

**COPY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20101201  
Docket: M073267  
Registry: Vancouver

Between:

**Camille Halsey**

Plaintiff

And:

**Susan J. Magnan and Gerald Arthur Boyce**

Defendants

Before: The Honourable Mr. Justice Willcock

On appeal from: Supreme Court of British Columbia, Order of a Master made  
July 23, 2010 (*Halsey v. Magnan*, Vancouver File No. M073267)

**Oral Reasons for Judgment**

In Chambers

Counsel for Plaintiff

J.M. Hebert

Counsel for Defendants

B.D.M. Loewen

Place and Date of Trial/Hearing:

Vancouver, B.C.  
December 1, 2010

Place and Date of Judgment:

Vancouver, B.C.  
December 1, 2010

[1] THE COURT: This is an application brought by the plaintiff, Camille Halsey, for an order extending the time within which the plaintiff might file notice of appeal from the order of Master Taylor pronounced July 23, 2010, and if such leave is granted, an order setting aside the Master's order. The plaintiff has spoken to the merits of the appeal, and the defendants have consented that matter being addressed at the same time.

**The Application to Extend the Time Within Which the Appeal may be Brought**

[2] The parties have both referred to *Best News Enterprises Corp. v. Tai Li Enterprises Ltd.*, 2003 BCSC 460, as an authority that describes the appropriate considerations on an application to extend the time within which an appeal may be brought.

[3] Those criteria are described in the written argument of the defendants as follows:

Was there a *bona fide* intention to appeal?

When was the respondent informed of the intention?

Would the respondent be unduly prejudiced by an extension?

Is there merit in the appeal?

Is it in interests of justice that an extension be granted?

[4] Having considered those criteria and the arguments of counsel, I grant an order extending the time within which the appeal from the Master's order may be brought so that it may be heard today. I do so because on the material it appears clear to me that the plaintiff herself had a *bona fide* intention to appeal. There was some correspondence to that effect to the respondent to the appeal. It was as a result of an error on the part of counsel that the notice of appeal was not filed in time. I am not of the view that there is any undue prejudice to the respondents in granting the order permitting the appeal to be heard today, and there is at least an arguable appeal that should be heard and determined. For reasons that follow, I am also of the view that it is interests of justice that an extension be granted.

**The Merits of the Appeal**

[5] The appeal is from the order of the Master that the plaintiff's application to remove the action from Rule 15 of the Fast Track Litigation Program be dismissed.

[6] The parties agree that on the appeal the onus falls upon the appellant to establish that the Master was clearly wrong in making the order from which the appeal is brought.

[7] Rule 15-1, which is the successor to the rule under which this action was initiated, which was Rule 68, provides that:

- (1) Subject to subrule (4) and unless the court otherwise orders, this rule applies to an action if
  - (a) the only claims in the action are for one or more of money, real property, a builder's lien and personal property and the total of the following amounts is \$100,000 or less, exclusive of interest and costs:
    - (i) the amount of any money claimed in the action by the plaintiff for pecuniary loss;
    - (ii) the amount of any money to be claimed in the action by the plaintiff for non-pecuniary loss;
    - (iii) the fair market value, as at the date the action is commenced, of
      - (A) all real property and all interests in real property, and
      - (B) all personal property and all interests in personal propertyclaimed in the action by the plaintiff,
  - (b) the trial of the action can be completed within 3 days,
  - (c) the parties to the action consent, or
  - (d) the court, on its own motion or on the application of any party, so orders.

[8] On an application to the court, a case may be removed from the fast track litigation.

[9] The defendant says that in order for the plaintiff to succeed on this appeal it must be established that the Master was clearly wrong in concluding that the case fell within Rule 15-1(1) as an action where the claim appeared to be of a value of

less than \$100,000 or a case that could be completed within three days. The defendant says, and I agree, that if the Master concluded that the case met either of those criteria, it was appropriate for trial under the fast track litigation.

[10] In addressing the appeal, I am somewhat handicapped by the fact that there is no transcript of the proceedings before the Master and there are no reasons for judgment on the application. I have only the affidavits before the Master and the order that was made following the application in chambers. I note that the order was made at the same time as the hearing of an application by the plaintiff for an adjournment of the case, which was then set for trial in August 2010.

[11] The applicant appellant before me has, in my view, not clearly identified any error in principle on the part of the Master. The appellant has simply restated the argument that was made before the Master, relying upon essentially the same material, in an attempt to satisfy the court that the case does not properly fall within the fast track litigation.

[12] To allow the appeal to succeed on that basis, in my view, would be to simply substitute my assessment of the case for that of the Master, and I am not prepared to do so, I am not prepared on the material before me to find that the Master was clearly wrong in determining that the case was appropriate for continuation under Rule 15-1.

[13] In my view, the Master must be taken to have been aware of the criteria and to have reviewed the materials and applied his considered judgment to the material in determining that the case should proceed under the fast track litigation.

[14] In making my order, however, I note that Rule 15-1 provides in subrule 14 that:

(14) If, as a result of the trial management conference in a fast track action, the trial management conference judge considers that the trial will likely require more than 3 days, the trial management conference judge

(a) may adjourn the trial to a date to be fixed as if the action were not subject to this rule, and

(b) is not seized of the action.

[15] In my view, when the Master made the order that the case be continued under the fast track litigation, he must be taken to have been cognizant of the rule that provided that at a trial management conference in the case the court would again consider whether the case could be completed within three days, and if the trial management conference judge is of the view that the case cannot be so completed, that it will be open to the trial management judge, notwithstanding the Master's order, to adjourn the trial to a date to be fixed as if the action were not subject to the rule.

[16] In dismissing the appeal in the case before me, I am not ruling on the question of whether or not it remains open to the plaintiff at a trial management conference to put before the trial management judge the evidence that the plaintiff intends to lead at trial and to seek a direction from the trial management judge that the case should be adjourned to a date to be fixed as if the action were not subject to the fast track litigation rule. Nor am I dealing in any way with the plaintiff's application, which was contemplated by the Master, for leave to adduce additional expert reports at trial.

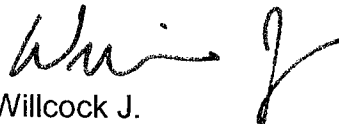
[17] I will therefore allow the application by Camille Halsey for an order extending the time within which she may file an appeal from the order of the Master, dismiss the appeal from the Master's order, and in doing so note that that dismissal is not to prejudice the right of the plaintiff to make submissions at the trial management conference with respect to whether or not the case can appropriately be completed within three days. My order, of course is not in any way to limit the ability of the trial management conference judge to review the parties' time estimates, their description of the evidence, and to conclude that the case is not one which should continue as a Rule 15-1 action. I leave it to the plaintiff to seek an appropriate date for trial management conference in the case and to seek at an appropriate early occasion an opportunity to apply for leave to adduce the additional expert reports that have been referred to in the material before me.

[18] In my view, on the appeal of the Master's order being dismissed, costs should be costs to the defendant in the cause.

[19] Are there any other matters, counsel?

[20] MR. LOEWEN: My Lord, costs to the defendant in the cause for our entire appearance here today?

[21] THE COURT: For the appeal of the Master's order and the appearance today.

  
Willcock J.