

CANADA / JUDGMENT

Sidhu v. Hiebert

2011 BCSC 1364

COURT

Supreme Court of British Columbia

DECIDED

13 October 2011

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2011 BCSC 1364 Sidhu v. Hiebert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Hiebert,

2011 BCSC 1364

Date: 20111013

Docket: M082472

Registry: Vancouver

Between:

Arshdeep Singh Sidhu,

an infant by his litigation guardian Kuljivan Singh Dhaliwal

Plaintiff

And:

Jan Abram Hiebert, Balwinder Kaur Sidhu,

Rajvinder Singh Sidhu, and Surinder Singh Rattan

Defendants

And:

Insurance Corporation of British Columbia, Jan Abram Hiebert,

Balwinder Kaur Sidhu, Rajvinder Singh Sidhu,

Surinder Singh Rattan and Rudolph Werner Braun

Third Parties

- And -

Docket: M083848

Registry: Vancouver

Between:

Balraj Singh Sidhu,

an infant by his litigation guardian Tejpaul Mann

Plaintiff

And:

Jan Abram Hiebert, Balwinder Kaur Sidhu,

Rajvinder Singh Sidhu, and Surinder Singh Rattan

Defendants

And:

Surinder Singh Rattan, Jan Abram Hiebert, Balwinder Kaur Sidhu,

Rajvinder Singh Sidhu, Insurance Corporation of British Columbia

and Rudolph Werner Braun

Third Parties

- And -

Docket: M083325

Registry: Vancouver

Between:

Balkran Singh Gill,

an infant by his litigation guardian Inderjeet Dhaliwal

Plaintiff

And:

Jan Abram Hiebert, Balwinder Kaur Sidhu,

Rajvinder Singh Sidhu, and Surinder Singh Rattan

Defendants

And:

Insurance Corporation of British Columbia, Jan Abram Hiebert,
Balwinder Kaur Sidhu, Rajvinder Singh Sidhu, Surinder Singh Rattan
and Rudolph Werner Braun

Third Parties

Before: The Honourable Mr. Justice Johnston

Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff:

Arshdeep Singh Sidhu

J. Buckley and C. D'Sa

Counsel for the Defendant/Applicant:

Surinder Singh Rattan

N. P. Kent

Counsel for the Defendants/Third Parties:

Balwinder Kaur Sidhu and

Rajvinder Singh Sidhu

C. Kelly

Counsel for the Third Party:

Insurance Corporation of British Columbia

A. B. Hudson

Counsel for the Third Party:

Rudolph Werner Braun

S. A. Braun

Place and Date of Hearing:

Vancouver, B.C.

June 16-17, 2011

and August 19, 2011

Place and Date of Judgment:

Vancouver, B.C.

October 13, 2011

- [1] There are three actions, brought on behalf of three infant plaintiffs, all arising out of a motor vehicle accident. Arshdeep Singh Sidhu, the most seriously injured of the plaintiffs, claims damages against his parents Balwinder Kaur Sidhu and Rajvinder Singh Sidhu, the driver and owner, respectively, of the vehicle in which he rode as a passenger; against Mr. Hiebert, the driver of the vehicle that collided with his parents' vehicle; and against Mr. Rattan, who is alleged to have hosted a party at which Mr. Hiebert became drunk just before the accident.
- [2] The plaintiffs in the other two actions were also passengers in the Sidhu vehicle, and each claims against the same defendants based on similar allegations of negligence.
- [3] Mr. Rattan alleges contributory negligence against the infant plaintiff. As well, Mr. Rattan has issued a third party notice claiming contribution and indemnity against Mr. Braun, who was a passenger in Mr. Hiebert's vehicle. Mr. Rattan asserts that if he, Rattan, can owe a duty to third party users of the highway such as the plaintiff, then so too can Mr. Braun.
- [4] The Sidhu defendants and Mr. Hiebert have issued third party notices claiming contribution and indemnity from Mr. Rattan.
- [5] The defendant Rattan applies by way of summary trial to have the plaintiffs' claims, along with any third party claims against him, dismissed, with costs.
- [6] The third party Braun applies by way of summary trial to have the defendant Rattan's third party claims against him dismissed, with costs.
- [7] Mr. Rattan argues that his liability to the plaintiff, if any, would arise from his status as what is called a "social host," and as a matter of law he owed no duty of care to public users of the highway who might be injured by an intoxicated guest. He says further that the claims by various co-defendants who seek contribution or indemnity from him by way of third party notices should be dismissed for the same reason.
- [8] Similarly, Mr. Braun seeks the dismissal of the third party notice issued against him on the basis that he owed no duty of care to the plaintiff.

