

CANADA / JUDGMENT

Ahmed v. Carrere

2010 BCCA 409

COURT

British Columbia Court of Appeal

DECIDED

21 September 2010

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2010 BCCA 409 Ahmed v. Carrere COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Ahmed v. Carrere, 2010 BCCA 409 Date: 20100921 Docket: CA036238 Between: Mr. Mohamed Ahmed Appellant (Plaintiff) And Drs. Ron G. Carrere, Andrew T. Jakubowski, Krishnan Ramanathan, John G. Webb, Vancouver Coastal Health (Vancouver General Hospital), Providence Health Care (St. Paul's Hospital), College of Physicians and Surgeons of British Columbia Respondents (Defendants) Before: The Honourable Madam Justice Newbury The Honourable Madam Justice Saunders The Honourable Madam Justice Bennett On appeal from: Supreme Court of British Columbia, June 11, 2008 (Ahmed v. Carrere, 2008 BCSC 743, Vancouver Docket No. S082470) Appellant Appearing In Person: M. Ahmed Counsel for the Respondents, Drs. Carrere, Jakubowski, Ramanathan, and Webb: R. Samtani M. Kinch Counsel for the Respondents, Vancouver Coastal Health and Providence Health Care: E. Stanger Place and Date of Hearing: Vancouver, British Columbia April 13, 2010 Place and Date of Judgment: Vancouver, British Columbia September 21, 2010 Written Reasons of the Court Reasons for Judgment of the Court:

- [1] Mr. Ahmed appeals the order of Mr. Justice Meiklem striking his statement of claim in its entirety and granting leave to file a new statement of claim within 30 days. The order provided that if a new statement of claim was not filed within that time, the defendants could seek a desk order dismissing the action. As Mr. Ahmed did not file a new statement of claim in 30 days, the defendants applied for and were granted an order dismissing the action. When the matter first came before us in January 2010, Mr. Ahmed's appeal did not encompass the second order dismissing the action, although Mr. Ahmed clearly wished to have that order set aside. Accordingly, we adjourned the appeal to permit him an opportunity to file a notice of appeal of the second order. He has now done so, and these reasons address all issues arising from the two orders. Also in January 2010, we gave Mr. Ahmed liberty to file with this Court a revised statement of claim that complies with the Rules of Court. Mr. Ahmed has presented a revised statement of claim, and the appeal proceeded by examining the revised statement of claim, although in the context of the judge's reasons for judgment concerning the original statement of claim.
- [2] It is, we consider, useful to describe the substance of Mr. Ahmed's action as set out in the original statement of claim, and as now reflected in his proposed revised statement of claim.

- [3] We observe, at the outset that the procedure adopted by the learned judge reflected Mr. Ahmed's status as a self-represented litigant and his serious medical situation which he attributes, to some degree, to the care he received from the defendants. The caution exercised by the learned judge in permitting Mr. Ahmed the chance to file a revised statement of claim was appropriate in the circumstances before him. For the same reasons, and given the order dismissing the action was in the nature of a guillotine order in that it was made as a desk order (an order without notice to Mr. Ahmed - see PD. October 17, 1990), it was, in our view, in the interests of justice that we permit Mr. Ahmed one final opportunity to set out a reasonable cause of action in a proposed revised statement of claim.
- [4] With these observations we turn to Mr. Ahmed's claim. Mr. Ahmed had open heart surgery in 1987. Subsequently he has been under the care of, been examined by, and been treated by several medical doctors. In this action Mr. Ahmed complains of the treatment he received from several doctors at various locations including St. Paul's Hospital, Richmond Hospital and Vancouver General Hospital between December 27, 2006 and March 21, 2007. More specifically he complains of several decisions that were made and alleges he did not receive timely and effective treatment. He pleaded, in the statement of claim that was before the judge and that was struck:
21. In effect they admitted and confirmed that during the months of December 2006 to February 2007 the four above-mentioned cardiologists and their superiors in the three hospitals and the college of physicians and surgeons of British Columbia, who licensed and supervise the cardiologists named above, who knew without a shadow of a doubt that I needed immediate attention to correct my severe coronary condition, but have conspired and protected each other in their cover-up in which they concluded that there was nothing wrong with my heart falsified their reports and angiogram results. They have been lying to my wife and me, stopped my vital heart medications, which I should take until the end of my life. They poisoned me with useless medications and refused me treatment.
22. These physicians defied their oath in at least two occasions: ...
- [5] Mr. Ahmed sought as remedies:
- (a) Damages for conspiracy to cause premature death,
 - (b) Severe physical, emotional, mental stress and anxiety to be determined by court,
 - (c) Pain and suffering,
 - (d) Punitive damages to be determined by court,
 - (e) Appropriate sanctions and/or fines including revoking of medical licenses to practice medicine ...

