
CANADA / JUDGMENT

Sharma v. Mohammed

2021 BCSC 1124

COURT

Supreme Court of British Columbia

DECIDED

9 June 2021

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

2021 BCSC 1124 Sharma v. Mohammed

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sharma v. Mohammed,

2021 BCSC 1124

Date: 20210609

Docket: M175226

Registry: New Westminster

Between:

Sandeep Sharma

Plaintiff

And

Karim Aminullah Mohammad

Defendant

Before: Master Muir

Reasons for Judgment

In Chambers

The Plaintiff:

No appearance at this hearing

Counsel for the Defendant, appearing via videoconference:

J. Rusinek

Counsel for Proposed Third Party, Daniil Oleksand Polyakov, appearing via videoconference:

L.E. Miller

M. MacNiel, Articled Student

Place and Date of Hearing:

New Westminster, B.C.

June 1, 2021

Place and Date of Judgment:

New Westminster, B.C.

June 9, 2021

Introduction

- [1] This is an application by the defendant, Mr. Mohammad, for leave to file a third party notice against Daniil Oleksand Polyakov (Mr. Polyakov).
- [2] The plaintiff, Mr. Sharma, brings this action for damages said to have arisen from a motor vehicle accident on November 30, 2013 (the "first action"). The notice of civil claim was filed on November 4, 2015.
- [3] Mr. Sharma has also commenced an action (New Westminster Registry Action S210547) against Mr. Polyakov for damages said to have arisen from a motor vehicle accident on April 26, 2017 (the "second action"). The notice of civil claim in the second action was filed on January 24, 2019.
- [4] Mr. Sharma takes no position on this application.
- [5] Counsel for Mr. Mohammad was aware of the 2017 accident and that it had apparently exacerbated Mr. Sharma's injuries from the 2013 accident by, at least, the first examination for discovery of him on December 14, 2017.
- [6] On October 20, 2020, counsel for Mr. Polyakov brought an application in the second action for leave to add Mr. Mohammad as a third party. Mr. Mohammad took no position and the order was granted. The third party notice against Mr. Mohammad in the second action was served on April 23, 2021.
- [7] Mr. Mohammad now seeks leave to bring a third party claim against Mr. Polyakov in the first action. Mr. Polyakov says the limitation period has run and the proposed third party claim against him is time-barred.

Legal Basis

[8] The applicable limitation provisions are provided for in the Limitation Act, S.B.C. 2012, c. 13:

Basic limitation period

6 (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.

(2) The 2 year limitation period established under subsection (1) of this section does not apply to a court proceeding referred to in section 7.

Discovery rule for claims for contribution or indemnity

16 A claim for contribution or indemnity is discovered on the later of the following:

- (a) the day on which the claimant for contribution or indemnity is served with a pleading in respect of a claim on which the claim for contribution or indemnity is based;
- (b) the first day on which the claimant knew or reasonably ought to have known that a claim for contribution or indemnity may be made.

Positions of the Parties

[9] Counsel for Mr. Mohammad conceded that if the discovery rule in s. 16(b) of the Limitation Act is the appropriate measure, the limitation period for bringing a third party claim has expired.

[10] Mr. Mohammad relies upon the decision of the Court of Appeal in *Sohal v. Lezama*, 2021 BCCA 40 in support of his argument that the limitation period has not expired.

[11] The context of the *Sohal* decision was somewhat different, but counsel argued that the case stands for the proposition that the notice of civil claim in the first action cannot be the "pleading in respect of a claim on which the claim for contribution or indemnity is based" under the Limitation Act, s. 16(a).

[12] The notice of civil claim in the first action does not raise the issue of the potential liability of Mr. Polyakov, as the second accident had not yet occurred. No amended pleading alleging Mr. Polyakov's fault has been filed in the first action.

[13] Mr. Mohammad argues that the only pleading on which discovery for s. 16(a) purposes could be based is the service of the third party notice on him by Mr. Polyakov in the second action. He argues that there is nothing in s. 16(a) that confines the referenced pleading to one within the same action.

[14] As the third party notice in the second action was served April 23, 2021, Mr. Mohammad argues that the limitation period has not expired.

- [15] Mr. Polyakov took the position that discovery for purposes of s. 16(a) of the Limitation Act occurred on service of the notice of civil claim in this action. That was well over two years ago.
- [16] Discovery as provided for by s. 16(b) of the Limitation Act has been conceded to be more than two years prior to this application and, hence, Mr. Polyakov submits that under either sub-section, the limitation period has expired.

