

Date: 20071002

Docket: T-605-07

Citation: 2007FC995

Toronto, Ontario, October 2, 2007

**PRESENT: Kevin R. Aalto, Esquire,
Prothonotary**

BETWEEN:

**H-D MICHIGAN, INC. and
HARLEY-DAVIDSON MOTOR COMPANY, INC.**

Plaintiffs

and

**JAMAL BERRADA and
3222381 CANADA INC.**

Defendants

REASONS FOR ORDER AND ORDER

[1] This Court is not a rubber stamp Court. Orders of this Court are made only upon an assessment of the evidence and the application of the appropriate legal principles of substantive or procedural law. Counsel and users of this Court are reminded that there must be some evidence to support relief requested from the Court.

[2] On this motion, the parties seek a bifurcation order on consent. The entirety of the written representations in this matter are as follows:

I. NATURE OF MOTION

The Plaintiffs seek an Order for bifurcation of the action pursuant to Rule 107 of the *Federal Courts Rules*, on the terms set out in the draft Order attached as Schedule “A” to the Notice of Motion.

II. FACTS

The parties consent to the issuance of an Order for bifurcation in the form of the draft Order attached as Schedule “A” to the Notice of Motion.

III. SUBMISSIONS

In view of the consent of the parties, the Plaintiffs respectfully submit that the granting of the requested Order for bifurcation is justified.

IV. RELIEF REQUESTED

In view of the foregoing, the Plaintiffs respectfully request that this Honourable Court grant the relief requested in the Notice of Motion.

[3] There is not one single scintilla of support for the requested bifurcation order other than that the parties by their counsel have “consented” to the order.

[4] Bifurcation orders are the exception not the norm. The bifurcation of liability and damages, in effect, creates the possibility of two separate trials. This, in turn, may necessitate using additional judicial time and Court resources and thereby create additional costs. The Court must be satisfied prior to making such an order that there is a benefit to separating the two issues into two separate proceedings.

[5] In any motion for bifurcation pursuant to Rule 107 of the *Federal Courts Rules*, the Court must take into consideration a number of factors to ensure that such an order will result in the most just, expeditious and least expensive determination of the proceedings on its merits. These factors include, but are not limited to:

- (i) The complexity of the issues;
- (ii) Whether the issues of liability are clearly distinct from issues of remedy and damages;
- (iii) Whether the issues of liability and damages are so interwoven that no time will be saved;
- (iv) Whether a decision relating to liability will likely to put an end to the action altogether;
- (v) Whether the parties have already devoted resources to all of the issues;
- (vi) Whether the splitting of the action will save time or lead to unnecessary delay;
- (vii) Whether the parties will suffer any advantage or prejudice; and
- (viii) Whether bifurcation will result in the most just, expeditious and least expensive disposition of the proceeding.

[6] Whether there is consent by all parties is a factor for consideration but only where there is first and foremost a case made out, at least in the view of the moving party, that bifurcation is required and beneficial to the case.

[7] Here there is absolutely nothing in the Motion Record which assists the Court in understanding the issues or why bifurcation is required. This is not a specially managed proceeding. If it were, then the case management Judge or Prothonotary might very well be able to make the requested order without the benefit of a more fulsome evidentiary record because of their greater knowledge of the case. Counsel are operating under the mistaken presumption that because they consent the bifurcation order should be granted. Counsel have an obligation, especially in non-case managed cases, to put before the Court the evidence and arguments which support the requested order and any authorities which assist the Court in making the determination of whether the order should be made.

[8] As there is no evidence whatsoever of why bifurcating the issues will result in the most just, expeditious and least expensive disposition of this action, the motion should be dismissed, with leave to renew the motion on proper materials. However, rather than simply dismiss the motion at this juncture, counsel are afforded an opportunity to provide proper materials to the Court in support of a bifurcation order. In the event counsel do not do so in a timely way, the motion will be dismissed.

ORDER

THIS COURT ORDERS that:

1. Counsel for the parties may file materials with the Court on or before October 12, 2007 to support the requested bifurcation order, failing which this motion is dismissed.

"Kevin R. Aalto"
Prothonotary

FEDERAL COURT
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-605-07

STYLE OF CAUSE: H-D MICHIGAN, INC. and
HARLEY-DAVIDSON MOTOR COMPANY, INC.
v.
JAMAL BERRADA and 3222381 CANADA INC.

CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369

**REASONS FOR JUDGMENT
AND JUDGMENT:** AALTO P.

DATED: October 2, 2007

WRITTEN REPRESENTATIONS BY:

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