



Court of Appeal File Nos. CA44460, CA44463,
CA44469, CA44478
Registry Vancouver

COURT OF APPEAL

BETWEEN:

ROBERT GEORGE KIRK, as Representative Plaintiff

RESPONDENT
(Plaintiff)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA as represented by
THE MINISTER OF TRANSPORTATION AND
INFRASTRUCTURE and THE MINISTER OF FORESTS,
LANDS AND NATURAL RESOURCE OPERATIONS,
EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD.,
DANNY LaSANTE and TRANSWEST HELICOPTERS
LTD.

APPELLANTS
(Defendants and Third Parties)

ORDER

BEFORE:

The Honourable Madam Justice Garson
The Honourable Madam Justice Fisher
The Honourable Madam Justice Griffin

Vancouver, British Columbia, April 5, 2019

THE APPEAL from the order of Mr. Justice Masuhara of the Supreme Court of British Columbia at Vancouver, British Columbia dated the third day of May, 2017 (the "**Order Below**"), coming on for hearing on October 15-16, 2018; AND ON HEARING Brad W. Dixon and Michelle T. Maniago for the appellant Danny LaSante, Ian M. Knapp and Emily Dvorak (Articled Student) for the appellant Transwest Helicopters Ltd., Kelsey Sherriff for the appellant Executive Flight Centre Fuel Services Ltd., James L. Maxwell and Tamara S. Saunders for the appellant Her Majesty the Queen in Right of the Province of British Columbia, and David M. Rosenberg, Q.C., David M. Aaron, David W.P. Moriarty and Naomi Moses for the respondent; AND ON READING the materials filed herein; AND ON JUDGMENT BEING PRONOUNCED ON THIS DATE;

THIS COURT ORDERS that the appeal is allowed and the Order Below is set aside.

THIS COURT FURTHER ORDERS that the certification application be remitted to the chambers judge, and on remittal:

a) that there is an identifiable class of two or more persons and an appropriate representative plaintiff, and that the pleadings disclose a cause of action on issues not requiring reconsideration;

b) the following proposed common issues do not require reconsideration:

(a)/(i) Did all, or any of, the Defendants owe a duty of care to the class members?

(b)/(ii) Did all, or any of, the Defendants breach this duty, and if so, when?

(d)/(iv) Did the acts or omissions of any of the Defendants cause an evacuation order to be issued with respect to the class members' properties?

(m)/(xiii) If two or more of the Defendants are found to be at fault, are they jointly and severally liable to the members of the class?

c) the following proposed common issues are struck out and are not remitted for reconsideration:

(c)/(iii) If the Defendants, or any of them, did breach their owed duty, did this breach cause the class members to suffer harm?

(f)/(vi) Did the acts or omissions of any of the Defendants, jointly and/or severally, cause the class members to suffer a loss of use of their properties and/or an interference with the quiet enjoyment of their properties?

(i)/(ix) Did the acts or omissions of any of the Defendants cause the real properties within the Evacuation Zone to diminish in market value? If so, what is the best method for valuing the diminution of that market value?

(j)/(x) Do the acts or omissions of any of the Defendants justify an award of

punitive damages?

(k)/(xi) If an award of punitive damages is justified, and if the aggregate compensatory damages awarded to class members does not achieve the objectives of retribution, deterrence and denunciation in respect of such conduct, what amount of punitive damages is awarded against the Defendants, or any of them?

d) The following proposed common issues are struck out and are remitted for reconsideration:

(e)/(v) Did the resulting evacuation of the class members from their properties constitute a loss of use of their real properties and/or an interference with the quiet enjoyment of their real properties?

(h)/(viii) Does the rule in *Rylands v. Fletcher* (1886), L.R. 1X 265 at 279, 289 (H.L.) apply to the facts in this case? If so, are any or all of the Defendants liable for damages in accordance with this rule?

e) The following proposed common issues do not require reconsideration but are amended as follows:

(g)/(vii) Did any of the Defendants, through their acts or omissions, jointly and/or severally cause and/or contribute to the Spill (as defined in the Amended Notice of Civil Claim)?

(l)/(xii) Did any of the Defendants, through their acts or omissions, and to what degree, cause or contribute to the Spill and issuance of the Evacuation Order?

f) whether a class proceeding is the preferable procedure is an issue remitted for reconsideration.

APPROVED AS TO FORM:

Counsel for the Appellant
Danny LaSante

Counsel for the Appellant
Transwest Helicopters Ltd.

Counsel for the Appellant
Executive Flight Centre Fuel Services
Ltd.

Counsel for the Appellant
Her Majesty the Queen in Right of the
Province of British Columbia as
Represented by the Minister of
Transportation and Infrastructure, and
the Minister of Forests, Lands and
Nature Resource Operations

Counsel for the Respondent
Robert George Kirk

*Settled before the
Registrar
x August 2019*

N. Gibson J.A.



BY THE COURT

Deputy Registrar

[Signature]

ENTERED

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(Defendants and Third Parties)

CONSENT ORDER

BWD/MTM

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