

CANADA / JUDGMENT

De Araujo v. Read

2005 BCCA 252

COURT

British Columbia Court of Appeal

DECIDED

27 April 2005

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2005 BCCA 252 de Araujo v. Read COURT OF APPEAL FOR BRITISH COLUMBIA Citation: de Araujo v. Read, 2005 BCCA 252 Date: 20050427 Docket: CA29268 Between: Estela de Araujo Respondent (Plaintiff) And Kenneth C. Read Appellant (Defendant) Before: The Honourable Mr. Justice Low The Honourable Mr. Justice Smith The Honourable Mr. Justice Thackray S.B. Stewart and M. Wilhelmson Counsel for the Appellant W.S. Berardino, Q.C. and A.N. MacKay Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia 12 December 2003 Written submissions received Place and Date of Judgment: Vancouver, British Columbia 27 April 2005 Reasons for the Court Reasons for Judgment for the Court:

- [1] On 13 May 2004 we ordered a new trial in this civil jury proceeding due to misconduct of counsel for the plaintiff respondent. The Supreme Court of Canada has refused leave to appeal our order. Our order reserved the issue of costs. We are now in receipt of written submissions from counsel on that issue.
- [2] We have not been asked to consider ordering counsel for the respondent personally to pay the costs of the trial aborted by our order. Therefore, following the decision in Brophy v. Hutchinson, 2003 BCCA 21, we think the appropriate order is that the respondent shall pay the costs of the trial thrown away. Of course, the appellant will also recover his appeal costs.
- [3] We have evidence that the respondent is an elementary school teacher without a substantial income. It is suggested that having to pay costs forthwith will stand in the way of her ability to pursue her claim for personal injuries in a second trial and to pursue her claim for damages for additional injuries arising out of another motor vehicle accident that occurred after the trial judgment set aside by our order. We are told that ICBC wishes to have trial of the second claim consolidated with the retrial in the present action.
- [4] In each action, the defence admits liability. The first accident involved a substantial collision and injury to the respondent. It seems to be certain that the respondent eventually will recover more than enough in damages to offset the costs thrown away and the costs of the appeal and she will likely recover costs in the second trial whether or not that trial encompasses her injuries arising out of both accidents.

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- [5] In the circumstances, we order that the appellant is entitled to his costs thrown away in the first trial plus his appeal costs, with recovery of all costs to be deferred until conclusion of the litigation. "The Honourable Mr. Justice Low" "The Honourable Mr. Justice Smith" "The Honourable Mr. Justice Thackray"
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