Date: 19980423
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

No. C963847
VANCOUVER REGISTRY

INSURANCE CORPORATION OF BRITISH COLUMBIA

PLAINTIFF

AND:

RAYMOND HUNG SAM, ANDREZ (ANDREW) BABA, IRENA BABA, JAROSLAW (JERRY) BABA, JANUZ (JOHN) BABA, DO WA CHAN, ERNEST TINLAP CHENG, GEORGE YIU MAN CHU, BIBI AJEET KAUR FISHMAN, JEREMY STEPHEN JONES, DICKSON KAR LEE, ENTON (TONY) MULLARAI, ALEXIS (ALEX) OSORIO, DOI TAI WONG, MAURO MASSIMO ZUZOLO, MICHELLE KULAS AND CHRISTIAN MARIO SALINA

DEFENDANTS

NO. B960468
VANCOUVER REGISTRY

BETWEEN:

JOHN BABA

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

NO. B953587
VANCOUVER REGISTRY

BETWEEN:

BIBI AJEET FISHMAN

PLAINTIFF

AND:

RAYMOND HUNG SAM AND
INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

THIRD PARTY

NO. S026653
NEW WESTMINSTER REGISTRY

BETWEEN:

GEORGE YIU MAN CHU

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE COULTAS

(IN CHAMBERS)

Counsel Appearing:

Insurance Corporation of British Columbia	F. Potts
Bibi Ajeet Fishman	P. Hansen
Dickson Kar Lee and Doi Tai Wong	M. Nathanson (Articled Student)
Enton (Tony) Mullarai and Alexis (Alex) Osorio	K. Affleck
Januz (John) Baba and Irene Baba	B. Promislow
George Yiu Man Chu	M. Hambrook

Place and Dates of Hearing: Vancouver, B.C.
November 24, 25, 26, 1997[1] On November 24, 25 and 26, 1997, counsel appeared before me to argue a number of interlocutory matters arising out of these four separate actions. At that time, I reserved judgment and proposed to deal with all of the Notices of Motion submitted in a single set of Reasons. These are my Reasons.

[2] In what I will refer to as the "Main Action" (Vancouver Registry C963847), the Insurance Corporation of British Columbia ("ICBC") has brought an action alleging fraud and conspiracy to commit fraud against 18 defendants arising out of 8 separate incidents. In addition, there are three separate plaintiff actions: the "Baba Action" (Vancouver Registry B960468), the "Fishman Action" (Vancouver Registry B953587), and the "Chu Action" (New Westminster Registry S026653). These actions have been brought by Januz (John) Baba, Bibi Ajeet Kaur Fishman and George Yiu Man Chu, respectively, (each of whom is a defendant in the Main Action) claiming damages for personal injuries and loss arising from respective incidents included in the Main Action.

The Incidents

[3] Before I address the specific applications brought before me, I will briefly describe the details of each accident. The letters of the alphabet followed by a number corresponds to the designations set out on a "Cheat Sheet" prepared by counsel for ICBC to assist the Court.

[4] Accident #A1 occurred on February 10, 1995 and involves the following defendants: Irena Baba, Christian Salina, Andrez (Andrew) Baba, John Baba and Jaroslaw (Jerry) Baba. ICBC alleges that the vehicle was struck intentionally by a stolen vehicle so that the parties could make personal injury claims against ICBC and so that the actual vehicle owner, John Baba, could be compensated for a replacement vehicle. Irena Baba was not in the vehicle at the time of the incident, but was the registered owner of the car. ICBC alleges that the actual owner was John Baba, and the car was registered in Irena Baba's name to secure a reduced insurance premium. Default judgment has been granted against Christian Salina, Andrew Baba and Jerry Baba. This accident forms the basis of the Baba Action.

[5] Accident #A2 occurred on March 5, 1995 and also allegedly involved a stolen vehicle intentionally colliding with the vehicle of Enton (Tony) Mullarai. Alexis (Alex) Osorio and Mauro Zuzolo were passengers. ICBC has taken default judgment against Mauro Zuzolo.

[6] Mauro Zuzolo is the sole defendant in Accident #A3. Mr. Zuzolo alleged that his vehicle had been stolen from his home; when discovered it was determined to be a total loss.

