

CANADA / JUDGMENT

Savvas v. Green

2008 BCSC 39

COURT

Supreme Court of British Columbia

DECIDED

10 January 2008

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2008 BCSC 39 Savvas v. Green IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Savvas v. Green, 2008 BCSC 39 Date: 20080110 Docket: M92375 Registry: New Westminster Between: Sophia Savvas and John Savvas Plaintiffs And David Frederick Green Defendant Before: Master Caldwell Reasons for Judgment Counsel for the Plaintiffs: K.A. Murray, R. Fister Counsel for the Defendant: M.G. Voros Date and Place of Hearing: November 1, 2007 New Westminster, B.C.

- [1] This is an application by the plaintiffs to add a new defendant to this proceeding well outside of the two year limitation period and outside of the "two years and one year to serve" guideline which is normally applied in such cases.
- [2] The proposed new defendant was notified of the application and was represented by counsel who opposed the order sought. It was acknowledged by counsel that on the facts of this case there is no actual prejudice to the proposed defendant save and except for the loss of the limitation defence.
- [3] The plaintiffs were passengers in a vehicle driven by their sister, the proposed new defendant. That vehicle was "rear-ended" by a vehicle driven by the original defendant, Green. The plaintiffs statements to ICBC indicated that their vehicle was stopped when it was struck by Mr. Green's vehicle. Based upon similar information as related to him by his clients, plaintiffs counsel commenced action against Mr. Green. Liability was not admitted by the defendant, Green, but rather alleges that the motor vehicle accident and any injuries were caused "solely by the negligence of the plaintiffs" however no further details of such allegations are provided.
- [4] In February of this year, after the expiry of the limitation period plus one year, counsel for the defendant advised plaintiffs counsel that a witness to the accident had provided a statement to ICBC on November 17, 2006.

- [5] The contents of that statement raise the possibility that the driver of the plaintiffs vehicle, i.e. the intended new defendant, may have been wholly or partly responsible for the accident. No such allegation was contained in the Statement of Defence, however, the identity of the witness and her phone number were noted on the original Accident Report and it appears that she may well have provided a similar statement to the police at the time of the accident.
- [6] Evidence is provided by Mr. Soo, an adjuster employed by ICBC. Mr. Soo states at ¶6-8 of his affidavit number two:
6. I was the adjuster assigned to investigate the claim brought against Roza Savvas.
 7. On June 6, 2003, I met with Roza Savvas and obtained from her a statement with respect to how the motor vehicle accident happened. Now produced and shown to me and marked Exhibit "A" to this my Affidavit is a true copy of that statement.
 8. A separate adjuster with ICBC had been appointed to investigate the claim brought against Mr. Green.
- [7] Accordingly, it is clear that Mr. Soo was not in fact the adjuster on this file but rather was the adjuster on another file arising from this accident and which involved a claim against Ms. Savvas, the intended new defendant herein. No evidence has been provided by the adjuster who did in fact have conduct of this particular file. Notwithstanding this fact, Mr. Soo's affidavit number two exhibits telephone conversation notes on file L322982-4 which is ICBC's reference for this matter naming Mr. Green as the defendant. Mr. Soo's notes appear to indicate that he advised plaintiffs counsel that liability was not being admitted, was still a live issue, and was being investigated.
- [8] One week earlier however, Mr. Soo wrote to plaintiffs counsel in this action and identified himself as "the ICBC adjuster assigned to this case". Nowhere does the material indicate that Mr. Soo ever advised plaintiff's counsel that he was Ms. Savvas' adjuster regarding the claim being pursued against her as he has sworn in his affidavit.
- [9] In short it appears that everyone, including Mr. Soo and plaintiffs counsel were unclear, at the time of information exchange, as to which file involved which possible defendants. In this regard, it does not appear that plaintiffs counsel knew that there was a separate file, upon which Mr. Soo acted as the adjuster, and wherein there was a claim of negligence against Ms. Roza Savvas. Perhaps this confusion could have been resolved by evidence from the adjuster who was actually assigned to the "Green" file at the outset, but no such evidence was placed before me.

- [10] Counsel for Roza Savvas admits that there is no prejudice to her save and except the loss of the limitation defence. It is clear that she was aware from the outset that the plaintiffs were pursuing a claim regarding injuries suffered in the accident. No evidence of Roza Savvas is tendered to suggest that she was unaware of a claim that she was at least partly liable for the collision in question.
- [11] On the evidence before me I find that the prejudice to the plaintiffs outweighs the prejudice to the intended defendant and I exercise my discretion to add Roza Savvas as a defendant, to amend the style of cause accordingly and to grant the plaintiffs liberty to file the amended writ and statement of claim.
- [12] Each party will bear their own costs. "Master Caldwell"
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