

CANADA / JUDGMENT

Bajpai Law Corporation v. Harper

2024 BCSC 2338

COURT

Supreme Court of British Columbia

DECIDED

20 December 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2338 Bajpai Law Corporation v. Harper

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bajpai Law Corporation v. Harper,

2024 BCSC 2338

Date: 20241220

Docket: S246292

Registry: New Westminster

Between:

Bajpai Law Corporation

Plaintiff

And

Maureen Harper

Defendant

Corrected Judgment: The text of the judgment was corrected

at paras. 13 and 19 on January 7, 2025.

Before: Associate Judge Krentz

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

A.G. Capadouca

Counsel for Defendant:

M. Regier

Appearing as agent

for S. Albert

Place and Date of Hearing:

New Westminster, B.C.

September 27, 2024

Written Submissions Received:

November 7 and 8, 2024

Place and Date of Judgment:

New Westminster, B.C.

December 20, 2024

- [1] The plaintiff, Bajpai Law Corporation and the defendant, Maureen Harper, entered into a contingency fee agreement on March 10, 2017, wherein the defendant instructed the plaintiff to act on her behalf and to take any legal proceedings they considered appropriate to pursue a claim for damages arising out of the surgical removal of the defendant's right kidney by Dr. Melnyk on September 21, 2015, at the Chilliwack Hospital.
- [2] The agreement provided for a 30% to 40% fee, depending on the stage of the proceedings when settlement was reached or an award was obtained, and included a term that in the event the defendant decided not to proceed with her claim, she would promptly pay for the legal services performed up until that time at the lawyer's hourly rate of \$300. The agreement also provided that the defendant would pay disbursements and other charges regardless of the outcome of her claim.
- [3] Vishal Bajpai, on behalf of the defendant, filed a notice of civil claim on August 31, 2017. A few days before the scheduled trial, the defendant decided not to proceed with the action and instructed Mr. Bajpai to terminate the proceedings.
- [4] On October 6, 2020, the plaintiff, pursuant to the terms in the contingency fee agreement, issued an account for fees and disbursements in the total amount of \$95,863.91.
- [5] On December 9, 2020, the defendant filed an appointment pursuant to s. 70 of the Legal Profession Act, S.B.C. 1998 c. 9 [LPA] seeking a review of the plaintiff's account ("Taxation Appointment").

- [6] On December 11, 2020, the defendant took out another appointment seeking a review of the contingency fee agreement ("Agreement Appointment").
- [7] On April 8, 2021, at a pre-hearing conference in relation to the appointments, Master Keighley made two orders:
- a) with respect to the Taxation Appointment, he ordered that the Agreement Appointment was to be heard prior to the Taxation Appointment; and
 - b) with respect to the Agreement Appointment, he ordered that the parties take various steps to prepare for that hearing.
- [8] The hearing of the Agreement Appointment was set for June 2, 2022; however, the hearing did not proceed as there was insufficient court time on that date. At that time, Mr. Skands was counsel for the plaintiff and he advised counsel for the defendant that they would wait to hear from them with respect to scheduling another date for the hearing.
- [9] After June 2, 2022, the defendant took no further steps to reschedule the hearing or to pursue the appointments. On October 5, 2022, Mr. Skands, on behalf of the plaintiff, filed a notice of civil claim seeking to collect the outstanding amount owing on the plaintiff's account. It was filed on that date, as that would have been the last day before the expiration of the limitation period.
- [10] Through inadvertence, as deposed by Mr. Skands in his affidavit, he failed to serve the notice of civil claim and only became aware of that omission in May 2024. The deadline for service being October 5, 2023.
- [11] In his affidavit, Mr. Bajpai also deposes that he only became aware that the notice of civil claim was not served on the defendant in approximately May 2024. Prior to that, he had assumed that it had been served within the required one year.
- [12] On August 29, 2024, the plaintiff filed this application seeking to renew the notice of civil claim. The purpose of seeking the renewal is to preserve the plaintiff's remedy so that it may pursue collection of its account from the defendant, in the event the defendant withdraws her review of the plaintiff's account and the contingency fee agreement.
- [13] In opposing the application, the defendant has deposed that she is 79 years old and blind, and her affairs are largely managed by her son, Michael Harper. Although she was represented at this hearing, on October 31, 2024 the defendant filed a notice of intention to act in person that was signed on her behalf by her son.
- [14] In her affidavit, the defendant sets out some of the background to this matter which included that on September 21, 2015, she underwent a nephrectomy procedure in which her right kidney was removed. She deposes that she was advised by the surgeon that the kidney was cancerous but once it was removed it was discovered that it was not, so it had been unnecessarily removed.

