IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Shingler v. British Columbia (Attorney General) et al.,*** 2008 BCSC 364

Date: 20080327
Docket: 005595
Registry: Victoria

Between:

Ronald Clarence Shingler

Plaintiff

And:

Attorney General for the Province of British Columbia, The Law Society of British Columbia, Regional Crown Counsel, Royal Canadian Mounted Police, Crown Counsel, Esquimalt Police Department, Residential Tenancy Branch, Sihota & Starkey, Noel P. Lenaghan, Marlene Russo, Ronald and Irmagard Houle, Land Title Assurance Fund, John and/or Jane Doe

Defendants

Before: The Honourable Mr. Justice Masuhara

Reasons for Judgment

Counsel for the Plaintiff:	D.H. Christie (March 4, 2008)
Counsel for the Defendant Attorney General of Canada:	E.L. Ross
Counsel for the Defendants Attorney General of British Columbia, Regional Crown Counsel, Crown Counsel, The Residential Tenancy Branch, and the Land Title Assurance Fund:	M.F. Volk
Ronald and Irmagard Houle:	No Appearance
Counsel for the Defendant Esquimalt Police Department and Sergeant John James:	D.G. Butcher
Counsel for the Defendant Sihota & Starkey, Noel P. Lenaghan and Marlene Russo:	K.L. Simmons
Date and Place of Trial/Hearing:	February 29, 2008 and March 4, 2008 Victoria, B.C.

Introduction:

[1] The applications before me are brought by the Attorney General for Canada for the Royal Canadian Mounted Police; Esquimalt Police Department; John James, Attorney General of British Columbia for the Province of British Columbia, the Residential Tenancy Branch, the Land Title Assurance Fund, Regional Crown Counsel, and Crown Counsel; the law firm of Sihota & Starkey; Noel P. Lenaghan; and Marlene Russo.

[2] The motions before me seek to have the action brought by Mr. Shingler dismissed for want of prosecution; dismissed against certain named parties as they are not legal entities; dismissed against certain parties because the statement of claim discloses no cause of action; and a declaration that the Amended Writ of Summons is a nullity.

[3] The application was heard Friday, February 29, 2008 in Victoria. I was called to Victoria the afternoon before from Vancouver on Thursday, February 28, 2008 as apparently Mr. Shingler had argued that matters related to his suit are to be heard by an "out-of-town" judge.

[4] At the start of proceedings on Friday, February 29, 2008, Mr. Shingler was not present. I was advised that Mr. Shingler had attended with counsel for the defendants at the Trial Coordinator's office earlier in the fall to specifically schedule this hearing. I am told that all of the parties had agreed to the schedule. I was also advised that a hearing notice was duly served on Mr. Shingler. Counsel for the defendants requested that Ms. Lezetc, the Court Trial Coordinator, be called as a witness to provide evidence with respect to the personal notice that Mr. Shingler had been provided. She testified that her assistant had called Mr. Shingler's phone number on Thursday afternoon to confirm that the hearing was set for the next day, Friday. Ms. Lezetc's assistant apparently left a message for Mr. Shingler. Ms. Lezetc also said that she called Mr. Shingler's number shortly after in the afternoon and spoke directly with Mr. Shingler. She confirmed that she advised Mr. Shingler that the hearing was set for 10:00 a.m. on Friday morning and that he confirmed to her that he would be there. She specifically

spoke to him because a judge would be travelling to Victoria to hear the application. On Friday morning, however, Mr. Shingler did not appear. Ms. Lezetc testified that she had attempted three times Friday morning to contact Mr. Shingler but was unable to do so. She heard the standard phone message when she called the number that the customer was not available. I was satisfied that Mr. Shingler was notified of the hearing and that I decided as a result to commence with the hearing. The submissions from counsel took most of the day on Friday and no appearance or word from Mr. Shingler was received during the course of the day. I should note as well that except for Ms. Simmons, the other counsel had travelled for the day from Vancouver to attend the hearing.

