

CANADA / JUDGMENT

Forde v. Interior Health Authority

2007 BCSC 1706

COURT

Supreme Court of British Columbia

DECIDED

27 November 2007

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2007 BCSC 1706 Forde v. Interior Health Authority IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Forde v. Interior Health Authority, 2007 BCSC 1706 Date: 20071127 Docket: S043004 Registry: Vancouver Between: Leonora Forde Plaintiff And Interior Health Authority, operating as a public hospital under the name of Royal Inland Hospital, Dr. Majid Faridi, Dr. P. Geoff Newell, Dr. Jeffrey R. Oyler and John Doe Defendants Before: The Honourable Madam Justice L.D. Russell Reasons for Judgment Counsel for Plaintiff V. Critchley Counsel for Defendants, Drs. Akagami, Redekop, Toyota, Bilbey, Clare, Walter and McKeown A.P. Mayer Counsel for Defendant Dr. M. Faridi P. Spinks Date and Place of Hearing: October 5, 2007 Vancouver, B.C.

INTRODUCTION

- [1] This is an application to join several parties to a proceeding pursuant to Rule 15(5)(a)(iii) of the British Columbia Supreme Court Rules, B.C. Reg. 221/90.
- [2] The plaintiff, Ms. Leonora Forde, is pursuing an action in negligence against various medical professionals. The plaintiff alleges there was an unreasonable delay in diagnosis, a failure to communicate and other negligent acts, thereby causing her injury, loss and expense.
- [3] The plaintiff filed a Writ of Summons on June 1, 2004, naming the Royal Inland Hospital, Dr. Faridi, Dr. Newell and Dr. Oyler, as defendants. The plaintiff now applies to add four further medical professionals to the existing action, Drs. Bilbey, Walter, Redekop and Toyota. Should this application fail, the plaintiff will be statute-barred from recovering against the latter four doctors. The limitation periods have expired.

FACTS

- [4] In 2001, the plaintiff began seeking treatment from her family physician, Dr. Newell, for lower back pain. She was referred to various specialists, but her condition continued to decline until she eventually became quadriplegic. The plaintiff received a diagnosis of vascular malformation (AVM) in November 2002. Surgery was performed in April 2003 by Dr. Redekop.

- [5] The plaintiff retained Mr. Renaud as counsel in late 2003 and initiated the action against the original defendants on June 1, 2004. Mr. Renaud argues that he had no basis upon which to add Drs. Bilbey, Walter, Redekop and Toyota as defendants at the time the original writ was filed.
- [6] Mr. Renaud states that in June 2004, even though he was aware that there were radiologists involved in the assessment of the plaintiff, he had no reason to believe that Drs. Bilbey and Clare could be held liable in negligence. At that time, Mr. Renaud believed that the defendant hospital was responsible for the creation and administration of a system of communication regarding patient care. On November 6, 2006, Mr. Renaud received a statement of defence from the defendant hospital disclaiming responsibility for any administrative failure and arguing that this responsibility fell on individual radiologists. Mr. Renaud claims that it was at this point that he felt it necessary to add Drs. Bilbey and Clare as defendants. On March 16, 2007, Mr. Renaud applied to add the radiologists as defendants.
- [7] Although Mr. Renaud was aware at all times that Dr. Redekop had performed surgery on the plaintiff in April 2003, he states that he did not become aware that Dr. Redekop was involved in the plaintiff's care prior to this date until July 2006. At the examination for discovery of Dr. Faridi in July 2006, Mr. Renaud received telephone records indicating telephone communication between Dr. Faridi's office and Dr. Redekop's office on January 3, 2003. Accordingly, Mr. Renaud felt it necessary to add Dr. Redekop as a defendant and Dr. Redekop was served on October 30, 2006.
- [8] Mr. Renaud states that, although he reviewed Dr. Faridi's records around June 2004 and observed a referral letter to Dr. Toyota, he had no reason at that time to believe that Dr. Toyota was involved in the plaintiff's care. There was no corresponding MSP record, the plaintiff was unaware of any involvement of Dr. Toyota, and Dr. Toyota advised Mr. Renaud that he did not have any clinical records relating to the plaintiff. On August 25, 2005, Mr. Renaud received further records from Dr. Faridi indicating that Dr. Toyota had some involvement in the plaintiff's care. However, it was not until July 26, 2006 that Mr. Renaud received documents indicating that diagnostic images had been delivered to Dr. Toyota's office in 2002. At this time, Mr. Renaud felt it necessary to add Dr. Toyota as a defendant in the action. Dr. Toyota was served on November 1, 2006.
- [9] Mr. Renaud states that any delay in adding the proposed defendants stems from error in judgment or inadvertence. He argues that the delay was not a tactical decision.

