

ONTARIO
SUPERIOR COURT OF JUSTICE

Plaintiff: Melanson et al.

Counsel: C. Martin

Defendants/moving parties: Nemeth/Ryder Truck Counsel: A. Gaw

Defendants: Singh/P.L.I.

Counsel: D. Harasym

Defendant: Kuchocki

Counsel: E. Harding

Defendants: Dabek/S.L.H. Transport

Counsel: K. Bunt

Heard: July 12, 2021 by Zoom

Before: Justice A. D. Grace

ENDORSEMENT

- ① This action follows a multi-vehicle collision on February 27, 2014 in the ~~westbound~~ ^{westbound} lanes of Highway 401 near Currie Road.
- ② A transport truck owned by the defendant Ryder Truck Rental Canada Ltd. ('Ryder') and driven by Mihaly Nemeth was struck from behind.
- ③ Then four-year-old Ryder melanson was in a following car driven by the defendant Joseph Kuchocki. Also involved in the accident were transport trucks operated by the defendants Ranjit Saini (owned by Performance Logistics Inc.) and Dariusz Dabek (owned by S.L.H. Transport Inc.).
- ④ The plaintiffs ^{individually} allege that the negligence of one, some or all of the ~~defendants~~ ^{also} caused or contributed to the collision. They ^{also} maintain that the corporate defendants are vicariously liable.
- ⑤ All of the defendants are actively defending the action. Each defendant or group of defendants has asserted a cross claim against the others. Jury notices have been served.

- ⑥ Not surprisingly, ^{members of} the Ontario Provincial Police (OPP) were dispatched to the scene. In the course of investigating the accident, statements were taken from the various individual defendants.
- ⑦ Examinations for discovery of the individual defendants, with the exception of Mr. Dabek who is deceased, were completed in May and June 2020.
- ⑧ This motion by Mr. Nemeth and Ryder (collectively the 'Ryder defendants') followed. They seek summary judgment dismissing the action and all ~~counterclaims~~ ^{cross-claims} against them.
- ⑨ They maintain that it is abundantly clear from all of the evidence that the multi-vehicle collision was caused by sudden and unexpected whiteout conditions to which Mr. Nemeth responded in an entirely appropriate and reasonable manner. They note that he was hit from behind.
- ⑩ The moving parties submit that there is no genuine issue requiring a trial insofar as they are concerned because there is simply no evidentiary foundation for the allegations of negligence. No properly instructed jury, they say, could find either of them even 1% responsible for the accident.
- ⑪ To the contrary, the moving parties argue that Mr. Nemeth did exactly what he should have done. He gradually reduced his speed. He activated his windshield wipers and four-way hazard lights. At the moment of impact, he was easing his vehicle onto the shoulder of the highway. ~~His vehicle's brake lights were functioning.~~ ^{per. The} ~~vehicle's speed at that time~~ ^{was} Thirty Kilometres per hour was Mr. Nemeth's estimate of speed at the time of the collision. No charges were laid as a result of the accident. He was not the subject of discipline by his employer.
- ⑫ In ~~the~~ ^{their} material, the Ryder defendants noted descriptions provided by other drivers. Mr. Kuchocki had said the change in weather was like having "a knitted blanket thrown over top your windshield instantaneously".
- ⑬ Mr. Saini said he reacted to the conditions by slowing to no more than 45 km/h, engaging his four-way flashers and looking for the side of the highway. He remembered having encountered two previous whiteouts but said this one had the same effect as if "someone pointed the

windshield.

14 Mr. Dabek was interviewed by a member of the OPP. He said "you couldn't see a thing from blowing snow." His flashers had also been activated and his speed reduced when suddenly something appeared in the middle of the road. When asked if he had seen a collision involving the car in which young Ryder ^{was riding}, Mr. Dabek responded "No. It was already done..."

15 In ~~its~~ ^{their} material, the plaintiffs explained that inconsistent evidence had been provided over time by Mr. Nemeth and Mr. ~~Kuchocki~~ ^{Kuchocki}. Examples were ~~also~~ given, with respect to Mr. Nemeth, the plaintiffs' position was well summarized in para. 14 of their factum. In part it reads:

... [Mr. Nemeth] is unable to state at what point the weather conditions deteriorated; for how long he was driving in whiteout conditions and at what proximity to the point of impact, whether measured by time or distance, and at what intervals he reduced his speed in proximity to the point of impact, whether measured by time or distance.

16 The defendant Kuchocki made a similar observation while unsure, ~~and~~ during the examination for discovery Mr. Nemeth testified that he was driving in zero visibility conditions for a period of less than five minutes. In terms of location of the vehicle on the roadway, Mr. Nemeth told the plaintiffs' lawyer that it was partially in the right lane and partially on the shoulder at the time of impact. In the right lane and about to move to the side of the roadway is what Mr. Nemeth told counsel for Mr. Kuchocki.

17 When interviewed by a police officer, Mr. Nemeth remembered a gold truck striking his vehicle from the left side. ~~on when~~ examined for discovery, two collisions were recalled: the one mentioned to the interviewing officer and a second and earlier one from behind.

