

CANADA / JUDGMENT

# Hayward v. Bennett

2011 BCSC 571

## COURT

Supreme Court of British Columbia

## DECIDED

14 February 2011

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2011 BCSC 571 Hayward v. Bennett IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hayward v. Bennett, 2011 BCSC 571 Date: 20110214 Docket: S094874 Registry: Vancouver Between: William Hayward Plaintiff And Samuel E. Bennett Defendant Before: The Honourable Mr. Justice Bowden Oral Reasons for Judgment In Chambers The Plaintiff, William Hayward: In person Counsel for the Defendant: C.D. Steinberg Place and Date of Hearing: Vancouver, B.C. February 14, 2011 Place and Date of Judgment: Vancouver, B.C. February 14, 2011

- [1] THE COURT: I will briefly give reasons. The defendant today is seeking five orders as indicated in his filed application record today:
- 1) an order that the plaintiff's indigent status be revoked pending a hearing on the issue of that status;
  - 2) an order that the plaintiff list and produce to the defendant within 21 days various relevant financial, accounting, and tax documents;
  - 3) an order requiring the plaintiff to obtain leave of the court prior to filing any interlocutory applications within this proceeding;
  - 4) costs thrown away fixed and payable forthwith to the defendant in the amount of \$1,500 with respect to the plaintiff's application for a Mareva injunction which was withdrawn at the last moment; and
  - 5) costs of the hearing of this application.
- [2] With regard to the indigent status of the plaintiff, I have reviewed the history, and Master Donaldson ordered indigent status for the plaintiff to take the step of initiating what was a Rule 18A application or proceeding by way of a summary trial, and Master Donaldson indicated in his reasoning which is contained in a transcript on the file, that he was not giving the plaintiff carte blanche to take further proceedings. Subsequently, the plaintiff obtained an order extending his indigent status to steps in relation to a trial of this matter before Associate Chief Justice MacKenzie and there appears to have been, I will say, at least some confusion as to the basis of the indigent status granted by Master Donaldson.

- [3] As a result of the expanded indigent status ordered by Associate Chief Justice MacKenzie, the plaintiff has taken a number of steps on an interlocutory basis, including an application for injunctive relief, that perhaps I say may not have been taken but for the indigent status being granted and the plaintiff admits to some what he calls "overzealous behaviour." Both parties have informed the court that they wish this matter to go to trial without further delay, and the plaintiff has also indicated to the court that he does not intend or contemplate any further interlocutory applications and wants this matter to proceed to trial.
- [4] If steps are determined to be necessary on the part of the plaintiff by the case management judge, then the plaintiff may at that time apply for indigent status in relation to the steps that have been identified as necessary in these proceedings, but I am ordering that the plaintiff's indigent status be terminated today subject to any further application being made as a result of steps being identified by the case management judge as being necessary to proceed to the trial on the part of the plaintiff.
- [5] As to any interlocutory applications, the plaintiff shall not file any interlocutory application without first obtaining the consent of the case management judge.
- [6] With regard to costs, the costs thrown away sought by the defendant and the costs of the hearing of this application shall be determined by the trial judge at the conclusion of the trial.
- [7] WILLIAM HAYWARD: Could I speak to costs at this time --
- [8] THE COURT: Costs --
- [9] WILLIAM HAYWARD: -- just a sidebar of costs?
- [10] THE COURT: Yes. [SUBMISSIONS ON COSTS]
- [11] WILLIAM HAYWARD: I cannot see for the life of me where the order that you are about to give lends any fairness or justice to the defence and it definitely could and will present an injustice and an unfairness to me --
- [12] THE COURT: Well, sir, I have already given --
- [13] WILLIAM HAYWARD: -- and a hardship.
- [14] THE COURT: I have already given my order.
- [15] WILLIAM HAYWARD: Okay.
- [16] THE COURT: All right.
- [17] WILLIAM HAYWARD: Thank you, My Lord.
- [18] MR. STEINBERG: May I say in this -- feel free, it is just a suggestion, that perhaps we could dispense with the plaintiff being necessary to approve form and content of the order before entering it. Often in matters like this it is an order that is made as a adjunct.

- [19] THE COURT: Yes, yes.
- [20] MR. STEINBERG: It just a suggestion. I do not think I need to make submissions on it.
- [21] THE COURT: Right, yes. The approval by the plaintiff of the order is not going to be required.
- [22] MR. STEINBERG: Thank you, My Lord.
- [23] THE COURT: Sir, you are free if you choose to appeal that order, but I would --
- [24] WILLIAM HAYWARD: I am in a situation where I will accept your order. You are a fair and reasonable man.
- [25] THE COURT: All right, and as I say, based on what you have told the court today, I think the order will fit within your plan to go to trial and, hopefully, these matters will all be dealt with -- any matters outstanding will be dealt at the trial. "Bowden J."

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