
CANADA / JUDGMENT

Papaspyros v. Cox

2014 BCSC 1569

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 1569 Papaspyros v. Cox

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Papaspyros v. Cox,

2014 BCSC 1569

Date: 20140819

Docket: M103226

Registry: Vancouver

Between:

Adamandia Papaspyros

Plaintiff

And

James Cox, South Coast BC Transportation Authority,

Coast Mountain Bus Company Ltd. and

Insurance Corporation of British Columbia

Defendants

- and -

Docket: M103227

Registry: Vancouver

Between:

Maria Pappas

Plaintiff

And

James Cox, South Coast BC Transportation Authority,

Coast Mountain Bus Company Ltd. and

Insurance Corporation of British Columbia

Defendants

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

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Place and Date of Trial/Hearing:

Vancouver, B.C.

June 30, 2014

July 2 - 4, 2014

Place and Date of Judgment:

Vancouver, B.C.

August 19, 2014

Introduction

- [1] On July 31, 2008, a bus, driven by the defendant James Cox, came to a sudden stop at the intersection of MacDonald Street and West 4th Avenue in Vancouver (the "Incident") causing a number of passengers to be thrown to the floor. Those passengers included the plaintiffs, Maria Pappas and Adamandia Papaspyros, both of whom have commenced actions claiming damages for the injuries that they sustained.
- [2] The bus was owned and operated by the defendant Coast Mountain Bus Company ("Coast Mountain"), which is an operating company of the defendant South Coast BC Transportation Authority ("Translink"), the regional transportation authority. For ease of reference, where appropriate I will refer to Mr. Cox, Coast Mountain and Translink collectively as the "Transit defendants".
- [3] Mr. Cox alleges that the Incident occurred when a car cut suddenly in front of him requiring him to forcefully apply his brakes in order to avoid a collision. The defendant Insurance Corporation of British Columbia ("ICBC") has admitted that the Incident was caused by the unidentified driver of that car.
- [4] Pursuant to previous orders of this court, liability in the two actions was ordered to be heard together and separate from the issue of damages.
- [5] The central issue in this trial is therefore whether Mr. Cox as the driver of the bus, together with Coast Mountain and/or Translink as his employer(s), bear any liability for the Incident.

The Lay Evidence

- [6] The bus in issue was a No. 22 which has a route that travels north on MacDonald Street heading into downtown Vancouver.
- [7] Ms. Pappas testified that she boarded the bus around 15th Avenue and MacDonald Street to go downtown to her work at Vancity Credit Union, located at Hastings Street and Howe Street.
- [8] It was about 7:40 am and the bus was not very full. She sat on a bench seat towards the front of the bus on the opposite side of where the driver sat. Her seat faced the aisle of the bus.
- [9] Ms. Pappas testified that by the time the Incident occurred, the bus had gotten quite full and there were people standing in the aisle.
- [10] The last stop before the Incident was on the east side of MacDonald Street, north of 5th Avenue.

- [11] Ms. Pappas recalled talking to some people on the bus as it pulled forward from that stop, including Ms. Papaspyros who she knew casually. Shortly after pulling forward, the bus braked once which caused her to move forward out of her seat. As she was sitting back down, the bus braked a second time, more aggressively, and came to a sudden stop. The force of that stop caused her to, in her words, fly out of her seat. She said that she was like a "rag doll".
- [12] Ms. Pappas testified that she flew two to three feet and landed on a pile of people who had fallen into the aisle. She said that she had no warning and therefore could not brace herself for the stop.
- [13] Ms. Pappas said that she did not see the car that apparently cut the bus off nor could she see the traffic light at the intersection of MacDonald Street and 4th Avenue. She did not notice any pedestrians outside of the bus.
- [14] After the sudden stop, the bus driver pulled ahead across 4th Avenue and stopped to check and see if anyone was hurt. Ms. Pappas recalls the driver saying that a car had cut in front of him.
- [15] Ms. Papaspyros testified that she boarded the bus at 20th Avenue at about 7:30 am and she too was heading downtown to work. Her office was located in the HSBC Building at West Georgia Street and Hornby Street.
- [16] She sat in the aisle seat in the first row of front-facing seats on the opposite side of where the driver sat. This was directly adjacent to the bench where Ms. Pappas was sitting, though Ms. Pappas faced into the aisle whereas Ms. Papaspyros faced the front of the bus. She said that the two women were talking as the bus moved along.
- [17] Similar to Ms. Pappas's evidence, Ms. Papaspyros said that the bus was not very full when she got on but by the time of the Incident there were people standing in the aisle.
- [18] Ms. Papaspyros recalls that the bus jerked forward once, which caused her to move forward in her seat, and then there was a second and more forceful jerk that caused her to fall forward out of her seat into the aisle. She said that she fell to her hands and knees but was then pushed flat onto the floor as other people fell on her.
- [19] After the Incident, she recalls seeing a man towards the front of the bus by the fare machine holding his leg.
- [20] Ms. Pappas stayed with her and helped her call her employer to let them know she would not be in. A transit supervisor eventually drove her home.
- [21] Ms. Papaspyros could not remember the bus stop just before the Incident. She said she knew that there were stops on MacDonald Street between Broadway and 4th Avenue but could not say where they were. She did not remember the last stop before the Incident nor did she recall seeing any traffic in front of the bus.

