

CANADA / JUDGMENT

Sohal v. Argitos

2010 BCSC 916

COURT

Supreme Court of British Columbia

DECIDED

28 June 2010

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2010 BCSC 916 Sohal v. Argitos IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sohal v. Argitos, 2010 BCSC 916 Date: 20100628 Docket: M117100 Registry: New Westminster Between: Resham Kaur Sohal on behalf of the Estate of her Husband, Ranjit Singh Sohal, Deceased, Resham Kaur Sohal and Victor Sohal by his Litigation Guardian, Resham Kaur Sohal, Baldev Singh Sohal and Nirmal Kaur Sohal as the personal representatives of the Estate of Ranjit Singh Sohal (deceased) Plaintiffs And Christopher Ryan Argitos also known as Christopher Argitos, Beck Drilling and Environmental Services Ltd., and CCS Inc. Defendants And Argo Road Maintenance (North Okanagan) Inc. and Her Majesty the Queen in Right of the Province of British Columbia Third Parties

- and - Docket: M080788 Registry: Vancouver Between: Baljit Singh Sandhu Plaintiff And Christopher Ryan Argitos, Beck Drilling and Environment Services Ltd. Defendants And Argo Road Maintenance (North Okanagan) Inc. and Her Majesty the Queen in Right of the Province of British Columbia Third Parties Before: Master Keighley Reasons for Judgment Counsel for The Plaintiffs, Resham Sohal Baldev & Nirmal Sohal: J. Chadola Counsel for the Plaintiff Baldev Sandhu Action Number M080788: L. Cohen Counsel for the Defendants, Beck Drilling & CCS Inc.: K.A. Jones Counsel for the Third Party, Argo Road Maintenance: D. Hendricks Counsel for the Third Party, Her Majesty the Queen in Right of the Province of British Columbia: G. Underwood Place and Date of Hearing: New Westminster, B.C. May 25, 2010 Place and Date of Judgment: New Westminster, B.C. June 28, 2010

Background

- [1] On a wintry afternoon in January 2007, Ranjit Singh Sohal ("Sohal"), together with his friend and business associate, Baldev Singh Sandhu ("Sandhu"), were travelling from their homes in Calgary in a vehicle then being driven by Sohal. In the vicinity of Pritchard, a small community east of Kamloops, the travelled portion of the road was clear, but vision was obscured somewhat by plumes of snow thrown up from the un-travelled by moderate traffic. The defendant Christopher Ryan Argitos ("Argitos"), travelling in the opposite direction and driving a commercial vehicle owned by the defendant, Beck Drilling and Environmental Services Ltd. ("Beck") for reasons which may be clarified at trial, slid into the oncoming lane, striking the Sohal vehicle on the driver's side. Sohal died at the scene. Sandhu and Argitos

were essentially uninjured.

- [2] In the months prior to the accident, Sohal and Sandhu had formed a trucking company and the claims arising from the accident will focus to a large degree on the anticipated earnings of that enterprise. The Pleadings
- [3] Sandhu issued a Statement of Claim (Vancouver Registry No. M080788 and hereinafter referred to as the "Sandhu action") on February 19, 2008. The defendants Argitos and Beck filed their defence on September 12, 2008, having issued a third party notice naming Argo Maintenance (North Okanagan) Inc. and Her Majesty the Queen in Right of the Province of British Columbia as third parties on September 9, 2008. Argitos and Beck deny liability and, in general terms claim over against the third parties alleging failure to adequately maintain the highway and failure to warn with regards to hazardous conditions. The third parties also deny liability: Argo filing its Statement of Defence on October 2, 2008 and a Defence being filed on behalf of Her Majesty on October 27, 2008.
- [4] Notice of Trial was filed in the Sandhu action on May 29, 2009 scheduling the trial in the Vancouver Registry for 15 days commencing November 22, 2010.
- [5] Initially, two Family Compensation Act claims were commenced by Sohal's survivors: one by his wife and on behalf of his infant child, and the other by his parents as his personal representatives. With the consent of all parties, these actions were consolidated by desk order dated Wednesday April 7, 2010, and continue as Action No. M117100 issued out of the New Westminster Registry (hereinafter referred to as the "Sohal action").
- [6] Argitos and Beck are also defendants in the Sohal action and Argo and Her Majesty the Queen are also named as third parties. The defendants filed their defence on July 31, 2009 issuing third party proceedings the same day. A Statement of Defence was filed on behalf of Her Majesty on September 3, 2009 and Argo filed its Statement of Defence on November 10, 2009. A consolidated Statement of Claim has not yet been filed in the Sohal action and the matter has not been set for trial.
- [7] In the Sandhu action an examination for discovery has been conducted of the plaintiff, Argitos and a representative of Argo. A discovery of a representative of Her Majesty the Queen is scheduled for this month. No discoveries have yet been conducted in the Sohal action. The Application
- [8] The defendants in both actions seek an order that the Sohal action and the Sandhu action be tried together on the date presently scheduled for the commencement of the Sandhu action, namely November 22, 2010 for 15 days, subject to the direction of the trial judge. Sohal seeks the following orders:
 - 1. Adjournment of the November 22, 2010 trial date (anticipating that the order for concurrent trials will be granted);
 - 2. An order that the concurrent trial be heard in the New Westminster Registry;

