
CANADA / JUDGMENT

Ahluwalia v. Richmond Cabs Ltd.

2008 BCSC 804

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 804 Ahluwalia v. Richmond Cabs Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ahluwalia v. Richmond Cabs Ltd.,

2008 BCSC 804

Date: 20080523

Docket: S051726

Registry: Vancouver

Between:

Ranjit Ahluwalia

Plaintiff

And:

Richmond Cabs Ltd.

Defendant

Before: The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

May 23, 2008

Counsel for the Plaintiff

David Unterman

Jaspreet Malik

Counsel for the Defendant

Bruce Thompson

Date and Place of Trial:

May 5-9, 12-14, 16, 2008

Vancouver, B.C.

- [1] THE COURT: Mr. Ahluwalia was, in 1998, the holder of certain rights to operate a taxi cab (Cab No. 9) for Richmond Cabs Ltd. On August 1 of that year the company seized Mr. Ahluwalia's taxi from his home, alleging that he had violated the terms of its agreement with him. It took the position that the contract between itself and Mr. Ahluwalia was at an end, and removed the taxi plates and other equipment associated with its use as a cab (including the dispatch terminal, taxi meter and top light) from the vehicle. It cancelled the vehicle's insurance under the taxi fleet agreement that it had with ICBC. Although it offered Mr. Ahluwalia the right to retake possession of the vehicle on payment of certain fees, he did not take the company up on that offer. Ultimately, after storing the vehicle for several months, the company paid to have the vehicle towed away and scrapped.
- [2] Mr. Ahluwalia alleges that the termination of the Dispatch Agreement and seizure of the vehicle and associated plates and equipment was unlawful. He seeks a variety of remedies for the alleged breaches of contract, for conversion or detinue, and for breach of trust.
- [3] The company argues that Mr. Ahluwalia's actions prior to the seizure resulted in the termination of the agreement. It argues that the seizure was lawful. It also takes the position that even if the seizure was unlawful, Mr. Ahluwalia is without remedy as this litigation was commenced outside of the applicable limitation period.
- [4] I have concluded that while the seizure itself was probably unlawful, Mr. Ahluwalia's action is, with one small exception, statute barred as being brought outside of the limitation period.

Background Facts

- [5] Mr. Ahluwalia began his association with Richmond Cabs in 1988 when he acquired the right to operate Cab No. 9 from the previous owner. He entered into a Dispatch Agreement with Richmond Cabs in respect of the vehicle on July 15, 1988. He later acquired the rights to operate a second vehicle - ultimately those rights attached to Cab No. 8. His Dispatch Agreement in respect of that second vehicle was dated October 1, 1991. Mr. Ahluwalia did not himself operate Cab No. 8, nor did he own the vehicle that was used for that cab. Instead, he leased his rights to another operator who owned the vehicle and either drove it or arranged for others to do so.

- [6] Mr. Ahluwalia's relations with Richmond Cabs have been acrimonious for many years. The rights to operate cabs for the company were attached to non-voting, non-participating redeemable shares in the company. Mr. Ahluwalia took the position that holding shares gave him rights to equity in the company. He was unhappy with the way the company was operated and commenced litigation against it. In 1994, following a 19-day trial, this court held that Mr. Ahluwalia did not hold an equity stake in Richmond Cabs (*Ahluwalia v. Richmond Cabs Ltd.*, [1994] B.C.J. No. 1364). The decision was affirmed by the Court of Appeal (13 B.C.L.R. (3d) 93).
- [7] Mr. Ahluwalia continued to have disputes with the company, including one in which he withheld dispatch fees. Following a judgment of this court, the company seized Mr. Ahluwalia's two taxis in 1996. The matter culminated in the Court of Appeal chambers, where an order was made staying execution against the taxis on Mr. Ahluwalia's payment of certain arrears and costs and on condition that he continued to pay monthly dispatch fees at a particular level.
- [8] Mr. Ahluwalia refused to accept the earlier Court of Appeal decision on his ownership of the company as being final, and continued to commence lawsuits against the company attempting to relitigate the issue. On December 9, 1998 Skipp J. granted Richmond Cabs an order prohibiting Mr. Ahluwalia from commencing proceedings against it without leave of the court.
- [9] I think it is fair to say that Mr. Ahluwalia's relations with the company were poor from at least from the early 90s, and that it viewed him (with some considerable justification) as a bit of a nuisance.

