

CANADA / JUDGMENT

Tucker v. Brown

2008 BCSC 734

COURT

Supreme Court of British Columbia

DECIDED

9 June 2008

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2008 BCSC 734 Tucker v. Brown IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Tucker v. Brown, 2008 BCSC 734 Date: 20080609 Docket: M073168 Registry: Vancouver Between: Emily Tucker Plaintiff And Donald Brown, Shaw Cable Systems Limited and Kenneth Huml Defendants Before: The Honourable Mr. Justice Cole Reasons for Judgment (Costs) Counsel for the Plaintiff M. D. Fahey Counsel for the Defendant D. M. De Bai Written Submissions: April 25 and 30, 2008

- [1] On April 23, 2008, the plaintiff was awarded damages for injuries suffered in a motor vehicle accident on July 30, 2005. The plaintiff was awarded \$11,500 for non-pecuniary damages plus \$790 for special damages.
- [2] Because of the amount of the total award the defendant takes the position that pursuant to Rule 57(10) of the Rules of Court the plaintiff should only be awarded disbursements. Rule 57(10) states: A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.
- [3] The onus of showing "sufficient reason for bringing the proceeding in the Supreme Court" falls on the plaintiff (Bhanji v. Quezada, 2003 BCCA 445, [2003] B.C.J. No. 1883 (C.A.)) Mr. Justice Low at para 8 states: "It was for the plaintiff to justify his choice of forum when the resulting monetary judgment fell well below the threshold."
- [4] In the Court of Appeal decision Reimann v. Aziz, [2007] B.C.J. No. 2025 (C.A.), Mr. Justice Chiasson deals with the issue of discretion and the ongoing obligation to assess the quantum of the claim.
- [5] At para. 13 Mr. Justice Chiasson states: At the outset, I observe that the application of Rule 57(10) does not involve an exercise of discretion. For a plaintiff who recovers a sum within the jurisdiction of the Small Claims Court to recover more than disbursements, the court must make a finding that there was sufficient reason for bringing the action in the Supreme Court. At para. 44 Justice Chiasson states: Considering Rule 57(10) in its legislative context and applying its words in their grammatical and ordinary sense harmoniously with the

scheme of the legislation and its objects, I conclude that a plaintiff does not have an ongoing obligation to assess the quantum of a claim and that the point in time for a consideration of whether a plaintiff had sufficient reason for bringing a proceeding in the Supreme Court is the time of the initiation of the action.

- [6] Here the plaintiff filed the writ and statement of claim on July 18, 2007 and advanced a claim for general damages, for pain and suffering, loss of earnings, loss of future earning capacity and special damages.
- [7] At the time of the motor vehicle accident the plaintiff was working at a golf course and as a result of her injuries was unable to perform her duties at the required level and she worked reduced hours. She later was dismissed. The reason for her dismissal was not known at the time of the filing of the writ of summons. She was also working on the family farm at the time of the accident, approximately 13 hours per week. She was unable to perform those duties for several weeks. At the time the writ of summons was issued it was anticipated there would be "an in trust claim" for the value of those services that she provided on her parents' farm. At the time of the commencement of the action the plaintiff did not have a medical legal report and it was not known which of her two treating physicians would draft it. Her previous family doctor quit the practice of medicine sometime after her accident and subsequently died. Therefore, plaintiff's counsel was not in a position to finalize the quantum of general damages until the report was finally received, after the commencement of the proceedings.
- [8] It was subsequently decided that in order to comply with Rule 66(1) that the income loss and "in trust claim" would be abandoned. The failure to abandon those claims would mean the matter would not have been completed within the two days set under Rule 66(1).
- [9] Although the defendant admitted liability, quantum was an issue because the defendant took this as a "no crash no cash" claim. Therefore, the plaintiff submitted that it was an important consideration that they have an opportunity to question the defendant and it was only through the discovery process that the plaintiff discovered that on the defendant's incident report to his employer he admitted speed to be 5 - 10 km/hour.
- [10] In *Reimann v. Aziz* Mr. Justice Chiasson reviewed the policy consideration set out in various decisions of the Supreme Court. He observed at para. 35: In my view, the approach generally taken by the Supreme Court is too limited. It overemphasizes the policy of encouraging parties to proceed in the Provincial Court, but fails to consider the equally compelling policy consideration that parties are entitled to have respected their legitimate choice of forum.
- [11] The plaintiff has satisfied me that there were sufficient reasons for bringing these proceedings in Supreme Court and I order that the plaintiff is entitled to her costs. The Honourable Mr. Justice F. W. Cole

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