

CANADA / JUDGMENT

Cheung v. Dhaliwal

2020 BCSC 911

COURT

Supreme Court of British Columbia

DECIDED

2 June 2020

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2020 BCSC 911 Cheung v. Dhaliwal IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Cheung v. Dhaliwal, 2020 BCSC 911 Date: 20200602 Docket: M176267 Registry: Vancouver Between: Benson Chee Keung Cheung Plaintiff And Mandeep Dhaliwal, Yellow Cab Company Ltd. Defendants Before: Master Vos Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: S.J. Turner Counsel for the Defendants: S.L. Markovich Place and Date of Hearing: Vancouver, B.C. June 2, 2020 Place and Date of Judgment: Vancouver, B.C. June 2, 2020

- [1] THE COURT: The plaintiff applies for an order that would strike the notice requiring trial by jury filed on behalf of the defendants, so the trial of this action can proceed without a jury on June 22, 2020. The defendants oppose the order sought.

Background

- [2] The plaintiff claims damages for personal injuries and consequent losses he sustained as a result of car/motorcycle accident that occurred on July 29, 2016.
- [3] The notice of civil claim was filed on July 25, 2017.
- [4] The plaintiff filed a notice of trial on January 28, 2019, setting the case for a ten-day trial commencing on June 8, 2020. On January 28, 2019 the plaintiff also filed a notice requiring trial by jury.
- [5] The parties determined that additional time was needed for the trial and agreed to reschedule the trial. On May 28, 2019 the plaintiff filed a second notice of trial, setting the case for a 14-day hearing starting on June 22, 2020. On May 28, 2019 the plaintiff filed another notice requiring trial by jury. A notice requiring trial by jury was filed on behalf of the defendants on June 26, 2019.
- [6] Effective March 19, 2020, the Honourable Chief Justice suspended regular operations of this Court at all of its locations in order to protect the health and safety of court users and to help contain the spread of COVID-19. Subsequent notices advised that all civil and family trials scheduled to begin on or before June 5, 2020 were adjourned, unless otherwise directed by the Court.

- [7] The Court's COVID-19 Notice No. 22 provided that all civil and family trials scheduled to begin on or after June 8, 2020 will resume, unless the court otherwise directs. Under that Notice, all civil jury selections are suspended and civil jury trials are cancelled up to and including September 7, 2020.
- [8] The plaintiff wants this trial to proceed on June 22, 2020. The plaintiff is prepared to abandon his right to a jury trial, so the case can proceed to trial on that date.
- [9] The defendants want to maintain their right to have this case proceed to trial by jury.
- [10] The plaintiff's application was brought at the trial management conference for this case, pursuant to COVID-19 Notice No. 22. It provides that in civil actions where a jury notice has been filed and served, a party wishing to proceed by judge alone may schedule a trial management conference and apply to set aside the jury notice. A party wishing to continue with a trial by jury can oppose the application and can apply to adjourn the trial.

Analysis

- [11] This trial cannot proceed with a jury on June 22, 2020. The defendants' desire to have the trial proceed with a jury would necessitate an adjournment. In the circumstances of this case, should the defendants' right to a jury trial prevail where it would cause an adjournment of a trial that could otherwise proceed?
- [12] The defendants rely on case authorities which establish that the right to have a civil trial by jury is a substantive right that should not be taken away without cogent reasons; *Cliff v. Dahl*, 2012 BCSC 276, at para. 20; *Sidhu v. Hiebert*, 2020 BCSC 183, at para. 18.
- [13] Although jury trials are deeply rooted in our justice system, a litigant does not have an absolute right to a jury trial in a civil action. Cases relating to certain areas of law must be heard without a jury (see Rule 12-6(2) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 (the "Rules")). Furthermore, there are circumstances where the court may refuse trial with a jury (see Rule 12-6(5)).
- [14] The plaintiff refers to Rule 12-6(5)(a)(iii). It provides that the court may order that a trial be heard without a jury if "...the extra time and cost involved in requiring that the trial be heard with a jury would be disproportionate to the amount involved in the action." In *Cotter v. Point Grey Golf and Country Club*, 2015 BCSC 447 the court suggested, at para. 22, that the use of the word "disproportionate" in this subrule may be a reference to the object of the rules, as set out in Rule 1-3: Object
 - (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits. Proportionality
 - (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to