[7] Accident #A4 occurred on April 24, 1995 and involved Mauro Zuzolo as registered owner and driver and Michelle Kulas and

Jerry Baba as passengers. ICBC has taken default judgment against all of these parties.

[8] Accident #B5 involves Raymond Hung Sam, Ernest Tinlap Cheng and Bibi Ajeet Kaur Fishman. ICBC alleges that Mr. Sam intentionally drove his car into a tree and claimed an unidentified vehicle forced him off the road. Default judgment has been taken against Messrs. Sam and Cheng. ICBC does not allege that Ms. Fishman knew of Mr. Sam's intention, but alleges that she conspired to defraud the insurer when she signed a joint statement for an adjuster indicating that there was another car involved, a "phantom vehicle". It is out of this incident that the Fishman Action arises.

[9] Accident #B6 involves Dickson Kar Lee, Doi Tai Wong, Raymond Hung Sam and Do Wa Chan. ICBC alleges a "phantom vehicle" was involved, as in Accident #B5. It also alleges George Yiu Man Chu and not Dickson Kar Lee was the actual owner of the vehicle and that the vehicle was registered in Mr. Lee's name to secure a lower insurance premium. ICBC alleges that a representation was made that Raymond Sam and Do Wa Chan were in the vehicle and were injured, when, in fact, they were not in the vehicle at all. ICBC has taken default judgment against Do Wa Chan and, as noted, Raymond Hung Sam.

[10] Accident #B7 involves Debbie Lee, George Yiu Man Chu and Dickson Kar Lee. ICBC has dropped its action against Ms. Lee whose only involvement was that she allowed the vehicle, which was actually owned by George Chu, to be registered in her name. ICBC alleges that Sam and Chu were not passengers, as alleged. The Chu Action arises out of this incident.

[11] Finally, Accident #B8 involves Raymond Hung Sam, Jeremy Stephen Jones and Ernest Tinlap Cheng. ICBC has taken default judgment against all three defendants.

[12] While most heads of damages have been assessed against the defendants in default, punitive damages remain to be assessed against Messrs. Sam and Chan arising out of Accident #B6 and damages for ICBC's over-head costs remain to be assessed against all defendants. These assessments will form part of the Main Action.

Application to Strike ICBC's Statement of Claim

[13] Mr. Nathanson, representing Dickson Kar Lee, seeks an order pursuant to R. 19(24) of the Rules of Court striking out the portions of ICBC's Statement of Claim relating to the allegations of conspiracy on the ground that it discloses no reasonable cause of action. Rule 19(24) reads:

> At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence as the case may be,
> (b) it is unnecessary, scandalous, frivolous or vexatious,
> (c) it may prejudice, embarrass or delay the fair trial or hearing or the proceeding, or
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[14] McEachern C.J.B.C., in Can-Dive Services Ltd. v. Pacific Coast Energy Corp. (1993), 96 B.C.L.R. (2d) 156 (C.A.) at 158, sets out the criteria for the tort of conspiracy:

> ...the following elements must be proved:
>
> 1. an agreement between two or more persons;
>
> 2. concerted action taken pursuant to the agreement;

3. (i) if the action is lawful, there must be evidence that the conspirators intended to cause damage to the plaintiff;

(ii) if the action is unlawful, there must at least be evidence that the conspirators knew or ought to have known that their action would injure the plaintiff (i.e., constructive intent);

4. actual damage suffered by the plaintiff.

[15] He then proceeded to examine case law regarding conspiracy;

In Proconic Electronics Ltd. v. Wong (1985), 67 B.C.L.R. 237 (S.C.), Southin J. (as she then was), said at p. 241:

> I think a plaintiff who makes serious allegations of misconduct against someone who stands in a fiduciary relationship to him and who says he cannot give any particulars of those allegations must adduce some evidence even if very little in order to require a defendant to answer. Defendants are not to be called upon to answer a bald allegation of breach of fiduciary duty of which there is no evidence and of which no particulars are given.

In Thompson v. Coquitlam (District) (1979), 15 B.C.L.R. 59 (S.C.), Esson J. (as he then was) said at p. 63:

> It is well settled that the gist of the tort of conspiracy is not the conspiratorial agreement alone, but that agreement plus the overt acts causing damage.

