

I.C.B.C. v. Sam et al, 1999 CanLII 15190 (BC S.C.)

Date: 1999-06-01
Docket: C963847 • S99-2132
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Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Bennett
Pronounced at Trial
June 1, 1999

BETWEEN:

INSURANCE CORPORATION OF BRITISH COLUMBIA

PLAINTIFF

AND:

**RAYMOND HUNG SAM, ANDREZ (ANDREW) BABA,
IRENE BABA, JAROSLAW (JERRY) BABA,
JANUZ (JOHN) BABA, DO WA CHAN,
ERNEST TINLAP CHENG, GEORGE YIU MAN CHU,
BIB AJEET KAUR FISHMAN, JEREMY STEPHEN JONES,
DICKSON KAR LEE, DEBBIE LEE,
ENTON (TONY) MULLARAI, ALEXIS (ALEX) OSORIO,
DOI TAI WONG, MAURO MASSIMO ZUZOLO,
MICHELLE KULAS AND CHRISTIAN MARIO SALINA**

DEFENDANTS

Docket: S026653
Registry: New Westminster

BETWEEN:

GEORGE YIU MAN CHU

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

Counsel for the Plaintiff/Defendant
Insurance Corporation of British Columbia:

F. Potts

Counsel for Defendant/Plaintiff
George Yiu Man Chu:

F. Hambrook

Appearing on His Own Behalf:

Dickson Kar Lee

[1] **THE COURT:** (Oral) This is a motion for judgment as a result of a jury verdict rendered May the 26th, 1999, and an application for special costs.

[2] The history of this matter is long and convoluted. There were initially some 18 defendants who were subject to a claim by the Insurance Corporation for fraudulently obtaining funds or attempting to obtain funds from I.C.B.C. There were allegations of staged accidents, fraudulently obtaining insurance and premium fraud.

[3] The two accidents that actually came to trial were referred to a B-6 and B-7. There was also a concurring action by Mr. Chu for personal injury claim arising out of accident number B-7.

[4] B-6 was an accident that occurred in May of 1994. The allegations of fraud arising out of that action were that Mr. Chu fraudulently transferred his vehicle to Dickson Lee's name in order to fraudulently obtain insurance. While driving that vehicle Dickson Lee was involved in an accident. Two others, Mr. Chan and Mr. Sam, came along and participated in what is referred to as a jump-in. They were not in the vehicle, but they claimed they were and claimed personal injury.

[5] B-7 was an allegation of Mr. Chu fraudulently registering his vehicle in the name of Debbie Lee and fraudulently obtaining insurance. There was also a motor vehicle accident November of 1994. Mr. Lee and Mr. Chu were in that accident. It was an allegation of a hit and run driver. Mr. Chu's personal injury claim arose out of that. The jury found fraud with respect to all matters, including Mr. Chu's personal injury claim.

[6] The Insurance Corporation is claiming special costs against the defendants jointly and severally and are seeking full indemnification for their legal fees.

[7] The law with respect to special costs has been recently stated in the case of **Insurance Corporation of British Columbia v. Sangara** (1991), 49 C.C.L.I. 169, at 188, decision of Madam Justice Southin which I read as concurred in by Justices Hutcheon and Taylor. At paragraph 64 Southin J.A. said:

The regrettable result in this case is that the corporation will be substantially out of pocket in exposing this fraud. However, in any future case of this kind, because of the new rules on costs, it will be open to a judge to award, in the fraudulently brought action for negligence, full indemnity for costs of defending that action and, in an action for a fraud of the sort perpetrated here, full indemnity for the costs of prosecuting that action. The only limitation will be the principle of the new rules that the costs have been reasonably incurred. Thus where it is appropriate that there be full indemnity to the corporation, the rule in **Quartz Hill** will cause it no difficulty.

[8] That decision has been applied by Mr. Justice Arkell in the decision of **Insurance Corporation v. Teo Le et al** (1997), B.C.J. No. 3135, as well as an earlier decision in this case dealing with the unrepresented defendants by Mr. Justice Williamson, 7 March 1997, Vancouver Registry No. C963847. The only distinction with respect to this case is that the punitive damages awarded against Mr. Lee and Mr. Chu are extremely high, in excess of \$60,000 for Mr. Lee and in excess of \$80,000 for Mr. Chu.

