

CANADA / JUDGMENT

T.N. v. Letcher

2015 BCSC 1986

COURT

Supreme Court of British Columbia

DECIDED

30 October 2015

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2015 BCSC 1986 T.N. v. Letcher IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: T.N. v. Letcher, 2015 BCSC 1986 Date: 20151030 Docket: 09-5030 Registry: Victoria Between: T.N. a.k.a. Tayo Olantunde Falade Plaintiff And: Blake Letcher and Spence Laronde and Vernon Walker and Chad Poitras and John Doe 1 and John Doe 2 and John Doe 3 and Her Majesty the Queen in right of the Province of British Columbia Defendants Before: Master Bouck Reasons for Judgment Counsel for the Plaintiff: K. Hauer Counsel for the Defendant Her Majesty the Queen in right of the Province of British Columbia: P. Manhas Place and Date of Hearing: Victoria, B.C. September 29, October 8, 2015 Place and Date of Judgment: Victoria, B.C. October 30, 2015 The Application

[1] These reasons address the defendant Crown's application for orders that:

- a. the trial in this action scheduled to commence in February 2016 be adjourned generally; and
- b. the plaintiff provide particulars of two factual allegations made in the further amended notice of civil claim.

[2] Originally, the Crown also sought particulars on a third factual allegation. However, that factual allegation has now been removed entirely from the notice of civil claim.

[3] Most of the argument on this application was heard on September 29, 2015. Following argument, I ordered that the Crown's application be adjourned and granted leave to the plaintiff to file and deliver yet a further amended notice of civil claim. I also ordered that the Crown's application could be continued, if necessary, once that pleading was delivered. Argument resumed on October 8, 2015. The Crown's position on its application did not substantially change, despite the additional amendments to the notice of civil claim.

[4] The factual allegations on which particulars are sought are:

11. 12. The Plaintiff Claimant was also subsequently subjected to numerous threats by other inmates, which necessitated his being moved to different units within VIRCC on multiple occasions.

12. 13. The Plaintiff Claimant was also subjected to repeated slurs and insults by other inmates because of the Plaintiff's Claimant's status as a citizen of the United States of America and for his criminal conviction for raping one or more white females.
- [5] The Crown seeks the following particulars on each and every one of the individual incidents alleged in the paragraphs:
- a. when the incidents occurred;
 - b. where the incidents occurred;
 - d. who was threatening, insulting or using slurs in relation to the plaintiff ; and
 - e. what injuries the plaintiff says he suffered as a result.
- [6] The plaintiff and the Crown are the only parties of record in this proceeding and will be referred to in these reasons as "the Parties". Default judgment has been obtained against the individual defendants. Background Facts
- [7] The plaintiff is an American citizen of Nigerian descent, who was held in custody in either the Vancouver Island Regional Correctional Centre (VIRCC) or the Fraser Regional Correctional Centre (FRCC) between December 2007 and March 2009. Mr. Falade alleges that he was the victim of three separate assaults while in custody. The assaults were allegedly committed or conspired by fellow inmates, namely the various individual defendants and John Does named in the proceeding. Prior to the most recent pleading amendments, Mr. Falade also claimed to have been assaulted by other inmates on 70 more occasions.
- [8] Mr. Falade pleads that he was the victim of other indignities and mistreatment during his period of incarceration. He seeks an award of damages against all of the defendants for the mental and physical injuries resulting from these events. Those injuries are described in the further amended notice of civil claim.
- [9] It is alleged that the Crown breached its duty of care to Mr. Falade by failing to prevent the assaults and mistreatment from occurring. The Crown's agents or employees are also alleged to have breached certain of Mr. Falade's rights under the Charter.
- [10] Mr. Falade returned to the United States following his release and now resides in or near Baltimore, Maryland. This action was commenced on November 10, 2009. The Crown was served shortly thereafter and filed a statement of defence in which all of the plaintiff's allegations are denied. The statement of defence was amended on one occasion. The statement of claim was converted to a notice of a civil claim in August 2012. That pleading was amended twice, once on December 12, 2012, and then again on December 4, 2013. An examination for discovery of the Crown's representative took place on December 17, 2013.

- [11] On February 4, 2014, the Parties appeared before me at a case planning conference. Both the trial length and the timing of Mr. Falade's examination for discovery were discussed at the conference. The Parties agreed that ten days would be sufficient for the hearing of the trial, so long as the plaintiff withdrew his claim relating to the 70 assaults. The case plan order required Mr. Falade to be examined for discovery before June 30, 2015. By agreement, the trial was then scheduled to commence on July 6, 2015.
- [12] In fact, the plaintiff has yet to be examined for discovery. Mr. Falade is either unable or unwilling to travel to this jurisdiction for that purpose. Because of the delay in scheduling this examination, the trial was adjourned by agreement to February 2016. Arrangements have now been made for the Parties' respective counsel to travel to the Baltimore area but the timing of the plaintiff's examination for discovery is dependent on the outcome of this application.
- [13] In or about August 2015, the Crown concluded that the trial could not be completed in ten days. The plaintiff had yet to amend his pleading as promised at the case planning conference. In communications with plaintiff's counsel, the Crown suggests that the trial should be rescheduled to allow for a five-week hearing. The Crown contacted Supreme Court Scheduling to determine the earliest available dates for a five-week trial. As of September 11, 2015, the earliest available dates in the Victoria registry would be in January 2017.
- [14] On September 13, 2015, the Crown issued the demand for particulars and reiterated its concern that the trial could not possibly be concluded in ten days. The plaintiff has refused to provide any of the particulars demanded. Discussion
- [15] The Crown submits that a reasonable estimate of trial length cannot be provided unless or until it receives the demanded particulars. The Crown asks for the particulars to be provided within ten days of the court's order and that the oral discovery of the plaintiff be delayed until receipt of the particulars. Order for Particulars
- [16] Particulars may be ordered when necessary to delineate the issues between the parties: *Cansulex Ltd. v. Perry*, [1982] B.C.J. No. 369 (B.C.C.A). As set out in that decision, the function of particulars are:
- (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
 - (2) to prevent the other side from being taken by surprise at the trial;
 - (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
 - (4) to limit the generality of the pleadings;
 - (5) to limit and decide the issues to be tried, and as to which discovery is required, and