BACKGROUND

- [9] The defendant Rattan, the defendant Hiebert and the third party Braun were school friends when they were younger, but they had drifted apart as they got older.

- [10] When Mr. Rattan was about to turn 50, his family decided to have a party to celebrate. Mr. Hiebert and Mr. Braun were invited, and attended together, arriving some hours after the celebration had started.
- [11] The evidence conflicts on how much, and what kind, of alcoholic beverage Mr. Hiebert consumed at the Rattan home; in whose presence he consumed it; and who knew of his resulting condition.
- [12] Mr. Hiebert left the gathering with Mr. Braun. Mr. Hiebert drove his truck and Mr. Braun rode as a passenger.
- [13] Shortly after leaving the Rattan home, Mr. Hiebert drove through a stop sign and hit the vehicle in which the three infant plaintiffs were riding as passengers. The defendant Balwinder Kaur Sidhu was driving that vehicle, which was owned by the defendant Rajvinder Singh Sidhu.
- [14] Mr. Hiebert's blood alcohol content has been analyzed and extrapolated back to the time of the collision to be more than three times the legal limit for driving. An expert has opined that Mr. Hiebert would have had to drink between 20 and 26 ounces of hard liquor to produce such a result.
- [15] The infant plaintiff Arshdeep Singh Sidhu is disastrously injured as a result, as his spinal cord was severed in the high cervical area. The plaintiffs in the other two actions allege lesser injuries.
- [16] The plaintiff's trial on issues of liability and damages is set for 15 days in October 2012.

POSITIONS OF THE PARTIES

- [17] Mr. Rattan's position is that he owed no duty to the infant plaintiffs arising out of the fact that Mr. Hiebert had consumed alcohol at his home. He relies on the decision of the Supreme Court of Canada in *Childs v. Desormeaux*, 2006 SCC 18. Mr. Rattan says that the effect of *Childs* is that he owed no duty to monitor Mr. Hiebert's alcohol intake while at his house, or to take any steps to protect other users of the highways when Mr. Hiebert proposed to drive away from his house.
- [18] He argues further that the issue of any liability that might attach to him as a "social host" is sufficiently discrete from the issues among the parties to the motor vehicle accident litigation that it would be just and convenient to decide his liability separately on this summary trial application.
- [19] The plaintiff Arshdeep Singh Sidhu, supported by Mr. Rattan's co-defendants Balwinder and Rajvinder Sidhu, and the third party Insurance Corporation of British Columbia ("ICBC"), argue that this issue is not suitable for disposition on summary trial. The plaintiffs in the other actions delivered responses adopting the position taken by Arshdeep Singh Sidhu, but did not appear on the application.

[20] The plaintiff argues that there are controversial aspects of the evidence that make summary determination inappropriate, including:

1. Mr. Hiebert's condition when he arrived at the Rattan home, and Mr. Rattan's knowledge of that condition;
2. The amount of alcohol that was available or served to Mr. Hiebert at the Rattan home;
3. Mr. Hiebert's condition when he left the Rattan home, and Mr. Rattan's knowledge of that condition; and
4. Whether Mr. Rattan offered to call Mr. Hiebert a taxi, or offered to drive him home himself.

[21] The defendant Rattan argues:

1. Mr. Hiebert's condition when he arrived at the party is moot because the law does not require him to have either monitored Mr. Hiebert's drinking or intervened to prevent or discourage him from driving;
2. As he has no duty of care as a social host, the amount of Mr. Rattan's liquor Mr. Hiebert chose to drink at his home is moot;
3. As there is no duty to intervene to prevent or discourage Mr. Hiebert from driving, his condition when he left the Rattan home is moot; and
4. In any event, Mr. Rattan offered to call a taxi one or more times, and had no legal obligation to do more.

