

CANADA / JUDGMENT

Waechter v. MacLeod

2024 BCSC 1360

COURT

Supreme Court of British Columbia

DECIDED

24 June 2024

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2024 BCSC 1360 Waechter v. MacLeod

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Waechter v. MacLeod,

2024 BCSC 1360

Date: 20240624

Docket: M56770

Registry: Vernon

Between:

Hannah Patricia Louise Waechter

Plaintiff

And

Fardowsa Mahad MacLeod

Defendant

Before: The Honourable Madam Justice Ker

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

M.J. Yawney, K.C.

A. Severn

Counsel for the Defendant:

K.D. Watts

Place and Date of Hearing:

Vernon, B.C.

June 24, 2024

Place and Date of Judgment:

Vernon, B.C.

June 24, 2024

- [1] These reasons for judgment were delivered as oral reasons. They have since been edited for distribution.
- [2] On this application, the plaintiff, Hannah Waechter, seeks to have the stay of proceedings ordered on September 26, 2023 by now Associate Judge Schwartz lifted and the matter reinstated to proceed in the British Columbia Supreme Court.
- [3] The underlying action relates to a motor vehicle accident that occurred on May 24, 2020. The background facts are not in significant dispute. They are as follows.
- [4] The action arises out of a head-on collision that occurred on May 24, 2020, on Highway 97 near Enderby, B.C., when the defendant, after driving her black Hyundai Santa Fe Sport erratically for some time and well over the speed limit, crossed the centre line, drove directly into the path of and collided with the plaintiff's red Mazda 3 (the "Collision"). The plaintiff and defendant's vehicles sustained significant crush damage as a result of the Collision. The defendant was charged with dangerous driving causing bodily harm.
- [5] On October 20, 2020, five months after the collision, a notice of civil claim was filed on behalf of the plaintiff for injuries which included: head injury, headaches, dizziness and balance issues, memory and concentration issues, neck and back pain, difficulty sleeping, and chronic pain.
- [6] On March 2, 2021, the defence filed a response to civil claim denying liability for the Collision.
- [7] The defendant's criminal trial proceeded on June 6 and 7, 2022, in the Provincial Court of British Columbia. On June 30, 2022, the Honourable Judge Guild found the defendant, Ms. MacLeod, guilty of dangerous driving causing bodily harm to the plaintiff.
- [8] Between October 14 and 24, 2022, the parties agreed to an examination for discovery of the defendant which was scheduled for January 20, 2023.

- [9] On December 19, 2022, the defendant filed an amended response to civil claim adding that the injuries sustained by the plaintiff, if any, constituted a minor injury as defined by s. 101 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, and Parts 1 and 2 of the Minor Injury Regulation, B.C. Reg. 234/2018. The denial of liability for the Collision was maintained.
- [10] On January 16, 2023, counsel for the defendant cancelled the examination for discovery of the defendant.
- [11] Approximately nine months later, on September 5, 2023, counsel for the defendant filed an application seeking a stay of proceedings in this court pending a determination from the Civil Resolution Tribunal (the "CRT") regarding whether this case involved a minor injury (the "Stay Application").
- [12] The Stay Application was heard on September 26, 2023. On the hearing of the Stay Application, Associate Judge Schwartz ordered that (1) the plaintiff's action be stayed pursuant to s. 16.1(2)(a) of the Civil Resolution Tribunal Act, S.B.C. 2012, c. 25 [CRTA] pending a determination by the CRT as to whether the matter relates to a minor injury within the jurisdiction of the tribunal and (2) costs of the application and costs of the action generally may be brought back before the court later, once the CRT determination of the minor injury issue has been made (the "Order").
- [13] The defendant provided the plaintiff with an entered copy of the Order on October 13, 2023.
- [14] On November 7, 2023, counsel for the defendant advised the plaintiff that they would be making the CRT application.
- [15] On or about November 24, 2023, the defendant submitted an application to the CRT seeking a determination on the minor injury claim within the 28-day time limit provided by s. 13.3 of the CRTA.
- [16] Following the filing of their application, several communications between counsel for the defendant's firm and the CRT appear to have occurred as to who should be bringing the claim that the injuries sustained constitute minor injuries. The plaintiff, who was not involved in the communications with the CRT and counsel for the defendant's firm on the issue, has no intention of bringing any such claim.
- [17] The minor injury claim arises from the defendant's pleadings amendment in December 2022. The communications are confusing, and at one point it appears that counsel for the defendant believes it was told by the CRT that it was improper for it to bring the application, as outlined in their letter dated January 30, 2024 to the plaintiff's solicitor.

- [18] I note that the evidence from the CRT does not support the position that it was improper for the defence to bring the application. Be that as it may, the defence also had information in an email from the CRT on December 1, 2023, advising them that if they withdrew their dispute, Civil Resolution Tribunal Rules Rule 6.1(3) required them to apply to get the CRT's permission to revive the dispute if they determined they wished to proceed after withdrawing it.
- [19] On or about May 10, 2024, the CRT sent a confirmation email to defence counsel's firm confirming that the CRT had received the defence request to withdraw dispute number VI-2023-012030. The CRT reviewed and approved the request and advised that the dispute was now closed and would not be heard by the CRT.
- [20] Contemporaneous with the confirmed withdrawal of the 2023 dispute, it appears the defence filed a new dispute application, VI-2024-005232, on May 10, 2024. No confirmation of acceptance of this dispute has been provided. Clearly it is an attempt to proceed with the dispute that was previously withdrawn. There is no evidence that the defence has sought the CRT's permission to do so as required by Rule 6.1 of the Civil Resolution Tribunal Rules and as they were notified in the December 1, 2023 email from the CRT if they wished to revive the earlier dispute application.
- [21] In addition, s. 13.3 of the CRTA provides:

Time limit -- court determination about matters within jurisdiction of tribunal

13.3 Unless the tribunal or the court orders otherwise, a party may not make a request under section 4 [asking the tribunal to resolve a claim] asking the tribunal to resolve a claim more than 28 days after the date of a court order under section 16.1 [court must stay or dismiss certain proceedings] staying or dismissing, as applicable, a court proceeding under that section.

