

CANADA / JUDGMENT

Sidhu v. Hiebert

2020 BCSC 1548

COURT

Supreme Court of British Columbia

DECIDED

21 October 2020

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

2020 BCSC 1548 Sidhu v. Hiebert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Hiebert,

2020 BCSC 1548

Date: 20201021

Docket: M082472

Registry: Vancouver

Between:

Arshdeep Singh Sidhu

Plaintiff

And

Jan Abram Hiebert, Balwinder Kaur Sidhu, Rajvinder Singh Sidhu,

Surinder Singh Rattan, Nissan Canada Inc., Nissan Motor Co., Ltd.,

Nissan North America, Inc., Abbotsford Nissan Ltd.

Defendants

And

Insurance Corporation of British Columbia, Jan Abram Hiebert,

Balwinder Kaur Sidhu, Rajvinder Singh Sidhu, Surinder Singh Rattan,

Nissan Canada Inc., Nissan Motor Co., Ltd.,

Nissan North America, Inc. and Abbotsford Nissan Ltd.

Third Parties

Before: The Honourable Madam Justice Forth

Reasons for Judgment re Bar Order

Counsel for the Plaintiff:

M. J. Slater, Q.C.

S. J. Jaworski

Counsel for the Defendants and Third Parties, Nissan Canada Inc., Nissan Motor Co., Ltd., Nissan North America, Inc., and Abbotsford Nissan Ltd.:

M. Parrish

G. McDonell

Counsel for the Defendants and Third Parties, Balwinder Kaur Sidhu and Rajvinder Singh Sidhu:

L. Dineley

Counsel for the Defendant and Third Party, Surinder Singh Rattan:

P. Miller

Counsel for the Third Party, Insurance Corporation of British Columbia:

D. D. Nugent

J. Lai

Place and Date of Hearing:

Vancouver, B.C.

August 26, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 21, 2020

Table of Contents

Introduction. 4

Background. 4

Positions of the Parties. 8

Nissan's Position. 8

Mr. and Ms. Sidhu's Position. 8

ICBC's Position. 9

Plaintiff's Position. 9

Analysis. 9

Conclusion. 13

Introduction

- [1] These are reasons for judgment on an application brought by Nissan Canada Inc., Nissan Motor Co., Ltd., Nissan North America, Inc., and Abbotsford Nissan Ltd. (collectively, "Nissan"). Nissan applies for an order, commonly referred to as a "bar order", setting out the parties' respective rights and obligations at the trial of this action following Nissan's settlement with the plaintiff, Arshdeep Singh Sidhu.
- [2] The only matter over which the parties disagree is a paragraph in the bar order that would allow Nissan to "seek leave to make submissions or take other steps" at the trial of the action. The non-settling defendants and the plaintiff argue that Nissan has chosen to settle and should not be permitted to make submissions or call evidence at trial. For the reasons that follow I am issuing a bar order that will allow Nissan to seek leave to participate. If Nissan should seek leave to participate at trial then the other parties will have full opportunity to oppose Nissan's application at that time and costs may be awarded against Nissan should it pursue this course of action.

Background

- [3] This action arises from a motor vehicle accident that took place on March 30, 2008 (the "Accident"), in which the plaintiff was seriously injured. It is the result of a consolidation of two separate actions involving the following defendants (the "Action"):
- a) Jan Abram Hiebert - the driver of the motor vehicle that struck the Nissan Pathfinder in which the plaintiff was traveling at the time of the Accident;
 - b) Balwinder Kaur Sidhu - the plaintiff's mother who was driving the Nissan Pathfinder at the time of the Accident;
 - c) Rajvinder Singh Sidhu - the plaintiff's father and the owner of the Nissan Pathfinder;
 - d) Surinder Singh Rattan - the social host of the party that Mr. Hiebert attended before the Accident; and
 - e) Nissan - the manufacturer and distributor of the Nissan Pathfinder.

