

*Sidewalk
2006*

File No. C38212

C A N A D A

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

(BEFORE THE HONOURABLE JUDGE G.J.F. BAKER)

SURREY, B.C.

1998 JUNE 11

BETWEEN:

GAIL MAROIS

CLAIMANT

AND:

THE CORPORATION OF THE CITY OF WHITE ROCK

DEFENDANT

EXCERPT FROM PROCEEDINGS

(Reasons for Judgment)

APPEARANCES:

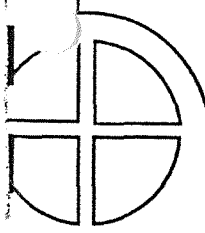
**THE CLAIMANT
P. HANCOCK**

**not represented by counsel
for the Defendant**

**S. PRASAD
M. PHILCOX**

**Court Recorder
Transcriber**

FIRST COPY



Judgment (Baker, G.J.F., P.C.J.)

1 THE COURT: I heard this matter this morning and this
2 is over an injury that was sustained by the
3 Claimant after she alighted from her car and was
4 moving towards a building, a grocery store on the
5 south side of Pacific Avenue in the City of White
6 Rock. She said that she put her foot on the top
7 of the curb which is about maybe four to six
8 inches wide and that was her right foot. When
9 she lifted her left foot, she somehow fell. She
10 cannot tell us how she fell. She said it happened
11 so quickly and she fell on to the sidewalk and
12 injured herself. She has explained that to us
13 very succinctly and very well.

14 The Claimant is saying that the City of White
15 Rock is responsible for the injury because the
16 City of White Rock must maintain the streets and
17 the sidewalks so they do not represent a hazard.

18 This is a matter that has been before the
19 Court many, many times. It has come down, as
20 counsel has quite ably set it out, there are two
21 heads. Number one, was the City negligent in its
22 care of the City for the citizens that live and
23 utilize the City? The courts have said that if
24 there is an inspection system in place and if that
25 inspection system is carried out, and the City
26 takes note of these matters and deals with them as
27 it can financially. You see, you might find that
28 the City does not have the money to do anything
29 and if it does not have any money to do anything,
30 then it is not responsible because it cannot do
31 something. The City is not an insurer of its
32 citizens.

33 In this case, the City had a system of
34 looking after its streets and curbs and sidewalks.
35 That was put in, in writing, in June of 1994. We
36 have heard Mr. Haight (phonetic) who said he
37 composed it and had caused that to be done. He
38 told us what was done in the City and how they
39 classify the work that was to be done. He also
40 told us that the City had received no complaints
41 about this particular curb and this particular
42 sidewalk. It had been there in that condition for
43 some years. The one complaint they did receive
44 regarding the sidewalk was one of water pooling in
45 front of the stores and the store owner asked if
46 that could be rectified and we have heard all
47 about that. But no one else has had a problem

Judgment (Baker, G.J.F., P.C.J.)

1 with this curb or with this sidewalk.

2 Also counsel has mentioned that the claimant
3 had visited this particular store on this
4 particular place and sidewalk before and has been
5 ascertained that of course you could not get into
6 the store unless she utilized the sidewalk. She
7 could approach the store from the lane and not go
8 over the curb, but that seems to be a little
9 awkward. She certainly had been there. She
10 certainly was not a stranger to the area. The
11 claimant really cannot tell us how she happen to
12 fall, but she did fall. There is no doubt about
13 that.

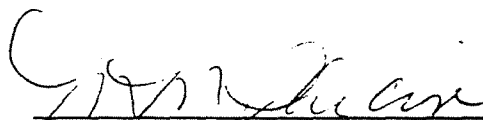
14 I do not find as far as the negligence of the
15 City is concerned, that the City was negligent in
16 this matter.

17 Now the other head is the head that is in the
18 Justice case and Lysak case and that I go back to
19 the fact that if it is an executive decision not
20 to do or to do something, then the Court has said
21 that the Court does not have the right to review
22 that decision. That is exactly what this was.
23 There was a program set up. The program was in
24 place. The program was to deal with these
25 matters. The council would look at the program
26 and say yes, we can afford to do this; no, we
27 cannot afford to do that and they would pick and
28 choose. They picked and chose and they chose not
29 to do anything on this particular curb.

30 Therefore, I cannot find that the City is
31 responsible in this matter on either head. So I
32 have to dismiss your case with costs. Thank you.

33
34 (EXCERPT CONCLUDED)
35
36
37
38
39
40
41
42
43
44
45
46
47

I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability.



M. Philcox
Transcriber