

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Shamtanis v. Leung*,
2023 BCSC 829

Date: 20230426
Docket: M229594
Registry: New Westminster

Between:

Alexander Shamtanis

Plaintiff

And

Silja Leung

Defendant

And

Alexander Shamtanis

Defendant by way
of Counterclaim

Before: The Honourable Mr. Justice Riley

Oral Reasons for Judgment

Counsel for the Plaintiff/Defendant by way
of Counterclaim:

P. Di Tomaso

Appearing on her own behalf:

S. Leung

Place and Date of Trial:

New Westminster, B.C.
April 17-19, 2023

Place and Date of Judgment:

New Westminster, B.C.
April 26, 2023

[1] **THE COURT:** These are reasons for judgment following a three-day trial in relation to Ms. Leung's claim for damages in connection with a motor vehicle accident that occurred on 6 August 2018.

Introduction

[2] Ms. Leung alleges that the opposing party, Mr. Shamtanis, is liable for negligence in the collision.

Facts

[3] The following facts are uncontroverted:

- a) The collision occurred on 6 August 2018 at or around 11:10 a.m. within the intersection of North Road and Gatineau Place.
- b) North Road runs north and south. Gatineau Place runs east and west and terminates at North Road, where it leads into the parking lot of a grocery store and some other businesses.
- c) The intersection is controlled by traffic lights in both directions.
- d) Immediately before the collision, Ms. Leung was driving her vehicle northbound on North Road approaching the intersection, while Mr. Shamtanis was driving eastbound on Gatineau Place toward the intersection.
- e) The two vehicles came together in a collision on the west side of North Road, at or near the curb lane, that is, the lane furthest to the east on North Road.
- f) Based on the photographs of the vehicle damage, it is clear that the front end of Mr. Shamtanis's vehicle made contact with the front driver side of Ms. Leung's vehicle.

- g) Ms. Leung's vehicle was a write-off. It is not clear what the cost or extent of damage to Mr. Shamtanis's vehicle was, although, based on the photographs, I would say the damage was considerable.
- h) It is evident from the manner in which the cars collided that one of the two parties drove through a red light while the other party was driving into the intersection on a green light.

[4] Against this backdrop, the key factual issue in this trial insofar as liability is concerned is which party drove through the red light.

[5] There are some additional uncontroverted facts and some details with respect to the procedural history of the case that are also germane:

- a) The police attended the scene shortly after the collision. An officer spoke with Mr. Shamtanis and Ms. Leung. There is some dispute between the parties about whether the officer spoke with anyone else.
- b) The officer issued a violation ticket to Ms. Leung at the scene for failing to heed a traffic signal, basically driving into the intersection on a red light.
- c) Ms. Leung later filed a notice of dispute with respect to that ticket on the basis that the officer who issued it did not actually witness the collision. Rather, the officer appears to have issued the ticket based on a third party report, that is, a report made by someone who claimed to have witnessed the collision. The Motor Vehicle Branch acceded to Ms. Leung's argument and cancelled the first ticket.
- d) The police issued a second violation ticket in respect of the same incident, again citing Ms. Leung for driving into the intersection on a red light. Ms. Leung disputed that ticket on the same basis, that is, that the officer who issued it did not actually witness the alleged infraction, and the Motor Vehicle Branch again acceded to that argument and cancelled the ticket.

- e) Ms. Leung had a valid driver's insurance policy with ICBC. ICBC determined that Ms. Leung was 100% at fault, taking the position that she was the one who drove through the red light. This was based on either the violation ticket or the alleged third-party witness report, which I will come to in a moment. In any event, ICBC took the position that Ms. Leung was 100% at fault for insurance purposes.
- f) Ms. Leung disputed or appealed ICBC's administrative determination that she was at fault. Her appeal was rejected and the initial decision finding her 100% responsible for the collision was affirmed. This meant, among other things, that Ms. Leung's insurance premiums increased as a result of the collision.
- g) Mr. Shamtanis filed an action against Ms. Leung alleging that she was 100% responsible for the collision. Ms. Leung filed a response to the claim denying liability. She also filed a counterclaim asserting that Mr. Shamtanis was liable for the collision and seeking damages against him. In the amended claim, she seeks damages for psychological injuries, various physical maladies said to be tied to her psychological injuries, loss of wages, loss of future earning capacity, and punitive damages.
- h) With regard to Mr. Shamtanis's claim against Ms. Leung, ICBC assumed conduct of Ms. Leung's defence, as is their right to do under the relevant provisions of the relevant regulations. ICBC eventually settled Mr. Shamtanis's claim against Ms. Leung. This was over Ms. Leung's objection.
- i) The trial in this matter has to do with Ms. Leung's counterclaim.

