

CANADA / JUDGMENT

Pannu v. Behnke

2024 BCSC 968

COURT

Supreme Court of British Columbia

DECIDED

14 May 2024

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2024 BCSC 968 Pannu v. Behnke

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pannu v. Behnke,

2024 BCSC 968

Date: 20240514

Docket: M221202

Registry: New Westminster

Between:

Varinder Singh Pannu

Plaintiff

And

Zachary Jordan Behnke

Defendant

Corrected Judgment: The text of the judgment was corrected
at para. 14 on June 5, 2024.

Before: Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

B.J. Yu

Counsel for the Defendant:

N.A. Rayan

Place and Date of Hearing:

New Westminster, B.C.

May 9, 2024

Place and Date of Judgment:

New Westminster, B.C.

May 14, 2024

- [1] THE COURT: The plaintiff commenced two actions arising from motor vehicle accidents that took place on March 8, 2018 and February 20, 2020. The actions were joined for trial and, with respect to the second accident, the trial judge did not find the defendant to be negligent, so that claim was dismissed. With respect to the first accident, liability was admitted and the plaintiff was awarded damages by the trial judge on March 1, 2024, in the sum of \$540,274.
- [2] The defendant filed an appeal and it is anticipated that an application for a stay of execution will take place in the Court of Appeal on May 31, 2024.
- [3] The order of the trial judge has not yet been entered, as the parties at the time of this hearing were still exchanging draft orders, as there were some deductions to be calculated. For the purposes of this application, the plaintiff submits he is prepared to endorse the draft order that is attached to the affidavit of Ms. Uppal as Exhibit B. According to that draft, the amount of judgment is reduced to \$520,907 plus costs yet to be assessed.
- [4] Counsel retained by the defendant for the appeal, Mr. James, advised the plaintiff's counsel that they were prepared to pay some of the judgment pending the appeal and proposed a sum of just under \$200,000. As that offer was not acceptable to the plaintiff, this application was set down for hearing before me on May 9, 2024.
- [5] The plaintiff's application is framed as an application pursuant to s. 76(2) and (3) of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, which read as follows:
- (2) Even though he or she does not have a contractual relationship with the insurer, a claimant is entitled, on recovering a judgment against an insured or making a settlement with the insurer, to have the insurance money applied toward the claimant's judgment or settlement and toward any other judgments or claims against the insured who is covered by the indemnity.

- (3) The claimant may, on behalf of himself or herself and all persons having judgments or claims against the insured who is covered by the indemnity, bring an action against the insurer to have the insurance money applied in accordance with subsection (2).
- [6] In the notice of application under "Legal Basis", the plaintiff did not refer to any authorities.
- [7] In the application response of the defendant, he opposes the application on the basis that as of the date that the response was filed, the parties were still engaged in discussions to settle the order, so it is not yet entered. They still need to resolve the appropriate deductions and a stay of execution application in the Court of Appeal has been filed and set for hearing.
- [8] The defendant further argues that s. 76(3) of the Insurance (Vehicle) Act requires that an action must be commenced against the Insurance Corporation of British Columbia ("ICBC"), so the plaintiff is, in effect, seeking an order against a non-party. Therefore, until an action is commenced, this application should stand as dismissed.
- [9] The defendant referred to a decision of this court, Schoenhalz v. ICBC, 2016 BCSC 661. In that case, the plaintiff was a passenger in a vehicle driven by an unlicensed 15-year-old, who was found to be negligent for an accident that caused injuries to the plaintiff. The plaintiff was awarded damages.
- [10] The plaintiff then commenced an action against ICBC pursuant to s. 20 of the Insurance (Vehicle) Act. The same judge that presided over the trial heard that application. The trial judge noted the following at para. 3:
- [3] The purpose of s. 20 of the Act is to provide a 'last-resort' for compensation to an injured person who obtains a judgment against an uninsured motorist Ms. Schoenhalz is not insured under s. 20, nor is there the creation of a contract between Ms. Schoenhalz and ICBC. It simply allows her to seek the amount of her judgement against ICBC. [Citation omitted.]
- [11] The judge then went on to say at para. 6:
- [6] Section 76(2) of the Act permits a person with a judgment against a tortfeasor who was covered by third party liability insurance with ICBC or another insurer to recover up to the limits of the third party liability insurance policy. Under both s. 20(9) and s. 76(2), the plaintiff must have a judgment before an action for enforcement can be commenced. Section 76(2) requires the claim against the insured to be of the indemnity provided in the insurance policy.
- [12] The defendant submits that pursuant to a clear reading of this section, an action to enforce a judgment must first be commenced against ICBC, as was done in the Schoenhalz case. Counsel did not refer to any other authorities.
- [13] The plaintiff submits that subsection (2) simply states that a claimant, as defined in subsection (1), which includes the plaintiff, need only have a judgment against an insured, which he has, to have insurance money under a policy applied towards his judgment.

