

CANADA / JUDGMENT

Bagri v. Bagri

2015 BCSC 2132

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2132 Bagri v. Bagri IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Bagri v. Bagri, 2015 BCSC 2132 Date: 20151120 Docket: M083817 Registry: Vancouver Between: Sharanjeet Bagri Plaintiff And Sodhi Bagri and Kwok Keung Tam Defendants

- and - Docket: M102466 Registry: Vancouver Between: Sharanjeet Bagri Plaintiff And Todd Lance and Shelley Irene Meadows Defendants Before: Master Scarth Reasons for Judgment Counsel for the Plaintiff: M.S. Randhawa Counsel for the Defendants: D. Madani Place and Date of Hearing: Vancouver, B.C. August 10, 2015 Place and Date of Judgment: Vancouver, B.C. November 20, 2015
- [1] These two personal injury actions are proceeding to trial together in January 2016, pursuant to a consent order of October 21, 2010.
- [2] The plaintiff applies for an order to strike the jury notices filed by the defendants in both actions. The defendants apply for an order removing the actions from Rule 15-1.
- [3] The issue on the cross-applications is whether the trial will be by judge alone or by judge and jury. I. Background
- [4] Ms. Bagri alleges injuries arising from two motor vehicle accidents: September 23, 2007 and August 16, 2009.
- [5] Ms. Bagri filed an action related to the first accident on September 2, 2008, under former Rule 68 which provided for expedited actions. The defendants filed a statement of defence admitting liability for the accident. On July 8, 2009, on application by the defendants, Leask J. made an order removing the action from Rule 68. The defendants then filed a notice requiring trial by jury pursuant to Rule 12-6(3) for the trial set for November 23, 2010. There appears to be no dispute that the jury notice was valid at the time it was filed.
- [6] Ms. Bagri filed the second action on May 25, 2010 as an expedited action under former Rule 68. Again, liability was admitted by the defendants.

- [7] The new Supreme Court Rules came into effect on July 1, 2010. On July 5, 2010, Ms. Bagri filed a notice of fast track action in the second action pursuant to Rule 15-1(2)(a). On July 28, 2010, she filed a similar notice in the first action.
- [8] On October 21, 2010, the parties consented to an order that the actions be heard together for trial.
- [9] The trial was repeatedly delayed due to multiple applications and because of Ms. Bagri's impending shoulder surgery. There have been three adjournments, three case planning conferences, and numerous applications.
- [10] In June 2012 the defendants filed notices requiring trial by jury in both actions.
- [11] On November 14, 2013, the plaintiff applied in each action for an order striking the defendants' jury notice. The applications were adjourned, as was the trial date of November 18, 2013.
- [12] On July 4, 2014 the defendants filed additional notices requiring trial by jury in each action for the trial set for January 11, 2016.
- [13] On August 12, 2014 the defendants served notices seeking an admission that the damages do not exceed \$100,000 in either action. The plaintiff responded with a denial.
- [14] On December 18, 2014, the defendants brought their application for an order that these actions be removed from Rule 15-1 and for an order that the jury notices are valid. II. Issues
- [15] The issues on these applications are as follows:
- (a) Are these actions fast track actions under Rule 15-1?
 - (b) If no, are the jury notices, or any of them, valid? III. Discussion
- [16] Pursuant to the rules for transitional pleadings set out in Rule 24-1, the current Rules apply to both actions notwithstanding that they were started under the former court rules. Rule 15-1 (entitled "Fast Track Litigation") replaces former Rule 68 and provides a "process for a more efficient and economical litigation of those cases that are relatively straightforward, can be prepared for trial and tried relatively quickly, and do not require as extensive a process as the more complex cases": *Shaker v. Chow*, 2012 BCSC 617, at para. 27.
- [17] The material provisions of Rule 15-1 are set out below:
- (1) Subject to subrule (4) and unless the court otherwise orders, this rule applies to an action if
 - (a) the only claims in the action are for one or more of money, real property, a builder's lien and personal property and the total of the following amounts is \$100,000 or less, exclusive of interest and costs:

