

Date: 19970307
Docket: C963847
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSURANCE CORPORATION OF BRITISH COLUMBIA

PLAINTIFF

AND:

RAYMOND HUNG SAM, ANDREZ (ANDREW) BABA, IRENA BABA, JAROSLAW (JERRY) BABA, JANUZ (JOHN) BABA, DO WA CHAN, ERNEST TINLAP CHENG, GEORGE YIU MAN CHU, BIBI 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

REASONS FOR JUDGMENT
OF THE
HONOURABLE MR. JUSTICE WILLIAMSON

Counsel for the Plaintiff: F.G. Potts

Counsel for the Defendants: Unrepresented

Place and Date of Hearing: Vancouver, B.C.
March 4, 1997

[1] This is an application by the Plaintiff pursuant to Rule 17(13) and Rule 25(16) of the Rules of Court for an assessment of damages owing by various of the defendants to the plaintiff. The matter arises out of eight automobile accidents which according to the plaintiff led to fraudulent insurance claims involving some 18 defendants.

[2] In a number of these accidents, various combinations of the defendants arranged for an automobile to be stolen and used to effect a collision with a vehicle registered in the name of and insured by one of the defendants. Other of the defendants would be in the struck vehicle. Various claims for personal injury and property damage were lodged.

[3] A second group of incidents involved a claim that an unknown vehicle had struck the allegedly insured's vehicle, when in fact no such thing had happened.

[4] All of the defendants with whom I am dealing today are subject to default judgments either for failing to file an appearance or for failing to file a statement of defence. One of the defendants, Mauro Zuzolo, brought a motion before this court in January of this year to have the default judgment set aside. That application was dismissed in reasons for judgment of Holmes J. filed January 20, 1997.

[5] I add that although no material was filed on this application by any of the defendants, two of the defendants were present in court: Mauro Zuzolo and Jerry Baba. Counsel

for the plaintiff, Mr. Potts, invited the court to permit these two defendants to file appearance notices and to address the court with respect to the quantum of damages. The two defendants were given this opportunity. However, each took the position that they were not liable to the plaintiff at all. In other words, they had no submissions on quantum, unless it was to say that quantum should be assessed at zero as they were not liable. These submissions were irrelevant to the issue before me.

[6] Counsel for the plaintiff took the position that any award of damages made on this application should be without prejudice to the position of either the plaintiff or any defendant in any subsequent proceedings which remain to be heard because those defendants not subject to this application have filed defenses. In this regard, the plaintiff relies upon *Const. Scarmar Lt.e. v. Geddes* (1989), 38 B.C.L.R. (2d) 188 (C.A.). In that case, the Court of Appeal concluded the common law rule that a person who suffered damage as a result of a tort committed jointly by a number of persons can recover against only one defendant had been extinguished by Section 48(2) of the Law and Equity Act. That provision reads:

s. 48 (2) The obtaining of an order against any one person jointly liable does not release any others jointly liable who have been sued in the proceeding, whether the others may have been served with process or not.

[7] It is also the position of the plaintiff that should they obtain judgment against the nine defendants in the categories sought today, it would remain open to them to seek damages against these same defendants under other heads of damage. For this proposition, the plaintiff relies on *Tillery v. Okusako* (June 27, 1989), Vancouver CA009839 (B.C.C.A.). In that case, Madam Justice Southin considered Rule 25(16):

Where a plaintiff has obtained judgment under subrule (6), (7) or (8), instead of proceeding to trial to assess the damages or the value of the goods, the plaintiff may apply to the court and the court may

- (a) assess the damages or value of the goods summarily upon affidavit or other evidence,
- (b) order an assessment, an inquiry or an accounting,
- (c) give directions as to the trial or hearing of the assessment or determination of value, or
- (d) make any other order it thinks just.

[8] In *Tillery*, the court observed that part of the damages represented an outlay of cash whereas other damages claimed involved opinion evidence. The order made by the court permitted the respondent to recover forthwith the amount which represented a cash outlay, but left other damages to be assessed in subsequent proceedings.

