

Court of Appeal Rejects Claim-Splitting

Property damage judgment in Small Claims Court leads to dismissal of personal injury claim in Supreme Court

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A motor vehicle accident gives rise to a single cause of action. to \$100.

A claimant cannot seek different remedies from that single cause of action in different courts.

Elissa Hoverd of our office recently argued these principles before the Nova Scotia Court of Appeal affirmed these principles in ***Kameka v. Williams*** 2009 NSCA 107.

The court barred a motorist's personal injury claim where he had already obtained a property damage judgment in a previous Small Claims Court action.

In doing so the court emphatically rejected the suggestion that this type of claim-splitting was common practice in Nova Scotia.

Property damage in Small Claims Court ...

The accident in ***Kameka*** involved a motorcycle and a taxi. The motorcyclist sustained personal injuries along with property damage to his motorcycle.

Represented by counsel, the motorcyclist went to Small Claims Court where an Adjudicator found the taxi driver solely responsible for the accident.

Small Claims Court was set up to decide cases informally and inexpensively. It can hear claims arising from contract or tort up to \$25,000.

Within that limit the court can award general damages—to compensate pain and suffering, for example—but only up

In this case the claimant had asked for property damages only, and the taxi driver duly paid for the cost of repairs as ordered by the Adjudicator.

....And bodily injury in Supreme Court?

The motorcyclist started a Supreme Court action nine months later. He claimed damages resulting from personal injuries.

He repeated his Small Claims negligence allegations against the taxi driver, although he said that he would rely on the Adjudicator's liability finding in that regard. He also sued the owner of the taxi this time around.

The taxi driver and owner applied to strike the motorcyclist's Supreme Court action.

A Supreme Court judge in chambers dismissed the application, remarking that the Small Claims general damages jurisdiction was limited to \$100 and that it "would have been obvious" that the motorcyclist went there looking for property damages only.

The judge added that it "could not have been a surprise" when the motorcyclist started a separate action for personal injury damages. The defendants were now "stuck with" the liability finding.

Off to the Court of Appeal

The taxi driver and owner appealed. The Court of Appeal reversed the chambers judge and dismissed the

personal injury claim.

The appeal court took two routes to the same result.

The majority opinion from Justice Beveridge, Justice Oland concurring, was that the motorcyclist had a single cause of action that merged into the Small Claims Court judgment.

The claimant's rights, in other words, no longer flowed from the cause of action but from the judgment.

Having obtained that judgment, which had been paid in full, the motorcyclist's rights were extinguished and he had no claim to take to the Supreme Court.

Concurring reasons

Justice Fichaud wrote separately, preferring to use a statute, and not the common law, to reach the same result.

He characterized the motorcyclist's approach as one that turned the Small Claims Court into a "gatekeeper" that would determine liability for the more substantial claims to come in Supreme Court.

Justice Fichaud concluded that the *Small Claims Court Act* clearly prohibited claim-splitting and that, in effect, was that.

Having brought part of his claim to Small Claims Court, the *Act* also dictated that the motorcyclist had abandoned the residue—in this case his claims for damages exceeding that court's jurisdiction.

Discussion

In the lead opinion, Justice Beveridge agreed that the purpose and goals of the *Small Claims Court Act* were consistent with the common law principle of merger in judgment.

In his view, however, the courts have a discretion in this area that Justice Fichaud's approach would seemingly do away with.

Merger is part of the common law doctrine of *res judicata* (Latin for a *thing decided*). Generally speaking it means that a matter, once decided, is not open to relitigation. It is designed to prevent abuse of the decision-making process.

One consequence is that a second suit cannot be brought on the same cause of action: the entire cause of action is said to have merged in the first judgment.

That is what happened in *Kameka*. In fact, the majority opinion saw this as a "straightforward application of well established common law principles."

There are numerous decisions from other jurisdictions—none of which were addressed by the chambers judge in this matter—where personal injury claims were barred following successful property damage claims in courts of limited jurisdiction.

The majority opinion reaffirmed the view that a single negligent act gives rise to a single cause of action. In this case, a motor vehicle accident did not lead to one cause of action for property damage and another for personal injuries.

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The chambers judge seemingly doubted that proposition.

Having stated that the personal injuries action could not have come as a surprise, the chambers judge had also appeared to find “special circumstances” that, as a matter of common law, might support the court’s discretion not to apply the *res judicata* doctrine.

That discretion, according to the majority opinion in **Kameka**, was “not completely inflexible,” although it remained “very limited in its application.”

As for “special circumstances,” the Court of Appeal affirmed the principle, established in other cases, that prior notice of a further personal injury claim did not count, nor did “advisor error.”

The majority rejected the claimant’s assertion that the practice in Nova Scotia allowed him to recover property damage in Small Claims Court and then pursue personal injuries damages in Supreme Court.

The Court of Appeal stated that such a practice, if it did exist, was “unsupportable.”

The majority also rejected the motorcyclist’s contention that Small Claims Court could not have granted him the remedy he sought.

When pressed, he could only point to general damages. The majority noted that his real complaint was that Small Claims Court could not give him an *effective* remedy, since it can award general damages up to \$100.

The Supreme Court, on the other hand, was the court “having jurisdiction to deal effectively with all aspects of his claims” and the motorcyclist could give no reason why he did not go there in the first place other than his concern over delay in recovering property damages.

What about the taxi owner?

An odd feature of **Kameka** was that the motorcyclist sued the taxi owner in Supreme Court, but not the first time around in Small Claims Court.

The appeal court decided that the motorcyclist had no claim left to bring against the taxi owner. All three judges took the same approach here.

The court found that where the *Tortfeasors Act* might allow successive actions against driver and owner, it would limit the amount recoverable in the second action to the amount awarded in the first.

Since the first judgment was paid in full in this case, there was no claim left to bring against the owner and the action against that defendant was also dismissed.

Impact

In our view the law in this area was well-established in this province and elsewhere.

Generally speaking, claims were not split between different courts. In the motor vehicle accident context, plaintiffs did not go to Small Claims Court for property damage only and then—with liability finding in hand—go off to Supreme Court seeking personal injury damages.

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Just over one year ago, the chambers decision in this matter appeared to have turned that on its head.

If the chambers decision reflected (or simply gave) the impression that this type of claim-splitting was acceptable in Nova Scotia, ***Kameka v. Williams*** now stands as the Court of Appeal's emphatic rejection of that practice.

In our view the Court of Appeal's internal debate does not alter the practical effect of ***Kameka v. Williams***.

Whether a Supreme Court personal injury claim is found to have merged into a Small Claims Court property damage claim, or whether it is characterized as claim-splitting under the *Small Claims Court Act*, the result is the same: the second claim is barred.

Kameka v. Williams definitively sets out the law in this area, removing any remaining doubt that a motor vehicle accident gives rise to one cause of action where all damages are to be assessed in a single proceeding.

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