Esson J. also cited Bullen, Leake & Jacob's Precedents of Pleadings, 12th ed. (1975), p. 341. The current edition of Bullen Leake & Jacob's Precedents of Pleadings, 13th ed (1990), states at pp. 221-22:

> The statement of claim should describe who the several parties to the conspiracy are and their relationship with each other. It should allege the conspiracy between the defendants giving the best particulars it can of the dates when or dates between which the unlawful conspiracy was entered into or continued, and the intent to injure ... It should state precisely the objects and means of the alleged conspiracy to injure and the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance of the conspiracy, and lastly, the injury and damage occasioned to the plaintiff.

In my judgment, pleadings alleging conspiracy must be as specific as possible.

[16] Mr. Nathanson submits that the Statement of Claim amounts to nothing more than a broad and vague allegation of conspiracy and, accordingly, those portions relating to conspiracy should be struck.

[17] I do not agree. At paragraph 24 of the Statement of Claim, ICBC sets out the general particulars alleged against the defendants:

> The general particulars of the wrongful conduct as alleged aforesaid as against the Defendants, except Irena Baba and Debbie Lee, are as follows:
>
> (a) in exchanging information and advice as to the Plaintiff's policies and requirements in assessing and adjusting claims and in assisting and encouraging each other to advance claims as against the Plaintiff and/or the Plaintiff's insureds with the intent of fraudulently

obtaining payment of monies and/or benefits;

(b) in providing false evidence and statements, one for the other, and on each's own behalf, to the Plaintiff with the intent that the Plaintiff would rely upon such evidence and/or statements in providing insurance and /or paying out and/or settling fraudulent or exaggerated claims advance by one or some of the Defendants as against the Plaintiff or the Plaintiff's insureds;

(c) in assisting each other by way of damaging and/or destroying or stealing each others property with the intent that such loss would be reported to the Plaintiff as a bona fide insured loss, and that the Plaintiff would rely upon which such reports and would make payment out to the Defendants or some of them on behalf of the Plaintiff or the Plaintiff's insureds;

(d) in fabricating evidence or, alternatively, deliberately causing, or allowing motor vehicle accidents or property damage to occur with the intent of presenting claims to the Plaintiff in respect of such matters in the expectation that the Plaintiff would rely upon the Defendant's statements and evidence in respect of such incidents and would make payment on its own behalf or on behalf of the Plaintiff's insureds to some or all of the Defendants.

[18] ICBC then proceeds to describe how these general allegations have caused them to suffer loss and damage. The Statement of Claim then details each incident, including whom ICBC alleges was involved and what occurred. In my view, this provides the defendants with sufficient detail to know the allegations against them, including the nature of the conspiracy alleged in each incident. The allegations of conspiracy are not so vague that they should be struck from the Statement of Claim.

Application for Particulars

[19] Mr. Nathanson also applies pursuant to R. 19(6) for particulars of the conspiracy alleged against his client, Dickson Kar Lee.

[20] Southin J. (as she then was) in Proconic Electronics Ltd. v. Wong (1985), 67 B.C.L.R. 237 (S.C.) discussed when an order for particulars should be granted and at p. 241 quotes from Waynes Merthyr Co. v. Radford & Co., [1896] 1 Ch. 29 at 35, 65 L.J. Ch. 140:

> The Lord Justice did not lay down any such general proposition as that contended for by the defendants counsel, and in my opinion there is no such general rule. There is no hard and fast rule as to the class of cases in which particulars should precede discovery, or discovery be ordered before particulars; but the judge may exercise a reasonable discretion in every case after carefully looking at all the facts, and taking into account any special circumstances.

[21] In my opinion, Examinations for Discovery will likely clarify any uncertainties that the defendants may have in relation to the allegations made against them. Therefore, I refuse this application pending the conclusion of Examinations for Discovery. The application may be renewed, if necessary, at that time.

