# IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20160908
Docket: M167486
Registry: New Westminster

Between:

**Nadia Ali-Majid**

Plaintiff

And

**See-Choh H. Yeo and Li-Li S. Yeo**

Defendants

Before: Master Caldwell

## Oral Reasons for Judgment

In Chambers

| | |
|---|---|
| Counsel for Plaintiff: | M.D. Gillespie |
| Counsel for Defendants: | J.V. Marshall |
| Place and Date of Trial/Hearing: | New Westminster, B.C.<br>September 8, 2016 |
| Place and Date of Judgment: | New Westminster, B.C.<br>September 8, 2016 |

[1] **THE COURT:** This is an application brought to remove the matter from 15-1, which is going to go by consent, and that order is made.

[2] There is also a follow-up order for a continuation of the examination for discovery which was previously conducted shortly before correspondence between the parties about removal from 15-1 fast track.

[3] That discovery was two hours in length under 15-1. It is now sought by the defence to have an order that that discovery be continued for a period of a further five hours.

[4] It is agreed by defence counsel what they are seeking is what is sort of a standard order regarding the continuation of that and they are not seeking to have several other discoveries adding up to five hours.

[5] The wording, I expect, will be out of the CLE chambers orders manual, and counsel can agree on what is being sought is an additional five hours' continuation of the existing discovery.

[6] The facts are somewhat interesting, and they are important in that the decision of Master Muir in *Lee* have been referred to me. There is also the decision of Madam Justice Fleming in *Brown v. Dhariwal* as to how to proceed with respect to continuations of discoveries.

[7] In *Lee*, as I understand the facts as they have placed before me, and according to recollection, is that the discoveries took place on the basis of 15-1 and thereafter a very sizeable future loss claim in excess of $400,000 hit home to vastly increase the overall claim being made by the plaintiff, largely, if not entirely, as a result of that future loss claim, which was essentially a new issue.

[8] The discovery was somewhat limited when it was ordered to be continued or when it was agreed to be continued because that issue had arisen and the discovery was limited to pursuing questions relating to that.

[9] Similar comments were made in the decision of *Brown v. Dhariwal* by Madam Justice Fleming in dealing with an appeal from a Master's decision and applying the *Lee* reasoning.

[10] Here the facts, in my view, are a little bit different. They arise out of a motor vehicle accident from April 2013. The matter was put into 15-1 fast track by the claimant and liability has been denied.

[11] The claimant is a medical doctor, and the defence has throughout indicated that this was a sizeable claim and was not appropriate for 15-1 fast track. There are claims for past and future loss of income, but up until five days following this discovery, plaintiff's counsel steadfastly remained of the view that this matter had to stay in 15-1 and was in fact a 15-1 case.

[12] Trial was discussed at that point as being five days or better. Accordingly, since it was more than three, the implication would be that in order to fit into 15-1, the claim was worth less than $100,000. It involves claims of past and future loss of income and a variety of other heads.

[13] The discovery went forward, and defence counsel, operating under the two-hour limit, asked a wide variety of questions on a wide variety of issues but because of the time limits did not delve deeply into any of them because they had, by inference, assumed that the claim was $100,000 or less.

[14] As I say, within five days of the conclusion of the discovery where plaintiff's counsel absolutely refused anything further than the two hours and limited the defence counsel to their two-hour time period as a result of the 15-1 designation, plaintiff's counsel indicated that this was in fact a case worth well over a million dollars and discussions are being had for 8 days to 12 days of trial.

[15] That in my view is not a *Lee* situation. This is not a situation where issues A, B and C were on the table and were discovered upon and thereafter issues X and Y reared their heads and vastly changed the nature of the claim. In those circumstances it might well be a sufficient discovery was done on A, B and C issues

and subsequent discoveries would then be focused on and limited to new issues X and Y.

[16] Here I am not told that any of the particular heads of damage are the ones that have driven this case skyward; rather, the whole of the claim in past and future loss is simply vastly different than what was originally characterized.

[17] In those circumstances I do not see how, other than admonishing counsel that they cannot re-ask the same questions, it would be proper to limit defence counsel's questioning only to new issues.

[18] The plaintiff will attend for a further five hours of discovery. Defence counsel will be entitled to canvass all of the issues relating to the claim, liability and quantum. They are not entitled to re-ask the same questions or focus on exact types of questions that were asked before, but they are certainly entitled to canvass those issues of liability, quantum, specific injuries, et cetera, which it appears have caused the matter to increase from a fairly nominal claim to one of well over a million dollars.

[19] The plaintiff's counsel will be at liberty, as they always are, to object to specific questions and to seek further guidance of the court if it is necessary to qualify whether or not certain questions are appropriate, but the scope of the discovery is limited in that it cannot duplicate what was covered before but it certainly can flesh out anything relating to the enhanced damages claimed over what was originally dealt with. It would seem to me that that would have been a reasonable approach to sort out.

[20] Costs will be to the defence in any event of the cause.

"Master Caldwell"