

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Williams v. Kameka , 2008 NSSC 364

Date: 20081202

Docket: SN No. 296673

Registry: Sydney

Between:

Ervin Williams

Plaintiff / Respondent

v.

Norman Kameka and Thomas Hayes

Defendants / Applicants

Judge:

The Honourable Justice Frank Edwards

Heard:

October 27, 2008, in Sydney, Nova Scotia

Counsel:

Tony W. Mozvik, for the plaintiff / respondent
Elissa Hovard, for the defendants / Applicants

By the Court:

[1] This is an application pursuant to Civil Procedure Rule 14.25(1)(b) and (d), or Civil Procedure Rule 25.01, or as an exercise of the Court's inherent jurisdiction to have the Plaintiff's Statement of Claim struck.

[2] The Plaintiff and the Defendant Kameka were involved in a motor vehicle accident. The Plaintiff's motorcycle was written off and the Plaintiff suffering personal injuries including a broken rib, broken bones in his foot, injuries to his shoulder, and lacerations to his right arm and right foot.

[3] The Defendant denied liability. The Plaintiff brought an action in Small Claims Court (SCC). The Adjudicator found the Defendant liable and awarded the Plaintiff \$6,257.68 for his motorcycle. The Plaintiff then filed an action in this Court seeking general damages for his injuries.

[4] The Defendants say that the accident gave rise to a single cause of action. Having obtained judgement in SCC, the Plaintiff's cause of action merged into that judgement and extinguished all his rights arising from the accident. They argue that the Plaintiff therefore has no claim to bring in Supreme Court.

[5] The Defendants rely on *Cahoon v. Franks*, a 1967 decision of the Supreme Court of Canada (1967) 63 DLR (2d) 274. When *Cahoon* was decided, there was no Small Claims Court. *Cahoon* does not therefore address the particular circumstances before me.

[6] From the outset, it would have been obvious to the Defendant (who was represented by Counsel) that the Plaintiff was going to the SCC to recover only his property loss. Aside from nominal general damages, that was all the SCC jurisdiction allowed (see SCC Act ss. 9(a) and 11). The Defendant had the option to appeal the SCC's finding on liability but failed to do so. The Defendant is now stuck with that determination.

[7] It could not have been a surprise to the Defendant when the Plaintiff started the present action for general damages.

[8] Two Nova Scotia decisions, *Gough v. Whyte* (1983) 56 NSR (2d) 68 (N.S.S.C.) and *Big Wheels Transport and Leasing Ltd. v. Hansen* (1990), 102 NSR (2d) 371 (N.S.C.A.) support the Plaintiff's right to proceed.

[9] I am dismissing the application with costs of \$300.00 to the Plaintiff.

Order accordingly.

J.