Applications to Consolidate or Sever the Actions

[22] The majority of the Notices of Motion brought before me concern ICBC's attempt to have the three plaintiff actions heard at the same time as the Main Action, and applications by various defendants to have the portions of the Main Action that relate to them severed and either heard separately or at the same time as their plaintiff action in the case of Baba, Fishman and Chu.

[23] Mr. Affleck, counsel for Tony Mullarai and Alex Osorio, submits that it is premature to make any decision relating to severance or consolidation at this time, relying on the decision of Master Kirkpatrick (as she then was) in Merritt v. Imasco Enterprises Inc. (1992), 2 C.P.C. (3d) 275 (B.C.S.C.), at pp. 282-3:

> I was informed that examinations for discovery are in their early stages. It is a year to trial. Notwithstanding the enormity of the amounts claimed, a very significant amount of pre-trial work must realistically be expected yet to be done. Until the examinations for discovery have been seriously tackled (though not necessarily concluded), I doubt that anyone can accurately advise the court of the practical result to be achieved by the order sought (for consolidation).

[24] The present circumstances are substantially different from those in the Merritt case. It appears unlikely that further discoveries will substantially change the nature of the allegations and the commonalities between them. Furthermore, in this case, ICBC has already obtained default judgment against half of the defendants. Those defendants have, therefore, been deemed to have admitted the allegations made against them. Thus, ICBC has already established a substantial part of its case. In my opinion, there is, sufficient information now before me to rule on whether these matters should be consolidated or severed.

[25] Rule 5(6) of the Rules of Court sets out when it is appropriate to sever an action:

> Where a joinder of several claims or parties in a proceeding may unduly complicate or delay the trial or hearing of the proceeding or is otherwise inconvenient, the court may order separate trials or hearings or make any order it thinks just.

Rule 5(8) addresses the issue of consolidation:

> Proceedings may be consolidated at any time by order of the court or may be ordered to be tried together at the same time or on the same day.

[26] In Merritt, Master Kirkpatrick set out some of the factors that should be considered by a court in exercising its discretion to grant an order consolidating actions. At p.282 she said:

> None of the submissions of counsel address the real issue to be determined. That is, are the issues raised by the pleadings sufficiently similar to warrant the order sought and will the order make sense in the circumstances? An application to have actions tried at the same time thus requires an examination of circumstances which may be of a more general nature than is made under R. 27 or 19. I accept that the foundation of an application under R. 5(8) is, indeed, disclosed by the pleadings. The examination of the pleadings will answer the first question to be addressed: do common claims, disputes and relationships exist between the parties? But the next question which one must ask is: are they "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"? Webster v. Webster (1979), 12 B.C.L.R. 172 at 182, 10 R.F.L. (2d) 148, 101 D.L.R. (3d) 248 (C.A.). The second question cannot, in my respectful view, be determined solely by reference to the pleadings. Reference must also be made to matters disclosed outside the pleadings:
>
> (1) Will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?;
>
> (2) Will there be a real reduction in the number of

trial days taken up by the trials being heard at the same time?;

(3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?; and

(4) Will there be a real saving in experts' time and witness fees?

This is in no way intended to be an exhaustive list. It merely sets out some of the factors which, it seems to me, ought to be weighed before making an order under R. 5(8).

[27] In Shah v. Bakken (1996), 20 B.C.L.R. (3d) 393 (S.C.) at 398, Master Joyce suggests two additional considerations that should be added to the list provided by Master Kirkpatrick in Merritt:

...(5) Is one of the actions at a more advanced stage than the other? See Forestral Automation Ltd. v. R.M.S. Industrial Controls Inc., unreported, March 6, 1978, No. C76533/76, Vancouver (B.C.S.C.).

(6) Will the order result (sic) a delay of trial of one of the actions and, if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have?

[28] The same considerations apply to whether the application is to consolidate various actions or sever part of an existing action. Analytically, they are two sides of the same coin. My analysis on whether the plaintiff actions should be heard together with the Main Action will, therefore, also apply to the applications by Irena and John Baba, Tony Mullarai and Alex Osorio, Bibi Fishman, Dickson Kar Lee, Doi Tai Wong, and George Chu to sever the portion of the Main Action that relates to them.