[9] However, during the course of the jury trial the jury requested information regarding costs of a matter that related to the litigation. They were told in no uncertain terms that the costs of the litigation was not something that they were to be concerned with, and that I would be dealing with that later. It is clear to me that the jury did not reduce the punitive damages or increase the punitive damages on the basis of the costs of the litigation. The punitive damage award as well as the other awards may of course be the subject of an appeal. It is my view that the special costs should not be reduced in this case based on the punitive damage award. I see no basis to depart from the reasoning in the **Sangara** decision. Therefore with respect to the special costs they will be awarded full indemnification for that portion of the fraud in which each party was involved up to the date of the verdict.

[10] With respect to the motion for judgment, the motion for judgment will be granted in the terms of the jury verdict. There are some calculations that will have to be done with respect to the B-7 because some of the individuals, particularly Mr. Sam have already agreed to certain special damages, and I will have to rely on Mr. Potts to draft the order accordingly.

[11] There will be joint and several liability with respect to Lee, Chan and Sam on the B-6. With respect to B-6, in the amount of \$8,053.04, there will be joint and several liability with respect to George Chu and Dixon Lee. With respect to B-7, the hit and run, there is \$3,166.99, and there will be joint and several liability with respect to that, with Mr. Chu and Mr. Lee. The prejudgment interest with respect to the special damages and with respect to the punitive damages will be one-tenth of one percent award on the punitive damages. Mr. Chu's action is dismissed and I should say the special costs are ordered for both, Mr. Chu's personal injury claim and the claim where I.C.B.C. is the plaintiff. With respect to Mr. Chu's personal injury claim, the jury made a specific finding of fraud with respect to his personal injury claim.

[12] Now, Mr. Potts, you'll have to do some calculations with respect to B-6, but also with Mr. Lee having agreed to \$350 in investigating and adjusting costs, I think that was calculated into part of the special costs for the hit and run.

[13] COUNSEL: Part of the special damages.

[14] THE COURT: Special damages.

[15] COUNSEL: Yes, I believe it was.

[16] THE COURT: All right, so you will need to take that into account as well when you are -

[17] COUNSEL: I will.

[18] THE COURT: Because of that judgment, the jury could not in fact make an order against Mr. Lee for any investigating and adjusting costs.

[19] COUNSEL: I will do the calculations and I will send it off to Mr. Lee. Mr. Lee has been pretty good about staying involved, it will give him an opportunity to review that.

[20] THE COURT: And then this order will not be entered for 30 days from today's date. Mr. Lee, within the 30 days, if you are going to take issue between you and Mr. Nathanson, you must let Mr. Potts know within the 30 days, all right, and let him know in writing, send him a letter. So if he doesn't hear from you, then he can go ahead and enter the judgment.

[21] All right, is there anything else?

[22] COUNSEL: Two matters, my lady. We still have Mr. Mullarai and Mr. Osorio outstanding, and that's going to have to be reset for trial, do you recall that portion was adjourned?

[23] THE COURT: Yes, that's where Mr. -

[24] COUNSEL: Affleck.

[25] THE COURT: Affleck is acting.

[26] COUNSEL: Yes, so am I to proceed on the basis that you are still pre-trial judge, and we are to deal with all matters with you, or is that back at large?

[27] THE COURT: I think that that will be a very short trial, I understand, I think that that can go back at large. If there is some reason you think I should stay involved, you can let me know, but otherwise it would simply go on.

[28] COUNSEL: Lastly, my lady, I was speaking with Mr. Hambrook and on behalf of both of us we are much obliged for your willingness to sit early and late and deal with the numerous pre-trial conferences. Sometimes judges aren't disposed to do that, and it makes counsel's life a lot easier when they are.

"E.A. Bennett, J."

The Honourable Madam Justice E.A. Bennett

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