
CANADA / JUDGMENT

Hanlon v. Juusola et al

2006 BCSC 1968

COURT

Supreme Court of British Columbia

DECIDED

19 December 2006

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2006 BCSC 1968err1 Hanlon v. Juusola et al

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hanlon v. Juusola et al,

2006 BCSC 1968

Date: 20061219

Docket: M40001

Registry: Nanaimo

Between:

Hugh Hanlon

Plaintiff

And

Jack Allen Juusola, Jack Juusola Sales Limited, Chung Suck Rhee

Defendants

Before: The Honourable Mr. Justice Shabbits

Oral Reasons for Judgment

December 19, 2006

Appearing on his own behalf:

H. Hanlon

Counsel for the defendants:

N. Cederberg

Place of Hearing in Chambers:

Nanaimo, B.C.

- [1] THE COURT: This application is brought in proceeding number 40001 of the Nanaimo Registry. Hugh Hanlon is plaintiff. The defendants are Jack Allen Juusola, Jack Juusola Sales Limited, and Chung Suck Rhee. This proceeding was commenced on December 23, 2003. The proceeding relates to two separate and different causes of action.
- [2] Mr. Hanlon, who is sometimes also known as Hugh Joseph Hanlon, claims against the defendant Chung Suck Rhee, for damages, interest, and costs, for personal injuries arising from a motor vehicle accident that is alleged to have occurred on October 3, 1992, in Vancouver. Mr. Hanlon claims for damages, interest, and costs, for personal injuries arising from a bicycle/motor vehicle accident that is alleged to have occurred in Salmon Arm on January 15, 2002. This claim is brought against Mr. Juusola and the defendant corporation Jack Juusola Sales Limited.
- [3] The writ of summons has been amended on two occasions. The amendments occurred on December 10, 2004, and December 17, 2004. The appearance in this proceeding was filed on December 7, 2004.
- [4] The plaintiff has not yet filed a statement of claim.
- [5] The defendants apply under Rule 25(1) for an order that the action be dismissed. Rule 25(1) reads as follows:

If a plaintiff has not filed and delivered a statement of claim and the time for doing so has expired, the court may, on the application of a defendant, order that the action be dismissed or make any other order it thinks just.

- [6] The time for the delivery of a statement of claim has long since expired. The plaintiff's default in filing a statement of claim is of very long standing.
- [7] Matters arising in this proceeding came on before Mr. Justice Lander, in Chambers, on Monday, November 28, 2005. Mr. Justice Lander requested the Chief Justice of the Supreme Court of British Columbia to have a case management trial judge assigned to this proceeding. The reason advanced by Mr. Justice Lander for his request was that he expressed a doubt that the plaintiff had the ability to comprehend all the issues and he thought the plaintiff may require a committee to be appointed on his behalf.
- [8] Following Judge Lander's request, I was assigned as a case management trial judge, by way of a memorandum issued by the Chief Justice of the Supreme Court of British Columbia, on December 12, 2005.

- [9] A case management conference came on before me on Wednesday, February 15, 2006, in Nanaimo. Mr. Hanlon appeared in person; counsel appeared for the defendants. Counsel for the defendants at that time submitted that they wished to have this action dismissed for want of prosecution, the want of prosecution arising from the plaintiff's failure to have a statement of claim filed.
- [10] At that time Mr. Hanlon, who appeared in person, had before the court material reflecting that the relief he was seeking, included the recovery of five billion dollars worth of gold bullion.
- [11] At that case management conference I directed Mr. Hanlon to file a statement of claim. I advised Mr. Hanlon that if he did not file a statement of claim, I would permit the defendants to apply to have the proceeding dismissed for failure to file a statement of claim. I did not at that time say I would dismiss the action, but I said the defendants would be permitted to apply.
- [12] The next case management conference came on for hearing on Thursday, April 6, 2006, in Nanaimo. Mr. Hanlon appeared in person. Counsel appeared for the defendants. Mr. Hanlon had not yet filed a statement of claim. At that time he said he required six to nine months to file and deliver a statement of claim. At that hearing, he indicated that he intended to join other defendants in this proceeding, or to commence separate proceedings against other persons.
- [13] Counsel for the defendants indicated that the defendants wished to have the matter brought to a conclusion. Counsel for the defendants said that the 1992 accident had, in fact, been the subject of an earlier court proceeding in the Provincial Court of British Columbia. She submitted that in respect of the 2002 cause of action, there was not even any good evidence that there was an accident at all, let alone that the plaintiff had been injured in such an accident.
- [14] At that time, that is on April the 12th of 2006, I set the matter over to September for a further case management conference. I thereby gave the plaintiff a further five months in which to file a statement of claim.
- [15] On April 12, 2006, I told Mr. Hanlon that if he had not filed a statement of claim by the time the matter came on again before me in September of 2006, I would fix a time for an application by the defendants to be heard to have this proceeding dismissed.
- [16] In setting the matter over for yet a further five months, I expressed a concern that Mr. Hanlon was under a disability. The matter then came on again in Chambers, in Nanaimo, on September 12, 2006. The matter had been adjourned to September 12, 2006, by direction I made in the case management conference on April 12, 2006.

