

Personal Injury Claims, Settlement Agreements And Repudiation

January 13th, 2009

When offers are made for the settlement of ICBC or other BC personal injury claims the parties involved must take care not to 'demonstrate an unwillingness to be bound by the agreement' otherwise they risk the settlement agreement being repudiated. [Reasons for judgement were released today illustrating this principle.](#)

A bit of background is necessary before getting into the facts of this case. Typically in BC Personal Injury Cases from car accidents ICBC insures both the Plaintiff and the Defendant. This is so because ICBC is a statutory insurer with certain monopoly privileges so they ensure almost all vehicles in British Columbia. In some circumstances, of course, other insurance companies are involved (for example when the offending party is an out of Province motorist).

In today's case the Plaintiff was insured with ICBC for 'no-fault benefits' (also known as Part 7 benefits) and the operator of the offending vehicle was insured with Progressive. The Plaintiff ran into problems with both companies and started a lawsuit against ICBC for no-fault benefits which were allegedly outstanding and also made a tort claim against the motorist insured with Progressive.

The tort case apparently settled for "79,605.50 plus costs of no more than \$19,767.13". The parties then apparently settled the costs amount with Defence Counsel writing to Plaintiff's counsel stating

I have instructions to accept your offer to settle the costs. The adjuster will be forwarding to your office a cheque in the sum of \$97,936.70 Cdn to cover the settlement including costs. The funds will be sent on your undertaking not to release any part of them to the plaintiff until the Release and Consent Dismissal Order that I plan to fax to you today are fully executed, and on your further undertaking to return the executed documents to me as soon as reasonably possible

A few days later counsel for the Plaintiff responded stating that the Plaintiff "was not prepared to execute the release because it referred to a "Part VII action". It stated that the defendant was released from all claims:"

The parties tried to resolve their differences but could not. The Plaintiff brought an application for an order to enforce the settlement agreement that was allegedly reached. Mr. Justice Williamson refused to do so finding that the Plaintiff had repudiated any settlement agreement that may have been reached. The courts key reasoning is set out at paragraphs 14 - 20 of the judgement which I reproduce below:

[14] The plaintiff relies upon **Cellular Rental Systems Inc. v. Bell Mobility Cellular Inc.**, [1995] O.J. No. 721 (Ct. J. (Gen. Div.)). At para. 24 of that decision, Chapnik J. stated:

It is well established that settlement implies a promise to furnish a release unless there is agreement to the contrary. On the other hand, no party is bound to execute a complex or unusual form of release: although implicit in the settlement, the terms of the release must reflect the agreement reached by the parties. This principle accords with commonsense and normal business practice.

[15] And further, at para. 36, the learned judge stated:

The onus is on the party claiming repudiation to show that the disagreement consequent upon the settlement constitutes a repudiation of it. Subsequent disputes should be resolved by application to the court or by commonsense within the framework of the settlement to which the parties have agreed and in accordance with the common practices which prevail amongst members of the bar. It will be rare for conduct subsequent to a settlement agreement to amount to repudiation.

[16] In so stating, Chapnik J. referred to a decision of McEachern C.J.B.C. in **Fieguth v. Acklands Ltd.** (1989), 59 D.L.R. (4th) 114, 37 B.C.L.R. (2d) 62 (C.A.). In **Fieguth**, the Chief Justice noted that once there has been an agreement, one party can tender whatever documents thought appropriate to complete the agreement without actually rescinding the settlement. At page 121, the Chief Justice stated:

If such documents are accepted and executed and returned then the contract, which has been executory, becomes executed. If the documents are not accepted then there must be further discussion but neither is released or discharged unless the other party has demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied in these circumstances.

[17] Here, the release documents were not accepted. There was further discussion. The question is, in the words of McEachern C.J.B.C. as stated above, has one party demonstrated an unwillingness to be bound by the agreement by insisting upon terms or conditions which have not been agreed upon or are not reasonably implied?

[18] I conclude that is the circumstance here. The parties appear to have agreed to settle the matter for \$97,936.70 Cdn. However, when the necessary documents, in particular the release, was forwarded to counsel for the plaintiff, the plaintiff declined to execute the release unless something was done about the plaintiff's right to continue with the other action against ICBC.

[19] I have referred to the December 1, 2008, email from counsel for the plaintiff to counsel for the defendant. In my view, the wording of it is clear. It states "my client will sign a full release once she has been compensated for Part 7's in the sum of \$7,000". In other words, the plaintiff took the position that she would not complete the November 19 agreement unless she was paid an additional \$7,000 or, presumably, the defendant agreed that she could continue her action against ICBC. I conclude that to take such a position is to repudiate the agreement allegedly reached on November 19.

[20] In the circumstances, the plaintiff's application is dismissed. The defendant will have its costs.