- [22] The bus driver, Mr. Cox, has been a driver with Coast Mountain since 2006. He has a class 1 driver's licence which enables him to operate any motor vehicle other than a motorcycle. A class 2 licence is the minimum requirement to operate a bus.
- [23] Mr. Cox testified that when he was first hired, he had six weeks of training on all aspects of bus operation, including safety procedures. He did a further safety course in June 2008 that focussed on space cushions, a safety concept where the driver is taught to maintain a safe distance between the bus and other vehicles at all times.
- [24] On July 31, 2008, Mr. Cox's shift started at 6:50 a.m., and he said that he usually arrives for his shifts 15 - 20 minutes early. When his shift started, he conducted a standard pre-trip inspection of his bus. Everything was normal.
- [25] He was driving the No. 22 bus which starts its route at the Dunbar Loop then proceeds north to downtown. Its route takes it along MacDonald Street from King Edward Avenue through to Cornwall Avenue before heading over the Burrard Street Bridge. Mr. Cox said he was familiar with the route as he had driven it a number of times.
- [26] By the time he reached the bus stop just north of 5th Avenue on MacDonald Street, Mr. Cox estimated that there were 60 or more passengers on the bus. Most of the seats were taken and there were people standing in the aisle.
- [27] According to Mr. Cox, as he left the bus stop, the light at the intersection of MacDonald Street and 4th Avenue turned green. The evidence is that the intersection is between 46-56 metres from the bus stop; it is 56 meters from the bus stop post and 46 metres from the north end of the no parking zone sign. There is no evidence of precisely where the bus was when it was stopped at the bus stop.
- [28] Mr. Cox proceeded straight ahead in the curb lane as there was no other traffic in front of him. The next bus stop was on the north side of 4th Avenue, just across the intersection, so Mr. Cox said it was a fairly short trip between stops.
- [29] He said that there were 5 or 6 cars lined up in the left north bound lane waiting to turn left onto 4th Avenue. His impression was that all of the cars had left turn signals on. The first car had pulled forward into the intersection and the other cars in the line moved forward as well.
- [30] Mr. Cox testified that he accelerated to about 10 - 20 kilometres per hour then took his foot off the throttle and covered the brake. Just before he got to the crosswalk at the intersection, the second car in line in the left lane suddenly cut in front of him. It looked to Mr. Cox like the car, which he described as a blue BMW Mini (the "Mini"), was intending to turn right onto 4th Avenue.

- [31] Mr. Cox applied his brake to slow down. He then saw a pedestrian step off the curb at the south east corner of the intersection into the north-south crosswalk crossing 4th Avenue. Mr. Cox saw the Mini's brake lights come on as the car stopped for the pedestrian. Mr. Cox therefore applied a hard brake to stop the bus in order to avoid running into the rear of the Mini.
- [32] Mr. Cox said that the events happened so quickly that he did not have a chance to call out a warning to the passengers. He said he was surprised that he did not in fact hit the Mini. His impression was that the bus stopped an inch or so away from the rear of the Mini.
- [33] According to Mr. Cox, a number of passengers fell into the aisle as a result of the sudden stop. One man flew forward and hit the fare box and was in obvious pain. There was a pile of people in the centre aisle.
- [34] Because the bus was blocking traffic on 4th Avenue, Mr. Cox pulled forward through the intersection to the next stop on MacDonald, north of 4th Avenue. He called for a transit supervisor and for an ambulance.
- [35] In cross examination, Mr. Cox could not recall precisely how much time elapsed between when he left the bus stop and when he first saw the Mini cut in front of him. However, he agreed that on examination for discovery, he stated that it was one to two seconds. Nor could Mr. Cox give a precise estimate of how fast the bus was moving, although he believed it was between 10 - 20 kilometers per hour. He was certain however that it was not faster than 25 kilometers per hour. He noted that because the next bus stop was close, there was no need to accelerate above that speed.
- [36] Mr. Cox agreed that when the Mini cut in front of him, it came within the four second safety cushion that bus drivers are taught to maintain.
- [37] Mr. Cox was vigorously cross-examined on the question of whether, had he tried to stop the bus when the Mini first moved in front of him, the stop would have been much smoother. While agreeing that he would have had more time and space to stop, he did not agree that the stop would have been smoother given that the bus was going at a faster speed. In any event, he said that he was simply reacting to events that happened extremely quickly.

