

CANADA / JUDGMENT

Ledwon v. Baines

2019 BCSC 819

COURT

Supreme Court of British Columbia

DECIDED

23 May 2019

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2019 BCSC 819 Ledwon v. Baines IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ledwon v. Baines, 2019 BCSC 819 Date: 20190523 Docket: M143723 Registry: Vancouver Between: Jane Ann Ledwon Plaintiff And Louise Baines, Glen George Fuller, Dave Watt, MVT Canadian Bus, Inc., and South Coast BC Transportation Authority also known as Translink Defendants Before: The Honourable Mr. Justice N. Smith Reasons for Judgment Re: Costs Counsel for the Plaintiff: H. Nirwan Counsel for the Defendants: J. Adrian M. Somers Written Submissions of the Plaintiff: April 8, 2019 Written Submissions of the Defendants: April 25, 2019 Place and Date of Judgment: Vancouver, B.C. May 23, 2019

[1] In reasons for judgment dated March 28, 2019, indexed at 2019 BCSC 450, I awarded damages against the defendants, Louise Baines and Glen George Fuller (the "unsuccessful defendants"), for injuries the plaintiff suffered in a motor vehicle accident. At the same time, I dismissed the plaintiff's claim against the defendants, Dave Watt, MVT Canadian Bus, Inc., and South Coast BC Transportation Authority also known as Translink (the "successful defendants") for damages arising out of a second motor vehicle accident. I found that the plaintiff had failed to prove that the alleged second accident had occurred. On the question of costs, I said at para. 105:

[105] The plaintiff will have costs against the defendants Louise Baines and Glen George Fuller unless counsel need to address matters I am not aware of. The remaining defendants, against whom the plaintiff has not been successful, are also entitled to costs, subject to the fact the two actions were heard together and all defendants were represented by the same counsel. Counsel are at liberty to make submissions as to the nature and extent of those parties' entitlement to costs.

[2] The plaintiff now seeks an order that the successful defendants recover their costs from the unsuccessful defendants rather than the plaintiff because all defendants were represented by the same counsel.

[3] Rule 14-1(18) of the Supreme Court Civil Rules reads: Costs of one defendant payable by another

- (18) If the costs of one defendant against a plaintiff ought to be paid by another defendant, the court may order payment to be made by one defendant to the other directly, or may order the plaintiff to pay the costs of the successful defendant and allow the plaintiff to include those costs as a disbursement in the costs payable to the plaintiff by the unsuccessful defendant.
- [4] An order that an unsuccessful defendant pay the costs of the successful defendant directly is commonly referred to as a "Sanderson order", after *Sanderson v. Blyth Theatre Co.*, [1903] 2 K.B. 533 (C.A.). An order allowing the plaintiff to claim costs paid to the successful defendant as a disbursement against the unsuccessful defendant is known as a "Bullock order", after *Bullock v. London General Omnibus Co.*, [1907] 1 K.B. 264 (C.A.).
- [5] In considering whether such an order is appropriate, the court must first deal with a threshold question of whether it was reasonable, in the circumstances, for the plaintiff to join the ultimately successful defendant "in order that the matter might be thoroughly threshed out". If that test is satisfied, the decision on whether or not to make the order is a matter of "true discretion" for the trial judge. *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528 at para. 52.
- [6] However, there must be something which the unsuccessful defendant did that caused the successful defendant to be brought into the litigation. Such conduct would include, but is not limited to, one defendant attempting to cast blame on the other: *Gill v. Dunlop-Miller*, 2004 BCCA 632 at para. 17.
- [7] In this case, the plaintiff relies on *Camaso v. Egan*, 2011 BCSC 954 where the court said at para. 20 that certain successful defendants should not recover their costs from the plaintiffs because they were jointly represented by counsel representing the unsuccessful defendants.
- [8] In *Camaso*, a police officer was found to have been negligent in a shooting death and his employer, the District of Saanich, was found vicariously liable. The successful defendants referred to in the passage cited by counsel were two other Saanich police officers and the chief of police. The important point, in my view, was that the alleged liability of all defendants arose out of a single incident.
- [9] The plaintiff in this case alleged two different motor vehicle accidents occurring more than a year apart and involving different defendants. Although both accidents were the subject of a single proceeding, they were, in all respects, separate causes of action.
- [10] Nor can it be said there were issues of indivisible injuries that required the successful defendants to be brought into the action. The unsuccessful defendants were found liable for an accident in which their vehicle ran over the plaintiff's foot. The successful defendants were alleged to be responsible for an accident that the plaintiff claimed aggravated a pre-existing neck and back condition.

- [11] I find the plaintiff has not met the threshold test for a Bullock or Sanderson order. Even if she had, I would not consider this an appropriate case to exercise my discretion in favour of such an order.
- [12] Having said that, the fact that all of the defendants were represented by the same counsel would make it unfair for the successful defendants to recover their full trial costs. The most serious injuries alleged by the plaintiff arose from the first accident and most of the 13-day trial was focussed on her damages arising from those injuries.
- [13] The successful defendants called two witnesses on liability, each for half-a-day. The plaintiff testified for more than three days, of which only a small portion could fairly be attributed to issues related to the second accident.
- [14] I, therefore, conclude that the costs recoverable by the successful defendants include only two days of trial, plus all pre-trial costs, such as discovery and document disclosure, specifically related to those defendants. "N. Smith J."

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