Difficulties Over the Airport Agreement

- [10] In April 1998 the Vancouver International Airport Authority was planning to implement a number of new regulations designed to improve the quality of taxi cab service at the airport. It entered into an agreement dated April 10, 1998 with the nine taxi companies that served the airport (the "Airport Agreement").
- [11] Among the changes set out in the Airport Agreement was a limit on the age of vehicles used as taxi cabs at the airport, a requirement that cab drivers have a certification known as "Taxi Host" and a requirement that certain fees be paid in respect of each trip from the airport in order to fund new equipment.
- [12] The Airport Agreement was provided to the plaintiff with a letter dated April 29, 1999. He was quite unhappy with it. The Airport Agreement required taxi cabs operating from the airport to be nine model years old or newer as of July 1, 1998. The vehicle that he used as Cab No. 9 was a 1987 model. Further, the agreement required all drivers to have a Level 1 Taxi Host certification after June 30, 1998 and a Level 2 certification at a future date. Mr. Ahluwalia did not hold a Taxi Host certification and did not expect to be able to pass the test for it.

- [13] Some drivers, including Mr. Ahluwalia, considered the new requirements to be too onerous to meet. He considered his older model taxi cab to be in good condition and protested.
- [14] On June 1, 1998 Mr. Ahluwalia wrote to the Airport Authority complaining of unfair rules and practices. His concerns included the new requirements that were to be implemented July 1, but also concerned the fact that he had been suspended on three occasions for refusing to take fares from the Vancouver Airport. The latter conduct appears to have been related to Mr. Ahluwalia's broader dispute with Richmond Cabs. He refused to use the company's designated forms for customers who used charge accounts, and the company refused to pay him when he submitted charge claims on older forms. In any event, after setting his out complaint, Mr. Ahluwalia stated:

If for any reason Ranjit S Ahluwalia is suspended from his livelihood again, that will be the first day of HUNGER STRIKE and protest and this letter will be posted on the protest site.

- [15] On June 16, 1998, Mr. Ahluwalia resent his letter to the Airport Authority as a "reminder" and he sent a copy to Transport Canada the following day. Coincidentally, Richmond Cabs' solicitors wrote to Mr. Ahluwalia on June 16, 1998, reminding him of the requirement to acquire a newer vehicle by July 1, 1998. He noted that a failure to comply with the Airport Agreement could place the company's airport permits for Mr. Ahluwalia's cabs in jeopardy and would be a violation of Mr. Ahluwalia's Dispatch Agreement. It stated, "Richmond Cabs Ltd. will hold you liable for any loss or damages it may suffer."
- [16] On July 1, 1998, the solicitor wrote a further letter to Mr. Ahluwalia headed "Richmond Cabs Ltd., Cab No. 9." Cab No. 8 was no longer a concern to the company, as the lease operator had acquired a newer vehicle and had the required Taxi Host certification. The letter noted that the vehicle being used as Cab No. 9 did not comply with the new requirements. It stated:

Under the Dispatch Agreement dated October 1, 1991, you are required to comply at all times with all applicable laws, bylaws and regulations of any competent authority in the ownership and operation of the motor vehicle in pursuance of the Dispatch Agreement (paragraph 7(j)). Also, under the Dispatch Agreement you shall not do or permit to be done any act or thing which may cause any of the taxi licenses held by the company to be in jeopardy of suspension or cancellation by any government agency or licensing body (paragraph 7(c)).

By failing to replace your vehicle on July 1, 1998, you are in default of the terms of the Dispatch Agreement.

Please be advised that you must cure these defaults by July 30, 1998. If you fail to do so, Richmond Cabs Ltd. may exercise its option to terminate the Dispatch Agreement pursuant to paragraph 10 of the Dispatch Agreement.

Further, we hereby give you notice pursuant to paragraph 7(g) of the Dispatch Agreement to deliver the motor vehicle or any replacement to [the company's office] on July 30 for inspection. Failure to do so will also be grounds for termination of the Dispatch Agreement.

[17] The letter erroneously referred to the October 1991 agreement and to provisions of that agreement. That agreement, in fact, related not to Cab No. 9 but to Cab No. 8. Some of the provisions referred to in the letter corresponded to provisions in the 1988 agreement in respect of Cab No. 9 - though the paragraph numbering did not match - and some of the provisions simply did not exist in the 1988 agreement.

