

CANADA / JUDGMENT

Johnson v. Noort Investments Ltd.

2025 BCSC 2355

COURT

Supreme Court of British Columbia

DECIDED

28 November 2025

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2025 BCSC 2355 Johnson v. Noort Investments Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Johnson v. Noort Investments Ltd.,

2025 BCSC 2355

Date: 20251128

Docket: M05040

Registry: Abbotsford

Between:

Donna Johnson

Plaintiff

And

Noort Investments Ltd., Value Village Canada Inc., GYH Holdings Ltd.,

Mr. Mikes Restaurants Corporation, ABC Company Ltd. and John Doe,

Downunder Landscaping and Property Services, and Rodney Scott MacDonald

Defendants

And

Noort Investments Ltd., Value Village Canada Inc., GYH Holdings Ltd.,

Mr. Mikes Restaurants Corporation, ABC Company Ltd. and John Doe,

Downunder Landscaping and Property Services, Rodney Scott MacDonald

and Jordan MacDonald

Third Parties

Before: The Honourable Justice Ormiston

Reasons for Judgment

In Chambers

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Rodney Scott MacDonald and Jordan MacDonald:

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No other appearances

Place and Date of Hearing:

Chilliwack, B.C.

April 17, 2025

Place and Date of Judgment:

Abbotsford, B.C.

November 28, 2025

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Introduction

- [1] The defendants, Mr. Mikes Restaurants Corporation ("Mr. Mikes") and Noort Investments Ltd., apply to strike the plaintiff's amended notice of civil claim, and alternatively to have the claim dismissed on a summary trial. The remaining defendants support these applications. The applicants argue the claim has no prospect of success because it is statute barred by British Columbia's 'no fault' insurance scheme that prohibits legal actions for injuries caused by a vehicle arising out of an accident.

Background

- [2] The circumstances founding the claim are straightforward. On October 9, 2022, the plaintiff was driving her three-wheeled motorcycle in a parking lot where she struck a raised curb. She sustained serious injuries as a result, including a head injury with cognitive impairment. The connection between each defendant and the parking lot where the accident occurred is controversial, however the plaintiff alleges that the lot is private property owned by the defendants GYH Holdings Ltd. and Mr. Mikes. She claims that these defendants as well as Noort Investments Ltd. and Value Village Canada Inc. ("Value Village") were occupiers of the parking lot and responsible for it at the time of the accident. The defendant Downunder Landscaping and Property Services ("Downunder Landscaping") is alleged to have been responsible for maintenance and repairs of the parking lot. Ultimately, the plaintiff claims that the curb she struck was hidden by overgrown plants and that her injuries were caused by the negligence of the defendants in failing to keep the parking lot free from such obstructions.

Positions of the Parties

- [3] The parties are in agreement that the viability of the plaintiff's claim rests on the applicability and interpretation of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231 [IVA]. In 2020, this Province enacted significant amendments to the IVA, prohibiting people from bringing actions for bodily injuries caused by a vehicle. Specifically, s. 115 of the IVA states:

Despite any other law or enactment but subject to this Part,

- (a) a person has no right of action and must not commence or maintain proceedings respecting bodily injury caused by a vehicle arising out of an accident, and
 - (b) no action or proceeding may be commenced or maintained respecting bodily injury caused by a vehicle arising out of an accident.
- [4] It is not in dispute that the plaintiff was operating a vehicle and that her motorcycle accident resulted in bodily injury. The live issue is whether these injuries were 'caused by a vehicle arising out of an accident.' The applicants submit that s. 115 makes plain and obvious that the claim has no prospect of success, because s. 113 of the IVA defines "bodily injury caused

by a vehicle" as "bodily injury caused by a vehicle or the use or operation of a vehicle." [Emphasis added.] The applicants argue that the plaintiff's claim is statute barred because her injuries flowed from the ordinary and well-known use of her vehicle, that is, striking an object while driving.

