Citation: Jordan v. Fortier et al
2002 BCSC 1315

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Docket: B990741
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IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Master Barber
August 28, 2002

BETWEEN:

EDWARD KEITH JORDAN

PLAINTIFF

AND:

ROBERT LOUIS FORTIER et al

DEFENDANTS

Counsel for Plaintiff	Y. Gertsoyg
Counsel for Defendant	T.H. Pettit
Counsel for Defendant Bennett	V. Critchley

[1] **THE COURT:** In this matter the plaintiff asks for an adjournment of the trial currently set for September 30th for ten days. If the trial is adjourned, it appears that early 2004, at the best, would be the next time a ten-day window could be obtained.

[2] The actions, and there are more than one, relate to five motor-vehicle accidents which occurred between the period 1997 and December of 1999. Liability is at issue in two of the actions. The defendants oppose the adjournment.

[3] The reason the adjournment is sought is simply this: that Mr. Jordan did not have counsel from January of this year until now, except for a brief period when Mr. Laudadio was counsel. There was a parting of the ways between Mr. Jordan and Mr. Laudadio, and Mr. Laudadio is no longer involved.

[4] Current counsel applies for the adjournment on behalf of the plaintiff based solely on one point, and that is that counsel, who was just retained a week ago, has a conflict in that he has a ten-day trial scheduled for exactly the same time, or within enough of the time that he could not take the trial of Mr. Jordan's action if it were to go ahead.

[5] Counsel for the defence cite various reasons as to why the application should not be granted. Dealing with them in part, they are as follows:

1. That this trial has been scheduled since March of 2001, and even though there have been no previous times this matter has been set for trial, they say that there ought to have been a concerted attempt to get counsel who could take the trial at an earlier date.

2. That if the trial were to be adjourned there could easily be prejudice to the defence in that, as two actions liability is in issue, the witnesses' memory could degrade even further than what it may have degraded by this time. It is about a year-and-a-half at the best, before a new trial date could be obtained. That would mean that about six-and-a-half years would have expired since the first accident, quite a long time.

4. They also suggest that at the settlement conference, which took place on August the 7th, that there was no suggestion at that time of the need for an adjournment.

5. They further say that there is no good explanation for the delay between January, when Mr. Jordan parted company with his counsel at that time, and the time of getting counsel now, except again for the brief period Mr. Ladidio was involved.

6. They also argue strongly that it is not appropriate to ask for an adjournment simply because counsel, who was retained a week ago, cannot take the trial. In this regard they point to the case of ***V. v. R.***, a decision of Master Joyce, as he was then in December of 1992, where he said at page 368 of the decision:

> The defendant seeks an adjournment of the trial on grounds apart from his desire for a jury. The solicitor whom he retained in early November is not available on the date set for trial. In my opinion it ought not to be open to a party to delay a proceeding by selecting counsel known to have a conflict of trial dates.

7. They say this is more to the point in a case where the trial is virtually a month away, to select counsel who not only has a potential conflict but has an actual conflict with a trial that he says will go ahead at that time, and thus it is impossible for him to take the trial on September 30th.

8. Further, they say that costs, if the trial is adjourned, may not in fact be a valid remedy. They point to the fact that Mr. Jordan has financial difficulties and that appears in the file, and in addition that even the award may not be sufficient to pay the costs, depending on the amount of the award, of course, because there have been some prepayments.

[6] Therefore, for these reasons and the others given by the defence, they say the adjournment ought not to be granted.

[7] The plaintiff, in response, says that I ought to weigh the prejudice to the plaintiff as opposed to the prejudice to the defendants. The prejudice to the plaintiff, of course, if the adjournment is not granted, is that this particular counsel will not be able to take the trial for him. That does not mean that he will not have counsel at trial. It simply means this particular one will not be able to proceed for him.

[8] I have sympathy for the plaintiff in the position he is in, but I do not believe that it was appropriate for him to select counsel who was not able to take the trial, and then to ask for an adjournment without giving sufficient explanation of why the delay occurred and what his difficulties were during the whole of the period of time. Therefore, the application is denied.

[9] MR. PETTIT: Your Honour, we'd seek costs of the application.

[10] THE COURT: Yes, any response?

[11] MR. GERTSOYG: Liability is in issue, so I would ask for costs in the cause.

[12] THE COURT: Are you asking for something other than costs in the cause?

[13] MR. PETTIT: Well, we'd like costs in any event.

[14] THE COURT: No.

[15] MR. PETTIT: Okay. Thank you very much. Costs in the cause.

[16] THE COURT: Mr. Critchley?

[17] MR. CRITCHLEY: Your Honour, I can't say there should be any reason why it should be anything other than that.

[18] THE COURT: Costs in the cause. Yes. Agreed. Thank you, gentlemen.

"Master R. Barber"