[17] On September 12, 2006, I asked Mr. Hanlon whether he recalled that I had made a direction that he be required to file a statement of claim. Mr. Hanlon replied, "Yes, sir, clearly." I asked him whether he had filed a statement of claim and he replied:

HUGH HANLON: It is not completed despite my best effort. I would honestly state that it's perhaps probably 55 percent accomplished.

THE COURT: Yes.

Mr. Hanlon went on:

HUGH HANLON: In -- and -- and to state more fully, it's 55 percent accomplished in that I think it's 75 to 80 percent accomplished in research and 15 percent accomplished in drafting.

Now Mr. Hanlon went on to make a number of other observations.

[18] At that time, I made the observation that I had told Mr. Hanlon some months earlier that if the statement of claim was not filed, I would permit the defendants to apply to have the actions dismissed for want of prosecution.

[19] On September the 12th I then gave leave to the defendants to apply to have the claims dismissed for want of prosecution, and I directed that they not be heard until the end of October or some time in November. On September the 12th I said that when the application was heard, I would consider whether the action should be dismissed, or whether alternatively, it should be stayed until such time as the plaintiff appointed counsel or had counsel appointed for him to represent him in this proceeding.

[20] The application to have this proceeding dismissed, arising from the plaintiff's failure to file a statement of claim, was heard before me on December 15th, 2006, just a few days ago. Mr. Hanlon has still not filed a statement of claim.

[21] On December 15, 2006, Mr. Hanlon filed a handwritten diary that he has laboriously prepared. The diary relates to his physical and mental condition over a long period of time. The diary is over 1,200 pages in length. Its preparation was an enormous undertaking. However, I do not see that the content of the diary is of relevance to the filing of the statement of claim. The diary relates to matters of evidence, and not to a pleading, except very indirectly. On December the 15th of 2006 Mr. Hanlon also filed an affidavit to which is appended a raft of other documents. Mr. Hanlon submits that those documents all relate to matters concerning the difficulty he has had in delivering a statement of claim. The pages of this document are not numbered, but they appear to me to be hundreds of pages in length.

[22] There is within this material, which was filed by the plaintiff, an opinion letter that he received from a law firm dated January 6 of 2005. That letter has come to my attention, of course, because it is within the documents that Mr. Hanlon provided to me for review on this application. I make reference to it only because in that letter counsel that the plaintiff sought for advice said that Mr. Hanlon would probably have a very difficult time in establishing significant damages. At the outset of the letter he said that his purpose of the

letter was to set out his opinion as to the difficulties that Mr. Hanlon faced in proving significant damages arising from the 1992 and 2002 motor vehicle accidents.

- [23] I make reference to that letter only for this reason. The three defendants on this proceeding assert that the plaintiff's causes of action against them are problematic, and it is their position that the plaintiff cannot, in law, recover as against them damages of significance, if any.
- [24] My concern is that there is reason to consider that that might be so, and that I must be guided in ensuring that the orders I make address not only the rights of the plaintiff, even though he may be under a disability, but also the rights of the defendants. It would be unjust to require the defendants to be put to enormous expenses without good reason for that.
- [25] The material before me includes material relating to a Provincial Court of British Columbia Small Claims proceeding. On September 29, 1994, Mr. Hanlon had issued a notice of claim in the Provincial Court of British Columbia, Small Claims Court, naming Chang Suck Rhee as defendant, and claiming that his claim against that defendant was for injuries and damages sustained by him when a motor vehicle, owned and negligently operated by that defendant Chang Suck Rhee, struck the plaintiff's motor vehicle on or about the 3rd day of October 1992 in Vancouver. That is the same cause of action of one of the two causes of action in the proceeding before me.
- [26] On December the 17th of 1995, Mr. Hanlon wrote to the Provincial Court of British Columbia. The document that he sent the court read as follows [as read in]:
- Notice to Provincial Court of British Columbia regarding registered file 94007854, Hanlon v. Rhee, filed 29 September 1994. I do herewith withdraw this action. Hugh Hanlon 17 September 1995.
- That document was not filed.
- [27] The court registry records reflect that on September 26, 1995, registry staff wrote Mr. Hanlon as follows [as read in]:
- Please file with us the correct document (attached) to withdraw your case.
- It would appear that that further document was not filed by Mr. Hanlon.
- [28] On July 16th of 1996, The Honourable Judge Tweedale of the Provincial Court of British Columbia, made an order dismissing the plaintiff's Small Claims action, as against the defendants Chang Suck Rhee, and Insurance Corporation of British Columbia, who had also been named as a defendant, for failing to file a certificate of readiness as required by the rulings of the Provincial Court.

