

CANADA / JUDGMENT

Wilkinson v. I.C.B.C.

2010 BCSC 113

COURT

Supreme Court of British Columbia

DECIDED

27 January 2010

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2010 BCSC 113 Wilkinson v. I.C.B.C. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wilkinson v. I.C.B.C., 2010 BCSC 113 Date: 20100127 Docket: S58701 Registry: Nanaimo Between: John Bruce Wilkinson Plaintiff And Allan Martin, Insurance Corporation of British Columbia Defendants Before: The Honourable Mr. Justice B.D. MacKenzie Reasons for Judgment John Wilkinson appeared on his own behalf: Counsel for the defendants: Kristen Morley Place and Date of Hearing: Nanaimo, B.C. January 25, 2010 Place and Date of Judgment: Nanaimo, B.C. January 27, 2010

- [1] Mr. Wilkinson is self represented. He filed a statement of claim on January 7, 2010 seeking damages from the defendants. He claims his friend Mr. Martin ran over his foot with his automobile when they were leaving a drinking establishment.
- [2] The notice of motion is for immediate payment by the defendant I.C.B.C. of \$10,500.
- [3] He also seeks an order that there be a Rule 18A summary hearing of this matter. He says this is a simple matter. He says it should not take very long for the court to conclude that he was injured as he claims.
- [4] Mr. Wilkinson says his affidavit should be sufficient evidence for the court to make an award of damages in his favour.
- [5] Counsel for the defendants argues that the application for immediate payment should be dismissed on the basis that I.C.B.C. is denying liability in this particular action. Mr. Wilkinson's application is based on the fact that an adjuster for I.C.B.C. in December made an offer to settle Mr. Wilkinson's claim in the amount of \$10,000. I.C.B.C. acknowledges this offer was made. The offer was made prior to the defendant Mr. Martin providing I.C.B.C. with a statement regarding the alleged incident. In that statement and in his affidavit Mr. Martin said he did not hit him with his motor vehicle.
- [6] As a result of this significant new information, Mr. Tait, the I.C.B.C. adjuster, withdrew his offer of settlement prior to acceptance by Mr. Wilkinson.

- [7] Having regard to the diametrically opposed positions of Mr. Wilkinson and the defendants and the affidavit material of Mr. Martin, I am unable to grant Mr. Wilkinson his order for advance payment given that any liability is denied by the defendants. As Prowse J. said in *Andruschak v. Helina* [1993] B.C.J. No. 2678, "to make such an order would require a determination of the issues that are the very subject - matter of the action."
- [8] As I have mentioned the facts are in dispute between Mr. Wilkinson and Mr. Martin as to what exactly took place on the date in question. In addition, Mr. Wilkinson has produced very brief affidavits from his father and another person which relate to alleged telephone conversations between them and Mr. Martin that occurred shortly after the alleged incident. Mr. Wilkinson says these materials support his version of what took place on the night in question.
- [9] It is clear there will be potentially significant disputed evidence between the parties and some witnesses. Clearly the credibility of the witnesses will be a crucial issue for the trial judge.
- [10] In these circumstances I am unable to conclude that these disputed questions of fact can be decided on affidavits or even cross-examination on the various affidavits.
- [11] In these circumstances it is appropriate that the trier of fact have the opportunity to hear the various witnesses and consider their evidence both in-chief and in cross-examination in order to assess the credibility of these witnesses.
- [12] I am therefore not satisfied the court would be able, given the evidence before the court on this application, to find the facts necessary to decide the matter.
- [13] I am also of the opinion that it would be unjust to both the plaintiff and defendants to decide the issue by way of a summary proceeding.
- [14] I am mindful of the factors outlined in *CIBC v. Charbonnages de France International S.A.* [1994] 10 W.W.R. 232. These include the amount of money probably involved in this case, the complexity or lack thereof of the trial, the cost and how long a relatively short trial will take to get heard.
- [15] Given all these points, this hearing may very well be better suited in Provincial Court, with a jurisdiction of \$25,000 and given the provisions of s.57(10) of the Supreme Court Rules.
- [16] In any event, for these reasons Mr. Wilkinson's application for a summary trial under Rule 18A is dismissed as is his application for immediate payment.
- [17] There will no order for costs of this application.

Mr. Justice B.D. MacKenzie

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