

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Lan Quach and Janet Phan, Plaintiffs

**AND:**

Asif Sani, Mazyar Mir Bashiri, Effat Mansouri and Townsend Mutual Insurance Company, Defendants

**BEFORE:** The Honourable Mr. Justice R. J. Nightingale

**COUNSEL:** H. S. Ginn, Counsel, for Lan Quach, Defendant by way of counterclaim

S. Clarke, Counsel, for Effat Mansouri and Mazyar Mir Bashiri, Defendants

K. Temple, Counsel for Asif Sani, Defendant

No one appearing for the Plaintiffs and Townsend Mutual Insurance Company, Defendant

**HEARD:** November 15, 2019

**ENDORSEMENT**

- [1] Lan Quach, the defendant by counterclaim, brings this motion for summary judgment to dismiss the counterclaims of the defendants Asif Sani, Mazyar Mir Bashiri and Effat Mansouri in this action brought against her.
- [2] Lan Quach is also a plaintiff in this action because of her claims for personal injury damages sustained by her in a three-vehicle motor vehicle accident of August 20, 2013. She was the driver of a motor vehicle in which the co-plaintiff her daughter Janet Phan was a passenger.
- [3] The defendant Sani was the owner and operator of a motor vehicle that struck the Quach vehicle from behind. The defendant Bashiri was the operator of the defendant Mansouri vehicle in front of the Quach vehicle that was struck from behind by her.
- [4] The defendants Sani, Bashiri and Mansouri counterclaim against Lan Quach that her own negligence caused or contributed to her own injuries and damages and to those of the co-plaintiff Janet Phan.
- [5] The factual dispute in this case is whether the Quach vehicle was stopped before it was struck from behind by the Sani vehicle causing it then to be moved forward striking the

Bashiri vehicle or whether the Quach vehicle failed to stop striking the Bashiri vehicle behind first and then being struck by the Sani vehicle from behind.

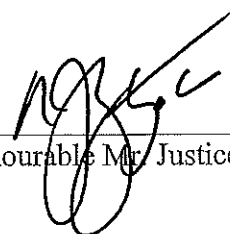
- [6] The applicant Quach in my view has not established on a balance of probabilities under *Rule 20* that there is no genuine issue requiring a trial with respect to whether there is any liability on her part in causing or contributing to the motor vehicle accident. *Hyrniak v. Mauldin*, 2014 1 SCR 87. Accordingly, her motion for summary judgment is dismissed for the following reasons.
- [7] There is a clear factual dispute arising from the conflicting evidence of the parties involved in this action regarding how the accident took place. There is no independent witness or expert reconstruction evidence.
- [8] Lan Quach's evidence was that a transport truck in front of her changed lanes to the left revealing two cars in front that were at a complete stop. She claimed she braked right away and did not strike the Bashiri vehicle in front of her. She claimed her vehicle stopped approximately one-half metre away from Bashiri's vehicle for approximately one second before she was rear-ended by the Sani vehicle pushing her vehicle into the Bashiri vehicle.
- [9] Her daughter Janet Phan's evidence was that when the transport truck in front of them changed lanes, Lan Quach stepped on the brakes coming to a complete stop before colliding with Bashiri vehicle in front of them. Approximately two seconds later, they were rear-ended by the Sani vehicle which pushed their vehicle into the Bashiri vehicle.
- [10] Ms. Phan testified that she struck her head on the right door frame from the first impact.
- [11] However, the co-defendants produced the evidence from the 911 call made by Ms. Phan immediately after the accident which contradicted that testimony. In that 911 call, Ms. Phan stated that their vehicle struck the Bashiri vehicle in front of them in their lane because of an accident and because of a transport truck ahead of them changing lanes moments before. Their vehicle was then rear-ended by the Sani vehicle.
- [12] The evidence of Mr. Bashiri was that another vehicle drove in front of his scratching his front bumper. He stopped his vehicle in the third lane of traffic on the highway, put his four-way hazard lights on and exited his vehicle to inspect the front bumper. After seeing no significant damage, he proceeded to re-enter his vehicle but before being able to do so, the Quach vehicle then struck his vehicle from behind causing it to move forward.
- [13] He then walked towards the rear of his vehicle to look at the rear bumper when the Sani vehicle then rear-ended the Quach vehicle with that impact pushing the Quach vehicle forward causing a second impact with the Bashiri vehicle. His evidence was that the first collision with the Quach vehicle was the most significant of the two causing his rear bumper to be pushed in.
- [14] The third vehicle operator Sani stated that the brake lights or hazard lights of the Quach vehicle were not on at the time of his colliding with the rear of it. His evidence was that he

was traveling at a low speed and almost stopped when he struck the Quach vehicle. The front of his vehicle sustained mild damage with only a small dent to the rear bumper of the Quach vehicle.

