[1991–92 Gib LR 350]

DINGSDALE v. TARR

SUPREME COURT (Alcantara, A.J.): July 3rd, 1992

Civil Procedure—judgments and orders—summary judgment—personal injury action—may grant judgment on issue of liability despite failure to serve statement of special damages claimed and medical report with statement of claim in accordance with Rules of Supreme Court, O.18, r.12(1A), if damages claim included in statement of claim and report previously served

Tort—negligence—inevitable accident—defendant to show cause of accident or all possible causes, and prove in respect of each that outcome unavoidable—accident inevitable if defendant's behaviour that of reasonable person exercising ordinary care in circumstances—accident due to sun temporarily obscuring driver's view not inevitable

The plaintiff brought proceedings against the defendant to recover damages for personal injury sustained in a road accident.

The plaintiff alleged that the defendant had negligently driven into the back of another car waiting at traffic lights, causing personal injury to him as his passenger. He applied for summary judgment on the ground that the defendant had no defence to the claim and no arguable point to raise in his defence. The defendant served a defence, claiming that he had been momentarily blinded by the sun shining over the crest of a hill directly into his eyes and that despite applying the brakes sharply he had been unable to avoid the collision. Consequently, the accident had been inevitable. Furthermore, the plaintiff had not served a medical report and a statement of special damages claimed with his statement of claim, as required by O.18, r.12(1A) of the Rules of the Supreme Court, and accordingly, the court should dismiss the application under r.12(1B).

Held, giving summary judgment on the issue of liability:

(1) The defendant's failure to serve the correct documents with his statement of claim was not fatal to his application for summary judgment and so did not justify a dismissal of the application or the giving of unconditional leave to defend under O.14, r.7 or O.18, r.12(1B). The plaintiff had included full particulars of special damages claimed in his statement of claim and had earlier served a medical report on the defendant's solicitors. He had complied with r.12(1A) (paras. 6–7).

(2) Furthermore, the defendant had raised no defence or arguable point in his defence. In order to make out the defence of inevitable accident, the defendant had to show what was the cause of the accident, or show all possible causes, and prove in respect of each that the result could not have been avoided. An accident was to be regarded as inevitable if nothing was done or omitted to be done by the defendant which a reasonable person exercising ordinary care in the circumstances would not have done, or would have done, as the case may be. The defence was not arguable on the facts as stated by the defendant. The court would order judgment for the plaintiff on liability and the issue of damages would be tried later (paras. 8–9).

Legislation construed:

Rules of the Supreme Court, O.14, r.2(1): The relevant terms of this paragraph are set out at para. 3.

r.7(1): If the plaintiff makes an application under rule 1 where the case is not within this Order . . . then, the Court may dismiss the application with costs . . .”

O.18, r.12(1A): The relevant terms of this paragraph are set out at para. 5.

(1B): The relevant terms of this paragraph are set out at para. 5.

C. Finch for the plaintiff;
J.D.J. Rosado for the defendant.

1 **ALCANTARA, A.J.:** This is an application under O.14 for summary judgment against the defendant. The statement of claim of the plaintiff reads:

> “On July 21st, 1991 the plaintiff was a passenger in a motor vehicle being lawfully driven by the defendant by or with the consent of the owners thereof along the highway known as the N340, near Marbella, Spain, when by reason of the negligence of the defendant in the driving of the said motor car, a collision occurred when the defendant collided with the rear of a stationary Mitsubishi jeep motor vehicle which had stopped correctly in obedience to red traffic light signals on the said highway.”

2 The statement of claim then goes on to give particulars of negligence, particulars of injuries and particulars of special damages. On the same day on which the present summons under O.14 was served on the defendant, the defendant served a defence on the plaintiff. Paragraph 3 of the defence states:

> “The collision occurred without negligence on the part of the defendant and was due to an inevitable accident, in that while the defendant was driving motorcar registration No. 666187 properly and not at an excessive speed well within the speed limit, along the N 340 road which at that location travels up a gradient, the sun came

over the crest of the road shining directly into the defendant's eyes, blinding him, whereby the defendant's view became momentarily but entirely obscured and, notwithstanding the exercise of all reasonable care and skill in the emergency thereby created, and the defendant applying the brakes in order to bring the motorcar to a complete standstill, the defendant was unable to avoid the collision."

