

CANADA / JUDGMENT

Saran v. Dhillon Labour Contractors Ltd.

2020 BCSC 1652

COURT

Supreme Court of British Columbia

DECIDED

4 November 2020

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2020 BCSC 1652 Saran v. Dhillon Labour Contractors Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Saran v. Dhillon Labour Contractors Ltd., 2020 BCSC 1652 Date: 20201104 Docket: M212117 Registry: New Westminster Between: Kamaljeet Kaur Saran Plaintiff And Dhillon Labour Contractors Ltd., and Parminder Kaur Defendants Before: The Honourable Mr. Justice Blok Reasons for Judgment Place and Date Notice of Application Filed: New Westminster, B.C. October 29, 2020 Place and Date of Judgment: New Westminster, B.C. November 4, 2020

- [1] By way of an application by written submissions, made pursuant to Covid-19 Notice No. 14 dated April 27, 2020 (revised July 20, 2020), the applicant, the plaintiff in this action, seeks an order renewing her notice of civil claim ("NOCC") for a period of 12 months. The application is brought without notice.
- [2] The NOCC concerns a claim for damages arising from a motor vehicle accident that occurred on March 30, 2017 in Abbotsford, British Columbia.
- [3] The NOCC was filed on March 11, 2019 and the plaintiff served the NOCC on the defendants' insurer, the Insurance Corporation of British Columbia, on April 10, 2019. The matter was subsequently assigned to defence counsel, who confirmed their appointment in an email to plaintiff's counsel dated October 23, 2019.
- [4] The plaintiff engaged new counsel in July 2020. Defence counsel then wrote to the plaintiff's new counsel to request affidavits of service confirming service of the NOCC on the defendants. It was at that time that plaintiff's counsel discovered that service of the NOCC had not been effected on the defendants.
- [5] Rule 3-2(1) of the Supreme Court Civil Rules provides for the renewal of a notice of civil claim either before or after the expiration of the 12 month period that it remains in force.
- [6] The test for renewal is one of long standing, going back to *Bearhead v. Moorhouse* (1977), 3 B.C.L.R. 81 (S.C.), aff'd (1978), 5 B.C.L.R. 380 (C.A.). The test was more recently affirmed in *Fast Fuel Services Ltd. v. Michelin North America (Canada) Inc.*, 2008 BCCA 216 [Fast Fuel]. The factors to consider are: (1) whether the application to renew was made promptly; (2) whether the defendant had notice of the claim before the writ (now notice of civil claim) expired; (3) whether the defendant was prejudiced; (4) whether the failure to effect service

was attributable to the defendant; and (5) whether the plaintiff, as opposed to the plaintiff's solicitors, was at fault.

- [7] In *Fast Fuel*, the Court of Appeal also said (at para. 21): where a defendant has notice of an action within the time prescribed by the Rules for service of a writ, only a compelling case of prejudice should defeat its renewal, unless perhaps the plaintiffs' conduct in causing the delay is so egregious a refusal to renew can be justified.
- [8] In *Sutherland v. McLeod*, 2004 BCCA 653, at paras. 28-29, the court added the following: (1) in an application to renew a writ of summons (now a notice of civil claim), the basic fact that must kept in mind is that it is primarily concerned with the rights of litigants and not with the conduct of solicitors; and (2) the essential question which faces the court is: what is necessary to see that justice is done? The court emphasized that the overarching objective is to see that justice is done.
- [9] Applying those factors to the facts of this case, I note that: (1) the defendants' insurer had notice of the claim before the NOCC expired; (2) there is no apparent prejudice to the defendants; (3) the defendants played no part in the failure to effect service; and (4) the failure to effect service appears to be the fault of the earlier solicitor, not the plaintiff.
- [10] The delay in applying for renewal requires somewhat more comment. Here, the delay is about three months. Oddly, the plaintiff offers no explanation for that delay other than to say "the application was immediately begun", a statement that does not seem to reconcile well with the three-month delay. I appreciate that this delay is not egregious, but since an omission that results in the lapse of a notice of civil claim has at least a whiff of negligence about it, one would think that remedying the situation would have been done with all haste.
- [11] Despite those comments, I conclude the application ought to be allowed, as I am satisfied that the ends of justice favour the renewal of the NOCC. I am however, not persuaded that the NOCC should be renewed for a further 12 months, as sought, as it is time to move this matter along. Six months should suffice.
- [12] Accordingly, I order that (1) the NOCC is renewed for a period of six months from the date of this order; and (2) the defendants shall have 21 days after service for the filing of a response or responses to civil claim. "Blok J."

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Prepared on 26 October 2026 · Esheria