- (i) the amount of any money claimed in the action by the plaintiff for pecuniary loss; (ii) the amount of any money to be claimed in the action by the plaintiff for non-pecuniary loss; (iii) the fair market value, as at the date the action is commenced, of (A) all real property and all interests in real property, and (B) all personal property and all interests in personal property claimed in the action by the plaintiff, claimed in the action by the plaintiff,
- (b) the trial of the action can be completed within 3 days,
- (c) the parties to the action consent, or
- (d) the court, on its own motion or on the application of any party, so orders.
- (2) If this rule applies to an action,
 - (a) any party may file a notice of fast track action in Form 61, (a.1) the filing party must serve a copy of the filed notice of fast track action on each of the other parties or record, and
 - (b) the words "Subject to Rule 15-1" must be added to the style of proceeding, immediately below the listed parties, for all documents filed after the notice of fast track is filed under paragraph (a) or the court order is made under subrule (1)(d), as the case may be.
- (3) Nothing in this rule prevents a court from awarding damages to a plaintiff in a fast track action for an amount in excess of \$100,000.
- (6) This rule ceases to apply to a fast track action if the court, on its own motion or on the application of any party, so orders.
- (10) The trial of a fast track action must be heard by the court without a jury.
- [18] An action is not a fast track action simply because a party has filed a notice of fast track action. Rather, a fast track action occurs in the circumstances set out in Rule 15-1(1): see *Musgrove v. Elliot*, 2014 BCSC 40 at para. 17, quoting *Narain v. Gill*, 2012 BCSC 1468 at para. 17. An action can be fast tracked as long as one or more of the criteria in Rule 15-1(1) are met: see *Hermani v. Hillard*, 2011 BCSC 1381 at paras. 10-17.
- [19] Even if an action qualifies as a fast track action, pursuant to Rule 15-1(6), a court may order that the action is to proceed as a regular action. When determining whether or not an action should proceed as a fast track action, the court has considered numerous factors, including:
 - (i) the time required for trial: *Shaker*, at para. 21; (ii) whether all parties have consented or acquiesced to use fast track procedures: *Musgrove* at paras. 19-21; (iii) the risk of prejudice to a party, including prejudice with respect to costs: *Shaker* at paras. 33-34; (iv) whether a party is using the application of fast track for an improper purpose, for example as a back door method to strike a jury notice: see *Tong v. Lanser*, [2012] B.C.J. No. 2956 at paras. 45-46, 51 (S.C.); and *Beckett v. Tong*, [2013] B.C.J. No. 1434 at para. 15 (S.C.); and

- (v) the interests of justice and the purpose of Rule 15-1, which was designed to provide a more efficient and economical procedure for more straightforward or less valuable cases: *Shaker* at paras. 24-26; and *Tong* at paras. 32-33.
- [20] If an action is a fast track action, Rule 15-1(10) applies to require that the "trial of a fast track action must be heard by the court without a jury". The process for obtaining a jury trial set out in Rule 12-6(3) is expressly subject to the restriction in Rule 15-1(10). Therefore the parties to a fast track action cannot file a valid jury notice as long as Rule 15-1 applies to the proceedings. A jury notice that is not filed in compliance with the Rules is a nullity: see *Lanci v. Marpole Transport Ltd.*, 2000 BCSC 1227 at paras. 33-35. IV. Are these Fast Track actions?
- [21] Subrule (1)(a) provides that Rule 15-1 applies to an action where the plaintiff's damage claim has a value of not more than \$100,000. Ms. Bagri submits that given that there are two actions, this limit is doubled to \$200,000, and further, that pursuant to Rule 15-1(3), the court has discretion to award more than that amount. In *Shaker*, the Court proceeded on the basis that the action qualified as a fast track action under Rule 15-1(1)(a) because, although the plaintiff's claims were not limited to \$100,000, the plaintiff asserted that his damages would likely not exceed \$100,000. Here, Ms. Bagri has declined to admit that her claims will not exceed the limit in Rule 15-1(1)(a). The calculations on past income loss provided by plaintiff's counsel in submissions on this application suggest an amount over \$200,000 (6 years of lost income of \$40,000 per year). Further Ms. Bagri has obtained an expert report which assesses her costs of future care and loss of future income at more than \$440,000. While the expert evidence is not definitive as to what damages will be awarded, it provides an indicator that the plaintiff's claims exceed even a doubled monetary limit under Rule 15-1(1)(a).
- [22] In the circumstances, it is fair to conclude that the actions do not fall within the monetary limit specified in Rule 15-1(1)(a).
- [23] A second circumstance in which an action can be appropriately placed in fast track is where the time required for trial is 3 days or less: Rule 15-1(1)(b). In a Reply to Notice to Admit filed on May 28, 2012, the plaintiff estimated that the trial would last 6-7 days. Ms. Bagri had previously estimated an 8-day trial at the trial management conference on May 11, 2012. The defendants have estimated a 10-day trial. The trial is now set for 10 days commencing January 11, 2016. Again, even assuming that the length of trial specified in Rule 15-1(1)(b) should be doubled on the basis that there are two actions involved, the limit set out in the rule is not met.
- [24] A third circumstance is where the parties consent to proceed as a fast track action: Rule 15-1(1)(c). The plaintiff asserts that the defendants here should be found to have consented given that they acquiesced in the actions proceeding as fast track actions. In support of her position the plaintiff cites the fact that until this application was filed in December 2014, the defendants made no move to have the actions removed from Rule 15-1 -- either when the

