NO. M175894
 VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

DANIELA GRABOVAC

PLAINTIFF

AND

FRANCESCO JUNIOR FAZIO

DEFENDANT

NO. M1812133
 VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

DANIELA GRABOVAC

PLAINTIFF

AND

DANIEL MESZAROS and DAJANA GRABOVAC

DEFENDANTS

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| CLOSING STATEMENT OF DANIELA GRABOVAC

|  |  |
| --- | --- |
| **COUNSEL FOR THE PLAINTIFF** KazLaw Injury Lawyers1900 – 570 Granville Street Vancouver, BC V6C 3P1Telephone: (604) 681-9344MARC KAZIMIRSKI & JULIE GAGNON | **COUNSEL FOR THE DEFENDANT FAZIO** Murray Jamieson 200 – 1152 Mainland StreetVancouver, BC V6B 4X2Telephone: 604-688-0777ALECIA HAYNES |
|  |  |
| **COUNSEL FOR THE DEFENDANT MESZAROS**Wilson King1000 - 299 Victoria StreetPrince George, BC V2L 5B8Telephone: 250-960-3200DOUGLAS MCLAUCHLAN | Chris Bolan Law Suite 301 – 220 Brew StreetPort Moody, BC V3H 0H6Telephone: 604-633-4293CHRIS BOLAN |

 |  |

# Reply to Defendant Fazio

1. At pages 4-5 the defendant Fazio summarizes the medical evidence.
2. At paragraph 7(e), the defendant Fazio cites Dr. Hirsch’s second report and sumarizes that the “plaintiff is capable of performing all domestic tasks within an apartment with pacing and specialized equipment”. The plaintiff responds as follows:
* The plaintiff will not live in an apartment for the rest of her life and hopes to have a home with Mr. Posavljak where she will require homecare assistance.
* The functional capacity evaluation confirmed that plaintiff has numerous physical limitations and she requires assistance in most aspects of her functioning. Those care needs increase if she moves from an apartment into a house.
* The plaintiff’s psychological injuries create further disability that limit the plaintiff’s ability to complete household chores. There are days when she does not get out of bed because of fatigue and depression.
1. At paragraph 7(f), the defendant Fazio cites Dr. Hirsch and summarizes that “an improvement in the plaintiff’s mental health status would probably lead to functional improvement”. The plaintiff responds as follows:
* Dr. Hirsch explained in his first report (2019) and gave evidence at trial that the plaintiff has a poor prognosis and he does not expect any significant / meaningful improvement.
* Dr. Hirsch’s prognosis has been confirmed in the last 2 years. The plaintiff has seen two psychologists and attended 43 counselling sessions without any meaningful improvement. The plaintiff has been working with an occupational therapist since September 2019, and despite having 20 meetings they have not achieved any significant improvement in her function. The plaintiff has tried various psychiatric medications under the direction of Dr. Parhar without any change in her symptoms.
1. At paragraph 9, the defendant Fazio mistakenly states that Mr. Shew did not assess her capacity to work in a light or sedentary occupation. The plaintiff responds as follows:
* At page 7 and 8 of Mr. Shew’s report he discusses the plaintiff’s “Overall Capacity”.
* At page 8 lines 11-20, Mr. Shew sets out the plaintiff’s limitations.
* At page 8 lines 22-29, Mr. Shew notes that her “*physical capacity is likely, only compatible with limited, part-time employment and the tasks need to remain within her demonstrated capacity (sedentary/limited level occupations)… she will require a supportive employer and substantial alterations to work tasks and hours in order to be engaged in some accommodated fashion, but from a practical standpoint, she is likely competitively unemployable*.”
1. At paragraph 19(g), the defendant Fazio mistakenly states that “it is unlikely that the plaintiff’s neck, back, and knee pain would suddenly resolve in the 18 months between the February 104 visit to Dr. Parhar and the 2015 Accident.” The plaintiff responds as follows:
* The February 2014 clinical record does not mention any neck or back complaints.
* The last reference to neck or back complaints in Dr. Parhar’s clinical record is October 2010 – nearly five years before the 2015 Accident.
1. At paragraph 24, the defendant Fazio states that “… the plaintiff had a vulnerability that would have likely affected her life in the future. These symptoms would likely have flared up during particularly stressful time such as choosing a career, starting a career, moving to a different country, having children, etc…” The plaintiff responds as follows.
* All of the medical experts agreed that the plaintiff’s pre-existing anxiety symptoms and depressive symptoms were minor and would not meet the diagnostic criteria for a mental health disorder in the DSM5. Specifically, they note that these symptoms were transient and did not cause any disability or impairment.
* If there was any doubt about this issue, the plaintiff’s functioning in 2017 and the early part of 2018 confirms that she had no mental health issue issues and she fully participated in vocational and avocational activities without any restrictions.
1. At paragraph 26, the defendant states “there is a real chance that the plaintiff would have developed SSD or IAD at some point in her life, in any event of the accidents.” The plaintiff responds as follows.
* There is no evidence (medical or otherwise) that the plaintiff would have developed SSD or IAD absent the Second Accident. If anything, the plaintiff’s recovery from the First Accident shows a level of resilience that suggests otherwise.
1. At paragraph 54(b) the defendant Fazio mistakenly states that “Hirsch opined that the plaintiff is capable of working a sedentary or light physical demand occupation.” The plaintiff responds as follows:
* Dr. Hirsch is clear that the plaintiff is competitively unemployable and states in his second report dated April 28, 2021 at page 9 – “*her long-term vocational prospects will be dictated by her ability to deal with her chronic pain as well as improvement / resolution of her unresolved mental health issues. At present, I would view Ms. Grabovac as not being competitively employable.”*
* When this section (above) is read in conjunction with the psychiatric reports and the poor prognosis for further psychiatric recovery it become clear that the plaintiff is permanently disabled from working in any capacity.
1. With respect to damages, at paragraph 55, the defendant Fazio states that “it is likely the plaintiff will return to work in some capacity” and suggested 10-20 hours per week in a sedentary job.” The plaintiff responds as follows:
* The evidence from Mr. Shew is that the plaintiff is competitively unemployable in any occupation. This was confirmed by Dr. Anderson, Dr. Hirsch, and Dr. Parhar.
* The defendants had the plaintiff assessed by Ms. Bariah Chandoo (OT) and they did not serve a Functional Capacity Report.
* The plaintiff has not worked in the 3.5 years since the Second Accident, despite the assistance of an occupational therapist.
* The defendant cannot point to a single job that can accommodate the plaintiff’s injuries and limitations.
1. At paragraph 56, the defendant Fazio argues that “the plaintiff’s previous working history, and pr-accident vulnerabilities, there is a real risk that she would not have continued to work full-time as a dental hygienist until age 65, even absent the subject accidents.” The plaintiff responds as follows:
* At trial, the plaintiff testified that she “*planned on working until 65*” and explained that “*Working is really important to me and important to my family. My sister, mom and grandma works – it’s a family value. We’re hardworking, especially with challenges we overcame as immigrants. I’m really proud of how far I’d come and was able to get in my career. I’m really proud and didn’t want to stop, never wanted to stop. I really liked it*.”
* The plaintiff’s work ethic is reflected in her history of working in high-school and university, that she paid $36,000 to attend the dental hygiene school with a view to having a career in that profession, and that she was working full-time at the time of the Second accident and earing nearly $2,000 per week.
* There is no evidence (medical or otherwise) that the plaintiff’s pre-accident symptoms would have restricted her ability to work a full career.
1. At paragraph 62, the defendant Fazio argues for a 50% deduction applied to the child-care expense “*for the chance that the plaintiff does not have children*.” The plaintiff responds as follows:
* At trial, the plaintiff testified (adamantly) that she “*still want(s) to have children really badly”.* The plaintiff has obvious concerns about her ability to care for a child and stated, “*I’m barely able to care for myself, I would need a lot of help during the day and care from others. Having a child right now would require 110% from me and that’s not something I can even give myself. I wouldn’t be able to carry them or do activities with kids that you would want your mom to do with you*.” The plaintiff said that she does not want to impose on her family and would have to hire a nanny (and do background checks) to help with the things she can no longer do.
* In the event that the plaintiff cannot physically have children due to her injuries, there are other ways to have a family such as surrogacy or adopting.
* If the plaintiff cannot have a family due to her injuries then this increases the non-pecuniary damages that should be awarded. The closest precedent is *Wilhemson v. Dumma*, 2017 BCSC 616 in which the court awarded $367,000 for general damages in circumstances where the plaintiff suffered devastating injuries and the medical experts recommended against her having children.
1. The remainder of the defendant Fazio’s submissions regarding damages are repeated in the defendant Maszaros submissions and addressed below.