- [4] The plaintiff advances motor vehicle tort claims against Mr. Hiebert, Ms. and Mr. Sidhu, and he advances a social host claim against Mr. Rattan. The claims against Nissan are product liability claims related to alleged defects in the manufacture and design of the rear seatbelt system used in the Nissan Pathfinder. In December 2008, the Insurance Corporation of British Columbia ("ICBC") was added as a third party to contest the claims against Mr. Hiebert. Third party notices were filed against Nissan by Mr. Rattan, ICBC and Mr. and Ms. Sidhu.
- [5] I was notified by a letter from Nissan's counsel dated September 3, 2020 (the "Letter") that Mr. Rattan has agreed to discontinue his third party claim against Nissan. Therefore, the only remaining third party notices against Nissan are those of ICBC and Mr. and Ms. Sidhu.
- [6] I have been the case management judge assigned to all of the actions arising out of this Accident since June 2017. The trial of the Action was scheduled to begin in March of 2020, but it was delayed due to COVID-19. A new trial date was set for August 4, 2020. However, the week before the trial was to begin, I was alerted that the plaintiff and Nissan had reached a settlement. As a result the trial was adjourned to September 14, 2020.
- [7] The trial did not commence on September 14, 2020, as a result of an adjournment application sought by the defendants, Mr. and Ms. Sidhu, arising from the withdrawal of their counsel due to medical issues. The trial is now scheduled to commence on June 14, 2021.
- [8] The type of settlement reached in this Action is often referred to as a "BC Ferry agreement", named after the BC Court of Appeal decision in *British Columbia Ferry Corp. v. T&N plc* (1995), 16 B.C.L.R. (3d) 115 (C.A.) [BC Ferry]. A redacted version of the settlement agreement was before me on this application. In it, Nissan agrees to pay the plaintiff an amount (which was redacted, but the parties agree will be disclosed after judgment has been rendered) in "full and final satisfaction of any and all claims asserted by the Plaintiff against the Nissan in any way directly or indirectly related to, connected with or arising from the Accident, the Action or the subject matter of the Action." In exchange, the plaintiff agrees to discontinue his claim against Nissan and covenants not to sue Nissan for any claims related to the Accident or the Action. The plaintiff retains the right to claim that the non-settling defendants remain liable after any fault allocated or apportioned to Nissan is deducted. He also makes the following further covenants:
- a) Not to seek to recover any portion of the losses that the Court may allocate and apportion to the fault of Nissan;
 - b) Not to seek to recover any portion of any judgment or award against any other person that provides that person a right to claim contribution or indemnity against Nissan for that amount;
 - c) Expressly waives any right to recover from the non-settling defendants any loss which is apportioned to Nissan; and

- d) To amend his pleading to reflect the terms agreed to in the settlement.
- [9] At the hearing of this application on August 26, 2020 (the "Hearing"), I granted leave to the plaintiff to amend the notice of civil claim and to discontinue the action against Nissan, subject to the approval required under the Health Care Costs Recovery Act, S.B.C. 2008, c. 27. Nissan remains a third party as a result of the third party notices filed against it.
- [10] In its notice of application, Nissan also sought an order striking certain relief in the third party notices filed against it as well as orders relating to the discovery and evidentiary rights of the non-settling defendants. The parties reached an agreement on the vast majority of the terms in the proposed order. They originally disagreed on paragraphs 1, 5 and 8 of the order but have since reached a compromise. The only paragraph now remaining at issue is paragraph 8.
- [11] At the Hearing, Nissan proposed an amendment to paragraph 1 of the proposed bar order attached as appendix A to its notice of application. The revision removes the words: "and the Plaintiff and Nissan reserve the right to argue as against any Non-Settling Defendant purporting to pursue such portion of any such judgment or award that any purported claim for contribution and indemnity is not maintainable, either in whole or in part." With this revision, the non-settling parties agreed to the remaining words of paragraph 1.
- [12] The non-settling defendants were initially concerned with paragraph 5 of the proposed bar order which provides:
- All claims by the Non-Settling Defendants against the Settling Defendants for contribution, indemnity or other claims over, inclusive of interest, taxes and costs which were or could have been brought in the Action or otherwise, are barred, prohibited and enjoined in accordance with this Order.
- [13] The non-settling defendants were initially concerned that paragraph 5 would prevent them from claiming costs against Nissan in the event that Nissan continues to be involved in this Action at trial.
- [14] In the Letter, I was advised that there is no longer any dispute respecting paragraph 5 of the proposed bar order and no dispute respecting the proposed amendments to the third party notices.
- [15] The only term of the proposed bar order that remains contentious is paragraph 8. The plaintiff and the non-settling defendants, except the defendant Mr. Rattan, oppose its inclusion. Nissan's counsel made an amendment to paragraph 8 at the Hearing, and the proposed wording is:

Subject always to the direction of the Trial Judge, the Settling Defendants retain the right to appear at the trial of the Action and to seek leave to make submissions to the Court or take other steps with respect to the alleged fault of the Settling Defendants or any of them.

