IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wormell v. Insurance Corp. of British Columbia,* 2010 BCSC 1028

Date: 20100721
Docket: S096414
Registry: Vancouver

Between:

Brent Wormell

Plaintiff

And

Insurance Corporation of British Columbia

Defendant

Before: The Honourable Madam Justice Loo

Reasons for Judgment

Counsel for the Plaintiff:	T. J. Delaney
Counsel for the Defendant:	C. R. Fister
Place and Date of Hearing:	Vancouver, B.C. February 17, 2010
Place and Date of Judgment:	Vancouver, B.C. July 21, 2010

INTRODUCTION

[1] This application involves an interpretation of ss. 64(a) and 72(1) and (2) of Part 6 – Third Party Legal Liability, of the *Revised Regulation (1984) Under the Insurance (Motor Vehicle) Act*, B.C. Reg. 447/83 as amended. The sections raise two issues which are simply described as the coverage issue (s. 64), and the exclusion issue (s. 72).

[2] Brent Wormell obtained a judgment against Bradley Hagen for $570,288.71 as damages for personal injuries. Mr. Hagen owns a large Kenworth flatbed truck with an attached crane. Mr. Wormell was helping Mr. Bradley remove cargo when he jumped off the truck and sustained injuries. Mr. Justice Goepel found that Mr. Wormell's injuries and damages were caused by Mr. Hagen's negligence.

[3] At the time of the accident, Mr. Hagen had a policy of insurance with the defendant Insurance Corporation of British Columbia ("ICBC"). On this application Mr. Wormell seeks a declaration and order that ICBC pay him the full amount of the judgment.

[4] ICBC contends that Mr. Wormell's loss did not arise out of the use and operation of a motor vehicle under s. 64: it argues that at the time of the accident, the outriggers were extended, and the truck ceased to be a motor vehicle and became a crane (the coverage issue). Alternatively, ICBC contends that his loss is excluded by s. 72 which excludes liability arising out of the operation of attached equipment at a site (the exclusion issue).

THE FACTS

[5] The facts are generally set out in the reasons for judgment of Mr. Justice Goepel in *Wormell v. Hagen*, 2009 BCSC 1166.

[6] Mr. Hagen and Mr. Wormell both live in the Merritt area. In October 2003 Don Moses hired Mr. Hagen to pick up some goods Mr. Moses (or his company) purchased at a Ritchie Bros. auction in Surrey, and haul the goods back to Merritt.

[7] Mr. Wormell was friends with both Mr. Hagen and Mr. Moses. He had some free time and accompanied them on their trip to Surrey.

[8] Mr. Hagen's flatbed truck is described by Mr. Justice Goepel in his reasons for judgment at para. 7:

> [7] Mr. Hagen owned a large flatbed truck that was equipped with a Model 900-L crane mounted at the centreline of the vehicle, immediately behind the truck's cab and ahead of the truck's bed. The bed of the truck was 20 feet long x 8 1/2 feet wide. The crane was equipped with a 27 foot boom, which had a maximum up angle of 79 degrees, resulting in a minimum 5 foot working radius. The truck was also equipped with four outriggers, two at the front mounted immediately beside the crane base and two at the rear of the truck, stored in an extended position below the deck of the truck. All four outriggers were hydraulically operated for horizontal and vertical movement, and could be operated independently of one another.

[9] When the men arrived at Ritchie Bros. Mr. Hagen operated the crane to load the goods onto his truck. They included a mobile portable sawmill, two 45 gallon drums filled with fuel, two large cement blocks, and some steel plates.

[10] At the Hope weigh scales, the attendant informed Mr. Hagen that his load was too wide and his truck was overweight. Mr. Hagen decided to remove the portable sawmill, leave it at the weigh scale, continue on to Merritt, and return the next day to pick up the sawmill.

[11] Mr. Justice Goepel described what occurred:

> [17] At the Hope weigh scales, the attendant advised that the load was too wide, the truck was overweight, and that the fuel tanks required documentation confirming they were gas-free. Mr. Wormell solved the load width problem by extending the lights on the truck. Mr. Moses communicated with Ritchie Bros. to obtain the necessary documentation concerning the fuel tanks while Mr. Hagen prepared to reduce the weight on the truck by removing some of the cargo.