18 With that background, am I satisfied there is no genuine issue requiring a trial with respect to the plaintiffs' claim and the cross-defendants' cross claim against the Ryder defendants. The short answer is no.

conducta detailed

19) I decline to review the seminal case of Hrynkiak v. Mauldin 2014 SCC 7 (Hrynkiak). The principles it establishes have been endlessly repeated. While arguably an over-simplification, in the final analysis, the motion judge must be satisfied that they are in a position to reach a fair and just determination on the merits based on the record assembled. para. 49.

20) Those resisting such a motion are required to respond to the motion with vigour, because they must put their best foot forward: 1061590 Ontario Ltd. v. Ontario Hockey Club (1995) 21 O.R. (3d) 547 (C.A.) at p. 537.

21) The analysis is contextual and fact specific. As Karakatsanis J. said in Hrynkiak Summary judgment is appropriate: "... when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

22) Simply put, I am not in that position. It is clear that all of the defendants faced a severe weather event and responded to it in a variety of ways. From all accounts, visibility was severely limited, road conditions deteriorated and decisions were made and implemented in short order and in stressful circumstances.

23) A clear picture of who did what and when did not emerge. The versions of events provided so far were not always consistent; internally or externally, ~~leads~~ leads inevitably

24) I simply do not agree that the record ~~leads~~ leads inevitably to the conclusion that Mr. Nemeth is driving that day met the standard of care. It may or may not have. Did he react appropriately - or reasonably - in terms of speed, direction, steering, braking, instrument control etc. bluntly, on this record, I do not know.

25) Should Mr. Nemeth have exited the highway at an earlier exit as the plaintiff contends? Was he even in a position to do so?

26) In my view, this is precisely the kind of case that requires a trial: live witnesses testifying in front of a jury and the trier of fact assessing the credibility

and reliability of each witness based on testimony given in real time. Even with the benefit of witness statements and transcripts of examinations for discovery, the evidence on this motion seemed fractured and, to borrow a word uttered by Lauwers S.A. in Baywood Homes v. Haditagh, 2014 ONSC 450 at para. 44 "decontextualized".

27) There are more reasons why this motion ^{was granted} ~~succeeded~~, Mr. Nemeth would undoubtedly be a key witness at trial. The vehicle he was operating was the first of four ultimately involved in the collision. It is already clear that there will be fingers pointed in every conceivable direction. A "blame game" will result. The risk of inconsistent findings is very real. Dia v. Calypso Theme Waterpark 2021 ONSC 273 at para. 28. Even as lead driver Mr. Nemeth is not inevitably insulated from liability. Martin-Vanderhede v. Mytilis, 2012 ONSC 53 at para. 31.

28) Further, this motion involves a request for what amounts to partial summary judgment, albeit one that would, if granted, extricate the Ryder defendants completely from the ambit of a potential judgment.

29) In Butera v. Chown Cairns LLP, 2017 ONSC 783 at para. 34, Pepou S.A. cautioned:
A motion for partial summary judgment should be considered to be a rare procedure that is reserved for an issue or issues that may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost effective manner...
See, too, Service Mold Aerospace v. Khalaf, 2019 ONSC 369 at para. 14.

30) In Haideri v. Seney, 2020 ONSC 698 (S.C.T.), George J. declined to grant summary judgment in favour of some of the participants in a multi-vehicle accident although of the view the case against them was "not particularly strong": para. 51. At para. 53, he wrote in part:
It is the number of Defendants, nature of the accident, and the fact granting summary judgment would not end this proceeding, that ~~lead~~ leads me to conclude that it is not appropriate in this instance.

31 I am in the same position. The suggestion the Ryder defendants can be extricated from this action because none of the other parties has been able to precisely articulate what Mr. Nemeth did to fall below the standard of care, ignores the fact that the scenario is a murky one. It most certainly cannot be said, on this record, that Mr. Nemeth met the standard of care. A properly instructed jury may well find that he is at least 1/90 liable for the collision that injured Ryder onelenson. Granting summary judgment would, in my view, be unjust. See, for example, Lannarella v. Corbett, 2015 ONCA 110 at paras. ~~6, 8, 12~~ 6, 8, 12 and 13

32 Unquestionably, there are cases where summary judgment dismissing an action as against one driver is appropriate: see, for example, Ojinkowski v. Raymond, 2018 ON SC 5779 (S.C.J.) aff'd 2019 ONCA 435. As mentioned earlier, the analysis is fact driven. This is simply not one of those cases: see Vanderhende v. Myslik, 2012 ONCA 53 at para. 31

33 For the reasons given, the Ryder defendant's motion for summary judgment must be dismissed.

34 If the parties are unable to agree on costs, concise submissions not exceeding five (5) pages each may be provided to me by the successful parties ~~within~~ by the close of business on August 13 and by the moving defendants on August 27, 2021.

Grace J.
Grace J.

Released: July 30th 2021.