[22] The plaintiff submits that Childs did not go so far as to eliminate all possibility that a duty of care might arise out of social hosting circumstances. He argues that there are many conflicts in the evidence, which, if resolved in favour of the plaintiff, are capable of satisfying the Anns test (*Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.)), and from which a duty of care might arise. The plaintiff submits that there is a significant risk that a just and fair result will not be achieved if the findings of credibility and fact that are critical to the analysis required by Anns were to be made on a summary, as opposed to a full, trial.

THE LAW

[23] Childs arose out of a New Year's party hosted by two defendants to which their co-defendant Desormeaux was invited. The invitees were expected to bring their own refreshments, and the hosts provided a small amount of champagne to each guest to toast the New Year.

- [24] The hosts knew that Mr. Desormeaux had in the past driven after becoming drunk. On this occasion, Mr. Desormeaux got drunk, drove, and caused a serious car accident. The trial judge did not find that the hosts knew, or ought to have known, that Mr. Desormeaux was impaired when he left their party. The trial judge concluded that the hosts nevertheless owed a prima facie duty of care to the injured plaintiff, but found that this duty was negated on grounds of public policy and dismissed the action.
- [25] On appeal, the Ontario Court of Appeal determined that no prima facie duty of care had arisen and dismissed the appeal. The case went to the Supreme Court of Canada where the issue was the existence of a duty of care on the part of the defendant social hosts.
- [26] The Court reviewed the analytical framework for whether or not a duty of care arises in light of the two-part test established in the House of Lords decision in *Anns*. Those two parts are first, whether there is a sufficiently close or "proximate" relationship between plaintiff and defendant to give rise to a duty of care, and second, if the relationship is sufficiently close, whether there are policy reasons to negate a duty of care.
- [27] The Court then applied its reasoning from *Odhavji Estate v. Woodhouse*, 2003 SCC 69, where the question of proximity was divided into two elements, foreseeability and proximity. It said that the test for proximity will not always be satisfied by reasonable foreseeability.
- [28] The plaintiff bears the burden of satisfying the first, or proximity, stage of the analysis. The first stage of the *Anns* test may be avoided where the relationship between the parties is such that a prima facie duty of care has been imposed in previous decisions involving parties in similar relationships. If, however, the relationship upon which the duty is alleged to arise is a novel one, in the sense that precedent has not established the categorical existence of a duty of care, then the plaintiff must satisfy the first stage of the *Anns* test.
- [29] The plaintiff who succeeds in establishing proximity raises a prima facie duty of care that shifts an evidentiary burden to the defendant to establish a policy reason for not imposing the duty raised in a prima facie way upon him or her.
- [30] The Court in *Childs* concluded that the first part of the *Anns* test could not be avoided on the basis that the social host case before it was sufficiently similar to cases already decided where the existence of a duty had become established - the nearest analogy being commercial hosts, such as bars. The court did not deny similarities between commercial and social hosts. It simply said that "the possibility of a duty of care on commercial hosts does not automatically translate into a duty of care for social hosts" (para. 17).
- [31] The Court instead determined that it had to decide whether the plaintiff had raised a prima facie duty of care.
- [32] Whether a duty had been established on the face of it depended on the answer to this question: "What, if anything, links party hosts to third-party users of the highway?" (*Childs*, para. 24).

