
CANADA / JUDGMENT

Mocharski v. Ly

2015 BCSC 1200

COURT

Supreme Court of British Columbia

DECIDED

5 January 2015

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2015 BCSC 1200 Mocharski v. Ly

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mocharski v. Ly,

2015 BCSC 1200

Date: 20150105

Docket: M133324

Registry: Vancouver

Between:

Christine Mocharski

Plaintiff

And

Quang Minh Ly, Thi Muoi Mot Thi,

and Louise Isidore Paul Mocharski

and Rene Hahn

Defendants

Before: Master Harper

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

R.A. Holness

Counsel for the Defendants:

M. von Antal

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 5, 2015

Place and Date of Judgment:

Vancouver, B.C.

January 5, 2015

- [1] THE COURT: The plaintiff makes three applications today. The first is that the defendants amend their response to civil claim; the second is that the defendant Ly submit to a further examination for discovery and answer particular questions; and third, that the defendants Ly and Mocharski provide particulars in response to demands issued by the plaintiff.
- [2] The action arises out of a motor vehicle accident involving the plaintiff in 2011. It was a multi-vehicle accident. One lawyer was appointed to represent all defendants, and a global admission of liability was made on behalf of all defendants.
- [3] I will first deal with the application for an order that the defendants amend their response to civil claim.
- [4] The notice of civil claim sets out the facts, in the plaintiff's view, of the circumstances of the accident. Paragraph 6 of the notice of civil claim states as follows:
6. On or about the 26th day of May, 2011 at or near the intersection of Fleming Street and 33rd Avenue, in the City of Vancouver, in the Province of British Columbia, a collision occurred between a motor vehicle driven by the Defendant Mocharski, in which the Plaintiff was a passenger, a motor vehicle owned by the Defendant Ngo and driven by the Defendant Ly. Because of the severity of the impact by the Defendant Ly's vehicle upon the vehicle operated by the Defendant Mocharski, the Defendant Mocharski's vehicle was spun into the Defendant Hahn's parked motorhome on East 33rd Avenue facing East, in the City of Vancouver, in the Province of British Columbia. This motorhome owned by the Defendant Hahn was parked within the T-intersection of Fleming Street and 33rd Avenue. Further, following this impact, the Defendant Ly, having exited his vehicle, this now unoccupied vehicle rolled into the Defendant Mocharski's vehicle causing another impact to the Defendant Mocharski's vehicle while the Plaintiff was still sitting inside the vehicle.
- [5] In their amended response to civil claim filed September 3, 2014, at para.1 in Division 2 - Defendants' Version of Facts, the defendants say:

1. The Defendants, admit for the purposes of this action only, that a collision occurred on or about May 26, 2011 at or near the intersection of 33rd Avenue and Fleming Street, in the City of Vancouver, British Columbia, and that it was the negligence of the Defendants that caused the collision to occur, but denies [sic] that the Plaintiff sustained any injury, loss, damage or expense as a result thereof.
- [6] In submissions, it became clear to me that the only real issue with respect to the response to civil claim was this para. 1 of Division 2 of the amended response to civil claim.
- [7] Pleadings, of course, are important, and notwithstanding the fact that liability has been globally admitted, there is an issue with respect to causation of the plaintiff's alleged injuries. The defendants deny that the plaintiff was injured at all, and the plaintiff takes the position that the facts of the various impacts are relevant, insofar as determining how the plaintiff was injured.
- [8] I agree with that submission of the plaintiff and I make an order that the defendants amend para. 1 of Division 2 of the amended response to civil claim to provide the information required pursuant to Rule 3-3(2)(i) of the Supreme Court Civil Rules.
- [9] I want to make it clear that it is obviously the facts of the accident that are relevant here, not liability.
- [10] I will now deal with the issue concerning the examination for discovery of the defendant Ly.
- [11] Counsel for the plaintiff asked the defendant Ly various questions concerning the accident. Unfortunately, the way the questions were asked would raise an inference that the plaintiff was really trying to get at liability, which was already admitted, and counsel for the defendant Ly objected to questions that would go to liability. For instance, the defendant Ly was asked a question along the lines of, "Did you do anything that caused the collision?" That is not an appropriate question where liability has been admitted. However, a general question, such as, "Tell me in your own words how the accident occurred", is an appropriate question because it gets to the facts of the accident. While this is a broad question, presumably follow-up questions would be asked so that further details of the accident could be elicited from the defendant.
- [12] The examination for discovery of the defendant Ly was adjourned very shortly into the discovery because of a concern about the nature of the questions being asked.
- [13] The defendants relied on *Joy v. Atkinson*, 2009 BCCA 230, a case that had to do with submissions being made in front of the jury about the liability of the defendant when the defendant had admitted liability. The purpose of the inflammatory remarks was to create sympathy for the plaintiff.