- [22] The defence's second dispute application to the CRT in this same matter is seven-and-a-half months past the 28-day deadline mandated by the Civil Resolution Tribunal Rules. Both the CRT email of December 1, 2023 and the decision in *Downing v. The Owners, Strata Plan VR 2356*, 2020 BCCRT 1079 establish that the CRT's permission, essentially leave, is necessary for the defence to proceed through the CRT minor injury process in these circumstances. There is no evidence that permission or leave from the CRT to either revive the withdrawn application filed in time or to proceed on a new application filed well after the 28-day time limit has been sought.
- [23] In the circumstances, the proceedings in this case appear, thus far, to be antithetical to the CRT's mandate "to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly" (*Downing* at para. 8), and contrary to the objectives of the Supreme Court Civil Rules, B.C. Reg. 168/2009.

[24] As the Supreme Court of Canada noted in *Hryniak v. Mauldin*, 2014 SCC 7, at para. 28, the goal of the courts is to provide a fair process resulting in the just adjudication of disputes; the process must be accessible, which means proportionate, timely, and affordable.

[25] The objective of the Supreme Court Civil Rules includes the speedy and inexpensive determination of the proceeding on its merits. Rule 1-3 of the Supreme Court Civil Rules provides:

Rule 1-3 -- Object of Rules

Object

(1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

(2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to

- (a) the amount involved in the proceeding,
- (b) the importance of the issues in dispute, and
- (c) the complexity of the proceeding.

[26] Subsections 2(2)(a) and (b) of the CRTA provide:

(2) The mandate of the tribunal is to provide dispute resolution services in relation to matters that are within its authority, in a manner that

- (a) is accessible, speedy, economical, informal and flexible,
- (b) applies principles of law and fairness, and recognizes any relationships between parties to a dispute that will likely continue after the tribunal proceeding is concluded, . . .

[27] I agree with the plaintiffs that the conduct of the defence in the advancement of the minor injury claim has been inconsistent with the overarching objective of the Supreme Court Civil Rules and the mandate of the CRTA.

[28] This action has been removed from proceeding in this Court for an inordinate period of time, with no clear timeframe for when the matter may get back on track. The defendant has been convicted of a criminal offence in relation to this matter--dangerous driving causing bodily harm. The conviction was entered nearly two years ago on June 30, 2022. It took a further six months after the entry of the conviction for the defence to file an amended response to civil claim claiming minor injuries. It took another nine months to seek a stay of the action to have the minor injury claim adjudicated by the CRT. And, the minor injury claim has not yet been adjudicated upon. Indeed, the defence application to the CRT that

flows from the stay in this Court has been withdrawn. A new defence application has been filed with the CRT, but no companion application has been made to bring that initiating dispute application well beyond the 28-day time limit of s. 13.3 of the CRTA.

- [29] Importantly, liability, notwithstanding the criminal conviction, is still denied. In my view, it is at the very least unfair, bordering on an abusive misuse of procedure, to permit the stay to remain in place in these unique circumstances. Prejudice can be presumed at this point given the significant passage of time since the accident with no appreciable movement forward on either the CRT or Supreme Court front, notwithstanding a criminal conviction two years ago in respect of the events that form the basis of this action.
- [30] In my view, the stay must be lifted so that the action can move forward at least insofar as conducting discoveries and trying to get the matter back on track.
- [31] Should the defence feel compelled to persist in its minor injury claim, it can make the requisite application to the CRT for an extension of time. If that is obtained and if an actual hearing on the minor injury claim does then proceed, the defence can apply for another stay of the action in this forum if necessary.
- [32] In my view, the plaintiff's action has been unnecessarily delayed and there is no timeline advanced to assure the Court that the matter will proceed with dispatch. It cannot be overlooked that the plaintiff takes a calculated risk in pursuing this matter in Supreme Court in light of s. 135(4) of the CRTA, which provides:
- (4) If a party brings or continues any proceeding in the Supreme Court in respect of liability and damages in relation to an accident and the settlement or award is less than the tribunal limit amount, the costs, including disbursements, that may be ordered are limited to an amount that would have been permitted in the tribunal proceeding by order of payment of expenses under section 49 [order for payment of expenses].
- [33] Thus, if the plaintiff is only awarded damages within the tribunal limit amount, then there are costs consequences to her.
- [34] Accordingly, for the foregoing reasons, the stay of proceedings made by now Associate Judge Schwartz on September 26, 2023, is lifted.
- [35] This matter shall proceed through the BC Supreme Court process until further order of this court or by agreement between the parties.
- [36] The costs of this application are to be payable to the plaintiff in any event of the cause.
- [37] That concludes my ruling. Thank you.

"Ker J."

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Prepared on 29 October 2026 · Esheria