

Citation: Ruling on Application by Defendant Hogarth
2004 BCPC 0032

File No:
Registry:

Date: 20040216
0315260
North Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
CIVIL DIVISION

APPLICATION BY DEFENDANT(S)
FOR CHANGE OF VENUE

In the Case

BETWEEN:

JOSELIN JOHNSON

CLAIMANT

AND:

ALAN GEOFFREY HOGARTH, SONYA HICKMAN,
MICHAEL GORDON CHARLES GREIG and

NORMAN EDWARD RICHARDS

DEFENDANTS

RULING ON APPLICATION
OF THE
HONOURABLE JUDGE D. E. MOSS

Counsel for the Defendant(s):
Counsel for the Claimant:
Place of Hearing:
Date of Hearing:
Date of Judgment:

T. Pettit
A.C.R. Parsons
North Vancouver, B.C.
January 27, 2004
February 16, 2004

[1] The defendant seeks to have the trial of this action transferred to Victoria on Vancouver Island being the Provincial Court Registry closest to a motor vehicle accident which is the basis of the claim herein.

[2] The action arises out of a claim for damages due to personal injuries allegedly sustained. The *locus sine qua* of the 5-car motor vehicle accident was near Sidney, British Columbia on Highway 17 and Beacon Avenue, commonly referred to as the "Pat Bay Highway".

[3] At a settlement conference conducted in North Vancouver Provincial Court on January 27, 2004, the defendants, by agreement, were reduced in number to one from five. The remaining defendant, Alan Hogarth, resides in Maple Ridge, B.C. At all material times, the plaintiff has resided and continues to reside on Salt Spring Island, which is considerably closer to the accident scene and Victoria, B.C. than either North Vancouver or Maple Ridge.

[4] At this point, the only connection anyone has to North Vancouver is the defendant Hogarth's solicitor is there. Counsel for the plaintiff has his business in Vancouver.

[5] The test generally considered on such an application is based on the "Balance of Convenience". It is a discretionary order of the Provincial Court based on a balancing of relevant factors.

[6] I do not view this as a case where it could really be argued by anyone that to have the trial held closest to the accident location would work any particular hardship on either party or potential witnesses.

[7] I take into account, in coming to my decision to grant the application to have the trial heard on Vancouver Island closer to the accident scene, the following:

- 1) The claimant resides on Salt Spring Island which is much closer to Southern Vancouver where the accident occurred than either North Vancouver or Maple Ridge where the sole defendant resides.
- 2) The defendant's counsel may well be calling witnesses from the Sidney RCMP who investigated the accident, a potential Salt Spring Island witness and possibly a Nanaimo resident (Norman Richards) as a witness. There is a further possibility an ICBC adjuster will be called. He operates out of Duncan, B.C. on Vancouver Island.
- 3) The claimant's doctor is, in my view, at least a potential witness, as this is a claim for personal injury. He/she resides on Salt Spring Island and works out of the local Family Health Clinic in Ganges.
- 4) No one seems to feel that Maple Ridge, where the defendant resides, is where the trial should take place, including the defendant.

THE LAW

[8] Under the Small Claims Act (2.1) R.S.B.C. 1996 c. 430, the intent is to have claims resolved in as just and speedy and inexpensive manner as reasonable. The Court has the discretion to make such directions as it deems reasonable to achieve this result. This includes a determination on the "balance of convenience" as to where the trial will be heard. Under Rule 17(6), the Court has the jurisdiction to change the venue of a trial. I pause to state there is no real reason to conduct the trial in North Vancouver. The accident was on Southern Vancouver Island and the only ongoing *nexus* to North Vancouver is that defence counsel has his place of business there. That link, in my view, is too tenuous. The plaintiff does not have an unfettered right to commence and/or maintain an action wherever he/she pleases.

[9] The location of a proposed trial in the Small Debts Court of British Columbia must be carefully considered by the Court before changing such location. In other words, the Court's discretion should not be invoked lightly or unreasonably. All surrounding factors need to be considered. In my view, it would be fair to all parties to conduct this litigation nearest to the transaction or event that resulted in the claim, i.e., the closest Court Registry to Sidney, British Columbia. Accordingly, the file will be transferred to Victoria Provincial Court for trial.

[10] The matter of Costs, if any, to be awarded by the Trial Judge.

The Honourable D. E. Moss, P.C.J.

Cases Considered:

1. Section 2 of the *Small Claims Act*, R.S.B.C. 1996, c. 430
2. *Jacobs v. Challenger*, December 21, 2001, Victoria Docket 990986
3. *Jacobs v. Challenger*, [2003] B.C.J. No. 2039 (BCCA)
4. *Seaman v. Crook*, [2003] B.C.J. No. 701 (BCSC)
5. Excerpt from *Small Claims Practice Manual*
6. *Simpson-Sears Ltd. v. Marshall*, [1979] 12 B.C.L.R. 244
7. *Roy v. Nanaimo Community Bingo Association*, May 12, 1994, Vancouver Registry File No. 09665
8. *32262 B.C. Ltd. v. Rycer Enterprises Inc.*, October 18, 1993, Richmond File No. C9305722
9. *Craig v. Gidyk*, May 5, 1994, Surrey File No. F09276
10. *R.K. v. McBride*, [1994] B.C.J. No. 2791
11. *L.L.C. v. P.G.*, [1994] B.C.J. No. 1591