- (a) the amount involved in the proceeding,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the proceeding.
- [15] The trial of this matter is scheduled to start less than three weeks from today. The plaintiff argues that requiring the trial to proceed without a jury in June 2020 would avoid extra time and cost that would be incurred if the trial is adjourned. He submits that the delay and uncertainty inherent in rescheduling the 14-day trial, coupled with the extra cost of preparing again for a future trial, runs contrary to the "just, speedy and inexpensive determination" of this case on its merits. He says that if the trial is adjourned it would likely be reset for hearing at least two years from now. He points out that uncertainty with respect to the COVID-19 pandemic means there is no guarantee the case could proceed with a jury if it is rescheduled. A new date could be set, only to find out that jury trials are still suspended because of health concerns.
- [16] The defendants argue that their right to have the case tried by a jury should not be taken away. As their position embodies an adjournment of the trial, the law applied on applications to adjourn must be considered. It is well settled law. The interests of justice govern whether the court should grant an adjournment of a trial; *Sidoroff v. Joe*, [1992] B.C.J. No. 2776. When determining whether the interests of justice require an adjournment of a trial, the paramount consideration is whether an adjournment is needed to ensure that there would be a fair trial on the merits of the action; *Navarro v. Doig River First Nation*, 2015 BCSC 2173, at para. 19. Prejudice to be suffered by either side if an adjournment is or is not granted must be weighed and balanced; *Navarro*, at para. 25.
- [17] The objective of securing the just, speedy and inexpensive determination of this case points to the trial proceeding before a judge alone on June 22, 2020. The accident that is the subject of this action occurred almost four years ago. If the trial is adjourned it may not get on for a while. The plaintiff is concerned that a trial with a jury may be scheduled two or three years from now. Such a delay could result in a deterioration of evidence, as memories fade over time. This may be significant as liability for the subject accident is in issue and there will be witness testimony in relation to this issue.
- [18] Counsel for the plaintiff provided some information to the court about the personal circumstances of the plaintiff. He presently is 35 years old. He is single and has no children or dependants. At the time of the accident, he was employed as a financial service representative with Vancouver Credit Union. He has not returned to work since the occurrence of the accident. He lives with his parents.
- [19] An adjournment of the trial would obviously be prejudicial to the plaintiff as it would delay his day in court and thereby his ability to resolve the litigation and get on with his life. His counsel also points out that if the trial is adjourned additional expert fees will likely be incurred, as some reports will need to be updated for the new trial date.

- [20] On the other hand, if the trial proceeds on June 22, 2020 the only prejudice the defendants would suffer would be that the mode of trial would not be the mode they chose; trial by jury. Although the defendants may lose any tactical advantage they may believe they would have if the case is tried with a jury, they nevertheless would be assured of a just determination of the issues on the merits.
- [21] An adjournment of the trial would clearly prejudice the plaintiff. The prejudice to the plaintiff outweighs any prejudice the defendants may suffer if the case is heard by a judge without a jury. In the circumstances, the defendants' notice requiring trial by jury should be struck so the case can proceed to trial as scheduled, later this month.
- [22] The plaintiff's application is granted. Result
- [23] The order sought in Part 1, para. 1 of the plaintiff's notice of application filed May 26, 2020 is granted.
- [24] Are there submissions on costs? [DISCUSSION]
- [25] The defendants seek a direction that they would retain the right to pursue a jury trial if the trial does not proceed on June 22, 2020, and has to be rescheduled. The plaintiff does not oppose that direction. It is granted.
- [26] There will be no costs to any party with respect to this application. "Master Vos"

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