
CANADA / JUDGMENT

Singleton v. MacKenzie Fujisawa LLP

2014 BCSC 1543

COURT

Supreme Court of British Columbia

DECIDED

14 August 2014

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

2014 BCSC 1543 Singleton v. MacKenzie Fujisawa LLP

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Singleton v. MacKenzie Fujisawa LLP,

2014 BCSC 1543

Date: 20140814

Docket: M140728

Registry: New Westminster

Between:

Elizabeth Ann Singleton

Plaintiff

And

MacKenzie Fujisawa LLP and Michael Murphy

Defendants

Before: Master Muir

Reasons for Judgment

Counsel for Plaintiff:

T.P. Harding

Counsel for Defendants:

A. Mackay

Place and Date of Hearing:

Vancouver, B.C.

July 24, 2014

Place and Date of Judgment:

Vancouver, B.C.

August 14, 2014

- [1] This is an application by the defendants for an order setting aside the plaintiff's Notice Requiring Trial by Jury.
- [2] The present action is a solicitor's negligence action arising from the defendants' representation of Ms. Singleton in an action related to a motor vehicle accident that occurred on June 24, 2005 in Gibsons, B.C. (Vancouver Registry, Action No. M060288) (the "personal injury action").
- [3] Ms. Singleton was rear-ended while stopped at a stop sign at the bottom of a steep hill. There was apparently a slippery substance on the road at the time.
- [4] The primary liability issue in the personal injury action was the defendants' claim of inevitable accident due to the slippery substance on the road and whether, given that plea and the reverse onus arising from it, the plaintiff had proved the accident resulted from the defendants' negligence.
- [5] The trial judge dismissed the personal injury action. She held that negligence had not been proved in the circumstances.
- [6] Ms. Singleton was then advised to and did appeal. The appeal was unsuccessful.
- [7] Ms. Singleton now alleges that her counsel, the defendants herein, breached their contract with her, breached their fiduciary duty to her and were negligent, amongst other things in, 1) failing to name other defendants who might have been responsible for the slippery substance on the road, and 2) failing to call sufficient evidence to supplant the defence of inevitable accident.
- [8] Ms. Singleton seeks a trial by jury and has filed the requisite notice. There is a right to a trial by jury unless the case falls within an exception barred by the Supreme Court Civil Rules, B.C. Reg. 168/2009 (the "Rules") or the applicant establishes that the case falls within the grounds set out in Rule 12-6(5) of the Rules. If the case does fall within that sub-rule, there is a wide discretion in the court in considering whether the matter is appropriate for a jury. The right to a jury will not readily be disturbed.

- [9] The defendants argue this matter is too complex to be heard by a jury. Counsel points to the expert reports and the closing arguments in the personal injury action. Those reports and arguments were lengthy and dealt extensively with the issue of inevitable accident.
- [10] The defendants argue that determination of this claim will require a trial within a trial. The jury would be required to determine if the defendants' actions were in keeping with the standard of care required, analyze the evidence then before the court, and consider whether additional defendants should have been added or whether additional evidence was available.
- [11] The jury would then have to determine whether at the trial of the personal injury action the plaintiff would have been successful in the new circumstances. If so, she could recover her damages. If that is not proved, then the potential loss of opportunity the plaintiff had to succeed in her personal injury action must be considered. Then the trier of fact would have to consider whether there was any breach of the standard of care in recommending the plaintiff appeal the personal injury decision and what would flow from that.
- [12] The defendants say that there has never been a case in B.C. where a jury has considered a case requiring a trial within a trial. On the contrary, they argue several decisions have concluded that cases requiring a trial within a trial are too complex for consideration by a jury.
- [13] The defendants rely on *Cederland v Bilkey*, 2001 BCSC 1152, *Persall v Buxton*, 2012 BCSC 347 and *Lopushinsky v. Spraggs*, 2000 BCSC 222. All were solicitor's negligence cases.
- [14] In *Cederland*, at para. 17, the court rejected the argument that solicitor's negligence cases are not appropriate to be heard by a jury and held that each case has to be considered on its own facts and on the basis of the pleadings in the action. In that case, a jury notice was set aside in the context of a settlement that was argued to be improvident. There the court considered that the complexities inherent in a recommendation to settle and in determining whether that was negligent were best considered by a judge alone.
- [15] The *Persall* case was a solicitor's negligence case that involved a trial within a trial, the plaintiff's potential contributory negligence, the impact of that on joint versus several damages and the approach counsel would take in negotiating a settlement in the circumstances. The court accepted that a jury was capable of determining the original personal injury action and whether there was a breach of duty by the solicitor, but held the other factors involved made the matter too complex and ordered the jury notice struck.
- [16] In *Lopushinsky*, the court held:
- [20] I have concluded that the facts and issues in this case are such that it is not appropriate for determination by a judge with a jury. From Mr. Lopushinsky's statement of claim, it appears that the trier of fact, to decide this case, will have to consider the original trial that ended in 1987, the reasons for judgment, and then form a reasoned opinion of the prospect of success on appeal. Against that backdrop, the trier of fact must consider such legal matters as

negligent and fraudulent misrepresentation, economic duress, negligence and fiduciary duties. The trier of fact will also have to consider whether the application for a stay of execution was appropriate and may have to consider whether there existed a conflict of interest. A particularly complex issue is whether in all of these circumstances the contingency fee agreements were fair and reasonable and whether they should be set aside. This summary does not touch all of the issues, but it is sufficient, in my view, to demonstrate that the issues are of sufficient complexity and intricacy to require an order that the trial be heard by judge alone.

