

CANADA / JUDGMENT

Abdi v. Bottomley

2018 BCSC 2333

COURT

Supreme Court of British Columbia

DECIDED

21 June 2018

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2018 BCSC 2333 Abdi v. Bottomley IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Abdi v. Bottomley, 2018 BCSC 2333 Date: 20180621 Docket: S147738 Registry: Vancouver Between: Alla Abdi Plaintiff And: Paul Bottomley, Roberta Bottomley, and City of Burnaby Defendants And: Paul Bottomley and Roberta Bottomley Third Parties Before: The Honourable Madam Justice Gropper Oral Ruling re Canvassing the Jury Counsel for the Plaintiff: J.S. Stanley P.J. Bosco Counsel for the Defendants and Third Parties Paul and Roberta Bottomley: M.D. Murphy Counsel for the Defendant City of Burnaby: D.J.A. Bell S. L. Hamilton Place and Date of Trial/Hearing: Vancouver, B.C. June 21, 2018 Place and Date of Judgment: Vancouver, B.C. June 21, 2018

- [1] THE COURT: I have had an opportunity to review your submissions before we met today and I thank you for providing them to me in advance. The question is whether the case is sufficiently complex that the jury ought to be canvassed about the basis for their decision on finding negligence, if they do.
- [2] The City of Burnaby submits that the questions to the jury should require them to provide particulars in respect of their findings regarding breach, standard of care and causation because there is sufficient reason to believe that the jury's understanding of its instructions may need to be tested.
- [3] The plaintiff opposes the application. She argues that this is a simple case of negligence. The particulars alleged are simple: the Bottomley's should not have had fires and Burnaby should not have let them keep the fire pit. The plaintiff submits that the particulars are easily and logically associated to the issue of causation and that the simplified version of the CIVJI instruction is sufficient to instruct the jury as to factors needed to make out a claim for negligence.
- [4] The jurisprudence addresses motor vehicle accident cases as the simple cases and malpractice cases as a complex. This case is neither. It is more analogous to a motor vehicle accident case: the accident occurred and caused injury.

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- [5] I have already decided the issue of the duty of care of the City of Burnaby. Asking the jury to provide particulars on those areas identified by Burnaby is not one of those areas where the jury's understanding needs to be tested. These are interesting issues, as far as lawyers are concerned, but the jury is here to provide an answer to whether any or all of the defendants were negligent.
- [6] Asking the jury questions about "why" will invite a look at the deliberative process, which we are not to do. I do not think this jury will necessarily be able to come to an agreement about the particulars if they are asked.
- [7] We have asked the jury to find whether there is negligence and if so, to assess damages. It is not a complex case and there is no point making it more complex for the jury.
- [8] I decline to ask the jury to provide the particulars that Burnaby suggests. "Gropper J."
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