

CANADA / JUDGMENT

Gradek v. DaimlerChrysler Financial Services Canada Inc.

2010 BCCA 256

COURT

British Columbia Court of Appeal

DECIDED

9 April 2010

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2010 BCCA 256 Gradek v. DaimlerChrysler Financial Services Canada Inc. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Gradek v. DaimlerChrysler Financial Services Canada Inc., 2010 BCCA 256 Date: 20100409 Docket: CA037737 Between: Henryk Sylweste Gradek Respondent (Plaintiff) And DaimlerChrysler Financial Services Canada Inc./ Services Financiers DaimlerChrysler Canada Inc. and Frank Butch Fletcher Appellants (Defendants) Before: The Honourable Mr. Justice Groberman (In Chambers) On appeal from: Supreme Court of British Columbia, November 17, 2009 (Gradek v. DaimlerChrysler Financial Services Canada Inc. and Fletcher, 2009 BCSC 1572, Vancouver Registry M081674) Oral Reasons for Judgment Counsel for the Appellant: R.W. Parsons Counsel for the Respondent: Z. P. Wiseman Place and Date of Hearing: Vancouver, British Columbia April 9, 2010 Place and Date of Judgment: Vancouver, British Columbia April 9, 2010

- [1] GROBERMAN J.A.: This is an application for leave to appeal from an order as to costs following a Rule 66 fast track trial. The plaintiff recovered an amount of \$9,685.87 in damages of which \$8,000 represents general damages. This is far below the Provincial Court jurisdictional limit of \$25,000.
- [2] Costs were awarded under Rule 66(29)(b) in the amount of \$6,600, which is the statutory amount for a two day trial. Rule 66(29)(b) is expressly made subject to Rule 57(10) which provides: A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.
- [3] In this case the trial judge provided a number of reasons that he considered to be sufficient for bringing the matter into Supreme Court. Those matters can compendiously be described as procedural advantages in Supreme Court that were not available in Provincial Court. He referred, as well, to the complexity of the case.

- [4] The appellant wishes to argue on appeal that the exclusive, or near exclusive, criterion for "sufficient reason" under Rule 57(10) is the quantum that a plaintiff could reasonably contemplate recovering at the time he or she commenced the action.
- [5] In general, on applications for leave to appeal, the court takes into account four considerations as set out in *Chavez v. Sundance Cruises Corp.* (1993), 77 B.C.L.R. (2d) 328 (C.A.). Those are:
1. whether the appeal is prima facie meritorious or, on the other hand, frivolous;
 2. the significance of the point on appeal to the litigants;
 3. the significance of the point on appeal to practice generally, and
 4. the question of whether the appeal will delay or hinder the progress of the action;
- [6] The fourth consideration, of course, is not a factor in dealing with the question of appeal from an order as to costs.
- [7] The issue on which the appeal is sought to be brought is a pure issue of law. It is one of statutory construction, the question being the meaning of the words "sufficient reason" in the context of Rule 57(10). The language of Rule 57(10) does not, on its face, limit "sufficient reason" to a consideration of the anticipated quantum of damages. Even so, while I would not describe the appellant's case as a very strong one, it does seem to me that it is arguable that "sufficient reason" contemplates jurisdictional questions (particularly the quantum of damages), and not procedural advantages. In my view, there is sufficient merit in the appeal to warrant a hearing before a division of the Court.
- [8] The issue of how the Supreme Court is to determine whether a matter is brought in that court for "sufficient reason" is a matter of general importance in litigation, particularly given that the monetary limit for Small Claims Court has expanded to \$25,000. There will now be a sizable number of cases that fall below the Small Claims limit.
- [9] The case is of significance to the defendant in this matter; from a practical standpoint, it is an institutional defendant involved in many cases. The case is, however, of limited significance to the plaintiff. While the costs award is a significant proportion of the entire award received by the plaintiff, the costs of defending the appeal may significantly exceed the amount in issue.
- [10] This concern is mitigated, however, by the fact that the appellant is prepared to abide by an order that it will pay the respondent's costs on Scale 1 in any event of the appeal (it is acknowledged that the respondent would be free to argue before the Court that a higher level indemnity should be awarded).
- [11] In the circumstances, I am satisfied that leave ought to be grant and that a division of the Court should hear this matter. Leave is granted. The appellant will be responsible for the respondent's costs in any event of the appeal. "The Honourable Mr. Justice Groberman"

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