

CANADA / JUDGMENT

Assadimofrad v. Cowan

2020 BCSC 1961

COURT

Supreme Court of British Columbia

DECIDED

10 December 2020

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2020 BCSC 1961 Assadimofrad v. Cowan IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Assadimofrad v. Cowan, 2020 BCSC 1961 Date: 20201210 Docket: M165449 Registry:

Vancouver Between: Pooneh Assadimofrad Plaintiff And Doris Margaret Cowan and William

Donavon Cowan Defendants Before: The Honourable Madam Justice W.A. Baker Reasons for

Judgment - Re: Costs Counsel for the Plaintiff: K. Miles C. Caldwell Counsel for the Defendants: S

Markovich P. Harden Date Written Submissions Received: October 16, 22, 27, 2020 Place and Date

of Judgment: Vancouver, B.C. December 10, 2020

- [1] This action arose as a result of a motor vehicle accident on August 27, 2014 in North Vancouver, B.C. The plaintiff's car was rear-ended by the defendant Ms. Cowan. The defendants admitted liability for the accident.
- [2] The trial was heard by a jury over eight days, beginning on January 27, 2020. At issue were causation and quantum of damages.
- [3] On August 28, 2020 I awarded costs in favour of the plaintiff. The plaintiff now seeks a further order that I award costs of two counsel. In particular, the plaintiff argues the defence should pay an additional 5 units per day for item 34 (preparation), and an additional 10 units per day for item 35 (attendance at trial). The plaintiff seeks the additional units under item 34 for all 10 days which were originally scheduled, notwithstanding the fact that the trial completed in eight days.
- [4] I will not repeat the background of the facts in this case, as I have done so in my decision of August 28, 2020.
- [5] The plaintiff argues that the complexity of the issues, including the number of experts called for the plaintiff and anticipated to be called by the defence, and the number of lay witnesses called by the plaintiff (six) and anticipated to be called by the defence (four), all justify costs for two counsel.

- [6] The plaintiff relies on *Chen v. Beltran*, 2011 BCSC 41 and *Godbout v. Notter*, 2019 BCSC 1481 as support for its submission that costs for two counsel have been awarded where the complexity of the case justifies two counsel. I note that in *Godbout*, the court awarded costs of a second counsel because it would be grossly inadequate and unjust to not award additional costs where two counsel were necessary and useful.
- [7] The defence argues that that *Chen* and *Godbout* are distinguishable from the case at bar. In those cases liability was strenuously contested, and accident reconstruction experts were required, in addition to the more usual medical experts.
- [8] The defence relies on *Thom v. Canada Safeway Limited*, 2015 BCSC 2026, as applied in *Pinch (Guardian ad litem of) v. Morwood*, 2016 BCSC 1907 and *Whaley v. Bryant*, 2020 BCSC 797. *Thom* was a wrongful dismissal trial heard by a jury, which spanned 14 days. In *Thom*, Mr. Justice Saunders described the case to be one of ordinary to more than ordinary difficulty.
- [9] Saunders, J. analyzed the authority in the Rules of Court to make an award for two counsel in an ordinary order for costs. After reviewing the law in detail, he concluded:
- [46] To the extent that complexity of a case supports the involvement of two counsel, that complexity may be recognized in an award of costs under Scale C. Other than that, and with due respect to those who have found in favour of such awards, I find only a very limited authority in the Rules under which an additional costs award for the participation of two counsel might be granted. Specifically, Appendix B, s. 2(4) provides that the value for each unit on the tariff for the proceeding, or any step in the proceeding, may be set at 1.5 times the value that would otherwise apply, but only if after fixing the scale of costs the court finds that an award on the basic scale would, because of "unusual circumstances", be "grossly inadequate or unjust". I can make no such finding in the circumstances of this case.
- [47] The Rules provide no other basis for such an award of increased party and party costs.
- [48] To the extent that the recent decisions of this court listed above would appear to support awards of double costs in circumstances less stringent than those set out in s. 2(4), I would regard those decisions, with respect, as not being binding authority due to the provisions of the Rules not having been considered (in accordance with *Re Hansard Spruce Mills Limited*, [1954] B.C.J. No. 136).
- [10] In my view, the number of experts and lay witnesses in the case at bar was not particularly unusual for a motor vehicle case. Similarly, this case did not stand out as unduly complex.
- [11] The analysis of *Saunders, J.* is applicable to the case before me. I do not find that the circumstances of case before me were unusual, or that it would be grossly inadequate or unjust to award costs on the basic scale.
- [12] The application of the plaintiff is denied. "Baker J."

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Prepared on 26 October 2026 · Esheria