- [16] Prior to this amendment, the wording of paragraph 8 of the proposed bar order was much more broad. The original wording permitted Nissan "to call witnesses and seek to adduce evidence", subject to the direction of the trial judge.

Positions of the Parties

Nissan's Position

- [17] Nissan submits that if the third party notices of claim for declaratory relief are maintained and Nissan remains a formal party in the Action, then Nissan is entitled to appear at trial and, if it feels necessary, to seek leave to make submissions or take "other steps".
- [18] It was not entirely clear at the Hearing what these "other steps" would be. Nissan submits that it will have a better idea of what those steps would be once there is a clearer picture of how the remaining defendants will present their case for declaratory relief against Nissan or use Nissan's witnesses and experts. Those steps may include examining or cross-examining witnesses and calling independent witnesses. Nissan emphasizes that these issues do not need to be resolved today, as the only issue before me on this application is whether Nissan is entitled to appear at the trial and entitled to seek leave to take steps it considers appropriate during the trial.
- [19] Nissan submits that it is contrary to the principles of fundamental justice that Nissan could remain a third party, even for the narrow purpose of declaratory relief, and be subject to the compulsion of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules] that apply to third parties at a trial, but not be entitled to attend trial and seek leave to take other steps.
- [20] Nissan accepts that the proposed bar order does not preclude the Court from exercising its discretion to make an award of costs against Nissan with respect to any involvement by Nissan in the trial unrelated to the declaratory relief.

Mr. and Ms. Sidhu's Position

- [21] Mr. and Ms. Sidhu submit that paragraph 8 of the proposed bar order should not be included. They do not oppose Nissan appearing at the trial, but they submit that the term is overly broad in that it could allow Nissan to make submissions with respect to the fault that should be attributed to it and essentially defend the case against it. This would be prejudicial to the non-settling defendants, who would have no recourse against Nissan because they have agreed to amend their third party notices to limit them to declaratory relief and to remove their right to seek indemnity or costs against Nissan. They submit Nissan cannot "have it both ways": it made a choice to settle, having weighed the costs and benefits of doing so, and it cannot now seek to "come back into the fray".

- [22] Mr. and Ms. Sidhu submit that they will not seek further discovery of Nissan and will not seek to call Nissan witnesses. They point out that paragraph 11 of the proposed order, to which no one objects, gives Nissan the right to oppose any application by the non-settling defendants to seek any further discovery of Nissan or call evidence of Nissan witnesses at trial. Therefore, paragraph 8 is unnecessary.

ICBC's Position

- [23] ICBC submits that paragraph 8 is not necessary and will lead to a "procedural quagmire" in what is already a lengthy and complex trial. Like Mr. and Ms. Sidhu, ICBC does not object to Nissan's attendance at trial; it objects to the breadth of Nissan's potential participation.

Plaintiff's Position

- [24] The plaintiff opposes paragraph 8 of the proposed bar order. He submits that Nissan is a sophisticated party who made the decision to enter into a settlement that requires it to divorce itself from the Action and withdraw. The plaintiff relies on *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 [Sable] at para 6. He reiterates that paragraph 11 of the proposed order is sufficient to cover any issues that may arise if one of the parties changes its position on further discovery of Nissan or calling a Nissan witness.

Analysis

- [25] The parties all agree that there is no decision in British Columbia that deals squarely with the rights of a defendant who settles against a plaintiff in a BC Ferry agreement, but remains a third party for the purposes of declaratory relief, to appear at and participate in the trial of the action.
- [26] As I noted earlier in these reasons, in British Columbia, settlement agreements reached between some parties, but not all, in multi-party proceedings, are often referred to as "BC Ferry agreements" after the BC Ferry decision from our Court of Appeal. In most other Canadian jurisdictions, partial settlements in multi-party proceedings are referred to as Pierringer agreements, named after the decision in *Pierringer v. Hoyer* (1963), 124 N.W. (2d) 106 (U.S. Wis. S.C.).
- [27] As the Supreme Court of Canada explained at para. 6 in *Sable*, a Pierringer agreement "allows one or more defendants in a multi-party proceeding to settle with the plaintiff and withdraw from the litigation, leaving the remaining defendants responsible only for the loss they actually caused. There is no joint liability with the settling defendants, but non-settling defendants may be jointly liable with each other".
- [28] While *Sable* is helpful to explain some basic principles that typically apply to partial settlements, I disagree with the plaintiff's submission that the Court's statement at para. 6 was intended to be a blanket statement meaning that settling parties are, in all circumstances, required to withdraw where there is a partial settlement in multi-party

litigation. First, the language used is permissive ("allows" the party to withdraw) rather than mandatory. Second, in that case, there is no mention of third party notices or any desire for the settling parties to participate in the trial, so the issue of procedural rights was not before the Court. The focus of *Sable* was whether settlement privilege applied to the settlement amount, not the procedural rights of a settling defendant who remains a third party at the trial of the action.

