

CANADA / JUDGMENT

Canadian Pacific Railway v. Enderby et al.

2000 BCCA 319

COURT

British Columbia Court of Appeal

DECIDED

10 May 2000

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

2000 BCCA 319 Citation: Canadian Pacific Railway Company v. Enderby Date: 20000510 2000 BCCA 319 Docket: CA026077 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Chief Justice McEachern May 10, 2000 The Honourable Madam Justice Rowles The Honourable Mr. Justice Finch Vancouver, B.C. BETWEEN: CANADIAN PACIFIC RAILWAY COMPANY PLAINTIFF (APPELLANT) AND: JOHN LEONARD KENNETH ENDERBY and BAYRIDGE TRANSPORT LTD. DEFENDANTS (RESPONDENTS) J.E. Gouge, Q.C. and T. Punjabi appearing for the Appellant W. Westeringh and E. Ryder appearing for the Respondents

- [1] FINCH, J.A.: This is an appeal from the order of a judge in Chambers on 10 June 1999 holding the plaintiff's action to be statute barred as commenced more than two years after the date on which the cause of action is said to have arisen. The issue for the Chambers judge was whether the defendants had confirmed the plaintiff's cause of action in writing within the meaning of s. 5(2)(a) of the Limitation Act, R.S.B.C. 1996, c. 266.
- [2] The plaintiff argued that the defendant had confirmed a cause of action by two letters, one dated 5 November 1997 and the second dated 17 January 1998. The Chambers judge held that the letters from the defendants' agent did not confirm the plaintiff's cause of action and that the claim was barred by s. 3(2) of the Limitation Act two years after the date of the accident, May 25, 1996, giving rise to the plaintiff's claim.
- [3] The Chambers judge applied the law laid down in *Podovnikoff v. Montgomery* (1984), 58 B.C.L.R. 204 (C.A.), where this court held that (at p. 209): ...what binds a defendant and activates s. 5(2)(a)(i) is an acknowledgment in writing of a cause of action which admits some liability thereunder. The test as laid down in *Podovnikoff* is an objective one, namely whether (at p. 210): ...a reasonable person receiving the letters and reading them would take it that the insurer was going to settle the respondent's personal injury claim.
- [4] On this appeal, the plaintiff says the Chambers judge applied the correct legal test, but misconstrued the true meaning and effect of the letters relied upon in the context of what had previously passed between the parties. The defendants say that the Chambers judge did not err in construing the correspondence and did not err in holding the action to be statute barred. In the alternative, the defendants say the Chambers judge should not have admitted

into evidence earlier letters marked "without prejudice" and affidavit evidence as to oral communications between the parties.

- [5] I will assume for the purposes of this appeal, without deciding, that all of the evidence held admissible by the Chambers judge was properly before her.
- [6] The facts briefly are that the plaintiff's claim arose from a motor vehicle accident on 25 May 1996 when a truck owned by the defendant, Bayridge, and driven by the defendant, Enderby, was involved in a collision and came to rest on the plaintiff's tracks. The plaintiff's train in attempting to stop is said to have derailed and suffered damages as a result.
- [7] The correspondence between the parties is fully summarized in the Reasons of the learned Chambers judge and I do not think it necessary to set it out in its entirety. The letter of November 5, 1997 from the defendants' agent reads as follows: We acknowledge receipt of your correspondence dated October 7, 1997 with enclosures and thank you for same. We have noted the contents of your correspondence and enclosures and confirm that, needless to say, we require further documentation prior to giving further consideration to the claim presented in the amount of \$184,116.91. Please provide us with photographs as well as estimates/appraisals covering the damages you are claiming. In particular, please provide us with detailed itemization/breakdowns of your claim. We note your correspondence indicates a derailment and we confirm that we have no knowledge of a derailment as result of the occurrence we are dealing with. The second letter relied upon by the plaintiff is a letter of January 17, 1998, which reads as follows: We acknowledge receipt of your correspondence dated December 10, 1997 with enclosures and thank you for same. Please accept our apologies for not responding sooner. We have noted the contents of your correspondence and enclosures and thank you for the photos that you have provided, however, we would appreciate receiving additional photos, if available. In particular, we would appreciate photos which would tie in the photo of the tractor unit partially on the track that the two photos showing the rail workers on the track. In addition, a diagram indicating the location of the derailment in relation to the area where the tractor unit had come over the embankment would be much appreciated. In addition to the above, is there a separate report to the authorities regarding this derailment? At what time did this derailment take place on May 25, 1996? As we await your response, we appreciate your continued patience in this matter, however, we are sure you realize our reasons for the delay in issuing payment of your claim.
- [8] After the letter of January 17, the plaintiff's claims agent faxed a letter to the defendants' claims manager on January 17 which said in part: Peter, after having read your letter it appears to me that you are still investigating the accident. There followed a description of what information the plaintiff did or did not have.
- [9] That letter was responded to by a further letter from the defendants' claims manager dated January 28, 1998 as follows: We acknowledge receipt of your correspondence dated January 22, 1998 by fax and thank you for same. We have noted the contents of your correspondence

