

CANADA / JUDGMENT

Cooper v. Lynch

2009 BCSC 1386

COURT

Supreme Court of British Columbia

DECIDED

23 June 2009

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2009 BCSC 1386 Cooper v. Lynch IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Cooper v. Lynch, 2009 BCSC 1386 Date: 20090623 Docket: 09-1521 Registry: Victoria Between: Joan May Cooper Plaintiff And: Travis Gregory Lynch Defendant Before: Master McCallum Oral Reasons for Judgment Counsel for Plaintiff: M. Pohorecky Counsel for Defendant: E. Hughes Place and Date of Hearing: Victoria, B.C. June 23, 2009 Place and Date of Judgment: Victoria, B.C. June 23, 2009

- [1] THE COURT: I am not going to take the opportunity offered to me by the plaintiff here to revisit the decision I made in Smith v. Chabutura.
- [2] In my view the facts in the Smith case that I decided in January of 2009 are indistinguishable from the facts in the case at bar. For the reasons advanced in Smith v. Chabutura, I say the defendant's motion should go and the action should be transferred to Kelowna.
- [3] I will say that I did not have the benefit in the Smith decision of the Okayasu case. In my view, that does not change anything. The facts in that case were different than the facts here. The court, of course, ordered the trial of the action heard in a different location, but the court in that case declined to transfer the file for pre-trial matters. That related to the issues that are set out at paragraph 48, the difficulty in finding a non-local judge available to hear interlocutory matters, the fact that two out of three counsel were from Vancouver. The court did say that the general proposition that the plaintiff has the right to choose the venue permitted all matters up to trial to be heard in Vancouver.
- [4] That is not the case here. So, as I say, I say for the reasons articulated in Smith that this order should go. If I am wrong in that, Mr. Pohorecky, you will have to get somebody else to say so.
- [5] Thank you.
- [6] With respect to the order of costs, I agree with the defendant, the defendant should have her costs in any event of the cause in this application. That is, again, consistent with what I said in Smith.

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- [7] Having started down the path, Mr. Pohorecky, I am going to stay on it. "W. McCallum"
Master William McCallum
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