[18] The provision that corresponded to paragraph 7(c) of the 1991 agreement was paragraph 11(d) of the 1998 agreement. It said:

The Purchaser will not do or permit to be done any act or thing which may cause any of the taxi licenses held by the Vendor to be in jeopardy of suspension or cancellation by any Government agency or Licensing body or render void or voidable any policy of insurance on the taxi or any replacement therefore.

"Purchaser" referred to Mr. Ahluwalia and "Vendor" referred to Richmond Cabs.

[19] The provision of the 1988 agreement corresponding to paragraph 7(g) of the 1991 agreement was paragraph 11(g) and it read as follows:

The Purchaser will deliver the taxi to the premises of the Vendor for the purpose of mechanical inspection PROVIDED that the Vendor shall give the Purchaser one week verbal notice of such a summons and further that this inspection shall be required a maximum of once per month.

[20] Mr. Ahluwalia claims that he was confused by the letter, or genuinely thought that it was about Cab No. 8 rather than Cab No. 9 because the references to the Dispatch Agreement were to the 1991 agreement rather than the 1988 agreement. I reject his evidence in that regard. Both his evidence on discovery and common sense strongly suggest that he knew very well that the company's concerns were with Cab No. 9. I accept the defendant's assertion that Mr. Ahluwalia was aware of the solicitor's error in referring to the wrong Dispatch Agreement and, in fact, resolved to attempt to use that error, if possible, as an excuse for failing to comply.

[21] The company was untruthful in the July 1 letter in suggesting that the deadline for compliance remained July 1, 1998 and in suggesting that the company's licenses might be in jeopardy. The company had already secured a one-month extension for compliance with the agreement, but failed to communicate that extension to Mr. Ahluwalia. Further, it appears to have been working closely with the Airport Authority in dealing with Mr. Ahluwalia, and clearly knew that the authority was not minded to hastily withdraw its licenses.

[22] On July 6, 1998 Mr. Ahluwalia wrote an "open letter" to the Minister of Transport with copies to the Airport Authority and to media outlets. It is a lengthy letter alleging that the Airport Agreement was not entered into lawfully by the taxi companies, was outside the jurisdiction of the Airport Authority and was a violation of his constitutional rights. He forwarded a copy to Richmond Cab's solicitor on July 26, 1998. Among the attachments to the forwarded letter was a newspaper article quoting Mr. Ahluwalia as follows:

Ahluwalia says he continues to serve the airport even though he doesn't have his Taxi Host certificate.

His car, Richmond Cab No. 9, is a 1987 Caprice, but he said it is in good running order. He said he has been threatened with suspension from airport service if he doesn't comply by July 30.

He says he will go on a hunger strike the next day if his livelihood is disrupted.

[23] Mr. Ahluwalia agreed in evidence that he made those statements to the newspaper reporter though he denies that he was, in fact, continuing to serve the airport in July 1998.

[24] Mr. Ahluwalia gave evidence that he made attempts to comply with the Airport Agreement both by looking at purchasing a new car and by posting a note in the cab drivers' washroom at the airport seeking to find someone interested in leasing the rights to Cab No. 9. His story is corroborated in some respects by his wife and his daughter.

[25] I do not believe Mr. Ahluwalia's statements about looking for another vehicle. It made little sense for Mr. Ahluwalia to look for a new vehicle when he did not expect to be able to obtain his Taxi Host certificate. He would have had to find another driver with such a certificate to operate the cab, and there is no evidence to suggest that he made any serious efforts to find one. Further, he claims that he was looking to lease out the right to operate Cab No. 9. It seems to me that he would want to determine what terms he could arrange for such a lease before entering into the purchase of a new vehicle. It was certainly foreseeable that any lessee would prefer to provide his or her own vehicle under an arrangement similar to the one that Mr. Ahluwalia had for Cab No. 8.

[26] Beyond that, if Mr. Ahluwalia had been serious about purchasing another vehicle I would have expected him to obtain clear specifications as to what was needed, and to have expended some effort in locating a vehicle. His suggestion that he went to a dealer, borrowed a car, took it to the airport and was told by someone who appeared to be a commissionaire that the trunk was inadequate makes no sense at all. If he wanted to obtain a replacement vehicle, that would not have been the end of his efforts. In any event, I do not see the story, even if true, as showing any bona fide intention to comply with the Airport Agreement.