[6] I want to make it clear that the settlement of Mr. Shamtanis's claim is legally irrelevant to my assessment of liability in relation to Ms. Leung's counterclaim. These points are simply included in my review of the facts as part of the procedural history

of the case and because the manner in which Mr. Shamtanis's claim was dealt with is tied to the damages claimed or injuries claimed by Ms. Leung.

[7] That brings me to the trial in this matter. As the plaintiff by counterclaim, Ms. Leung presented her case first. She called one witness, namely herself. Mr. Shamtanis, the defendant by counterclaim, called two witnesses in his defence, namely himself, and Ms. Poitras, an allegedly independent third-party witness to the collision.

Ms. Leung's Trial Testimony

[8] Ms. Leung testified that she was driving northbound on North Road in the curb lane at a relatively cautious rate of speed, and that she proceeded through the intersection on a green light. Ms. Leung says she did not notice Mr. Shamtanis's vehicle until it ran into the side of her car.

[9] Ms. Leung testified that she believes there were two occupants in Mr. Shamtanis's vehicle, namely Mr. Shamtanis in the driver's seat and another person in the front passenger seat. In cross-examination, Ms. Leung testified that she could see a shadow or the shape of a person in the front passenger seat of the Shamtanis vehicle, but she could not describe what she saw in any greater detail than that.

[10] Ms. Leung maintained that apart from her own vehicle and the Shamtanis vehicle, there were no other cars on the road at the time. More specifically, it was her evidence that there were no other vehicles in the intersection, no other vehicles approaching the intersection from North Road in either direction, and no other vehicles approaching the intersection from Gatineau Place.

[11] After the collision, Ms. Leung drove ahead about one or two car lengths and pulled over to the side of North Road. She saw Mr. Shamtanis proceed into the parking lot of the grocery store. In direct examination, her evidence was that the Shamtanis vehicle drove some distance away and parked in one of the stalls near the southeast corner of the parking lot. Mr. Shamtanis then walked back toward the

collision scene and, as he approached her vehicle, he was talking on a cellphone, apparently to a 9-1-1 operator.

[12] For her part, Ms. Leung had some trouble getting out of her vehicle because of the damage to her front driver side door, but eventually got out and spoke briefly with Mr. Shamtanis. She later spoke with the police officer who issued her a ticket.

[13] Ms. Leung says that Mr. Shamtanis refused to take note of her name and driver's licence. Ms. Leung says she asked Mr. Shamtanis to show her the damage to his car and she walked with him some distance from the collision scene to the southeast quadrant of the parking lot where his car was located. Ms. Leung took at least one photograph of Mr. Shamtanis's car where it was parked after the collision. She also took a photograph of her own car.

[14] I have four points to note about Ms. Leung's testimony.

[15] First, I do not accept Ms. Leung's evidence that there were no other vehicles at or near the intersection at the time. I find this recollection to be quite unlikely given the time of day and the nature of the area. I note that Ms. Leung's photographs taken perhaps 10 or 20 minutes after the collision indicate that there is a fair amount of vehicle traffic at or near the intersection and a fair number of vehicles parked in the parking lot to the east of North Road. All this suggests to me that the traffic on the road at the time of the collision was likely not as light as Ms. Leung seems to recollect in her testimony.

[16] In any event, I accept the testimony of the independent witness, Ms. Poitras, that at the time of the collision there were in fact multiple other vehicles on the road, namely vehicles stopped northbound and southbound on North Road, and vehicles at the lights for traffic going eastbound on Gatineau Place. I accept Ms. Poitras's evidence that she was stopped in the parking lot facing west, looking directly into the intersection at the time.