- [15] The defendant acknowledges that she retained the services of the plaintiff to pursue a claim of medical malpractice and that she had signed the contingency fee agreement.
- [16] The defendant deposes that a few days before the trial on the advice of her counsel, she accepted an offer which resulted in a consent dismissal order without costs. Accordingly, she received no monetary award.
- [17] The defendant further deposes that she did not learn of this action until September 10, 2024, when her previous lawyer, Mr. Lester, had been contacted by the plaintiff's counsel. Lastly, the defendant deposes that she has limited income and will face significant prejudice if this action was permitted to proceed, as she has very limited funds to proceed with two simultaneous actions.
- [18] The legal basis for this application is set out in Rule 3-2(1) of the Supreme Court Civil Rules [Rules]. The relevant factors are as follows:
1. Was the application brought promptly?
 2. Did the defendant have notice of the claim?
 3. Has the defendant suffered prejudice?
 4. Was the failure to serve due to the fault of the defendant?
 5. Was the failure to serve attributable to the plaintiff or its solicitor?
- (*Bearhead v. Moorhouse* (1977), 3 B.C.L.R. 81, 1977 CanLII 346 (S.C.)).
- [19] With respect to whether or not an application is brought promptly, the delay runs from the date a plaintiff became aware that the notice of civil claim expired to the date on which the application is brought (*Sutherland v. McLeod*, 2004 BCCA 653 at para. 38).
- [20] In this case, the plaintiff filed the application approximately three months after they became aware that the notice of civil claim had expired. I find that it was brought promptly.
- [21] Although the defendant did not have notice of this action until recently, she has been aware of the nature of the claim, as she filed her own appointments related to the same matter in December 2020.
- [22] I do not find there is actual prejudice to the defendant, as this proceeding would only be pursued by the plaintiff in the event that she withdraws her appointments. The evidence that she would provide at the hearing of the appointments would be mostly the same as the evidence in this proceeding. In her affidavit, the defendant refers to a close friend who would be a witness for her that is experiencing health issues. However, if there is any erosion of evidence, it would apply equally to the LPA appointments and this action.

- [23] The failure to serve the notice of civil claim is solely attributable to the plaintiff's counsel and is not attributable in any manner to the plaintiff. In the application to renew a notice of civil claim, the focus is on the rights of the parties rather than the conduct of legal counsel (Seel v. Stephenson, 2009 BCSC 319).
- [24] With respect to further prejudice to the defendant, she deposes in her affidavit that she is of limited funds and unable to conduct simultaneous actions. Section 70(12) of the LPA provides:
- (12) If a lawyer sues to collect money owed on a bill, the lawsuit must not proceed if an application for review is made before or after the lawsuit was commenced, until
- (a) the registrar has issued a certificate, or
- (b) the application for review is withdrawn.
- [25] Accordingly, the defendant would not be faced with simultaneous actions. The defendant retains control of this matter as she can still pursue the appointments before a registrar. It is only if she withdraws those appointments, then the plaintiff may pursue collection of their account in this action.
- [26] Accordingly, there would be no prejudice to the defendant to renew the notice of civil claim, as this action cannot be pursued so long as the review before the registrar remains outstanding.
- [27] Rule 13-1(19) provides that "when making an order under these Supreme Court Civil Rules, the court may impose terms and conditions and give directions it considers will further the object of these Supreme Court Civil Rules."
- [28] After considering the factors set out in Bearhead v. Moorhouse, I find it is appropriate to renew the notice of civil claim for a period of six months. However, in doing so, I further order that other than serving the notice of civil claim, the plaintiff shall take no further steps in this proceeding until the appointments filed by the defendant pursuant to the LPA have either been withdrawn by the defendant or the registrar has issued a certificate.

"Krentz A.J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/23/2024BCSC2338cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bajpai-law-corporation-v-harper-2024>

Prepared on 28 October 2026 · Esheria