[27] I also have considerable difficulty with Mr. Ahluwalia's claim to have posted a notice in the washroom seeking a lessee. There is no independent evidence of such notice. Mr. Ahluwalia's evidence is corroborated only to a very minor extent on this matter. His wife and daughter say that he talked about possibly leasing out the right to operate Cab No. 9 around that time and talked about placing a notice in the washroom. While I held that that evidence was admissible in order to rebut an apparent allegation of recent fabrication, I find it difficult to countenance. Neither Mr. Ahluwalia's wife nor his daughter are disinterested witnesses. Further, I find much of their evidence, particularly surrounding their reactions to Mr. Ahluwalia's threats to go on a hunger strike, not to be credible.

- [28] Mr. Ahluwalia was, at the time he claims to have been seeking out a lessee, taking a firm and aggressive stance against the Airport Agreement in his letters and with the media. It is difficult to countenance, in the circumstances, his assertion that he was looking to comply with that agreement.
- [29] In any event, in light of the view I take of the matter, the question of whether Mr. Ahluwalia did make some perfunctory efforts to obtain a new vehicle or to find a lessee has no bearing on the results of this case.

Termination of the Agreement and Seizure of the Vehicle

- [30] On July 30, 1998 the company's solicitor wrote to Mr. Ahluwalia stating:

Further to our letter of July 1, 1998, letter [sic] we are writing to advise that as a result of your defaults and non-compliances under the Dispatch Agreement, Richmond Cabs Ltd. hereby terminates the said Agreement with respect to Cab No. 9.

We hereby demand that you deliver Cab No. 9 to Richmond Cabs Ltd.'s office .

- [31] Presumably, this letter was provided pursuant to the terms of paragraph 13 of the Dispatch Agreement which provides:

The Vendor and the Purchaser agree that in the event ... the Purchaser defaults in the performance of [a] covenant herein contained on the part of the Purchaser to be performed and said default shall continue for thirty (30) days after written notice of said default shall be given to him this agreement at the option of the Vendor shall cease and determine and the Purchaser shall return the radio, meter, mobile data terminal if any, and taxi to the Vendor.

- [32] On August 1, 1998, almost certainly prior to the delivery of the letter itself, the company sent a bailiff to Mr. Ahluwalia's home. The bailiff forcibly seized the taxi. On August 4, 1998 the company cancelled the insurance on the vehicle and received a refund of \$1,721.
- [33] On August 6, 1998 the company's lawyer wrote to Mr. Ahluwalia. Among other things, it stated that the company had removed all taxi equipment and licenses from the vehicle and had "repossessed" the taxi itself. It offered to transfer registration of the vehicle to Mr. Ahluwalia (though in later correspondence, it made it clear that Mr. Ahluwalia could not actually have retaken possession of it until he paid for bailiff's storage charges). The letter also demanded that Mr. Ahluwalia deliver his share certificates to the company.
- [34] In the meantime, on August 4, Mr. Ahluwalia commenced a hunger strike at the airport which lasted until August 15 when he was removed from the premises.
- [35] There is very substantial correspondence between the parties continuing up to the fall of 1998, but in my view nothing in this case turns on it and I do not intend to deal with it further.

Propriety of the Seizure

- [36] In light of my conclusions with respect to the limitation period in this matter, it is unnecessary for me to reach a conclusion as to the propriety of the seizure. I would comment, however, that there are several apparent problems with the seizure.
- [37] Firstly, notice of the alleged defaults was defective in that it referred to the wrong Dispatch Agreement and included clauses that were simply not present in the correct Dispatch Agreement.
- [38] Secondly, there was no clear violation of the Dispatch Agreement given that the Airport Authority had extended Richmond Cab's deadline for compliance with the Airport Agreement by a full month.
- [39] Thirdly, it is not clear that Mr. Ahluwalia's conduct would have violated the terms of the Airport Agreement even if it had come into force on July 1, because it is not clear that he attended at the airport and picked up passengers in an older car and without a Taxi Host certificate. It is quite possible that he did not attend at the airport at all during the month of July.
- [40] While a failure to go to the airport during a month might also be a violation of the agreement, it would not constitute a violation until the end of the month, when the required number of trips had not have been made. Therefore, the default could not have been in existence for 30 days.
- [41] Fourthly, the company has not established that the July 1 letter was delivered on July 1, and it appears unlikely that it was. Accordingly, the company did not give 30 days notice of the termination.
- [42] Finally, counsel can point to no authority for the seizure of the vehicle and its contents in the absence of any court order.

