

CANADA / JUDGMENT

Mehta v. Douglas

2011 BCSC 714

COURT

Supreme Court of British Columbia

DECIDED

2 June 2011

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2011 BCSC 714 Mehta v. Douglas IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Mehta v. Douglas, 2011 BCSC 714 Date: 20110602 Docket: M082253 Registry: Vancouver Between: Yeshvi Shailesh Mehta, an infant, by her litigation guardian, Rinku Shailesh Mehta Plaintiff And Kirk Adair Douglas also known as Douglas Kirk Adair, GMAC Leaseco Corporation/La Compagnie GMAC Location, Shailesh Revachand Mehta also known as Kehta Shailesh also known as Shailesh Kehta and Toyota Credit Canada Inc. Defendants Before: The Honourable Mr. Justice Harris Reasons for Judgment re Costs Counsel for the Plaintiff: Stephen C.M. Yung Counsel for the Defendants: Ivor Mcgurk Place and Date of the Plaintiff's Written Submissions: Vancouver, B.C. May 26, 2011 Place and Date of the Defendants' Written Submissions: Vancouver, B.C. May 16, 2011 Place and Date of Judgment: Vancouver, B.C. June 2, 2011

- [1] At the conclusion of a summary trial I invited counsel to make submissions in writing dealing with the issue of costs. The summary trial involved the assessment of damages for the infant plaintiff who was injured in a motor vehicle accident.
- [2] I assessed damages of \$15,000 in respect of non-pecuniary damages and \$3,400 for future treatment costs. The damage award falls within the jurisdiction of the Provincial Court under the Small Claims Act R.S.B.C., c. 430, Rule 14-1(10) of the Supreme Court Civil Rules provides that in these circumstances a plaintiff is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.
- [3] The parties do not disagree about the governing legal principles that apply in determining whether there was sufficient reason to bring the proceeding in this court. The governing authorities are Gehlen v. Rana, 2011 BCCA 219 and Gradek v. Daimler Chrysler Canada, Inc., 2011 BCCA 136.
- [4] In Gehlen, the Court of Appeal said this about the meaning of "sufficient reason":
- [35] In Gradek, the Court interpreted the meaning of "sufficient reason" in Rule 57(10). The Court acknowledged that the procedures available in the Small Claims Court will, in most cases, "enable the parties to proceed in a cost-efficient manner to a just result" (para. 18).

- [36] The Court ultimately concluded that "sufficient reason" was not intended by the Legislature to be limited to the quantum as assessed at the outset of the claim. However, the Court stated, at paras. 16 and 20:
- [16] The words "sufficient reason" are not defined in the Rules of Court. In their ordinary and grammatical sense, they do not suggest a specific limitation in terms of application, although it is clear that "any reason" will not do. The reason has to be "sufficient", but there is nothing in the Rule to suggest that it has to be connected solely to the quantum of the claim. On the other hand, the words do not connote the exercise of a discretion, with its attendant deferential standard of review. That point was made by this Court in *Reimann v. Aziz*, 2007 BCCA 448, 72 B.C.L.R. (4th) 1, at para. 13: ...
- [20] I accept that the narrow interpretation of the words "sufficient reason" advocated by the appellant would provide greater certainty to litigants in knowing the consequences of proceeding in Supreme Court where the matter falls within the Small Claims monetary limit. But I agree with the trial judge that if the Legislature had intended to limit the scope of the words "sufficient reason" to the extent suggested by the appellant, it could readily have done so. While I am satisfied that the words, "sufficient reason" should not be interpreted in an expansive manner, but with restraint, I am also satisfied that they must be read in such a way that a trial judge is not forced to deny a party costs where he is satisfied, as here, that justice can only be achieved as between the parties by an award of costs to the successful party.
- [37] As I understand the import of *Gradek*, it is that likely quantum, while perhaps the most important factor for determination of sufficient reason, is not the only factor that may be taken into account. The Court in *Gradek* also accepted that there may be other circumstances that justify bringing an action in the Supreme Court despite the fact that the likely quantum will not exceed the Small Claims amount. Thus, in *Gradek* the Court accepted the trial judge's finding that Mr. *Gradek*, due to language difficulties, required the assistance of counsel and it would be unjust to require him to bring his claim in the Small Claims Court where he would be denied costs that would partially offset the expense of retaining counsel (para. 18). However, it is clear from *Gradek* that the burden is on the plaintiff to establish eligible circumstances that are persuasive and compelling to justify "sufficient reason".
- [5] It is common ground that the assessment of whether that was sufficient reason to bring the proceeding in this court should be determined at the commencement of the action.
- [6] The defendants argue that when the plaintiff's claim was filed in May 2008, the allegations were limited to minor soft tissue injuries as well as headaches, fatigue, dizziness, nausea and sleeplessness. They say that there was no bleeding of anxiety, which was the principal subject matter of the damage assessment at trial, and accordingly the potential that that injury could exceed the jurisdiction of the Provincial Court should be ignored.

- [7] In their submission, it was clear when the action was started that the injuries that were pleaded were minor and well within the jurisdiction of the Provincial Court. Moreover, no other reasons exist that would be sufficient to start this action in this court.
- [8] The plaintiff argues that at the time the action was started it was unclear what the likely claim to damages would be. She says that it is appropriate to be cautious, particularly where an infant is concerned, about the extent of damages, but an injury may cause. Moreover, being an infant, the retention of counsel is justified and indeed required. The plaintiff required the assistance of counsel to present her case properly, just as was the case in *Gradek*. Finally, the plaintiff contends that that was sufficient reason to start this action in this court because certain of the procedures available in this court are not available in Provincial Court. These procedures include examinations for discovery and summary trial. The availability of summary trial allowed this matter to be resolved without the need to subject a young plaintiff to the stresses of testifying. The summary trial took approximately 90 minutes of court time, rather than between one and two days that would have been needed for trial in the Provincial Court.
- [9] I accept the submissions of the plaintiff. In my view, the plaintiff required counsel to present her case. It would be unjust to deny her costs that would permit her partially to defray the expense of retaining counsel. Although it would have been difficult to predict at the outset whether this matter would prove to be suitable for summary determination, the availability of examinations for discovery and the possibility of summary trial are both factors that in the circumstances of this case are sufficient to justify starting the action in this court. The availability of these procedures and their potential to promote a proportionate and efficient use of resources is something that would be known at the outset. In my view, it would be unjust to deprive the plaintiff of costs in circumstances where knowing of those procedures she has subsequently used them efficiently.
- [10] Although the plaintiff did not initially plead the injuries that ultimately formed the primary basis of the summary trial, I accept that it is appropriate to be cautious in assessing what could reasonably be predicted as the quantum for a damages claim when the action is started, particularly in the case of an infant. While on the facts that were known concerning the minor nature of the plaintiff's soft tissue injuries and the speed with which they had resolved, it would have been unlikely that the award would exceed the small claims jurisdiction, but the exact value of the claim nevertheless could not be predicted accurately. Given the uncertainties facing the plaintiff at the time she started the action, it was not unreasonable to start it in this court.
- [11] Taking all of these factors into account, I am of the view that the plaintiff had sufficient reason to start this action in this court and accordingly she is entitled to her costs in accordance with Schedule B. "Harris J."

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