
CANADA / JUDGMENT

Wingrave v. Pure Painters Inc.

2018 BCSC 58

COURT

Supreme Court of British Columbia

DECIDED

9 January 2018

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2018 BCSC 58 Wingrave v. Pure Painters Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wingrave v. Pure Painters Inc.,

2018 BCSC 58

Date: 20180109

Docket: S121692

Registry: Vancouver

Between:

Haley Wingrave

Plaintiff

And

Pure Painters Inc., Bayside Property Services Ltd.

and The Owners Strata Plan No. NW-1080

Defendants

And

General Paint Corp., General Paint Ltd., and

General Paint doing business as General Paint

Third Parties

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

Eduard Matei

Lee A. Cowley

Counsel for Defendants:

Alex L. Eged

Kiran Sidhu (A/S)

Place and Date of Hearing:

Vancouver, B.C.

October 17 and

December 22, 2017

Place and Date of Judgment:

Vancouver, B.C.

January 9, 2018

- [1] The Defendants, Bayside Property Services Ltd. ("Bayside") and The Owners Strata Plan No. NW-1080 ("Strata"), seek judgment by summary trial. Bayside was the property manager of two residential strata buildings in Coquitlam. The Strata was the ownership group for the two buildings. The Plaintiff, Ms. Wingrave, owned and occupied a residential unit on the third floor of one of the buildings.
- [2] This application came before me originally on October 17, 2017. However, the available time then was largely consumed with submissions as to the admissibility of expert reports. The application on its merits had to be adjourned and was heard December 22, 2017.
- [3] The Plaintiff has sued Bayside and the Strata for damages she alleges from an event, which is said to have occurred April 19, 2010. She sued the other Defendant, Pure Painters Inc. ("Pure"), as a result of the same event. She has settled with Pure on terms which have not been disclosed to the Court.
- [4] Generally in these reasons, I will refer to Bayside and the Strata together as the Defendants. Their positions in the case coincide.

- [5] The Defendants had decided to have the common property hallways and stairwells repainted in both buildings. They hired Pure to carry out that work and Pure did the work. The Plaintiff alleges that she suffered injury from the paint fumes after Pure had painted the third-floor common hallway of her building. She encountered the fumes while heading from the elevator to her unit.
- [6] The Plaintiff argues that the case is not suitable for disposition by summary trial. The parties are in agreement that a threshold question for determining suitability for summary disposition, where the summary relief sought is confined to questions of liability, is whether it is appropriate to sever liability from damages because such severance is implicit in the application: See *Chun v. Smit*, 2011 BCSC 412, particularly paras. 8 and 9. The Defendants acknowledge *Chun* as having application, and also rely on *Gladney v. Capital Regional District*, 2015 BCSC 258, paras. 20-23, to say that if there are "compelling" reasons for severance of liability from damages, summary trial on liability can proceed.
- [7] I accept that legal summary for the purposes of these reasons, and I accept the Defendants' submission that there are compelling grounds in this case for proceeding summarily on the questions of liability alone. Those grounds, I hope, will become apparent from the reasoning below. They have to do with the strength of the parties' respective positions on liability linked with the practical fact that if the Defendants succeed here, a trial set for 12 days can be avoided.
- [8] The Plaintiff seeks, on two grounds, to resist proceeding summarily. She asserts that the assessment of her credibility and conflicts in the expert testimony both require a conventional trial. I do not, however, accept that submission, for the following reasons.
- [9] In the Plaintiff's discovery evidence, given in 2013, she said that the fumes in the hallway were "a very thick mist of white particles kind of like a sand storm." She also said in her discovery evidence that she assumed the hallway had been spray painted in order to generate the particles she spoke of. The Plaintiff later learned that the third-floor hallway of her building was painted using only rollers and brushes. There was no spraying in any of the hallways. In her affidavit made October 12, 2017, after learning that only brushes and rollers had been used, the Plaintiff was somewhat more constrained than she had been in her discovery evidence. In her affidavit, she said that "there were chemicals in the air" and "a fog of paint fumes".
- [10] The Strata evidence filed on this application does not deny paint fumes being in the air. The Strata president on the day of the incident the Plaintiff complains of, April 19, 2010, inspected the painting work on the first and second floors of the Plaintiff's building, and did not see any sort of mist in the air "or any unusual or otherwise problematic paint fumes present while Pure was performing the work. Visibility in the area of Pure's work was normal."
- [11] In his affidavit, the witness for Pure said the following:

