

Brar v. Feng

British Columbia Judgments

British Columbia Supreme Court
New Westminster, British Columbia
B. Elwood J. (In Chambers)
Heard: September 6, 2022.
Oral judgment: September 6, 2022.
Docket: S231912
Registry: New Westminster

[2022] B.C.J. No. 1850 | 2022 BCSC 1719

Between Surinder Kaur Brar, Plaintiff, and Jack Feng, Defendant

(25 paras.)

Case Summary

Civil litigation — Civil procedure — Pleadings — Striking out pleadings or allegations — Grounds — Failure to disclose a cause of action or defence — Application by Feng for an order dismissing or striking out the claim, granted — There were no material facts pleaded in the notice of civil claim of unlawful conduct by Feng outside his handling of an ICBC claim — There was no claim against Feng as an employee or agent of ICBC for inducing a breach of the insurance contract between the plaintiff and ICBC or for interfering with the performance of the contract between the plaintiff and ICBC — The notice of civil claim failed to disclose reasonable claim against Feng and should be struck out in its entirety.

Application by Feng for an order dismissing or striking out the claim. The claim was for damages in relation to the provision of no-fault accident benefits under the Insurance Act and Part 7 of the Insurance Regulation (part 7 benefits) arising out of a motor vehicle accident. The plaintiff commenced an action against Insurance Corporation of British Columbia (ICBC) for a declaration that she was entitled to part 7 benefits and for breach of contract. The plaintiff alleged Feng was a claims examiner employed by ICBC and Feng had the responsibility of administering the insurance plan under a contract between the plaintiff and ICBC. The plaintiff alleged Feng committed negligence, bad faith, and tortious conduct in relation to the administration of her no-fault accident benefit coverage under part 7. And the plaintiff alleged Feng intentionally induced a breach of contract or interfered with the performance of the contract between the plaintiff and ICBC.

HELD: Application granted.

There were no material facts pleaded in the notice of civil claim of unlawful conduct by Feng outside his handling of an ICBC claim. There was no claim against Feng as an employee or agent of ICBC for inducing a breach of the insurance contract between the plaintiff and ICBC or for interfering with the performance of the contract between the plaintiff and ICBC. The notice of civil claim failed to disclose a reasonable claim against Feng and should be struck out in its entirety. The claims against Feng in negligence were barred by both ss. 30(2) and (3) of the Insurance Corporation Act. The claims relate to the discharge of Feng's duties in the ordinary course of his employment with ICBC in respect of the administration of the plaintiff's no-fault accident benefit coverage under part 7. The claims of bad faith, or the allegation of a breach of the duty of good faith, could only be brought against the corporation in accordance with s. 30(2). Accordingly, The plaintiff's leave to amend the notice of civil claim to substitute the ICBC as the sole defendant, granted.

Statutes, Regulations and Rules Cited:

Insurance Corporation Act, s. 30(2), s. 30(3)

Rule, r. 9-5(1)(a)

Counsel

Counsel for the Plaintiff: B. Yu.

Counsel for the Defendant: J. Morris.

Oral Reasons for Ruling Re Application for an Order Striking Out a Claim

B. ELWOOD J. (orally)

1 The defendant applies for an order dismissing or striking out the claim in this action pursuant to Rule 9-5(1)(a).

2 The claim is for damages in relation to the provision of no-fault accident benefits under the *Insurance (Vehicle) Act* and Part 7 of the *Insurance (Vehicle) Regulation*, commonly referred to as "part 7 benefits", arising out of a motor vehicle accident on November 25, 2018. Jack Feng is the only defendant.

3 The plaintiff has also commenced an action against ICBC for a declaration that she is entitled to part 7 benefits and for breach of contract.

4 In this action, the plaintiff alleges that Mr. Feng is a claims examiner employed by ICBC and

that Mr. Feng had the responsibility of administrating the insurance plan under a contract between the plaintiff and ICBC.

5 The plaintiff makes two categories of claim. First, the plaintiff alleges that Mr. Feng committed negligence, bad faith, and tortious conduct in relation to the administration of her no-fault accident benefit coverage under part 7: notice of civil claim, paragraph 6. Second, the plaintiff alleges that Mr. Feng intentionally induced a breach of contract or interfered with the performance of the contract between the plaintiff and ICBC: notice of civil claim, paragraph 7.

6 On an application to strike out a notice of civil claim, the facts pleaded are presumed to be true. No evidence is admissible on an application under Rule 9-5(1)(a). A claim will only be struck out if it is plain and obvious, assuming the facts pleaded to be true, the pleading discloses no cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 17, 21-22.

7 The defendant relies on ss. 30(2) and (3) of the *Insurance Corporation Act*. They read as follows:

Limitation of actions

30 (2) No action or other proceeding lies against any person other than the corporation for the purpose of enforcing a claim or right in relation to the operations engaged in or carried on under this Act or any insurance plan established under any act.

(3) No action or other proceeding whatever may be commenced against a person in respect of any act or omission done in good faith in connection with the administration or carrying out of this Act, regulations or any insurance plan established under any act.

8 In *No. 1 Collision Repair & Painting (1982) Ltd. v. Insurance Corporation of BC*, [1994] B.C.J. No. 2781, which I am told is the only decision of this Court that has interpreted these provisions, Justice Hood held that s. 30(2) bars an action against any person except ICBC for claims arising out of the discharge of their duties in the ordinary course of their employment, but does not shield personal defendants from claims of wrongful conduct, in that case, an unlawful act conspiracy, conduct that Justice Hood held does not come within the meaning of " a claim or right in relation to the operations engaged in or carried on under this Act" (page 6).