and note your advice that "the train impact took place at about 7:55am local time", yet our investigation indicates our insured's incident took place around 8:15am to 8:30am. It is for this reason that we inquired as to whether or not there was a "separate report made...to the authorities...". Therefore, we confirm that we are continuing our investigation into this matter as we had no prior knowledge of a derailment due to our insured's mishap.

- [10] On the issue of whether the correspondence had confirmed a cause of action, the learned Chambers judge said this:
- [16] In this case, the letters specifically asked for more particulars concerning both the quantum and the derailment allegedly giving rise to the defendants' liability. There is no reference in either letter to settlement of the claim. The November 5, 1997 letter contains no reference to payment of the claim. The January 17, 1998 letter, on which the plaintiff chiefly relies, refers to "the delay in issuing payment of your claim". [17] If the context of the communications is relevant in determining how a reasonable recipient of the letter would construe it, the response of the plaintiff's claims agent to the letter of January 17, 1998 provides the answer: he concluded that the defendants' claims agent was still investigating the accident. There is no basis for me to conclude that the plaintiff's claims agent is not a reasonable person or that any reasonable person would interpret the defendants' claims agent's requests for information concerning the derailment differently. [18] While the defendants' claims agent did not expressly deny liability, he did not indicate that he was accepting the plaintiff's claim, with respect to either liability or quantum, without reservation. In the context of the communications between the parties, the defendants' claims agent's reference to "the delay in issuing payment of your claim" is nothing more than a direct response to the plaintiff's requests for payment. There is nothing in either the context of the communications as a whole or in the content of the specific letters relied on by the plaintiff that suggests that the defendants' claims agent accepted liability for the derailment and was looking to settle or finally resolve the plaintiff's claim. [19] The verbal offer made by the defendants' claims agent before any investigation of the claim lends no additional weight to the plaintiff's argument.
- [11] I am not persuaded that the learned Chambers judge erred in her understanding or construction of these letters. In my view, their content read in context fails to meet the test laid down by this court in *Podovinikoff*, *supra*. I think that a reasonable person reading these letters in the context of what had passed between the parties would not conclude that the defendants had admitted any liability. One might say that the letters acknowledged a cause of action in the plaintiff but that is not enough. There must in addition be an admission of some liability. The Chambers judge's conclusion in my view was a reasonable interpretation of this correspondence, and I would not interfere with her conclusion.
- [12] I would dismiss the appeal.
- [13] MCEACHERN, C.J.B.C. I agree with what Mr. Justice Finch has said.

[14] ROWLES, J.A. I agree.

[15] MCEACHERN, C.J.B.C. Thank you counsel. The appeal is dismissed. "The Honourable Mr. Justice Finch"

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/ca/00/03/c00-0319.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/canadian-pacific-railway-v-enderby-et-al-2000>

Prepared on 28 October 2026 · Esheria