3. An order that liability be dealt with first and "next the action herein be heard".
- [9] Argitos, Beck, and CCS generally oppose the application for adjournment indicating that they are prepared to proceed with the concurrent trial of the two matters should I grant their applications. They also oppose Sohal's application for an order that the trial be heard in New Westminster and the application for severance of the issues of liability and quantum. Sandhu opposes an order for concurrent trials if that means an adjournment of the November date. In the event that the trial is adjourned, he seeks an order for an advance on damages in light of what he says are dire financial circumstances. Concurrent Trials
- [10] The application is brought pursuant to Rule 5(8) of the Rules of Court which reads as follows: Consolidation Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.
- [11] The order sought is discretionary.
- [12] Exercise of this discretion is governed by the principles set out in the decision of Master Kirkpatrick, as she then was, in the case of *Merritt v. Imasco Enterprises Inc.* (1992), 2 C.P.C. (3d) 275 at para. 18 and 19:
18. None of the submissions of counsel address the real issue to be determined. That is, are the issues raised by the pleadings sufficiently similar to warrant the order sought and will the order make sense in the circumstances? An application to have actions tried at the same time thus requires an examination of circumstances which may be of a more general nature than is made under R. 27 or 19.
19. I accept that the foundation of an application under R. 5(8) is, indeed, disclosed by the pleadings. The examination of the pleadings will answer the first question to be addressed: do common claims, disputes and relationships exist between the parties? But the next question which one must ask is: are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"? *Webster v. Webster* (1979), 12 B.C.L.R. 172 at 182, 10 R.F.L. (2d) 148, 101 D.L.R. (3d) 248 (C.A.). That second question cannot, in my respectful view, be determined solely by reference to the pleadings. Reference must also be made to matters disclosed outside the pleadings:
- (1) Will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?
- (2) Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?
- (3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest? and

- (4) Will there be a real saving in experts' time and witness fees? This is in no way intended to be an exhaustive list. It merely sets out some of the factors which, it seems to me, ought to be weighed before making an order under R. 5(8).
- [13] To these considerations, Master Joyce, as he then was, added two more in the case of *Shah v. Bakken*, [1996] B.C.J. No. 2836, 20 B.C.L.R. (3d) 393, at para. 15: Other factors which in my view can be added to the foregoing list are:
- (5) Is one of the actions at a more advanced stage than the other? See: *Forestral Automation Ltd. v. RMS Industrial Controls Inc. et al.* (No.2), unreported, March 6, 1978, No. C765633/76, Vancouver (B.C.S.C.).
- (6) Will the order result a delay of the trial of one of the actions and, if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have?