ANALYSIS

- [10] Rule 15(5)(a)(iii) provides as follows:

- (a) At any stage of a proceeding, the court on application by any person may (iii) order that a person be added as a party where there may exist, between the person and any party to the proceeding, a question or issue relating to or connected (A) with any relief claimed in the proceeding, or (B) with the subject matter of the proceeding, which in the opinion of the court it would be just and convenient to determine as between the person and that party.
- [11] The two part test for the addition of parties under Rule 15(5)(a)(iii) is well established:
- a) The court must be satisfied that there is a question or issue between the parties relating to the relief, remedy or subject matter of the suit; and
 - b) That it is just and convenient to determine the issue in the proceedings in question.
- [12] See *Strata Plan LMS 1816 v. Acastina Investments Ltd.*, 2004 BCCA 578, 33 B.C.L.R. (4th) 69.
- [13] The first branch of the Rule 15(5)(a)(iii) test will be met when a plaintiff can show that it has a possible cause of action against a proposed defendant. The threshold at this stage is low, and evidence is not to be analyzed. In *MacMillan Bloedel Ltd. v. Binstead* (1981), 58 B.C.L.R. 173, [1982] B.C.W.L.D. 494 (C.A.) at para. 16, the court set out the correct approach that a trial judge should take when evaluating the first branch of the test: It seems to me clear that one of the functions of the chambers judge hearing an application under this rule must be to decide whether there may exist between the appropriate parties a question which can be answered or an issue which can be decided by a court of law or by a judge exercising jurisdiction in a judicial capacity and to see, through whatever means, and not necessarily affidavits, that the question or issue is a real one in the sense that it is not entirely frivolous and would result in courts wasting judicial time. It is not the function, in my opinion, to decide whether on any kind of balance it is likely that the plaintiff would be able to prove its allegations on a balance of probabilities or to any other degree beyond showing that there may exist a question or such an issue.
- [14] To demonstrate a possible cause of action against the defendant, the plaintiff must plead those facts which are material to a viable cause of action (*Acastina Investments*, *supra*; *Link v. Texas Oil & Gas Inc.*, 2006 BCSC 1520, [2007] B.C.W.L.D. 1663).
- [15] There is ample authority for the proposition that, although pleadings may be general, they must be specific enough to show on what grounds the proposed defendant is being sued (*Strata Plan LMS 2869 v. Redekop Properties (Lonsdale) Inc.*, 2002 BCSC 1608; *Mareigh v. Demco* (1981), 21 C.P.C. 101 (B.C.S.C.); *Hunt v. T&N plc. et al.* (1989), 41 B.C.L.R. (2d) 269, 38 C.P.C. (2d) 1 (B.C.C.A.); *Robson Bulldozing Ltd. v. Royal Bank of Canada et al.* (1985), 62 B.C.L.R. 267 (B.C.S.C.)).
- [16] The respondents rely on *Basdeo (Litigation Guardian of) v. University Health Network*, [2002] O.T.C. 54, 111 A.C.W.S. (3d) 33 (O.S.C.J.) to argue that the pleadings in this case fail to contain material facts giving rise to a viable cause of action. *Basdeo*, *supra* stands for the proposition that it is inappropriate to lump defendants together and make blanket allegations against them, unless those defendants were in an identical relationship to the

plaintiff. Standard or "boilerplate" allegations in a statement of claim will often not satisfy the requirements under the first stage of the Rule 15(5)(a)(iii) test.

- [17] I agree that the plaintiff has improperly made blanket allegations against the proposed defendants. The pleadings are imprecise and overly general. Paragraph 23 of the Amended Statement of Claim alleges that the "Defendants, or any one combination thereof, and / or their servants or agents who treated, attended and advised the Plaintiff are guilty of negligence." Paragraph 24 purports to set out the particulars of the negligence claim, containing 11 allegations that are applicable to one, several, or all of the defendants. As has been pointed out by the respondents, if the defendants were involved in the plaintiff's care, they would have provided different types of care, for different reasons, at different times.
- [18] It is impossible to discern on what basis each of the proposed defendants could be held liable in negligence. This is further complicated by the fact that affidavit evidence of some of the respondent physicians suggests that they had nothing to do with the plaintiff's care at the relevant time. Thus, I agree with the respondents that merely setting out a list of negligent actions that may or may not be applicable to each of the defendants on an individual level is so imprecise that it fails to give rise to a cause of action. CONCLUSIONS
- [19] I dismiss the plaintiff's petition with costs to the defendants. This dismissal is without prejudice to the plaintiff's right to amend the pleadings and submit a new application for joinder.

Madam Justice Loryl D. Russell

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Prepared on 26 October 2026 · Esheria