

CANADA / JUDGMENT

# Laferriere v. Her Majesty the Queen

2020 BCSC 1925

## COURT

Supreme Court of British Columbia

## DECIDED

6 November 2020

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2020 BCSC 1925 Laferriere v. Her Majesty The Queen IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Laferriere v. Her Majesty The Queen, 2020 BCSC 1925 Date: 20201106 Docket: S162916 Registry: Vancouver Between: Audrey Jane Laferriere, personal representative of Randy Michael Walker, Deceased, Audrey Jane Laferriere, in her personal capacity, and Audrey Jane Laferriere, Executor of the Last Will and Testament of Randy Michael Walker Plaintiffs And Her Majesty The Queen, the Attorney General for the Province of British Columbia, the Minister of Health, Vancouver Coastal Health, Vancouver General Hospital, George Pearson Centre, Kip Woodward, the Public Guardian and Trustee, the Vancouver Police Department, the B.C. College of Physicians and Surgeons, WorkSafeBC, BC Emergency Health Services, Andrew MacFarlane, Dr. James Dunne, Dr. Richard Hay, Dr. James Mark Roberts, Sam Greenspoon, Robert Chapman, Kevin Calder, Dr. Georgina Nemetz, Linda Rose, Tanvirezohra Batlawala, Romilda Ang, Paladin Security Ltd., David Doig, Tim Louis and others (Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5, Jane Doe #6, Jane Doe #7, Jane Doe #8, Jane Doe #9, Jane Doe #10) Defendants Before: The Honourable Madam Justice Iyer Oral Reasons for Judgment In Chambers The Plaintiff, Appearing in Person: A. Laferriere Counsel for the Defendants Vancouver Coastal Health, Andrew MacFarlane, Kevin Calder, Tanvirezohra Batlawala, and Romilda Ang: D. Bell C. Seo, Articled Student Counsel for the Defendant Public Guardian and Trustee: M. Wolf Counsel for the Defendant Dr. James Dunne: J. Morris M. Clark Counsel for the Defendant David Doig: G. Wong No other appearances Place and Date of Hearing: Vancouver, B.C. November 6, 2020 Place and Date of Judgment: Vancouver, B.C. November 6, 2020

- [1] THE COURT: The defendants apply under Rule 22-7(2) of the Supreme Court Civil Rules to have the plaintiffs' claims dismissed on the basis that they have not complied with the Rules or with orders of the court without lawful excuse. This is not the first time this application has been argued before me. I first heard it on March 13, 2019. At the time, the plaintiffs were represented by counsel. In my reasons for judgment dated May 7, 2019, reported at 2019 BCSC 690 ("2019 Reasons"), I dismissed the defendants' application on the basis that, although troubling in a number of respects, the plaintiff's conduct did not rise to the level where her action ought to be dismissed in its entirety. I wrote at para. 54: Considering all of the circumstances, I am not persuaded that the Plaintiffs' conduct to date attracts the severe sanction of outright dismissal of the Amended Claim. However, it is clearly unfair to the

defendants to let the present state of affairs continue and to put them to the time and expense of bringing further applications. As I see it, the key question is whether Ms. Laferriere's health warrants staying the proceedings. It is clearly up to the Plaintiffs whether they want to bring such an application. However, fairness to the defendants requires that deadlines be set and that they have an opportunity to renew their applications if the Plaintiffs do not seek a stay or a stay is not granted.

- [2] I dismissed the plaintiffs' 2015 action as all claims advanced in it were included in the 2016 action. I will not here repeat the narrative set out in the 2019 Reasons, but I rely on it as setting out what happened between the commencement of the litigation in 2015 and the March 13, 2019, hearing. In the 2019 Reasons, I found that the plaintiffs' amended notice of civil claim did not comply with the Rules. On May 20, 2019, the plaintiffs, then represented by counsel, sought the defendants' consent to file a further amended notice of civil claim. The defendants did not consent, taking the position that the proposed pleading did not comply with the Rules. The plaintiffs did not apply to court to file the proposed pleading. As a result, there is still no notice of civil claim that complies with the Rules.
- [3] My 2019 Reasons found significant deficiencies in the plaintiffs' list of documents. This problem has not been rectified. A second list of documents was produced, but as the defendants' evidence shows, it is both inconsistent with the first list and is incomplete. Rather than producing a list, the plaintiff suggested the defendants come to her apartment to look at the documents, noting that they numbered in the thousands and were not in chronological order. The plaintiff has failed to comply with two court orders to pay costs. The first was an award I made in my 2019 Reasons relating to the 2015 action that I dismissed. The second was made by the Court of Appeal in February 2020 dismissing as abandoned the plaintiffs' appeal of the 2019 Reasons.
- [4] The primary reason that I did not grant the defendants' dismissal application in 2019 was that Ms. Laferriere said that her ill health was the reason she had not advanced her claim. I gave her an opportunity to apply for a stay of proceedings on that basis. There were more delays, but she made that application in October 2019. I dismissed it on the basis that Ms. Laferriere had failed to provide evidence of a medical basis to stay the proceedings. I wrote at para. 12: Having invoked the processes of this court to advance their claim against the defendants, and absent any medical evidence of incapacity, fairness requires Ms. Laferriere to take the steps in the proceedings set out in the Rules of Court, including compliance without the outstanding court orders.
- [5] In the days leading up to the hearing today, Ms. Laferriere was in contact with the defendants and with this court trying to put it off on the basis that she now intends to produce medical evidence. She was advised by the court that she needed to file and serve any materials she intended to rely on. She did not do so. She sent the defendants an unfiled affidavit, but did not include any of the exhibits. Ms. Laferriere was not in court at the outset of the hearing and it commenced without her. When she arrived, she was afforded an opportunity to respond to the application. I did not accept her affidavit for filing on the basis