- [29] Canadian law often includes protections for non-settling defendants, such as requiring settling defendants to allow non-settling defendants access to their evidence or previously retained experts: *Sable* at para. 24. The parties, in their submissions, appear to agree that the procedural rights of non-settling defendants are emphasized to a greater extent in BC than in other Canadian provinces because of the principles set out in the *BC Ferry* decision. The Alberta Court of Appeal, for example, has expressly rejected the *BC Ferry* approach of keeping settling defendants as parties to the litigation for the purpose of declaratory relief: *Amoco Canada Petroleum Company Ltd. v. Propak Systems Ltd.*, 2001 ABCA 110.
- [30] *BC Ferry* is the foundational case setting out the principles and procedures that apply to partial settlements in multi-party litigation in BC. That case, which was also an action in negligence, involved an appeal from three orders that effectively struck out all relief sought in the defendants' third party notices. The Court dealt with several issues in that appeal, but the one most relevant to this decision was the issue of whether the defendants were entitled to maintain their third party notices for declarations as to the degree of fault attributable to each party.
- [31] The Court in *BC Ferry* confirmed that it is not necessary for third parties to be joined as parties to the action for the judge to have jurisdiction to assess and apportion any degree of fault against them: at para. 14. Justice Wood considered jurisprudence holding that courts should be wary of claims for declaratory relief that involve purely academic questions and do not engage real interests of the person raising it. However, he determined that this "general rule" does not need to be "regarded as a controlling consideration in all cases": at para. 29.
- [32] In Wood J.'s view, the declaratory relief sought in the third party notices in *BC Ferry* was not for purely theoretical purposes. Unless the third party notices were maintained, the non-settling defendants' ability to present their case would be adversely affected by their inability to invoke the procedural steps that are afforded by the Rules against third parties, such as discovery, notices to admit, and the ability to call parties as adverse witnesses: *BC Ferry* at paras. 30-31.
- [33] In accordance with *BC Ferry*, the non-settling defendants are permitted to maintain third party notices against Nissan in order to have access to the procedural rights that the third party notices afford them under the Rules. However, *BC Ferry* also makes it clear that it is not necessary for them to maintain these notices in order for the Court to have jurisdiction to apportion fault. If the non-settling defendants do not wish to avail themselves of the

procedural rights that the third party notices grant them, it is open to them to discontinue their third party notices as Mr. Rattan has done. Discontinuing those notices will not prevent the Court from assessing fault as it is required to do under the Negligence Act, R.S.B.C. 1996, c. 333. I accept Nissan's submissions that if the third party notices are maintained and it remains a formal party to this Action, it would not be reasonable to bar Nissan's attendance at the trial. I note that none of the other parties seek such an order in any event.

- [34] I have reviewed paragraph 11 of the proposed order and while it addresses most discovery and evidentiary issues that could arise, I accept Nissan's submissions that unforeseen events may arise that engage its interests to a sufficient extent that it may wish to seek leave to participate at trial. Importantly, this order does not give Nissan a free pass to become involved whenever it sees fit; it merely confirms Nissan's ability to attend at the trial, and Nissan must ask for leave to do anything other than simply attend.
- [35] I understand the plaintiff and the non-settling defendants' concern about the potential increase in time and complexity that could be added to what are already lengthy and complex proceedings if Nissan is permitted to "re-enter the fray". In my view, the order sought, as amended, does not grant Nissan the right to do so. I have specifically changed the order to remove the reference to "the alleged fault of the Settling Defendants or any of them" to reference Nissan's rights as a third party. As I have already said, if Nissan does seek to make any submissions at trial or take any other steps, aside from mere attendance, it is not permitted to do so without my leave. I accept that this is a fair balance of Nissan's rights as a named party in the Action and the objectives of reducing trial length and complexity that partial settlements in multi-party litigation aim to achieve.
- [36] To be clear, this order does not permit Nissan to present an opening, to object to admissibility of expert reports, to cross-examine experts, to call their own experts or witnesses, or to make closing submissions. As the trial judge, I do not anticipate that Nissan, if it sought leave, would be granted leave to actively participate in this trial with a view to defending any apportionment of fault against it. If Nissan wanted to participate in that fashion it could have remained in the Action and not settled.
- [37] The procedural history of this case reflects the fact that this is a complex matter involving many contentious issues. Nissan has stated that it does not wish to become involved in trial, and hopefully its intentions do not change. I am satisfied the plaintiff and non-settling defendants' concerns about Nissan's potential further involvement are addressed in the order, as Nissan is required to seek leave to participate and faces potential cost consequences if it does so. In my view, including paragraph 8 in this order clarifies that Nissan, if it remains a third party, can attend the trial but will not play an active role unless leave is granted. If Nissan applies for leave to take any active steps at trial, the plaintiff and non-settling defendants will be provided with full opportunity to argue the appropriateness of any such application.

