

CANADA / JUDGMENT

Finch v. Anderson

2014 BCSC 2008

COURT

Supreme Court of British Columbia

DECIDED

27 October 2014

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2014 BCSC 2008 Finch v. Anderson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Finch v. Anderson, 2014 BCSC 2008 Date: 20141027 Docket: M136890 Registry: Vancouver Between: Amarjit Finch Plaintiff And John Anderson and Coast Mountain Bus Company Ltd. Defendants Before: Master Muir Reasons for Judgment Counsel for Plaintiff: H. MacDonald Counsel for Defendants: R. Robertson Place and Date of Hearing: Vancouver, B.C. October 15, 2014 Place and Date of Judgment: Vancouver, B.C. October 27, 2014

- [1] This is an application by the defendants to withdraw the admission of negligence and liability made in their response to civil claim filed December 18, 2013.
- [2] The action arises from a motor vehicle accident that occurred on March 27, 2013. A bus operated by the defendant, Coast Mountain Bus Company Ltd. ("Coast Mountain") and driven by the defendant, Mr. Anderson, rear-ended the plaintiff's vehicle, which was stopped in the bus lane on Highway 99 in Surrey, B.C.
- [3] Almost immediately following the accident the plaintiff made a report to the Insurance Corporation of B.C. The plaintiff's statement at the time was that she was travelling west on Highway 99 at King George Boulevard when her car engine died. She pulled into the far right lane and put her hazard lights on.
- [4] On April 8, 2013 she made a statement regarding the accident circumstances, again saying the accident was on Highway 99 at or near the King George Highway overpass.
- [5] In his statement made the day of the accident Mr. Anderson puts the accident further north on the highway. He says the plaintiff was stopped after the Serpentine River Bridge on a curve in the highway and that her vehicle was obscured to him by traffic and the curve of the road. When he saw the plaintiff's vehicle, Mr. Anderson was unable to change lanes due to traffic in the lane to the left of him and uneven gravel and a ditch to the right. He applied the bus brakes fully but was unable to stop before hitting the plaintiff's vehicle.
- [6] The Transit Supervisor's report of the same day says that the driver had nowhere to go as there was a large delivery truck to the left of the bus and the ditch on the right.

- [7] The accident was investigated by Coast Mountain, apparently including revisiting the scene and taking video of the area.
- [8] The investigation File Log Summary contains notes questioning why Mr. Anderson allowed the "truck to block him in contrary to what they are taught." And concludes: "By allowing this to happen he left himself no out or exit in the event of an emergency. Anderson should have backed off and let the truck go ahead of him. He did not do that."
- [9] An Incident Analysis report dated May 3, 2013 concluded that the accident was preventable, as contrary to Coast Mountain's Training Department instructions, Mr. Anderson had permitted the large vehicle to block his view ahead. They determined that he should have distanced himself from this vehicle to allow a full field of view.
- [10] Apparently, as a result, the admission of liability was made.
- [11] Examinations for discovery were held of the plaintiff and Mr. Anderson on August 26, 2014.
- [12] At those discoveries, the defendants say certain facts were learned that were not known when the admission of liability was made. Including:
- a) Although the plaintiff has consistently stated that her hazard lights were on, Mr. Anderson denies having seen them;
 - b) The two differed by perhaps 2 kilometers as to the location of the accident; and
 - c) The plaintiff "was in her car while it was stopped in the bus lane for a significant amount of time prior to the Accident."
- [13] As to the last point, her evidence was that the accident occurred several minutes after she stopped. She said she tried to start the car several times and at the time of the collision was trying to call her son to come and pick her up.
- [14] After the collision the plaintiff tried shifting the transmission to neutral and was able to start her car and drive away.
- [15] The defendants submit that this evidence raises questions about what the plaintiff was doing on the side of the highway. The implication being that her vehicle was not really disabled and she had perhaps stopped to make or take a phone call.
- [16] The defendants therefore argue that the plaintiff was in contravention of s. 187 of the Motor Vehicle Act, RSBC 1996, c. 318, which provides: Where parking prohibited 187 (1) Subject to subsection (3), if outside of a business or residence district it is practicable to stop, park or leave a vehicle off the roadway, a person must not stop, park or leave the vehicle either unattended or attended on the roadway.
- (2) Subject to subsection (3), a person must not park a vehicle so as to obstruct the free passage of traffic on the highway.

- (3) Subsections (1) and (2) do not apply when a vehicle is so disabled that it is not practicable to avoid stopping and temporarily leaving it on a highway.
- [17] They also point to decisions in which the operator of a vehicle stopped on a highway was considered to be negligent, e.g. *Hart v. Jacobsen*, 2014 BCSC 704 and *Skinner v. Guo*, 2010 BCCA 321.
- [18] A failure to pull fully off the highway and engage hazard lights in this circumstance could contribute to a finding of negligence.
- [19] An admission in a pleading cannot be withdrawn other than by consent or with leave of the court. See Supreme Court Civil Rules, B.C. Reg. 168/2009, Rule 7-7(5).
- [20] The applicable test was not disputed. It was recently set out by Mr. Justice Kent in *Continental Steel Ltd. v. CTL Steel Ltd.*, 2014 BCSC 104, as follows:
- [27] With respect to applications under Rule 7-7(5)(c), the leave to withdraw an admission made in a pleading, the principles to be applied and the factors to be considered have been summarized and endorsed by the Court of Appeal in *Munster & Sons Development Ltd. v. Shaw*, 2005 BCCA 564 (CanLII) (at para. 10) as follows:
1. The test is whether there is a triable issue which, in the interests of justice, should be determined on the merits and not disposed of by an admission of fact.
 2. In applying that test, all the circumstances should be taken into account including the following:
 - a. the admission has been made inadvertently, hastily, or without knowledge of the facts.
 - b. the fact admitted was not within the knowledge of the party making the admission.
 - c. the fact admitted is not true.
 - d. the fact admitted is one of mixed fact and law.
 - e. the withdrawal of the admission would not prejudice a party.
 - f. there has been no delay in applying to withdraw the admission.
- [21] This test has been held to apply to the withdrawal of an admission of liability in a response to civil claim in *Sidhu v. Hothi*, 2013 BCSC 1753.
- [22] Here whether the plaintiff was negligent is a triable issue. The admission, although not inadvertent, appears to have been made considering only the actions of the defendant driver and not the potential negligence of the plaintiff and without full knowledge of the facts. Although slim, there were facts raised on the examinations for discovery that highlighted the potential for such negligence.

- [23] Clearly the admission is not a purely factual one - an admission of negligence and liability involves mixed fact and law.
- [24] As to prejudice, the plaintiff suggested that she has been deprived of the ability to fully investigate the circumstances of the accident and that she would have done so promptly had she known liability would be disputed.
- [25] There were four independent witnesses to the accident that were identified by the defendant driver. Since the hearing of this application, I have been advised that three of those witnesses were in fact contacted by counsel for the plaintiff prior to this application. Although their memories may have faded, there is no indication that the plaintiff's ability to investigate this matter has been impaired.
- [26] I am satisfied that there is no significant prejudice to the plaintiff here.
- [27] It is only about 18 months since the accident. The action was started promptly and this application was made within a month of the examinations for discovery. Delay is not a significant factor in my view.
- [28] In all of the circumstances, I am satisfied that it is in the interests of justice to allow the admission of negligence and liability to be withdrawn. It is preferable that there be a full investigation of the merits of this case.
- [29] As a result, the application is allowed with costs to the defendant in the cause. ____ "Master Muir" ____ Master Muir

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