[9] In the case at bar, the plaintiff seeks damages from the defendants against whom judgment has already been obtained for all amounts paid to the individual defendants, or to third parties on their behalf, as well as the costs of investigating and adjusting these claims. An overhead component involved in these investigations, however, has been left open and not claimed as part of the assessment undertaken in this application.

[10] Further, in two of the accidents all of the defendants involved are subject to default judgments. For those defendants, the plaintiff seeks an order of joint and several liability. In seven other requested personal judgments, because all of the defendants involved in a particular accident are not subject to default judgments, the plaintiff seeks only judgments against the individuals without joint and several liability.

[11] Finally, given the fraudulent nature of these claims, the plaintiff seeks punitive damages as well as special costs in the nature of full indemnity to the plaintiff.

[12] The nine defendants subject to today's application are Christian Salina, Andrew Baba, Do Wa Chan, Ernest Cheng, Jerry Baba, Raymond Hung Sam, Mauro Zuzolo, Jeremy Jones, and Michelle Kulas.

[13] The actions of each of these defendants are detailed in the pleadings. They are also set out in the affidavit of Glen Hayward, an employee of the plaintiff, which evidence is uncontradicted. By virtue of Rule 19(19) of the Rules of Court, the defendants, having failed to file either an appearance or a statement of defence, are deemed to have admitted the allegations in the pleadings.

[14] As a result, it has been proven that the defendant, Christian Salina, wrongly alleged that he was driving a car struck by an unidentified vehicle and that he suffered personal injuries in that accident. The material discloses that the car which struck the vehicle Salina was said to be driving was in fact a vehicle stolen for that purpose. Salina was paid some \$4,000.00 for non-existent personal injuries.

[15] Similarly, the defendant, Jerry Baba, alleged that he was a passenger in that vehicle and suffered personal injuries as a result. He was paid \$2,000.00. Andrew Baba also claimed he was a passenger.

[16] Mauro Zuzolo claimed he was a passenger in a vehicle struck by an unidentified car on March 5, 1995. He claimed that he suffered injuries.

[17] Mr. Zuzolo was also involved in a second incident in which another car was struck by an unidentified vehicle on April 24, 1995. He claimed damages for personal injuries.

[18] In that accident, Michelle Kulas alleged that she was a passenger in the car owned and driven by Mr. Zuzolo and that she suffered injuries. Jerry Baba made the same claim. In fact, this accident was staged.

[19] Raymond Hung Sam filed claims with the plaintiff saying that on December 9, 1995 his car was forced off the road by an unidentified vehicle. The plaintiff paid these claims. Ernest Cheng claimed that he was in the same vehicle forced off the road December 9th. His claims were paid as well. The accident was staged.

[20] Mr. Sam also made claims concerning accidents said to have happened May 26, 1994 and January 17, 1995. These claims were paid and again were false.

[21] Do Wa Chan claimed he was a passenger in a vehicle of which the driver lost control May 26, 1994 and struck a light standard. He claimed he was injured and his claim was paid by the plaintiff. His claim was fraudulent.

[22] Finally, Jeremy Jones claimed that he was a passenger in a motor vehicle struck by an unidentified car January 17, 1995 and that he suffered personal injuries as a result. In fact, the accident was staged.

[23] All of the above is confirmed in the affidavit material filed.

[24] The plaintiff seeks as a component of these awards the cost of adjusting and investigating each of the defendant's claims. Mr. Hayward, in appendices to his affidavit, has set out the hourly rates of the various employees of the plaintiff involved, and the hours they actually expended. The number of hours set out appear reasonable.

[25] The quantum of the awards represents the actual money paid out by the plaintiff to the relevant defendant, or to some one on behalf of that defendant, as well as the cost of adjusting and investigating the claims as documented by Mr. Hayward. Where the defendants are part of a group involved in an incident in which all parties are subject to default judgment, the assessed amount includes a component for monies paid out by the plaintiff to the owners of the vehicles stolen.

