

CANADA / JUDGMENT

# Tayes v. Snarr

2020 BCSC 1041

## COURT

Supreme Court of British Columbia

## DECIDED

14 July 2020

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2020 BCSC 1041 Tayes v. Snarr IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Tayes v. Snarr, 2020 BCSC 1041 Date: 20200714 Docket: 29329 Registry: Cranbrook Between: Taryn Jennie Tayes Plaintiff And Melody Snarr also known as Melody Jones, Margaret Jones, Chelsea Garvin and Susan Ramsay Defendants Before: The Honourable Mr. Justice Marchand Reasons for Judgment Counsel for the Plaintiff: W.T. Rogers Counsel for the Defendants: No appearance Written Submissions Received: July 9, 2020 Place and Date of Judgment: Cranbrook, B.C. July 14, 2020

## Introduction

- [1] Taryn Jennie Tayes was injured in a motor vehicle accident in Nelson, British Columbia on July 4, 2017. At the time of the accident, she was a passenger in a vehicle owned by Margaret Jones and driven by Melody Snarr (also known as Melody Jones) that collided with a vehicle owned by Susan Ramsay and driven by Chelsea Garvin.
- [2] On June 24, 2019, Ms. Tayes filed a notice of civil claim seeking compensation for injuries she suffered in the accident. She named Ms. Jones, Ms. Snarr, Ms. Ramsay and Ms. Garvin as defendants.
- [3] Ms. Tayes served the notice of civil claim on Ms. Ramsay on May 27, 2020 and on Ms. Snarr on June 23, 2020. On June 17, 2020, Ms. Tayes became aware that Ms. Garvin is deceased. On June 23, 2020, Ms. Tayes learned that Ms. Jones had been diagnosed with COVID-19 and was quarantined in the United States. As a result, despite diligent efforts, Ms. Tayes was unable to serve Ms. Garvin and Ms. Jones prior to the expiry of the notice of civil claim on June 24, 2020.
- [4] Ms. Tayes has applied by way of written submission for orders renewing the notice of civil claim for twelve months and permitting alternate service on Ms. Jones. Application to Renew the Notice of Civil Claim
- [5] Rule 3-2 empowers the court to renew a notice of civil claim that has not been served within twelve months of its filing for a period of not more than twelve months.

- [6] There are five factors governing the exercise of discretion to renew a writ: · whether the application to renew was made promptly; · whether the defendant had notice of the claim before the notice of civil claim expired; · whether the defendant was prejudiced; · whether the failure to effect service was attributable to the defendant; and · whether the plaintiff, as opposed to his solicitor, was at fault. (See: *Imperial Oil Ltd. v. Michelin North America (Canada) Inc.* (2008), 81 BCLR (4th) 99 (CA) at paras. 9 and 16).
- [7] The overarching objective is to see that justice is done: *Sutherland v. McLeod* (2004), 44 BCLR (4th) 265 (CA).
- [8] This is a clear case calling for a renewal of the notice of civil claim.
- [9] Ms. Tayes made timely and diligent efforts to serve the notice of civil claim. Her ability to do so was compromised during the pandemic. Further, while endeavouring to serve all of the defendants, she learned that she would be unable to personally serve Ms. Garvin, who had passed away, and Ms. Jones, who was quarantined in the United States. That was no one's fault. Ms. Tayes then applied very promptly to renew the notice of civil claim.
- [10] On the other side of the ledger, I can think of no prejudice to the defence if the renewal is granted. While I do not know whether Ms. Garvin or Ms. Jones were aware of the notice of civil claim, their insurers were certainly aware that Ms. Tayes intended to advance a claim and very likely received notice of the action in accordance with s. 22 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231.
- [11] In all of the circumstances, the interests of justice demand that the notice of civil claim be renewed. If it is not, Ms. Tayes' ability to pursue full compensation for her injuries will be significantly compromised. If it is, the defence will suffer no prejudice.
- [12] A renewal of the notice of civil claim is necessary to give Ms. Tayes an opportunity to identify and serve a representative of Ms. Garvin's estate, to serve Ms. Jones and to advance her claim. A renewal of six months should be more than adequate. Application for Alternate Service
- [13] Rule 4-4 empowers the court to make an order for alternate service if it is impracticable to serve a document by personal service, or if the person to be personally served cannot be found after a diligent search or is evading service.
- [14] The affidavit evidence makes clear that process servers retained by Ms. Tayes were able to locate Ms. Jones who was "stuck" in the United States due to the pandemic. The affidavit evidence also makes clear that Ms. Jones appeared to be cooperative, even offering to contact the process servers when she returned to Canada. There is no indication in the affidavit evidence that Ms. Jones is evading service.

- [15] Given that I will be renewing the notice of civil claim for six months, there should be plenty of time to personally serve Ms. Jones. If it subsequently becomes apparent that service remains impracticable or Ms. Jones cannot be found or is evading service, a further application can be made for alternate service. Order
- [16] For all of these reasons, I order that the notice of civil claim be renewed for six months. I dismiss Ms. Tayes' application to serve Ms. Jones by alternate service. "L.S. Marchand J." MARCHAND J.

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