IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20101203
Docket: M112666
Registry: New Westminster

Between:

Magdalena Spiewak

Plaintiff

And:

Madeline Sept
and Judith Annne Janzen, also known as Judith Janzen

Defendants

Before: Master Caldwell

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	M. Cleary
Counsel for the Defendants:	R. Pici
Place and Date of Hearing:	New Westminster, B.C. December 3, 2010
Place and Date of Judgment:	New Westminster, B.C. December 3, 2010

[1] **THE COURT:** This is an application brought by a plaintiff to adjourn a trial which is set for next week, December 15th.

[2] There are various medical reports which have been delivered under the *Rules* by both parties. The plaintiff has currently three experts who have tendered reports, the general practitioner, Dr. McLeod; a physiatrist, Dr. Lenoble (phonetic); and a functional capacity expert, a person by the name of Shu (phonetic). The plaintiff has also seen a vascular surgeon, Dr. Salvian, sometime in November, but I have no material from him.

[3] The history is that the matter arose by way of motor vehicle accident in April of 2007.

[4] The main ongoing complaint appears to be occasional numbness in the arm. I have had the opportunity to look through Dr. McLeod's material. That numbness in the arm was present within a week of the accident. It persisted, and note is made of it approximately three weeks after the accident. There are other notes made of it months after the accident and years after the accident as persisting.

[5] It is now three-and-a-half years post-accident and only in the fall of this year has Dr. McLeod now decided that it is an ongoing problem and referral should be made. Referral has been made to Dr. Lenoble, a physiatrist, who has also provided a diagnosis and a prognosis with respect to the condition of the plaintiff. Both have speculated about the possibility of thoracic outlet and have recommended as a counsel of perfection a referral to Dr. Salvian, a vascular surgeon. Arrangements have been made I understand for the plaintiff to see -- I am not sure if it is Dr. Salvian or someone else -- in January for further investigation into the problem.

[6] It is, however, in my view fair to say that both Dr. McLeod and Dr. Lenoble have provided diagnoses of the situation of the plaintiff and have provided a prognosis with respect to the plaintiff. They have indicated that she has suffered some form of injury which is interfering with her arm, that that is a chronic problem; that it for whatever reason is clearly associated in their view with the motor vehicle

accident that she continues three-and-a-half years later to have numbness and disability in her arm which is affecting and will continue to affect her employment. The plaintiff says that it has not had an opportunity to fully investigate that and to determine when it will resolve if ever.

[7] I do not agree. The plaintiff has had the opportunity. They have had three-and-a-half years and there is nothing new in the opinion of the general practitioner from that which really arose a week or two after the accident.

[8] There may be further investigation available, but it is not fair to say that there is no diagnosis or prognosis for the plaintiff to proceed to trial on. They have such from both Dr. McLeod and Dr. Lenoble and they have the functional capacity observations of this individual Shu.

[9] I had before me yesterday an application in similar circumstances to adjourn and in that case it was granted on the basis that when plaintiff's counsel received only a few months before the trial the anticipated opinion from the general practitioner, they were greeted with a letter which said "I am unable to provide either a diagnosis or prognosis". Plaintiff's counsel said and I accept that that came as a huge surprise to them. They were expecting some form of diagnosis and prognosis.

[10] That is not the problem counsel for the plaintiff faces in this case. I have said already a couple of times they have a diagnosis and a prognosis from at least two medical practitioners, including a specialist.

[11] This is Fast Track litigation. I accept that that was foisted upon the plaintiff by counsel for the defence when they filed the defence or shortly thereafter, however, nothing has been done to indicate that this is not appropriate for Fast Track litigation or that it cannot be completed within two days.

[12] We are now operating under the new *Rules* and the concept of proportionality. On the basis of all of that, it is my considered opinion that in this case the plaintiff has not shown a basis for an adjournment. They have and are able to

place before the Court a diagnosis and a prognosis from at least two medical practitioners and a functional capacity worker.

[13] Courts must deal on occasion with situations which have not resolved. They are dealing here with something that has not resolved in a course of three-and-a-half years. It may very well be here that is deemed to be a chronic situation and is compensated on that basis. That seems to be the evidence which will be before the Court, but I am not satisfied on the material that an adjournment to get further and better material when the information has been before the plaintiff's medical practitioners for three-and-a-half years now, this is not the appropriate time to further delay matters.

[14] The application to adjourn is dismissed. Costs in the normal course will be to the defendants.

Master Caldwell