

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

PARAMJIT SINGH DHALIWAL,
BALWINDER SINGH DHALIWAL,
JASWINDER KAUR DHALIWAL and
AMARJIT GAKHAL

Plaintiffs

- and -

GREGORY MILLER and ALL
CANADA CRANE RENTAL CORP.

Defendants

B E T W E E N:

PARMJIT DHALIWAL

Plaintiff

- and -

ROYAL & SUNALLIANCE
INSURANCE COMPANY INC.

) IN CHAMBERS

) Gurcharan Anand, for the Plaintiffs

) Bruce Hutchison, for the Defendants

) Gurcharan Anand, for the Plaintiffs

) Eric K. Grossman, for the Defendant

ENDORSEMENT

Daley J.

[1] This matter involves a motion for court approval of a settlement in this action pursuant to Rule 7.08 of the *Rules of Civil Procedure*.

[2] This endorsement follows my earlier endorsement of August 7, 2008.

[3] As outlined in my earlier endorsement, I had a number of concerns with respect to settlement of this action. The documentation initially submitted to the court was wholly inadequate. It did not provide the details asked for in my endorsement of August 7, 2008.

[4] Since that endorsement I have received additional materials from counsel for the plaintiffs.

[5] I am satisfied that the proposed settlement amount is reasonable and in the interests of the plaintiff Paramjit Singh Dhaliwal and that the two actions be concluded on payment of the sums outlined below.

[6] The tort claim on behalf of the plaintiff Paramjit Singh Dhaliwal has been settled at the all inclusive sum of \$302,500 and his accident benefit claim has been settled at the all inclusive sum of \$700,000, which is to be fully invested in a structured settlement.

[7] Having considered the additional materials submitted by counsel for the plaintiffs, I still have concerns with respect to this matter.

[8] Firstly, the retainer and the “explanation of ‘costs’ to client”, both of which signed on May 31, 2005 by Paramjit Singh Dhaliwal and Balwinder Dhaliwal, were executed by the plaintiff Paramjit Singh Dhaliwal at a time when presumably he was suffering from the effects of a closed head injury resulting in cognitive impairment.

[9] A motion was brought by the plaintiffs before Lemon, J. on June 27th, 2008 for the appointment of Balwinder Singh Dhaliwal and Jaswinder Kaur Dhaliwal as litigation guardians for their son, the plaintiff Paramjit Singh Dhaliwal. In support of the motion for the appointment of the litigation guardians, an affidavit was filed by both parents of the plaintiff Paramjit Singh Dhaliwal, which was dated June 22, 2008. In that affidavit the affiants stated:

4. As a result of his head injury and resulting cognitive impairments, our son is mentally incapable of managing his own financial affairs. Our son sustained a brain injury of such severity that it was classified as catastrophic impairment by Bridgepoint Hospital.
5. Since this car accident we have been managing all of our sons financial affairs and providing almost constant care and supervision.

[10] The structured settlement premium amount, according to a statement of July 18, 2008 from McKellar Structured Settlements Inc. is \$641,001.93. The

affidavit material indicates that the amount to be structured is \$700,000. The difference is not accounted for.

[11] The schedule outlining the payments to be generated by the structured settlement has been attached to the draft proposed judgment. The structured settlement calls for payments, payable monthly to Paramjit Singh Dhaliwal, starting September 2008 in the sum of \$2,156.46 with monthly amounts payable year-over-year increasing.

[12] In my view, given the Order of Lemon, J. appointing the litigation guardians on behalf of the plaintiff Paramjit Singh Dhaliwal, the settlement funds to be paid both by way of the lump sum cash payment and the monies payable through the structured settlement must be paid in such a manner as to protect the interest of the plaintiff, who, according to the evidence, is not capable of managing his own affairs. In view of the ruling by Lemon J., the lump sum payment and monthly structured settlement payments cannot be paid to the plaintiff Paramjit Singh Dhaliwal

[13] In my view, not only must Rule 7.08 be complied with for the purposes of obtaining court approval, additionally the provisions of the *Substitute Decisions Act* also must be complied with.

[14] The materials submitted for court approval do not contain any proposal with respect to the management or handling of the proceeds of the settlement on behalf of Paramjit Singh Dhaliwal.

[15] I am not content to simply have the plaintiff's parents as litigation guardians take over the management of the settlement monies without the appointment of guardian as to property and an approved plan of management.

[16] A bond may also be necessary.

[17] The concerns which I have stated in this Endorsement are supported by the views expressed by Wilkins, J. in *Marcoccia v. Gill* (2007) Canlii 33 (ONSC). In that decision, Wilkins, J. offers a thorough and comprehensive review of appropriate steps to be taken in presenting a proposed settlement for court approval including a review of the type of materials and evidence that is required in order to fully determine whether the settlement and the future management of the proceeds are in the interest of the minor or incompetent plaintiff.

[18] As a result, I am directing that my endorsements and the material that has been submitted for court approval be served upon the Office of the Public Guardian and Trustee.

[19] I have formed the view that settlement amounts are reasonable and in the interest of Paramjit Singh Dhaliwal, I would invite submissions from counsel on behalf of the Public Guardian and Trustee, specifically in regard to the management of the settlement proceeds.

[20] I would further invite submissions from counsel on behalf of that office with respect to the retainer and contingent fee agreement as well as the fees and disbursements charged by counsel for the plaintiffs.

[21] I would ask that counsel for the plaintiff confirm service of all of the materials upon the Public Guardian's office, following which I will await a receipt of submissions from counsel for the Public Guardian and Trustee concerning these matters.

[22] Subject to receipt of submissions from counsel on behalf of the Public Guardian and Trustee and any further submissions that counsel for the plaintiffs wishes to make, the motion for approval of the settlement will be done by correspondence as opposed to having submissions in open court.

Daley J.

Released: October 6, 2008

COURT FILE NO.: CV-05-011954-00
DATE: 20081006

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