The Expert Evidence

- [38] The plaintiffs rely on the expert opinion of Ian MacLeod, who was qualified to give opinion evidence in the areas of accident reconstruction and commercial driving strategy and tactics.
- [39] Mr. MacLeod provided an opinion on the sequence and timing of events leading to the Incident. His opinion was based in part on simulations performed using PC Crash Accident Simulation software.

- [40] The essence of Mr. MacLeod's opinion is that when Mr. Cox saw the Mini turn in front of him, he should have slowed and stopped more quickly and more smoothly than he did. On his analysis, when the Mini first crossed in front of the bus, there was still ample space between the vehicles that would have permitted a safe stop had Mr. Cox responded properly. Mr. MacLeod comes to this opinion based on a number of key assumptions, including the initial distance of the bus from the intersection, the speed of the bus and, notably, the assumption that the Mini entered the curb lane in front of the bus before commencing its right turn onto 4th Avenue.
- [41] The Transit defendants rely on the expert opinion of Robin Brown, P.Eng. who was qualified to give opinion evidence on forensic engineering and specifically motor vehicle accident reconstruction.
- [42] It was Mr. Brown's opinion that the Mini would have taken between 1.85 and 2.3 seconds to execute the sudden turn from the left northbound lane to where it stopped in the intersection facing east in the right northbound lane. According to Mr. Brown, the bus would have been within 15 metres of its final stopped location when the Mini commenced its turn, thus requiring the bus to brake aggressively.
- [43] A key difference identified by Mr. Brown in the underlying assumptions in his report, as opposed to Mr. MacLeod's opinion, is the assumption that the Mini cut suddenly in front of the bus rather than first entering the curb lane before commencing its turn.

Legal Framework

- [44] The leading case on the duty owed by public carriers is still *Day v. Toronto Transportation Commission*, [1940] S.C.R. 433, where Hudson J. stated at 441:

Although the carrier of passengers is not an insurer, yet if an accident occurs and the passenger is injured, there is a heavy burden on the defendant carrier to establish that he had used all due, proper and reasonable care and skill to avoid or prevent injury to the passenger. The care required is of a very high degree: 4 Hals., p. 60, paras. 92 and 95. In an old case of *Jackson v. Tollett*, the rule was stated by Lord Ellenborough, at p. 38, as follows:

Every person who contracts for the conveyance of others, is bound to use the utmost care and skill, and if, through any erroneous judgment on his part, any mischief is occasioned, he must answer for the consequences.

[Footnotes omitted.]

- [45] More recently, in *Prempeh v. Boisvert*, 2012 BCSC 304, Dardi J. described the applicable standard of care in these terms:

- [15] The principles that govern the disposition of this case are uncontroversial. The reasonable foreseeability test informs the analysis of liability. The standard of care owed to a plaintiff passenger by a defendant bus driver is the conduct or behaviour that would be expected of a

reasonably prudent bus driver in the circumstances. This is an objective test that takes into consideration both the experience of the average bus driver and anything the defendant driver knew or should have known: *Wang v. Horrod* (1998), 48 B.C.L.R. (3d) 199 at para. 39 (C.A.); *Patoma v. Clarke*, 2009 BCSC 1069 at para. 6.

[16] It is well-settled on the authorities that the standard of care imposed on a public carrier is a high one. However the principle to be derived from the authorities is that the standard to be applied to the bus driver is not one of perfection nor is a defendant bus driver effectively to be an insurer for every fall or mishap that occurs on a bus: *Patoma* at para. 7.