[38] I am confident that Nissan and their counsel will not attempt to bring any such leave application unless absolutely necessary.

[39] I was advised in the Letter that Nissan and the defendant Mr. Rattan have reached an agreement. Mr. Rattan will discontinue his third party notice against Nissan, and in exchange Nissan will discontinue its outstanding third party claim against Mr. Rattan. This will be done on a without costs basis. Accordingly, I have amended the proposed order to remove any reference to the third party notice of Mr. Rattan.

Conclusion

[40] For the above reasons, the following order is granted:

A. The plaintiff, Arshdeep Singh Sidhu, commenced the following actions in relation to a motor vehicle accident that occurred on March 30, 2008 (the "Accident") at or near the intersection of Townline Road and Upper Maclure Road, in the City of Abbotsford, British Columbia:

- a) SCBC Action No. M082472, Vancouver Registry under style of cause, Arshdeep Singh Sidhu, an infant by his litigation guardian Kuljivan Singh Dhaliwal v. Jan Abram Hiebert, Balwinder Kaur Sidhu, Rajvinder Singh Sidhu, Surinder Singh Rattan (the "Hiebert Action");
- b) SCBC Action No. S152491, Vancouver Registry under the style of cause, Arshdeep Singh Sidhu, an infant by his litigation guardian Kuljivan Singh Dhaliwal v. Nissan Canada Inc., Nissan Motor Co. Ltd., Nissan North America, Inc., Nissan Technical Centre North America, Inc., Nissan Design America, Inc., Nissan Research & Development, Inc., and Abbotsford Nissan Ltd. (the "Nissan Action");

B. The plaintiff filed a notice of discontinuance in the Nissan Action against Nissan Technical Centre North America, Inc., Nissan Design America, Inc., and Nissan Research & Development, Inc. The remaining defendants in the Nissan Action are Nissan Canada Inc., Nissan Motor Co., Ltd., Nissan North America, Inc., and Abbotsford Nissan (collectively, the "Settling Defendants");

C. By Litigation Management Order dated February 6, 2017, the Nissan Action was consolidated with the Hiebert Action under SCBC Action No. M082472 (collectively, the "Action").

D. The following parties filed third party notices in the Action:

- a) On December 22, 2008, the Insurance Corporation of British Columbia ("ICBC") filed a third party notice to add itself as a third party in this action pursuant to the provisions of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, in order to contest the claims made by the plaintiff against Jan Abram Hiebert;
- b) On April 28, 2017, Surinder Singh Rattan filed a third party notice against the Settling Defendants;
- c) On May 30, 2017, ICBC filed a third party notice against the Settling Defendants; and

- d) On September 15, 2017, Balwinder Kaur Sidhu and Rajvinder Singh Sidhu filed a third party notice against the Settling Defendants.

E. The plaintiff and the Settling Defendants have entered into an agreement effective July 28, 2020, to settle any and all claims made by the plaintiff against the Settling Defendants in any way related to and/or arising from the Accident and/or the Action (the "Settlement Agreement").

F. The plaintiff wishes to preserve any and all claims which he may have against Jan Abram Hiebert, Balwinder Kaur Sidhu, Rajvinder Singh Sidhu, and Surinder Singh Rattan, the remaining defendants and third parties in the Action (collectively, the "Non-Settling Defendants").

G. The plaintiff does not relinquish any claims he may have against the Non-Settling Defendants, or any of them, that they are liable to the plaintiff for their fault.

H. The case management judge has previously issued trial management conference orders and directions dated February 13, 2020, March 10, 2020, March 18, 2020, and August 9, 2020 (collectively, the "Previous TMC Orders").

