IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bahinipaty v. Vancouver Coastal Health Authority*, 2024 BCSC 1530

Date: 20240615
Docket: S236110
Registry: Vancouver

Between:

Lingaraj Bahinipaty

Plaintiff

And

Vancouver Coastal Health Authority operating as Vancouver General Hospital and John Doe and Jane Doe 1-50

Defendants

Before: The Honourable Justice Kent

Oral Reasons for Judgment

In Chambers

Appearing in person:	L. Bahinipaty
Counsel for the Defendants:	K. Rollins E. Katz, Articled Student
Place and Date of Trial/Hearing:	Vancouver, B.C. July 15, 2024
Place and Date of Judgment:	Vancouver, B.C. July 15, 2024

[1] **THE COURT:** As this application first proceeded, I was initially somewhat sympathetic to the position of the plaintiff, Mr. Bahinipaty.

[2] The circumstances he described to me were that the judgment he now seeks to set aside, granted by Justice Kirchner on April 10, 2024, was made in his absence because he had undergone surgery a week or so earlier and he was not sufficiently recovered to attend. He apparently sent two documents by mail to the office of the law firm acting for Vancouver Coastal Health Authority, albeit without a cover letter.

[3] The law firm says the correspondence, such as it was, was actually received by it on the morning of the application but was not provided to the lawyers involved before their attendance in court.

[4] According to Mr. Bahinipaty, he also left two voicemail messages for one of the lawyers acting on the file the night before the application occurred. The law firm produced a recording of the voicemail which is largely unintelligible. They say they understood he appeared to have been requesting an adjournment and was stating that he would be unable to attend the following day.

[5] The matter proceeded before Justice Kirchner who was satisfied that judgment was appropriate.

[6] The application was for summary judgment or a summary trial. It had been served on Mr. Bahinipaty in December, 2023. He filed no response and so there was in front of Justice Kirchner on April 10 no evidence in opposition to the application.

[7] Mr. Bahinipaty says he was ill throughout the time following service of the application and has been unable to craft any sort of response or responsive affidavit addressing the merits of the matter. He also points out that, having undergone a craniotomy back in 2016, he confronts cognitive challenges that make it all the more difficult for a self-represented litigant to firstly, prosecute a claim against a health authority for medical malpractice, and secondly, put together materials and evidence sufficient to withstand any sort of summary trial application.

[8] It is apparent that Justice Kirchner was aware of most of the circumstances, but he was not aware of the recent surgery that had been performed upon Mr. Bahinipaty which, at least according to Mr. Bahinipaty, rendered him unable to attend the application.

[9] Mr. Bahinipaty now confronts the test that is applicable under Rule 22-1 of the Supreme Court Civil Rules. In particular, Rules 22-1(2) and (3) address the consequences of a failure of a party to attend a court application. Rule 22-1(2) permits the court, upon evidence of actual service having occured, to proceed with the application in the absence of the other litigant if it considers it appropriate to do so. That is precisely what happened in this particular case and I have no doubt that Justice Kirchner was aware that, (a), this claim had been litigated before and had already been dismissed, thereby giving rise to the defence of *res judicata* or even abuse of process; and (b), no steps had been taken to file any sort of opposition to the summary trial application. It is doubtless for these reasons that he decided to proceed, essentially because he thought the claim lacked merit.

[10] Unfortunately for Mr. Bahinipaty, Rule 22-1(3), dealing with the possibility of reconsideration of Justice Kirchner's decision, provides that such a process must not occur unless the court is satisfied that the person failing to attend was not guilty of any wilful delay or default. That subsection has been considered by this court in cases such as *CMHC v. Bhalla*, 2008 BCSC 1352, where it is pointed out that the test to be applied is very similar to the test used to set aside default judgments in this court. Part of the test is that the applicant must show there is a meritorious defence to the claim, or at least a defence worthy of investigation, and it is incumbent upon the applicant seeking the reconsideration to adduce evidence addressing any such meritorious defence. In this case, the reverse would be true, i.e. Mr. Bahinipaty has to adduce evidence substantiating at least some arguable merit to his second claim against the hospital and some arguable merit that the prosecution of the second action was neither *res judicata* nor an abuse of process through impermissible re-litigation.

[11] Mr. Bahinipaty has produced to the court some evidence that he underwent the excision of a cyst approximately a week before the hearing, and this might provide some basis for the court to conclude that his non-appearance on April 10 did not amount to a wilful default. However, as I say, the test also requires properly admissible evidence demonstrating some arguable merit in his claim. And it is here where his application for a reconsideration must fail.

[12] I am sympathetic to the cognitive challenges this particular plaintiff may confront as a result of his craniotomy. However, there is a point where the pursuit of unmeritorious litigation has to be brought to an end even if there is a sympathetic plaintiff and even if he genuinely believes that he has a proper cause of action.

[13] Justice Kirchner in his judgment seems to have gone some extra distance to explain to the plaintiff why his claim has no merit and why the summary judgment was being granted. He particularly addressed the very issue that Mr. Bahinipaty is attempting to articulate to this court as the basis for distinguishing lawsuit number 2 from lawsuit number 1. He concluded that the distinction had no merit from a legal perspective when considering the issues of abuse of process through re-litigation and *res judicata*. I agree with the conclusion.

[14] I should add here that while this particular plaintiff may have some challenges arising out of his brain surgery back in 2017, he is in fact legally trained as a lawyer and was at some point in time, and perhaps even still is, licensed to practice in the USA. He is not the usual self-represented litigant who comes to this court with no legal education, resources or understanding of the law or the procedure before the court.

[15] I do not necessarily fault Mr. Bahinipaty for not being an expert in British Columbia litigation procedure, although he is now a veteran of not one but two different lawsuits in this system. Nevertheless, I am compelled at the end of the day to conclude that the action he seeks to pursue lacks merit and it would be abusive to allow it to continue against the same defendant who has had his lawsuits against it dismissed not once but twice already.

[16] In the result, and for all of these reasons, I am obliged to dismiss the application for an order for reconsideration and setting aside the judgment of Mr. Justice Kirchner granted April 10, 2024.

(SUBMISSIONS RE COSTS)

THE COURT: What about costs?

CNSL K. ROLLINS: With respect to the issue of costs, the Health Authority seeks an order of $500 for attending today's application as well as the original May 7th application where no costs were awarded -- or dealt with, excuse me, at that application.

THE COURT: Are you seeking costs of $500 for each or are you seeking --

CNSL K. ROLLINS: No, total.

THE COURT: -- just a global amount of $500?

CNSL K. ROLLINS: A global amount of $500.

THE COURT: That's the cheapest cost award I've ever heard of. Mr. Bahinipaty, what do you say about costs?

L. BAHINIPATY: It's up to you, Your Honour. You are the decider.

THE COURT: All right, thank you.

[17] THE COURT: Costs are awarded fixed in the amount of $500.

"Kent J."