[18] The principles articulated in *Day* have been interpreted by the courts in this province as endorsing the following analytical approach - once a passenger on a public carrier has been injured in an accident a *prima facie* case of negligence is raised and it is for the public carrier to establish that the passenger's injuries were occasioned without negligence on the part of the defendant or that it resulted from a cause for which the carrier was not responsible: *Planidin v. Dykes*, [1984] B.C.J. No. 907 (Q.L.)(S.C.); *Visanji v. Eaton and Coast Mountain Bus Co. Ltd.*, 2006 BCSC 656 at para. 26.

[46] While there is little dispute about these governing principles, each case turns on its own particular facts (*Visanji* at para. 25).

The Parties' Positions

[47] The plaintiffs submit that they have met the initial burden of proving that they were injured while riding as passengers on a public carrier and that the burden now shifts to the Transit defendants to establish that the injuries were not due to negligence on their part. They say that the Transit defendants have failed to do so.

[48] Specifically, the plaintiffs submit that the driver Mr. Cox failed to follow his training and to leave sufficient space between his bus and the Mini such that he would have had adequate time to brake more slowly and smoothly so as to avoid the sudden stop that resulted in the plaintiffs' injuries. They say that the evidence, taken as a whole, establishes that Mr. Cox had time to react to the Mini moving into his lane before it commenced its right turn onto 4th Avenue. However, Mr. Cox failed to anticipate the possibility that the Mini would come to a stop. When it did, it was too late for Mr. Cox to do anything other than apply a hard brake.

[49] The plaintiffs submit further that Mr. Cox was negligent in failing to call out a warning to the passengers before applying the hard brake.

[50] The Transit defendants submit that the Incident is solely the fault of the unidentified driver of the Mini. They say that given the sudden and unexpected movement of the Mini into the path of the bus and its sudden stop, Mr. Cox had no choice but to apply a hard brake in order to avoid a collision. They say that his actions were consistent with the standard of a reasonably prudent bus driver in all of the circumstances.

[51] As an alternative submission, the Transit defendants say that if Mr. Cox is found to be partially liable for the Incident, it is open to the court to find that the plaintiffs were contributorily negligent for failing to take measures to secure themselves after the initial brake. This point was not argued strenuously by the Transit defendants.

Was Mr. Cox Negligent in the Operation of the Bus?

[52] There is no issue on the evidence that the plaintiffs were injured while riding as passengers on a public carrier.

[53] I pause to note that there was minimal evidence of the nature and severity of the plaintiffs' injuries and I make no findings on those issues, which will be the subject of separate trials. What evidence there was went simply to establishing, for the purposes of the analysis set out in Day and other cases, that the plaintiffs were in fact injured while riding the bus. The Transit defendants did not dispute that the plaintiffs have satisfied this aspect of the test.

[54] The issue then becomes whether the Transit defendants have established that the plaintiffs' injuries were not due to any negligence on the part of Mr. Cox.

[55] In considering this issue, I have taken account of the expert opinion evidence provided by both Mr. Macleod and Mr. Brown. However, in assessing that evidence, I would note that this is a case in which the expert evidence was of minimal assistance to the court. That is because the determination of what happened can best be accomplished by reference to the evidence of the witnesses who were actually involved in the Incident, rather than relying on simulations and projections that in turn are based on unproven assumptions.

[56] As noted by Mr. Brown in his testimony, much of the information that normally informs an accident reconstruction analysis is lacking in this case, for example the specific starting point of the bus, its actual speed, the specific starting part of the Mini when it first moved into the path of the bus and the exact location of the two vehicles at the point of near impact. As such, the analysis and resulting opinion of both experts is largely speculative.

[57] That said, while both experts are clearly qualified and both gave their evidence in a fair and objective manner, as befits an expert witness, on balance I prefer the opinion of Mr. Brown for the principal reason that his assumption concerning the path taken by the Mini better accords with the evidence than does Mr. MacLeod's version. There are also certain key facts absent from Mr. Macleod's analysis, most importantly the fact that there were two braking incidents.

[58] Again, it was Mr. Cox's evidence that the Mini cut in front of him very suddenly. He braked when the Mini appeared in front of him but did not stop because it looked like the Mini was going to complete the right turn onto 4th Avenue. When the Mini then stopped suddenly for the pedestrian, Mr. Cox had to apply a hard brake.

