

CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)
CIVIL ENDORSEMENT FORM
(Rule 59.02(2)(c)(i))

BEFORE	Judge/Associate Judge Justice C. Stevenson	Court File Number: CV-13-477790; CV-13-492593; CV-15-540391 and CV-13-492751
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Title of Proceeding:
RAHMAN, (by his LIT GUARDIAN) NAVEED CHOHTAI), et al Plaintiff(s)
 -v-
SAVITSKI, PETER et al; Wawanesa Defendant(s)

Case Management: **Yes** If so, by whom: **No**

Participants and Non-Participants: (Rule 59.02(2)(vii))

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	Ryan W. St. Aubin Jasmine Daya, former counsel	rstaubin@jrjlaw.com jasmine@jdlawyers.ca		Y Y
2) Defendant Savitski; Defendant Wawanesa	AKrajden Damien Van Vroenhoven	AKrajden@k2llp.com dvanvroenhoven@belltemple.com		Y
3)				

Date Heard: (Rule 59.02(2)(c)(iii)) Aug 27, 2024

Nature of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))
 Motion Appeal Case Conference Pre-Trial Conference Application

Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))
 In Writing Telephone Videoconference In Person
 If in person, indicate courthouse address:

Relief Requested: (Rule 59.02(2)(c)(v))

an Order to enforce a settlement of four related actions, subject only to a subsequent motion for rule 7.08(1) approval

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

An Order will go confirming the settlement agreement is valid subject to court approval pursuant to rule 7.08(1). The Order shall issue in action CV-13-477790 in the form and content which can be found at casecentre p. B-1-297. The Order shall issue in the other three actions involving Wawanesa in similar form, amended to reflect the different parties in each.

Costs: On a **No costs were awarded in any of the motions (all four actions)** indemnity basis, fixed at \$ _____ are payable
by _____ to _____ [when]

Brief Reasons, if any: *(Rule 59.02(2)(b))*

The plaintiffs commenced four actions as a result of a motor vehicle accident on July 22, 2011. Plaintiff Ibrahim Rahman (uncle to Rubina Samad) and Plaintiff Ms. Samad have been determined to suffer from a disability and Naveed Choghtai is their litigation guardian. The third plaintiff is Ms. Samad's son, Faizan Nadeem who had been an adult since July 2015. The first action (CV-13-477790) is the tort claim against Peter Savitski. The other three actions are SAB claims against Wawanesa.

The defendants in all four actions have brought this motion under rule 49.09 to enforce what they say is a full and final settlement, subject only to a subsequent motion for approval under rule 7.08 in respect of the two plaintiffs who are under a disability. The settlement is evidenced primarily by emails dated January 19-21, 2021 but there are other settlement documents in respect of the SABs matters.

The plaintiffs are represented on this motion by Ryan St. Aubin who has done an admirable job in difficult circumstances. The plaintiffs have filed a lawyer's affidavit (that of Natasha Coverdale sworn August 22, 2024) and the affidavit of plaintiff Rubina Samad sworn August 2, 2024. These affidavits set out the tortuous history of these proceedings and the settlement discussions and correspondence in 2021 and subsequently. I need not set out the details here but in my view a settlement of all four actions was concluded in 2021 on the terms set out in the correspondence, subject only to the rule 7.08 approval motion which will now be scheduled.

Ms. Samad's affidavit says that while her uncle Ibrahim may have some capacity issues, she believes that she can make decisions in the lawsuit on the advice of counsel. This was also the view of her lawyer Mr. St. Aubin at the return of the motion.

The current litigation guardian Mr Choghtai is a trusted acquaintance, and he was involved in the settlement agreement. Indeed his January 21, 2021 email (5.06pm) confirmed that "everyone" had accepted the concurrent offers on both the tort and SAB claims. The plaintiffs at the time were represented by a lawyer Mr. Tamur Shah who worked with Mr.

Choghtai on those discussions and emailed acceptance of the offers. Mr. Shah had attended an unsuccessful mediation with the plaintiffs on January 14, 2021. Mr. Shah had also consulted with the plaintiffs' former lawyer, Ms Jasmine Daya about the case and so was familiar with the issues.

Ms. Samad concedes that after the failed mediation she had several discussions with Mr. Shah and Mr. Choghtai, although she believes that they did not consult her about the subsequent negotiations that led to the settlement on January 19, 2021.

Yet, Ms. Samad's evidence is also that she felt pressured to take a settlement offer that was made by the defendants after the pretrial. Clearly, if she felt pressured to accept, Ms. Samad knew about the offer and she agreed to its terms, however reluctantly. Indeed, she testifies that she told Mr. Shah and Mr. Choghtai to accept the offer even though she did not feel it was enough money because they had so many expenses and treatment needs. She still does not think the settlement is fair, although that possibility (of which I have seen no evidence) may be considered by the judge hearing the rule 7.08 motion.

There is no evidence remotely close to duress and in any event, I find that both Mr. Shah and Mr. Choghtai had actual as well as ostensible authority to agree to the settlement terms. Mr. Choghtai has not filed any evidence, but the emails show he agreed to the terms at the time.

Ms. Samad's son, Faizan Nadeem, who is also a plaintiff and who is a capable adult has not filed any evidence disputing the settlement.

Apparently, Mr. Choghtai no longer wishes to act as litigation guardian and he has provided no written instructions to Mr. St. Aubin in respect of this motion. For the purposes of the future rule 7.08 settlement approval motion Mr. Choghtai should either step up and fulfil his role and give instructions, or he should resign or be replaced.

It is also to be hoped that Ms. Samad is capable and also that she will give instructions to Mr. St. Aubin to participate cooperatively with the defendants in processing the rule 7.08 motion as soon as possible. These matters have been dragging on for far too long, to the detriment of the plaintiffs, as much as anyone.

In reaching my decision to confirm the settlement under rule 49.09 I have applied the two part test in *Catanzares v. Kellogg's Canada Inc.*, 2015 ONCA 779 at para 9 (see also *Swaminathan v. Degnall*, 2021)NSC 8498 at para. 15.) I have found at the first stage that an agreement was reached by the parties. At the second stage I have considered all the facts and circumstances and I chose not to exercise my discretion to reject the settlement. There is nothing to suggest the terms are unreasonable or create a clear injustice. Settlement should not be rejected just because of a party's "second thoughts". Instead, I grant judgment in accordance with the terms of the accepted offer. This means the parties may now proceed with the rule 7.08 approval motion before Justice Chalmers.

Additional pages attached: Yes No

August 27, 20 24

Date of Endorsement (*Rule 59.02(2)(c)(ii)*)

Signature of Judge/Associate Judge (*Rule 59.02(2)(c)(i)*)