- [15] As indicated above, there was no evidence from an independent witness and no expert evidence led on this motion from any accident reconstruction engineer regarding the likely sequence and cause of the motor vehicle collisions.
- [16] Based on this clear conflicting of the parties, I cannot make the necessary findings of fact and apply the law to those facts to achieve a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.
- [17] A motion for partial summary judgment is a rare procedure reserved for an issue that may be readily bifurcated from those in the main action that may be dealt with expeditiously and in a cost-effective manner. *Butera v. Chown, Cairns*, 2017 ONCA 783.
- [18] Moreover, it is not in the interests of justice for me to weigh the evidence, evaluate credibility and draw inferences from the contradictory evidence to grant summary judgment especially in the absence of any evidence of an independent witness or expert regarding the cause of the motor vehicle collisions in question.
- [19] In addition, there will be no saving in court time or expense as Lan Quach as plaintiff will still be required to give evidence at the trial regarding the facts of the accident and her description of the two impacts involved with respect to her claims for her injuries sustained.
- [20] It would not be appropriate to use those expanded fact-finding powers under *Rule 20 3* to try to resolve the clear conflict in the evidence by calling oral evidence on this issue of liability now when the same evidence will be required at the trial. The risk of duplicative proceedings and inconsistent findings of fact is real in this case.
- [21] There is no speedier justice that can be obtained by the granting of the summary judgment motion in this case. Summary judgment motions remain the exception rather than the rule. *Mason v. Mongenais*, 2018 ONCA 978.
- [22] Lastly, the credibility of Lan Quach and Janet Phan will be a significant issue at the trial regarding not just how the accident occurred but also with respect to their claims for injuries sustained and to what extent they were caused or contributed to by the first and/or second collisions involved. Their credibility cannot be easily separated between the liability issues and their damages and the trier of fact would be entitled to consider all their evidence in evaluating the truthfulness and accuracy of their testimony on both issues.
- [23] It will be up to the trier of fact to determine the extent of the plaintiffs' injuries sustained and the contribution towards them by the negligence of the co-defendants and the plaintiff Lan Quach herself if they are found to be indivisible. *Clements v. Clements*, 2012 2 SCR 181; *Saadati v. Moorhead*, 2017 1 SCR 543.

**Conclusion**

- [24] The co-defendant Lan Quach has not met the onus on her to establish that there is no genuine issue regarding her liability for the motor vehicle collisions in question. Accordingly, her motion for summary judgment is dismissed.
  
- [25] With respect to costs, the applicant defendant by counterclaim Lan Quach would normally be responsible for the responding parties' costs of this motion on a partial indemnity basis payable within 30 days. If the parties are unable to agree on the amount of those costs, the respondents can make brief submissions of no more than two pages in length together with a bill of costs within 10 days from the date of this decision. The applicant shall have 10 days thereafter to similarly respond.
  
- [26] If no written submissions are made within these timelines, the parties will be deemed to have settled the issue of the costs of this motion.



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The Honourable Mr. Justice R. J. Nightingale

**Date:** November 19, 2019

1) Moving Party's Factums to be delivered by October 29, 2019.

2) Papp's Facts delivered by ~~11/19~~ Nov 5, 2019

5) Motion for Summary T set for November 15, 2019 for 3 hours  
3) Cross-Motions to be completed by Oct 15/19.

L. Sheppard J.

Nov 15/19

Mr. Simon for her direct reply e-c  
& e-letters for days Barkin & Norman's  
ll. Gange for day. Semi

motion for summary judgment heard  
division reviewed



Nov 19/19

Motion dismissed for  
written reasons provided  
Cost awarded