notices were filed in July 2010 or when the actions were ordered to be heard together in October 2010. Further, the defendants filed several applications as "Subject to Rule 15-1". Taken together, the plaintiff asserts that these facts support a finding that the defendants acquiesced to use fast track procedures.

- [25] The defendants dispute that they have consented to these actions being fast track. They rely, in part, on the affidavit of Lori Hall, a paralegal for the defendants' counsel who deposes that that the applications were filed "Subject to Rule 15-1" in error. Further the defendants submit that the evidence supports a conclusion that they consistently objected to proceed as a judge-alone trial.
- [26] Musgrove was a decision addressing the plaintiff's costs following a trial decision. There the defendant had filed notices of fast track action. The plaintiff never objected to the defendants' assertion that the actions were fast track actions, and the parties conducted discoveries as if Rule 15-1 applied. Johnston J. held that a party who acts in compliance with the fast track procedures will be deemed to have acquiesced unless they have voiced some disagreement reasonably promptly. He stated as follows:
- [20] At a minimum, when a party is served with a notice in Form 61, that party should be expected to turn their mind to whether they agree that the action should proceed under the fast track regime, and, if they do not agree, to say so reasonably promptly and not lie in the weeds to see how things turn out with respect to costs.
- [27] Based on Musgrove, while a party should not be allowed to proceed as if Rule 15-1 applies and then change his or her mind when the application of the rule becomes less favourable, if a party has clearly objected to the procedures that would apply under Rule 15-1, they cannot be viewed as acquiescing to its application. Here, there is no evidence that the defendants consented to the fast track procedure. They had applied to have the first action removed from the expedited process under the former rules. Further, by requesting a jury trial, both before and after the fast track procedures were invoked, the defendants made it clear that they did not agree to a core part of the fast track procedures.
- [28] There are other factors which support a finding that these actions are not fast track actions. Given that the earlier accident is from almost 8 years ago, the fast track procedures have not assisted the parties in resolving the disputes quickly or efficiently. In contrast, applying fast track procedures restricts the defendants' right to proceed as a jury trial and caps their potential costs. While it has not been made out that the plaintiff has invoked Rule 15-1 specifically to defeat the defendants' jury notice, it is fair to conclude that, in the circumstances, using fast track procedures would negatively impact the defendants more than it would positively assist the plaintiff or advance the purposes of Rule 15-1.
- [29] In my view, taking all these factors into account, it is fair to conclude that Rule 15-1 does not apply to these proceedings. Accordingly the application by the defendants to remove the actions from fast track is allowed. V. Is there a valid jury notice?

- [30] There is no dispute that the jury notice filed in the first action, following the order of Leask J. removing the action from Rule 68, was valid at the time it was filed. The various jury notices filed following the filing of the notices of fast track action were arguably not valid. Given that, by this order, the actions are now removed from Rule 15-1, it is appropriate for the defendants to file a jury notice in each action to confirm their election to proceed with a jury trial.
- [31] The application by the plaintiff is dismissed.
- [32] Costs to the defendants in any event of the cause. Master S. Scarth
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