

CANADA / JUDGMENT

Badela v. Donald

2023 BCSC 2366

COURT

Supreme Court of British Columbia

DECIDED

20 October 2023

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2023 BCSC 2366 Badela v. Donald IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Badela v. Donald, 2023 BCSC 2366 Date: 20231020 Docket: M245869 Registry: New Westminster Between: Kal Mohamed Badela Plaintiff And James Joseph Donald Defendant And Sterling Rychkun Defendant

- and - Docket: M246736 Registry: New Westminster Between: Kal Mohamed Badela Plaintiff And James Joseph Donald, Insurance Corporation of British Columbia, Beata Siwinski, Edward Leung, Ryan Ruggles, Claudia Cortez, Megan Stapelmann, Scot Jackson, Navdeep Brar, Daryl Learned and Robert Lnu Defendants Before: The Honourable Justice Taylor Oral Reasons for Judgment In Chambers The Plaintiff appearing on own behalf: K. Badela Counsel for the Defendants ICBC and the ICBC employees: J. Morris Place and Dates of Hearing: New Westminster, B.C. July 18, 2023 September 27, 2023 Place and Date of Judgment: New Westminster, B.C. October 20, 2023

[1] This chambers decision addresses the sequencing of a number of procedural applications advanced by both the plaintiff and the defendants in two related proceedings.

Background

- [2] The proceedings arise out of a single motor vehicle accident involving the plaintiff Mr. Badela and the defendant Mr. Donald in Burnaby on December 16, 2019 (the "Accident"). It is alleged in the pleadings that the Accident was witnessed by the defendant Mr. Rychkun.
- [3] Mr. Badela, by notice of civil claim filed September 12, 2022, commenced action number 245869. In that action, Mr. Badela claims against Mr. Donald and Mr. Rychkun in tort and conspiracy on the basis that the defendants made false statements to ICBC regarding the circumstance of the Accident with the result that Mr. Badela was determined by ICBC to be 100% responsible.
- [4] A few weeks later, Mr. Badela, by notice of civil claim filed on October 28, 2022, commenced a second claim with action number 246736. In that action, Mr. Badela advanced three separate claims also related to the Accident:

- 1) against the defendant Mr. Donald in tort for personal injuries caused by the Accident;
 - 2) against ICBC and certain ICBC employees in tort and conspiracy in relation to ICBC's determination that the plaintiff was 100% responsible for the accident; and
 - 3) against ICBC in relation to Part 7 entitlements.
- [5] The defendants filed responses to the civil claims in both actions denying the allegations.
- [6] On March 8 and March 14, 2023, the defendants filed applications seeking the following relief:
- 1) severance of the claim against Mr. Donald from the claims against ICBC and the ICBC employees in action number 246736;
 - 2) an order that the personal injury claim against Mr. Donald be tried before the claims against ICBC and the ICBC employees;
 - 3) an order staying the claims against ICBC and the ICBC employees, including with respect to document production and discovery, pending disposition of the claim against Mr. Donald;
 - 4) an order staying action number 245869 pending disposition of the claim against Mr. Donald; and
 - 5) an order that production of documents in discovery and all matters besides the claim against Mr. Donald be stayed pending disposition of that claim.
- [7] On June 19 and 26, 2023, the plaintiff filed an application seeking the following relief with respect to the two actions:
- 1) an order striking out the response to civil claim of Mr. Donald with leave to file an amended response in 14 days;
 - 2) an order striking out certain paragraphs of the response to civil claim of ICBC and the ICBC employees with leave to file;
 - 3) an order requiring the defendants to comply with discovery documents; and
 - 4) an order staying the defence application until the defendants have amended their pleadings and complied with discovery.
- [8] It was agreed between the parties at the outset of this hearing that my ruling would be limited to the procedural question of sequencing and that a ruling on the merits of the other issues could be addressed at a later date, depending on the outcome of this hearing. For clarity, I am not making a ruling in this decision on any of the substantive matters in any of the notices of applications other than the order of proceeding. Applicable Law