- [17] The defendants argue that this case is at least as complex as the three cases referenced.
- [18] The plaintiff argued as a preliminary point that the defendants had failed in their obligation to bring a proper foundation in evidence for their application. The plaintiff referenced *De Corde v. De Corde*, 2011 BCSC 1719, *Zecher v. Josh*, 2011 BCSC 311, *Sutherland v. Banman*, 2008 BCSC 1194 and *Chapman v. Magee*, 2009 BCSC 1736. Counsel argued this was fatal to the application before me.
- [19] This position was also advanced in *Cederland*, where the court held at para. 22:
- Except for the pleadings there is no evidence before the court by way of affidavit concerning the question of complexity. However, it is nonetheless my view that this is a matter best heard by a judge without a jury for all the reasons which Sigurdson, J. has set out in *Lopushinsky*, including the opportunity for a judge to reflect on the evidence and to be able to put together the pieces of this difficult legal puzzle without the pressures of time that might be affecting a jury.
- [20] Here, although the evidence is limited, the defendant relies on the pleadings, the expert reports regarding the accident and the closing submissions of both counsel at the personal injury trial. I consider there is a sufficient evidentiary foundation for the arguments advanced by the defendants.
- [21] The plaintiff's position is that generally the trend is to an expansion of the ambit of jury trials. She argues that complex medical negligence cases that were heard by judge alone in the past are now heard routinely by juries. Counsel for the plaintiff submitted that medical negligence cases are typically more complex than solicitor's negligence cases as doctors have more defences available to them. Counsel also pointed out that even the most complex criminal trials are dealt with by juries and cited *R. v. Pickton* as an example.
- [22] Further, counsel for the plaintiff argued that it cannot generally be said that it is more difficult to instruct a jury than it is for the judge to instruct himself or herself, that a jury is capable of dealing with many complex matters and it is easier for juries to make decisions.
- [23] It is the plaintiff's position that there are significant benefits to the parties of a jury trial. The object of Rule 1-3 of the Rules is the just, speedy and inexpensive determination of every proceeding on its merits. Juries give results in a few days, judges often reserve on complex matters for a considerable period of time. Although it was a very long trial, with very complex issues, the jury deliberation in the *Pickton* matter was 9 days. Although the norm is

for a judge to give reasons within at most a few months, the reserve time in complex cases can be a year or more.

- [24] The plaintiff referred to *Franson v. Caldarella*, 2014 BCSC 853, *Parmar v. Blenz the Canadian Coffee Company Ltd.*, 2008 BCSC 1338, and the unpublished decision in *Weinlich v. Campbell* (Vancouver Registry, Action No. S026835, January 31, 2006).
- [25] *Franson* was a complicated case involving the loss of income of an up and coming hockey player due to injuries sustained in a motor vehicle accident. The court held that a jury was capable of dealing with the scientific examination necessary and the hypothetical issues involved.
- [26] *Parmar* was a complicated intertwining solicitor's negligence/commercial case involving the solicitor's advice on the purchase of a franchise which failed. There the court held the matter was not so unduly complex as to require trial by judge alone.
- [27] *Weinlich* was a medical malpractice case involving a stroke suffered by the plaintiff following manipulation by a chiropractor. It involved different fields of expertise and the standard of care to be applied to each along with complex damage issues. Again, the court held that a jury was capable of dealing with the case.
- [28] The plaintiff submitted that this action was no more complex than the cases she relied on. The cases relied upon by the plaintiff, however, do not involve the added element of a trial within a trial.
- [29] Here, there is a trial within a trial, the potential of additional defendants and evidence, the defence of inevitable accident, the shift in onus as a result, and the issue of the appeal. While I believe there is merit to the plaintiff's position that juries are routinely hearing more complex matters than ever before, I am unable to distinguish this case from those relied upon by the defendants, involving, as it does, a trial within a trial and a similar level of complexity.
- [30] Accordingly, the jury notice is struck. The defendants will have their costs in the cause.

___ "Muir M." ___

Muir M.

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/14/15/2014BCSC1543.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/singleton-v-mackenzie-fujisawa-llp-2014>

Prepared on 26 October 2026 · Esheria