

CANADA / JUDGMENT

Shahi v. Mand

2020 BCSC 1690

COURT

Supreme Court of British Columbia

DECIDED

9 November 2020

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2020 BCSC 1690 Shahi v. Mand IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Shahi v. Mand, 2020 BCSC 1690 Date: 20201109 Docket: M191658 Registry: New Westminster Between: Sukhnandan Shahi Plaintiff And Avtar Mand and Geoffrey Budinski Defendants Before: The Honourable Mr. Justice Armstrong Reasons for Judgment Counsel for the Plaintiff: R.J. Chang No Appearance on behalf of Defendants: Place and Date Notice of Application Filed: New Westminster, B.C. October 29, 2020 Written Submissions Received: November 5, 2020 Place and Date of Judgment: New Westminster, B.C. November 9, 2020

- [1] The plaintiff seeks an order under Supreme Court Civil Rules, R. 6-1 and 6-2 to amend their notice of civil claim adding Swarni Kaur Mand as a defendant in the proceeding and to amend the style of cause accordingly. They also seek 12 months to serve the amended notice of civil claim.
- [2] It is apparent from the affidavit filed in support of the application that the plaintiff was injured in a motor vehicle accident on September 9, 2016. The plaintiff retained counsel who filed a Notice of Civil Claim on June 15, 2017 (the NOCC). At that time, counsel was aware that the driver of the motor vehicle was Swarni Kaur Mand but due to inadvertence, this person was not added as a defendant; the NOCC alleged that Avtar Mand (the "registered owner") was also the driver.
- [3] This application is not opposed by the defendants and was, in part, triggered by notice from the defendants' insurer that Avtar Mand was not the driver and Swarni Kaur Mand was in fact the driver.
- [4] The limitation period has expired and there is no indication that this application has been served on the proposed defendant.
- [5] At this juncture, I cannot grant the application unless or until the proposed defendant has been served with the application to add them as defendant in the action; see *Alexis v. Duncan*, 2015 BCCA 135 at paras. 22-24.

- [6] The proposed defendant is a person interested in the application and should be permitted to make submissions on the question of whether their joinder is just and convenient. It may be that the proposed defendant, through their insurer, has consented to the order; nothing in the affidavit material informed me on this point.
- [7] Thus, I will adjourn this application pending service of the application on the proposed defendant or confirmation otherwise that they consent to the order.
- [8] I also observed that no steps have apparently been taken in this litigation for more than 12 months; if this is the case then a 28 day notice must be issued and served before the application can be heard.
- [9] Finally, the affidavit of Ainsa Hepburn sworn in support of this application is seriously flawed. In that affidavit, the affiant says that they " have personal knowledge of the facts and matters hereinafter deposed to, save and excepted where same are stated to be on information and belief, and where so stated I verily believe them to be true." The affidavit then goes on to state various facts none of which are qualified as made "on information and belief". It is obvious that the affiant did not have any personal knowledge of many of those matters nor has she given any indication of where the information comes from. Although the factual assertions were most likely communicated to her from other sources, the failure to qualify those statements as based on information and belief is ordinarily fatal.
- [10] I would expect counsel to provide a proper affidavit when this matter comes back to the court. "Armstrong J."

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Prepared on 25 October 2026 · Esheria