[17] Second, with regard to the crucial question of whether the light was green when Ms. Leung entered the intersection, Ms. Leung's testimony as a whole was

somewhat ambiguous. For the most part, Ms. Leung simply asserted in her testimony that the light was green as she entered the intersection, without asserting that she had a specific recollection of looking at the light. When pressed on this point in cross-examination and at examination for discovery, Ms. Leung said at one point in her evidence that she saw the light was green, but at other points in her testimony, she asserted that the light was green because she has never driven through a red light before or after this occasion or on this occasion. This reasoning is somewhat circular and does not help me in determining whether Ms. Leung was actually looking at the light as she entered the intersection.

[18] Third, there is no evidence to support Ms. Leung's assertion that she saw a second person, a passenger, in Mr. Shamtanis's vehicle at the time of the collision. Ms. Leung's evidence on this point is not very reliable. She said she saw a shadow or the shape of a person in the passenger seat. She was not able to give any other description. On her own account, Ms. Leung did not notice Mr. Shamtanis's car until it hit her and thereafter I question whether she was in a state to make a reliable observation in the immediate aftermath of the collision. There is no evidence from any other source that there was a passenger in Mr. Shamtanis's vehicle, and Mr. Shamtanis himself maintained that he was the only occupant in his vehicle at the time of the collision.

[19] Fourth, I cannot accept Ms. Leung's testimony as to where Mr. Shamtanis drove and parked his vehicle after the collision. Ms. Leung's recollection was that Mr. Shamtanis drove quite a distance away to the southeast corner of the parking lot and parked in a row of stalls slightly to the south of the middle of the parking lot, as I say, in the southeast quadrant. However, based on the scenery and backdrop of the photograph that Ms. Leung took of Mr. Shamtanis's car showing damage to the front end after the collision, I conclude that the car was in fact parked in the first row of parking stalls just immediately to the east of North Road. Ms. Leung says that cannot be so because one can see on the opposite side of North Road in the background a car repair shop that is actually half a block south of the intersection. I do not agree with Ms. Leung's assessment of the photo. My assessment is that the

photograph is taken at an angle looking southwest, such that one can see the car repair shop on the opposite side of North Road.

[20] Of course, Ms. Leung's testimony about where Mr. Shamtanis parked his vehicle does not relate to the central issue of who drove through the red light, but I find that Ms. Leung's recollection about where Mr. Shamtanis parked his vehicle is clearly not accurate and this causes me to question the accuracy of some other aspects of her testimony.

Mr. Shamtanis's Trial Testimony

[21] Mr. Shamtanis testified that he was proceeding eastbound on Gatineau Place intending to drive into the parking lot on the opposite side of the street. He stopped at the red light for, he estimates, about 30 seconds. When the light turned green, he proceeded through the intersection, where he ran into Ms. Leung's vehicle. He did not see Ms. Leung's vehicle until the point of impact.

[22] After the collision, Mr. Shamtanis drove into the parking lot. A woman in a vehicle caught his attention and she said she could be a witness for him to describe what happened, if necessary. The woman, clearly Ms. Poitras, handed Mr. Shamtanis a business card. Mr. Shamtanis testified that he stopped his vehicle, got out, and obtained the business card, and then got back into his vehicle and backed it up into a parking stall. He said he had parked in the first row of parking stalls to the east of North Road.

[23] After his dealings with Ms. Poitras, Mr. Shamtanis proceeded to the point of the accident, saw Ms. Leung's vehicle stopped a short distance away, and spoke with her briefly. He asked her if she was okay and then said, "You know you ran a red light" or words to that effect. Ms. Leung did not agree.

[24] Mr. Shamtanis then spoke with the police. He told them about the witness, Ms. Poitras, and gave the police officer the card the witness had given him. Mr. Shamtanis showed Ms. Leung where his car was parked and she took a photo of it.

[25] Mr. Shamtanis testified that he initially called 9-1-1. After finishing up with the police at the scene, he went to the Royal Columbian Hospital in New Westminster. Mr. Shamtanis could not recall whether he got there by ambulance or by taxi.

