

CANADA / JUDGMENT

Engler & Others v. Mattis

2005 BCSC 157

COURT

Supreme Court of British Columbia

DECIDED

7 February 2005

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2005 BCSC 157 Engler&Others v. Mattis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Engler & Others v. Mattis

2005 BCSC 157

Date: 20050207

Docket: S044012

Registry: Vancouver

Between:

Terry Engler, James Meredith, Brian E. Sims,

Brian Siemens and Ted White, Trustees of the

B.C. Marine Industry Standard Welfare Plan

(also known as the B.C. Marine Industry Employee Health Benefit Plan)

Plaintiffs

And:

William Mattis

Defendant

Before: The Honourable Mr. Justice Rogers

Reasons for Judgment

Counsel for the plaintiffs:

A.M. Ross

Counsel for the defendant:

D.J. Renaud

Date and Place of Hearing:

February 2, 2005

Vancouver, B.C.

INTRODUCTION

- [1] In this summary trial the issue is how much money did the plaintiffs' loan to the defendant pursuant to a loan agreement, and how much money must the defendant repay under that agreement.
- [2] Those questions appear simple enough - but looks can be deceiving. The loan comprised short-term disability payments the plaintiffs made to the defendant during a period of disability. The defendant's disability arose first from injuries consequent to a motor vehicle accident and later from an illness. The defendant received some money in return for settling his claim for his accident injuries. The defendant says he should have to repay only benefits he received while he was disabled from the auto accident, and then only to the extent that he recovered past income loss in his accident claim. The plaintiffs says that all the benefits (i.e.: benefits paid during the accident disability and the illness disability) must be repaid and the defendant must use the whole fund from the accident claim to repay them.

The Facts

- [3] For the purpose of the summary trial I considered evidence contained in the affidavits of Harvey Mason; Brian Sims, affidavit #1; Brian Sims, affidavit #2; Simma Heer; and William Mattis.
- [4] The plaintiffs are the Trustees of a Worker's Welfare Plan. The Plan was established in the 1970's. The Plan exists to provide extended health benefits to marine workers. The Trustees administer the fund. The Trustees must formulate, create, establish, and maintain a plan to provide, among other things, accident and health benefits for the beneficiaries of the trust. To that end the Trustees set up a plan under which eligible marine industry employees who, by reason of injury or illness, become disabled from their work may apply for and receive short-term disability benefits.
- [5] Prior to January 2001 the Plan simply provided that the Plan was subrogated to the employee's "rights of recovery therefore against any person or organization". From January 2001 forward the Plan provided, in addition to subrogation, that:

At the discretion of the Trustees, benefits may be payable to a member who has a right to recover damages or benefits from any person or organization due to the same cause. Subject to approval by the Trustees, such a member must enter into a Loan Agreement with the Plan, which states that the member will reimburse the Plan in the amount of benefits paid out of the damages recovered. The term "damages" will include, but are not limited to, any lumps sum or period payments received on account of past, present or future loss of income.

[6] On March 1, 2001 Mr. Mattis was a member of the Plan. On that day he was involved in a two-vehicle auto accident. The other driver was at fault for the collision. The accident caused Mr. Mattis soft tissue injuries. Those injuries disabled him from his regular employment. Mr. Mattis applied to the Plan for short-term wage replacement benefits. The Plan agreed to pay those benefits, but stipulated that Mr. Mattis should sign a loan agreement with respect to those benefits. Mr. Mattis agreed to those terms, and on or about March 13, 2001 he signed a Loan Agreement.

[7] The Loan Agreement contained a number of terms relevant to this suit. They were:

Whereas:

- a) The employee is a member in good standing of the Plan.
- b) The employee, while employed by the Plan, incurred an injury or illness on or about March 2001 (the Disability);
- c) As a result of the Disability the employee has been unable to work and as such has experienced a wage loss (Wage Loss);
- d) The employee required financial assistance to supplement the employee's income while recuperating from the Disability;
- e) The Plan is willing to provide the employee with financial assistance by way of a loan repayable pursuant to certain conditions provided by this Agreement;
- f) The Plan and the employee have agreed to enter in to this Agreement to record their respective covenants pertaining to the Plan's advance of financial assistance and the employee's repayment of such financial assistance.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the Plan advancing the employee \$569 per week, the employee agrees:

1. The Plan's advance of \$569 per week to a maximum of 52 weeks or earlier recovery. The total of the payments will be taken in their aggregate and the employee William Mattis agrees that the total advance is a loan (the "Plan's Loan") and is not a gift.

