



NO. M105951
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SHAWNENE MARIE REDEKOPP

PLAINTIFF

AND:

DIANNE LYNN WATTS, BRIAN LAVERN WATTS and
ENVISION LEASING LTD.

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Scott B. Stewart, Solicitor for the Defendants

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in Part 1, paragraphs 2, 3, 4, 6 and 7 of the Notice of Civil Claim are admitted.
2. The facts alleged in Part 1, paragraphs 5, 8 through 15, and Part 3, paragraphs 1 and 2, of the Notice of Civil Claim are denied.
3. The facts alleged in Part 1, paragraph 1, of the Notice of Civil Claim are outside of the knowledge of the Defendants.

Division 2 – Defendants’ Version of Facts

1. The Defendants admit that on April 23, 2010, a motor vehicle operated by the Defendant Dianne Lynn Watts was involved in a collision with a motor vehicle being operated by the Plaintiff (the “Collision”).
2. The Defendants say, and the facts are, the Collision and the Plaintiff’s alleged injuries were caused by the Plaintiff’s negligent conduct, particulars of which are set out below:

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- (a) Driving without due care and attention, contrary to the provisions of s. 144 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, and amendments thereto;
 - (b) Driving at a rate of speed which was excessive in the circumstances;
 - (c) Driving on the highway while impaired by alcohol, drugs or fatigue;
 - (d) Failing to keep a proper or any lookout;
 - (e) Failing to take reasonable and proper steps to avoid the Collision;
 - (f) Failing to direct the course of the motor vehicle so as to avoid the Collision when it was or should have been apparent that the Collision was likely;
 - (g) Operating the motor vehicle in an unsafe mechanical condition;
 - (h) Operating the motor vehicle on a highway without effective brakes, or alternatively, failing to apply the brakes in time to avoid the Collision;
 - (i) Failing to give any audible or visible warning of her approach;
 - (j) Failing to reduce the speed of the motor vehicle reasonably or in time to avoid the said Collision or, in the alternative, failing to stop the motor vehicle in time to avoid the said Collision;
 - (k) Failing to turn out properly or in time to avoid the said Collision or failing to direct the course of the motor vehicle to prevent it from coming in to the said Collision when the same was, or should have appeared, imminent;
 - (l) failing to wear, properly adjust or securely fasten the available seatbelt assembly and failing to properly adjust the available headrest device installed in the motor vehicle;
 - (m) Entering an intersection against a yellow light, contrary to s. 128 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318;
 - (n) Failing to obey a traffic control device by proceeding into an intersection against a red light, contrary to s. 129 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318.
3. The Plaintiff sustained no injury, loss, damage or expense as a result of the Collision or alternatively, the alleged injuries, losses, damages or expenses are exaggerated.

4. Any alleged injury, loss, damage or expense was not caused by the said Collision but is attributable to previous and/or subsequent accidents, injuries or conditions involving or affecting the Plaintiff or is attributable to congenital defects and/or pre-existing injuries or conditions and, further, the alleged Collision did not aggravate any pre-existing injury or condition.
5. The Plaintiff has failed or refused to take any or any reasonable steps to mitigate any damage or loss, including but not limited to the following particulars:
 - (a) failing to follow the advice of medical advisors;
 - (b) failing to take proper steps to find any or any alternative employment; and
 - (c) failing to assist in rehabilitation.

Division 3 – Additional Facts

1. Nil.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendants oppose the granting of the relief sought in paragraph 1 of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

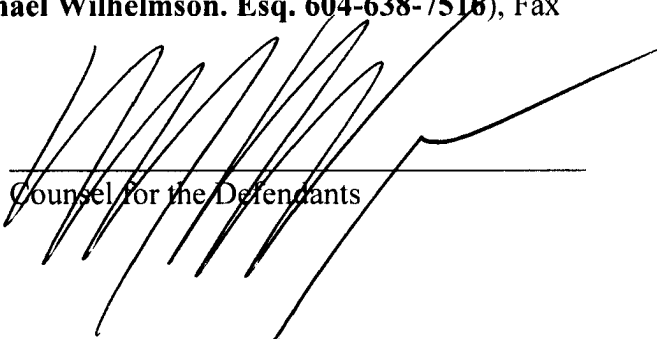
1. The Collision and any alleged injury, loss, damage or expense resulting thereby occurred without negligence on the part of the Defendants, and occurred solely as a result of the negligence of the Plaintiff and the Defendants are under no liability to the Plaintiff. Alternatively, the Plaintiff is contributorily negligent.
2. Any acts or omissions alleged by the Plaintiff in any event were not the proximate cause of the Collision or resulting injury, loss, damage or expense allegedly suffered by the Plaintiff.

3. The Plaintiff was insured at all material times under the provisions of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c.231, and amendments and Regulations thereto and the Plaintiff received, or was entitled to receive, benefits as provided under the said *Insurance (Vehicle) Act* and payment of, or entitlement to, benefits as aforesaid constitutes a release by the Plaintiff to the Defendants to the extent of such payment or entitlement and the Defendants plead the provisions of the said *Insurance (Vehicle) Act* and Regulations and, without restricting the generality of the foregoing, the Defendants specifically plead s.83 of the said *Insurance (Vehicle) Act*.
4. The Defendants are designated Defendants pursuant to s.95 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c.231 and the Plaintiff's entitlement to recovery of loss of income is limited by s.98 of the said *Insurance (Vehicle) Act* and the Regulations thereto.
5. The Defendants further rely on the provisions of:
 - a) the *Negligence Act*, R.S.B.C. 1996, c.333, and amendments thereto;
 - b) the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318;
 - c) the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, and amendments thereto.

Defendant's address for service:

Scott B. Stewart, Stewart & Company, Barristers & Solicitors, Suite 700, 1040 West Georgia Street, Vancouver, BC V6E 4H1, (**Attention: Michael Wilhelmson. Esq. 604-638-7516**), Fax number for service: (604) 638-7501.

Date: January 14, 2011



Counsel for the Defendants

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.