- [5] The plaintiff explains that her claim relies on a different interpretation of s. 115, and specifically what it means for injuries to have been 'caused by' a vehicle, or use of a vehicle. The respondent submits that the IVA does not preclude actions, such as hers, that are founded in the allegation that injury was caused by the negligence of a property owner or occupier. The respondent says the legislative decision to use the words 'caused by' is an intentional limitation on the type of actions prohibited by s. 115. Her primary argument on this application that a legal pathway exists for a court to find the words 'caused by' a vehicle (or use of a vehicle) refer to the proximate cause of the injuries sustained.
- [6] In support of this interpretation, the respondent emphasizes that government could have chosen to prohibit actions where injuries flowed from the use of a vehicle in any way whatsoever, but they did not do so. For example, s. 115 could have read "a person has no right of action [] respecting bodily injury arising out of an accident." Both the applicants and the plaintiff rely on *Amos v Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405, where the Supreme Court sets out a test to analyze whether injuries 'arise out of' an accident. The plaintiff argues that the wording of the legislation at issue in *Amos* is critically different from s. 115 of the IVA, because s. 115 requires injuries to be 'caused by' the use of a vehicle, not simply 'arising out of' the use of a vehicle. In its analysis, the Court in *Amos* expressly finds that the words 'arising out of' create a broader relationship between events than the words 'caused by,' and as such must be interpreted in a more liberal manner (at para. 20).
- [7] The plaintiff relies on *Amos* in submitting that the words 'caused by' must be read as an intentional limitation on the scope of the prohibition created by s. 115. Applied to her own circumstance, the respondent acknowledges that her injuries 'arose from' her use of a vehicle, but she submits those injuries were not 'caused by' her use of a vehicle. The essence of the claim is that the proximate cause of the plaintiff's injuries was the negligence of the defendants, and therefore her action does not fall within the ambit of s. 115.

Application to Strike

- [8] Rule 9-5(1)(a) allows the court to strike out or amend any pleading on the ground that it discloses no reasonable claim. Subsection (1)(d) also allows the court to strike any pleading that is otherwise an abuse of the court's process. A pleading will be struck under this Rule if it is plain and obvious that the claim has no reasonable prospect of success: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64. Striking a pleading where the relief sought is barred by statute, is a quintessential use of Rule 9-5 to prevent the protracted hearing of a meritless claim.

- [9] However, I cannot find that it is appropriate to strike the claim in this case. The plaintiff has put forward an interpretation of the IVA that gives rise to a reasonable prospect of success at trial. The applicants have attempted to establish that the issues raised by the plaintiff have been clearly resolved by the provisions of the IVA, and by relevant rulings made by higher courts. I cannot accede to these submissions.
- [10] First, I agree with the plaintiff that her interpretation of the IVA is not necessarily at odds with settled jurisprudence. The applicants submit that a court hearing this claim would rely on the test established in *Amos* in determining whether the plaintiff's injury was 'caused by' a vehicle. In *Amos* at para. 17, the court asked:
1. Did the accident result from the ordinary and well-known activities to which automobiles are put?
 2. Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the [] injuries and the ownership, use or operation of his vehicle, or is the connection between the injuries and the [] vehicle merely incidental or fortuitous?
- [11] The applicants submit that the circumstances of the plaintiff's accident fall easily within the 'ordinary and well known' operation of a vehicle, and that the plaintiff's injuries are more than merely incidental to her use of a vehicle. However, in my view, the respondent has effectively thrown into question the applicability of this test to the IVA's recent amendments. The plaintiff argues that the legislation under review in *Amos* is distinguishable from s. 115 of the IVA. In *Amos*, the provision at issue entitled insured motorists to benefits if their injuries were 'caused by an accident' that 'arises out of the ownership, use or operation of a vehicle.' In contrast, s. 115 limits legal actions where the injuries were 'caused by a vehicle.'
- [12] While the applicants point out that 'accident' is defined in the IVA as 'an accident in which there is bodily injury caused by a vehicle,' the respondent emphasizes that the test in *Amos* addresses whether injuries 'arose out of' the use of a vehicle, not whether injuries were 'caused by' the use of a vehicle. The scope of the legal issue before the Court in *Amos* is discussed at para.10 where it is noted that ICBC conceded that the injuries were 'caused by an accident.'
- [13] The plaintiff here says that even if her injuries 'arose out of' the use of a vehicle, her case is distinct from *Amos*, because s. 115 does not preclude actions where injuries 'arise out of' the use of a vehicle. Rather, s. 115 explicitly narrows its scope to those injuries 'caused by' a vehicle, or use of a vehicle. Ultimately, the respondent argues that the test formulated in *Amos* is not applicable to the legislation at issue in this claim, but that the reasoning of the court provides robust support for her contention that 'arising out of' and 'caused by' are materially different. Specifically, the test in *Amos* is a product of the court finding that "The phrase 'arising out of' is broader than 'caused by', and must be interpreted in a more liberal manner," with the former not requiring a standard of direct or proximate cause (at paras. 21 and 23).