Analysis

- [14] Obviously, the Sohal and Sandhu matters arise out of the same motor vehicle accident. Liability is denied and evidence with respect to causation and the circumstances of the immediate aftermath will be relevant to both cases.
- [15] As indicated, Sohal and Sandhu were in business together. Sandhu's claim for compensation and the claims advanced as a result of Sohal's death will focus on the operation of and profitability of the trucking enterprise they had established. To this extent there will be significant common issues with respect to the financial aspects of their claims.
- [16] Examinations for discovery have not yet completed in the Sandhu matter and have not yet begun in the Sohal matter.
- [17] With respect to the possible savings in pre-trial procedures, there is little evidence on this point but it does seem that there may be some saving in the time required for examinations for discovery by the defendants if a concurrent trial is ordered. It seems unlikely that Sohal's widow has much to offer with respect to the operation of the trucking company and document disclosure may be simplified by virtue of the disclosure which Sandhu has already made.
- [18] As to whether there will be real reduction in the number of days required for the trial of the two matters should they be tried together, that seems likely in light of the live issue of liability.
- [19] As to the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest, such a concern would seem to apply only to the plaintiffs in both actions and their counsel. The Sohal plaintiffs may have little interest in the evidence relating to proof of Sandhu's claim for damages with respect to his medical condition, but will likely be very interested in evidence related to proof of

financial claims related to the common business. Arrangements could be made, in any event for the non-attendance of the parties or counsel for portions of the trial in any event.

- [20] With respect to the cause of the accident, it appears that there may well be a real saving in expert evidence and witness fees with respect to evidence called in that regard.
- [21] The most significant issue is that which arises out of the concern that an order for a concurrent trial may result in delay of the resolution of the Sandhu claim. Both Sohal's counsel and counsel for Her Majesty the Queen say that they are unavailable to deal with the trial or a concurrent trial on the November date. Sohal's counsel was not consulted with respect to this date and has numerous conflicts arising from scheduled criminal trials on the material dates. Counsel for Her Majesty the Queen indicated from the outset that he was "double booking" the Sandhu trial and might be obliged to apply for an adjournment. Sandhu says that he scheduled his matter for trial a year ago and will be significantly disadvantaged if the trial is adjourned from its November date. Medical reports indicate that he suffers from major depression, feelings of guilt, post-traumatic stress, chronic pain and other disabling symptoms. He says that he is unable to work, has sold or disposed of all of his assets and has been living on credit. By virtue of his present financial situation he is not only unable to support himself or his family, but is unable to pursue recommended therapies and treatment. For that reason, he seeks an order for an advance which I will deal with in due course.
- [22] In the case of *Murray v. Morgan*, [1999] B.C.J. No. 2871, Master McCallum paraphrased Master Kirkpatrick's analysis in *Merritt* as "will the order make sense in the circumstances". I am satisfied that it would and because of issues relating to liability and the common business enterprise, I am also satisfied that the matters are "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense". The order will go. The matters will be tried at the same time. Adjournment
- [23] I am also satisfied that the concurrent trial should be adjourned from the presently scheduled date. Sohal is entitled to his counsel of choice and it appears that the contingency anticipated by counsel for Her Majesty the Queen has arisen. Although adjournment may represent a significant hardship for Sandhu, I am satisfied that the potential prejudice to Sohal and Her Majesty overrides the potential prejudice to him. The trial is adjourned generally to be rescheduled at date convenient to the parties. Sandhu's Application for an Advance
- [24] Although this Court, and indeed a Master has jurisdiction to order an advance payment as a term of adjournment, such an order should only be made in special circumstances and only where the court is completely satisfied that there is no possibility that the judgment will be less than the amount advanced: *Serban v. Casselman*, [1995] B.C.J. No. 254 (C.A.).

- [25] The court should not exercise its discretion to order an advance payment where liability is in dispute. Such an order requires a determination of the issues that are the very subject matter of the action: *Andruschak v. Helina*, [1993] B.C.J. No. 2678.
- [26] Liability is very much in dispute in both of these actions. Although the tragedy resulted from what was essentially a head-on collision in the plaintiffs' lane, a number of experts will be called to give evidence with regard to the question of liability. The defendants take the position that they are without negligence and that the accident in question was either the result of an inevitable accident, caused by road conditions, or as a result of the negligence of the third parties. Although I have no doubt that the adjournment of his trial will have significant financial consequences for Sandhu, I am unable to concede to his request for an advance.
- [27] Sohal's application for an order that the concurrent trial be held in New Westminster is not supported by evidence and is dismissed.
- [28] I recommend that a case management judge or master be appointed at the earliest possible date. The application for severance of the issues of liability and quantum is adjourned for consideration in that forum. Costs
- [29] Costs of these applications will be in the cause. "Master Keighley"

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