[29] In my opinion, an examination of the various pleadings reveals that, with the exception of Irena Baba, ICBC has sufficiently established that common issues of law and fact exist such that their request to not only hear all of its actions against the various defendants at the same time, but also the three plaintiff actions, is justified.

[30] The same questions of law regarding what constitutes fraud and conspiracy to commit fraud will need to be addressed in assessing liability against all the defendants who are currently not in default. These same issues will also arise in relation to ICBC's defence in the three plaintiff actions brought against it.

[31] Obviously, there will be common questions of fact in regards to the Main Action and the three plaintiff actions as they involve the same events. In fact, each of the three plaintiffs seek to have the sections of the Main Action that relate to these actions severed from the Main Action and consolidated with their plaintiff action.

[32] More specifically in relation to the issue of severance, the factual issues within the Main Action do not appear to be as closely related. The factual circumstances, as plead by ICBC, are different than those in ICBC v. Teo Le et al. (5 September 1997), Vancouver C966020 (B.C.S.C.) where the majority of the incidents were planned by a single individual. However, the pleadings do reveal interconnections between the various incidents. An examination of the first four incidents reveals at least one of the defendants was involved in another of the four accidents. The same can be said for the second group of accidents.

[33] Counsel for ICBC has also identified three common questions that he says favour hearing all of these matters at one time. First, ICBC is seeking as part of its damages, compensation for the overhead costs it incurred in investigating these alleged frauds. This will require calling expert evidence and will need to be assessed against all

defendants against whom default judgment has been taken.

[34] Second, ICBC says that there is a common question of law relating to the effects of the default judgments. When default judgment was entered against the defendants indicated, they were deemed to have admitted the allegations made against them in ICBC's Statement of Claim. The applicability of these deemed admissions on the cases of the defendants who were involved in the accidents but have entered defences will need to be resolved. This matter will affect the cases of all the remaining defendants.

[35] Third, ICBC has indicated that it will seek additional punitive damages against defendants who have actively pursued a plaintiff action if they are found to have committed a fraud against the insurer on the basis that such an action is an abuse of the court process.

[36] I find that there is sufficient commonality to justify hearing all of the actions against all of the defendants at one time.

[37] I must now turn to the second part of the test set down in Merritt, and determine if the actions are "so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense"?

[38] It is clear that hearing all of these matters at one time will result in an overall saving of the courts time. As with the hearing of these applications, interlocutory matters can be heard at one time and be resolved for all of the actions. Furthermore, pre-trial planning would only have to be done for a single trial instead of a multiplicity of proceedings.

[39] In addition, evidence as it relates to the various incidents would only have to be adduced once. As I have indicated, there are inter-relationships within the first and second groups of incidents. While the connection between the first group and the second is more tenuous, counsel for ICBC indicates that relationships exist between these two groups as well. It will undoubtedly save time if what occurred in each incident and the relationships between the parties would only have to be proven by ICBC once, instead of at a variety of different trials. As I previously said, ICBC will need to adduce expert evidence in relation to the cost of overhead expenses. It would be less costly and less time consuming if this was done only once.

[40] Neither the severing of the claims against some of the defendants in the Main Action nor hearing the plaintiff actions at the same time as the Main Action will result in a prejudicial delay. Time for a 30 day trial has already been set aside for April 1999. It is unlikely that any of the defendants could acquire a trial date for a shorter trial much before that time.

[41] My chief concern in having all of these matters heard at one time is the potential inconvenience the defendants could suffer from being involved in a 30 day trial of which only a part relates to them. None of the defendants in the Main Action is wealthy. Several of the defendants' counsel submitted that being involved in a 30 day trial, as opposed to a 2 or 3 day trial, would result in the defendants being unable to afford legal representation. Counsel for John and Irena Baba has indicated that he suspects a lengthy trial could even result in the loss of his clients' jobs.

[42] I conclude this problem can effectively be resolved by permitting the various defendants and their counsel to only attend those portions of the trial that relate to them. This will require a fair amount of planning, as I do not want to have the trial being delayed in order to ensure all the necessary counsel are present, but counsel for ICBC has agreed to such an approach and I believe it is quite possible to do with some careful planning. Mr. Potts for ICBC says:

Now, shortly put, the issue before you comes down to this; is it better to have four trials or one? I say asking the question provides the answer. I should tell you, as well, My Lord, that it's the plaintiff's position that there's no difficulty in allowing

various of the defendants to be excused from trial, and I will go further, the plaintiff will do everything it can do, subject to prejudicing its case, to assist in that regard.