[18] While it is not clear on the evidence exactly when the parties arrived at the weigh scales, it is common ground that when the accident happened, night had fallen. While there was some artificial light from light standards at the weigh station, vision was limited.

[19] Before reducing any cargo Mr. Hagen first moved the truck to an isolated area of the weigh station. He then set the outriggers and levelled the truck. He next assisted Mr. Wormell in removing the strapping from the load. The load appeared to be stable.

[20] Mr. Hagen then returned to the truck to operate the crane. He was situated in the crane operator's position, immediately in front of the truck deck on the driver's side. He raised the boom of the crane from the horizontal position so it was upright. He lowered the crane hook to about two feet from the lifting hook on the sawmill.

[21] Mr. Wormell climbed up on and walked across the sawmill in order to attach a chain to the crane hook and the sawmill's pickup point. He testified the load appeared stable as he walked across it. Facing Mr. Hagen, he looped the chain through the sawmill's pickup point and the crane's hook, securing the chain onto itself with a hook on the chain. He says he pulled the chain tight.

[22] Having secured the chain Mr. Wormell then turned his back to Mr. Hagen and began to retrace his steps in order to get down from the sawmill. Mr. Wormell had only taken a step or two and was still on top of the sawmill when he felt the sawmill start to shift under his feet. Fearing for his safety he jumped out and away from the load. He remembers Mr. Hagen yelling a warning to him. Mr. Hagen does not remember this although he admits he may have yelled.

[12] Mr. Hagen's truck was insured by ICBC. He did not have a commercial policy of insurance for his business activities.

THE STATUTORY PROVISIONS

[13] Part 6 of the *Revised Regulation (1984) Under the Insurance (Motor Vehicle) Act*, B.C. Reg. 447/83, as amended, provides in part:

Indemnity

64 Subject to section 67, the corporation shall indemnify an insured for liability imposed on the insured by law for injury or death of another or loss or damage to property of another that

(a) arises out of the use or operation by the insured of a vehicle described in an owner's certificate[.]

…

Restrictions on indemnity — attached equipment

72 (1) In this section, "attached equipment" means machinery, apparatus or equipment that is

(a) mounted on or attached to a vehicle, and

(b) not required for the safe operation of the vehicle on a highway.

(2) The corporation shall not indemnify an insured for liability imposed by law for injury, death, loss or damage arising, directly or indirectly, out of the operation of attached equipment at a site where the attached equipment is being operated, unless the attached equipment

(a) is used for snow or ice removal from a highway or for sweeping, cleaning, sanding or grading streets,

(b) is a side or rear mounted power-operated platform,

(c) is attached to a vehicle used for pleasure purposes,

(d) is attached to a vehicle used as a wrecker, dump truck or fork-lift,

(d.1) is attached to a vehicle used as a garbage truck, but only if the injury, death, loss or damage did not arise, directly or indirectly, out of the operation of a crane attached to the vehicle,

(e) is attached to a vehicle used as a front-end loader or backhoe, or

(f) is attached to a vehicle used as a mower.

ANALYSIS

1. Principles of Construction

[14] The general principles that apply when interpreting coverage and exclusion provisions of insurance policies are as follows:

1) coverage clauses should be construed broadly; and

2) exclusion clauses should be construed narrowly.

See: *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R. 405 at paras. 18-19; *Derksen v. 539938 Ontario Ltd.*, [2001] 3 S.C.R. 398 at paras. 49-52; and *Marjak Services Ltd. v. Insurance Corp. of British Columbia*, 2004 BCCA 455 at para. 40.

[15] Although there are principles that apply specifically to the interpretation of insurance policies, the general principles of statutory construction still form the foundation for statutory interpretation.