- [33] The Supreme Court of Canada's answer was that injury to the plaintiff Childs was not reasonably foreseeable on the facts found by the trial judge and, even if foreseeability had been established, no duty would arise because the wrong alleged was a failure to act, or nonfeasance, in circumstances where there was no positive duty to act.
- [34] There are two aspects of the Court's answer that require examination in light of the issues raised in this case: first, the conclusion that the plaintiff's injuries in Childs were not reasonably foreseeable on the facts as found in that case; second, that failure to act could not give rise to liability in circumstances where there was no duty to act.
- [35] On the first, the Court pointed out that the trial judge had not found as a fact that the hosts knew, or ought reasonably to have known, that their guest Desormeaux was too drunk to drive when he left their party.
- [36] In the case before me, there is a great deal of conflicting evidence on what Mr. Rattan knew or ought to have known about Mr. Hiebert's state of sobriety when he drove away from the party. That evidence includes: Mr. Rattan's statement to police that Mr. Hiebert was "pretty drunk," his discovery evidence that Mr. Hiebert "seemed okay" but "nobody should drive even after one drink." Mr. Hiebert's evidence on discovery that he had no difficulty walking and was not slurring his speech; Mr. Rattan's brother's affidavit saying Mr. Hiebert did not appear to be intoxicated when he shook his hand as Mr. Hiebert was leaving; and Mr. Rattan's adult children's affidavits in which they agreed that Mr. Hiebert did not appear intoxicated around the time he left the party.
- [37] The plaintiff refers to a statement given to police by Baljinder Rattan, a niece of the defendant host. Baljinder Rattan, who now lives in Ontario, has refused to give an affidavit. Her statement to the police is not admissible on summary trial for the truth of its contents. The question is whether it is admissible as evidence that it was made, and if so, how far that may be taken.
- [38] I conclude that I can accept the statement as proving that it was made, in order to determine whether, if the application is dismissed, there is a realistic possibility that facts might be found by a trial judge capable of supporting a conclusion that Mr. Rattan ought reasonably to have foreseen that these plaintiffs or other users of the roads might be injured by Mr. Hiebert's driving.
- [39] There is a very real possibility that Baljinder Rattan's evidence might be available at a trial, through operation of the Subpoena (Interprovincial) Act, R.S.B.C. 1996, c. 442, or Rules allowing for taking evidence outside British Columbia.
- [40] There is, furthermore, other, conflicting evidence admissible on this summary trial touching on what Mr. Rattan knew or ought to have known about Mr. Hiebert's condition when leaving the Rattan home. On one hand, Mr. Rattan has produced affidavits from his brother, his son and his daughter, each of whom describes Mr. Hiebert's apparent condition when he left the party in terms that would argue strongly against imposing a duty of care

upon Mr. Rattan. On the other hand, there is the opinion of Ms. Kirkwood, based on the analysis of a sample of Mr. Hiebert's blood, that at the time of the accident, Mr. Hiebert's blood alcohol concentration was 284 mg. of alcohol in 100 ml. of blood, and that she would expect 90 to 95% of the population having that level of alcohol in their blood to "exhibit symptoms of impairment that would be apparent to a casual observer."

[41] This is a case where findings of fact necessary to determine if a duty of care arose in the circumstances should not be made on affidavits, but rather should be made by a trier of fact who has had the advantage of observing and weighing the evidence of the witnesses in direct as well as cross-examination. That distinguishes the foreseeability aspect of this case from Childs, in my view.

[42] There is a second aspect of the Supreme Court of Canada's answer to the question of linkages between social hosts and third party users of the highway. This second aspect deals with nonfeasance or omission, and whether there was a duty to act.

[43] The court says at para. 31:

However, where the conduct alleged against the defendant is a failure to act, foreseeability alone may not establish a duty of care. In the absence of an overt act on the part of the defendant, the nature of the relationship must be examined to determine whether there is a nexus between the parties. Although there is no doubt that an omission may be negligent, as a general principle, the common law is a jealous guardian of individual autonomy. Duties to take positive action in the face of risk or danger are not free-standing. Generally, the mere fact that a person faces danger, or has become a danger to others, does not itself impose any kind of duty on those in a position to become involved. [Emphasis in original.]

[44] I take from this passage that this aspect is also evidence-driven, in that whether there is a nexus between the parties will depend on the nature of any relationship revealed by the evidence. The passage also suggests that if there is more than a "mere fact that a person faces danger," again revealed in the evidence, the general statement may not apply.

[45] The court in Childs summarized three situations where courts have in the past imposed positive duties to act: where a defendant has intentionally attracted and invited third parties to inherent and obvious risks created or controlled by the defendant; where there is a paternalistic, supervisory or controlling relationship between defendant and plaintiff; and where the defendant is engaged in a public function or commercial enterprise that implies responsibility to the public.

[46] I agree with counsel for Mr. Rattan that this case does not fit comfortably within any one of these three situations, but I also note that the Court in Childs at para. 34 said these were not strict legal categories, but serve to elucidate factors that can lead to positive duties to act.

