CANADA / JUDGMENT

Hodgson v. Walker

2005 BCSC 1658

COURT
Supreme Court of British Columbia

DECIDED
30 August 2005

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2005 BCSC1658err1.doc Hodgson v. Walker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Hodgson v. Walker

2005 BCSC 1658

Date: 20050830

Docket: S20360

Registry: Port Alberni

Between:

Clifford Bruce Hodgson

Plaintiff

And:

Walter Wendell Lawrence Walker

Defendant

Before: Master Patterson

Oral Reasons for Judgment

In Chambers

August 30, 2005

Counsel for the Plaintiff:

B. Smith, appearing as agent for D. Stofer

Counsel for the Defendant:

K. Klear

Place of Trial/Hearing:

Port Alberni, B.C.

[1] THE COURT: This is an application brought by the plaintiff for costs in a Supreme Court proceeding. I do not intend to review the history of the case in detail, but the action in question arises out of a motor vehicle accident which occurred in March of 2001.

[2] The writ was issued in the Supreme Court in January 2003, close to the end of the two-year limitation period. Liability was denied by the defendant. A Supreme Court trial was set for May of 2005. Examinations for discovery took place in November of 2004, and in March of 2005 an application was made by plaintiff's counsel to transfer this matter to Provincial Court. That order was, in fact, made. It was not opposed at the hearing; although there had been some sabre rattling prior to that by the defence.

[3] Counsel for the plaintiff argues that they should be entitled to costs of the action in Supreme Court, which would be from the date of commencement, up to and including the application to transfer to Provincial Court, and presumably costs of today's application as well.

[4] The result of the trial in Provincial Court, as I understand it, was that damages were assessed at $3,000 by the Provincial Court judge. The plaintiff was found to be 50% at fault. His recovery, therefore, for damages was $1,500, and I understand a total recovery of approximately $1,800. That is at the low end of the Provincial Court scale when the limit is $10,000.

[5] Counsel for the defendant has relied upon two decisions. They are Bhanji v. Quezada is 2003 BCCA 445 and Gill v. Mansour, 2004 BCSC 1537. Both of those cases emphasize the proposition that the plaintiff has to justify his choice of forum and must be prepared to justify that now.

[6] The difference between this case and those two is that both of those cases proceeded to trial in the Supreme Court and there were amounts recovered less than the Small Claims limit.

[7] The Supreme Court rule that has to be considered in cases of this nature is Rule 57(10). That provides that:

A plaintiff who recovers a sum within the jurisdiction of the Provincial Court under the Small Claims Act is not entitled to costs, other than disbursements, unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders.

[8] I think that it is reasonable to accept the defendant's argument that the onus is on the plaintiff to show, or to justify, the decision to proceed in this Court.

[9] The decision of Garcia v. Bernath, 2003 BCSC 1163, deals with this exact issue. That was a case that was transferred to Provincial Court, and a recovery within the Provincial Court jurisdiction, and an application for costs. In that case I held that it was reasonable for the

plaintiff to commence action in the Supreme Court, and after examination for discovery to apply to transfer that case to Provincial Court. In that case I noted a number of factors which could easily have contributed to a damage award to which the plaintiff was entitled, including a possible loss of earnings or of the opportunity to earn. In addition, there was a total denial of liability, and an allegation, as I understand it, that there were no injuries.

[10] In the present case before the court, the information which plaintiff's counsel had at the time of the commencement of the action, that is approximately two years after the accident, was a report from the plaintiff's general practitioner indicating minor injuries and only one attendance at his office for an examination. There was a report from a physiotherapist, which was dated in March of 2002, approximately a year after the accident, indicating that the plaintiff had some periodic neck pain, but there was nothing much more in that report.

[11] Plaintiff's counsel would have known that the plaintiff had not lost any time from work, within the two years after the accident, and there was no wage loss claim and highly unlikely to be a claim for loss of future earnings.

[12] The plaintiff was seen by Dr. Bass in consultation on February 13, 2003, which was approximately the same time as the writ was issued. Dr. Bass' diagnosis was of a fibro-ligamentous injury to the cervical spine, with residual soft tissue tender areas, and pre-existing degenerative changes. Dr. Bass' opinion was that he should be referred to an anaesthetist for an injection, which would clear up the pain. He says [as read in]:

If this occurs then I would suggest that this man, who I felt was a fairly tough sort of character and uncomplaining, would make a reasonably complete recovery after the treatment suggested has taken place.

I am not clear whether, in fact, the plaintiff had that injection or not, but that was Dr. Bass' opinion. That opinion was available at, or very shortly after, the writ in the Supreme Court was issued.

[13] In my view, the object of the rule of 57(10) is to encourage actions to be brought in the proper forum, and where there is a limited expectation of any monetary recovery, it is appropriate that it be done in the Provincial Court.

[14] It would seem to me, in this instance that it would have been clear to counsel for the plaintiff that this was a case unlikely to justify a claim in excess of $10,000, and therefore, in my view, was not one which should have been commenced in the Supreme Court.

[15] The plaintiff has not established the required reasons to have started this case in Supreme Court, and as the onus is upon the plaintiff, the application fails.

[16] The application is dismissed.

"Master A. Patterson"

December 7, 2005 - Revised Judgment

In paragraph 2, line 3, the word "plaintiff" should be replaced with "defendant".

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