IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Houghton v. Meier,*
2023 BCSC 1245

Date: 20230712
Docket: S232502
Registry: Vancouver

Between:

Elizabeth Houghton

Plaintiff

And

Jack Meier, The Intercity Group, also known as InsureBC, Intercity Equity Corporation, Intercity Investment Corp., I C Financial Corporation, Mapleleaf Insurance Services Ltd., InsureBC Financial Services Inc., 622039 B.C. Ltd., also known as InsureBC Finance, a division of 622039 B.C. Ltd., ABC Corporation, and XYZ Venture

Defendants

Before: Master Hughes

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff, via videoconference:	A.P. Lam
Counsel for the Defendants, Jack Meier, The Intercity Group, also known as InsureBC, Intercity Equity Corporation, Intercity Investment Corp., I C Financial Corporation, InsureBC Financial Services Inc., Mapleleaf Insurance Services Ltd., and 622039 B.C. Ltd., also known as InsureBC Finance, a division of 622039 B.C. Ltd.:	H. Poulus, K.C. F. Karimi
No other appearances	

Place and Date of Hearing:	Vancouver, B.C. June 26, 2023
Place and Date of Judgment:	Vancouver, B.C. July 12, 2023

[1] **THE COURT:** I have edited these oral reasons to correct grammatical errors, add full citations, and to make the judgment more readable in written form. The substance has not changed.

[2] The plaintiff in this action, who is or will be 104 years of age this month, claims that the defendant, Jack Meier, and various companies owned and/or controlled by him are refusing to return her investments at a time when she needs the funds for her support. The defendants oppose all of the allegations, which include common law claims of breach of contract, breach of fiduciary duty, fraud, misrepresentation, breach of trust, undue influence, conversion, and unjust enrichment. There are also statutory claims pleaded under the *Power of Attorney Act*, R.S.B.C. 1996, c. 370, *Trustee Act*, R.S.B.C. 1996, c. 464, *Securities Act*, R.S.B.C. 1996, c. 418, and the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

[3] The events in issue span a period of four decades, commencing in the early 1980s, although the plaintiff says that she only discovered the claim in March 2022. The notice of civil claim was filed on March 24, 2023. The plaintiff filed a notice of fast-track action pursuant to R. 15-1 of the *Supreme Court Civil Rules*, on the same day that she filed her notice of civil claim, and this matter is currently set for a three-day trial commencing October 31, 2023.

[4] At issue before me is the defendants' application seeking either a declaration that R. 15-1 does not apply to this action, or that the court exercise its discretion to remove the case from the fast track.

Law

[5] Rule 15-1(1) sets out when the rule applies:

> **When rule applies**
>
> (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;
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> (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 property
>
> claimed in the action by the plaintiff,
>
> (b) the trial of the action can be completed within 3 days,
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> (c) the parties to the action consent, or
>
> (d) the court, on its own motion or on the application of any party, so orders.

[6] Pursuant to subsection (6), the rule ceases to apply to a fast-track action if the court on its own motion, or on the application of a party, so orders.

[7] Placing an action on the fast track has a variety of procedural consequences, summarized by Justice Gomery in *Burt v. Tamesis*, 2021 BCSC 2522 at paras. 4–5 as follows:

> [4] Fast-track litigation is addressed in Supreme Court Civil Rule 15-1 and s. 12.1(2) of the *Evidence Act*, R.S.B.C. 1996, c. 124. Placing an action on the fast track has procedural consequences, including the following:
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> a) Most interlocutory applications cannot be brought unless a case planning conference or trial management conference has been held, subrules (7), (8) and (9);
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> b) The trial must be held without a jury, subrule (10);
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> c) Examinations for discovery are limited in duration and must be completed at least 14 days before the scheduled trial date, subrules (11) and (12);
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> d) Early trial dates are available, subrule (13); and
>
> e) Costs are presumptively awarded on a fixed scale, which is limited by comparison to the usual tariff, subrule (15).

[8] The purpose of the fast-track rule is the efficient and economic resolution of straightforward cases that can be prepared for trial relatively quickly. It is not appropriate for complex cases (*Shaker v. Chow*, 2012 BCSC 617 at para. 27).

