Citation: Hale v. Noa
2002 BCSC 144

Date: 20020212
Docket: LO13291
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Mr. Justice Goepel
February 12, 2002

BETWEEN:

GORDON HALE

PETITIONER

AND:

CAMERON NOA

RESPONDENT

Counsel for the Petitioner: T. Pettit

[1] **THE COURT:** On February 25, 1998, the petitioner Hale was involved in a collision with the respondent Noa. The respondent Noa then commenced action in Provincial Court for injuries and damages against the petitioner in January 1999. A settlement conference was held on the matter in January 2000. At the settlement conference, the petitioner was represented by counsel and an insurance adjuster. Both were prepared for the settlement conference. The adjuster had full authority to settle the matter.

[2] At the settlement conference, the respondent's counsel indicated a settlement position. The learned Provincial Court judge advised that the initial position was too high and ultimately the respondent was prepared to settle the matter for the sum of $3000 plus disbursement.

[3] The Provincial judge then asked for the defence response. The defence advised they were not prepared to make any monetary offer to the respondent. In the view of the provincial judge, this was not good enough. When the petitioner's representatives continued to refuse to make an offer, the court imposed a $500 penalty upon the petitioner because the petitioner was unwilling to make an offer. The settlement conference record indicated:

> Defendant to pay $500 to claimant pursuant to Rule 7(6), payable forthwith. Came not prepared to settle.

[4] In this action, the petitioner submits that the court made the order against the petitioner because the petitioner was unwilling to make an offer to the respondent at the settlement conference. Rule 7(6) of the civil rules governing the small claims procedure does allow the court to make awards for costs at settlement conferences. Rule 7(6) reads:

> If the settlement conference cannot be conducted properly because a party is not prepared for it, a judge may order that party to pay the reasonable

expenses of the other party or parties.

[5] There is no evidence that suggests that the petitioner was not prepared for the settlement conference. The petitioner was fully prepared for the conference, he simply was not prepared to make an offer for settlement in the circumstances.

[6] Similar issues have been before this court on two recent occasions. (***Giza v. Eastwood & Co***. 2001 B.C.J. No. 192; ***Shale and Malkowski,*** June 12, 2001, Vancouver Registry No. L010972.) As noted by Madam Justice Levine in ***Giza*** at paragraph 33:

> The settlement conference process provides an opportunity for settlement. It does not require a party to accept a settlement offer, even if the judge thinks the offer is a reasonable one.

[7] What appears to have happened in this case is the judge has imposed a penalty upon the petitioner solely because the petitioner was not prepared to make an offer at the settlement conference. Such an order is outside the jurisdiction of the learned provincial judge and, in the circumstances, that order must be set aside. It is my understanding that the petitioner did pay the amounts in question to the respondent and accordingly, what flows from this petition would be a judgment in favour of the petitioner, against the respondent, for the $500.

[8] I have given consideration to the question of costs. It seems to me that a party in a small claims action, which is supposed to be dealt with expeditiously, should not be burdened with costs because the learned provincial judge exceeds his jurisdiction. Accordingly, I will make no order as to costs in relation to this petition.

"R.B.T. Goepel, J."
The Honourable Mr. Justice R.B.T. Goepel