11. When Pure left the building 707 at the end of its work day, namely 4:00 P.M. [on April 19, 2010] there was no mist from the paints or other particulates in the air and visibility down the third floor hallway was unobstructed and completely clear. Pure did not spray any paint on April 19, 2010.
12. I have been a professional painter for 20 years and have never seen paint, including the paint [used on this occasion] applied by hand as we did in the common areas of the third floor of building 707 result in airborne paint or other particles or reduced visibility in the area being painted. I would not leave the work site if such a condition was present.
- [12] The Plaintiff's affidavit, sworn after she knew there had been no paint spraying in her hallway, but only brushing and rolling, combined with the affidavits from both Defendants, lead me to conclude that there is not a sufficient dispute as to the degree and state of the fumes to warrant a full trial on that question.
- [13] However, even if there were left open room for a meaningful evidentiary debate on the extent of the fumes, the Plaintiff's case on its merits would still need to establish that the Defendants breached their duty of care to the Plaintiff and that the Defendants' conduct caused the Plaintiff's alleged damages.
- [14] The question of causation is directly linked to the Plaintiff's second basis for resisting summary trial. Two experts for the Plaintiff have opined that the fumes caused or could have caused the injuries of which the Plaintiff complains. The Defendant expert, on the other hand, opines that the fumes could not have caused the injuries.
- [15] I note here that this Court has often weighed competing expert reports and achieved proper disposition through summary trial: See, as an example, *Racine v. Porco*, 2013 BCSC 742, paras. 33, 38, 72 and 77.
- [16] Through counsel's submissions, and after the hearing of this application, I have had the opportunity to review the three expert reports. In my view, the opinion of the defence expert is bound to prevail. First, the credentials of the defence expert are far more closely related to the required opinion evidence than are the credentials of the Plaintiff's two experts. Second, but linked to the first point, the relevant expertise of the defence expert is extensive. Third, his analysis of the paint which was used was detailed and learned, leading to his conclusion that the paint as it was used in this case was not toxic. Fourth, the defence expert gives a sophisticated critique undermining the one Plaintiff's expert report that was available to him at the time he prepared his report.
- [17] The Plaintiff's experts relied substantially on the timing of the Plaintiff's ailments beginning after April 19, 2010. This Court has cautioned against undue weight being given to such timing: See *White v. Stonestreet*, 2006 BCSC 801; and *Yip v. Saran*, 2014 BCSC 1283, para. 57.

- [18] In conclusion, with respect to this case being suitable for disposition by summary trial, I conclude that the Plaintiff's two objections to summary disposition are not sufficient to defeat the application proceeding.
- [19] Turning now, more directly, to liability, in my view the Defendants did not breach a standard of care which they owed.
- [20] In *Arkesteyn v. Burgess*, [1989] B.C.J. No. 264 (S.C.), this Court identified four factors that may be considered in deciding whether an occupier of premises has fulfilled its duty under the Occupiers Liability Act, R.S.B.C. 1996, c. 337. They were:
1. whether there was an unusual danger (this was said to be the first and most important factor);
 2. whether there were posted warning signs;
 3. the ease or difficulty, and the expense, with which the unusual danger could have been remedied; and
 4. the prior record of safe usage of the premises.
- [21] I do not determine whether the Strata can rely on the Occupiers Liability Act. It cites the criteria summarized in *Arkesteyn* because they are useful tests to employ for assessing the standard of care the Defendants had to meet whether it is assessed under the statute or the common law. Applying the criteria stated above to the facts of this case, there was not an unusual danger. Highly experienced painters were rolling and brushing paint that was not toxic in the circumstances in which it was employed.
- [22] The Defendants chose Pure as the painters based, at least in part, on Pure's good reputation. Pure was a reasonable choice.
- [23] The Defendants observed Pure to be working in a reasonable, professional manner. The Strata president mentioned the fans in the hallway to the painters on April 19, 2010, and asked if they required them to be on. One of the painters replied that everything was fine. Unusual problems were not present.
- [24] Strata meeting minutes providing notice of the painting to be done were provided to the Plaintiff and the other unit owners before the work commenced. Painting signs and wet paint signs were posted everywhere in the building one could expect to find them during the work. If something did go wrong April 19, 2010, and there is little in the evidence to suggest that it did, nothing occurred from which I can conclude that these Defendants breached the standard of care they owed the Plaintiff.

- [25] Conduct does not become negligent until it creates an objectively unreasonable risk of harm: See *Lawrence v. Prince Rupert (City)* and *BC Hydro Power & Authority*, 2005 BCCA 567, paras. 18-22. Although I am not addressing the liability of Pure in these reasons, I cannot find that either Pure or the remaining Defendants were negligent under the test as expressed in *Lawrence*.
- [26] I find that the Defendants did not breach the duty of care they owed the Plaintiff.
- [27] The question of causation I addressed above in these reasons, when considering the expert reports in assessing suitability for summary trial. I adopt that reasoning here in concluding that the Plaintiff is not able to prove that the Defendants' conduct caused the damages she complains of.
- [28] In the result, I allow the Defendants' application and dismiss the Plaintiff's action.
- [29] Costs have not been spoken to. In all the circumstances I was told of, the Defendants may not wish to press for costs. However, if they do, they may do so in a written submission to me within seven days. The submission should not exceed two pages, plus any needed case law. The Plaintiff will have seven days to reply in a written submission of the same length.

"MACINTOSH, J."

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Prepared on 27 October 2026 · Esheria