[9] In *Bagri v. Bagri*, 2015 BCSC 2132 at paras. 18 and 19, Master Scarth describes the two stages of analysis to be considered in determining whether an action is or should remain a fast-track action:

> [18] An action is not a fast-track action simply because a party has filed a notice of fast-track action. Rather, a fast-track action occurs in the circumstances set out in Rule 15-1(1): see *Musgrove v. Elliot*, 2014 BCSC 40 at para. 17, quoting Narain v. Gill, 2012 BCSC 1468 at para. 17. An action can be fast tracked as long as one or more of the criteria in Rule 15-1(1) are met: see *Hermani v. Hillard,* 2011 BCSC 1381 at paras. 10-17.
>
> [19] Even if an action qualifies as a fast-track action, pursuant to Rule 15-1(6), a court may order that the action is to proceed as a regular action. When determining whether or not an action should proceed as a fast-track action, the court has considered numerous factors, including:
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> (i) the time required for trial: *Shaker,* at para. 21;
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> (ii) whether all parties have consented or acquiesced to use fast-track procedures: *Musgrove* at paras. 19-21;
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> (iii) the risk of prejudice to a party, including prejudice with respect to costs: *Shaker* at paras. 33-34;
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> (iv) whether a party using the application of fast track for an improper purpose, for example as a back door method to strike a jury notice: see *Tong v. Lanser,* [2012] B.C.J. No. 2956 at paras. 45-46, 51 (S.C.); and *Beckett v. Tong,* [2013] B.C.J. No. 1434 at para. 15 (S.C.); and
>
> (v) the interests of justice and the purpose of Rule 15-1, which was designed to provide a more efficient and economical procedure for more straightforward or less valuable cases: *Shaker* at paras. 24-26; and *Tong* at paras. 32-33.

[10] The four criteria for fast-track application under R. 15-1(1) are disjunctive: see *Musgrove v. Elliot*, 2014 BCSC 40 at para. 18; *Varga v. Shin*, 2012 BCSC 1643 at para. 27. If, therefore, any one of (a) through (d) of R. 15-1(1) applies to the claim, then it is a fast-track action and fast-track costs ought to be awarded. (*Saopaseuth v. Phavongkham,* 2015 BCSC 45 at para. 24.)

[11] As noted by Justice Gomery in *Burt* at para. 20, “the relevant time to consider the four criteria in [R. 15-1(1)] as conditions to its application is when the action is placed on the fast track. Once an action is placed on the fast track, it remains on the fast track unless it is removed pursuant to subrule (6) …”

Is this a fast track action?

[12] The parties agree that the issue is really whether this trial can be completed within three days as provided in R. 15-1(1)(b). As for the other possible criteria, the plaintiff's claim is for a sum far in excess of the $100,000 limit set out in R. 15-1(1)(a). The defendants have not consented to fast track, and there has been no order to that effect.

[13] The plaintiff says that the trial can be completed in three days. There is somewhat of a disconnect between the plaintiff's submissions on this application, both orally and in the application response, and the pleadings. She argues that this is, in essence, a straightforward debt demand case, that there will be only two lay witnesses, being Ms. Houghton and Mr. Meier, plus two experts. She says that the plaintiff's case can be completed in one day, leaving two days for the defendants' case. Having this case on the fast track results in an earlier trial date, pursuant to R. 15-1(13), which is important for the plaintiff given her age. An additional factor militating in favour of an early trial date is that Mr. Meier's long time assistant, who may be an important witness, has terminal cancer.

[14] The defendants' time estimate for this trial is not three days, but four weeks. The direct examination of Mr. Meier alone is estimated to take two days, plus another day or more for cross-examination of the plaintiff. In addition to these key parties, the defendants propose to call a number of witnesses who provided financial and investment advice and services to the plaintiff over the course of four decades, along with an expert business valuator who will provide evidence as to the value of the investments held by the plaintiff in the four corporate defendants. A large volume of documents will likely be in evidence, including the plaintiff's banking, investment, tax records, and documents relating to her income and assets, again spanning four decades.