[26] Accordingly, there will be judgment against Mauro Zuzolo, Michelle Kulas and Jerry Baba in the amount of \$5,842.57 for

which they will be jointly and severally liable. There will be judgment against Raymond Hung Sam, Jeremy Jones and Ernest Cheng in the amount of \$13,754.56 for which they will be jointly and severally liable.

[27] There will also be judgment against Mauro Zuzolo in the amount of \$1,547.49, against Raymond Hung Sam in the amount of \$16,469.37, against Jerry Baba in the amount of \$2,354.92, against Ernest Cheng in the amount of \$5,573.25, against Christian Salina in the amount of \$4,541.53, against Andrez Baba in the amount of \$1,317.62 and against Do Wa Chan in the amount of \$777.77. These seven judgments are against the individuals and do not attract joint and several liability.

[28] Counsel for the plaintiff argues that this is an appropriate case for punitive damages. These individuals were involved in organized deliberate schemes to defraud the publicly owned plaintiff. In so doing, they were taking money from the large number of citizens who must insure their motor vehicles with the plaintiff, an insurance corporation with a statutorily defined monopoly in automobile insurance in this province. The schemes, involving the theft of other automobiles as well as the staging of fake accidents, manifest considerable planning. I am satisfied these factors render this case a suitable one for punitive damages.

[29] I embark upon the assessment of punitive damages with some caution because, except as noted above, although given notice, no one appeared on behalf of the defendants on the application before me. As such, I have not heard evidence with respect to their financial circumstances or any other matters which might mitigate their wrongdoing. That is not enough to cause me to sidestep assessing such damages. It is simply to say that I should be cautious. There is no reason in principle, however, why a summary assessment of damages cannot include an award for punitive damages.

[30] Mr. Potts relies upon Insurance Corporation of British Columbia v. Sanghera (1991), 55 B.C.L.R. (2d) 125 (C.A.) for the proposition that \$5,000 in punitive damages is the appropriate amount for one incident of fraud perpetrated upon the plaintiff by a defendant such as those in this case. I do not read any formula into the comments of the learned justices in that case. The case is authority, however, for an award of punitive damages in these circumstances, and I have regard to the various factors mentioned in Sanghera.

[31] Mr. Potts argues that punitive damages should be greater in the accidents which involved the theft of another vehicle. I agree. In assessing these damages, I have also taken into account that I know of no criminal proceedings that have been taken with respect to this matter and that I was informed by counsel for the plaintiff that he knew of no plans to commence criminal proceedings.

[32] While the judgments I have set out above go a long way towards reimbursing the plaintiff for its losses occasioned by the actions of the defendants, I am satisfied that the conduct of the defendants warrants punishment over and above compensatory damages. See Huff v. Price (1990), 51 B.C.L.R. (2d) 282 (C.A.), at 300.

[33] Punitive damages are assessed as follows. Mr. Zuzolo was involved in three different incidents, one of which involved the theft of an automobile. Punitive damages against Mr. Zuzolo are assessed at \$11,000.00. Mr. Sam was involved in three different fraudulent claims, one of which involved a stolen motor vehicle. Punitive damages are assessed against him in the amount of \$11,000.00. Mr. Jerry Baba was involved in two incidents, one of which concerned a stolen automobile. Punitive damages against him are assessed in the amount of \$8,000.00.

[34] Mr. Cheng was involved in two incidents, one of which involved a stolen car. Punitive damages against him are assessed at \$8,000.00.

[35] Mr. Salina and Ms. Kulas were each involved in one incident. Punitive damages are assessed at \$3,000.00 against each of them. Mr. Chan was involved in one incident and punitive damages are assessed against him at \$3,000.00.

Finally, Andrez Baba and Jeremy Jones were each involved in one fraudulent claim concerning a stolen automobile. Punitive damages are assessed against them at \$5,000.00 each.

[36] The plaintiff will have special costs in an amount equal to the actual cost of proceeding against these individual defendants, such costs to be taxed by the Registrar.

[37] No one having appeared on behalf of the defendants, the plaintiff will have leave to file the order without signatures from the defendants approving the form of the order.

"Williamson J."
Mr. Justice Williamson