The employee further agrees:

2. To repay the Plan's Loan from any monies received by the employee paid as a result of the Disability, which monies are inclusive but not limited to contributions from Workers' Compensation Board, any no fault insurance, the employer or its agents, employees and assigns, or any other party corporate or personal who may be responsible for the Disability;
- [8] The evidence satisfied me that the injuries Mr. Mattis sustained in the auto accident disabled him from his work for a period of eight weeks. At the end of those eight weeks he was sufficiently recovered so that he was able to go back to his regular employment. The evidence further satisfied me that just as he was ready to return to work Mr. Mattis had the misfortune of experiencing one or more small cerebral strokes. These strokes affected his ability to walk and maintain his balance. These stroke-caused symptoms were sufficient to keep him off work until sometime in the summer of 2002.
- [9] Although the evidence is not absolutely clear about this, I infer that Mr. Mattis did not file an application for disability benefits for time-off-work due to the strokes. He simply continued to draw benefits under the original auto accident application and those benefits continued to be paid.
- [10] On the strength of the medical reports submitted by Mr. Mattis in the summary trial, I further infer that the reason Mr. Mattis did not file a separate claim for disability benefits for the strokes was because he thought that perhaps the stroke symptoms were caused by the auto accident and that he might therefore be compensated for them in the claim he had commenced against the driver at fault for the auto collision. In the end, the medical evidence came down clearly against a link between the auto accident and the stroke symptoms.
- [11] In all Mr. Mattis received the full 52 weeks of benefits at \$569 per week allowed under the Plan, making a total paid of \$29,588.
- [12] As noted Mr. Mattis launched a tort claim for recovery of damages caused him by the at-fault driver. When the medical evidence made it clear that he could not get compensation for his stroke symptoms Mr. Mattis decided to settle his tort claim. He settled the claim upon payment to him of \$29,975. In return for that sum Mr. Mattis released all his claims for general and special damages, past and future income loss, cost of care, and costs and disbursements.
- [13] Mr. Mattis and his tort feisor did not break-out a wage loss figure from the global settlement. Mr. Mattis' affidavit in the summary trial asserted that his recovery for wage loss was \$4,000. That is really a conclusion, and Mr. Mattis did not testify to any facts on which the court might find that conclusion was warranted. Mr. Mattis did not, for example, testify that his regular income in March 2001 was \$X per week or month. He did not provide a tax return or pay stubs to show how much he was paid. There is no letter from his employer. Absent some evidence on those facts I find that I cannot independently conclude that Mr. Mattis' income was as he says it was. I find that the evidence in the summary trial was sufficient for me to hold that Mr. Mattis suffered some income loss due to the auto accident,

I cannot say precisely how much that loss was. Neither can I say exactly how much money Mr. Mattis received from his tortfeasor in compensation for past income loss attributable to the accident.

- [14] Upon learning that Mr. Mattis had settled his tort claim, the Plan demanded repayment of disability benefits it had paid to Mr. Mattis. The Plan made that demand on March 24, 2004. The Plan demanded that Mr. Mattis pay back all of the benefits he'd received, viz: \$29,558. The Plan's theory was that the tort settlement comprised "monies received by the employee paid as a result of the Disability", and that therefore the whole of the tort settlement was available to fund Mr. Mattis' obligation to repay.
- [15] Mr. Mattis refused to repay all of the benefits. Mr. Mattis maintains that the Loan Agreement must be read in the context of the Plan. He took the position that the Loan Agreement must be interpreted so that the only pool of settlement money available to repay benefits was the \$4,000 he says represented the income loss he recovered.