[15] With respect, the plaintiff's position as to the length of trial can best be described as wishful thinking, given the number of separate causes of action pleaded, the limitation defence, and the span of time over which various incidents

occurred. The plaintiff may want to complete the trial in three days, but the defendants are entitled to present their case in a manner which allows them to make a full answer and defence to the very serious allegations that have been made against them. As noted previously, those allegations include fraud, breach of trust, and undue influence.

[16] The plaintiff relies on *Bean v. Emco Corporation*, 2021 BCSC 2047, a decision of Master Elwood as he then was, as authority for the proposition that the relevant standard is whether there is a "rational possibility" that the trial can be completed in three days. At para. 19, Master Elwood said:

> [19] Before me, there was discussion of the standard against [which] the circumstances are measured to determine whether the action qualifies for or should remain as fast track litigation. Mr. Bean argued that an action will remain suitable for fast track so long as there is a "rational possibility" the trial can be completed within three days or the damages awarded will be $100,000 or less.

[17] Further on at paras. 26 and 27, he said:

> [26] In my view, a party invoking Rule 15-1 based on subrule 1(a) (the only claim is for damages of $100,000 or less) or subrule 1(b) (the trial can be completed within three days) should not be put to strict proof the action qualifies on these grounds. The purpose of the Rule as explained by Justice Joyce in *Shaker* would easily be frustrated if litigants seeking its procedural advantages are required to demonstrate from the outset of the proceeding a certain length or outcome of a trial that may be some time away. In many cases, these matters may be uncertain when a case is filed (although they may become clearer as the proceeding progresses). Responsible counsel are entitled to some deference from the court as to whether a case with which they are much more familiar qualifies for fast track litigation under Rule 15-1(1)(a) or (b).
>
> [27] For these reasons, I agree with Mr. Bean that, so long as there is a "rational possibility" the trial can be completed within three days or the damages awarded will be $100,000 or less, the action qualifies for fast track litigation under Rule 15-1(1).

[18] The defendants submit that *Bean* was wrongly decided and that based on *F.H. v. McDougall*, 2008 SCC 53, the only standard of proof in civil cases is proof on a balance of probabilities. I am not entirely persuaded that *Bean* was wrongly decided in light of *F.H.* In *F.H.*, the Supreme Court of Canada considered whether to apply a stricter standard of proof in cases where the allegations against a defendant

are particularly grave. Such cases include fraud, professional misconduct, or criminal conduct such as sexual assault against a minor, as was the subject of the *F.H.* case. It is in that context that Justice Rothstein said at para. 49:

> [49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[19] The plaintiff disagrees that says that *Bean*, relying on the decision of *Cooper v. Jordan*, 2004 BCSC 783, is good law. Although the standard of proof at a civil trial is the balance of probabilities, there are other standards applied to certain types of interlocutory applications. One example is the “plain and obvious” test for striking pleadings under R. 9-5.

[20] In any event, I do not need to resolve this particular legal argument. Regardless of whether the test is a “rational possibility” or the “balance of probabilities”, given the nature and number of the claims and the factual background put in issue by the plaintiff, I do not see how this trial could ever have been expected to be completed in three days. The plaintiff, through her counsel, must have appreciated the complexity of the case when drafting her notice of civil claim with 12 separate causes of action and material facts spanning four decades.

[21] Accordingly, I have determined that none of the criteria in R. 15-1(1) applied to this case at the time that the notice of fast track was filed and that this case was never a fast-track case. This action is therefore removed from the fast track.

Removal from Fast Track

[22] In the event that I am wrong on that point and the action was properly a fast-track action when the notice was filed, I have also determined that I should exercise my discretion to remove this action from the fast track for the following reasons.

[23] As quoted earlier, Master Scarth in *Bagri*, at para. 19, canvassed a number of factors to be considered when determining whether an action should proceed as a fast-track action.

[24] The first is the time required for trial, which I have already discussed. Given the number of witnesses and the number of causes of action, I am satisfied that three days is woefully inadequate.