[16] Section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, directs the manner in which legislation is to be interpreted:

> Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[17] In *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, Mr. Justice Iacobucci relied on the equivalent provision in Ontario's act, combined with Driedger's approach to statutory interpretation:

> [21] Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, *Statutory Interpretation* (1997); Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) (hereinafter "*Construction of Statutes*"); Pierre-André Côté, *The Interpretation of Legislation in Canada* (2nd ed. 1991)), Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Recent cases which have cited the above passage with approval include: *R. v. Hydro-Québec*, [1997] 1 S.C.R. 213; *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550; *Friesen v. Canada*, [1995] 3 S.C.R. 103.
>
> [22] I also rely upon s. 10 of the *Interpretation Act*, R.S.O. 1980, c. 219, which provides that every Act "shall be deemed to be remedial" and directs that every Act shall "receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit".

2. The Coverage Issue

[18] Section 64 provides that ICBC shall indemnify an insured for liability imposed on the insured by law for injury or death of another that "arises out of the use or operation" of a vehicle described in an owner's certificate. The *Insurance (Vehicle) Act*, R.S.B.C 1996, c. 231, defines "vehicle insurance" in s. 1 as insurance against liability arising out of bodily injuries "caused by a vehicle or the use or operation of a vehicle". "Vehicle liability policy" is defined in s. 1 to mean a certificate or policy evidencing insurance against liability arising out of bodily injury to a person caused by a vehicle or the use or operation of a vehicle.

[19] There is no dispute that Mr. Hagen's flatbed truck is a vehicle.

[20] In *Amos*, the Supreme Court of Canada considered s. 79(1) (in Part 7) of the *Revised Regulation (1984) Under the Insurance (Motor Vehicle) Act*. The language of that section is almost identical to s. 64(a) except that s. 79(1) includes the word "ownership" and falls under Part 7 - Accident Benefits, whereas s. 64(a) falls under Part 6 - Third Party Liability Insurance Coverage. The sections require the court to interpret the words "arises out of the use or operation" of a vehicle.

[21] In *Amos*, the appellant (plaintiff) was driving his van when he was attacked by a gang of six people. One of the gang members walked in front of the van, pointed a gun, and shot the plaintiff. He sustained permanent serious and disabling physical and mental injuries. The trial judge found that the injuries were not caused by anything the plaintiff did as the owner of his van but by his attackers. The van was merely the *situs* of the attack. The B.C. Court of Appeal dismissed the appellant's appeal.

[22] The Supreme Court of Canada allowed the appellant's appeal and found that while the section must not be stretched beyond its plain and ordinary meaning, it should not be technically construed so as to defeat the legislative intent.

[23] Major J. set out the two-part test to be applied in interpreting the section, stating at para. 17:

> [17] In the same way, while s. 79(1) must not be stretched beyond its plain and ordinary meaning, it ought not to be given a technical construction that defeats the object and insuring intent of the legislation providing coverage. The two-part test to be applied to interpreting this section is:
>
> 1) Did the accident result from the ordinary and well-known activities to which automobiles are put?
>
> 2) Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between the appellant's injuries and the ownership, use or operation of his vehicle, or is the connection between the injuries and the ownership, use or operation of the vehicle merely incidental or fortuitous?
>
> This two-part test summarizes the case law interpreting the phrase "arising out of the ownership, use or operation of a vehicle", and encompasses both the "purpose" and "causation" tests posited in the jurisprudence.
>
> [Emphasis in original.]

[24] He then dealt with the first part of the two-part test, the purpose test, and concluded succinctly at para. 18:

> [18] … The appellant here was driving his van down a street; the accident clearly resulted "from the ordinary and well-known activities to which automobiles are put". The first part of the two-part test is satisfied.

[25] Here, Mr. Hagen's flatbed truck was being used to transport, load, and unload goods.

[26] The second part of the test to be met in determining whether an injury arises out of the use or operation of the vehicle is whether there is some causal relationship between the injuries and the use or operation of the vehicle. The use or operation of the vehicle only needs to materially contribute to the injury: *Marjak Service Ltd.* at paras. 52-53.

[27] Here, Mr. Wormell was engaged in unloading goods from the truck. The use or operation of the vehicle materially contributed to his injuries.

3. The Exclusion Issue

[28] The relevant words of s. 72 provide that ICBC shall not indemnify an insured for injury arising out of the operation of attached equipment at a site where the attached equipment is being operated.

