

CANADA / JUDGMENT

Mand v. Struzewski

2001 BCSC 552

COURT

Supreme Court of British Columbia

DECIDED

12 April 2001

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2001BCSC0552

Citation: Mand v. Struzewski Date:20010412

2001 BCSC 552 Docket:

S035074

Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PARMJIT MAND
RESPONDENT/PLAINTIFF

AND:

JANINE STRUZEWSKI
APPLICANT/DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BOYLE

Counsel for the respondent/plaintiff: R. Pawliuk

Counsel for the applicant/defendant: P.K. Hamilton

Date and Place of Hearing: April 4, 2001

New Westminster, BC

- [1] This arose from a Chambers application in which the defendant sought an order authorizing discussion with and record production by staff of three hospitals at which the plaintiff, at one time or another, had been employed as a nurse.
- [2] The subject matter of the action in which this application was brought is a claim for damages arising from two separate motor vehicle collisions.

- [3] I granted the order some time ago. I did so precipitously under the mistaken impression argument had been completed because there had been delay in exchange of written material after the hearing.
- [4] Plaintiff's counsel filed a notice of appeal but, at the same time, asked that I review my reasons and hear further argument. Because it was under appeal, I considered it inappropriate to review my reasons.
- [5] The appeal was heard at which time the matter was remitted to this court. Counsel did not advise me what in particular troubled the court of appeal. I assumed the appeal court's concern was to allow completion of argument. That argument proved to be a replication of the argument made on appeal with no direct reference to the point or points adopted by the appeal court.
- [6] The argument in general seemed to be that I had on a warm August day destroyed the entire tort system from the washroom plumbing on up by circumventing Rules (26 and 28).
- [7] The order protested here was for protection, not for production but I do agree that I made it under a misunderstanding. I took away from the first hearing the impression that the hospitals had been addressed and had no objection to provision of records and information if protected from repercussions. I now understand the hospitals had not and have not been addressed nor have they been given notice of this application. I do not know what their position and policy is. Further, for two of the hospitals, the plaintiff probably could work out an accommodation with the defendant.
- [8] Rule 26(11) presumes circumstances making necessary an order to produce. It does not require an order in all cases. Rule 28 goes to examination under oath. It does not prohibit investigation. Each of those Rules are simply weapons to be drawn in the face of refusal (which is not to suggest refusal may not be justified). I do not know (I now realize) the position of the hospitals.
- [9] This application comes down to an application under the Rules but lacking notice. The issue at the end of the day will not be privilege or privacy but possibility or not of relevance.
- [10] The application is dismissed.
- [11] Costs of this day to the plaintiff. Costs of the previous (August) hearing in the cause.

"H.D. Boyle, J."

The Honourable Mr. Justice H.D. Boyle

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