[5] I reserved my ruling until 9:30 a.m., Tuesday, March 4, 2008. All counsel for the defence, except for Ms. Simmons, attended by conference call. Mr. Shingler also appeared. He sought an adjournment indicating that Mr. Christie was considering whether to take on his case. He stated that he had been sick on Friday and could not attend court or even call. During the course of Mr. Shingler's submission to me, Mr. Christie appeared in the courtroom and sought leave to speak. At that point, he stated that he had not agreed to act for Mr. Shingler but wished to have a brief adjournment so that he could speak with Mr. Shingler. After the adjournment, I was advised by Mr. Christie that he would be acting for Mr. Shingler for the motion only. Mr. Christie sought leave to have Mr. Shingler give his evidence *viva voce* regarding his motion and that he further had good reasons for the delay and wished to also address the merits on the applications. Defence counsel objected to permitting Mr. Shingler to make submissions and to provide evidence on the basis that he had ample time to respond on the date that had been set and that their attendance was simply to receive my judgment. In this regard, I note that Mr. Butcher was represented by Ms. Srivastava, as agent, three were attending by conference call and could hardly examine Mr. Shingler; I did not accept Mr. Christie's proposal and directed that Mr. Shingler provide his evidence by affidavit and that he also provide written submissions by Friday, March 7, 2008 on the subject applications. I provided some specifics to Mr. Christie regarding the various aspects of the applicant's submissions that required a response. I also indicated that the Court's Digital Audio Recordings of the February 29, 2008 proceeding could be accessed supplement to the filed materials.

[6] I indicated in response to a question from defence counsel that if no materials were filed by Mr. Shingler on or before March 7, 2008 that I would then not feel constrained to providing my ruling on the applications that I had heard. Mr. Christie acknowledged this eventuality.

[7] On March 7, 2008, the requested materials were filed on behalf of Mr. Shingler by Mr. Christie. On March 13, 2008 the applicants filed their responses.

[8] What follows are my reasons for judgment.

[9] I start with the history of this action.

[10] This action originates out of a property foreclosure proceeding against Mr. Shingler in March 1992 by a Ms. Moore, the mortgagee. The subject property was owned by Mr. Shingler and was in the order of 16½ acres. He had purchased this property in 1980. Mr. Shingler opposed the order for foreclosure but was unsuccessful. He was represented by Ms. Russo. Mr. Lenaghan represented Ms. Moore. Mr. Starkey of Sihota & Starkey represented the subsequent purchasers of the property, the Houles. Mr. Justice Hutchinson granted an *order nisi* and Mr. Shingler appealed it. The appeal was apparently heard by Madam Justice Proudfoot who ruled against Mr. Shingler. As a result, the plaintiff lost title to his property and the property was then sold to Mr. and Mrs. Houle.

[11] The plaintiff claims that there were a number of chattels and personal effects on the property which the new owners prevented Mr. Shingler from removing. As a result of the foreclosure and refusal to allow him to remove these items, he claims that he was left homeless. There have been apparently several other proceedings brought on by Mr. Shingler in this court and at least one before the Court of Appeal [1994] B.C.J. No. 1796 (C.A.) prior to the start of this action.

[12] On December 14, 2000, Mr. Shingler filed the writ in this action. The brief statement on the writ states:

> This action is being brought against the defendants for the following reasons: refusing to accept new evidence, withholding evidence, misleading the court, coercion, collusion, obstruction of justice, misconduct, malpractice, negligence and professional negligence.

[13] The writ named twelve defendants plus John and Jane Does. On January 5, 2001, Mr. Shingler filed a statement of claim. It appears that on January 12, 2001, Mr. Shingler filed an amended writ naming specific members and unknown members of the RCMP.

[14] In summary, Mr. Shingler's claim alleges the following:

1. negligence on the part of Don Laughton, Crown counsel, for not permitting Mr. Shingler to bring charges against Mr. Houle for various offences;

2. negligence on the part of Mr. Gillan, Regional Crown counsel, for staying all charges against Mr. Houle;

3. negligence against Mr. Justice Hutchison, Mr. Justice Gow, Mr. Justice Murphy, Mr. Justice Melvin, Master Wilson (as he then was) for various judicial decisions made regarding Mr. Shingler. As well, he alleges that these judges participated in a conspiracy to defraud Mr. Shingler of his land and chattels and other belongings;

4. conspiracy by the Law Society of British Columbia to prevent Mr. Shingler from obtaining legal representation;

5. negligence and conspiracy against the RCMP in refusing to arrest Mr. Houle;

6. defamation against the Esquimalt Police Department and a member, Mr. James. He also alleges a breach of the ***Privacy Act***;

7. negligence against the Residential Tenancy Branch in a ruling it made regarding Mr. Shingler;

8. conspiracy and negligence against the law firm of Sihota & Starkey;

9. conspiracy and negligence against Mr. Lenaghan;

10. negligence against Ms. Russo;

11. unjust enrichment and breach of promise against Mr. & Mrs. Houle;

12. wrongdoing against the Land Title Assurance Fund.