[26] Mr. Shamtanis was cross-examined at length but was entirely unshaken in his description of the collision. There is a discrepancy between the testimony of Mr. Shamtanis and the third-party witness, Ms. Poitras, about precisely where in the parking lot Mr. Shamtanis spoke with her and collected her business card, but I find that this discrepancy is a minor detail and it has no bearing on the truthfulness or reliability of Mr. Shamtanis's account of the collision itself.

Trial Testimony of Ms. Poitras

[27] Ms. Poitras was called as a witness for the defendant by counterclaim, Mr. Shamtanis. Ms. Poitras testified that she did not know either party in the case and the only time she ever met Mr. Shamtanis was on the date of the collision, and then briefly again on the date when she came to court to testify. I have been given no reason to question Ms. Poitras's testimony on this point. I find that she is a completely independent witness to the events in question with no motive to lie or misrepresent what occurred, and no apparent reason to shade her evidence in favour of one party or against the other.

[28] Ms. Poitras testified that just prior to the collision, her vehicle was stopped at the stop light in the parking lot on the east side of North Road. The light was red. There was an advance green signal for cars turning left from Gatineau Place onto North Road. One or more vehicles proceeded into or through the intersection. Then the light turned green and a vehicle, which I find to be Mr. Shamtanis's vehicle, proceeded into the intersection eastbound heading toward the parking lot.

[29] Ms. Poitras noted that all of the traffic on North Road was stopped at a red light. There was a row of cars stopped at the light facing southbound on North Road, and a row of cars stopped at the light facing northbound on North Road as well.

[30] Ms. Poitras then noted one vehicle, which I find to be Ms. Leung's vehicle, going northbound on North Road in the curb lane through the intersection on a red light. It was obvious to Ms. Poitras that it was a red light, because all of the other vehicles on North Road were stopped at the light. At this point, Ms. Poitras could tell there was going to be a collision. She could see the Shamtanis vehicle proceeding straight through the intersection on Gatineau, and the Leung vehicle proceeding straight through the intersection on North Road. The two vehicles collided more or less right in front of her. From her position, she could not see precisely which parts of the vehicles made contact, but she saw the collision, as I say, right in front of her vehicle.

[31] Ms. Poitras's evidence was that after the collision, both vehicles appeared to be "driveable". Ms. Poitras backed her vehicle up and spoke with Mr. Shamtanis, informing him that she had seen the collision and she could be a witness for him. She offered her card and he reached out or stepped out of his car without fully getting out and retrieved it from her. Ms. Poitras then left the scene. She had to drive around some of the debris as she exited onto North Road.

[32] Ms. Poitras drove home. A short time later, she got a call from a police officer and she later sent the officer a typewritten statement of what occurred. About one year later, she was interviewed by an investigator and gave another statement, which the investigator typed up and she signed. She also reviewed a street diagram prepared on graph paper, which the investigator prepared and Ms. Poitras agreed was an accurate reflection of the layout of the intersection where the collision occurred, though not necessarily an accurate depiction of each of the vehicles that were on the road at the time and their positions.

[33] Ms. Poitras was cross-examined at length about a number of points. I have five specific comments about her evidence.

[34] First, Ms. Poitras was cross-examined at length about exactly where in the parking lot she met up with Mr. Shamtanis after the collision to give him her business card. As noted, I accept that there is a minor discrepancy between the evidence of

Ms. Poitras and the evidence of Mr. Shamtanis about the precise location in the parking lot where this interaction occurred. As between these two witnesses, I find Ms. Poitras's account to be most reliable, based on her description of where Mr. Shamtanis stopped his car and a comparison to the photograph taken by Ms. Leung a short time after that conversation must have occurred. Ms. Poitras testified that Mr. Shamtanis spoke with her and then must have backed his car up one further row and parked it in the stall shown in the photograph, which makes sense to me based upon the orientation of the vehicle in the photograph.

[35] Second, Ms. Poitras was cross-examined at length about the precise point of contact between the two vehicles. In one of her two written statements, or at least one of them, she said that the "front end" of Ms. Leung's vehicle hit the "right front corner" of Mr. Shamtanis's vehicle. In her testimony in chief, Ms. Poitras said she could not actually see where the two vehicles hit each other because of her position. I accept that testimony as accurate. I find that Ms. Poitras's written statement where she said the "front end" of Ms. Leung's vehicle hit the front corner of Mr. Shamtanis's vehicle to be inaccurate or imprecise.