- [14] The Court in *Amos* cites *Dickinson v. Motor Vehicle Insurance Trust*, [1987] 61 A.L.J.R. 553 where "That court reasoned that under the 'wide formula', as expressed by the wording 'arising out of', it is the injury which must be caused by or arise out of the use of the motor vehicle. Negligence or fault in the use or operation of a motor vehicle does not need to be the cause of the injury. The liability for the injury may arise from a tortious act other than the negligent use of a motor vehicle." The court ultimately concludes: "This is an important distinction" (at para. 23).
- [15] The respondent relies on this distinction between 'caused by' and 'arising out of' in submitting that the words 'caused by' in s. 115 of the IVA require a finding that a vehicle was the proximate cause of the plaintiff's injury. The plaintiff invokes settled principles of statutory interpretation in maintaining that courts should assume that each word used by drafters of documents establishing legal rights have been deliberately chosen and are intended to contribute to the meaning or the purpose of the document: *Zalys v. Canada (Royal Canadian Mounted Police)*, 2018 FC 1122 at para. 17.
- [16] The plaintiff points to the fact that s. 115 contains both the phrase 'arising out of' and 'caused by,' which is capable of supporting her contention that the two phrases are not synonymous. She submits that this distinction must be considered to be intentional, and that legislators purposefully required injuries to be directly caused by a vehicle if an insured person was going to be restricted from bringing other court actions. In addition, the plaintiff notes that different language regarding causation is used in other sections of the IVA, such as the definition of 'deceased' as "an insured who died as a result of the accident," (s. 113). In considering the meaning of this section, the Civil Resolution Tribunal cited *Amos* as authority for the difference between 'caused by' and 'arises out of,' and found that 'as a result of' falls closer to the latter end of this spectrum: *Passmore v. ICBC*, 2024 BCCRT 1064 (CanLII) at paras. 26-31.
- [17] The applicants submit that the plaintiff's position is at odds with the way *Amos* has been interpreted by higher courts, in particular, *McMillan v. Thompson (Rural Municipality)*, [1997] M.J. No. 67, 1997 CanLII 11522 (Man. C.A.), where the scope of no-fault insurance in Manitoba was considered by the Court of Appeal. As in the case at bar, the facts in *McMillan* involved a single-vehicle accident. Serious injuries were suffered by occupants of a vehicle that plunged into a gap in a bridge. The injured parties alleged the municipality was negligent in their duty to maintain and repair the bridge. However, the Court ruled that the injured parties' claim was statute barred by the province's no-fault insurance scheme.
- [18] I agree with the applicant that the facts in *McMillan* bear some similarities to the claim here, in the sense that injuries arose from a single-vehicle accident, and the plaintiff is attempting to sue entities alleged to have caused their injuries through negligence. However, I find that the respondent plaintiff has carved out a path to distinguish the applicable legal analysis from *McMillan*. Specifically, the plaintiff has provided a basis on which a court could find that the legislation in Manitoba differs from the IVA here in B.C. in material ways. According to the plaintiff, the critical difference lies in the fact that, unlike the IVA, the Manitoba

Public Insurance Corporation Act, R.S.M. 1987, c. P215 as amended, S.M. 1993, c. 36, s. 5 [MPICA] explicitly links the provision of benefits to the restriction on other legal actions. Section 72 states:

Notwithstanding the provisions of any other Act, compensation under this Part stands in lieu of all rights and remedies arising out of bodily injuries to which this Part applies and no action in that respect may be admitted before any court.