- [14] With respect, I cannot accept that submission, subsection (3) provides that a claimant, in order to have insurance money applied in accordance with subsection (2), may bring an action against the insurer, which he has not.
- [15] In *Wormell v. Insurance Corporation of British Columbia*, 2011 BCCA 166, the defendant's vehicle was insured under a policy with ICBC. At para. 11, the Court stated the following:
- [11] Mr. Hagen's truck was insured under an owner's certificate with ICBC. Although Mr. Wormell had no contractual rights as against ICBC, he was permitted to seek payment of the judgment he obtained at the tort trial by virtue of s. 76(2) of the Insurance (Vehicle) Act which provides
- [16] The Court went on to say at para. 12:
- [12] Mr. Wormell sued in these proceedings claiming a declaration that ICBC was liable to him under Mr. Hagen's insurance coverage, and seeking payment of the amount he was awarded as damages in his action against Mr. Hagen.
- [17] In the *Wormell* case, due to the nature of the accident, ICBC argued at trial that the action that the claimant commenced against them was for damages that did not arise from the operation of the defendant's vehicle and therefore were not covered under their policy. In *Wormell*, ICBC was unsuccessful at both the trial and the appeal.
- [18] In my view, the importance of the *Wormell* decision is that pursuant to s. 76(2), the plaintiff being successful in the tort action commenced a new action against ICBC, as he was required to do.
- [19] In absence of any authorities being provided to the court that supports his position that a new action is not required in order to rely upon s. 76, the plaintiff's application must be dismissed and I do so.
- [20] As I advised counsel during submissions, I also have concerns as to my jurisdiction to enforce a judgment when the order has not yet been entered, even though I recognize the plaintiff accepts the terms as drafted by defendant's counsel.
- [21] Practice Direction 50 sets out the jurisdiction of an associate judge at s. 9. It says:
9. an associate judge has jurisdiction to enforce orders under Rule 13-4, the Court Order Enforcement Act, the Family Maintenance Enforcement Act, and any statute which requires an application to the court to enforce under the Rules of Court an order made by a statutory board, statutory decision maker or tribunal.
- [22] In my view, this section contemplates an order being entered before it can be enforced by an associate judge. Even if the order had been entered against the defendant, for the reasons set out above, an action would still have to be commenced against ICBC. The application is dismissed.

[23] Submissions on costs?

[24] CNSL B. YU: I would simply say costs should be in the cause.

[25] CNSL N. RAYAN: Your Honour, my friend came to court asking the court to go outside the apparent language of the statute, without providing any authority for that position. In my view, it ought to have been apparent that the application could not have been granted in the manner that it was brought. There was no prospect of success of the application, and for that reason I say that the application respondent should have costs of this application.

[26] THE COURT: Yes. Costs of this application to the defendant. Thank you both.

"Associate Judge Krentz"

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Prepared on 27 October 2026 · Esheria