[29] Mr. Wormell relies on *Twylight Pressure Controls Ltd. v. The Dominion of Canada General Insurance Company*, 2000 BCCA 26. In that case the plaintiff company owned and operated a service truck used in seismographic activities for oil and gas exploration. The truck was fitted with a tidy tank for transporting gasoline to fuel generators and other equipment in the field. The truck itself operated on diesel fuel.

[30] The plaintiff was visiting his cousin at Twylight's business premises. The cousin was putting gasoline into the tidy tank when gasoline spilled onto the floor because of an open valve at the bottom of the tank. A resulting gasoline explosion and fire injured the plaintiff. ICBC argued (as it does in the case at bar) that the loss was excluded by s. 72(1) and (2) as the liability arose out of the operation of "attached equipment".

[31] The trial judge concluded that there was insufficient evidence to determine whether the tank was "attached" to the truck, but also found that where the accident occurred was not a "site" within the meaning of the exclusion. Chief Justice Finch stated:

> [6] I respectfully agree that the filling of this container on the truck with gasoline, for the purpose of its transportation was an ordinary use of the truck and therefore within I.C.B.C.'s insuring agreement. I also agree that filling the container did not involve the operation of attached equipment at the site, within the meaning of the exclusion.

[32] ICBC argues that *Twylight Pressure Controls Ltd.* is distinguishable because the trial judge was unable to determine on the evidence whether the tidy tank was attached equipment. However, what is clear is that where the tank was being filled was not a site within the meaning of the exclusion.

[33] ICBC says that the word "site" should be given its plain meaning. The Canadian Oxford Dictionary gives the following definition:

> **site** *n.* **1** the ground chosen or used for a town or building. **2** a place where some activity is or has been conducted (*camping site; launching site*).

The Concise Oxford English Dictionary, 11th ed., gives the following definition:

> **site** ¦ n. **1** an area of ground on which something is located. **2** a place where a particular event or activity is occurring or has occurred.

[34] ICBC argues that once the outriggers were extended and the vehicle levelled, the truck was no longer operating as a motor vehicle and became a large commercial crane. Whenever or wherever that occurs, it occurs at a site. Therefore, the isolated area at the weigh scale was the site.

[35] In my view, whenever or wherever the attached equipment is being operated becomes a site, the words “at a site” at s. 72 become superfluous.

[36] Counsel for ICBC concedes that he wants the Court to read s. 72 as if the words “at a site” were omitted. However, when interpreting a provision in an insurance contract or legislation, all of the words must be considered.

[37] ICBC relies on *Prudential Assurance Co. v. Manitoba Public Insurance Corp.* [1989] 3 W.W.R. 758 (Man. Q.B.). However, I find that case distinguishable. There, a concrete pumping truck with an attached 90 foot boom was at a construction complex pumping concrete when the boom of the pumping unit contacted an overhead wire and electrical current caused damage to the truck. The exclusion clause was expressly stated not to apply to machinery or apparatus, including attached equipment or apparatus, while the machinery or apparatus is in actual use or operation for its functional purpose at the site of operations.

[38] I do not think it can be said that an isolated area of a government weigh station at night, is a site in the way the word is ordinarily used—such as a construction site, building site, or work site. Mr. Wormell was injured while Mr. Hagen’s truck was being put to its ordinary use. The truck was required by law to stop at the weigh scale, and the crane was unloading an item because the truck was overweight. To adopt the interpretation urged by ICBC would be interpreting the exclusion clause narrowly.

[39] I conclude that the attached crane was not operating at a site and coverage is therefore not excluded by virtue of s. 72.

CONCLUSION

[40] The plaintiff is entitled to the relief it seeks as set out in the notice of motion:

1) a declaration that the defendant Insurance Corporation of British Columbia is liable to pay the full amount of the judgment awarded to the plaintiff in Kamloops Action No. 35570 against Bradley Dean Hagen, plus the claim for costs and any interest accrued or accruing, to the limit of the plan or policy of insurance Bradley Dean Hagen had in place with the Insurance Corporation of British Columbia over a 1994 Kenworth truck on October 7, 2003; and

2) costs of this action.

“Loo J.”