

Leung v. Canada Safeway Ltd.

Between Lai Ho Leung, also known as Monica Leung, plaintiff, and Canada Safeway Limited, Canada Safeway Limited operating in the name and style of Food for Less, Stewart Green Land Co. Ltd. and Bal Sewa Singh, defendants

Alberta Court of Queen's Bench Judicial District of Edmonton Master Quinn (In Chambers)

Judgment: filed **January 13, 1993.**

Counsel:

Lai Ho Leung (the plaintiff), on her own behalf. V. Stevenson, for Bal Sewa Singh.

MEMORANDUM OF DECISION ¶ 1 MASTER QUINN:— This is an application by the plaintiff for leave to take the next step in this action.

¶ 2 The plaintiff is suing for personal injuries she received on December 21, 1985. Her action was commenced on December 16th, 1987.

¶ 3 The plaintiff previously had counsel acting on her behalf, but she has none now.

¶ 4 In opposing the plaintiff's application counsel for the defendant has put forward the affidavit of D.R. Wilson, a private investigator, sworn to on October 15th, 1992. The said affidavit is all hearsay and it is not admissible for the purpose of this application, which is not an interlocutory application (Rule 305). If the plaintiff does not obtain leave her action will be at an end, and she will never have her day in court.

¶ 5 That the affidavit relied on by the defendant is hearsay is sufficient reason without more to disallow it as a basis for refusing the Plaintiff leave.

¶ 6 The Alberta Health Care records show the plaintiff has consulted 40 physicians from the date of the accident to September 18, 1992. Some of these were consulted more than once. Dr. Yaqub was consulted on 207 occasions after the accident and 39 occasions before.

¶ 7 According to the Wilson affidavit (for what it is worth) one physician's records go back only to 1989 and one other's only to 1987. In five other instances the physician's records go back only to 1985. A number of the physicians would not give any information at all.

¶ 8 Four physician's who treated the plaintiff before the date of the accident are no longer in practice at all, or no longer in practice in Alberta.

¶ 9 Five physicians who treated the plaintiff on or after the date of the accident are no longer in practice at all or are not in practice in Alberta.

¶ 10 By her statement of claim the plaintiff does not claim for aggravation of any pre-existing injury or poor physical condition. She claims only for injuries sustained in the accident. She will have to adduce evidence at trial to prove her claim, and her witnesses will be subject to cross-examination.

¶ 11 There appears to be no shortage of physicians available as witnesses who have knowledge of the plaintiff's condition going back to the date of the accident. She consulted Dr. Yaqub on 207 occasions after the accident as well as on some occasions predating the accident.

¶ 12 Even if the affidavit relied on by the defendant was not merely hearsay, I would not be prepared to decline the plaintiff's request for leave to take the next step and thereby deprive her of her day in court. The injury she complains of was injury caused by the accident, and she has the onus of proving it.

¶ 13 Accordingly I grant the plaintiff leave to take the next step in the action which apparently is examination for discovery.

¶ 14 The plaintiff is urged to get on with her action without delay. If there are further delays for whatever reason she may not succeed in a future attempt to obtain leave to proceed.

¶ 15 Costs of this application will be in the cause.

MASTER QUINN