Mayers V. Khan — Summary Judgment Can Be Appropriate to Determine Liability Even When Key Facts Are in Dispute

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In *Mayers v. Khan*, 2017 ONSC 200, the Superior Court of Justice concluded that a motion for summary judgment can be appropriate in motor vehicle accident claims involving liability disputes even when there are disagreements as to key facts, particularly when the costs of a trial on damages and liability would be significant.

The defendant moved for summary judgment seeking a dismissal of the plaintiff's claim on the basis that he was not liable for an accident that was caused when his truck collided with the plaintiff's left-turning vehicle.

The plaintiff was travelling eastbound on Lawrence Avenue in Scarborough. The defendant was travelling Westbound on Lawrence Avenue. The plaintiff's evidence was that she made a left turn onto Birchmount road on an "advance green" light and claimed that the defendant struck her vehicle as he drove through a red light. The defendant's evidence was that his traffic light was green and turned amber when he was in the middle of the intersection. An independent witness had no evidence as to the colour of the light when the defendant entered into the intersection but gave evidence that the traffic light was amber for the plaintiff's vehicle when it turned left and that is when the defendant's truck entered the intersection.

The plaintiff, seeking a full trial, relied on a comment in *Cadogan v. Lavigne*, 2000 CarswellOnt 2191 (SCJ) that "the occasion would be rare in which a motion for summary judgement would succeed in a motor vehicle negligence claim," although the judge in that case noted that "circumstances, however, are so myriad and idiosyncratic that the circumstances for such a successful motion may well arise."

The motions judge relied on the general principles set out in *Hryniak v. Mauldin*, 2014 SCC 7 in determining that there should be no presumption against the availability of summary judgment for motor vehicle negligence cases. Under the *Hryniak* principles, summary judgment is appropriate given the time and costs involved to address damages, causation and threshold issues at trial.

The plaintiff submitted that there was a genuine issue requiring a trial because she had two theories as to liability of the defendant:

1. The plaintiff turned left on an advance green and the defendant drove through the intersection on a red light. On that basis the defendant could be liable; or
2. If the trial judge does not accept the plaintiff's evidence of an "advance green light", there is a genuine issue requiring a trial to determine whether the plaintiff turned on the yellow light, with the defendant contributorily liable for failing to take reasonable precautions to avoid the collision.

After considering the applicable summary judgment principles and motor vehicle negligence law, the motions judge concluded that neither theory raised a genuine issue requiring a trial. It is not simply because there is a conflict in evidence that a case must proceed to trial. The court must consider the evidence as a whole to determine whether it is an appropriate case for summary judgment.

The motions judge relied heavily on the evidence of the independent witness in rejecting the plaintiff's "contributory negligence" theory. The witness' evidence was that the plaintiff turned on the amber light and immediately thereafter the defendant's truck collided with the plaintiff's vehicle. The witness said it happened "so fast" since the defendant's truck was "already there" when the plaintiff turned on the amber light. The defendant's evidence was that the plaintiff's vehicle attempted to turn directly in front of his vehicle. In the circumstances, there was no genuine issue requiring a trial to determine whether the defendant could have avoided the collision, a finding which would be required in order for the plaintiff's "contributory negligence" theory to be successful. The only reasonable evidence to accept was that the collision occurred “too fast” for the defendant to do anything to avoid the collision.

In reaching this decision and granting the motion, the court confirmed that motions for summary judgment can be effective when the cost and time required to resolve the same issue at trial would be grossly disproportionate. The court further confirmed that following *Hryniak* there should be no presumption about which types of cases are or are not suited for summary judgment.

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