IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20181130
Docket: M105366
Registry: Kelowna

Between:

Janice Hagblom

Plaintiff

And:

Shoaib Ali and T&S Transportation Systems Inc.

Defendants

And

Emcon Services Inc., and Her Majesty the Queen in Right of the Province of British Columbia (Ministry of Transportation and Infrastructure)

Third Parties

- and -

Docket: M174345
Registry: Vancouver

Between:

Macy Jae Wilkinson, an infant by her Litigation Guardian, Gerri Wilkinson

Plaintiff

And:

Shoaib Mohabbat Ali, T&S Transportation Systems Inc., Janice Hagblom, U-Haul Co. (Canada) Ltd., U-Haul Co. (Canada) Ltee, HMC Services Inc., Emcon Services Inc., and Her Majesty the Queen in Right of the Province of British Columbia (Ministry of Transportation and Infrastructure)

Defendants

And

Shoaib Mohabbat Ali, T&S Transportation Systems Inc., Janice Hagblom, U-Haul Co. (Canada) Ltd., U-Haul Co. (Canada) Ltee, HMC Services Inc., Emcon Services Inc., and Her Majesty the Queen in Right of the Province of British Columbia (Ministry of Transportation and Infrastructure)

Third Parties

Before: Master Muir

(In Chambers)

Oral Reasons for Judgment

Counsel for Janice Hagblom, U-Haul Co. (Canada) Ltd. and U-Haul Co. (Canada) Ltee:	K. Murray
Counsel for Shoaib Ali and T&S Transportation Systems Inc.:	J.V. Marshall
Counsel for Emcon Services Inc. and HMC Services Inc.:	B. Meadow
Counsel for Macy Jae Wilkinson:	M.P. Keen
Place and Date of Hearing:	Vancouver, B.C. November 30, 2018
Place and Date of Judgment:	Vancouver, B.C. November 30, 2018

[1] **THE COURT:** This is an application brought in two actions, namely the Hagblom action and the Wilkinson action, by Shoaib Ali (“Mr. Ali”) and his company, T&S Transportation (“T&S”) for an order that liability in the two actions be joined and determined at the same time, subject to the direction of the trial judge, and that the issues of damages or quantum in each action are to be tried separately subsequent to the determination of liability.

[2] Paragraph 4 of the notice of application is adjourned generally.

[3] Paragraph 5 has been dealt with at the case planning conference.

[4] Paragraph 6 is simply for an order that all evidence adduced at the liability trial will be evidence at any subsequent assessment of damages.

BACKGROUND

[5] The background is that these two actions are a result of a very serious motor vehicle accident that occurred on or about November 29, 2012 on the Trans-Canada Highway outside of Golden, BC involving Mr. Ali and T&S (the “accident”) where Mr. Ali was driving a semi-trailer truck owned by T&S. I gather his vehicle jackknifed and collided with a vehicle coming in the other direction owned by U-Haul and being driven by Ms. Hagblom.

[6] Ms. Wilkinson was a passenger in the Hagblom vehicle and she was 11 years old at the time. Ms. Hagblom is her grandmother. Ms. Wilkinson did reside in Saskatchewan at the time, but now resides in Alberta. Ms. Hagblom, I gather, still resides in Saskatchewan.

[7] The actions against the Crown have been dismissed. Thus, the only other defendants and third parties involved are Emcon Services Inc. (“Emcon”) and HMC Services Inc. (“HMC”). The allegations against Emcon and HMC are with respect to failure to maintain the highway correctly or properly or in accordance with their contract. I gather the allegation is that the highway was iced over.

ANALYSIS

[8] Dealing first with joinder for one trial. All counsel are *ad item* that there should be some form of joinder. Counsel for Emcon and HMC is of the view that the trial should be a joint liability and damages trial all as one trial. Counsel for all of the other parties are of the view that the liability trial should be heard at one time and that there should be then two other trials with respect to the damages for Ms. Wilkinson and for Ms. Hagblom.

[9] I am certainly satisfied that there must be some form of joinder in this case. The issues are obviously tremendously interwoven, at least with respect to liability and the circumstances of the accident. Obviously, they are not with respect to the circumstances of injuries sustained by the two plaintiffs. The only consistent evidence with respect to the damages side is that they were both taken to the same hospital. They have different doctors, different experts. They live in different places. There is going to be little, if any, overlap in evidence on questions of their respective injuries and damages. With respect to liability, there is no question that this is appropriate for an order to have the two matters heard together.

