

CANADA / JUDGMENT

Stevens v. Sleeman

2020 BCSC 2244

COURT

Supreme Court of British Columbia

DECIDED

11 December 2020

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2020 BCSC 2244 Stevens v. Sleeman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stevens v. Sleeman,

2020 BCSC 2244

Date: 20201211

Docket: M172345

Registry: Vancouver

Between:

Cole Stevens

Plaintiff

And

Judson Sleeman, Christine Meroniuk, Darrell Thomas, Jennifer Thomas, District of Mission, The Minister of Public Safety and Solicitor General of British Columbia, Her Majesty the Queen in right of the Province of British Columbia by Her Representative the Ministry of Transportation and Infrastructure, Cobra Electric (South Coast) Ltd., Emil Anderson Maintenance Co. Ltd. and the Estate of Barbara McNally

Defendants

And

Kelly Molloy, Executor of the Estate of Barbara McNally, Judson Sleeman, Christine Meroniuk, Darrell Thomas, Jennifer Thomas, District of Mission, the Minister of Public Safety and Solicitor General of British Columbia, Her Majesty the Queen in Right of the Province of British Columbia by her Representative the Ministry of Transportation and Infrastructure and Emil Anderson Maintenance Co. Ltd.

Third Parties

Before: Master Vos

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

M.G. Siren

Counsel for the Defendant and Third Party Judson Sleeman:

J. Carangi

Counsel for the Defendant and Third Party District of Mission:

C.L. Paterson

Counsel for the Defendant and Third Party, The Minister of Public Safety and Solicitor General of B.C.:

A.W.T. Scarth

Counsel for the Defendant Cobra Electric (South Coast) Ltd.:

S.M. Vorbrodt

Counsel for the Defendant and Third Party, Emil Anderson Maintenance Co. Ltd.:

C. Kennedy

Counsel for the Plaintiff, David Lopez, in SCBC Action M189593, New Westminster Registry, Lopez v. District of Mission and Others:

A. Urquhart

Counsel for the Plaintiff, Kelly Malloy, in SCBC Action M189730, Malloy v. Sleeman and Others:

M.T.K. Berry

No one appearing for the other Defendants and Third Parties.

Place and Date of Hearing:

(By MS Teams and teleconference)

Vancouver, B.C.

December 7, 2020

Place and Date of Judgment:

(By teleconference)

Vancouver, B.C.

December 11, 2020

- [1] THE COURT: Judson Sleeman, a defendant and third party to this action, applies for an order that would sever the liability issues in this action and three other actions from the assessment of damages in each case, and for an order directing that the liability issues for the four actions be tried at the same time. If those orders are granted, he also seeks an order directing that the files for the three other actions be transferred to the Vancouver registry for purposes relating to the liability trial.
- [2] This decision is being delivered as oral reasons. If the oral reasons are transcribed, I may edit them to include references to background information and to clarify the judgment in written form. The result and the core analysis will not change.

Background

- [3] This action concerns Cole Stevens' claims for damages for personal injuries and consequent losses he sustained as a result of a motor vehicle accident that occurred on October 10, 2016. The accident happened in a four-way intersection in Mission, BC. The traffic lights for the intersection were not operating at the time of the accident. Mr. Stevens was a passenger in a vehicle driven by Barbara McNally. A vehicle driven by the defendant, Judson Sleeman, collided with Ms. McNally's vehicle. Ms. McNally's vehicle then struck a vehicle driven by the defendant, Christine Meroniuk, and a vehicle driven by the defendant, Darrell Thomas.
- [4] Barbara McNally died as a result of injuries she sustained in the accident. Ms. McNally's estate and the owners and drivers of the three vehicles her vehicle collided with are defendants to this action. The other defendants are: District of Mission (the plaintiff alleges the District owned and controlled the intersection); The Minister of Public Safety and Solicitor General of British Columbia (the plaintiff alleges The Minister was responsible for the acts or omissions of the Royal Canadian Mounted Police in relation to the use of the intersection); Her Majesty the Queen in right of the Province of British Columbia by her representative the Ministry of Transportation and Infrastructure (the plaintiff alleges the Provincial Crown was responsible for the management, charge and direction of all matters relating to the design, acquisition, construction, repair, maintenance, alteration, improvement and operation of the intersection); Cobra Electric (South Coast) Ltd. (the plaintiff alleges Cobra was involved in the maintenance and repair of the traffic lights for the

intersection); and Emil Anderson Maintenance Ltd. (the plaintiff alleges Emil Anderson was involved in the maintenance of the intersection).

