

CANADA / JUDGMENT

Parker v. O'Neill

2020 BCSC 1120

COURT

Supreme Court of British Columbia

DECIDED

30 July 2020

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2020 BCSC 1120 Parker v. O'Neill IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Parker v. O'Neill, 2020 BCSC 1120 Date: 20200730 Docket: 29194 Registry: Cranbrook Between: Korbin Parker Plaintiff And Patrick O'Neill and 604282 B.C. Ltd. Defendants Before: The Honourable Mr. Justice Marchand Reasons for Judgment Counsel for the Plaintiff: W. Rogers No other appearances: Written Submissions Received: July 28, 2020 Place and Date of Judgment: Cranbrook, B.C. July 30, 2020

Introduction

- [1] The plaintiff, Korbin Parker, alleges that he was seriously injured in a motor vehicle accident on March 17, 2017. He filed a notice of civil claim seeking damages for his injuries on April 30, 2019. He now seeks to add a defendant and leave to amend the notice of civil claim.

Background

- [2] According to the notice of civil claim, prior to the accident, Mr. Parker and the defendant, Patrick O'Neill, were drinking at a licenced establishment in Elkford, British Columbia owned by the defendant, 604282 B.C. Ltd. ("604"). At the time, Mr. Parker was a minor. Mr. Parker left the establishment in a motor vehicle being driven by Mr. O'Neill. The vehicle subsequently lost control and slid sideways into a parked vehicle causing Mr. Parker injuries.
- [3] Mr. Parker seeks damages from the two current defendants in negligence. He also asserts that 604 breached duties owed to him and/or to Mr. O'Neill under the Occupiers Liability Act, R.S.B.C. 1996, c. 337. The primary allegation against 604 is that it over-served Mr. Parker and Mr. O'Neill and then failed to exercise reasonable care to ensure that Mr. O'Neill did not harm others while he was intoxicated.

- [4] Mr. Parker served 604 with the notice of civil claim by mailing it to 604's registered head office via registered mail on March 6, 2020. On June 1, 2020, counsel for 604 advised counsel for Mr. Parker that, at the time of the accident, 604 had leased the premises to the proposed defendant, 1032308 B.C. Ltd. ("103"). Based on documents provided to counsel for Mr. Parker, it appears that 103 was the holder of the Liquor Primary License on the date of the accident. Mr. Parker says this was the first he became aware of 103's involvement.
- [5] 103 voluntarily dissolved on March 22, 2019.

Analysis

- [6] Rule 6-2(7) of the Supreme Court Civil Rules permits the court to add a person to a proceeding in certain circumstances. A party should be added where that party's participation is necessary for the proper determination of the case and the discretion to add a party should be generously exercised to enable the effective adjudication of all matters: *Meade v. Armstrong (City)*, 2011 BCSC 1591 at para. 16.
- [7] I am satisfied that it is appropriate to add 103 as a defendant in the circumstances of this case. My reasons are as follows:
1. Under s. 346 of the Business Corporations Act, S.B.C. 2002, c. 57, a legal proceeding may be brought against a dissolved company within two years after its dissolution as if the company had not been dissolved. In this case, Mr. Parker seeks to add 103 within two years after its dissolution.
 2. Despite exercising due diligence, Mr. Parker did not learn of the involvement of 103 until June 1, 2020. As a result, no limitation period has expired.
 3. The participation of 103 is clearly necessary for a proper determination of Mr. Parker's case on the merits.
 4. A denial of this application would seriously prejudice Mr. Parker's ability to seek and/or receive full compensation for the injuries he alleges he suffered.
 5. Granting this application will not significantly prejudice 103. Even if Mr. Parker had been aware of 103's involvement from the outset, he had until three years after his 19th birthday to serve 103 with a notice of civil claim. Mr. Parker turned 19 on May 22, 2017. Accordingly, 103 is being added as a defendant within a little over two months of the third anniversary of Mr. Parker's 19th birthday. Conclusion and Order
- [8] For all of these reasons, I make the following order:
1. 1032308 B.C. Ltd. is added as a defendant;
 2. The style of proceeding will be amended accordingly;
 3. The plaintiff has leave to amend the notice of civil claim; and

4. The plaintiff will serve 1032308 B.C. Ltd. with a filed copy of this order and the amended notice of civil claim within 60 days. "L.S. Marchand J. MARCHAND J.
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