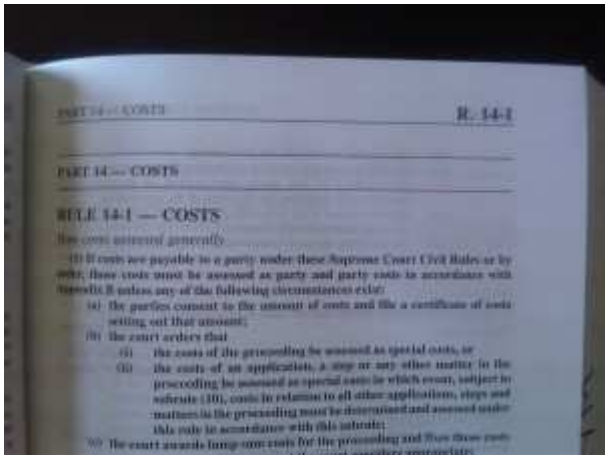
The Price Of Passing The Buck: Dismissed Third Party Claims And Costs Consequences

November 12th, 2010



PART 14 — COSTS R. 14-1

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RULE 14-1 — COSTS

As previously discussed, when Plaintiffs lose a lawsuit in the BC Supreme Court the Defendants are typically each entitled to recover their '*costs*'. For this reason Plaintiffs need to take care in selecting the Defendants to their lawsuit. The same principle holds true for Defendants who don't accept blame for their actions and unsuccessfully try to pass the buck by dragging a '*Third Party*' into a lawsuit. Reasons for judgement were released this week by the BC Supreme Court, Vernon Registry, demonstrating this general principle.

In this week's case (Vedan v. Stevens) the Plaintiff sued the Defendant for personal injuries. The Defendant denied fault and blamed the Plaintiff. The Defendant also filed a "Third Party" claim against two individuals arguing they may be at fault and brought them into the lawsuit. Ultimately Madam Justice Beames found that both the Plaintiff and the Defendant were at fault for the Plaintiff's injuries but that the Third Parties were faultless.

The Third Party brought a motion seeking an order requiring the Defendants to pay their costs. The Defendant argued that these should be the Plaintiff's responsibility. Madam Justice Beames disagreed and ordered that the Defendant pay the Third Party's costs. In reaching this typical result the Court provided the following reasons:

[7] With respect to who ought to pay the third parties' costs, the general rule is that a defendant who has unsuccessfully brought third party proceedings should be responsible for the third parties' costs: Wilson v. INA Insurance Co. of Canada, [1998] B.C.J. No. 2174 (B.C.C.A.) at para. 37; Milina v. Bartsch, [1985] B.C.J. No. 2789 (S.C.) at para. 4.

[8] As McLachlin J. (as she then was) said in Milina:

[5] There may be situations where, on the peculiar facts of the case, fairness requires that an unsuccessful plaintiff bear a successful third party's costs. Courts have held that such an order may be appropriate where one or more of the following situations was present:

1. Where the main issue litigated was between the plaintiff and the third party…

2. Where the third party was brought or kept in the matter by reason of the act or neglect of the plaintiff…

3. Where the case involves a string of contracts in substantially the same terms for the sale of goods…

4. Where the third party proceedings follow naturally and inevitably upon the institution of plaintiff's action, in the sense that the defendant had no real alternative but to join the third party…

[9] The defendant argues that this situation is very similar to that of Norman (Guardian ad litem of) v. McMillan, 2004 BCSC 384 in which the court found that the defendant fell within the exceptions in paragraphs 2 and 4 of Milina. In my view, the decision in Norman is distinguishable. There, the defendant was found completely blameless for the accident, which had initially been commenced when the plaintiff's mother was his guardian ad litem. It had been her decision to commence the unsuccessful action against the defendant in the first instance. Certain steps that were taken in the action led the trial judge to conclude that defence counsel had a proper basis for alleging negligence on the part of the third party and the trial judge accepted that the third party, or her counsel, had employed tactics amounting to an attempt to make an end run around the defendant.

[10] I am not satisfied that there is anything in this case which takes it out of the general rule. Consequently, the defendant will bear the third parties' costs as assessed.