[10] Accordingly, the real nub of the question here is whether the issues of liability and quantum should be severed. That, I think, as everyone has noted, is a most unusual remedy. It is very rare. Although the courts perhaps have stepped away from saying it is only in exceptional circumstances, certainly the circumstances have to be unusual. There has to be something that militates very strongly in favour of severance in order for the court to be persuaded that severance of liability from damages is appropriate.

[11] Certainly, I think it is easier to make that step when, as here, there are two separate plaintiffs. This is quite different from an application in one action where a plaintiff is saying let us sever liability from quantum because our trial time is not sufficient or I do not want to go to the expense of getting expert reports until I know for sure that I am going to have a case of damages to proceed with. That is not the circumstance here.

[12] The cases relied upon for the principles that a court is to consider on a severance application are *The Council of the Haida Nation v. British Columbia*, 2018 BCSC 277, and *Nguyen v. Bains*, 2001 BCSC 1130. The principles are essentially as follows:

a) A judge's discretion to sever an issue is probably 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.

b) 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.

c) Severance is most appropriate when the trial is by judge alone.

d) Severance should generally not be ordered when the issue to be tried is interwoven with other issues in the trial. This concern may be addressed by having the same judge hear both parts of the trial and ordering that the evidence in the first part applies to the second part.

e) A party's financial circumstances are one factor to consider in the exercise of the discretion.

f) Any pre-trial severance ruling will be subject to the ultimate discretion of the trial judge.

Nguyen at para. 11

[13] Looking at the factors here, is there a real likelihood of savings in time and expense? Emcon and HMC say no. They argue that everyone is probably going to be involved in all three trials, assuming I accede to the request here, and that will require perhaps duplication in terms of preparation and so forth.

[14] The other parties are not on side with that argument. They are of the view that a liability trial could well release one or more of the defendants or third parties from the action, assuming liability having been found in their favour. In addition, it is argued that there will be a narrowing of issues, which is the consideration I think coming out of the *Haida Nation* case, and an encouragement or a possibility of the discussion of settlement if this liability impediment is resolved.

[15] Counsel for Emcon and HMC emphasized that there had been no concrete demonstration that there would be a savings of time and money through severance. I note that in the *Haida Nation* case itself at para. 29, the judge says:

> Although it is preferable in an application for severance that the applicant provide evidence to demonstrate how much time and money can be saved through severance, failure to do so is not an absolute bar to the exercise of the Court's discretion. …

[16] Where there are so many variables, it is impossible, in my view, to say precisely what savings can or could or will be effected by a severance but, certainly, in my view, one of the things that the court is here to further is promoting settlement. I totally understand when counsel says here the injuries are serious injuries. They are concrete injuries. They are broken bones and surgeries. They are not subjective. The question of liability may well prove, once it is determined, to be the only impediment in settling the quantum parts of the trial.

[17] As to the mode of trial, it was argued that it is premature because we do not know what mode of trial will be chosen. Counsel for the applicants points out that there has been a joint case planning conference between these two actions and, in each case, each party did a case planning conference brief asserting that the trial was to be by judge alone.

[18] I should also say, as noted earlier, that the issues of quantum are not inextricably interwoven with the issues of liability. To the extent that there is any issue of evidence overlapping, I am of the view that that can be resolved by agreeing to the order that evidence in the first liability trial applies to the other trials.

[19] I am satisfied here that there are extraordinary circumstances, those being the similar issues that can be resolved on liability, the discrepancy between the two plaintiffs with respect to the damages portion of their actions, and in addition, there is the argument advanced by the applicants here that these two plaintiffs are not husband and wife. They are a grandmother and granddaughter. They live in different provinces. There are very real privacy issues here that the court should take into consideration in making this kind of order.

[20] Counsel for Emcon and HMC submitted, we could deal with all of these issues by siloing sections of the trial such that the parties and their counsel are not involved in the issues of quantum with respect to the other plaintiff.

[21] Firstly, that ignores the rights that they have to be involved in the trial. Secondly, as counsel for the applicants correctly points out, counsel cannot take the risk that there will not be issues that arise that they need to attend to in a global trial.

[22] The question is: How would siloing the damages portions of the trial differ from having separate trials? That was not something that counsel for Emcon and HMC could answer, other than that that it would get it all over at one time rather than at perhaps three separate occasions. That is something that can be dealt with by case planning, and I am of the view it is not an impediment here.

[23] It should be clear that my analysis has led me to the conclusion that the application should be allowed, and the orders will go as set out in paragraphs 1, 2, 3, and 6 of the notice of application.

"Master Muir"