- [29] In the submissions before me, counsel for the defendants submitted that Mr. Hanlon's claim as against Mr. Rhee had already been adjudicated and had been dismissed. Mr. Hanlon submitted that it never had been adjudicated upon on its merits, and that it was dismissed through misunderstandings in respect to the filing of documents. He noted that it would be necessary for him to apply to the Provincial Court of British Columbia to have the dismissal order vacated, which he submitted would permit him to pursue his action in this proceeding.
- [30] I make no comment as to that, but I do note that this proceeding commenced, as it was in late 2003, was a proceeding commenced over 11 years after the cause of action involving Mr. Rhee. This proceeding was commenced just before the second anniversary of the January 15, 2002, cause of action. It is on that date that Mr. Hanlon says that he, as a cyclist, was injured when a vehicle operated by Mr. Juusola, and owned by the defendant corporation, struck him on the Trans Canada Highway in Salmon Arm. As I have noted, it is now almost three years since this proceeding was commenced, and a statement of claim has not been yet filed.
- [31] There is ample reason, arising from the documentation filed by the plaintiff himself, to suggest that he has a disability. The nature of Mr. Hanlon's various submissions in this proceeding also suggest to me that he may have a disability. I am completely satisfied that Mr. Hanlon does not have an understanding of what is required by a statement of claim. There is, in fact, no reason why this pleading could not have long since been filed.
- [32] I have concluded that the failure to file a statement of claim does not arise from any lack of interest on the part of the plaintiff to pursue his legal rights or to prosecute this proceeding, but they arise entirely because Mr. Hanlon does not know how the proceeding might be prosecuted.
- [33] Of concern to the defendants is that the documentation that Mr. Hanlon placed before me on this application reflects that he is considering adding numerous defendants to this proceeding. By way of example, he is alleging negligence on the part of a number of medical practitioners, who have had dealings with him in the past. Mr. Hanlon asserts that those causes of action relate to the issue in this proceeding, because they relate, at least in part, to "collision caused injuries".
- [34] By way of further example, Mr. Hanlon is suggesting that a number of persons, including both medical practitioners and others, will be joined as defendants relative to occasions in which Mr. Hanlon asserts that he was wrongly confined or mistreated in respect of alleged mental illness issues. Mr. Hanlon has again advanced his assertion that he wishes to advance a claim against the Insurance Corporation of British Columbia for bad faith, which he still evaluates at five billion dollars.

- [35] Mr. Hanlon also asserts that the issues include a failed business venture of his, in respect of his intention to promote a very large food business in Russia in the early 1990's. Mr. Hanlon submits that the 1992 cause of action had impact on that.
- [36] The lengthy delay in filing a statement of claim would normally mandate that this proceeding be simply dismissed. However, under Rule 25(1), the discretion accorded to me is much broader. Furthermore, as my involvement on these applications has been as case management judge under the appointment of the Chief Justice of the Supreme Court of British Columbia, I have come to the conclusion that the orders I make today should address both considerations. That is, the orders should relate to the lack of proceeding on the part of the plaintiff and the plaintiff's failure to file a statement of claim, and they should also relate to the defendants' entitlement to have the causes of action, which had been filed as against them, addressed in an appropriate fashion.
- [37] Taking both of those demands into account, I make the following orders: I order that this proceeding shall be stayed, until such time as the plaintiff, or a litigation guardian appointed to act for him under the Rules, appoints a member of a law society of Canada to act as solicitor for the plaintiff in this proceeding.
- [38] I order that the plaintiff shall not be entitled to act on his own behalf in this proceeding, or to take on his own behalf any further step in this proceeding, without further order of the court, except that should circumstances change from today, the plaintiff may apply to the court for an order that he then be entitled to act on his own behalf in this proceeding.
- [39] I also order that upon a solicitor being appointed to act for the plaintiff, that appointment either being by the plaintiff or by his litigation guardian should one be appointed, the defendant Chung Suck Rhee shall have leave to apply to have this proceeding dismissed as against him, for the reason that the plaintiff's cause of action has already been dismissed and determined by the courts, or alternatively, for the reason that the cause of action as against him is barred at law because of effluxion of time.
- [40] I also order that upon a solicitor being appointed to act for the plaintiff, the defendants Mr. Juusola and Jack Juusola Sales Limited have leave to apply to have the issue of their liability severed from the issue of damages, the liability of those defendants relating only to the cause of action arising from the alleged January 15th, 2002, accident. I make that order because, in my opinion, fairness requires that that issue be determined before the defendants are put to the expense of addressing an assessment of damages, which the plaintiff asserts is extremely complicated.
- [41] So those are the orders that I make today.
- [42] Is there anything arising from this, Ms. Cederberg?