Discussion

- [16] To answer Mr. Mattis' argument that the fund from which benefits must be repaid is limited to the amount the member recovers by way of wage loss, it is necessary to go no farther than the Agreement's term that the employee agrees "to repay the Plan's Loan from any monies received by the employee paid as a result of the Disability". Those words are clear and unambiguous. They describe the totality of the compensation the employee obtains for the injury or illness giving rise to the employee's Disability.
- [17] I am not persuaded that to understand the Loan Agreement the court must make reference to the terms of the Plan. The Loan Agreement contains perfectly clear language. It is not fraught with ambiguity such that the court should consider extrinsic evidence in order to give it proper sense. The loan agreement means what it says: the full amount of the money the employee receives from third parties as a result of the Disability is the amount available from which the employee must repay benefits.
- [18] The next issue, and the key question in this case is: what was the amount of money loaned by the Plan to Mr. Mattis pursuant to the Loan Agreement? The plaintiffs says that the loan amount was \$29,588 because that was the amount of benefits the Plan paid to Mr. Mattis. Mr. Mattis says that the loan amount was limited to the eight weeks of benefits he got on account of his disability arising from the auto accident. That smaller figure is \$4,552.
- [19] In my view the language of the Loan Agreement is, again, clear and unambiguous. The Agreement stipulates that the Plan will loan money to Mr. Mattis. The loan comprises financial assistance to Mr. Mattis and is intended to alleviate hardship caused by the defined term "Wage Loss". The Loan Agreement stipulates that the Wage Loss in question is the Wage Loss resulting from Mr. Mattis' "Disability". The Agreement defines Mr. Mattis' Disability as either the injury or the illness he had on or about March 1, 2001.

- [20] The only ailment that Mr. Mattis had on March 1, 2001 was the soft tissue injury he sustained in the accident. Therefore, what the Plan loaned to Mr. Mattis under the Loan Agreement were those benefits that alleviated his wage loss caused by disability arising from the March accident. When Mr. Mattis' disability ended eight weeks later the Plan stopped advancing money to him under the terms of the loan agreement.
- [21] Now, obviously the Plan continued to pay Mr. Mattis benefits after he recovered from his auto accident. But those later benefits cannot be the subject of the Loan Agreement in issue here. That is because those benefits were paid to provide financial assistance for wage loss suffered as a consequence of a disability other than the one defined by the Loan Agreement. The parties ought to have crafted a new Loan Agreement in May when the new Disability manifested. They did not. The Plan simply continued to pay Mr. Mattis disability benefits. I infer that the Trustees were not inclined to exercise their discretion to require Mr. Mattis to sign a new Loan Agreement with respect to the benefits paid due to his illness in May 2001.
- [22] For reasons of their own the plaintiffs here did not plead that Mr. Mattis had an obligation to bring his illness to the Plan's attention in a timely way, and that he breached that obligation. It may be that if the plaintiffs had pursued that argument the case would have had a different complexion (although I am not sure that the outcome would be any different - I doubt that the Plan would bother with a loan agreement when benefits are paid due to an illness where no third party right of recovery exists). I note that possibility as a matter of caution - I would not want this decision to be taken to erode an insured's obligation to make full and frank disclosure to his disability insurer.

Conclusion

- [23] The Loan Agreement stipulates that the loan the Plan made to Mr. Mattis comprised the benefits paid to Mr. Mattis while he was recovering from his disability. The Agreement defined his disability as whatever injury or illness he had on March 1, 2001. That disability was the soft tissue injury caused by the auto accident. Mr. Mattis recovered from that disability eight weeks after its onset. The loan period spanned those eight weeks, and the loan amount was \$4,552. The benefits the Plan paid to Mr. Mattis after he recovered from the auto accident were not contemplated by the loan agreement he signed. He has no obligation to repay those latter monies.
- [24] Mr. Mattis is obliged to pay the whole of the \$4,552. The terms of the Loan Agreement do not allow him to limit his obligation to repay whatever lesser sum he may have recovered by way of wage loss from his tortfeasor.
- [25] The plaintiffs shall have judgment against the defendant for \$4,552 plus court order interest as requested from March 24, 2004 to the date of judgment.

Costs

[26] The amount recovered by the plaintiffs is within the jurisdiction of the Small Claims Court. By the time the plaintiffs' writ was filed sufficient information was at hand to indicate that Mr. Mattis' disability from May 2001 on was caused by something other than the disability contemplated by the Loan Agreement. There was, therefore, no good reason for the plaintiffs to commence its action in this court. Therefore, and in accord with Rule 57(10), the plaintiffs shall recover disbursements only.

"P. Rogers, J."

The Honourable Mr. Justice P. Rogers

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