

Citation: Borkovic v. Laurentian Bank of  
Canada et al  
2001 BCSC 337

Date: 20010302  
Docket: 01 0688  
Registry: Victoria

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**JOSEPH BORKOVIC**

PLAINTIFF

AND:

**LAURENTIAN BANK OF CANADA et al**

DEFENDANTS

**REASONS FOR JUDGMENT**

**OF THE**

**HONOURABLE MR. JUSTICE K. SMITH**

Appearing in Person:

J. Borkovic

Counsel for the District of  
Central Saanich:

K. Bhandar

Counsel for Andrew Petter,  
Kenneth Jacques, and William  
McCallum:

A. K. Fraser

Date and Place of Hearing:

March 1, 2001  
Victoria, BC

[1] I begin by acknowledging counsel who prepared for and appeared on this matter, although I did not find it necessary to call upon them.

[2] This hearing concerned a referral to the Court by the Deputy District Registrar pursuant to Rule 19(25) of the **Rules of Court**. Rule 19(25) provides as follows:

19 (25) Where on the filing of a document a registrar considers that the whole or any part of an endorsement, pleading, petition or other document could be the subject of an order under subrule (24), the registrar may, notwithstanding any other provision of these rules, retain it and all filed copies of it, and refer it to the court and the court may, after a summary hearing as the court directs, make an order under subrule (24).

Subrule (24) of Rule 19 provides:

19 (24) At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing or the proceeding, or
- (d) it is otherwise an abuse of the process of the court.

and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[3] The first six pages of the thirty-one-page document in question consist of a listing of the parties to the action. The seventh page is entitled "Writ of Summons." The plaintiff, Mr. Borkovic, filed the document in the Victoria Registry on February 14, 2001, and duly paid a fee of \$208.00, levied pursuant to Appendix C, Schedule 1, Item 7 of the **Rules of Court**, to the Crown provincial.

[4] Because of the positions taken by Mr. Borkovic during his submission, it is necessary to say something about the jurisdiction of the Court to adjudicate this matter.

[5] I mentioned the fee paid on commencement of this proceeding because, if I understand Mr. Borkovic correctly, he believes that the fee was consideration paid by him to the Supreme Court of British Columbia and as such, binds the Court (and me as a judge of the Court) to a contract with him to hear his case according to procedural rules that he said are set out in his filed documents and cannot be changed without his consent. I suspect that this misconception about the nature of the fee underlies, as well, his assertion that the

time of the Court on the hearing date belonged to him because he had purchased it. I add, parenthetically, that I am unable to discern the procedural rules alluded to by Mr. Borkovic from his documents, perhaps because of the unconventional syntax he has adopted. However, that is of no consequence for present purposes.

[6] The first point I must make is that the fee paid by Mr. Borkovic to commence this proceeding was levied by and paid to the provincial government. The Supreme Court of British Columbia, which is separate from and independent of the executive and legislative branches of government, did not receive the fee. Rather, it went into the general revenues of the provincial government.

[7] Secondly, the Supreme Court of British Columbia is not an arbitrator appointed by contract. It is a superior court of record and of general jurisdiction. It is a direct descendant of the English superior courts, which, as noted in ***Stroud's Judicial Dictionary***, 4<sup>th</sup> ed. Vol. 5, at p. 2685, are courts:

... having an inherent jurisdiction ... to administer justice according to law, as and being a part of, or descended from, and as exercising part of the power of, the *Aula Regia*, established by William the First, which had universal jurisdiction in all matters of right and wrong throughout the kingdom, and over which, in its early days, the King presided in person (3 Bl. Com. 37-60).

[8] It follows that there is no contractual relationship between Mr. Borkovic and the Court. It follows, as well, that, as a judge of the Court, I am not prohibited from adjudicating this matter unless Mr. Borkovic should consent, a proposition that he said is clearly set out in the procedural rules that he invoked.

[9] As is stated in *Halbury's Laws of England*, 3<sup>rd</sup> ed., Vol. 9, at p. 344, the Court:

... has an inherent power to regulate its own procedure, save in so far as its procedure has been laid down by the enacted law, and it cannot adopt a practice or procedure inconsistent with rules laid down by statute or adopted by ancient usage.

[10] The procedures upon which Mr. Borkovic sought to rely, to the extent that he made them known to me, are inconsistent with the enacted procedures by which the judges of this Court are bound. Moreover, and in any event, as they are not procedures either enacted by statute or adopted by this Court by ancient usage, this Court cannot follow them.

[11] Section 1 of the *Court Rules Act*, R.S.B.C. 1996, c. 80, gives the Lieutenant Governor in Council the power to make rules governing the conduct of proceedings in the Court of Appeal and in the Supreme Court of British Columbia. The

**Rules of Court** were enacted pursuant to that power by B.C. Reg. 221/90, effective September 1, 1990, O.C. 1039/90.

[12] Rule 1(4) provides as follows:

- 1 (4) These rules govern every proceeding in the Supreme Court except where an enactment otherwise provides.

