

Citation: ***Mora v. Chan***
2005 BCSC 544

Date: 20050203
Docket: M040515
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Morrison
February 3, 2005

BETWEEN:

ELMER MORA

PLAINTIFF

AND:

BRUCE HIN-WAI CHAN

DEFENDANT

Counsel for Plaintiff

R. Dewar

Counsel for Defendant

T. Pettit

[1] THE COURT: These are cross-applications with regard to a two-day trial that has been set to commence February 17th, 2005, involving a motor vehicle accident that occurred February 6th, 2002.

[2] The plaintiff's application is that the Rule 66 trial of the within matter scheduled for February 17th and 18th, 2005 be adjourned generally and secondly for costs of the application. The defence notice of motion requests a number of things: first, an order that the trial which is to commence February 17th be set for nine days commencing February 14th, 2005; second, a declaration that the matter has not been within the ambit of Rule 66 at any material time in the litigation; third, defence seeks a declaration that the notice requiring trial by jury which was filed by the defendant on July 16th, 2004, is valid, or, alternatively, that the defendant be given leave to correct any deficiencies in its jury notice; fourth, the plaintiff seeks to bring to court documents for inspection by the court and names documents 4, 6 and 7. Two other categories under that portion of the notice of motion have already been resolved and I will not mention those.

[3] Next, in the alternative, the defence seeks that in the event that the court does adjourn the trial first that the adjournment should be set to reasonable trial dates as ordered by the court on the hearing of this motion; next, that costs be given to the defence as thrown away for unnecessary preparation for trial; next, that jury fees paid by the defence in relation to the February 17th, 2005 trial dates be applied to the future trial date as determined by the court, or, alternatively, to be treated as costs thrown away payable by the plaintiff in any event of the cause; fourth, that the adjournment of the trial should be preemptory on the plaintiff; and finally, as a term of the adjournment, that the parties be required to disclose all privileged medical reports in their respective possession. And finally, the defence seeks costs for the motion to the defence in any event as lump-sum costs assessable by the court.

[4] I agree with the defence that this action has never been properly brought subject to Rule 66 of the ***Rules of Court***, although even the defence pleadings and notice requiring trial by jury mention being subject to Rule 66,

something that counsel for the defence says was inadvertent on that part.

[5] Rule 66 is specifically for a speedier and less expensive trial that must be completed within two days. It has been apparent for many months to both sides that this trial would never be completed within two days. It is now estimated to take nine and possibly ten days.

[6] It seems to me that the required endorsement is the basic first step in establishing a proceeding as a fast-track one under this rule. That means that the jury notice was valid and the defence is further to be given leave to correct any deficiencies in the notice should that be necessary given that an adjournment of this trial is being granted.

[7] The plaintiff's action to adjourn is granted on conditions that I will set out shortly.

[8] The defendant's application that the trial now begin as a nine-day jury trial on February 14th, 2005, eleven days from now is dismissed. That would be unfair to the plaintiff under all the circumstances, particularly given the non-availability of counsel for the plaintiff on such short notice and the plaintiff's seeking further medical investigation.

[9] In going back to the Rule 66, I should state as a fact that the plaintiff had written on top of the heading "Writ of summons" the words "subject to Rule 66," and those words also appear on top of the title of the statement of claim. As I have said, I agree with the defence that that is not in keeping with the requirement of the endorsement required under Rule 66(6). For the record I will read Rule 66(6). Subsection (6) reads:

Subject to sub-rule (3) --

And sub-rule (3) deals only with family law proceedings.

--this rule applies to an action if an endorsement in form 137 is added or attached to the statement of claim or a statement of defence filed in the action.

Form 137 of the **Rules** is entitled "Rule 66 endorsement" and reads:

The party --

And I assume that would be either the plaintiff or defendant.

--hereby estimates that a trial of this action will be completed within two days and elects to have this action proceed in accordance with Rule 66.

[10] As I have said, nowhere does that endorsement appear in either the writ of summons, the statement of claim or of course in any of the defence pleadings as well.

[11] Going back then and dealing with the rest of the notice of motion filed by the defence. The defence application that the plaintiff bring to court documents 4, 6 and 7 for inspection by the court is denied at this time. I do not know if there will be need for that to be brought forward at another time but I saw no need in this application to have those documents brought forward.

[12] Next, the defence seeks that the trial be set at an earlier date and some dates have been given. It will be my order that the trial is to be set for no later than August 2006 unless the parties agree otherwise. The parties of course can agree on any dates and bypass this order, but if there is no agreement, then the trial is to be set to begin no later than August 2006.

[13] The defendant's application for costs as thrown away is denied. The delays in this trial thus far are not solely the fault of the plaintiff. The parties have been communicating in a manner that places the cause for delays at both doors, and there are no grounds to force the plaintiff to pay such costs.

[14] Jury fees paid by the defence with regard to the February 17th, 2005 trial shall be applied to the future trial date. The defence application that the adjournment of the trial be preemptory on the plaintiff is denied. Both parties are expected to advance expeditiously to trial, or, may I say hopefully, to settlement. But that cannot be a term of the order; as much as I would like to order settlement I know that is not possible.

[15] It will be a term of the adjournment that both parties be required to disclose all privileged medical reports in their possession within 30 days of this date.

[16] As far as costs are concerned, costs will be in the cause, scale 3.

“N. Morrison, J.”
Madam Justice N. Morrison