

Date: 19970321
Docket: C944200
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ARTHUR DOIG and ARMA HOLDINGS LTD.

PLAINTIFFS

AND:

LAURAND HOLDINGS LTD., HARRISON DOIG, and
DOIG BAILY McLEAN GREENBANK and MURDOCH

DEFENDANTS

REASONS FOR JUDGMENT
OF THE
HONOURABLE MR. JUSTICE HARVEY
(IN CHAMBERS)

Counsel for the Plaintiffs: T.J. Delaney
Counsel for the Defendants,
Laurand Holdings Ltd. and
Harrison Doig: P.D. Le Dressay
Place and Date of Hearing: Vancouver, B.C.
March 12, 1997

[1] The defendant, Doig Baily McLean Greenbank and Murdoch (the "Law Firm"), should no longer appear in the style of cause of this matter. A consent dismissal order dismissing the plaintiffs' action against the Law Firm was entered on September 19, 1996.

[2] The remaining defendants, Laurand Holdings Ltd. ("Laurand") and Harrison Doig, apply under Rule 19(24) and Rule 34(1) for orders to strike eleven paragraphs of the statement of claim herein, and to decide a point of law arising from the pleadings and the filing of the consent dismissal order on September 19, 1996 dismissing the plaintiffs' action against the Law Firm.

[3] Put in its simplest terms, counsel for Laurand and Harrison Doig, submits the nature of the causes of action pleaded against all defendants, being joint, the entry of the said consent dismissal order against one defendant, releases the other defendants alleged to be jointly liable for the same delict. Counsel for the said defendants submits those causes of action are not now maintainable and are res judicata and, furthermore, that the doctrine of issue estoppel applies. He submits further, by way of illustration, if plaintiffs settle with one of two joint tortfeasors (here, one of three), the entry of a consent dismissal order has the legal effect of making unmaintainable the claims against the other joint tortfeasor.

[4] Counsel for the plaintiffs, apart from objections taken to the procedure being followed (the plaintiffs not consenting to a point of law set down for hearing) submits, inter alia, the

submissions of counsel for the remaining defendants have "no connection to reality" because the allegations in the statement of claim against the defendants, are not predicated solely or at all upon the joint liability of the said defendants. He submits further upon examination of the allegations in the statement of claim, many of the claims made against the defendants are clearly severable. He submits that the statement of claim does draw a distinction between the claims on the one hand, against Harrison Doig and Laurand for their alleged wrongful acts arising out of their business dealings and joint venture with the plaintiffs, and the claims on the other hand, against Harrison Doig and the Law Firm for the alleged breaches of contract and duties owed to the plaintiffs for failing to warn or protect the plaintiffs from the wrongful acts of Harrison Doig and Laurand. He refers specifically in passing to the provisions of paragraphs 6, 7, 12, 13, 18 and 19 of the statement of claim.

[5] Finally, he submits the consent dismissal order at best only dismissed the claims against the Law Firm for alleged breaches arising out of its position as the legal advisors to the joint venture. The Law Firm was never a joint venture partner and Laurand was never a lawyer.

[6] In keeping with the conclusion I have reached in the matter, I do not consider it necessary to deal with the other objections to both the procedure being followed by the remaining defendants and positions at law, including, inter alia, the following:

- (a) whether an application under Rule 34 should be by consent;
- (b) res judicata and estoppel should be pleaded and, collaterally, that such applications as the present must be decided on the pleadings as they presently exist;
- (c) any decision made will not be decisive of the litigation or an issue raised in it; and,
- (d) there should only be recourse to Rule 19(24) when it is plain and obvious the plaintiffs' claims will fail.

[7] I agree with what I understand to be the fundamental position of counsel for the plaintiffs in overview which is that the claims of the plaintiffs against the defendants, set out in the allegations in the statement of claim, are not predicated solely or at all upon joint liability of the defendants but rather are selective to a degree and discrete.

[8] Finally, if it were necessary for me to do so, I would find that in keeping with the decision of the Court of Appeal of this Province, in *Nesbitt Thomson Deacon Inc. v. Everett* (1989), 37 B.C.L.R. (2d) 341, the entry of a consent dismissal order should not be taken to have decided all of the terms, duties or liabilities that exist between Harrison Doig, Laurand and the plaintiffs.

[9] The application of the defendants is dismissed with costs to the plaintiffs in any event of the cause.

"R.B. HARVEY J."