Section 1 of the **Interpretation Act**, R.S.B.C. 1996, c. 238

sets out several relevant definitions:

"Act" means an Act of the Legislature, whether referred to as a statute, code or by any other name, and, when referring to past legislation, includes an ordinance or proclamation made before 1871, and having the force of law;

...

"enactment" means an Act or a regulation or a portion of an Act or regulation;

...

"regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant, bylaw or other instrument enacted

- (a) in execution of a power conferred under an Act;

or

- (b) by or under the authority of the Lieutenant Governor in Council, but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between 2 or more persons ...

[13] Mr. Borkovic referred to no enactment, other than the **Rules of Court**, that sets out procedural rules for this Court. The Vienna Convention and the Hague Convention, upon which Mr. Borkovic placed reliance, are not "enactments" within the meaning of that term in the **Interpretation Act**. Further, s. 9 of the **Law and Equity Act**, R.S.B.C. 1996, c. 253, to which Mr. Borkovic also adverted, deals with substantive, not procedural, law.

[14] In the result, I am bound by and must apply the relevant **Rules of Court** on this reference.

[15] It appears from Mr. Borkovic's remarks at the hearing that his claim arises out of a foreclosure action brought against him by a mortgagee of his residential premises. As I understand him, he ultimately seeks, first, *in rem*, an unspecified remedy regarding his residence and, second, *in personam*, damages against a number of persons for alleged libel. He told me that the gist of his complaint in the foreclosure proceeding was that the mortgagee had calculated the interest owing incorrectly in the mortgagee's favour in an amount of \$20,000 to \$30,000 and that he was not, in fact, in default at the time of the foreclosure. He told me, as well, that a Master of the Court did not accept his evidence in this regard and granted an order *nisi* of foreclosure over his

protests. Although the Master told him that his remedy, if any, lay by way of an appeal from the Master's decision, he commenced this proceeding instead. It appears that his claim of libel relates to the effect upon his reputation for creditworthiness of the allegedly false publication that he was in default of repayment of his mortgage.

[16] Mr. Borkovic affected an aggressive posture during the hearing, likely because of his mistaken belief that the Court is contractually bound to him to follow the procedures that he invoked. Among other discourtesies, he accused me of not having read the documents that he filed. In that he was wrong. He accused me, as well, of not understanding the documents that he filed. In that, regrettably, he was correct.

[17] The fundamental rule of pleading is set out in Rule 19(1) of the *Rules of Court*, which provides:

- 19 (1) A pleading shall be as brief as the nature of the case will permit and must contain a statement in summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proved.

[18] "Material facts" are those necessary for the purpose of formulating a complete cause of action: *Troup v. McPherson* (1965), 53 W.W.R. 37 (B.C.S.C.) at p. 39. To put it another

way, material facts are statements by the parties' pleaders of what they claim to be the legal effect of the evidence to be produced, to the end that clear and narrow issues of fact will be defined for the trier of fact to adjudicate. The plaintiff's pleading must, therefore, set out in understandable terms the material facts relied upon in order that the opposing parties may know whether to admit, to deny, or to confess and avoid those material facts in accordance with the centuries'-old rules of pleading.

[19] It would be impossible for anyone steeped in the practices and procedures and the conventional language of the common-law courts to draw from the document by which Mr. Borkovic commenced this proceeding any understanding of the cause or causes of action asserted. The document contains no statements of fact whatsoever, let alone any statements of material facts that would relate to the claims that he outlined in general terms during his oral remarks. Making all allowances for the fact that Mr. Borkovic is not a lawyer and has prepared this pleading himself, I nevertheless conclude that the document referred to the Court by the Deputy District Registrar not only does not comply with the long-established rules of pleading, but also that it is incapable of amendment in any reasonable way to bring it into compliance.

[20] The principles governing the application of Rule 19(24) are clear. I must assume that the material facts alleged in the impugned pleading can be proven and I must not strike out the pleading unless it is plain and obvious that it discloses no reasonable cause of action. There are many authorities for those propositions, of which *McNaughton v. Baker* (1988), 25 B.C.L.R. (2d) 17 (C.A.) and *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 are two frequently-cited examples.

[21] Here, there are no material facts alleged and I am satisfied that it is plain and obvious that the document filed on February 14, 2001, entitled "Writ of Summons", discloses no reasonable cause of action and that it is incapable of amendment so as to disclose a reasonable cause of action. The similarities between the form and syntax of this pleading and of that considered in *National Leasing v. Top West Ventures et al* 2001 BCSC 111 are remarkable. Not surprisingly, the result must be the same.

[22] I suspect that Mr. Borkovic will not accept this decision. However, he must understand that when he chooses to bring his proceeding in this Court he must follow the procedural rules of this Court. He has failed to do that.

[23] Accordingly, on the ground identified in Rule 19(24)(a) of the *Rules of Court*, I direct that the writ of summons in this action be struck out.

"K.J. Smith, J."  
The Honourable Mr. Justice K.J. Smith