- [5] There are three other actions arising from the October 10, 2016 accident. Personal injury claims have been advanced on behalf of David Lopez (another passenger in Barbara McNally's vehicle) and Gloria Jean Taylor (a passenger in Darrell Thomas' vehicle), and a Family Compensation Act claim has been presented by Barbara McNally's daughter, Kelly Molloy.
- [6] The application record includes 12 application responses. They set out the following positions concerning the applications.
- [7] The plaintiff, Mr. Stevens, does not oppose the applications. He proposes that the liability issues in the four actions be tried at the commencement of the trial time he has reserved for this action; 22 days starting on January 3, 2022. He believes the combined liability trial would take less than 22 days and wants to use the remaining trial time for the assessment of the quantum of his claims.
- [8] Six parties consent to the applications. They are: the defendants, Christine Meroniuk, District of Mission, and Cobra Electric (South Coast) Ltd.; David Lopez, the plaintiff in *Lopez v. District of Mission and Others*, New Westminster Registry No. S189593; Gloria Jean Taylor, the plaintiff in *Taylor v. Sleeman and Others*, Duncan Registry No. S18396; and Kelly Molloy, the plaintiff in *Molloy v. Sleeman and Others*, New Westminster Registry No. M189730.
- [9] Five defendants take no position with respect to the applications. They are: Darrell Thomas, Jennifer Thomas, The Minister of Public Safety and Solicitor General of British Columbia, Her Majesty the Queen in right of the Province of British Columbia by her representative the Ministry of Transportation and Infrastructure, and the Estate of Barbara McNally.
- [10] The defendant, Emil Anderson Maintenance Co. Ltd. ("Emil Anderson") opposes the applications. It suggests that the four actions should proceed to trial at the same time, for a continuous hearing of all issues in all the actions.
- [11] Counsel for Mr. Stevens advised that all defendants to this action and the plaintiff's lawyers for the other three actions have indicated they are available to attend a joint liability trial starting on January 3, 2022. However, counsel for the plaintiff, David Lopez, and counsel for the plaintiff, Kelly Molloy, indicated they may only be available for the first two weeks of that period.

Analysis

- [12] An application to sever the liability issues from the other issues in an action is made pursuant to Rule 12-5(67) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 (the "Rules"). It states:

The court may order that one or more questions of fact or law arising in an action be tried and determined before the others.

[13] In *Blue Line Hockey Acquisition Co. v. Orca Bay Hockey Ltd. Partnership*, 2006 BCSC 1716, at para. 22, the court indicated that the following principles apply on an application to sever issues for separate hearings:

- (1) The discretion to sever an issue is likely not restricted to extraordinary or exceptional cases. However, it should not be exercised in favour of severance unless there is a real likelihood of a significant saving in time and expense.
- (2) Severance may be appropriate if the issue to be tried first could be determinative in that its resolution could put an end to the action for one or more parties.
- (3) Severance should generally not be ordered where the issue to be tried is interwoven with other issues in the trial. This concern may be less significant where the same judge is hearing both parts of the trial and an order is made that the evidence in the first part applies to the second part.
- (4) A party's financial circumstances is a factor.
- (5) Severance is most appropriate when the trial is by judge alone.

[14] The rule considered in *Blue Line Hockey* was the predecessor to Rule 12-5(67), but is substantially the same as the present rule.

[15] The factors set out in *Blue Line Hockey* will be addressed in turn, in the context of the application to sever the liability issues for all four actions from the quantum issues for each and have them tried at a joint liability trial.

[16] The first factor to be considered is whether there is a real likelihood of significant saving in time and expense if the liability issues with respect to the four actions are severed and tried at a joint liability trial. It is obvious that would be the case. The witnesses to be called on the liability issues would appear in court only once, rather than four times. Expenses for witness fees and, possibly, fees for experts on liability issues would be saved if there was only one liability trial. In addition, a combined liability trial would eliminate the possibility of inconsistent decisions on identical liability issues, which could occur if all four actions proceed separately on liability issues.

[17] The second factor is whether the issue to be tried first could put an end to the action for one or more parties. This clearly is the case. A combined liability trial could end the actions against one or more of the defendants.

[18] The third factor is whether the liability issues are so interwoven with other issues such that it is undesirable to sever the trial. Counsel for Emil Anderson submits that evidence given on liability issues may be of assistance to the court when assessing each plaintiff's credibility on matters relating to damages they claim.

[19] This issue is discussed in *Coenen v. Payne*, [1974] 2 All E.R. 1109 (C.A.) an authority often cited on applications for severance of a trial. In that case, the defendant in a motor vehicle personal injury action applied for separate trials on the issues of liability and damages. Lord Stevenson described the general practice as follows (at p. 1114):

In most personal injury cases the issues of liability and damages, though clearly separate, are rightly tried together. That is so, even where the issue of damages, perhaps because of complicated medical evidence, takes longer to try than the issue of liability. The reason is, I think, that it is usually most convenient for the parties to have all the issues between them decided together and that it helps the judge to assess the credibility of the plaintiff if he can hear what the plaintiff has to say not only about his accident but also about his injuries and his financial loss. I would not disturb that general practice.