[36] In cross-examination, Ms. Poitras tried to explain the difference, but I did not find her explanation very compelling. The fact is Ms. Poitras was not accurate in her written statement in what she said about how the vehicles collided. I find that to be an error, but it does not cause me to conclude that Ms. Poitras was lying about how the accident unfolded, nor does it cause me to conclude that her trial testimony is unreliable. The error in the statement is simply a function of Ms. Poitras not being precise or making assumptions when she gave the written statement.

[37] Third, Ms. Poitras was cross-examined about her assertion that both vehicles appeared to be driveable after the collision. I do not find this line of questioning to cast any doubt on the credibility or reliability of Ms. Poitras's trial testimony. I accept Ms. Poitras's testimony that both vehicles were in fact able to drive away and reposition themselves after the collision. It is quite clear from all of the accounts that the two vehicles did not remain locked in place in the intersection where they

collided. Both vehicles cleared the intersection. Whether they were later determined to be total write-offs is not germane to what Ms. Poitras witnessed at the time of the collision or immediately thereafter.

[38] Fourth, Ms. Poitras was questioned about the timing of her statement to the police. She said she was contacted by the police a short time after she got home, but later in her testimony Ms. Poitras said it could have been an hour later. In closing submissions, Ms. Leung said this was not credible. I do not agree. I find that Ms. Poitras may not have an accurate recollection of when exactly she spoke with the police officer. I find that it was most likely within a matter of minutes after she arrived home, while the police officer was still in the parking lot, and prior to his issuing Ms. Leung the first violation ticket. The fact that Ms. Poitras later typed up a statement and emailed it to the police officer does not mean that she did not tell the police officer what she witnessed much earlier over the phone, prior to the police officer preparing and issuing the first violation ticket.

[39] Fifth, Ms. Leung submitted in closing argument that in her statement, Ms. Poitras asserted, after speaking with Mr. Shamtanis at the scene, she exited the parking lot from a different route than the one she was originally exiting or positioned to exit from. I do not believe this point was actually put to Ms. Poitras during her trial testimony, so I am not sure any use can be made of it in argument. The point was not in evidence and the witness did not have a chance to address the alleged discrepancy. In any event, even if I am wrong in my recollection about that, I find that Ms. Poitras's trial testimony that she exited the parking lot at the intersection of North Road and Gatineau Place, and that she had to drive around some of the debris from the collision to get out of the lot, has the ring of truth. I find this testimony to be credible and reliable. To the extent that it is inconsistent with what she said in a prior statement, I find it to be an honest mistake that does not impact on the truthfulness and reliability of her trial testimony.

[40] That concludes my review of the evidence.

Legal Principles

[41] A negligence claim has four elements, namely: (1) proof that the defendant owed the plaintiff a duty of care; (2) proof that the defendant breached the standard of care; (3) proof that the plaintiff suffered a loss or damages; and (4) proof that the defendant's conduct was, in fact and in law, the cause of the plaintiff's loss or damages: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3.

[42] The burden is on Ms. Leung as the moving party in the counterclaim to establish each of these four elements of her claim on a balance of probabilities.

[43] Dealing firstly with the issue of liability for the collision, it is well recognized that drivers in British Columbia owe a duty of care to others on the road. Thus, Mr. Shamtanis owed a duty of care to Ms. Leung as another driver on the road, and of course *vice versa*.

[44] The most contentious issue in the case is whether Mr. Shamtanis in fact breached the standard of care by proceeding into the intersection on a red light, contrary to s. 129 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318. I should say that the case law recognizes the statutory provisions in the *Motor Vehicle Act* are not a complete code, and that they do not encapsulate a complete legal framework governing the standard of care that drivers must adhere to on the road. The court must determine whether and to what extent each driver involved in a collision met his or her overarching common law duty to drive with due care and attention to others: *Salaam v. Abramovic*, 2010 BCCA 212 at para. 21; *Stewart v. Dueck*, 2012 BCSC 1729 at para. 38.