# Reply to Defendant Meszaros

1. At paragraphs 19-43, the defendant Meszaros summarizes the plaintiff’s pre-accident health history contained in Dr. Parhar’s clinical records. The plaintiff responds as follows:
* October 31, 2010 is the last mention of any neck or back pain in Dr. Parhar’s clinical records. In that same visit, the plaintiff mentioned anxiety, fear, and symptoms affecting her mood and sleep. The plaintiff did not require any treatment or medication for her symptoms.
* February 2014 is the next mention of any mood or anxiety symptoms in Dr. Parhar’s clinical record (3.5 years after previous consult). The plaintiff did not seek treatment or require medication for these symptoms.
* Between February 2014 consult and the First Accident, the plaintiff attended Dr. Parhar’s clinic for general health issues (5x) and there were no further complaints of mood or anxiety symptoms or injuries of any kind.
1. At paragraph 46, the defendant Meszaros subits that “the plaintiff’s pre-existing conditions are relevant to the assessment of her ongoing symptoms because they form a baseline of non-accident related periodic disruption that would contribute to her periods of “good days and bad days.” This baseline condition particularly disrupts her “attachment” and “re-attachment” to the work force. The plaintiff responds as follows:
* There is no evidence that the plaintiff’s pre-existing health concerns caused any disability or impairment in the plaintiff’s functioning.
* The plaintiff’s “baseline” was reset in 2017 and establishes that she was perfectly healthy – both physically and psychologically.
* There is no medical opinion or evidence that the plaintiff would have suffered any disability or limitation absent the Second Accident.

All of which is respectfully submitted this 10th day of September, 2021.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Marc Kazimirski and Julie Gagnon, counsel for the plaintiff.