COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Wormell v. Insurance Corp. of British Columbia,* 2011 BCCA 166

Date: 20110407
Docket: CA038359

Between:

Brent Wormell

Respondent
(Plaintiff)

And

Insurance Corporation of British Columbia

Appellant
(Defendant)

Before: The Honourable Chief Justice Finch
The Honourable Madam Justice Newbury
The Honourable Mr. Justice Lowry

On Appeal from: Supreme Court of British Columbia, July 21, 2010,
(*Wormell v. Insurance Corp. of British Columbia*, 2010 BCSC 1028, Vancouver
Docket: S096414)

Counsel for the Appellant:	G. Brown
Counsel for the Respondent:	T. Delaney C. Martin
Place and Date of Hearing:	Vancouver, British Columbia March 8, 2011
Place and Date of Judgment:	Vancouver, British Columbia April 7, 2011

Written Reasons by:
The Honourable Chief Justice Finch

Concurred in by:
The Honourable Madam Justice Newbury
The Honourable Mr. Justice Lowry

Reasons for Judgment of the Honourable Chief Justice Finch:

I. Introduction

[1] The only issue on this appeal is whether liability of the Insurance Corporation of British Columbia ("ICBC") under a motor vehicle owner's certificate to pay compensation to the plaintiff for his injuries and other losses suffered as a result of an accident on 7 October 2003 is excluded by the *Revised Regulation (1984) Under the Insurance (Motor Vehicle) Act*, B.C. Reg. 447/83, specifically the section in respect of "attached equipment" which provides:

> 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 vehide,
>
> (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.
>
> [Emphasis added.]

The regulation has since been re-enacted as the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83, though the language of all relevant provisions remains the same.

[2] The accident occurred when the attached crane on a truck was used to adjust the truck's load following inspection at a government weigh scale. The judge concluded that "the attached crane was not operating at a site" within the meaning of

the exclusion, and that s. 72 of the regulation did not therefore exclude coverage. ICBC appeals against that conclusion.

[3] For the reasons that follow I would dismiss the appeal.

II. Background

A. The Accident

[4] The plaintiff, Brent Wormell, was a friend of Bradley Hagen, both of whom live in the Merritt area. Mr. Hagen carried on the business of building log homes. For that purpose he owned a large flatbed truck equipped with a crane mounted at the centre line of the vehicle, and immediately behind the truck's cab.

[5] Mr. Hagen was hired by Don Moses to pick up some goods from an auction yard in Surrey. Mr. Wormell was a friend of both Mr. Hagen and Mr. Moses, and Hagen asked Wormell to accompany them on the trip from Merritt to Surrey and return.

[6] At the auction yard, Mr. Hagen used the crane on the truck to load Mr. Moses' goods onto the deck. The goods included a mobile portable sawmill, two 45 gallon drums filled with fuel, two large cement blocks and some steel plates.

[7] On the return trip to Merritt, the truck stopped at the government weigh scales at Hope. The attendant advised that the load was too wide, the truck was overweight, and the fuel tanks required further documentation. The load width problem was resolved by extending the lights on the truck. Steps were taken to obtain the necessary documents. Mr. Hagen proposed to reduce the load weight by removing some of the cargo.

[8] Mr. Hagen moved the truck to an isolated area of the weigh station. He set the outriggers and levelled the truck. Mr. Wormell climbed up and walked across the portable sawmill in order to attach a chain to the crane hook and the sawmill's pick up point. The chain was secured to the crane's hook and to the sawmill.

[9] While Mr. Wormell was still on top of the sawmill, he felt it start to shift. He jumped out and away from the load, and was injured in landing on the ground.

[10] The trial judge in the tort action (*Wormell v. Hagen*, 2009 BCSC 1166), Mr. Justice Goepel, found that the load shifted when Mr. Hagen continued to operate the crane after all the slack was removed from the connecting chain, causing the sawmill to move. He held that Mr. Wormell's injuries were caused by Hagen's negligence, and that there was no contributory negligence.

B. The Insurance Issue

[11] Mr. Hagen's truck was insured under an owner's certificate with ICBC. Although Mr. Wormell had no contractual rights as against ICBC, he was permitted to seek payment of the judgment he obtained at the tort trial by virtue of s. 76(2) of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, which provides:

> (2) Even though he or she does not have a contractual relationship with the insurer, a claimant is entitled, on recovering a judgment against an insured or making a settlement with the insurer, to have the insurance money applied toward the claimant's judgment or settlement and toward any other judgments or claims against the insured who is covered by the indemnity.

[12] Mr. Wormell sued in these proceedings claiming a declaration that ICBC was liable to him under Mr. Hagen's insurance coverage, and seeking payment of the amount he was awarded as damages in his action against Mr. Hagen.

[13] ICBC denied liability on two grounds. It said the liability for the damages suffered by Mr. Wormell did not arise out of the use or operation of the insured vehicle, and was therefore not within the insurance coverage provided under s. 64 of the regulation. Secondly, ICBC argued that if coverage did apply, it was excluded by the "attached equipment" regulation quoted at para. 1 of these reasons.

[14] Madam Justice Loo held against ICBC on both issues. On this appeal ICBC has abandoned the "use or operation" argument, but contends that the judge erred in the construction of the exclusion regulation, and in particular in the meaning she attributed to the words "at a site". ICBC maintains that the place where the cargo

was being unloaded at the Hope weigh scale station is as much "a site where the attached equipment is being operated" as was the auction yard in Surrey where the cargo was initially loaded, or the location in Merritt where the cargo was eventually delivered.

[15] The learned trial judge said:

> [35] In my view,[if] 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.