- [43] MS. CEDERBERG: My Lord, I would only ask that the court order that we dispense with Mr. Hanlon's approval as to form? As you may recall, we did have a problem with one of your preceding orders. And I'm happy to draft the order --
- [44] THE COURT: Well, what I am going to do, is this -- Mr. Hanlon, do you have any comment about that?
- [45] HUGH HANLON: About that?
- [46] THE COURT: No. Approval, not costs. Just approval as to form. See what I have done today is I have made some orders.
- [47] I will make one further order. I am going to direct that what I said today be transcribed, and that a copy of it be made available at the registry for the plaintiff and for the defendants.
- [48] Mr. Hanlon, it will take a while to transcribe it, but you can come to the registry and get a transcript of what I said today. You may need it in order to deal with counsel. Counsel will want to know what it is that I said.
- [49] In terms of approval as to form, what is required is that a formal court order setting out in wording what I have ordered today be prepared and entered as a court order. It is generally several brief paragraphs in length. I expect that Ms. Cederberg, counsel for the defendants, will prepare it.
- [50] You have a right under the Rules to ensure that what is entered as a court order reflects what it is that I have said today. So you have the right to have it approved. Ms. Cederberg applies to have your approval waived so that there not be a requirement that you approve it. Do you have any comment about that?
- [51] HUGH HANLON: Yes, sir. Thank you very much. I do have a very small comment.
- [52] THE COURT: Yes?
- [53] HUGH HANLON: I would point out that earlier there was a difference in understanding between Ms. Cederberg and myself over the orders or assertions at the hearing --
- [54] THE COURT: Yes.
- [55] HUGH HANLON: -- before Justice Lander. So it is certainly possible that misunderstanding could occur, and I'm cautious because of that, and this is of exceedingly great importance to my interests, and your order is --
- [56] THE COURT: Well, I think --
- [57] HUGH HANLON: -- to me, and --
- [58] THE COURT: -- without you going on, Mr. Hanlon, I agree with you. The matter is of importance to you.

- [59] You are entitled to have the order entered, in accordance with the Rules, and I see no reason for your approval as to form to be waived. So I will decline to make the order as to approval as to form.
- [60] But what I will point out is this, Ms. Cederberg, there is a provision under the Rules to have orders settled in a timely fashion, should there not be agreement between the parties as to the form of the order. It is not a costly procedure, and it is not a lengthy procedure, and I see no reason why it cannot be followed.
- [61] Mr. Hanlon, you have to make sure that Ms. Cederberg has your address for delivery, so that she can provide you with a copy of the proposed entered order.
- [62] HUGH HANLON: I am very happy to concede that if the order is simply a verbatim statement of what's available from the transcript as is made available in the registry, I'm certainly happy that --
- [63] THE COURT: Well, you do not have to concede anything, because it is not something that you will even know, the order has not even been drawn yet.
- [64] So we will have it settled in accordance with the Rules. There is no reason to do other than that.
- [65] MS. CEDERBERG: Thank you, My Lord.
- [66] THE COURT: Now I will make no order for costs.
- [67] MS. CEDERBERG: None are being sought, My Lord.
- [68] THE COURT: Yes.

"S.J. Shabbits, J."

The Honourable Mr. Justice S.J. Shabbits

February 13, 2007 - Revised Judgment

Corrigendum to the Reasons for Judgment issued advising that the last line of paragraph 37, page 11 should read "a law society" of Canada rather than "the Law Society".

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