[47] After pointing out that the three situations have in common the defendants' "material implication in the creation of the risk or his or her control of a risk to which others have been invited," and the reluctance of the law to infringe on the personal autonomy of

someone in Mr. Hiebert's position without good reason, the Court at para. 39 points out that someone in Mr. Rattan's position might be expected or required by law to impinge on Mr. Hiebert's autonomy only when he has a special relationship to the person in danger (not apparent here), or "a material role in the creation or management of the risk."

- [48] The evidence of Mr. Hiebert's condition on arrival at the party, or the possibility of Baljinder Rattan's evidence becoming available, coupled with the evidence in existence or possibly available concerning the contribution to Mr. Hiebert's intoxication from the alcohol Mr. Rattan supplied, could, if developed at a trial, arguably support an argument that Mr. Rattan had a material role in the creation of the risk posed by Mr. Hiebert.
- [49] A third possible ground on which this case may be distinguishable from Childs is on the question of reasonable reliance. The Court in Childs said at para. 40 that "reasonable reliance" unites its examples in the three situations that it had earlier said were not strict categories but were to elucidate factors that can lead to positive duties to act.
- [50] At para. 46 of Childs, the Court pointed out that there was no evidence in that case that anyone relied on the hosts to monitor guests' alcohol intake or to prevent intoxicated guests from driving. The Court said that this distinguished the social host from the commercial or public host: a commercial host warrants a duty of care because regulations govern the sale of alcohol, and the public by right relies on the commercial host to refrain from over-serving a guest, or to take reasonable steps to keep a guest, who has drunk too much, from driving.
- [51] Even this factor admits of a different result depending on evidence.
- [52] The Court indicates at para. 44 that it did not intend to close the door completely on the possibility of social host liability to third party users of the highways:

More is required to establish a danger or risk that requires positive action. It might be argued that a host who continues to serve alcohol to a visibly inebriated person knowing that he or she will be driving home has become implicated in the creation or enhancement of a risk sufficient to give rise to a prima facie duty of care to third parties, which would be subject to contrary policy considerations at the second stage of the Anns test.

And at para. 45:

As discussed, the implication of a duty of care depends on the relationships involved. The relationship between social host and guest at a house party is part of this equation. A person who accepts an invitation to attend a private party does not park his autonomy at the door. The guest remains responsible for his or her conduct. Short of active implication in the creation or enhancement of the risk, a host is entitled to respect the autonomy of a guest.

- [53] Supreme Court Civil Rule 9-7(15)(a) permits the Court to determine a summary trial application as follows:

- (15) On the hearing of a summary trial application, the court may
- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,

[54] In my view, this is a circumstance where both subsections (i) and (ii) apply. I have already alluded to some of the conflicts in the evidence bearing on the possible imposition of a duty of care, and in my view it would be unjust to decide the duty issue on a summary trial.

[55] Adverting to the considerations that have been developed since the decision in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 214 (C.A.), I note as well that there is a great deal at stake in the Arshdeep Singh Sidhu action, both in terms of money and the quality of care the infant plaintiff will hope to have if he succeeds, that this matter does not appear urgent, a trial is scheduled for October 2012, there is no prejudice likely to arise from delay beyond continuing costs to Mr. Rattan to defend the actions against him, and the cost of allowing the matter to proceed is not substantial given the amount at stake.

[56] Because I am persuaded that this case should be decided on a full record of evidence at trial, I conclude that I should leave to trial the question of whether motorists can reasonably rely on a social host to not exacerbate an obvious risk by continuing to supply alcohol to an apparently impaired guest who the host knows will drive away from the party. It seems to me that justice requires that I allow the parties to develop the evidence and argument on a full trial.

[57] Mr. Rattan's application is dismissed with costs in the cause.

BRAUN APPLICATION

[58] I turn then to Mr. Braun's application, seeking the dismissal of the third party notice filed against him by Mr. Rattan.

[59] Mr. Braun argues that any relationship he might have with the occupants of the Sidhu vehicle does not fall within one of the situations recognized in the authorities as giving rise to a duty of care, and that proximity cannot be established on application of the *Anns* test. He says in the alternative, if he might owe a *prima facie* duty to the plaintiffs, as users of the highway, under the *Anns* test, that duty would be negated on policy considerations.

[60] Mr. Rattan responds that there is no material difference between him and Mr. Braun sufficient to cause his claim against Mr. Braun to be dismissed while the claims against him are allowed to proceed.