[16] She held that the accident location at the government weigh scale was not a site in the way that word is ordinarily used. She interpreted such ordinary usage to mean a construction site, a building site or some other "work" site (at para. 38).

III. Analysis

A. Principles of Construction

[17] In *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33, [2010] 2 S.C.R. 245, the Supreme Court of Canada has recently restated the principles of interpretation to be applied to insurance policies:

> [21] Principles of insurance policy interpretation have been canvassed by this Court many times and I do not intend to give a comprehensive review here (see, e.g., *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59, [2009] 3 S.C.R. 605, at paras. 20-28; *Jesuit Fathers*, at paras. 27-30; *Scalera*, at paras. 67-71; *Brissette Estate v. Westbury Life Insurance Co.*, [1992] 3 S.C.R. 87, at pp. 92-93; *Consolidated-Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Co.*, [1980] 1 S.C.R. 888, at pp. 899-902). However, a brief review of the relevant principles may be a useful introduction to the interpretation of the CGL policies that follow.
>
> [22] The primary interpretive principle is that when the language of the policy is unambiguous, the court should give effect to clear language, reading the contract as a whole (*Scalera*, at para. 71).
>
> [23] Where the language of the insurance policy is ambiguous, the courts rely on general rules of contract construction (*Consolidated-Bathurst*, at pp. 900-902). For example, courts should prefer interpretations that are consistent with the reasonable expectations of the parties (*Gibbens*, at para. 26; *Scalera*, at para. 71; *Consolidated-Bathurst*, at p. 901), so long as such an

> interpretation can be supported by the text of the policy. Courts should avoid interpretations that would give rise to an unrealistic result or that would not have been in the contemplation of the parties at the time the policy was concluded (*Scalera*, at para. 71; *Consolidated-Bathurst*, at p. 901). Courts should also strive to ensure that similar insurance policies are construed consistently (*Gibbens*, at para. 27). These rules of construction are applied to resolve ambiguity. They do not operate to create ambiguity where there is none in the first place.
>
> [24] When these rules of construction fail to resolve the ambiguity, courts will construe the policy *contra proferentem* — against the insurer (*Gibbens*, at para. 25; *Scalera*, at para. 70; *Consolidated-Bathurst*, at pp. 899-901). One corollary of the *contra proferentem* rule is that coverage provisions are interpreted broadly, and exclusion clauses narrowly (*Jesuit Fathers*, at para. 28).

(See also *Derksen v. 539938 Ontario Ltd.*, 2001 SCC 72, [2001] 3 S.C.R. 398 at paras. 46-52.)

[18] Although it is in the insurance context, what is at issue in this case is a regulation. The general approach to statutory interpretation remains that stated by Elmer Driedger in his *Construction of Statutes*, 2d ed. (Toronto: Butterworths, 1983) at 87:

> 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.

See *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559 at para. 26.

[19] Also relevant is the presumption against tautology. The presumption is described by Ruth Sullivan in, *Driedger on the Construction of Statutes*, 3d ed. (Toronto: Butterworths, 1994) at 159 and 162:

> It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose.
>
> ...
>
> Although the presumption against tautology is frequently invoked, it is also easily rebutted. This can be done by coming up with a meaning or function for the words in question, to show that they are not in fact meaningless or

> superfluous. It can also be done by suggesting reasons why in these circumstances the legislature may have wished to be redundant or to include superfluous words. Repetition is not an evil when it serves an intelligible purpose.

See also *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715 at paras. 45-46, and *Hill v. William Hill (Park Lane) Ld.*, [1949] A.C. 530 (H.L.) at 546.

[20] The exclusion in s. 72 of the regulation concerning "attached equipment" must be construed according to those principles.

B. Application of the Principles in this Case

[21] To repeat, the language of this exclusion is as follows:

> (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 ...

[22] ICBC's position is that anywhere the crane is being used to load or unload cargo from the truck, or to move other loads, is "a site where the attached equipment is being operated".

[23] This proposition is at odds with the presumption against tautology. All words in a provision are to be taken to have meaning. To interpret this clause as ICBC would, that whenever the crane is being operated it is at a site, effectively strikes out or renders superfluous the words "at a site where the attached equipment is being operated".

[24] A plain reading of s. 72(2) leads to the conclusion that some losses from the operation of the attached equipment would be covered by ICBC. Otherwise, the clause "at a site where the attached equipment is being operated" is meaningless. The appellant argues in effect "everywhere" and "every time" the crane is operated it is at a site.

[25] If that were the case, then s. 72(2) would simply have read as follows:

> (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 ...

[26] To give meaning to the words "at a site where the attached equipment is being operated" requires that "site" refer to something more, such as work sites or the site of the owner's business operations. The appellant has not raised an alternative meaning or function that would not render the words "at a site" meaningless or superfluous.

[27] In accordance with the principles of interpretation for statutes and insurance policies, the clause means that the automobile insurance policy covers accidents caused by the attached equipment unless it was being used for business operations at a work site. That was no doubt the intent of the drafters, namely to exclude losses arising from business operations.

[28] On the appellant's interpretation the only time the vehicle would not be at a site, and the exclusion would not apply, would be when the truck and crane were in transit from place to place.

[29] Such an interpretation is not consistent with the reasonable expectations of the parties and if it had been intended, could have been achieved by much simpler and concise language directed to that end.

IV. Conclusion

[30] I agree with the learned trial judge that the plain meaning of the words used in s. 72 is that the words "at a site where the attached equipment is being operated" mean, a site such as a construction site, a building site, or some other "work site".

[31] I would dismiss the appeal.

"The Honourable Chief Justice Finch"

I agree:

"The Honourable Madam Justice Newbury"

I agree:

"The Honourable Mr. Justice Lowry"