- [14] The facts in Joy are different from the facts before me, because statements made to a jury are different from questions being asked at an examination for discovery, although the principle is really the same. It is not fair to Mr. Ly to have him answer questions which go to establishing his liability or fault for the accident when liability has already been admitted on his behalf. It looks like badgering, it does not help the plaintiff, and it is not fair to Mr. Ly.
- [15] The causation of the alleged injuries is relevant and the dynamics of the collision are therefore relevant. I am advised in submissions that there were in fact three impacts amongst the various vehicles. I think it is relevant for the plaintiff to explore the accident dynamics and, to put it in the vernacular, what happened to which vehicle at which point in time.
- [16] Therefore, I will make an order that the defendant Ly submit to a further examination for discovery and answer questions which go to the facts of the accident, but not to liability. Counsel for the plaintiff will have to be careful when crafting his questions in order not to violate this order.
- [17] I am turning now to the application for particulars.
- [18] In this case, there was a blurring of the distinction between particulars and evidence. I am going to go through the demand for particulars and give my decision on a line-by-line basis.
- [19] The first demand is for particulars of how the accident occurred. I am dismissing that application because it is addressed in the order I have just made requiring the defendants to amend their response to civil claim.
- [20] The next demand is for particulars of the allegations that the plaintiff failed to wear, to properly adjust, and to fasten securely the complete seat belt assembly. I am dismissing that application. The pleading contains the facts. The facts might not be found to be the case at trial, but the demand for particulars is really a demand for evidence, which is not the proper use of particulars.
- [21] The next demand is for particulars of the allegations that the plaintiff failed to properly adjust the headrest device. I make the same ruling as I did with respect to the seat belt. The response to civil claim sets out a fact. Again, it might not be a fact that is accepted at trial. The request for particulars is really a request for the evidence that the defendants have that the plaintiff failed to properly adjust the headrest device, and evidence-gathering is not a proper use of a demand for particulars.
- [22] The next demand is for particulars of the allegation that the plaintiff failed to follow medical advice in respect of treatment or exercise. Counsel for the plaintiff says that clinical records have been provided and the plaintiff has provided evidence at a full-day examination for discovery, so the defendants should be in a position to provide particulars of these allegations. In my opinion, that is not the end of the story, since the defendants would need to know what the medical advice was that they are alleging that the plaintiff failed to follow.

- [23] The affidavit evidence in this application was deficient, but I assume that medical expert reports have not yet been provided because the trial is not until 2016. I will adjourn generally the application for the particulars of the allegations that the plaintiff failed to follow medical advice in respect to treatment or exercise, with liberty to reapply.
- [24] The next demand is for particulars of the previous and/or subsequent accidents, injuries, or conditions involved or affecting the plaintiff, or congenital defects and/or pre-existing injuries or conditions alleged. We know from the particulars provided by the plaintiff that she alleges an aggravation of a pre-existing injury. Therefore, it is clear that there are pre-existing injuries. Counsel for the plaintiff correctly argues that the plaintiff's original position is the condition that existed at the time of the accident. However, it remains to be seen whether her pre-existing condition was active and debilitating at the time of the accident or not. I have no information in front of me concerning that. Therefore, I am going to make the same order as I did with the immediately preceding application, which is to order that the application for the particulars of the allegation be adjourned generally with leave to the plaintiff to reapply.
- [25] To summarize the issue concerning particulars, as Madam Justice Arnold-Bailey said at para. 28 in *Gulamani v. Chandra*, 2009 BCSC 1487, "the decision to order particulars is extremely discretionary and heavily fact dependent." In this case, I have found that statement to be particularly appropriate.
- [26] It was clear in the *Gulamani* decision that there were several pre-trial applications made on various subjects. At para. 37, Madam Justice Arnold-Bailey cites paras. 7 and 8 of *Cominco Ltd. v. Westinghouse Canada Ltd.* (1978), 6 B.C.L.R. 25 at 27 (S.C.), where Mr. Justice Bouck said:
- [7] Occasionally parties can get caught up in the fascination of the interlocutory process and lose sight of the fact that some day the matter must go to trial even though a "perfect" framework does not exist for its presentation. Sometimes as well one side or the other is merely replying to the overzealousness of his opponent and motions or their opposition are meant to let one another know it will be a long hard fight.
- [8] I mean no criticism of counsel by these remarks. They are honestly trying to pursue every recourse for the benefit of their respective clients. That is their right and their duty.
- [27] All I can say about that quotation from Mr. Justice Bouck in the present case is that, although the response to civil claim in this case was generic and somewhat deficient and counsel for the defendants probably should not have taken such serious objection to the examination for discovery, there was perhaps a little bit of overkill in the way these applications were pursued.

- [28] I mean no criticism of counsel, but it does seem to me that somehow the heat of battle has caused counsel's temperature to rise. I hope I have made some practical decisions here that will assist the parties in moving forward, and I hope that further applications will not be necessary.
- [29] My closing remark is that I do not see any real victor in this application. I see it pretty much as a draw, and therefore, I am not going to make any order as to costs.
- [30] MR. VON ANTAL: Your Honour, there is one point that I should make, and I note it arises in my material. I had sought that each party bear its own costs of the discovery that had taken place or the next -- one of the discoveries that is now admittedly going to result in an order for costs, we are going to have separate orders regarding one discovery, so I had sought that one of those be borne by the parties. I appreciate that there is some divided success here today and so I just want to point out that I have put that out there, and I am in the court's hands in that regard, but it is an issue that will arise at the end of the day when costs are pursued.
- [31] THE COURT: Right, so the costs of this application do not include the disbursements for any discoveries, and I think you are going to have to deal with that in terms of costs of the overall action, when the case is concluded.
- [32] MR. VON ANTAL: Good, thank you.
- [33] THE COURT: And see where the chips fall when the case is concluded. So I am not including any disbursements about discoveries at this point.

"Master Harper"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/15/12/2015BCSC1200.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mocharski-v-ly-2015>

Prepared on 29 October 2026 · Esheria