- [59] The sequencing of the braking testified to by Mr. Cox is consistent with the evidence of Ms. Pappas and Ms. Papaspyros, both of whom testified to a first brake sufficient to bring them out of their seats followed very quickly by a second more aggressive brake that threw them to the floor.
- [60] On the plaintiffs' theory, Mr. Cox would have had a number of seconds in between the first brake, when he saw the Mini come into his lane, and the second brake, when the Mini stopped, during which they say he could and should have brought the bus to a smoother stop. In other words, the plaintiffs say that Mr. Cox failed to appreciate the circumstances that presented and therefore reacted improperly and in a manner that falls below the standard of a reasonably prudent driver.
- [61] The plaintiffs' submit that this theory is consistent with much of Mr. Cox's own evidence, for example his evidence that he noticed the Mini enter his lane but that he did not stop because he believed that the Mini would complete its turn onto 4th Avenue. The plaintiffs say that Mr. Cox had time to react but that he misjudged the intention of the Mini which is what resulted in him having to apply the hard brake. In proceeding as he did, the plaintiffs say that Mr. Cox ignored his training which required him to keep a safe distance between his bus and other vehicles and to be alert for mistakes by other drivers and by pedestrians.
- [62] The plaintiffs point to Mr. Cox's evidence that the bus was in motion for one or two seconds after the last stop before he first saw the Mini. They say that this supports their position that Mr. Cox had ample time to see the Mini and react properly by slowing the bus.
- [63] It is clear on the evidence that Mr. Cox was mistaken in his estimate of one to two seconds, as that time frame would have left the bus well short of the intersection when the Mini made its turn. That time estimate is also inconsistent with Mr. Cox's own evidence, where he said that the Mini cut in front of him when the bus was almost at the MacDonald Street east-west crosswalk. When viewed in light of all of the other evidence, I find this latter evidence more accurate.
- [64] Further, while there are aspects of Mr. Cox's evidence that, when looked at in isolation, might suggest that he had more time to make a conscious decision about how to react to the Mini, when his evidence is looked at in its entirety, it supports a finding that the Mini cut in front of him suddenly and that he had no time to react other than as he did.
- [65] That finding is again supported by the evidence of Ms. Pappas and Ms. Papaspyros. It is also consistent with the positioning of the cars in the left hand lane. Mr. Cox's uncontroverted evidence was that the Mini was the second car in the left lane and that, when the light at the intersection turned green, the lead car in the left lane moved in to the intersection in order to turn left when traffic permitted. The other cars in that lane, including the Mini, moved forward as well. Thus, at a minimum, the Mini would have been in or just past the east-west crosswalk on MacDonald Street before it moved in front of the bus. That positioning is more consistent with a sudden cut or "beeline" across the curb lane than a more gradual move into the curb lane followed by a right hand turn. According to Mr. Brown, that turn by the

Mini would have taken between 1.85 and 2.3 seconds giving Mr. Cox minimal time to react.

- [66] Given the suddenness of the Mini's turn into the path of the bus, the concept of a normal four second "space cushion" has no application in this case. That cushion was breached as soon as the Mini cut in front of the bus and Mr. Cox had no opportunity to increase the space between the vehicles.
- [67] Taking all of the evidence into account, I find that Mr. Cox met the standard of a reasonable and prudent bus driver in the circumstances that presented and that his sudden hard brake was a necessary action in light of the Mini's sudden and unexpected turn and stop in front of the bus.
- [68] On the issue of whether Mr. Cox should have issued a warning to the passengers about the impending hard brake, I accept Mr. Cox's evidence that he had no time to issue such a warning given the sudden nature of the Mini's actions. In any event, given how quickly things transpired, it is unlikely that the passengers, including Ms. Pappas and Ms. Papaspyros, would have been able to brace themselves or take any other preventative measures to avoid falling.
- [69] Given my findings above, it follows that I would not find either Ms. Pappas or Ms. Papaspyros contributorily negligent for their injuries. On the evidence, they were both seated properly in their seats and neither had any reason to expect the sudden stop nor any means of protecting themselves against a resulting fall.

Conclusion

- [70] In summary, I find that the Incident was caused 100% by the actions of the unidentified driver of the Mini.
- [71] The plaintiffs' claim against the Transit defendants is therefore dismissed. The Transit defendants are entitled to a single set of costs.

"Skolrood J."

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