[15] In his claim, Mr. Shingler claims damages in the order of $25 million.

[16] Statements of defence were filed in January and February 2001. In January 2001, the Attorney General of Canada sent a letter to Mr. Shingler advising him that the RCMP was not a legal entity and could not be sued. Demands for particulars were made in January and February 2001. In February 2001, the Attorney General of Canada sent another letter advising Mr. Shingler that his amended writ of summons was a nullity because the RCMP members were added without the leave of the court.

[17] In July 2001, Mr. Shingler wrote to Mr. Butcher's office advising that he could not provide particulars as there was no amended statement of claim. In November 2001, a demand for discovery of documents and a notice to produce was delivered to Mr. Shingler. Except for a notice of intention to proceed that was filed by the plaintiff June 20, 2007, no positive steps have been taken by Mr. Shingler since he filed his amended writ in January 2001. The action has not been set for trial.

[18] The Law Society of British Columbia is the only defendant to have taken steps to extricate itself, prior to the current applications. They were successful and Mr. Shingler's appeal was dismissed.

[19] On June 21, 2007, Mr. Butcher, applied for an order dismissing the action for want of prosecution, or alternatively, on the basis that the Esquimalt Police Department was not a legal entity. Ms. Ross also moved to have the actions against those she represented dismissed. The matter was brought on before Mr. Justice Johnston. In the hearing, Mr. Shingler requested an adjournment. He was asked by Mr. Justice Johnston to explain his failure to do anything to advance his case over the past six and a half years. I note that it had been seven years by the time I had heard this matter.

[20] Mr. Shingler told Mr. Justice Johnston that he had interviewed over 100 lawyers and had not been successful in retaining even one. He stated that this was because the Law Society was a defendant in the action and had told lawyers that their careers were on the line if they acted for Mr. Shingler. Mr. Shingler noted, however, since the claim against the Law Society had been dismissed that he had seen "a couple of lawyers" and that he had "one to see on Monday that might take the case". That Monday would have been, by my review, June 25, 2007. I was advised that the Court of Appeal judgment that dealt with the dismissal against the Law Society of British Columbia was April 22, 2003. Over four years had passed by the time the matter was heard by Mr. Justice Johnston.

[21] Mr. Shingler was also of the opinion that the delay had not caused the defendants serious prejudice. He stated that all of the evidence was "on file in the court transcripts".

[22] Based on the characterization that the relief sought by the applications was "draconian", Mr. Justice Johnston adjourned the applications to September 14, 2007. It is significant however that Mr. Justice Johnston at that time made the following comments to the plaintiff:

> THE COURT: Mr. Shingler, what I've got in mind is to adjourn these applications to a fixed date in the early fall and to say to you, sir, that unless by then you can show some very real and very substantive steps to prosecute this action…
>
> MR. SHINGLER: Yes, Your Honour.
>
> THE COURT: I will hear the application again.
>
> MR. SHINGLER: Okay.
>
> THE COURT: And I say that, not having made a ruling, but I say that because although I say the delay has been very long and that you are dangerously close to having this action dismissed for want of prosecution, I am not convinced that it is yet long enough.

[23] The learned judge then said to Mr. Shingler that on the return date of the application that:

> Mr. Shingler, you should have some evidence, not just standing up and telling me what you've done, but some concrete evidence about what you have accomplished, including the delivery of the particulars to Mr. Butcher.

[24] Mr. Shingler answered: Yes, Your Honour.

[25] Johnston J. is no longer seized of this matter and I was assigned to be the "out-of-town" judge.

[26] As of March 4, 2008, none of the defendants have received any materials from Mr. Shingler or have been advised of any steps that have been taken to indicate a real move forward by Mr. Shingler.

[27] It is settled that to dismiss an action for want of prosecution, the court must find:

(a) there has been inordinate delay;

(b) the delay is inexcusable; and

(c) the defendant has been prejudiced by the delay.

[28] I note as well the following that:

- Rule 1(5) states that the object of the ***Rules of Court*** is "to secure the just, speedy and inexpensive determination of every proceeding on its merits".