[25] The second factor in *Bagri* is whether all parties have consented or acquiesced to use fast-track procedures. In the case at bar, the defendants have objected from the outset.

[26] Third is the risk of prejudice to a party, including prejudice with respect to costs. There is prejudice to the defendants in having to prepare for a trial that is both legally and factually complex, in a compressed timeframe, with limited discovery and limited potential cost recovery. The limit on costs is a factor that cuts both ways. However, as Justice Joyce said in *Shaker* (at para. 34), it is the plaintiff who institutes the action. She has made allegations that will require a large number of witnesses to testify at trial. She has advanced claims on a number of legal bases, which adds to the complexity of the process and the length of trial. The defendants must meet the case that is advanced.

[27] There is significant prejudice to the defendants in trying to mount a full answer and defence within the restrictions imposed by R. 15-1, particularly when that answer and defence involves locating witnesses and documents relating to events dating back to the 1980s. Some of those may require extraordinary efforts to locate, if they can be located at all, and that search may well take time. As in *Shaker*, the prejudice to the defendants of leaving the action under R. 15-1 is substantially greater than the prejudice to the plaintiff of removing it from the rule.

[28] The fourth factor is whether a party is using the application of fast track for an improper purpose, such as a back door to strike a jury notice. There is no such suggestion here. The plaintiff is candid in that the fast track is being used to secure

an earlier trial date, which is important given the plaintiff's age and circumstances. I do not consider this an improper purpose.

[29] Finally, the last factor considered in *Bagri* and other cases is the interests of justice and the purpose of R. 15-1, which was designed to provide a more efficient and economical procedure for more straightforward or less valuable cases. This case is neither straightforward, nor less valuable, with $1 million or more at issue. Quoting *Shaker* again at paragraph 35:

> [35] In my view, when one considers the number of issues involved, the number of witnesses who will have to be called and the amount of time that will have to be spent to determine the material facts, this is simply not the kind of case that was intended to be prosecuted under the Fast Track Litigation.

[30] As I indicated previously, if this ever was a fast-track case, I would exercise my discretion to remove the case from the fast track.

Early Trial Date

[31] Despite removing this case from the fast track, the plaintiff's age and the declining health of a key witness are reasons militating in favour of an early trial date. It is not possible to add time to the current trial dates, and that trial must necessarily be adjourned in order to accommodate a longer time estimate.

[32] I am not convinced that four weeks as proposed by the defendants are required. Their time estimate provided in submissions totalling 13 days for the defendants' case is generous to say the least. A number of pre-trial steps are proposed, which may well narrow the issues and shorten the time estimate. Appointment of a case management judge was also suggested at the case planning conference held on June 30, 2023. In my view, with appropriate diligence on the part of counsel, it should be possible to complete this trial in two weeks, certainly not more than three weeks. In saying that, I recognize that cases evolve over time, as discovery and admissions are obtained, and sometimes discovery leads to more complication rather than less, which may affect the time estimate.

[33] I have spoken with Supreme Court Scheduling, and I have been advised that a two- to three-week trial can be accommodated in January or February of 2024. I am directing that an early trial date be scheduled in this matter, for 15 days, commencing not later than February 2024.

[Discussion regarding scheduling.]

[34] THE COURT: I am directing that counsel are to contact Supreme Court Scheduling within the next 24 hours, to reserve a mutually available trial date within the timeframe that I have indicated, and the plaintiff is to file a new notice of trial.

[35] As the defendants have been successful on this application, they are entitled to their costs.

[Further discussion regarding scheduling.]

[36] THE COURT: If counsel are unable to agree on a date, that should be discussed at the case planning conference, but my order this morning is that this matter is to be scheduled for an early trial date, 15 days commencing not later than February 2024. My expectation is that counsel are to agree on a date. If counsel are unable to agree on a date because of the unavailability of defendants' counsel, that is a discussion that you can have at the case planning conference.

[37] In my view, the importance of getting this matter moving at an early time because of the plaintiff's age may override the defendants' right to choice of counsel. I am not making that decision at this point, but that is my view given what I know of the circumstances.

“Master Hughes”