[20] His Lordship went on to say:

In a personal injuries case the courts will not depart from the normal practice except for good reason; but though I appreciate the plaintiff's desire to be heard on liability and damages by the same judge, I think that in this special case the issue of damages is likely to take so much time and expense to try that it could more conveniently, and without injustice, be tried after liability has been decided, it may be in such a way as to make a trial on the issue of damages unnecessary.

[21] Lord Denning also found there should be separate trials. He provided an interesting perspective on the assessment of credibility in severed trials (at p. 1112):

In the present case counsel for Dr. Coenen said the judge would have a better opportunity of assessing the credibility of Dr. Coenen if he was two days in the witness box rather than two hours. I doubt it. I should think a judge could assess his credibility pretty well in two hours anyway.

[22] These passages show a pragmatic approach, with a focus on whether severance would unjustly limit the assessment of credibility.

[23] Although it is true that all evidence a witness gives can potentially assist the court in assessing that person's overall credibility, the evidence the three personal injury plaintiffs could give on the liability issues arising from the subject accident would be very limited in scope. That is because each of them were passengers at the time of the accident and therefore were not directly involved in causing the accident. It is doubtful that evidence the plaintiffs may provide of their observations, as passengers, on how the accident occurred would significantly assist the trial judge when assessing the credibility of their evidence with respect to the injuries and losses they allegedly sustained as a result of the accident. The fourth action concerns claims resulting from Ms. McNally's death as a result of the accident. Her passing forecloses any potential credibility issues relating to her evidence.

[24] The fourth factor is the financial circumstances of the parties. This is a concern with respect to the plaintiff, Mr. Stevens. He is 63 years old. His lawyer advised that he has not worked since the date of the accident. His lawyer asks that the combined liability trial proceed at the

commencement of the trial time he recently reserved for the trial of Mr. Stevens' action (commencing January 3, 2022) and that the quantum assessment of Mr. Stevens' claims proceed immediately thereafter. It would not be appropriate to make that order. The trial judge must have an opportunity to decide the liability issues before any of the quantum assessments proceed. If the trial carried on as suggested by counsel for Mr. Stevens, all parties would have to participate. It would not be fair to have all defendants take part in the quantum aspects of Mr. Stevens' trial, only to later find out that one or more were exonerated of any liability for his damages. Although this outcome would delay the assessment of the damages Mr. Stevens claims, it is an unavoidable consequence of the manner by which the litigation for the four actions will have to proceed.

- [25] Concern about Mr. Stevens' financial circumstances also bears on whether it would be appropriate to order that all four cases be tried at the same time in their entirety, as suggested by Emil Anderson. Such an order would, in all likelihood, greatly delay the trial of the Cole Stevens action, as some of the other actions are at an early stage in the litigation process and may not be ready to proceed to trial for quite some time. Also, all potential parties would remain engaged in the litigation, increasing the expense of conducting the cases.
- [26] The fifth factor is whether the trial would be a judge alone trial or a jury trial. Severance is most appropriate when the trial is to be by judge alone. This factor assists the applicant, as the trial of this case could not proceed with a jury. The provincial Crown is a defendant. Section 4(2) of the Crown Proceeding Act, RSBC 1996, c. 89, provides that in all proceedings against the British Columbia Crown, the trial must be without a jury.
- [27] An order to sever issues for separate hearings is a discretionary order. The court's discretion must be exercised in accordance with the object of the rules, as set out in Rule 1-3. An order severing the liability issues with respect to the four actions and having them tried at the same time would assist in securing the just, speedy and inexpensive determination of these proceedings on their merits. It would resolve the liability issues for each action in a timely manner. It would likely decrease the overall costs associated with the proceedings. A plaintiff would not have to continue their action against a defendant that would ultimately not be liable, thereby decreasing time required for the trials and eliminating potential exposure to a claim for costs from a vindicated defendant.
- [28] In all the circumstances, it would be appropriate to sever the liability issues for the four cases from the quantum assessments for each action and to direct that the liability issues in the four actions be tried at the same time.

Result

[29] The orders sought in Part 1, paras. 1, 2 and 3 of the notice of application filed by defendant and third party, Judson Sleeman, on August 7, 2019 are granted. The liability issues for the four cases are to be severed from the quantum assessments for each action and are to be tried at the same time. There will be a direction that the combined liability trial is to be set for the time reserved for the Cole Stevens trial, 22 days starting on January 3, 2022, or such other date as agreed on by all counsel.

[30] In light of Mr. Stevens' financial difficulties, I encourage all counsel involved in his action to make their best efforts to try to schedule the quantum assessment of his claims sometime in 2022.

[31] Costs of this application will be in the cause, pursuant to Rule 14-1(12).

"Master Vos"

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