Case Name:

Cheema v. Delo

Between
Balour Singh Cheema, plaintiff, and
Teodora Pantil Delo and Maximo Dion Delo, defendants

[2005] A.J. No. 228

2005 ABQB 152

138 A.C.W.S. (3d) 42

Docket No. 0103 10014

Alberta Court of Queen's Bench
Judicial District of Edmonton

Wachowich C.J.Q.B.

Heard: February 14, 2005.
Judgment: March 7, 2005.

(16 paras.)

Trials -- Juries -- Right to.

Application by the defendant Delo for a civil jury. The parties were involved in a motor vehicle accident in which the amount claimed by the plaintiff exceeded $10,000. The plaintiff submitted the reports of five doctors and one occupational therapist. He intended to call ten witnesses, including an expert witness, and estimated that seven to ten days were required to try his case. He spoke English as a second language and required an interpreter at trial. The defendant intended to call an unspecified number of expert witnesses and estimated five days were required to try the case. The primary issues were liability and causation of the plaintiff's injuries.

HELD: Application allowed. The factors raised by the plaintiff were not sufficient to inconvenience a jury in the discharge of its duty. The medical reports were not overly lengthy or complex. The lengthiest projection for the time of the trial was not unreasonable. The jury would not be

inconvenienced by the plaintiff's reliance on an interpreter. The parties had a prima facie right to a jury trial. The plaintiff failed to discharge his burden of showing that the issues raised could not be conveniently tried by a jury.

Statutes, Regulations and Rules Cited:

Jury Act, R.S.A. 2000 c. J-3
s. 17, s. 17(1)(b), s. 17(2)

Jury Act Regulation, Alta. Reg. 68/1983 s. 4.1(a)

Counsel:

Natalie Bristman (Brij Mohan & Associates) for the Plaintiff

Dalal Mouallem (Duncan & Craig LLP) for the Defendant

MEMORANDUM OF DECISION

WACHOWICH C.J.Q.B.:--

INTRODUCTION

1 The Defendant has applied for a civil jury pursuant to s. 17 of the Jury Act, R.S.A. 2000 c. J-3 ("the Act"). The Plaintiff opposes this application.

RELEVANT LAW

2 Section 17 of the Act states:

> 17(1) Subject to subsections (1.1) and (2), on application by a party to the proceeding, the following shall be tried by a jury:
> ... (b) an action founded on any tort or contract in which the amount claimed exceeds an amount prescribed by regulation, or
>
> ...
>
> (2) If, on a motion for directions or on a subsequent application, it appears that the trial might involve

> (a) a prolonged examination of documents or accounts, or
> (b) a scientific or long investigation,
>
> that in the opinion of a judge cannot conveniently be made by a jury, the judge may, notwithstanding that the proceeding has been directed to be tried by a jury, direct that the proceeding be tried without a jury.

3 The Jury Act Regulation, Alta. Reg. 68/1983 states:

> 4.1 The amount that is prescribed for the purposes of section 17(1)(b) and (c) of the Act is
>
> (a) $10 000 if the action was commenced in the Court before March 1, 2003. ...

4 This is a tort action which was commenced prior to March 1, 2003 and the amount claimed exceeds $10,000. Therefore, pursuant to s. 17(1)(b) the parties have a prima facie right to a jury trial: Ralph v. Robertson (1995), 173 A.R. 146 (Q.B.). The Plaintiff opposes the Defandant's application and therefore bears the onus of demonstrating that the matter cannot be conveniently tried by a jury: Govias v. Tempo Schools (1999), 248 A.R. 189. I must look at the factors outlined in s. 17(2) of the Act in exercising my discretion to hear this case without a jury.

FACTS

5 This claim arises from a motor vehicle accident that occurred on May 4, 2000, in which two vehicles collided in an intersection. The Plaintiff claims damages for personal injuries arising out of the accident, which include: neck pain, shoulder pain, back pain, left leg pain, headaches, and psychological and emotional injury.

6 The Plaintiff speaks English as a second language, and will require an interpreter to testify at trial.

7 The Plaintiff submitted the reports of five medical doctors and one occupational therapist. The Plaintiff deposes that he has also seen a chiropractor and physiotherapist, but has not submitted reports from them. The Plaintiff deposes that he will be seeing either an orthopaedic surgeon or a rheumatologist for an Independent Medical Examination, and that expert will be called at trial. The Plaintiff intends to call at least ten witnesses, and estimates his case will take seven to ten days of trial time.

8 The Defendant deposes an intention of calling an unspecified number of experts, but has not

filed any medical reports. The Defendant estimates the trial will take five days.

9 The primary issues in this matter are the liability for the collision and causation of the injuries and subsequent damages.

ANALYSIS

10 In Greenwood v. Syncrude Canada Ltd. (1998), 240 A.R. 130, I identified the following factors as being indicative of whether a matter can conveniently be heard and determined by a jury:

(a) whether the jury will have to spend an undue amount of time examining exhibits;
(b) the length and complexity of the potential scientific examination rather than convenience for the individual juror;
(c) ability of the jury to understand the nature of the issues;
(d) the interplay of facts and various legal tests that must be applied to those facts;
(e) conflicting medical evidence;
(f) the laboriousness and difficulty in recording, remembering, comprehending and collating evidence; and
(g) whether justice to both parties is best served with or without a jury (at para. 13).

11 In this matter, the Plaintiff argues that determining causation will be complex because of prior accidents and conditions, which relates primarily to the fourth factor above. The Plaintiff submits further that the jury would be challenged in determining liability and would be inconvenienced by the Plaintiff's requirement of an interpreter.

12 In assessing whether a jury trial would be inconvenient, the inquiry centres not on the number of experts, but on whether a jury could conveniently understand, recollect and process the scientific information, and whether a layperson would likely be able to comprehend and evaluate potentially perplexing or conflicting medical evidence and analysis: Sharma v. Smook (1996), 177 A.R. 353 (Q.B.); Hanak v. Kirkpatrick, 2000 ABQB 445.

13 The Defendant argues that he will not be attacking the theories behind the expert reports and that the reports can be understood by a jury.

14 Whether the Plaintiff's problems arise from the accident or the pre- and post-accident exacerbation of those injuries can be difficult for a jury to determine: Speirs v. Royal Alexandra Hospitals, 2003 ABQB 528. As was the case in Freund v. Garner, 1999 ABQB 967, where a Plaintiff's medical history is particularly lengthy, difficult, or complex, a jury trial may be inconvenient. However, Thongdee v. Moulton, 2001 ABQB 563 and Aujla v. Zuberbuhler, 2001 ABQB 999, show that pre-existing conditions do not always preclude a matter from being decided

by a jury.

15 I find that the factors raised by the Plaintiff, either individually or taken together, are not sufficient to inconvenience a jury in the discharge of its duty. The medical reports are not overly lengthy or complex, and the jury will be assisted by expert witness testimony to explain them. The parties disagree over the projected length of trial, but even the lengthiest projection is not unreasonable. Further, the jury will not be inconvenienced by the Plaintiff's reliance on an interpreter.

CONCLUSION

16 Having considered the factors outlined in s. 17(2) of the Act, and all the circumstances of this particular case, I find that the issues to be raised in this trial can be decided conveniently by a jury. The Plaintiff has not discharged his burden under s. 17(2) and I direct this matter to be tried with a jury.

WACHOWICH C.J.Q.B.

cp/e/qlrds