

CANADA / JUDGMENT

Sund v. Blue Hawks Transport Ltd.

2017 BCSC 2416

COURT

Supreme Court of British Columbia

DECIDED

22 November 2017

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2017 BCSC 2416 Sund v. Blue Hawks Transport Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sund v. Blue Hawks Transport Ltd., 2017 BCSC 2416 Date: 20171122 Docket: M162426 Registry: New Westminster Between: Shiveta Sund Plaintiff And Blue Hawks Transport Ltd., Surjit Singh Hayer and Sukhraj Singh Grewal Defendants Before: Master Caldwell Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: D.J. Brown B.M. McFadden Counsel for the Defendants: M. Pytlewski Place and Date of Hearing: New Westminster, B.C. November 22, 2017 Place and Date of Ruling: New Westminster, B.C. November 22, 2017

- [1] THE COURT: The application here is to have the claimant attend a defence medical examination with a rheumatologist, Dr. Wade. The situation arises out of a motor vehicle accident out of July 2012.
- [2] There have been a number of expert reports tendered by the claimant, and there are I believe two defence medical examinations done by agreement where the plaintiff attended on Dr. Sovio, an orthopedic surgeon, and Dr. Dahi, a psychiatrist.
- [3] It appears that many of these, or some of them at least, were provided early, and I am told that this current skirmish arose as a result of the claimant counsel serving a rheumatologist report of their own back in September, some 51 days before the expiry of the 84-day limit. That is back on September 13. That gives you about, what, 130 to 135 days prior to trial, well in advance of the 84-day deadline.
- [4] Defence at that point sought instructions but took no action to drive forward a defence medical of their own for a period of a month or so. At that point they were able to obtain this appointment for tomorrow, which is well within the 84-day deadline. That is an appointment with Dr. Wade, a rheumatologist.
- [5] There is no evidence before me as to attempts made by the defence to obtain alternate experts who might have been available for the expiry of the 84-day deadline and, in fact, able to present a fulsome report prior to the 84-day deadline as well.

- [6] Counsel also did not address whether this should be considered as a first defence medical or a second defence medical in a related field. There is undoubtedly some overlap between orthopedics and rheumatology. They are not completely similar, but there are overlaps, and there was no addressing by counsel as to whether this should be considered a first report in an unrelated field or a second report which would require a higher standard to be met in order for an order to go.
- [7] The claimant counsel who appears on this application points to considerable evidence in the previous medical disclosure which was sought by and provided to defence counsel over the course of the several years that this litigation had been ongoing. Those medical records are somewhat conclusive in that the claimant has for, well, for years complained about whole body pain that has been experienced and expressed in a number of ways to a number of medical experts and was noted in the medical records.
- [8] I note that the defence acknowledges that they are not after a rebuttal report, which would have a 42-day disclosure deadline. Both the letter of their chosen expert, Dr. Wade, and their submissions say that they are not aiming at a rebuttal report but rather are aiming at a report of first instance to substantively address the issue of fibromyalgia, which they say has only now arisen in the rheumatologist's report of the claimant delivered about 51 days before the 84-day deadline.
- [9] All of those things taken into account mitigate against granting the order sought today. There is no significant explanation as to why there was the delay from September 13 through until October or November. There is no evidence of attempts to find other experts who could have fit the bill and provided reports before 84 days. There is no evidence or argument presented to me as to whether this should be considered a first or a second report in a related field.
- [10] There is pre-existing evidence as to whole body pain from which the defence could reasonably have drawn the inference that something in the nature of fibromyalgia might very well be complained of or could arise in the claim. That was also addressed in terms of the level of pain and the full body nature of the pain in the examination for discovery that was conducted sometime ago.
- [11] All of those matters combined with the fact that it is a report of first instance and not a rebuttal report that is sought mitigates against the granting of this order as sought. The application is dismissed. The plaintiff will have their costs in any event of the cause. Thank you. "Master Caldwell"

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