In particular, I am content as a general proposition to indicate when which evidence will be called. I am prepared as a general proposition to recall certain witnesses where their evidence spans two or three cases. In short, we will do whatever we can do to minimize the inconvenience for various of the defendants.

[43] It has been suggested that because of the allegations of conspiracy and the inter-relationship between the incidents that counsel will need to be present for more than just the testimony relating to the incident in which their client is involved, I do not think that this will greatly increase the costs to the defendants. If the trials were heard separately, any testimony that relates to one of the defendants would be heard at his or her separate trial, thus lengthening that trial. I am confident that counsel for ICBC will be able to predict when the name of one of the other defendants will arise in testimony and will be able to instruct the other counsel that they should attend on that day. See Wirtz v. Constantini (1982), 137 D.L.R. (3d) 393 (B.C.S.C.), Spencer, J. at 396.

[44] A consideration not specifically spoken of in the framework established by Master Kirkpatrick, but mentioned in many of the cases presented to me, is a concern over inconsistent results: see Wirtz, supra, at 394 and Katinic v. Bruno (7 March 1995), New Westminster S09539 (B.C.S.C.) at p.6. This is an important factor in assessing whether or not the plaintiff actions and the Main Action are heard together. This is not, however, a particularly great concern because the plaintiffs in the Baba, Fishman and Chu actions each seek to have the portions of the Main Action that relate to them heard at the same time as their plaintiff action.

[45] I do not think that there is as great a risk of inconsistent results, as suggested by counsel for ICBC, if the applications for severance of Tony Mullarai, Alex Osorio, Dickson Kar Lee or Doi Tai Wong were granted. It is entirely possible that some of these incidents were fraudulent conspiracies and some were not; it is also possible that some of the participants were aware of the conspiracy while others were ignorant of it. However, if found liable the question of the overhead amount and the appropriate amount of punitive damages would need to be assessed, and in my opinion it is desirable to maintain consistency in these amounts for all of the defendants. Furthermore, the inconvenience of separate trials for these individuals outweighs any prejudice they might suffer.

[46] Even if I thought that these actions were best heard separately, given the overlapping parties such an order would be extremely difficult to make. For example, if I were to grant George Chu's application to hear the allegations in relation to Accident #B7 alone, this would conflict with the application by Dickson Kar Lee to have a separate trial in relation to Accidents #B6 and #B7. If I were to grant Bibi Fishman's application to hear the allegations in relation to Accident #B5 separately, this would bring along the claim against Raymond Sam and Ernest Cheng, who are each involved in at least one other incident. All of the defendants who seek severance, if their application was granted would take along another party who is involved in another accident. Any attempt at severing one of the defendants alleged to have committed conspiracy would ultimately lead to increased not decreased complications.

[47] Mr. Promislow, counsel for John and Irena Baba, seeks severance of the claims against his clients and the consolidation of that claim with John Baba's plaintiff's claim. While I am not willing to sever John Baba from the Main Action, I believe that the prejudice that Irena Baba would experience outweighs any convenience in hearing that matter at the same time as all of the other actions. As noted, the only claim against Ms. Baba is that she allowed a car which was actually

owned by her husband to be registered in her name. In my view, that is not compellingly similar to the other allegations made. Nor do I find that the convenience of hearing that matter, which in my opinion could be resolved with little court time, at the same time as the other matters, is sufficient to outweigh the possible prejudice Ms. Baba would endure.

[48] I do not accept Mr. Promislow's suggestion that, at the very least, I should sever the two groups of incidents. While I agree from the information I have before me that the link between the two groups of incidents is tenuous, I cannot see what would be gained by severing them. At the very least, the expert evidence would have to be called twice. Furthermore, it would still involve the defendants in a lengthy trial. Considering that the defendants need only attend that portion of the trial that concerns them, I do not believe that such an order would result in the defendants being in court for any shorter a period of time.

