

In the Provincial Court of Alberta

Citation: **Carvalho v Associated Chinook Cab Ltd., 2019 ABPC**

Date: 20190325

Docket: P1890103579

Registry: Calgary

Between:

Luellan Carvalho and Michael Licuanan

Plaintiffs

- and -

Associated Chinook Cab Ltd. and Jamil M. Rai

Defendants



Reasons for Decision of the Honourable Judge D.B. Higa

[1] The Applicants, Associated Chinook Cab Ltd. (“Associated”) and Jamil Rai seek an order striking the Plaintiffs’ claim pursuant to Rule 3.68 (d) of the *Alberta Rules of Court*. The Applicants submit the present action is an abuse of process based on *res judicata* and the two branches of that doctrine: issue estoppel and cause of action estoppel.

[2] On August 30, 2017, Associated commenced action against Ms. Carvalho and Mr. Licuanan (“Plaintiffs”) relating to a motor vehicle accident that occurred on June 21, 2017 (“First Action”). Associated sought property damages in the amount of \$6,305.09. The Plaintiffs defended the claim and counterclaimed for \$25,000.00. The Plaintiffs denied liability claiming the accident was caused by the negligence of the driver of the cab, Mr. Rai. The Plaintiffs also plead Associated was negligent by allowing Mr. Rai to operate the cab when his ability to do so was impaired and that Associated failed to properly maintain the cab.

[3] The Plaintiffs failed to attend the pre-trial conference scheduled in the First Action. As a result, their Dispute Note and Counterclaim were struck and on July 27, 2018 Associated was awarded judgment for \$6,469.03. The Plaintiffs then brought an application to set aside the judgment. On September 27, 2018, prior to the hearing of the application, the Plaintiffs fully satisfied the judgment. The Plaintiffs’ set aside application was dismissed by the Court on October 19, 2018. The Plaintiffs did not appeal the dismissal of their set aside application.

[4] On September 12, 2018, the Plaintiffs filed the Civil Claim in this action (“Second Action”). The Civil Claim in the Second Action pleads causes of action in relation to a motor vehicle accident occurring on June 21, 2017, the same accident at issue in the First Action.

[5] Paragraph 6(a) of the Civil Claim filed in the Second Action pleads negligence of Jamil Rai and is almost identical to paragraph 5 of the Civil Claim filed in the First Action. Paragraph 6(b) of the Civil Claim in the Second Action is almost identical to paragraph 6 of the Civil Claim in the First Action. The damage claim stated on the first page of the Second Action Civil Claim seeks \$25,000.00, the same amount claimed in the First Action.

[6] In Paragraph 7 of the Civil Claim in the Second Action, the Plaintiffs particularize the damages sought. Paragraph 7 is essentially the same wording found in Paragraph 15 of the Plaintiffs' Counterclaim filed in the First Action.

[7] The only significant change to the Second Action (and not specifically claimed on the first page of the Civil Claim) is that the Plaintiffs seek "contribution and indemnity" from Rai, for the judgment granted to Associated in the First Action. Accordingly, Rai is a named party to the Second Action and was not a party in the First Action. The remaining litigants are parties to both actions. However, it is significant that the causes of action raised against Rai in the Second Action were raised and specifically plead in the First Action.

[8] Again, the Applicants seek to strike the Second Action submitting the Second Action is an abuse of process and is barred pursuant to the doctrine of *res judicata*. The Court agrees with the submissions of the Applicants and the Second Action must be struck pursuant to Rule 3.68 of the *Alberta Rules of Court*.

[9] Justice Dario in *864503 Alberta Inc. v Genco Place Properties Ltd*, 2017 ABQB 809 discusses the doctrine of *res judicata* and the branches of issue and cause of action estoppel.

[10] At paragraphs 110 and 111,

The doctrine of *res judicata* has developed to maintain respect for the administration of justice. It is based on the principle that it is in the public interest for litigation to come to an end. To that end, the law requires that parties put forward their entire and best case once, and that judicial decisions be accepted as the final and conclusive determiner of the parties' dispute. Further, "[p]arties should not be called upon a second time to answer the same claim because legal ingenuity has revealed a new or revised version of the case". *Hill v Hill*, 2016 ABCA 49.

The result of this doctrine is that courts will not permit the same parties to litigate on the same subject matter that was at issue in prior litigation, or on any point that should have been raised in that litigation, even if it was left out due to negligence, inadvertence or even accident"...

[11] At paragraph 112 Justice Dario states,

There are two branches of the doctrine of *res judicata*: issue estoppel and cause of action estoppel. Issue estoppel is aimed at preventing the re-litigation of issues already addressed. Cause of action estoppel is aimed at preventing the fragmentation of litigation-it prohibits matters from being litigated in a second action that belonged in the first litigation;

[12] Justice Dario at paragraphs 113 and 114 states the requirements to establish issue and cause of action estoppel.

[13] All of the factual and legal requirements detailed by Justice Dario to support submissions of *res judicata*, issue and cause of action estoppel exist in the facts and circumstances before the Court in this application.

[14] A final determination has been made in the First Action, whereby a Certificate of Judgment has been granted to Associated against the Plaintiffs. The causes of action, issues and claims raised in the First Action have been finally and conclusively determined. That litigation is at an end and is not to be re-litigated.

[15] The only variable is that Mr. Rai was not a party to the First Action. However, that factor is addressed by Mr. Rai being privy to the First Action. As stated, the cause of action against Mr. Rai was raised and specifically plead in the First Action. The liability of Associated in relation to the Counterclaim in the First Action would be largely based on the vicarious liability of Associated for acts of its driver, Mr. Rai. Most certainly, Mr. Rai had a part and interest in the First Action.

[16] As Justice Dario stated, "...the law requires that parties put forward their entire and best case once..." and the courts will not allow litigation on the same subject matter that was at issue, "...even if it was left out due to negligence, inadvertence or even accident:".

[17] The cause of action raised in relation to Mr. Rai in the Second Action was plead and "could have been argued" in the First Action.

[18] Accordingly, the absence of Mr. Rai as a party in the First Action does not affect a finding of *res judicata*, issue and cause of action estoppel.

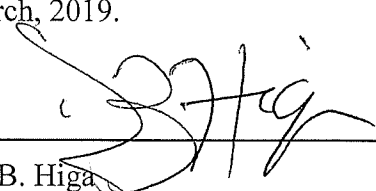
[19] Lastly, I agree with Applicants' counsel that the bringing of the Second Action is a collateral attack on the judgment granted in the First Action. This is abundantly clear by the Plaintiffs' claiming "contribution and indemnity" with respect to the "entire judgment granted in favour of Associated Cab in Action No. P1790103464...". This is an attempt by the Plaintiffs to avoid compliance with a judgment of this Court, not directly through an appeal of the proceedings in the First Action, but indirectly by bringing the Second Action.

[20] The Application is granted and the Civil Claim is struck.

[21] The parties may speak to costs, if costs can not be agreed upon. Should the parties wish to speak to costs, they must advise the Clerk of the Court within 30 days from the date of these reasons.

Heard on the 15th day of March, 2019.

Dated at the City of Calgary, Alberta this 25th day of March, 2019.



D.B. Higa
A Judge of the Provincial Court of Alberta

Appearances:

Counsel, Jason F. Wolcott
for the Plaintiffs

Counsel, Anthony Burden
for the Defendants