3 The plaintiff has complied with the requirement of O.14, r.2(1) by supporting his application with "an affidavit verifying the facts on which the claim . . . to which the application relates is based and stating that in [his] belief there is no defence to that claim . . . or no defence except as to the amount of any damages claimed."

4 The law is reasonably clear, and I can do no better than quote from 1 *The Supreme Court Practice 1991*, para. 14/3–4/2, at 146:

"The purpose of O.14 is to enable a plaintiff to obtain summary judgment without trial, it he can prove his claim clearly, and if the defendant is unable to set up a bona fide defence, or raise an issue against the claim which ought to be tried . . .

'When the Judge is satisfied not only that there is no defence but no fairly arguable point to be argued on behalf of the defendant it is his duty to give judgment for the plaintiff' (*per* Jessel M.R., *Anglo-Italian Bank v. Wells* . . .). See r.1.

The policy of O.14 is to prevent delay in cases where there is no defence . . ."

5 The defendant may show cause against the plaintiff's application, either by a preliminary or technical objection, or on the merits. Mr. Rosado, for the defendant, has put forward a technical objection. He has argued that there has been non-compliance by the plaintiff with O.18, r.12(1A). The said paragraph and the subsequent one read:

"(1A) Subject to paragraph (1B), a plaintiff in an action for personal injuries shall serve with his statement of claim—

(*a*) a medical report, and

(*b*) a statement of the special damages claimed.

(1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court may—

(*a*) specify the period of time within which they are to be provided, or

(*b*) make such other order as it thinks fit (including an order dispensing with the requirements of paragraph (1A) or staying the proceedings)."

6 What course does the judge take if there is non-compliance? A guide is provided by 1 *The Supreme Court Practice 1991*, paras. 14/3–4/3, at 147, which read:

> "If the objection is fatal, the Master will then dismiss the application under r.7 or give unconditional leave to defend; if the defect is capable of amendment, the Master may give leave to amend and proceed on the application as amended, subject to the question of adjournment and costs."

7 I find that the objection taken by the defendant is not one in the category of fatal. I further find that there has been compliance with O.18, r.12(1A). The full particulars given under particulars of special damages in the statement of claim amount to "a statement of the special damages claimed" under para. (1A). In so far as the medical report is concerned, the evidence before me is that such a report was provided by the plaintiff before action to the then solicitors of the defendant, and has been in the possession of the solicitors of the defendant since then. I reject the objection of the defendant as being one with little or no substance.

8 I now turn to the defendant showing a case on the merits. The defence is inevitable accident and, according to the defence and the affidavit in support of the defence, puts forward that the inevitability arose because the sun shone on his face on a sunny day. This is my interpretation of the defence: Hardly a case for supporting the defence of inevitable accident. Mr. Finch has referred me to a case cited in *Bingham's Motor Claims Cases*, 9th ed., at 35 (1986). I shall quote it in full:

> "In an unreported case where a wasp entered a car and settled on the driver's eye (*Gilson v Kidman* 28 October 1938), Mr Justice Lewis adopted the definition of inevitable accident of Sir James Colville in *The Marpesia* (1872) LR 4 PC 212. Nothing was done or omitted to be done which a person exercising ordinary care, caution and maritime skill, in the circumstances, either would not have done, or would not have left undone, as the case may be.
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> The judge held that the defence of inevitable accident had not been made out and gave a verdict for the plaintiff.
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> Per Lord Justice Fry (in *The Merchant Prince* [1892] P 179): The burden rests on the defendants to show inevitable accident. To sustain that, the defendants must do one of two things. They must either show what was the cause of the accident, and show that the result of that cause was inevitable; or they must show all the possible causes, one or other of which produced the effect, and must further show with regard to every one of these possible causes that the result could not have been avoided. Unless they do one or other of these two things, it does not appear to me that they have shown inevitable accident.

The principles were followed in *The St Angus* [1938] P 225."

9 I am satisfied that not only is there no defence but no fairly arguable point on behalf of the defendant. Accordingly, I entered judgment for the plaintiff on the question of liability. The question of damage is to be tried by a judge in court. I would suggest that there should be directions as to how the assessment of quantum should proceed.

10 The plaintiff is to have the costs so far.

Order accordingly.