[45] In my view, this particular case does not depend on any niceties as to the exact scope of each driver's legal responsibility or any determination of degrees of fault. It is clear that the collision occurred because one of the two drivers went into the intersection on a red light. The driver who entered the intersection on a green light had the right of way and, all things being equal, was entitled to assume that other drivers would obey the rules of the road: *Stewart* at para. 39, citing *Mills v. Siefred*, 2010 BCCA 404 at para. 26; *Jones v. Treloar*, 2013 BCSC 452 at para. 41.

[46] In this particular case, the driver who entered on the green light was caught by surprise. On either party's account, neither driver saw the other approaching and could not have done anything to avoid the collision which was caused entirely by the driver who entered the intersection on the red light. Thus, the sole and determining fact insofar as liability is concerned is whether Mr. Shamtanis is the one who was at fault by entering the intersection on a red light.

[47] As explained above, the burden is on Ms. Leung, as the moving party in the counterclaim, to prove on a balance of probabilities that Mr. Shamtanis was the driver at fault, that he proceeded through the red light. On the evidence outlined above, I find that Ms. Leung has failed to prove this key aspect of her claim. The evidence falls far short of that required for Ms. Leung to discharge her burden. In fact, on the evidence I heard, I have no difficulty concluding, on a balance of probabilities, that it was in fact Ms. Leung who went through the red light and thus is at fault for the collision.

[48] I base that finding principally on the testimony of Ms. Poitras, an independent witness who observed the collision as it occurred right in front of her. Ms. Poitras was able to say with certainty that the Leung vehicle went through the red light, while all of the other northbound and southbound traffic on North Road was clearly stopped at the red light. I have been given no reason to question the truthfulness or honesty of Ms. Poitras's testimony and her account makes sense and I find it to be reliable. Ms. Poitras was largely unshaken on cross-examination.

[49] I should add that I also accept that Mr. Shamtanis testified honestly and did his best to recount what happened leading up to the collision.

[50] Ms. Leung's theory that Ms. Poitras did not actually see the collision, that she is lying, and effectively that she and Mr. Shamtanis at some point got together and decided to collude in order to blame Ms. Leung for the collision is highly implausible and, in the end, unsupported by the evidence. Having heard the evidence of all the witnesses at the trial, I reject Ms. Leung's theory entirely.

[51] With regard to the testimony of Ms. Leung, I can say that it does appear she honestly believes at this point in time that she did not go through a red light. However, after considering all of the evidence, I find that Ms. Leung must be mistaken in that belief. Most likely she was not paying attention and she did not see the colour of the light. She may have convinced herself that she was not at fault and that she did not proceed through a red light, but the evidence does not bear that out.

[52] I therefore find Ms. Leung has failed to prove that Mr. Shamtanis breached the relevant standard of care. Ms. Leung's claim must be dismissed on that basis.

[53] I should go on to say that even if I were wrong in that conclusion, Ms. Leung's claim would fail for lack of proof of damages and causation.

[54] With regard to damages, Ms. Leung's evidence is that her vehicle was a write-off, but ICBC paid her out for it, so the cost of vehicle damage and repair is not an issue. Ms. Leung also readily concedes that she suffered no physical injury in the collision. Ms. Leung's claim for damages is focused on alleged psychological injury. The psychological injury in question is said to be stress and anxiety arising from the collision and the subsequent litigation.

[55] The case law holds that psychological disturbance that rises to the level of personal injury must be distinguished from psychological upset. Personal injury at law connotes serious trauma or illness, and the law does not recognize mere upset, anxiety, agitation, or other mental states falling short of the standard of serious and prolonged psychological disturbance: *Mustapha* at para. 9. In other words, the plaintiff must prove a psychological disturbance that rises to the level of a recognizable psychological illness: see *Kotai v. Queen of the North (Ship)*, 2009 BCSC 1405 at para. 69.

[56] In this case, Ms. Leung testified that in the wake of the collision, she has suffered depression and anxiety, but there is no medical opinion evidence to support her claim. To be clear, Ms. Leung tendered into evidence two documents, an MHSU screening assessment and a report from her general practitioner. These two

documents recount Ms. Leung's subjective symptoms, including nausea, headaches, insomnia, and anxiety, but there is no admissible evidence of a diagnosis of some particular medical condition, including any form of serious and prolonged psychological condition, from a medical report.

