

CANADA / JUDGMENT

Gallo v. Reyes

2021 BCSC 169

COURT

Supreme Court of British Columbia

DECIDED

14 January 2021

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2021 BCSC 169 Gallo v. Reyes IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Gallo v. Reyes, 2021 BCSC 169 Date: 20210114 Docket: M189028 Registry: Vancouver Between: Teri Leah Gallo Plaintiff And Andrew De Los Reyes Defendant Before: Registrar Nielsen Oral Ruling Re Application for Short Leave In Chambers Counsel for the Plaintiff: N.W. Peterson Counsel for the Defendant: J. Carangi Place and Date of Hearing: Vancouver, B.C. January 14, 2021 Place and Date of Decision: Vancouver, B.C. January 14, 2021

- [1] This is an application for short leave pursuant to the Supreme Court Civil Rules. Short leave was granted on January 12, 2021. At the time it was granted, it was my understanding that six expert reports had been submitted at the eleventh hour. I was not aware at that time that the service date was October 30, 2020.
- [2] I also was not aware that there had been an agreement that the short leave application was to be heard January 13, 2021, not January 12, 2021. I have been informed that because of difficulties at the registry, that defence counsel was unable to file his materials for January 13, 2021. So he therefore set the short leave application for January 12, 2021.
- [3] Again, I was not aware of the agreement that it be heard on January 13, 2021, or that there were any discussions with the registry concerning difficulties. Had I been aware of that, I would not have granted the order, and I would have investigated whether or not the January 13, 2021 hearing date could have been accommodated. In any event, both parties are agreed that the January 12, 2021 short leave which was granted needs to be vacated. It is vacated by consent.
- [4] The next issue is whether or not this matter has met the urgency test in the Supreme Court Civil Rules. I have heard extensively from both parties. In my view, this does come down to the issue that it does not involve matters that were unknown, or which came out of left field.
- [5] There were six expert reports served on October 30, 2020. That was the service date. The plaintiff had every right to serve them at that point in time. Within those reports was an opinion that potentially the plaintiff will never be able to work again. For whatever reason, that was not addressed in a reasonable timeframe.

- [6] There was a TMC on January 4, 2021, before Master Muir. At that time it was indicated the matter was ready to proceed. There were no complaints voiced about the fact that is now being alleged that there are six expert reports which are allegedly in breach of the Evidence Act. I have plaintiff's submission that the reports are not in breach; in fact, there are two notices of civil claims, and therefore there can be six, but that is not an issue I need to address today.
- [7] The trial is scheduled for January 25, 2021, and I can appreciate that in current defence counsel's view that that creates an urgency, but I am not satisfied the urgency has not been created by the inaction of the defendants by sleeping on their rights when they were served October 30, 2020.
- [8] Key in that regard is the fact that I have virtually no explanation or evidence why an application was not made in a timely fashion shortly after the service of those expert reports. There is simply no evidence in that regard, no explanation at all.
- [9] In my view this is a classic case of manufactured urgency, and it is manufactured by inaction. The application for short leave is denied. "Registrar Nielsen"

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