

COPY

No. 1326
Cranbrook Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

(IN CHAMBERS)

Cranbrook, B.C.
13 August 1996

BETWEEN:)	
)	
SHIRLEY WOOD)	REASONS FOR JUDGMENT
)	
(PLAINTIFF))	
)	OF THE HONOURABLE
AND:)	
)	
TOWN OF GOLDEN)	MADAM JUSTICE STROMBERG-STEIN
)	
(DEFENDANT))	

(NO COUNSEL)	for the Plaintiff
D. K. HORI, Esq.,	for the Defendant

THE COURT: (Oral) I want to start off by saying that Mrs. Wood has appeared in person on this application by the defendant, Town of Golden, to dismiss her action pursuant to Rule 18A. Previous counsel is off the record. Filed in Golden on August the 1st, of 1996, was a Notice of Intention to act in person, dated July 19th, of 1996, by Mrs. Wood. She has indicated that she may retain somebody in this matter. It has been ascertained that that person, a Mr. Zimmer, in fact, has not been retained. This matter has been set down for a three day trial in the middle of September and, in my view, notwithstanding an indication that there may or may not be counsel retained, I am satisfied that I should deal

with the matter today notwithstanding the fact that Mrs. Wood does not have counsel present. My queries of her this morning as to her intentions with respect to this matter resulted in her indicating that she was prepared to proceed in the absence of counsel and that we have done.

Now, dealing with the issue as to whether or not this matter is proper to be proceeded with by way of Rule 18A. This is a matter that Rule 18A was obviously designed to deal with and I'm satisfied that a Rule 18A summary trial is the proper way to proceed.

Turning to the issues involved. The plaintiff was injured when she tripped and fell on a sidewalk owned by the Town of Golden on June the 28th of 1994. She tripped over an elevation difference between two slabs of concrete forming the sidewalk that tapered from a one inch difference to no difference over an approximate span of twenty inches.

She had been walking from the bank, the Canadian Imperial Bank of Commerce, to her parked vehicle when she tripped. It was 9:30 at night. Visibility was good. She was familiar with this sidewalk, having walked over the sidewalk many, many times, and she was fully aware that there was an elevation difference in the concrete slabs. By way of her examination of discovery, which is at tab 6 of the defendant's trial brief, she acknowledges her familiarity with the sidewalk in question and her knowledge of the elevation difference in the sidewalk. She also acknowledged that at no point before her trip and fall did

she ever complain or alert the Town of Golden to the problem with respect to the sidewalk.

The plaintiff suffered some serious injuries to her left knee as a result of her trip, including a tear to the lateral meniscus which required surgical intervention to deal with the problem. She has claimed a number of things in her Statement of Claim, all of which indicate that the trip, fall and injury had a significant impact on her life and her ability to be employable.

With respect to the liability of the Town of Golden in these circumstances, counsel has referred to Section 3 of the Occupier's Liability Act, as well as to two cases which are at tabs 8 and 9 of the Chambers brief. The Occupier's Liability Act and the two cases establish that the duty on the Town of Golden is to take reasonable care to see that persons using their sidewalks and exercising ordinary care for their own safety will be reasonably safe.

I am satisfied, considering the case authorities and the evidence before me by way of affidavit, that the elevation difference between the sidewalk slabs of one inch is not an unusual occurrence or hazard. I am satisfied that had the plaintiff been exercising reasonable care for her own safety on June the 28th, she would and could have passed over this area without incident, bearing in mind the fact that she was familiar with the area in question and had passed over that area on numerous prior occasions without incident.

Considering these circumstances the application by the Town of Golden to dismiss the plaintiff's action against the defendant is allowed. There will be an order that the plaintiff's action against the defendant be dismissed.

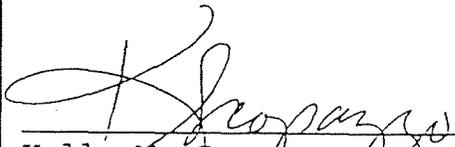
Dealing with the application by the defendant for costs with respect to this matter, in all of the circumstances I am not satisfied that I should make an order for costs and, therefore, I would dismiss the application for costs by the defendant.

So, Mrs. Wood, your claim is dismissed. There is no triable issue. However, I have not made an order of costs against you.

24 August 1996/kms

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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.



Kelly M. Scopazzo, Transcriber
for Scott Personnel Ltd.