

CANADA / JUDGMENT

Rakic v. Stolz

2019 BCSC 2300

COURT

Supreme Court of British Columbia

DECIDED

5 December 2019

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2019 BCSC 2300 Rakic v. Stolz IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Rakic v. Stolz, 2019 BCSC 2300 Date: 20191205 Docket: M176593 Registry: Vancouver Between: Daniela Gina Rakic Plaintiff And Johannes Peter Stolz Defendant Before: Master Harper Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: E. Lay, Articled Student Counsel for the Defendant: N. Rayan Place and Date of Hearing: Vancouver, B.C. December 5, 2019 Place and Date of Judgment: Vancouver, B.C. December 5, 2019

- [1] THE COURT: The plaintiff seeks an order that this action be removed from fast track. The application is brought on the Thursday before the trial that is set to commence on Monday. The plaintiff herself filed the notice of fast track.
- [2] The trial date was set for five days by agreement. Therefore, obviously, the plaintiff took the position that her claim was not worth more than \$100,000 subject to the discretion of the trial judge to award an amount higher than that.
- [3] In March 2019, the plaintiff received a medical report, delivered it to the Insurance Corporation of British Columbia, and made a request that the defendant agree to remove the action from fast track, but without providing any rationale. Defence counsel replied to the request in the negative.
- [4] The plaintiff took no steps to apply to remove the matter from fast track and in fact this application was only filed on November 14, 2019, despite short leave being sought and denied on the matter sometime at the end of October 2019.
- [5] In my view, if the matter is removed from fast track at this point, it would set a dangerous precedent. It would indicate to litigants that they could take advantage of the fast track rule, consent or acquiesce to it and, at their leisure, apply for an order removing the matter from fast track.
- [6] In my view, it is not incumbent on the defendant to demonstrate on this application that it would have taken different steps if the matter had been outside fast track. Rather, the onus is on the plaintiff to demonstrate why the court should exercise its discretion and order that the action be removed from fast track.

- [7] The fast track rules, importantly, contain a costs provision which is to the advantage of the defendant, subject to any ruling by the trial judge that costs be increased.
- [8] If the trial judge determines that quantum should be greater than \$100,000, such an outcome is well known to be within the purview of a trial judge on a R. 15-1 trial.
- [9] There is no reasonable explanation as to why the plaintiff delayed in making this application. This type of application should be made as soon as the facts are known to a party to justify an application to remove the matter from fast track.
- [10] At this stage of the proceeding, being the Thursday before a Monday trial date start, counsel should not be in chambers arguing this type of application; they should be preparing for trial.
- [11] The parties' counsel have waited most of the day to get this application on. This type of conduct is to be discouraged. There is no reason for this application to have been made, apart from (the only reason I can discern), for the plaintiff to pre-emptively be entitled to claim the usual tariff of costs rather than the fast track costs.
- [12] To use this application as a strategy to obtain increased costs before the trial on the Thursday before a Monday start date, in my view, is to be discouraged.
- [13] In the interests of time, I can simply say that I accept the submissions of counsel for the defendant on this application. I cite with approval the passages cited by counsel for the defendant in *Bagri v. Bagri*, 2015 BCSC 2132 and *Connatty v. Bone*, 2018 BCSC 2336. In particular, I cite para. 30 of *Connatty* where the Court says: I conclude the timing of the application, the circumstances under which it has been brought and the purpose for which it has been brought would make removal highly prejudicial to the defence, fundamentally unfair and contrary to the purpose of the fast track rule.
- [14] I think that applies to this application and I dismiss the plaintiff's application to remove the action from fast track.
- [15] THE COURT: Are there submissions on costs?
- [16] MR. LAY: Each party bear their own costs, Your Honour.
- [17] THE COURT: Thank you. Mr. Rayan?
- [18] MR. RAYAN: Your Honour, you have already heard most of what I had to say, but should have been very clear to the plaintiff that this application was not going to succeed, question the timing of it, so I would ask that the defendant have costs in any event of the cause, Your Honour.
- [19] THE COURT: I agree. This application should not have been brought. It was brought for a strategic reason. I disapprove. The defendant is entitled to their costs of this application in any event of the cause.

[20] MR. LAY: Thank you, Your Honour.

[21] THE COURT: Thank you.

[22] MR. RAYAN: Thank you, Your Honour. "Master Harper"

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