The Limitation Issue

- [43] As a result of Skipp J.'s order of December 9, 1998 Mr. Ahluwalia needed to obtain leave prior to commencing this action. He filed a petition seeking leave on May 21, 2003. The petition set out, in broad terms, the nature of the proposed action. The matter did not come on for hearing for eight months; no explanation for the lengthy delay has been provided. I heard the petition on January 21, 2004, and gave oral reasons for judgment granting leave two days later (*Ahluwalia v. Richmond Cabs Ltd.*, 2004 BCSC 161). I said, at paras. 26 and 27:

To the extent that the writ of summons and statement of claim are based on property rights, I think they should describe the alleged rights with some precision and avoid the use of the word "ownership", which is apt to be misconstrued.

Should there be a dispute as to whether the writ or statement of claim run afoul of this limitation, counsel should arrange to appear before me for a ruling as to whether or not the documents may be filed.

- [44] It is evident that the court contemplated the filing of a proper writ to commence the action as well as a statement of claim. For reasons that have not been explained, counsel did not file the order for entry until August 11, 2004. Mr. Ahluwalia purported to file a statement of claim on September 1, 2004 within the proceedings in which the petition was filed. No writ of summons was filed. It appears likely that counsel, realizing that the time for filing a writ had (at least arguably) expired, decided to file the statement of claim within the petition proceedings hoping to take advantage of the earlier initiation date of those proceedings.
- [45] The defendant applied to set aside the statement of claim on the basis that it was not properly filed within the petition proceeding and was a nullity. That application was set down for November 9, 2004 but the hearing date was adjourned on five separate occasions at Mr. Ahluwalia's request.
- [46] On April 7, 2005, Cohen J. held that the statement of claim was a nullity. He found that it had been improperly filed in the proceeding commenced by petition, which was already at an end. The limitation issue was considered by Cohen J. and he concluded that it was not proper to allow the statement of claim to stand notwithstanding that there would be limitation period issues in the event that a new writ had to be filed. No appeal was taken from Cohen J.'s decision, nor was any application made for leave to appeal it.
- [47] In the meantime, the plaintiff filed a writ in this action on March 29, 2005. This is well after the expiry of any applicable six-year limitation period that would have commenced no later than August of 1998.
- [48] The plaintiff argues that the claim is not statute barred on two bases. First, he argues that the claim is one coming under s. 3(3)(c) of the Limitation Act, R.S.B.C. 1996, c. 266 as being a "claim against a trustee for the conversion of trust property to the trustee's own use." Such a claim is subject to a ten-year limitation period as opposed to a six-year limitation prescribed by section 3(6)(c) for "damages for conversion or detention of goods."
- [49] The other argument made by the plaintiff is that the running of time for limitation purposes was suspended pursuant to section 7(4) and (5) of the Limitation Act because his ability to bring an action was circumscribed by Skipp J.'s order, which he says constituted a "disability" for the purpose of section 7. Although it is not clear to me why the period of suspension of the limitation period under s. 7 would be from the date of filing of the petition to the date that judgment was given granting leave that, as I understand it, is the plaintiff's position. In any event, any postponement under s. 7 that could be justified would undoubtedly bring the plaintiff within the limitation period.

- [50] The plaintiff's claim that this matter falls within s. 3(3)(c) arises from the Dispatch Agreement provisions dealing with the taxi vehicle. Paragraphs 4 to 6 of the Dispatch Agreement provide:
4. The Vendor and the Purchaser agree that the Purchaser shall have the beneficial ownership of the taxi, but it shall be registered in the name of the Vendor with the Superintendent of Motor Vehicles, in and for the province of British Columbia, for the purpose of fleet insurance coverage.
 5. In consideration of the Purchaser agreeing to pay the assessments as set out in paragraph 7 and 8 herein [which I will not quote] and in consideration of the Purchaser hereby agreeing to the registration of the said motor vehicle and any replacement therefore in the name of the Vendor, the Vendor doth hereby grant the Purchaser the following rights:
 - a) the exclusive use of the said motor vehicle or any replacement therefore, for the sole purpose of carrying on the business of the Vendor at the Vancouver International Airport;
 - b) the exclusive use of licenses to carry on business as an airport taxi.
 6. The parties hereto agree that the said motor shall remain registered in the name of the Vendor in the office of the Superintendent of Motor Vehicles, in and for the province of British Columbia and that the Purchaser shall have the legal and beneficial ownership and use of said motor vehicle and any replacement therefore, together with the rights and privileges granted hereunder pursuant to the provisions of the within agreement during the time that the Purchaser is not in default.
- [51] Except with respect to the ownership of the vehicle itself, I see no basis for finding that items taken by the defendant company were trust property. With respect to the dispatch terminal, top light, taxi meter and other taxi fittings, there is no indication that the defendant company held legal title or that it intended or contracted to be a trustee. To the extent that these were the property of the plaintiff, the defendant's seizure of them was not a seizure of trust property.
- [52] I also see nothing in the agreement or surrounding circumstances that would serve to make the various licenses and operating permits trust property. The agreement does not impose fiduciary or other obligations on the company in relation to such property rights. It appears to me to be nothing more than a contract under which Mr. Ahluwalia became a sublicensee. The licenses and permits were not trust property.
- [53] The vehicle itself was trust property, though the language of the agreement could certainly have been clearer in that regard. Notwithstanding the language of paragraph 6, which purports to vest legal as well as equitable ownership of the vehicle in Mr. Ahluwalia, I am satisfied that the registration of the vehicle in the company's name served to give it a legal interest in the vehicle which it held in trust for Mr. Ahluwalia.