[49] Should I not order that the fraud and conspiracy charges against John Baba be heard in a separate hearing along with the Baba Action, Mr. Promislow has requested that I order ICBC to pay a sum totaling $30,000, in trust, to cover the Baba's legal fees. He indicated that the Baba's could not afford to participate in a 30 day trial otherwise. If John Baba was found liable, this money would be repaid to ICBC, and if not it would contribute towards Mr. Baba's solicitor fees and disbursements.

[50] He claims I have authority to make such an order pursuant to R. 5(6), which allows me the discretion to make any order I think just. Such an order should, in my opinion, be made only in rare circumstances. Counsel could not cite a case where such an order has been made. While I have sympathy for lower income persons in the litigation process, I do not think that the Baba's lack of financial means, alone, justifies such an order and no extraordinary circumstances were brought to my attention that justifies this application. The cost of litigation will, at any rate, be reduced by excusing Mr. Baba from those parts of the trial that do not involve him.

[51] Several of the defendants' counsel have submitted that hearing all of these matters together before a jury, which is the intention of ICBC although a Jury Notice has not yet been issued, would be prejudicial to their clients. In particular, counsel for Bibi Fishman and George Chu submit that there is a danger that their plaintiff actions will be lost within a 30 day trial dealing predominantly with allegations of fraud and conspiracy. Counsel for Ms. Fishman points to an article from the Vancouver Sun that wrongly suggested all the defendants had default judgments taken against them. While I accept that may be a legitimate concern, I believe that if this matter does proceed before a jury any such prejudice can effectively be overcome through the submissions of counsel and the careful instruction of the jury by the trial judge. Counsel for ICBC has said that it is his intention to have the three plaintiff actions heard at the beginning of the trial, so these individuals will not lose what is generally thought of as the plaintiff's advantage in presenting his or her case first.

[52] Defendants' counsel have also suggested that this matter is simply too complicated to bring before a jury and that it should be severed into manageable components. Mr. Nathanson, who represented Dickson Kar Lee and Doi Tai Wong on this issue, cited Thompson v. Coquitlam (1979), 15 B.C.L.R. 59 (S.C.). In that case, Esson J. (as he then was) struck the claim of conspiracy finding that the pleadings were deficient and disclosed no reasonable claim. Esson J. also denied a request to consolidate the various actions for wrongful dismissal made by five former welfare administrators against their former employers, each a municipal government. At p. 63 he said:

> If the allegations of conspiracy could be seen to have substance, that would be a weighty consideration in favour of ordering consolidation. Obviously, if five persons are alleged to have conspired and if all are sued in respect of that conspiracy it is desirable that those allegations be dealt with in one action. But the resulting action, with five plaintiffs, six defendants, three third parties and seven law firms involved, would be a cumbersome and

> expensive one. Experience has shown that actions in which there is a multiplicity of parties and issues move very slowly, and when they eventually get to trial take a long time to try. That burden should be imposed upon the defendants only for cogent reasons. Such reasons have not been established.

[53] The claims made by the various plaintiffs were identical and, accordingly, Esson J. determined that it would be more efficient for one plaintiff to proceed with his action as a "test case", the result of which would likely resolve all of the claims. The same considerations do not apply in this case, which involves a single plaintiff and a variety of different defendants who are accused of similar, but not identical, misdeeds. Severance would not, in these circumstances, be the most efficient method to resolve these matters. The conclusion of one severed trial would not logically lead to the resolution of the other actions as in Thompson.

Conclusion

[54] In conclusion, I grant ICBC's applications to have the Baba, Chu and Fishman Actions heard at the same time as the Main Action and in Vancouver. I dismiss the applications by John Baba, Bibi Fishman, Dickson Kar Lee, Doi Tai Wong and George Chu seeking severance from the Main Action. I do, however, grant Irena Baba's application for severance.

[55] Dickson Kar Lee's applications to strike portions of the Statement of Claim and for particulars at this time are dismissed. His application seeking documents from ICBC was adjourned at the time of this hearing.

[56] Finally, I order that the defendants in the Main Action are excused from attending those portions of the trial that do not relate to them.

Costs

[57] The costs of these applications will be in the cause.

"Coultas, J."