

CANADA / JUDGMENT

Sandhu v. Roy

2011 BCSC 1653

COURT

Supreme Court of British Columbia

DECIDED

2 December 2011

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2011 BCSC 1653 Sandhu v. Roy IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sandhu v. Roy, 2011 BCSC 1653 Date: 20111202 Docket: S22959 Registry: Chilliwack Between: Jagjeet Sandhu Plaintiff And Davin Roy Defendant

- and - Docket: S21828 Registry: Chilliwack Between: Jagjeet Sandhu Plaintiff And Richard John Blades and Margaret Joan Blades Defendants Before: The Honourable Mr. Justice Grist Reasons for Judgment Counsel for the Plaintiff: K.R. Tonge Counsel for the Defendants: J.R. Parkinson Place and Date of Trial/Hearing: Chilliwack, B.C. November 7, 2011 Place and Date of Judgment: Chilliwack, B.C. December 2, 2011
- [1] The plaintiff, Jagjeet Sandhu, sues for damages in action S21828, the first action, alleging he was run down by the defendant in a crosswalk on November 6, 2008. The plaintiff asks for this action to be heard together with the second action, S22959, brought in respect of a motor vehicle collision on August 13, 2010. In the second action, the plaintiff pleads that he was injured when his vehicle was rear-ended by a vehicle driven by one of the defendants to that action.
- [2] The application for consolidation is appropriate and consented to by the counsel acting for the defendants in both actions.
- [3] The plaintiff also applies for an order that the consolidated actions be removed from Rule 15-1 of the Supreme Court Civil Rules which stipulates rules for Fast Track Litigation, and for adjournment of the trial date set in the first action, March 5-7, 2012.
- [4] The defendants in both actions have denied liability and delivered Rule 15-1 Notices of Fast Track Action. Following delivery of the first Notice of Fast Track Action, counsel for the plaintiff sent a number of letters to counsel for the defendants objecting to the Notice. She contended that the action now contested on liability and to be subject to consolidation with the pending second action, was not appropriate for the fast track designation.

- [5] The defendant did not reply to these letters objecting to the Fast Track Notice and the next correspondence from counsel for the defendants was to propose trial dates for a three-day trial. The plaintiff continued to object to the fast track designation and argued that the three days proposed for the trial of the anticipated consolidated actions was not appropriate in light of the contests on liability. On April 8, 2011, counsel for the plaintiff proposed a seven-day trial in July 2012.
- [6] Not satisfied with this, on April 21, 2011, the defence set down the March 5-7, 2012, trial dates unilaterally.
- [7] Ultimately, plaintiff's counsel set down a Case Planning Conference and obtained leave to bring this application.
- [8] Plaintiff's counsel says that a quantum assessment likely can be done within the three days set aside for trial. She intends to call the plaintiff, the treating GP and a physiatrist. She also intends to call the plaintiff's wife and, potentially, three employers the plaintiff has worked for since the first collision. If, however, she has to meet two cases on liability, she says the trial time estimate is inadequate. She anticipates the trial will involve her either calling the defendants, or cross-examining them if they are called by the defence. She would also want to present evidence from an accident reconstruction engineer. These additional elements of the case would require more trial time than the three-days presently reserved. She says 5-7 days are required.
- [9] Defence counsel says that liability is "not seriously in dispute" and that the three days set aside are sufficient. He says that he set down the trial unilaterally because plaintiff's counsel did not respond to his request for dates for a three-day trial, and that even should the trial estimate be insufficient and the present trial adjourned, a longer trial estimate alone does not disentitle a party from giving a Fast Track Notice. The defence position is that, as set out in *Hemani and Hillard*, [2011] B.C.J. No. 1924 (S.C.) [*Hemani*], Rule 15-1(1) is disjunctive in listing characteristics which will allow for a party to give a Fast Track Notice, and the fact the action is likely to take no more than three days at trial is not a pre-condition for giving the Notice.

Analysis

- [10] In my view, neither the Court nor a plaintiff can take notice of or rely on an assurance that liability is "not seriously in dispute." Litigation is defined by the pleadings and the defences filed, in both cases, deny the facts set out by the plaintiff as the circumstances of the two events founding the lawsuits, and each defence alleges the plaintiff was solely at fault in a number of enumerated ways.

- [11] Plaintiff's counsel has not given a specific accounting of hours for the witnesses likely necessary to deal with the issues plead, but I find enough in her material to conclude that three days will not be enough as the pleading now stand. I agree that at least 5 days are required.
- [12] The defendants' point that the prerequisites for a Fast Track Notice are listed disjunctively is sound. In *Hemani*, Master Bouck recognized the disjunctive list of criteria in Rule 15-1(1), as allowing for a case requiring more than three days to be set on Fast Track, and held that an action will not be removed from Fast Track on an application under 15-1(6) for that reason alone. Rule 15-1, however, presents something of a conundrum on the question of removal of an action from Fast Track as a result of an estimated trial length beyond three days. If the action proceeds to a Trial Management Conference, Rule 15-1(14) applies: If trial will require more than 3 days
- (14) If, as a result of the trial management conference in a fast track action, the trial management conference judge considers that the trial will likely require more than 3 days, the trial management conference judge
- (a) may adjourn the trial to a date to be fixed as if the action were not subject to this rule.
- [13] In a case like this one, where only three days are set aside for trial and the circumstances indicate that significantly more days are required, should the matter proceed to a Trial Management Conference, the court would in most cases be forced to require a second trial date be set, and may often be called on to remove the action from the strictures of the Rule.
- [14] In *Hemani*, the plaintiff set the proceeding for Fast Track and the objection came from the defence. The plaintiff in that case was willing to forego the extra costs of a trial exceeding three days. There is no mention of a liability defence in *Hemani* and the concession likely was of some singular significance. Here, the case was set on Fast Track by the defence and plaintiff's counsel, if forced to defend liability, wants to pursue the full costs of the proceeding. Further, pleading a full defence while otherwise taking an ambiguous position on liability does nothing to promote the simplified procedure under Rule 15-1, or the Rule 1-3 general objective of promoting a just, speedy and inexpensive determination of every proceeding.
- [15] I find 2 points of distinction between this application and the decision in the *Hemani* action:
- 1) In the *Hemani* case the proceedings had not advanced to the stage of setting trial dates and there may have been the prospect of simplification of the case before that step was taken, whereas in this matter the actions as plead will not only require more than three days, they are presently set for that inadequate length of trial and subject to adjournment under Rule 15-1(14).

- 2) Here the party objecting to the Fast Track proceeding can demonstrate that significant costs may be denied if forced into a longer trial than the 3-day costs provision under Fast Track can compensate.
- [16] I find merit in plaintiff's application and would accede to the adjournment of the trial and removal of the action from the Fast Track Program. I consider, however, that the orders may not ultimately be necessary if liability for the two collisions were to be admitted. Defence counsel should be given the opportunity to re-assess his position once the effect of this decision is known. Accordingly, I will stipulate that the two orders will become effective should the liability issues not be settled within 14 days of these Reasons.
- [17] The consent order for consolidation will be granted and the plaintiff should have the costs of this application in any event of the cause. "W.G. Grist J."
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