- [6] The defendants applied under R. 19(24)(a) and (b) of the Rules of Court for an order striking the statement of claim and dismissing the action on the basis the statement of claim did not disclose a reasonable claim.
- [7] Mr. Justice Meiklem reviewed the statement of claim in some detail, and determined it discloses no question to be tried. He observed that the only reference to a cause of action similar to any known in law is in the claim for damages "for conspiracy to cause premature death" and held it is impossible to read the statement of claim as alleging a conspiracy with any specificity. He concluded:
- [16] There are many additional difficulties with the statement of claim that I need not go through in detail. For example, included in the remedies sought is the "... revoking of medical licenses to practise medicine." Some of these other deficiencies could be corrected by striking only specific portions of the statement of claim, but I am of the view that there is too much wrong with the statement of claim to consider it a viable pleading of a tortious conspiracy claim, even after potential amendment. Coherent as the narrative is as a story of the origins of Mr. Ahmed's grievances about inadequate medical attention, it runs afoul of the rules of pleadings in reciting evidence and argument, rather than facts in a concise form. To the extent that allegations of fact might be implied with a very liberal approach considering that the plaintiff is self-represented and untrained in the law, the implied factual allegations would still not touch on the ingredients of the tort of conspiracy as set out in the authorities usefully reviewed in a case cited to me by Ms. Kinch; namely, *Olenga v. Insurance Corp. of British Columbia*, 2005 BCSC 1015.
- [8] In his proposed revised statement of claim Mr. Ahmed alleges the same sequence of events as set out in the original statement of claim that was before the judge. In particular he states that he underwent an angioplasty at St. Paul's Hospital on December 29, 2006 and was shown a document that showed "many blockages" but that nevertheless he was sent home. He states that shortly after that incident, he went to Richmond Hospital where his cardiologist was working and, after tests, his cardiologist discontinued his "vital heart medications". He states that when his chest pain persisted he went to Vancouver General Hospital, but was released. He alleges that his daughter sent a copy of the angiogram taken at St. Paul's Hospital December 29, 2006 to different health care centres and was told he should go to the nearest hospital because he had an aneurysm, and that eventually he was taken again to St. Paul's Hospital where a different surgeon performed an angioplasty upon him on March 20, 2007.
- [9] In his claim for relief as reframed in the proposed revised statement of claim Mr. Ahmed seeks:
- (a) Damages for Gross Medical Malpractices
 - (b) Damages for severe physical, emotional, mental stress and anxiety
 - (c) Damages for pain and suffering

(d) Punitive damages to be determined by the Court

(e) Appropriate sanctions or fines

[10] There are several significant features of the proposed amended statement of claim. In the statement of claim that was before the judge, the central claim identified by the judge was one of conspiracy. The claim for conspiracy which was not adequately pleaded as observed by the judge, has been deleted from the proposed revised statement of claim. Second, the proposed revised statement of claim makes no reference to either respondent Health Authority. Last, although by the claim for relief one might be alerted to a claim in negligence, the substance of the proposed amended statement of claim does not plead any wrongdoing by an individual, suggest there is a breach of a standard of care, or allege that the treatment of Mr. Ahmed was performed in a negligent manner.

[11] The respondents submit that the proposed revised statement of claim, like the one before it, fails to plead a cause of action known to law.

[12] We have embarked upon consideration of this submission willing to make some allowance for the difficulties that may be encountered by a self-represented party seeking to pursue an action based upon alleged deficiencies in the delivery of medical service. Nonetheless, it is basic to the trial process that the pleadings must disclose a claim that is known at law, one that if proven will support the remedies sought.

[13] In this case several defendants are joined. We have examined the statement of claim in relation to each defendant to determine whether any portion of the claim should be allowed to proceed. First we have considered the case pleaded against the two Health Authorities. Considering both the original statement of claim and the proposed revised statement of claim, there simply is no cause of action pleaded concerning either Health Authority. It is plain that the appeal cannot succeed in relation to the claims against either Health Authority.

[14] So too, material facts necessary to raise a legal claim against Dr. Webb and Dr. Ramanathan are not pleaded. The references to them in both the original and proposed revised statement of claim are of activity that, even if proved, would not give rise to a remedy in favour of Mr. Ahmed. For these reasons the appeal cannot succeed in relation to the claims against either of those doctors.

[15] This leaves the claims against Dr. Carrere and Dr. Jakubowski. Dr. Carrere is alleged to have advised Mr. Ahmed there was nothing wrong with him on December 30, 2006, and then after telling Mr. Ahmed that he would write a letter to Dr. Jakubowski, Mr. Ahmed's cardiologist, is alleged to have discharged him from the hospital. Dr. Jakubowski is alleged to have stopped Mr. Ahmed's heart medication.

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- [16] In our respectful view these allegations are not sufficient to plead an action against either doctor. For example, neither statement of claim sets out, as is required, the conduct said to be at fault, the basis for saying the doctors' actions are blameworthy, or the adverse consequences that accrued to Mr. Ahmed because of their actions which may be compensable in damages.
- [17] We have concluded that although Mr. Ahmed holds a strong view that he was not treated appropriately by certain health care providers in the period between December 26, 2006 and March 21, 2007, he has not presented a statement of claim that pleads a cause of action.
- [18] Accordingly, we would dismiss the appeal. "The Honourable Madam Justice Newbury" "The Honourable Madam Justice Saunders" "The Honourable Madam Justice Bennett"
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