

CANADA / JUDGMENT

Choy v. Stimpson

2021 BCSC 1197

COURT

Supreme Court of British Columbia

DECIDED

27 April 2021

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2021 BCSC 1197 Choy v. Stimpson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Choy v. Stimpson, 2021 BCSC 1197 Date: 20210427 Docket: M206253 Registry: New Westminster Between: Johnny Choy Plaintiff And Owen Stimpson and Alison Anne Stimpson Defendants

- and - Docket: M224571 Registry: New Westminster Between: Johnny Choy Plaintiff And Bonny Jing-Cay Mao and Allen Hung-Leung Mao Defendant Before: The Honourable Mr. Justice Edelmann Oral Ruling Re Application to Extend the Time to File an Expert Report Counsel for the Plaintiff: T.F. Dennis Counsel for the Defendants: T. Brown H. Khan, Articled Student Place and Date of Trial: New Westminster, B.C. April 27, 2021 Place and Date of Ruling: New Westminster, B.C. April 27, 2021
- [1] THE COURT: This is an application by the defendants to extend the time to file and serve an expert report under Rule 11-6(3) of the Supreme Court Civil Rules. The report, prepared by Dr. Raymond Ma, is dated September 10, 2018. It was prepared at the request of the plaintiff and was still listed as a privileged document on November 23, 2020.
- [2] It is unclear on the evidence before me when the defendants came into possession of the report, although counsel for the defendants accepts that it was sometime in 2019 or 2020. Dr. Ma was the plaintiff's family doctor, and the report would appear to have been included in the medical records from Dr. Ma provided to the defendants.
- [3] Counsel for the defendants has argued that he expected that Dr. Ma would be called by the plaintiff and, therefore, assumed that he would be able to rely on the report. If the plaintiff was going to rely on the report, it would have had to have been served on or about February 1, 2021 in order to comply with the 84-day notice period in Rule 11-6(3). The plaintiff did not serve the report at that time.
- [4] It was also clear from the plaintiff's trial brief filed on March 4, 2021 that he did not intend to call Dr. Ma as a witness or tender his report.

- [5] It would appear from the evidence of Marie Rivera, a paralegal of defendants' counsel's office that, on April 12, 2021, the plaintiff sent a copy of Dr. Ma's report to the defendants. The defendants suggest that that was the first date the plaintiff was no longer asserting privilege over Dr. Ma's report, although the evidence before me on that point is unclear.
- [6] On April 20, 2021, the defendants served Dr. Ma's report on the plaintiff and seek to have that deemed as the date of service. The trial in this matter commenced on April 26, 2021.
- [7] Rule 11-7(6) describes when the requirements of Rule 11-7 may be dispensed with as follows: Rule 11-7 -- Expert Opinion Evidence at Trial When court may dispense with requirement of this Part
- (6) At trial, the court may allow an expert to provide evidence, on terms and conditions, if any, even though one or more requirements of this Part have not been complied with, if
- (a) facts have come to the knowledge of one or more of the parties and those facts could not, with due diligence, have been learned in time to be included in a report or supplementary report and served within the time required by this Part,
- (b) the non-compliance is unlikely to cause prejudice
- (i) by reason of an inability to prepare for cross-examination, or (ii) by depriving the party against whom the evidence is tendered of a reasonable opportunity to tender evidence in response, or
- (c) the interests of justice require it.
- [8] These provisions are disjunctive, so if one of them applies, then the report in question may be admissible. The defendants rely on Rule 11-7(6)(b) and (c) in their argument.
- [9] In my view, the comments of Justice MacNaughton in the case of *Karpowicz v. Glessing*, 2018 BCSC 887, are equally applicable to the case before me:
- [49] In this case, although the plaintiff did not specifically rely on 11-7(6) or frame his arguments in terms of the reconsiderations in that rule, the plaintiff's arguments are essentially that the non-compliance with the 84-day deadline is unlikely to cause prejudice and the interests of justice require a waiver of the deadline in this case. I accept that the defendant would not be prejudiced in preparing to cross-examine Ms. Beattie. However, I do not consider this an appropriate case in which to exercise my discretion to waive entirely the 84-day deadline. In my view, the discretion in Rule 11-7(6) was intended to abridge the timelines in the rules and not to waive them entirely.
- [50] The practice of re-serving favourable opposing parties' experts' reports is not uncommon in personal injury litigation. It was a procedure which was open to the plaintiff in this case. In addition, the interests of justice in this case do not require a waiver.

- [10] In the case before me, the plaintiff had ample time to arrange for an expert report from Dr. Ma or other experts as he saw fit. Even if he wanted to rely on the report of Dr. Ma, this application could have been brought in February when the defendants realized the plaintiff was not calling Dr. Ma. At the latest, this would have been amply evident upon review of the plaintiff's March 4, 2021 trial brief.
- [11] Had the application been brought at that time, there would have been time to allow for either the normal 42 days for the plaintiff to file an expert report in response, or at least some substantial portion of that period would have been available. At the time this application is being made, it is not realistic for the plaintiff to respond and, in my view, it is therefore not in the interests of justice for the notice period to be waived.
- [12] The application is dismissed. "Edelmann J."

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Prepared on 29 October 2026 · Esheria