- When calculating the period of delay, the court may consider the overall period the plaintiff has pursued the action: ***Lindholm v. Pollen*** (1986), 2 B.C.L.R. (2d) 23 (S.C.), at ¶ 21.

- "delay after the issuance of the writ and particularly after the expiration of the limitation period will no doubt be scrutinized more closely but the characterization of the later delay may depend to some extent upon the proceeding delay." ***Fraser v. Kokan*** (1993) B.C.J. No. 2627, at ¶ 15.

- If the court finds that the plaintiff's delay is inordinate and inexcusable, the persuasive burden shifts to the plaintiff to rebut the presumption of prejudice which naturally flows from these

proceedings: ***Busse v. Robinson Morelli Chetkow*** (1999) 10 B.C.L.R. (3d) 174 (C.A.), at ¶ 18 and ***Tundra Helicopters v. Allison Gas Turbine*** (2002) 98 B.C.L.R. (3d) 238 (C.A.), at ¶ 16.

- Allegations of professional negligence calling into question the professional ability of a lawyer is a serious allegation challenging professional competence. Failure to pursue an allegation of this character with dispatch should be considered in determining the prejudice to defendants: ***Rhyolite Resources Inc. v. Canquest Resources Corp***. (1999) 64 B.C.L.R. (3d) 180 (C.A.), at ¶ 24 and ***Thore v. Sliva*** 2001 BCSC 899, at ¶ 13.

[29] All of the submissions of defence counsel point to the significant time that has elapsed since the foreclosure that is at the root of Mr. Shingler's claims, which is some 16 years ago. They note the lack of any steps by Mr. Shingler to advance his action. They note the lack of response to their demands for particulars and documents, which were provided to him soon after this action started.

[30] Mr. Butcher for the Esquimalt Police Department and John James also raised the issue that the Esquimalt Police Department is not a legal entity and cannot sue or be sued. He relied on various cases in support: ***Haeck v. Attorney General of British Columbia et al.*** 2005 BCSC 139, ***Goodhead v. Law Society of British Columbia,*** [1997] B.C.J. No. 1779 (S.C.) and ***Dixon v. Dean,*** [1989] B.C.J. No. 1471 (S.C.).

[31] The applicants also referred to the prejudice in the delay. The Province points out that several of the named persons relating to the claims against the Province are retired or that their whereabouts are unknown. Further, at least one defendant can no longer recall the event alleged.

[32] The Province also moved under Rule 19(24) to strike paragraphs 23, 28 and 33 from the statement of claim, on the basis that it is plain and obvious that no reasonable cause of action can be found. With respect to crown counsel, the Province raised the principle of "prosecutorial discretion" and the inexistence of a private duty of law by Crown Counsel to individual members of the public.

[33] With respect to the claim against the judges, the Province raised the principle of judicial immunity and that no facts had been pleaded that establish that the judges were acting outside the ambit of judicial immunity. The Province also raised collateral attack and absolute privilege in it submission regarding the claims against the judges.

[34] With respect to the claim against the Residential Tenancy Branch, the Province again raised the collateral attack argument.

[35] With respect to the Land Title Assurance Fund, the Province submitted that no action in tort is raised.

[36] The Attorney General of Canada pointed out that the RCMP members are retired and no longer employed by the RCMP and that they have no current contact information for three of the named officers.

[37] The Attorney General of Canada also submitted that the RCMP is not a legal entity and cannot sue and be sued and relies upon the same cases as Mr. Butcher.

[38] The Attorney General of Canada also submits that the failure by Mr. Shingler to obtain leave of the court to amend his writ to add parties renders the writ a nullity. Support for this proposition is found in a judgment of Madam Justice Boyd in ***Skrastins v. Kelowna (City) et al.*** [1992] B.C.J. No. 525 (S.C.).

[39] In his response, Mr. Shingler deposed in his affidavit of March 7, 2008 that:

> 10. I have now been advised and verily believe that in the absence of legal advice I have added improper parties, confounded too many allegations, and made the matter unnecessarily complicated which was a result of the stress, anxiety and depression which I have suffered since 1992 as a result of these events previously mentioned.
>
> 11. I agree the following parties should be dropped from my lawsuit, namely: Regional Crown Counsel, The Royal Canadian Mounted Police, Inspector Swan, Sergeant Bruce Brown, Constable Rod McKenzie, Constable Stack, Constable Mielke, Crown Counsel, the Esquimalt Police Department, Constable John James, the Residential Tenancy Branch and Carol Roberts.

