

CANADA / JUDGMENT

Kooner v. Pham

2020 BCSC 1828

COURT

Supreme Court of British Columbia

DECIDED

26 November 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1828 Kooner v. Pham IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Kooner v. Pham, 2020 BCSC 1828 Date: 20201126 Docket: M204391 Registry: Vancouver Between: Gurpreet Kooner Plaintiff And Thi Hong Pham, and Ba Huy Tran Defendants Before: The Honourable Madam Justice Duncan Reasons for Judgment Counsel for the Plaintiff: R.J. Chang No one appearing for the Defendants Written Submissions received: November 19, 2020 Place and Date of Judgment: Vancouver, B.C. November 26, 2020

- [1] By way of an application by written submissions, made pursuant to Covid-19 Notice No. 14 dated April 27, 2020 (revised July 20, 2020), the applicant, the plaintiff in this action, seeks an order renewing her notice of civil claim ("NOCC") for a period of 12 months; that the plaintiff be at liberty to serve Ba Huy Tran (hereafter "the defendant driver") with the NOCC by way of advertisement in Form 10 in one edition of the Vancouver Sun newspaper; and that the defendant driver has 28 days from the date of the advertisement to file a response. The application is brought without notice.
- [2] The NOCC concerns a claim for damages arising from a motor vehicle accident that occurred on October 1, 2018 in Surrey, British Columbia. The defendant driver was allegedly driving a motor vehicle owned by the defendant, Thi Hong Pham (the "owner").
- [3] The NOCC was filed on April 14, 2020. On September 24, 2020 counsel for the plaintiff was advised by the owner's insurer, the Insurance Corporation of British Columbia, that it was unable to locate the defendant driver at their last known address.
- [4] On October 9, 2020, a process server attempted to file the NOCC on the defendant driver at their last known address but was unable to do so. As a result, the defendant driver has not been personally served with the NOCC.
- [5] Rule 3-2(1) of the Supreme Court Civil Rules provides for the renewal of a NOCC either before or after the expiration of the 12 month period that it remains in force. The test for renewal is one of long standing, going back to *Bearhead v. Moorhouse* (1977), 3 B.C.L.R. 81 (S.C.), *aff'd* (1978), 5 B.C.L.R. 380 (C.A.). The test was more recently affirmed in *Fast Fuel Services Ltd. v. Michelin North America (Canada) Inc.*, 2008 BCCA 216 [Fast Fuel].

- [6] The factors to consider are: (1) whether the application to renew was made promptly; (2) whether the defendant had notice of the claim before the writ (now notice of civil claim) expired; (3) whether the defendant was prejudiced; (4) whether the failure to effect service was attributable to the defendant; and (5) whether the plaintiff, as opposed to the plaintiff's solicitors, was at fault.
- [7] In *Fast Fuel*, the Court of Appeal also said (at para. 21): where a defendant has notice of an action within the time prescribed by the Rules for service of a writ, only a compelling case of prejudice should defeat its renewal, unless perhaps the plaintiffs' conduct in causing the delay is so egregious a refusal to renew can be justified.
- [8] The overarching objective is to see that justice is done.
- [9] Applying those factors to the facts of this case, I note that the NOCC has not expired, the owner's insurer has notice of it, the plaintiff has made efforts to locate the defendant driver and there is no apparent prejudice to the defendants.
- [10] The application to renew the NOCC for an additional 12 months from the date of this judgment is allowed.
- [11] The plaintiff also seeks an order for alternative service of the NOCC pursuant to Rule 4-4. The plaintiff was advised by ICBC that it was unable to locate the defendant driver.
- [12] The plaintiff engaged a process server, Elwood Reid, to attend at the last known address for the defendant driver, provided by ICBC. The resident of the address informed Mr. Reid that the defendant driver's whereabouts were unknown.
- [13] Mr. Reid also called two phone numbers that were potentially linked to the defendant driver. One was a wrong number. Mr. Reid called the other number 15 times over the course of three days in October and received a busy signal.
- [14] I am satisfied that the defendant driver is either attempting to evade service or cannot be found as a result of the diligent efforts of the plaintiff. Accordingly, I order that the defendant driver may be served by advertisement in one edition of the *Vancouver Sun* and one edition of the *Province* newspaper, in Form 10, and has 28 days from the date of the later of the two advertisements to file a response.
- [15] No costs were sought and none are awarded. "Duncan J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/18/2020BCSC1828.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kooner-v-pham-2020>

Prepared on 29 October 2026 · Esheria