Analysis and Conclusion

- [17] The Court of Appeal in *Sohal* came to certain conclusions that are supportive of Mr. Mohammad's position.
- [18] The Court of Appeal noted:
- [78] As we have seen, the basis of a claim for contribution is a statutory right to restitution that flows from findings of liability, not from the commission of a tort. The connection to the underlying claim is not to the act or omission that gives rise to the tort claim. Rather, the connection arises from the bare fact of the tort action itself, because it seeks to impose liability.
- [79] The purpose of the claim for contribution is to remedy the defendant's loss in paying too much of the plaintiff's judgment as a result of the act or omission of the co-defendant or other third-party in failing to pay its proper share, thereby being unjustly enriched. The act or omission on which the claim for contribution is based thus remains that failure, which is something quite different from the act or omission giving rise to the tort claim. That is why tortfeasors may bring their claims for contribution independently of the tort claim, in a separate action, and are not obliged to attach them to the tort action by way of third-party proceedings.
- [19] In considering the trigger pleading required for s. 16(a) of the Limitation Act, the Court of Appeal in *Sohal* concluded:
- [109] The appellants then submit that the judge's interpretation leads to this further absurdity ("anomaly #3"): suppose a plaintiff commences action against defendant A, then 2½ years later, applies to add B as a defendant notwithstanding the expiry of a limitation, which is permissible according to section 22(1)(d). The court finds it is just and convenient to do so, and B is added. Defendant A then seeks to claim contribution from defendant B by third party notice. But, the appellants say, on the judge's interpretation, defendant A's claim for contribution from defendant B would be time-barred.
- [110] Like anomalies #1 and #2, anomaly #3 is something of a mirage. It ignores the discoverability provisions for claims of contribution in section 16. By that section, time begins to run from the later of

- (a) the day on which the claimant for contribution or indemnity is served with a pleading in respect of a claim on which the claim for contribution or indemnity is based;
 - (b) the first day on which the claimant knew or reasonably ought to have known that a claim for contribution or indemnity may be made.
- [111] As discussed above, a claim for contribution is based upon a finding of fault against two or more persons. A pleading alleging damage caused by the fault of two or more persons could not be served upon defendant A until the application to add defendant B. That is when time would begin to run in accordance with section 16(a). It follows that, consistent with the scheme of the new Act as a whole, a third party claim for contribution by defendant A against defendant B would not be time-barred. [Emphasis in original.]
- [20] The plaintiff, as was his right, commenced two separate actions for the two accidents. The notice of civil claim in the first action does not allege damage caused by the fault of two or more persons, and is thus not a pleading upon which the claim for contribution and indemnity is based, and could not trigger the running of time under s. 16(a) of the Limitation Act.
- [21] Thus, according to Sohal, Mr. Polyakov's position that the original notice of civil claim in the first action is the pleading that triggers the running of time under s. 16(a) of the Limitation Act is mistaken.
- [22] I do not agree, however, with the argument of Mr. Mohammad that the third party claim against him in the second action is the pleading that marks the discovery of a claim for contribution and indemnity for the purposes of s. 16(a) in the first action. I do not agree that the third party claim against Mr. Mohammad in a different action could properly be described as, "a pleading in respect of a claim on which the claim for contribution or indemnity is based".
- [23] The only analysis consistent with the reasoning in Sohal is similar to the example referred to as anomaly #3 in the above referenced paragraphs. The plaintiff in this action could apply to add Mr. Polyakov as a defendant. If the application to add Mr. Polyakov was allowed, it would be that pleading in this action, being one alleging damage from the fault of two persons, that would trigger the running of time for s. 16(a) of the Limitation Act.
- [24] Thus, I conclude that time under s. 16(a) of the Limitation Act has not yet begun to toll and Mr. Mohammad is within time to commence a third party claim against Mr. Polyakov.
- [25] Mr. Polyakov did not take issue with the application on any other basis. As the damages alleged are arguably related and Mr. Polyakov has third partied Mr. Mohammad in the second action, it would seem to be in the interests of justice to allow the third party claim to be made by Mr. Mohammad against Mr. Polyakov in the first action.
- [26] The application is thus allowed.

Costs

[27] Mr. Mohammad will have his costs of this application from Mr. Polyakov in the cause.

"Master Muir"

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/21/11/2021BCSC1124.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sharma-v-mohammed-2021>

Prepared on 28 October 2026 · Esheria