- [19] Given s. 72 of the MPICA, in order to allow the claim in negligence in McMillan, the Court had to find that the injured persons were not entitled to benefits, despite the fact that the eligibility for benefits in the MPICA requires injuries to be 'caused by' a vehicle (or use of a vehicle). The Court of Appeal decided that this language ought to be given the same 'broad and liberal construction' as the Court in Amos applied to injuries 'arising out of the ownership, use or operation' of a vehicle (McMillan at para. 25). The plaintiff here argues that the analysis in Manitoba is fundamentally different from what would be undertaken in B.C., because of the way s. 72 of the MPICA creates a mutually exclusive system where the receipt of benefits, by definition, extinguishes a person's right to make any further claims regardless of the cause of the accident. In B.C. there is no equivalent to s. 72 of the MPICA, in other words, there is no express statement that eligibility for benefits will preclude the recipient from pursuing any other legal remedies.
- [20] The plaintiff maintains it was necessary for the Manitoba Court to equate 'caused by' and 'arising out of' to avoid an obvious absurdity when interpreting its legislation. It would be absurd to read 'caused by' in the Manitoba legislation as a standard of proximate cause because in the context of the MPICA, if the court found that injuries 'caused by a vehicle' must be held to the standard of proximate cause, then the fundamental purpose of providing no-fault insurance benefits would be undermined. The plaintiff submits that B.C. courts will not be faced with this same paradoxical interpretation of what it means to be 'caused by a vehicle' in s. 115. This is because s. 115 does not connect the prohibition on legal actions to eligibility as does s. 72 of the MPICA. The eligibility section of the IVA is not only separate from s. 115, the eligibility provision in s. 118 is attended by an express statement in s. 117 that benefits are payable regardless of fault.
- [21] Importantly, there is no corollary to s. 117 that could relax the fault requirement that the plaintiff says ought to be read into phrase 'caused by' in s. 115. The plaintiff argues that the inclusion of s. 117 in relation to eligibility strengthens their argument that the Legislature intended the phrase 'caused by' in s. 115 to be given full effect. Legislators could have clarified, as they did in s. 117 for the provision of benefits, that other legal actions were prohibited 'regardless of fault' - but they chose not to do so. As such, the plaintiff submits, the purpose of the IVA can be harmonized with the standard of proximate cause in s. 115 in ways that the Manitoba legislation could not. Moreover, the plaintiff submits, there is a legal logic in their interpretation which gives a broader, remedial effect to the section establishing eligibility and a more narrow, circumscribed approach to the section that imposes limitations on the ability of an injured party to sue others (See Amos at para. 16).

- [22] In conclusion, I cannot find that the precedents in *Amos* and *McMillan* lead to an obvious and uncontroversial finding that Ms. Johnson's claim will not succeed. Not only has plaintiff's counsel set out a legal basis on which a court could find this case to be distinguishable from the authority marshalled by the applicants, but the parties are in agreement that s.115 of the IVA has not yet been judicially considered in B.C., let alone definitively by a higher court. The plaintiff is not seeking to disturb an already settled legal landscape. Rather, her counsel has put forward reasonable arguments about new and consequential legislation in a case that should be determined on its merits.
- [23] I am mindful that the applicants have raised additional arguments around legislative intent that could favour their position. For example, the applicant submits the purpose of the IVA would be defeated by a two-tiered analysis where the court must first determine proximate cause under s. 115. In addition, the applicants submit that when the IVA is read holistically, there is a clear intent to allow only specific limited exceptions to the prohibition created by s. 115, and that the plaintiff's interpretation could lead to injured parties being awarded 'double-recovery' with benefits under the IVA and windfall settlements from third party tortfeasors.
- [24] In response, the plaintiff says that the clear language about causation used in s. 115 allows a court to resolve her claim without resorting to a broader analysis of legislative intent. Alternatively, the respondent argues that a more narrow reading of s. 115 continues to align with the legislative objective of providing benefits regardless of the proximate cause of an accident. This is because s. 117 ensures the provision of benefits 'regardless of fault,' but a similar provision has not been included with respect to prohibitions on other legal actions.
- [25] With respect to the limited statutory exceptions to s. 115, the plaintiff points out that s. 116 only creates exceptions for situations in which s. 115 is engaged. In other words, if the injuries were not caused by a vehicle in the first place, then s. 115 does not apply, and nor do the exceptions. There is support for this position in the fact that the exceptions allowed by s. 116 could all reasonably apply in situations where a vehicle or use of a vehicle is the proximate cause of injuries. In general terms, all of the exceptions created by s. 116 relate to criminal acts committed while operating a vehicle, or to negligence arising from the manufacture, sale or repair of vehicles.
- [26] Finally, the applicants argue that there are live issues around double-recovery that could occur when a plaintiff sues occupiers for negligence when they have already collected benefits under the IVA. However, I am satisfied there is a reasonable basis to argue that this outcome is intended. Unlike the legislation in Manitoba, the IVA does not state that any benefits paid are "in lieu of all rights and remedies arising out of" the bodily injuries at issue. In addition, the plaintiff submits that the court will have various tools at its disposal to guard against double-recovery, including deductibility and an equitable right to subrogation.

