

CANADA / JUDGMENT

Kim v. Samuel

2018 BCSC 1483

COURT

Supreme Court of British Columbia

DECIDED

13 July 2018

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2018 BCSC 1483 Kim v. Samuel IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kim v. Samuel, 2018 BCSC 1483 Date: 20180713 Docket: M159045 Registry: Vancouver Between: Myung Hak Kim Plaintiff And Michael Samuel, CFM Marketing Services Ltd. Gold Key Sales and Lease Ltd. and Soon Ho Kim Defendants Before: The Honourable Mr. Justice Myers Oral Reasons for Judgment Counsel for the Plaintiff: Martin J. Bauer Counsel for the Defendant Soon Ho Kim: Frank Lin Place and Date of Hearing: Vancouver, B.C. July 13, 2018 Place and Date of Judgment: Vancouver, B.C. July 13, 2018

- [1] The plaintiff was in a motor vehicle accident in July 2014. The action has been discontinued against all of the defendants except for Soon Ho Kim. Mr. Kim seeks production of the plaintiff's file from Immigration, Refugees and Citizenship Canada. Immigration Canada takes no position on the substance of the application, but provided a letter with respect to the form of the order, if any.
- [2] The plaintiff claims that the accident caused physical and psychological injury, including nervous shock. The defendant seeks the immigration file in large measure to ascertain the plaintiff's pre-accident psychological state.
- [3] The plaintiff's pre-accident psychological state is no doubt relevant. However, documents relating to that have been already been disclosed by the plaintiff, including 1,650 pages of medical records.
- [4] The level of detail of what the defendant knows of the plaintiff's pre-existing condition is shown by what he set out in his notice of application: Once in Canada, the Plaintiff saw numerous physicians for pre-existing problems. His physicians stated that his past experiences left him with post-traumatic stress disorder ("PTSD"), depression, chronic anxiety [Dr. Wang Aug 4/11 referral, Tab 3, p. 51], multiple somatic pain issues including pain in his neck, lower back, stomach, legs and head and other issues [Dr. Wang Mar 29/12, Tab 3, p. 52].
- [5] The notice of application also sets out the plaintiff's background in detail:
 - 1) North Korea

9. The Plaintiff was born in North Korea on January 26, 1970. He was 44 years old at the time of the Accident, and is currently 48 years old.
10. The Plaintiff graduated from a military academy in North Korea, and attended a mechanic's university by distance learning. He worked as a field engineer in a department that made missile heads. He was later appointed as the supervisor at the Government Scientific Technology Institute, where he managed a department called construction, tools and equipment manufacturing part.
11. The Plaintiff betrayed his father to the North Korean government so he could survive. This resulted in a long history of guilt and shame in the Plaintiff.
12. While in North Korea, the Plaintiff experienced beatings and tortures. He was tortured in an underground cell by the North Korean police. He has many 1 cm cigarette burn scars on his trunk, abdomen, and back inflicted by the North Korean police. The Plaintiff had also witnessed public execution and people dying from starvation in North Korea.
- 2) Defecting from North Korea
13. In 1998, the Plaintiff fled from North Korea to China, leaving his wife and approximately 9-month-old daughter behind, for the following reasons:
 - a. He was put in a system for about a month where people were watching him; and
 - b. He wanted to go to a place where people don't die of hunger.
14. After defecting from North Korea, the Plaintiff went through the following:
 - a. he swam from North Korea to China, walked in China for five days, and eventually ended up working as a slave there;
 - b. he was imprisoned in Myanmar for about a year and five months; and
 - c. he then traveled to South Korea after being released from the prison in Myanmar.
- 3) South Korea
15. While in South Korea, the Plaintiff experienced beatings and tortures, had his fingers broken, and received a threat to bury him alive.
16. The Plaintiff provided information about the missiles in North Korea to the government in South Korea and the CIA. He was then informed by his brother that the North Korean authorities were seeking to find him. The Plaintiff felt the South Korean government could not protect him, and he came to Canada in 2008.
17. Before arriving in Canada, the Plaintiff had fears related to hunger, losing a job, and people approaching him. He also reported thoughts of suicide.

- [6] Further, in his written submission, the defendant notes: · On a 2012 intake form for a counselling service it was noted that the plaintiff suffered trauma from his escape from Korea and that he had an unknown fear or fear of death and wanted to be healed from the trauma. · The plaintiff was told by his family doctor that he had depression because of the difficult times he had before coming to Canada. · In 2012 the plaintiff saw a psychiatrist and reported to him that he had recently been overwhelmed with feelings of anxiety and extreme anger and had been getting flashbacks from his life's ordeals.
- [7] The defendant relies on some inconsistencies in the plaintiff's version of his pre-Canada life to different medical providers. For example, the defendant says the plaintiff told a physician that he suffered four days of torture whereas he told another one that he suffered years of abuse. I am not sure that is a conflict. But even if it is, it is not significant given the plaintiff's acknowledged past. I note that the facts set out above came from the plaintiff directly or indirectly; there was no attempt to conceal them.
- [8] The defendant also relies on some inconsistencies with respect to what the plaintiff said regarding his work experience in North Korea. In his discovery the plaintiff said that he was a field engineer and later a supervisor in North Korea. However, he told his treating psychiatrist that he was a missile engineer. That is a minor discrepancy. Further, I do not think it will be seriously argued that the plaintiff - who has been doing manual work since coming to Canada - would be able to work as a missile engineer but for the accident or will be able to return to that work in any event of the accident.
- [9] In *Desgagniers v. Yuen*, 2006 BCSC 955 at para. 36, a case in which the defendant in a motor vehicle accident sought metadata from the plaintiff's computer, I stated: In *Peter Kiewit, McEachern C.J.* adopted what might be termed a "cost benefit analysis" which focussed on the time and expense of locating the documents being sought. The costs of producing the hard drive are not substantial, but later cases have taken considerations other than time and expense into account, primarily privacy and confidentiality. *Desgagniers*, I note, was decided before the Rules were amended to specifically make proportionality a consideration.
- [10] The defendant has not provided an affidavit from a medical expert indicating that further information is necessary. Given what I set out above and what the plaintiff has acknowledged, it is doubtful that any further evidence as to the plaintiff's pre-accident psychological state would be of assistance. The immigration file would shed marginal, if any light on this case. It would be a disproportionate invasion of privacy to order it to be produced. The alleged inconsistent statements of the nature pointed out here does not justify the cost of invasion of privacy that production of the immigration file would entail.
- "E.M. MYERS, J."

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