- (6) to tie the hands of the party so that he cannot without leave go into any matters not included.
- [17] The Crown says that it is unable to prepare for the plaintiff's examination for discovery, or trial for that matter, without knowing the details of when and where the "numerous" threats alleged in paragraph 12 and the "repeated slurs and insults" pled in paragraph 13 occurred. The Crown references the Correction Act Regulation, [amendments included up to B.C. Reg. 191/2007, June 21, 2007] which describes the rules governing the conduct of inmates and what a staff member must do in light of breaches of those rules. The plaintiff cited this Regulation in previous versions of his pleading. The paragraph containing that reference has now been removed from the further amended notice of civil claim. Nevertheless, the Crown's duty of care to the plaintiff would appear to arise from the Regulation. For example, the Regulation provides that a staff member must either stop an inmate from conveying racial insults to another inmate or give the recipient of that insult an opportunity to correct the conduct. The Regulation requires the staff member to make a written record of the particular breach, with a "person in charge" to determine whether a disciplinary hearing is required.
- [18] Thus, the Crown says that it is being asked to defend its actions with respect to numerous incidents for which there may or may not be either witnesses or a written record. The Crown needs to know the dates and times of these incidents in order to search for witnesses to the events and perhaps find out why no written record of the event or incident was prepared.
- [19] The Crown argues that it will be taken by surprise if the plaintiff particularizes the incidents in his oral testimony at trial.
- [20] In answer to this application, the plaintiff says that the Crown only needs the details of the number of times that the plaintiff was moved within the prison system and the reasons behind those moves. The plaintiff says that the Crown must have written records containing this information. Furthermore, the plaintiff says the details of the insults or racial slurs are not necessary to delineate the issues between the parties. Rather, the allegation that the insults or slurs were conveyed merely describes the milieu in which the alleged negligence of the Crown occurred and that the Crown knew or ought to have known that the insults or slurs were occurring.
- [21] While the details of the alleged slurs, insults or threats may assist the Crown in defending the claim, I am not satisfied that such details require an order for particulars -- or effectively, still further amendments to the notice of civil claim. Those details may be canvassed at the plaintiff's examination for discovery.
- [22] One of the difficulties with the Crown's application is that the demand for particulars comes so late in the proceeding. As far as I can discern from the evidence, the demand for particulars is made more than five years after the statement of defence was filed and served. The Crown obviously had the ability to respond to these factual allegations and did so years

ago. Furthermore, the Crown agreed to set this matter for trial in the absence of the sought-after particulars. This sequence of events suggests that the Crown has not been concerned about any surprise at trial. Moreover, when the further amended notice of civil claim is read as a whole, the factual allegations in paragraphs 12 and 13 do delineate the issues to be tried.

[23] In the result, the relief sought in paragraph 2 of the notice of application is dismissed.
Adjournment of the Trial

[24] The Crown submits that even without particulars being ordered, the trial in this action will necessarily consume five weeks. In careful submissions, the Crown identified the potential witnesses to almost all of the allegations made in the 55-paragraphed further amended notice of civil claim. The Crown says that it will need to call various corrections officers, sheriffs, health officers, wardens and other inmates to address the multitude of allegations made by the plaintiff with respect to pre-trial and subsequent prison conditions and the consequences of those conditions. I agree that if all of the proposed individuals are called as witnesses, the trial will not be completed in ten days.

[25] The plaintiff argues that the Crown is unnecessarily inflating the trial time. The plaintiff's evidence in direct is estimated to consume one day. The plaintiff did not disclose what other evidence he would be calling.

[26] On this aspect of the application, the court must balance the interests of the Parties and ensure that a fair trial is heard on the merits. A continuation of a trial should be avoided if at all possible. The Crown does not identify any other possible prejudice besides this continuation should the February 2016 trial proceed as scheduled. It has had years to investigate the potential witnesses to the claim. On the other hand, an adjournment of the trial would not meet the objectives of speedy justice as set out in Rule 1-3 of the Supreme Court Civil Rules.

[27] The Crown agreed some time ago, albeit reluctantly, to a ten-day trial. The plea of 70 assaults, which was the initial basis for the Crown's time estimate concern, has now been withdrawn. Also, the discovery process has yet to be concluded. The examination of Mr. Falade should inform the Crown on the case to be met and perhaps result in admissions. If the Crown's list of witnesses remains unchanged, then an adjournment of the trial is likely a given. However, if the scope of the trial shrinks as a result of the discovery process, the trial may complete in ten days. In all of these circumstances, I find that the adjournment application is simply premature.

[28] In the result, the adjournment application is dismissed, with liberty to seek the same order following either:

- a. the completion the plaintiff's examination for discovery; or
- b. the trial management conference in this action, unless the presider orders the trial to be adjourned. Costs

[29] Costs of the application will be in the cause. "C.P. Bouck" Master C.P. Bouck

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