

**COURT OF APPEAL FOR BRITISH COLUMBIA**

Citation: *Thiessen v. Columbia Shuswap  
Reg. Dist. et al,*  
2003 BCCA 532

Date: 20030926  
Docket: CA030318

Between:

**Abram Thiessen**

Appellant  
(Plaintiff)

And

**Columbia Shuswap Regional District**

Respondent  
(Defendant)

And

**Norma Pasechnik dba S&P Salvage**

Respondent  
(Third Party)

Before: The Honourable Madam Justice Saunders  
The Honourable Mr. Justice Thackray  
The Honourable Mr. Justice Hollinrake

**Oral Reasons for Judgment**

P.D. Messner, Q.C.

Counsel for the Appellant

J.W. Locke

Counsel for the Respondent,  
Columbia Shuswap Reg. Dist.

Place and Date:

Kelowna, British Columbia  
September 26, 2003

[1] **HOLLINRAKE, J.A.:** This is an appeal from a judgment dismissing the appellant's action seeking damages for a slip and fall at a steel refuse bin owned by the respondent District. This was a summary trial pursuant to Rule 18A of the Rules of Court.

[2] The position of the appellant is that the respondent did not meet the standard of care required by the **Occupier's Liability Act** in terms of design, construction and operation of the premises. The judge concluded that the respondent District did measure up to the standard of care required under the **Act**. He said this on this issue:

[36]... Having considered the evidence relating to this Transfer Station [bin] as to its purpose and its safety features, in the context of the evidence of the design of several other landfills and transfer stations in British Columbia, Alberta and Washington State, as detailed in Dr. Cameron's report, I have reached the conclusion that the design and construction of the Regional District's Transfer Station meets the standard of care required in the circumstances and did not cause or contribute to Mr. Thiessen's injuries.

[3] The judge concluded that the cause of the slip and fall rested solely on the shoulders of the appellant. It is appropriate here to set out the facts as they pertained to the slip and fall itself.

[8] At the time of designing the Transfer Station, the Regional District considered issues pertaining to safety at the Transfer Station. A number of warning signs were in place at the time of the accident. The signs were two foot by one and a half foot in size. Two were located on a chain link fence at the unloading area near the transfer bins and one was attached to the side of the scale shack which all vehicles passed by on their way into the Landfill. The wording was as follows:

WARNING  
Use Caution When Unloading  
  
We Are Not Responsible for Damages Caused  
By You  
You Are Responsible For Your Own Safety  
Turn off Engine  
Children & Pets Should Remain in the Vehicle

[9] Below the top two lines of these signs there was the image of a pick-up truck with a person falling from the back of the pick-up truck box.

[10] The top of the transfer bins extend approximately twelve to eighteen inches above the grade of the unloading dock. The transfer bins are painted a bright blue colour which contrast with the edge of the loading dock. The transfer bins are rectangular in shape. The bins are eight feet high, eight feet wide and twenty-two feet long. Metal guardrails are in place on the short sides of the bins, and a metal tubular rail is in place at approximately seven feet above the docking surface beside that part of the transfer bin closest to where customers unload their vehicles.

[11] Over time it was noted by the Regional District that the majority of customers brought waste materials to the site using pick-up trucks or utility trailers.

[12] Mr. Thiessen had been using the Transfer Station since it opened for business in the spring of 1999. His family used the facility once every two weeks, and he had disposed of refuse there a dozen times before this accident. He was familiar

with the ramp leading to the unloading area where the metal refuse bins (the Transfer Station) are located.

[14] Mr. Thiessen said that there was nothing unusual or out of the ordinary at the Transfer Station on the day of the accident. On all other occasions he had used his 1997 GMC pick-up truck with a canopy over the cargo box to deliver refuse to the Transfer Station, and that was the vehicle he used on the day of the accident.

[15] Mr. Thiessen said that on occasions before the accident his practice was to drive up the ramp, stop and then back up towards the refuse bin, stopping four or five feet from the edge. He said he did this to avoid the risk of falling into the bin. Mr. Thiessen was aware of the warning signs at the Transfer Station, although he could not recall having seen the image of the man falling off the back of the pick-up truck depicted on the signs. He agreed that this sign represented a warning of a danger which he was already aware of, that is, the potential for injury if someone fell off the back of their pick-up truck at that location.

