

CANADA / JUDGMENT

Guo v. Stevenson

2023 BCSC 1284

COURT

Supreme Court of British Columbia

DECIDED

31 May 2023

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2023 BCSC 1284 Guo v. Stevenson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Guo v. Stevenson, 2023 BCSC 1284 Date: 20230531 Docket: M127738 Registry: Kelowna Between: Meifang Guo Plaintiff And Sean Stevenson and Sunbelt Rentals of Canada Inc Defendants Before: Master Schwartz Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: L. Turner Counsel for the Defendants: E. Ross Place and Date of Trial/Hearing: Kelowna, B.C. May 31, 2023 Place and Date of Judgment: Kelowna, B.C. May 31, 2023

- [1] THE COURT: This is the defendants' application for the orders set out in paragraphs 1 through 6 of Part 1 of their application filed May 17.
- [2] This action stems from a motor vehicle accident that occurred on June 15, 2018. An examination for discovery of the plaintiff has been completed, and the matter is presently scheduled for a seven-day trial starting October 10, 2023.
- [3] The plaintiff claims to have suffered a variety of injuries stemming from the accident, including injuries to her head, neck, right shoulder, back, as well as some psychological injuries. However, in the submissions before me today, it appears that tinnitus remains the most significant of her injuries.
- [4] In her notice of civil claim, the plaintiff has claimed for general damages, income loss, future care costs, loss of housekeeping capacity and special damages, although I am told that there is not much in the way of an income component to the claim, and she has recently abandoned her claim for the loss of housekeeping capacity.
- [5] Thus far, the plaintiff has attended at three separate IMEs; two organized by the plaintiff, those being with Dr. Dumper, an ENT, in October of 2020, and with Dr. Giantomaso, a podiatrist, in December of 2020. The plaintiff has also attended before Dr. Ayron, an ENT, on April 18, 2023. I am told that the clinical records have been delivered but there have been no reports served by Dr. Ayron.
- [6] The proposed IME is set to occur in Kelowna, where the claimant resides. The 84 day deadline has not yet expired, but rather it expires on July 14, 2023.

- [7] The defendants seek the IME, as they do not yet have an estimate to address the cost of care or the loss of housekeeping capacity, although they appreciate that the loss of housekeeping capacity claim has been withdrawn. They cite *Tran v. Abbott*, paragraphs 27 to 28 and 32 to 33 to suggest that the plaintiff has claimed multi-faceted injuries, and that the court should exercise its discretion and order a second IME.
- [8] Dr. Giantomaso himself points out that a functional capacity assessment could be considered, although he does qualify that and say it may not be necessary, as she is largely now retired.
- [9] Defence counsel says that the proposed IME involves wholly different medical areas, and that there should be no overlap with any of the previous IMEs.
- [10] The plaintiff says that the application should be dismissed. She says that *Tran* is clear that the second IME must be shown as being necessary to put the parties on equal footing, and not simply be beneficial. The plaintiff says her injuries have been well known for approximately two-and-a-half years, and there is nothing new or unforeseen.
- [11] The plaintiff says that this request is not proportional to the amount at issue. Really, the most significant injury is her tinnitus claim and she has already been seen by two separate ENT specialists. The plaintiff says she is no longer making a loss of housekeeping capacity claim, so the proposed expert will not be able to add anything of consequence, especially when considering proportionality.
- [12] I do agree with the plaintiff that it is questionable how the proposed expert will put the parties on equal footing. As the plaintiff has stated, with the exception of her tinnitus, her symptoms have decreased to the point where she can now wean herself off of her massage, chiro, counselling. The evidence suggests that her use of these services has decreased over time, and that she only has flareups every two to three months.
- [13] As an example, she says that her last two chiro appointments were in December of 2022 and in March of 2023. Her last massage appointments were in November of 2022 and March of 2023, so they are indeed a few months apart.
- [14] Practically, future care costs is all that the proposed expert can opine on, as the plaintiff is now retired and has abandoned her loss of housekeeping capacity claim. Given how the massage, chiro and counselling appointments are weaning down, the only care cost of significance appears to be her tinnitus appointments. However, two ENT specialists have examined her, and they are the ones who can more properly opine on the necessity of such appointments going forward.
- [15] Based on her resume, the proposed expert Ms. Peterson does not appear to have any speciality in that area.

- [16] Based on the evidence before me, I do not see how the proposed assessment is proportionate, having regard to the magnitude of her claim and the complexity of the issues. While such a report may be of some benefit to the parties and the court, I am not confident that it is necessary to put the parties on equal footing, and that is the test that the applicant is meant to meet.
- [17] In the circumstances, I elect to exercise my discretion and dismiss the application. "Master Schwartz"

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