…

15. That I now realize I should not have named or claimed against specific judges since the Court of Appeal overruled their decisions to the extent possible and naming them was not necessary.

16. That I now realize naming those named in paragraph 23, Don Laughton, Bob Gillan, Judges Hutchinson, Gow, Murphy, Melvin and Master Wilson was unnecessary and extraneous to the issue of the unlawful foreclosure and seizure of my property both real and personal which is the core of this dispute since the Court of Appeal ruling of August 2, 1994.

19. I realize now my state of anxiety and depression and inability to retain or instruct counsel which resulted from my mental state made my prosecution of this claim delayed. I specifically agree now having had benefit of advice of counsel to allow dismissal of the aforesaid irrelevant parts in paragraphs 23(a), 23(b), 23(c), 23(d), 23(e), 23(f), 23(g), 24, 25, 26, 27 and 28 hereof, to amend my statement of claim within 90 days and to set a trial date within 90 days, or failing this, I agree the entire action should be dismissed.

Given the above statement of Mr. Shingler, and the absence of an allegation of any independent wrong against the Attorney General of British Columbia or the Land Title Assurance Fund the plaintiff's action against the following are dismissed:

- The Royal Canadian Mounted Police;
- Inspector Swann;
- Sgt. Bruce Brown;
- Cst. Rod McKenzie;
- Cst. Stack;
- Cst. Mielke;
- The Esquimalt Police Department;
- Cst. John James;
- the Residential Tenancy Branch;
- Carol Roberts;

- The Land Title Assurance Fund; and
- Attorney General of British Columbia.

[40] Further, I find that:

- the claim against the RCMP and Esquimalt Police are not actionable as they are not legal entities.
- the amended writ is a nullity.
- the Province's application under Rule 19(24), demonstrates that, it is plain and obvious that paragraphs 23(a) to (g) inclusive, 24, 26, 27, 28 and 33 of this statement of claim disclose no reasonable cause of action and constitute an abuse of process. Accordingly, these paragraphs in their entirety are struck from the statement of claim.

[41] With respect to the remaining defendants, Mr. Shingler deposes that he will amend his statement of claim and set the matter down for trial within 90 days "or failing this, I agree the entire actions should be dismissed."

[42] Ms. Simmons in her response maintains that the plaintiff's delay has been inordinate, inexcusable and the plaintiff has not rebutted the presumption of prejudice. Alternatively she states:

> 20. In the event that the court is prepared to Mr. Shingler one last chance to pursue his action, his proposed 90-day period for action is too long in all the circumstances of this action. At best, he is entitled to 30 days to file amended pleadings and deliver the particulars of conspiracy and negligence requested by these defendants seven years ago, failing which the action should be automatically dismissed upon these Defendants filing an affidavit attesting to the fact that no amended pleadings have been filed and no particulars have be delivered.
>
> 21. Further, if Mr. Shingler does comply with that step, he will have a further 30 days from the date of filing the amended pleadings and delivery of the requested particulars to file a Notice of Trial and deliver a List of Documents of the Plaintiff, failing which the action should be automatically dismissed upon these Defendants filing an affidavit attesting to the fact.

> 22. Should Mr. Shingler take these steps, the action could be considered reasonably on track.

[43] I am of the view that given Mr. Shingler's response and his agreement to the dismissal of this entire action if he fails to meet certain conditions I am disposed to permit him "one last chance". However, the terms will be as follows:

- Mr. Shingler must file and serve his amended statement of claim not later than April 30, 2008.

- Mr. Shingler must deliver the particulars of conspiracy and negligence demanded by the defendants Sihota & Starkey, Noel P. Lenaghan, and Marlene Russo some 7 years ago; not later than April 30, 2008.

[44] Failure to file and deliver the above two items will lead to the dismissal of Mr. Shingler's action upon the filing of a motion supported by an affidavit attesting that the deadline has not been met.

[45] If Mr. Shingler meets the above deadlines then he is required to file a Notice of Trial and deliver the List of Documents of the plaintiff to all of the remaining defendants not later than May 30, 2008. Failure to meet the May 30, 2008 deadline will lead to the dismissal of Mr. Shingler's action upon the filing of a motion supported by an affidavit attesting that the deadline has not been met.

[46] I will remain seized of this matter.

"The Honourable Mr. Justice Masuhara"