

CANADA / JUDGMENT

Barker v. Construction & Specialized Workers' Union, Local 1611

2025 BCSC 1983

COURT

Supreme Court of British Columbia

DECIDED

28 August 2025

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2025 BCSC 1983 Barker v. Construction & Specialized Workers' Union, Local 1611

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Barker v. Construction & Specialized Workers' Union, Local 1611,

2025 BCSC 1983

Date: 20250828

Docket: S238708

Registry: Vancouver

Between:

Robert David Barker

Plaintiff

And:

Construction & Specialized Workers' Union, Local 1611

Defendant

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

N. Mitha, KC

I. Martinich

Counsel for the Defendant:

K.D. Blakely

Place and Date of Hearing:

Vancouver, B.C.

August 28, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 28, 2025

- [1] THE COURT: When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered given that some matters were abbreviated in the interests of time. I have made such edits without affecting the substance or final disposition.
- [2] The defendant brings this application for an adjournment of a trial in what are relatively unusual circumstances in that the application is being brought specifically under Supreme Court Civil Rule 12-1(7)(b), in response to the unilateral filing of a notice of trial. Rule 12-1(7) provides as follows:

If trial date unacceptable

- (7) If a party on whom a notice of trial is served under subrule (6) objects to the trial date set out in that notice of trial, the party must, within 21 days after service of the notice of trial,
- (a) request a case planning conference, or
 - (b) make an application to the court to have the trial rescheduled.
- [3] As such, the basis for the adjournment is not what we would typically see, namely a consideration of the factors set out in the *Navarro v. Doig River First Nation*, 2015 BCSC 2173 ("*Navarro*"), but rather what the defendant argues ought to be a slightly different or more nuanced approach.
- [4] Specifically, by its very nature, R. 12-1(7)(b), contemplates that an application for an adjournment will be brought within 21 days of a notice of trial being filed, meaning that the usual prejudice which may arise due to unavailability of evidence, inability to prepare fully for trial, and various other considerations as to the interests of justice which usually give rise to such an adjournment request are not likely to be present as the trial will inevitably be well in the future, in this case a year away.

Background

- [5] The plaintiff commenced this action for damages for wrongful dismissal.
- [6] The initial response to claim raised a contractual defence, namely that the employment contract provided for severance terms which were binding on the plaintiff, and that severance was paid according to those terms.
- [7] A prior 5-day trial date was scheduled for March 31, 2025, but was adjourned with the parties proceeding with a summary trial before Justice Elwood on the issue as to the enforceability of the employment contract. In reasons for judgment released April 17, 2025 Elwood J. found that the employment contract was not enforceable.
- [8] A further application was before Elwood J. that same day, which included an application to amend the notice of civil claim to plead specific damages over and above the usual severance, mainly with respect to what was a claim for intentional infliction of harm, which has evolved into, or will be once the pleadings are formally amended, with a breach of the obligation to act in good faith in the performance of contractual obligations, further to *Bhasin v. Hrynew*, 2014 SCC 71. In separate reasons for judgment, the amendments were allowed on specific terms and conditions as to the proposed amendments.
- [9] The subject notice of trial was then filed on June 23, 2025, scheduling the trial for 10 days commencing August 24, 2026.

Analysis

- [10] Neither party referred the court to any decisions where an adjournment was sought solely under R. 12-1(7)(b).
- [11] The defendant argues that as a result of the order allowing the notice of civil claim to be amended, those final form of pleadings should have been filed before the trial date was secured for the simple reason that until the parties know the exact case they are required to meet it is inappropriate to have the parties turn their minds towards trial preparation. Such a prohibition is consistent, the defendant argues, with the requirement in 6-1(1)(b) that any amendment to pleadings after a notice of trial is filed requires court approval or consent of the parties.
- [12] The defendant further argues that it is not in keeping with the judicious management of the court process for the court to set aside ten days for a trial date, as has been done in this case, without the parties being able to say definitively that that is an appropriate trial length given the infancy of the matter. In short, setting aside ten days when only five days is needed, the defendant argues, is a misuse of court time. Similarly, setting aside ten days when 15 days may be needed creates further difficulty down the road with scheduling if dates need to be added, and a further abuse of the court's process.

