
CANADA / JUDGMENT

Roberts & Baker v. Kemp

2005 BCSC 1244

COURT

Supreme Court of British Columbia

DECIDED

3 August 2005

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2005 BCSC 1244 Roberts & Baker v. Kemp

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Roberts & Baker v. Kemp

2005 BCSC 1244

Date: 20050803

Docket: L011130

Registry: Vancouver

Between:

Roberts & Baker

Solicitors

And

Dr. Brenlee Kemp

Client

Before: Registrar Blok

Oral Reasons for Judgment

August 3, 2005

Counsel for the Solicitors:

L.J. Muir

Counsel for the Client:

G. Turriff, Q.C.

Place of Hearing:

Vancouver, B.C.

- [1] I find it convenient to give reasons now. These reasons will not be as comprehensive as the submissions deserve or that the detailed facts perhaps warrant, but I think it convenient that I give you my decision in this matter now and the brief reasons for that decision.
- [2] On June 29th this year, the solicitors brought an application to have this Legal Profession Act matter reset for a hearing. That application proceeded, but as a result of a request by counsel for the client, the matter was adjourned and has been re-heard today.
- [3] This application stems or flows from proceedings which took place on November 17th, 2003, before me. On that day, which was the first day of a scheduled five day review, counsel for the client applied to adjourn the review in view of the fact that the client had recently filed a Supreme Court action alleging professional negligence against the solicitors.
- [4] It was submitted by the solicitors at that time that this eleventh hour filing amounted to an abuse of process and ought not to be endorsed or accepted by the Court by allowing the application for an adjournment.
- [5] In reply to the allegations of delay, the client said that she had had problems engaging counsel, that she had always intended to sue but was awaiting the resolution of the outstanding tort proceedings and that she had had some urgent matters to attend to because of her elderly mother's health.
- [6] In reasons given that day, I allowed the adjournment application but gave leave to the solicitors to apply to have the matter reset. I put it this way:

If the client falters in the progression of the solicitors' negligence action without good reason, the solicitors will have leave to have a further pre-hearing conference at any time to bring that to the attention of the registrar, and to ask leave that the review hearing be re-set.

- [7] A great deal of detail has been provided to me that gives full context to the history of these matters prior to November 17, 2003, and the progress, if it can be called that, of the negligence action after November 17, 2003.
- [8] Suffice it to say that the progress in the negligence action has been woefully short of any progress that I expected would have taken place when I made the order I did on November 17, 2003.
- [9] The reasons given for this lack of progress are largely the same as those given for the lateness of the adjournment application on November 17, 2003. In other words, the client, some 21 months after that adjournment application, states that she is still engaged in the search for counsel to represent her in the negligence action, and there are references to her again having difficulties due to concerns relating to her mother's health and welfare.

- [10] A third reason was given on that earlier occasion that certain of the client's psychological difficulties, depression in particular, left her psychologically unable to deal with matters. I did not hear, this time, that this was another reason for the delay, but in any event, two of the three reasons given earlier were again repeated before me today.
- [11] The general rule that a Legal Profession Act review will be allowed to await the outcome of a negligence action that may be brought against the solicitor is a rule of common sense and is a general rule only. At a certain point, unreasonable delay in the prosecution of a negligence action will create undue prejudice, and in my view, make it such that the usual rule ought not to apply.
- [12] The time frames that are evident in this matter are of very serious concern. Mr. Roberts' representation of Dr. Kemp was for a trial that took place in May, June, and December 1997. His representation of Dr. Kemp concluded six years ago. The last payment by the client other than by order was in August 1997. An advance ordered by Master Barber in 2002 was made for payment of outstanding disbursements.
- [13] I think it is long past the time when the prejudice to the solicitors arising from this delay outweighs the usual rule of deference to the negligence action.
- [14] Thus it is abundantly clear to me that this matter ought to be set formally for the hearing that was tentatively arranged for February 2006. I think it unnecessary for me to declare that date to be peremptory. The reasons I have given will speak for themselves.
- [15] Given my history and familiarity with this matter, I think it appropriate to declare myself seized of any pre-hearing applications that might be made. Those conclude my reasons.

[Submissions on Costs]

- [16] THE REGISTRAR: It seems clear to me that there was something in it for both sides today. Costs will be in the cause.

"District Registrar M. Blok"

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