THIS COURT ORDERS that:

Bar Order

1. The plaintiff shall not seek to recover in the Action any portion of any judgment or award, inclusive of interest, taxes and costs, against the Non-Settling Defendants, which provides the Non-Settling Defendants a right to, in turn, claim contribution or indemnity against any of the Settling Defendants for that portion of any judgment or award pursuant to the Negligence Act, R.S.B.C. 1996, c. 333, or any successor legislation, or at common law.
2. The Non-Settling Defendants may seek at the trial of the Action that the Court determine any portion of the plaintiff's claimed losses that the Court may allocate and apportion to the fault of the Settling Defendants or any of them.
3. The plaintiff shall not seek to recover in the Action or in any other proceeding, any portion of the plaintiff's claimed losses that the Court may allocate and apportion to the fault of the Settling Defendants or any of them.
4. The plaintiff expressly waives any right to recover from the Non-Settling Defendants any portion of the plaintiff's claimed losses that the Court may allocate and apportion to the fault of the Settling Defendants or any of them.
5. All claims by the Non-Settling Defendants against the Settling Defendants for contribution, indemnity or other claims over, inclusive of interest, taxes and costs that were or could have been brought in the Action or otherwise, are barred, prohibited, and enjoined in accordance with this Order.

6. The plaintiff shall restrict his joint and several claims against the Non-Settling Defendants such that the plaintiff shall only be entitled to claim and recover from the Non-Settling Defendants on a joint and/or several basis, only those losses, if any, allocated and apportioned to the fault of the Non-Settling Defendants or any of them.
7. The plaintiff retains the right to claim and argue in the Action that the Non-Settling Defendants remain liable to the plaintiff after deduction of any fault allocated or apportioned to the fault of the Settling Defendants or any of them.
8. Subject always to the direction of the Trial Judge, the Settling Defendants retain the right to appear at the trial of the Action, and to seek leave to make submissions to the Court or take other steps with respect to their rights as remaining third parties.

Third Party Notices of the Settling Defendants

9. The following paragraphs of the Third Party Notices of ICBC and Mr. and Ms. Sidhu are hereby struck pursuant to Rule 9-5(1):
 - a) Third party notice of Balwinder and Rajvinder Sidhu: paragraphs 4-6 of Part 2: Relief Sought; and
 - b) Third party notice of ICBC: paragraphs 21-23 of Part 2: Relief Sought.
10. ICBC and Mr. and Ms. Sidhu shall file before the trial of this Action amended third party notices deleting the identified paragraphs and amending to plead declaratory relief against Nissan.

Further Discovery and Trial Evidence of Settling Defendants

11. Where any of the Non-Settling Defendants seeks from any of the Settling Defendants, or their current or former employees, officers, or directors: (i) further discovery of any type (including but not limited to: document discovery, examinations for discovery, interrogatories, notices to admit, and/or pre-trial examinations); or (ii) evidence at, or for use at, the trial of the Action (including, but not limited to, attendance at trial in-person or by videoconference and/or deposition), the following procedure shall apply:
 - a) Any Non-Settling Defendant seeking discovery and/or trial evidence from the Settling Defendants shall make such a request in writing to counsel for the Settling Defendants (collectively, an "Evidence Request") the later of: (i) at least 21 days before the requested discovery and/or trial evidence; (ii) the applicable time period under the Supreme Court Civil Rules, if any; or (iii) the time period provided, under any Litigation Management Order or Previous TMC Order made in the Action, if any;
 - b) The Settling Defendants shall advise the requesting Non-Settling Defendant within 7 days of receiving an Evidence Request whether they are agreeable to responding to the Evidence Request without a Court order;

- c) Where the Settling Defendants are not agreeable to responding to the Evidence Request without a Court order, the Non-Settling Defendant may bring an application to compel the Settling Defendants to respond to the Evidence Request; and
 - d) Where a Non-Settling Defendant applies to compel the Settling Defendants to respond to the Evidence Request, the Settling Defendants retain all rights to oppose such an application(s).
12. Except where expressly stated in this Order, and subject always to the further direction and order of the Trial Judge, the Previous TMC Orders shall remain in force and effect.
13. The parties may seek directions of the Trial Judge with respect to this Order.
- [41] Nissan sought costs of the application. In light of the circumstances, and the novel nature of the bar order being sought, I am of the view that the parties should bear their own costs of this application. I thank all counsel for the degree of cooperation they have exhibited throughout these lengthy proceedings. I further thank Mr. Orchard for his efforts in assisting the court in this matter.

"Forth J."

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/20/15/2020BCSC1548.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sidhu-v-hiebert-2020-bcsc-1548>

Prepared on 28 October 2026 · Esheria