[15] On the day of the accident, Mr. Thiessen arrived at the Landfill site, stopped at the scale shack and then proceeded up the ramp of the Transfer Station, made a half turn, stopped and then backed up toward the transfer bin. However, instead of stopping four to five feet from the edge of the bin, as was his habit, he stopped his truck much closer to the bin. He estimated one to one and a half feet between the edge of the bin and the rear of his truck.

[16] When Mr. Thiessen had brought his vehicle to a stop, he walked to the rear of his vehicle, unlatched and lifted the canopy lid, dropped the tailgate and climbed into the vehicle and then threw his refuse into the transfer bin. He then jumped from the back of the vehicle onto the ground, off to the side of the vehicle. He did not jump off the back of the vehicle. He then attempted to close the tailgate walking from one end of the tailgate to the other. His evidence was that "I slipped or lost my

balance" and he said he fell backward into the bin. He was then engaged in attempting to close the tailgate. When he lost his balance, the tailgate fell open. As he was losing his balance, he stepped backward "and tripped on the edge of the bin" and then fell into the bin. He described this in paragraph 17 of his affidavit as follows:  
As I raised the tailgate, I lost my balance or slipped on something and in trying to regain my balance or footing, I stepped back, tripping on the edge of the bin, causing me to fall backwards into the bin.

[4] There was an issue before the trial judge as to the alleged slippery condition of the area in front of the bin which could have caused the slip and fall. On this issue the judge concluded:

[18] While Mr. Thiessen, in his Statement of Claim, says that "he either slipped on the ground in front of the bin due to its slippery nature or condition, or slipped on some material left on the ground by a prior user of the facility", I am not satisfied on a balance of probabilities that this material, or refuse, was slippery, nor that it caused or contributed to Mr. Thiessen losing his balance and falling.

[5] In concluding that the fault here lies entirely on the shoulders of the appellant the judge said:

[37] I have concluded that Mr. Thiessen sustained these injuries entirely as the result of his conduct on that day. He was familiar with the transfer bin and the area around it having dropped off refuse from his pick-up truck at the Transfer Bin on approximately twelve occasions prior to June 23,

2000. Before dumping the refuse into the bin he realized that he had backed his truck to a position where it was too close to the bin. After dumping the refuse into the bin, he considered moving his truck forward before closing the tailgate, but did not do so. He had the opportunity to observe the ground in front of the bin and the bin as he drove into the area, as he backed up his vehicle, as he opened the tailgate and again as he deposited his refuse into the bin. He was aware of the physical characteristics of the bin, before this accident, from previous attendances including the fact that the edge of the bin was twelve to seventeen inches higher than the landing area where he stopped his pick-up truck, the presence of the seven foot high, horizontal pipe, running lengthwise across the twenty-two foot face of the bin, and knew of course, that the transfer bin was open. He had ample opportunity to observe these conditions. There were no hidden dangers. His previous practice had been to stop his truck at a point where the rear of the truck was four to five feet from the near edge of the bin. Unfortunately for Mr. Thiessen his fall into the bin is solely the result of his inattention that day.

[6] I am satisfied that in concluding as he did the trial judge did not fall into any error such that this Court would be justified in intervening. I can see no misapprehension of the facts of law that could lead this Court to a decision contrary to that of the trial judge.

[7] I should note here that the appellant alleges error in that on the standard of care issue the judge made no reference to s. 119 of the *Workers' Compensation Act* and the new s. 3(4)

of the *Occupiers Liability Act*, which we are told were put to him in argument.

[8] Assuming it is applicable, in my opinion, those sections would have had no impact on the conclusions of the trial judge as to liability. The critical conclusion of the judge in this case is that the appellant is solely to blame for the fall and resulting injuries. In my opinion, that was a conclusion open to him on the evidence before the court and, in the absence of error, this Court cannot, as a matter of appellate jurisdiction, interfere.

[9] On the issue of the use of the expert report by the trial judge I am unable to conclude that it was not open to him to use it as he did. The new evidence motion before the Court, in my opinion, should be dismissed on the ground it would not have affected the outcome.

[10] I would dismiss the appeal.

[11] **SAUNDERS, J.A.:** I agree.

[12] **THACKRAY, J.A.:** I agree.

[13] **SAUNDERS, J.A.:** The appeal is dismissed. The motion to adduce fresh evidence is dismissed.

"The Honourable Mr. Justice Hollinrake"