- [61] Mr. Braun can be described as a companion or fellow traveler of the alleged main tortfeasor, Mr. Hiebert. The evidence suggests that Mr. Braun brought some beer with him when he went to Mr. Hiebert's home on the way to Mr. Rattan's birthday party, and that he may have had one beer to drink at Mr. Hiebert's before the two left in Mr. Hiebert's vehicle to go to the party.
- [62] The evidence does not suggest that Mr. Braun supplied any alcoholic beverage to Mr. Hiebert at the Rattan home, or that he encouraged Mr. Hiebert to consume any alcohol that was there.
- [63] There is some evidence of marihuana consumption at the party, but, again, the evidence does not suggest that Mr. Braun supplied the drug or encouraged Mr. Hiebert to take it.
- [64] Baljinder Rattan's statement to police is also relevant here. She tended to treat Mr. Hiebert and Mr. Braun together, by describing their condition on arrival and on leaving the party in joint terms, that is, "they" were obviously intoxicated, drank a lot, and the like. Again, this is not admissible to prove the truth, but can be considered as evidence that might be available if Mr. Rattan's claims against Mr. Braun proceed to trial.
- [65] If I assume for the purposes of this application that the evidence showed that Mr. Braun and Mr. Hiebert arrived together at the party in an intoxicated condition, both continued to drink Mr. Rattan's alcohol to excess at the party, and both left together at the end, in a more intoxicated condition than when they arrived - with Mr. Hiebert driving and Mr. Braun as his passenger - is there a possibility that the first branch of the Anns test might be satisfied? My answer is no.
- [66] The language in *Childs* that might allow a court to conclude that a social host owes a duty of care to highway users injured by a driver who becomes impaired as a guest of the host does not go so far as to admit the possibility of a duty on a companion or fellow traveler who does no more than observe the risky behavior of the drinking guest, and perhaps acquiesce to an extent in the risk by drinking with and then accepting a ride home from the party with the drunken guest.
- [67] If the categories of negligence are not closed, then neither are the possibilities that someone might be found to owe a duty of care to another on the basis that he or she somehow assisted in the creation of the circumstances giving rise to a duty of care, or encouraged a principal tortfeasor to engage in conduct that would give rise to a duty of care.
- [68] I have examined the evidence for something that would support an argument that such a duty could arise here, without success.
- [69] The defendant Rattan seeks to sustain his claims against Mr. Braun by arguing that if he had a duty to monitor Mr. Hiebert's alcohol intake at the party, or to intervene to prevent Mr. Hiebert from driving drunk, then so too did Mr. Braun. That argument seems to me to go more to the standard of care if duty were established, and not to the existence of the duty.

- [70] On the evidence presented, I can see no basis on which a duty of care can be imposed on Mr. Braun. Allowing for evidence that might be available at trial, but not on summary trial (the evidence of Baljinder Rattan), I see no basis on which a duty of care can be imposed on Mr. Braun.
- [71] The considerations flowing from Inspiration Management do not lead to the same result in this application as was found in the Rattan application. The plaintiffs have not sought damages from Mr. Braun; rather, Mr. Rattan seeks contribution or indemnity in the event he is found to have owed a duty of care to the plaintiffs, and to have breached it. The amount at stake in Mr. Rattan's third party proceedings is not the same as in the plaintiffs' claims against Mr. Rattan, particularly if Mr. Rattan succeeds in his plea of contributory negligence against the infant plaintiff Arshdeep Singh Sidhu, making liability several, not joint. Mr. Rattan's potential several liability to the plaintiff must be compared to that of the driver, Mr. Hiebert. Counsel have conducted discoveries, and the further costs of continuing to trial are not insignificant. I must contrast these costs with the likelihood that a duty of care will be imposed on Mr. Braun, and with the size of his potential contribution to overall damages should he be found to have owed a duty and to have breached it, in a case where Mr. Rattan might succeed in limiting his own liability to several, rather than joint.
- [72] In the circumstances it is fair and just to determine the third party claims against Mr. Braun on summary trial.
- [73] The third party notice brought by Mr. Rattan against Mr. Braun is dismissed with costs to Mr. Braun.

"R.T.C. Johnston, J."

The Honourable Mr. Justice Johnston

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