IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20130109
Docket: M105950
Registry: Vancouver

Between:

Harpreet Kaur Gill

Plaintiff

And

Jin Sook Shin, Lucy Rei Shin Fermill and Juanito Victor Fermill

Defendants

And

Docket: M105949
Registry: Vancouver

Between:

Harpreet Kaur Gill

Plaintiff

And

Thea Stevenson and Joseph Armand Camille Martineau

Defendants

Before: Master McDiarmid in Chambers

Oral Reasons for Judgment

Counsel for Plaintiff: M.S. Randhawa

Counsel for Defendants: S. Sharma

Place and Date of Trial/Hearing: Vancouver, B.C. January 9, 2013

Place and Date of Judgment: Vancouver, B.C.
January 9, 2013

[1] **THE COURT:** The salient facts as I see them are that on July 6, 2011, the plaintiff in the *Gill v. Shin* action filed a notice of trial setting this matter down for trial on January 21, 2013. That notice of trial states:

> All parties of records [sic] in this action agree that not more than SEVEN (7) days is a reasonable time for the hearing of all evidence and argument in this action.

[2] The notice of trial is signed by Mr. Maglio, counsel for the plaintiff.

[3] On July 22, 2011, the parties in action M105950 and in action M105949 agreed that the trial of Action No. 105950 should be heard at the same time as the trial in *Gill v. Martineau*, which is Vancouver Registry Action No. 105949. A notice of trial was filed by counsel for the plaintiff in that action on September 1, 2011, setting the matter down for trial, again for January 21, 2013, consistent with the July 22, 2011 consent order.

[4] The parties have the same counsel. The plaintiff is the same in both actions. The same counsel represent both sets of defendants.

[5] The defendants in both actions filed jury notices within the time limited by the *Supreme Court Civil Rules*.

[6] On December 19, 2012, a trial management conference took place before Master McCallum. At that time, the issue of both actions proceeding by way of fast track pursuant to Rule 15-1 was raised. Master McCallum made three orders in each action.

[7] The first order was that the plaintiff was to file an application to strike the jury notice by December 31, 2012, returnable January 9, 2013. The plaintiff in fact did not file the application until a couple of days later. The returnable date was as directed by Master McCallum, and I do not find that there is any significant issue that arises as a consequence of the failure to file the application as ordered by him,

although obviously court orders ought not to be taken lightly. I am keeping in mind here the interests of the plaintiff and the fact that at times, especially over the holiday season, some time limits do get missed. The matter was heard today, which is the date that Master McCallum ordered that it be heard.

[8] The claims in my view are not suitable for fast track. They are somewhat complex. There are significant issues between two experts as to causation and as to duration of injuries. There is a possibility that there will be a third expert, although that is not the main reason why I am refusing the application to strike the jury notice.

[9] There are other matters that have been raised here. The conduct of the litigation in these matters was not done in accordance with Rule 15-1. There were applications brought and there were costs orders made. The effect of today striking the jury notice and allowing these matters to proceed by fast track would be to potentially deprive the defendants of successful costs awards in some of those applications.

[10] Another issue for which there appears to be no authority, is whether or not the fast track rule can be applied to each action so as to permit the criteria as set out in Rule 15-1(1) to be initially viewed singly, recognizing that the trial is taking place to assess damages in two actions. The Rule itself, as counsel for the plaintiff sets out, does refer to an action. In my view, the intent of the Rule combined with the proportionality provisions set out in Rule 1-3 is that the trial of all matters should take place in three days, although there is some judicial discretion to permit slightly longer than that.

[11] In this particular case, though, it would appear that the amount in issue is going to be in excess of $100,000. The trial will be in excess of three days. Plaintiff's counsel viewed it as being seven days and that was before a jury notice was issued and before the consent to try both actions together. There are complexities in the materials that I have reviewed. In my view it is not appropriate to strike the jury notices. The application to do so is dismissed. As sought by the defendants, this

matter is not suitable for fast track, and it is appropriate that both actions be removed from Rule 15-1.

[12] The defendants have been successful on this. The materials completely overlap so they should have one set of costs for this, not two.

[13] MR. SHARMA: And that's costs in any event of the cause, Your Honour? Liability has been admitted for both actions.

[14] THE COURT: Yes, costs in any event of the cause. It was well argued, counsel. It is an interesting point, but as you can tell from my reasons, I do not think that Rule 15-1 was designed to apply to situations like this.

MASTER McDIARMID