

CANADA / JUDGMENT

Lemarque v. Rouse

2023 BCCA 452

COURT

British Columbia Court of Appeal

DECIDED

5 December 2023

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2023 BCCA 452 Lemarque v. Rouse COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Lemarque v. Rouse, 2023 BCCA 452 Date: 20231205 Docket: CA48450 Between: Mary Lemarque and Joseph Lemarque Appellants/ Respondents on Cross Appeal (Defendants) And James Christopher Rouse Respondent/ Appellant on Cross Appeal (Plaintiff) Corrected Judgment: The citation of the judgment was corrected on December 6, 2023. Before: The Honourable Mr. Justice Fitch The Honourable Madam Justice Horsman The Honourable Justice Skolrood Supplementary Reasons to Lemarque v. Rouse, 2023 BCCA 392, Vancouver Docket CA48450. Counsel for the Appellants: R.C. Brun, K.C. J.J.L. Brun, K.C. Counsel for the Respondent: D.S. Jarrett W. Wafa, Articled Student Place and Date of Hearing: Vancouver, British Columbia September 11, 2023 Place and Date of Judgment: Vancouver, British Columbia October 26, 2023 Written Submissions received: November 24, 2023 Date of Supplementary Judgment: December 5, 2023 Supplementary Reasons of the Court Summary: Supplementary reasons on costs. Supplementary Reasons for Judgment of the Court:

- [1] The parties are unable to agree on the appropriate order as to costs flowing from the Court's reasons for judgment indexed as 2023 BCCA 392.
- [2] By letter to the Registrar dated November 24, 2023, the parties set out their positions on costs and the rationale for the respective orders they seek. The letter provides sufficient information to enable resolution of the controversy without requiring further written submissions.
- [3] By way of background, the respondent suffered injuries in a motor vehicle accident. The appellants appealed an order awarding damages to the respondent for loss of earning capacity, past and future. The respondent cross appealed, arguing the trial judge should not have applied a 10% contingency reduction to all heads of damages to account for the possibility that future treatment would prove beneficial. The respondent applied to adduce new evidence in support of the cross appeal.

- [4] In the result, the appeal was allowed, but only to the extent of setting aside the \$30,000 award of damages for past loss of earning capacity. Respecting the \$102,000 award of damages for future loss of earning capacity, the Court found the trial judge to have erred in his approach to the quantification of damages, but upheld the award, finding it to be justified on alternative grounds. The respondent's new evidence application and cross appeal were dismissed.
- [5] Against this background, the appellants submit they achieved substantial success and should be awarded ordinary costs of the appeal.
- [6] The respondent submits that he achieved substantial success and should be awarded ordinary costs of the appeal. In the alternative, the respondent submits that success was mixed and each party should bear their own costs of the appeal and cross appeal.
- [7] We have reviewed the positions of counsel and considered the arguments raised on appeal and the overall effect of the judgment.
- [8] Having done so, we consider that success was divided on the main appeal. The parties will bear their own costs in respect of that matter. The appellants shall have their costs in relation to the respondent's unsuccessful new evidence application and cross appeal. "The Honourable Mr. Justice Fitch" "The Honourable Madam Justice Horsman" "The Honourable Justice Skolrood"

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Prepared on 29 October 2026 · Esheria