9 In my view, the claims against Mr. Feng in negligence are barred by both subsection (2) and subsection (3) of s. 30. Those claims relate to the discharge of Mr. Feng's duties in the ordinary course of his employment with ICBC in respect of the administration of the plaintiff's no-fault accident benefit coverage under part 7. In accordance with s. 30(2), the plaintiff may bring those claims against ICBC, but not against Mr. Feng personally.

10 During oral argument, plaintiff's counsel acknowledged that the claims in negligence are barred by s. 30(2) and further agreed that the allegation of "tortious conduct" adds nothing to the plaintiff's claim. So, the issue comes down to whether the claims in bad faith are barred by s. 30.

11 Plaintiff's counsel argued that, by barring actions in respect of acts or omissions done in good faith, subsection (3) carves out an exception for a claim of bad faith or a claim along the lines of authorities to which I was referred from other jurisdictions that advance a separate claim against an insurance adjuster for breach of an insurer's duty of good faith. I do not agree.

12 I am guided in my interpretation of s. 30 by the decision of the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at paragraph 21:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

13 I am also alive to the rule of statutory interpretation that a provision that limits a plaintiff's right to bring an action is to be construed strictly, with any ambiguity resolved in favour of the plaintiff: *Berardinelli v. Ontario Housing Corp.*, [1979] 1 SCR 275, at 280.

14 Read in their entire context in their grammatical and ordinary sense, the words of subsection (2), in my view, require that any action in relation to the insurance coverage provided by ICBC must be brought against the corporation. This, in my view, includes an allegation of a breach of the duty of good faith, so long as it is in relation to the insurance coverage provided by ICBC. The Legislature of British Columbia has decided that claims of that nature in this jurisdiction can only be brought against the corporation.

15 Subsection (3) further bars other claims (that is, claims that do not relate to insurance coverage) if they are in respect of an act or omission done in good faith. Thus, as held in *NO. 1 Collision*, neither subsection (2) nor subsection (3) would bar an action for wrongful conduct outside the handling of an ICBC claim.

16 In my view, there are no material facts pleaded in the notice of civil claim of unlawful conduct by Mr. Feng outside his handling of an ICBC claim.

17 Nothing in the notice of civil claim or the proposed particulars of bad faith takes the alleged facts of this case outside of Mr. Feng's handling of the plaintiff's claim for part 7 benefits. The proposed particulars of bad faith do not advance a claim of wrongful conduct in relation to something other than Mr. Feng's handling of the plaintiff's claim.

18 So, for those reasons, in my view, the claims of bad faith, or, if you will, the allegation of a breach of the duty of good faith, can only be brought against the corporation in accordance with s. 30(2).

19 I turn to the separate allegation that Mr. Feng induced a breach of contract or interfered with the performance of the contract between the plaintiff and ICBC. Again, this claim is barred by

subsection (2). It is an allegation of tortious conduct in relation to Mr. Feng's handling of the plaintiff's part 7 benefits claim. It can only be brought against the corporation.

20 Even if it was not barred by subsection (2), I agree with counsel for the defendant that, as a matter of law, there is no claim against Mr. Feng as an employee or agent of ICBC for inducing a breach of the insurance contract between the plaintiff and ICBC or for interfering with the performance of the contract between the plaintiff and ICBC.

21 The tort of inducing breach of contract or interference with performance of contract requires a third party. In this case, there is no third party. The plaintiff's allegation that Mr. Feng induced ICBC to breach the contract is, in law, a claim that ICBC breached the contract. ICBC can only act in breach through its employees and agents like Mr. Feng. This was explained in *Frank v. Kalokina*, 2014 BCSC 1866, at paragraph 37, where Justice Baird said:

[37] With the greatest respect to those who think otherwise, in the situation under consideration here there is no third party. There is only the plaintiff and Sun Life, which acts or omits to act through employees and agents like Ms. Kalokina. The claim, properly construed, is not that Ms. Kalokina induced Sun Life to breach its contract, or interfered with contractual relations between Sun Life and the plaintiff, but rather that she carried out Sun Life's breach of contract as its agent. While I read with interest the case of *Walsh v. Nicholls*, 2004 NBCA 59, I consider myself bound, on this point, to follow this court's decision in *XY, Inc. v. International Newtech Development Incorporated*, 2012 BCSC 319.

22 I respectfully agree with the reasoning of Justice Baird in *Frank*. In my view, it is based solidly on the decision of the Supreme Court of Canada in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, [2014] 1 SCR 177, where the Court, referring to the scope of liability for the tort of causing loss by unlawful means, said at paragraph 5:

In light of the history and rationale of the tort and taking into account where it fits in the broader scheme of modern tort liability, the tort should be kept within narrow bounds. It will be available in three-party situations in which the defendant commits an unlawful act against a third party and that act intentionally causes economic harm to the plaintiff. (Other torts remain relevant in two-party situations, such as, for example, the tort of intimidation.

23 For these reasons, I find that the notice of civil claim as currently pleaded fails to disclose a reasonable claim against Jack Feng and must be struck out in its entirety.

24 I will grant the plaintiff leave to amend the notice of civil claim to substitute the Insurance Corporation of British Columbia as the sole defendant and to provide proper particulars of the alleged breach of the duty of good faith. The amended notice of civil claim is to be filed within 21 days.

(SUBMISSIONS ON COSTS)

25 THE COURT: Mr. Feng is entitled to costs in any event of the cause in the action against ICBC.

B. ELWOOD J.

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