- [54] Had the company converted the vehicle to its own use, the claim in respect of the vehicle would have come within s. 3(3)(c) of the Limitation Act. I am not convinced, however, that it did so. The evidence is that the vehicle was seized in order to remove other property from it, including the dispatch terminal, meter, and top light. The vehicle was detained for a short period for that purpose, and then offered back to Mr. Ahluwalia.
- [55] Section 3(6)(c) of the Limitation Act speaks of "conversion or detention of property." In contrast, s. 3(3)(c) speaks only of "conversion" of trust property by the trustee. It seems to me that the distinction is deliberate and important and that the mere detention of the vehicle did not bring this matter within s. 3(3)(c). Further, the words "to the trustee's own use" in s. 3(3)(c) must also be given some meaning. I cannot see any manner in which the company can be said to have converted the vehicle to its own use.
- [56] Section 3(3)(c) appears to me to be directed at trustees who abuse their position of trust and take trust property for their own benefit. A trustee who detains, loses or destroys property without converting it to the trustee's own use would not appear to come within the section.
- [57] If I am wrong in this regard, I would have found that the value of the vehicle, in any event, was very limited and that there is a serious issue with respect to Mr. Ahluwalia's failure to mitigate any damages consequent upon his loss of it.
- [58] The only property that was converted to the company's own use that appears to me to be trust property is the proceeds of the cancellation of the insurance policy. The company cancelled the insurance on August 4, 1998 and received \$1,721. The insurance was taken out in the company's name to take advantage of fleet pricing, but the premium had been paid by Mr. Ahluwalia. The company, therefore, held the policy in trust for him. When it cancelled the policy, the refunded premium was also held in trust.
- [59] While the company has suggested that it was entitled to set off amounts that Mr. Ahluwalia owed it against the refund, I am not satisfied by the company's bookkeeping and cannot determine that any amounts were owed to it by Mr. Ahluwalia. I therefore find that the company did convert trust property to its own use in the amount of \$1,721 on August 4, 1998. The ten-year limitation period applies to that conversion and the claim was filed within time.
- [60] I am granting the plaintiff judgment in the amount of \$1,721 plus prejudgment interest from August 4, 1998.
- [61] I will consider only briefly the other argument of the plaintiff with respect to the limitation period. The plaintiff relies on s. 7 of the Limitation Act, and argues that he was under a disability because Skipp J.'s order prohibited him from bringing an action against the defendant without leave.
- [62] Section 7 itself defines the situations in which a person is under a disability. Section 7(1)(a) provides:

7. (1) For the purposes of this section,
- (a) a person is under a disability while the person
 - (i) is a minor, or
 - (ii) is, in fact, incapable of or substantially impeded in managing his or her affairs.

[63] I am satisfied that the definition is intended to be an exclusive one. The two circumstances set out in section 7(1)(a) are the only ones that will render a person "under a disability". Mr. Ahluwalia was not under a disability but merely subject to a procedural requirement that he obtain leave prior to commencing an action. That is not a situation to which s. 7 of the Act is directed.

Conclusion

[64] I am granting the plaintiff judgment in the amount of \$1,721 plus prejudgment interest from August 4, 1998. The balance of the claim is dismissed.

(Submissions re costs)

[65] THE COURT: This claim would have been within the small claims limit. Costs, other than disbursements, would not normally have been awarded. Given that the discoveries were not particularly directed at the issue on which damages were awarded, I agree with the parties that the most appropriate order is that each side bear its or his own costs.

The Honourable Mr. Justice H. M. Groberman

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