- [13] I agree and accept the defendant's submissions that an application being brought under R. 12-1(7) ought to be considered differently than an application for an adjournment in the ordinary course which engages the various factors in Navarro at paras. 18 to 22.
- [14] However, the analysis regardless of whether it is done under R. 12-1(7)(b) or otherwise, does not require the court to determine if it is in the overall interests of justice to have the trial remain on the books or have it adjourned, when it has been unilaterally set and a party does not agree to the date.
- [15] Given that R. 12-1(7)(b) requires the application to be brought within 21 days of the notice of trial being filed, considerations as to prejudice will generally not be applicable to a consideration of whether it is in the interests of justice to set aside the trial date.
- [16] Factors that may be relevant to the consideration of whether it is in the overall interests of justice to proceed with the scheduled trial date may include:
- a) The parties' conduct, for example if the applicant refused or employed delay tactics by being nonresponsive to requests for a trial date, or have delayed discovery;
 - b) If by its nature it is plain and obvious that the matter can simply not be ready for trial as scheduled, which may be the case for complex litigation or where there are amendments to pleadings being contemplated, and reasonable case management terms cannot be made to ensure readiness;
 - c) The trial date set aside is clearly insufficient for the resolution of the matter such that it is an abuse of the court's resources to have an unsuitable trial block reserved that will inevitably have to be revised with days being added closer to trial;
 - d) Unavailability of counsel which is not likely to change. That counsel may be double booked may not be a sufficient factor if the trial date is still far in the future; and
 - e) The nature of the claim and any urgency to its timely resolution.
- [17] As to the state of the pleadings and the ability of the defendant to know the claim being made against them without the pleadings being formally filed, this is largely answered by the reasons for judgment relating to the amendments. It is clear in the reasons what amendments have been approved. It is not likely that the defendants will be caught by surprise once the pleading itself is filed.
- [18] I also note that the delay in having that final form of pleading filed is not wilful delay by the plaintiff. The impediment to its filing has been the usual delay in getting the entered order agreed to by the parties, submitted for entry, and the entered order returned by the registry, which is required before the registry will allow the amended pleading to be filed. The Order has been submitted for filing approximately three weeks ago, but has not yet been returned.

- [19] Notwithstanding that the pleadings have not been formalized, the plaintiff does indicate that they have provided all of their document disclosure. There are unlikely to be expert reports. There is nothing to indicate that the matter cannot be ready for trial by the scheduled date.
- [20] As to the trial length, based on the trial briefs filed with respect to the previous five day trial date, the trial time or length of ten days does not appear to be so obviously out of line or so objectionable that I can conclude that it is a misuse of court resources to have a ten day trial date set aside.
- [21] Finally, it is notable that this is a wrongful dismissal claim. By its nature, it is one that ought to be resolved in a timely and efficient manner, given the issues that inherently arise when a person is faced with an unexpected job loss, and loss of income as a result.

Conclusion and Order

- [22] Having regard to the above considerations, I do not find that it is in the interests of justice to set aside the trial date at this point.
- [23] The application is dismissed, but on a without-prejudice basis in respect of any further applications for adjournment in the ordinary course.
- [24] CNSL N. MITHA: Thank you, Your Honour.
- [25] THE COURT: Thank you.
- [26] CNSL N. MITHA: And costs, Your Honour, in the cause, or?
- [27] THE COURT: Costs in the cause. Unless you have alternative submissions, Mr. Blakely?
- [28] CNSL K. BLAKELY: No, I don't. Thank you.
- [29] THE COURT: Costs in the cause. Thank you.

"Associate Judge Robertson"

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