- [9] In my view, I have a discretion to order the sequencing of applications in this case. Rule 22-1(7) of the Supreme Court Civil Rules empowers the court to: [g]rant or refuse the relief claimed in whole or in part, or dispose of any question arising on the chambers proceeding.
- [10] Rule 22-5 enables the court to order separate hearings or trials if a joinder may unduly complicate or delay the proceeding at trial. Section 8(2) of the Law and Equity Act, R.S.B.C. 1996, c. 253, also empowers the court to stay proceedings if it thinks fit.
- [11] In *Johnston Estate v. Johnston*, 2017 BCCA 59, the British Columbia Court of Appeal explained that this Court has an inherent jurisdiction to stay proceedings. The Court of Appeal explained that in doing so the court must weigh the potential benefits and prejudice and balance the parties' competing interests. The court also emphasized the principle that a multiplicity of legal proceedings should be avoided as far as possible.
- [12] In *British Columbia v. The Jean Coutu Group (PJC) Inc.*, 2021 BCCA 219, the Court of Appeal in the context of the class action discussed the considerations applicable in sequencing applications, particularly to the extent to which a preliminary application may dispose of the whole proceeding or narrow the issues to be determined, the interests of judicial economy and efficiency and a fair and efficient determination of the proceeding. I consider that case to be applicable by analogy since this is obviously not a class proceeding.
- [13] All the above is merely a subset of the more general principle that the superior court has power to control its own process: *Crowder v. British Columbia (Attorney General)*, 2019 BCSC 1824 at paras. 185 and 196

Analysis

- [14] Taking into account the legal principles, all the circumstances and balancing the interests, my view is that these proceedings should be sequenced in the manner proposed by the defendants.
- [15] As context, I observe at the outset that the dispute began as a simple motor vehicle claim. The plaintiff, by filing two separate claims and adding ICBC, the ICBC employees, and Mr. Rychkun as defendants, has made a decision to significantly expand the scope and complexity of the litigation and to create a multiplicity of proceedings out of a single motor vehicle incident.
- [16] While it is certainly the plaintiff's right to litigate his claims as he chooses, I must address this application in light of the larger context of judicial economy, procedural efficiency, and fairness to all parties.
- [17] In my view, the efficiency of the sequencing proposed by the defendants significantly exceeds the efficiency of the plaintiff's proposed sequencing for three reasons. First, if the defendants' applications are granted, the proceedings will be limited at the initial stage to the personal injury claim, which will narrow the issues before the court. Depending upon the result in the personal injury claim, the plaintiff's application in relation to the

conspiracy claim, the ICBC claim, and the s. 7 claim may be rendered unnecessary or could be narrowed. For example, if the plaintiff were found at trial to be 100% responsible for the Accident, it is difficult to see how his conspiracy and tort claim against ICBC and the ICBC employees (relating to their determination that he was 100% responsible) could reasonably proceed.

- [18] Second, the issues for discovery, pretrial procedures and ultimately trial will be narrowed and the case can be scheduled for an earlier and shorter trial date. Whereas the simple question of liability in a personal injury claim involves only three factual witnesses, the separate conspiracy, ICBC and Part 7 claims involve numerous witnesses, including at least eight individual ICBC employees, requiring a much lengthier and more complex discovery and trial process.
- [19] Third, there is no prejudice to the plaintiff by proceeding in this manner because the plaintiff will still have the opportunity to oppose the defendants' applications on the merits. If he is unsuccessful, his right to make his applications and ultimately his claims will not be denied but merely delayed. Further, he will have the right to seek to strike the claim of Mr. Donald in any event.
- [20] Mr. Badela argues that it is necessary for the pleadings of the defendants to be further particularized to address the defendants' applications. I do not agree. On review of the defendants' pleadings, which I note have previously been amended in response to the plaintiff's earlier demands for particulars, these pleadings are in my view sufficiently detailed to enable the court to understand the nature of the claims and defences and to enable the defendants' applications on severance and a stay of proceedings to be addressed, at least at this stage.
- [21] By contrast, proceeding with the plaintiff's applications first will create no efficiencies. This is because even if he is successful in striking the defendants' pleadings with leave to amend, the defence applications will still need to be argued once the pleadings are amended and re-filed. No steps in the litigation will therefore be saved, nor will the process be shortened.
- [22] The defendants also argue persuasively that if their applications are dismissed, discovery will be the next step in the proceedings, and the only issue will be the plaintiff's argument with regard to the pleadings, which could be addressed as a discrete matter in regular chambers or before a master. There would therefore be no prejudice to Mr. Badela.
- [23] Further, in terms of fairness, I note that the defendants' applications were raised as a preliminary matter in March 2023, well before the plaintiff's application was filed in June 2023, and the defence applications have been outstanding since April 2023 when they were first scheduled and adjourned. The defendants have been diligent in pursuing their applications and there has been no delay attributable to them, as the original application was adjourned due to insufficient court time.

- [24] For all the above reasons, I find that the defence applications should be heard first followed by the plaintiff's at a subsequent date, as necessary, based on the outcome of the defendants' applications.
- [25] For clarity the plaintiff's application is stayed pending the hearing of the defence applications.
- [26] Costs shall be in the cause. "M. Taylor J."

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