- [27] While the applicants raise legitimate legal issues, I am satisfied that the differences in provincial 'no fault insurance' legislation are such that the persuasive authority in *McMillan* and the test formulated in *Amos* should not lead to an automatic dismissal of this claim. The key case relied upon by the applicants is not from this Province, and I am satisfied that the differences in Manitoba's statutory scheme are sufficiently material to argue that the issues raised by the plaintiff's claim do not have an obvious legal conclusion. The parties have advanced arguments that deserve judicial consideration, and which have not yet been specifically ruled on in British Columbia. The application to strike the claim pursuant to Rule 9-5 is dismissed.

Application for Summary Trial

- [28] Alternatively, the applicants seek a summary trial of the claim, on the basis that the court's interpretation of s. 115 will be determinative. Rule 9-6 allows the defendants to apply for a summary dismissal of the plaintiff's claim, and Rule 9-6(5) allows this Court to do so if it is satisfied that the only genuine issue is a question of law.
- [29] The plaintiff submits that her claim goes beyond a judicial ruling on how s. 115 ought to be interpreted. If the court accedes to her interpretation of s. 115, it must go on to determine whether the defendants are the proximate cause of her injuries. This will undoubtedly require an assessment of disputed facts and is therefore not suited to a summary proceeding. The issue of whether the benefits received by the plaintiff thus far are deductible or subject to repayment will also be the subject of dispute.
- [30] Even if the court's findings align with the applicants' interpretation of s. 115, the respondent submits there is still a live factual issue about whether the plaintiff's use of her vehicle was incidental to the injuries she sustained. In support of this latter argument, the plaintiff offers various examples of other ways in which injury could result from striking the curb in a parking lot where the public is implicitly invited to attend. These include the possibility that someone operating a bicycle, or an electric-scooter, or even a pedestrian, could have struck the obscured curb and sustained serious injury.
- [31] The applicants submit that the essential circumstances of the accident are such that there can be no live dispute about whether the injuries were incidental to the use of the vehicle. They point to the analysis in *Smith v. Zrobek*, 2018 MBQB 22, where the court found that the use of a vehicle was incidental to a person who was getting out of her car when she was injured by her foot being caught under a fence the defendants had built near the property line. The applicants argue that the way the plaintiff in the present case was injured is clearly distinguishable, given that striking an object while driving arises in the ordinary use of a vehicle.
- [32] Regardless, the plaintiff points to the analysis in *Smith* as an example of the factual issues that will need to be resolved should this claim proceed to trial. Specifically, a court hearing the plaintiff's claim will need to make findings about the nature of the mischief or hazard

alleged, so that it can decide whether the plaintiff's use of a vehicle was incidental to her injuries or not. While it is always open to the court to draw reasonable inferences from the facts, there is a sufficient factual dispute arising from the circumstances of this case that I am not satisfied it can be fairly or appropriately decided on a summary trial.

[33] I agree with the applicant that summary trials are an efficient way to resolve disputes that can be determined by resolving a genuine point of law. However, in this case I am satisfied that even with a summary ruling interpreting s. 115, there is a reasonable prospect that the court would have to make factual determinations to confront all of the issues arising in this dispute. I cannot see the interests of justice being served in bifurcating these legal and factual decisions, and accordingly the application to dispose of the claim by way of summary trial is dismissed.

"Ormiston J."

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