that she had not complied with the court's directions and, in any event, had not provided the defendants with the material she intended to rely on.

- [6] Against this background, I turn to the law. The defendants' unchallenged evidence is that the plaintiffs have continued to fail to comply with the Rules. In her submissions, Ms. Laferriere does not dispute this. She says she is unable to do so. Non-compliance can be justified where the non-compliant party has a lawful excuse. The plaintiffs have not tendered any evidence of lawful excuse. I rejected Ms. Laferriere's explanation of ill health in my 2019 Reasons, which she supported with some evidence. There is no new evidence before me today.
- [7] *Breberin v. Santos*, 2013 BCSC 560, contains a helpful discussion of what level of non-compliance warrants dismissal of an action at paras. 56 to 64. The passage is also reproduced at para. 33 of my 2019 Reasons:
- [56] Because an action may be struck when the lack of production has been occasioned by negligence, the degree of negligence required should be more than moderate on a scale ranging from mere negligence to gross negligence.
- [57] Fundamental failures, such as failure to make appropriate disclosure of documents or records, must be treated as a serious default.
- [58] A dismissal order will not usually be granted on a first application for relief arising from procedural delay, even intentional delay. Injustice might result from such a course of action.
- [59] A dismissal order will not usually be granted until the plaintiff has been warned that result will follow upon further delay or obstruction.
- [60] Lesser sanctions ought to be considered where any are available and appropriate.
- [61] A self-represented litigant cannot be held to the same standards as a professional lawyer in terms of compliance with court procedures and rules. That said, a litigant who chooses to represent him- or herself cannot ignore his or her responsibilities with impunity.
- [62] A persistent pattern of delay on the part of the plaintiff, as well as a persistent failure to comply with the Rules of Court and court orders, may result in a dismissal order. Defaults must be seen in context. The plaintiff's conduct of the claim from its inception does have a bearing on the seriousness of the default before the court.
- [63] When persistent conduct prevents the litigation from progressing at all, and when trial dates are lost through deliberate defaults, the failures may have an irreparable negative effect on the just determination of a case. Failing to comply with an order in a manner that causes an adjournment of trial is seriously prejudicial to the defendants.
- [64] Refusal to comply with an order for reasons raised before the court and rejected amounts to an overt and deliberate flouting of the court order: *Balaj*; *House of Sga'nisim*; *Dhillon v. Pannu*, 2008 BCCA 514; *Kemp v. Dickson*, 2006 BCSC 288.

- [8] The evidence before me demonstrates that the plaintiffs are in serious default because they have repeatedly refused or failed to disclose documents. This is not the defendants' first application and the plaintiffs have been warned. Lesser sanctions have been ineffective. Although Ms. Laferriere is self-represented, I find that she has repeatedly relied on that fact to excuse her conduct. She has not tried to comply with the Rules and this pattern did not change when she was represented by counsel. There is a persistent and longstanding pattern of delay. The plaintiffs have not complied with court orders.
- [9] While I appreciate the dismissal of an action for non-compliance should only be granted in rare cases, this is one of those cases. The defendants have been unable to clear their names of very serious allegations for a long time and have no prospect of ever being able to do so. Ms. Laferriere told me repeatedly today that the conduct of the litigation is making her ill. Although she may not see it that way, in my view, bringing this litigation to an end is in the best interests of the parties and in the best interests of justice. I grant the defendants' applications. The claims against all defendants are dismissed.
- [10] With respect to costs, I doubt there is much prospect of recovery. However, the plaintiff's conduct should not be condoned. I award costs of \$1,000 to each of Dr. Dunne, the Health Authority defendants, and the PGT, and the \$500 to Dr. Doig.
- [11] That concludes my reasons.
- [12] MR. MORRIS: My Lady, just in terms of the form of order, I just ask for a term dispensing with the plaintiffs' approval as to form?
- [13] THE COURT: Yes, I will dispense with Ms. Laferriere's approval as to form. "Iyer J."

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