[57] Ms. Leung testified that as a result of her anxiety, she has developed irritable bowel syndrome and diabetes, but again there is no opinion evidence from a qualified medical expert to support her contention that these conditions are a product of anxiety or psychological injury arising from the motor vehicle accident. Ms. Leung says one can easily go on the internet and confirm that both diabetes and IBS can be triggered by stress or anxiety. That may well be so, but the issue is not whether it is possible that such conditions can be the product of stress and anxiety in the abstract, but whether in this particular case it has been proven on a balance of probabilities that Ms. Leung's IBS and diabetes conditions are in fact a product of some serious and prolonged psychological condition that is, in turn, attributable to the collision. Ms. Leung's evidence falls short of proving that claim.

[58] This point goes to both proof of injury or loss and proof of causation.

[59] In terms of causation, the law requires that the moving party establish that he or she would not have suffered the injury or loss in question but for the opposing party's tortious conduct. Further, there are two aspects to the causation inquiry, namely, cause in fact and legal proximity: *Ediger v. Johnston*, 2011 BCCA 253 at paras. 67 to 70. In this case, I am not satisfied on the evidence presented that the motor vehicle collision is the cause, in fact, of Ms. Leung's medical issues, including IBS and diabetes. Moreover, the nature of Ms. Leung's claims leads me to question whether the conditions which are the source of Ms. Leung's complaints are sufficiently remote or foreseeable to establish a legally-recognizable causal connection to the collision.

[60] As noted, the plaintiff does not allege any physical injury from the collision and her claims of psychological injury for stress and anxiety are said to relate to what is, in effect, the legal aftermath of the collision. Thus, Ms. Leung's complaint is

not so much about the collision itself, but rather the legal implications of the collision, including her dealings with ICBC, her dealings with the police, and her involvement with this lawsuit.

[61] Counsel for Mr. Shamtanis questions whether psychological injury attributable to litigation arising from a tortious act is sufficiently proximate to the tortious act to be compensable in damages. I have some sympathy for that position.

[62] In my view, the case for claiming damages for stress and anxiety arising from litigation, and thus only tied in a very indirect way to the underlying tortious conduct, that is a claim of negligence relating to a motor vehicle accident, is in my view quite weak. This is particularly so in the absence of any evidence of impropriety or heavy handedness in the litigation itself.

[63] However, in the end, I do not need to decide that issue in this case because Ms. Leung's claim has failed for a variety of reasons, namely: (1) failure to prove that Mr. Shamtanis was at fault for the collision; (2) failure to prove any actual compensable damages; and (3) failure to prove that the collision was the cause, in fact, of any psychological condition or resulting physical ailments from which Ms. Leung suffers.

[64] Finally, in terms of loss of income and earning capacity, the evidence shows that Ms. Leung's income has fluctuated and gone down over time, but the evidence does not satisfy me that Ms. Leung was unable to work due to some particular form of psychological condition attributable to the collision.

[65] Further, insofar as loss of future earning capacity is concerned, there is no evidence of prognosis, and thus no basis for the court to find that Ms. Leung has suffered a loss of ability to work as a nurse in the future. There is certainly every hope that when Ms. Leung puts this incident behind her, she will have less stress, anxiety, and depression, and she will be able to refocus and start working again.

[66] I conclude my reasons by saying that Ms. Leung has now had a full airing of the circumstances surrounding the collision. The court heard testimony from three

individuals who were present and in a position to recount what happened. Of these witnesses, I have concluded that Ms. Poitras was in the best position to give an independent, trustworthy, and reliable description of what occurred. On Ms. Poitras's description of the incident, it is not difficult to understand why Ms. Leung has failed to prove that Mr. Shamtanis bore any degree of fault for the collision.

[67] For all those reasons, I find that Ms. Leung's counterclaim against Mr. Shamtanis must be dismissed, so that concludes the ruling.

[submissions as to costs]

[68] THE COURT: Mr. Shamtanis is entitled to costs for defending the counterclaim, at Scale B.

Riley J.