

File No: 09-24982
Registry: Vancouver

In the Provincial Court of British Columbia
(CIVIL DIVISION)

BETWEEN:

OLGA RADISSON

CLAIMANT

AND:

ANY REHTLANE B.Sc. D.M.D.

DEFENDANT

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE EHRCKE**

COPY

Counsel for the Defendant:

J. Brun

Appearing on her own behalf:

Olga Radisson

Place of Hearing:

Vancouver, B.C.

Date of Judgment:

September 28, 2010

[1] THE COURT: This is an application by the defendant dentist to dismiss a claim on the basis that a professional or expert report was not filed in accordance with the order at a trial conference on May 14th of this year. At that conference Her Honour Judge Gallagher ordered that the claimant file an expert report within two months, which would have been by July 14th, 2010. There is a cross-application to extend the time allowed to file an expert report.

[2] I will go through the chronology of this case at the outset. The notice of claim was filed on March 12th, 2009. The reply was filed on March 31st, 2009. Is there, counsel, a corporation as well as the dentist personally?

[3] MS. BRUN: Your Honour, I believe that there is, Dr. A.L. Rehtlane Incorporated. That's sort of how we've been citing the style of cause.

[4] THE COURT: The reply is filed only on behalf of the dentist personally.

[5] MS. BRUN: And I believe -- this just came to my attention today. I believe that that is the confusion with respect to that default order. Looking in here, I think what happened was the first notice of claim, we didn't receive -- you've mentioned an amended notice of claim in there?

[6] THE COURT: Yes.

[7] MS. BRUN: We didn't receive that --

[8] THE COURT: Oh, I see.

[9] MS. BRUN: -- and I think that's what happened.

[10] THE COURT: So you never were served with the amended notice of claim?

[11] MS. BRUN: No, Your Honour.

[12] THE COURT: Thank you. The original notice of claim was filed March 12th, 2009. In it, Anu Rehtlane, the dentist, was sued, and a reply was filed on her behalf on March 31st, 2009. The claimant amended the notice of claim on February 9th, 2009, but apparently that was not served. In the amended notice of claim she adds the dentist's corporation, and I am going -- because the amended notice of claim was never served I am going to deem the reply sufficient for both.

[13] On December 9th, 2009 the claimant filed an application to extend the time to file a certificate of readiness. That application was never served or heard. The claimant also applied for a default order. That application was filed on December 10th, 2009. It was never heard.

[14] On December 9th and I believe also on December 11th, the claimant filed a certificate of readiness. The two filings are identical. They specify the amount claimed, but there are no expert reports attached. No medical or dental records of any kind are attached.

[15] On May 14th, 2010 the claimant filed a report by Dr. Racich, and there was also a report filed by Eli Whitney, a dentist. I believe that report is dated May 22nd, 2007. Neither of these reports give an opinion on the work done for the claimant by the defendant dentist or speak to the standard of care required. I notice they were filed on the same day as the trial conference. In any event, as I noted earlier, on May 14th, 2010 there was a trial conference and Her Honour Judge Gallagher ordered that an expert report be filed within two months. She also recommended that the claimant get legal advice on this matter.

[16] Judge Gallagher also requested that counsel for the defendant write the claimant a letter confirming the time limit for filing an expert report and confirming some of the matters that were apparently discussed at the trial conference, including the requirements for proving medical or dental malpractice, and that was done. There was a letter sent to the claimant by counsel for the defendant on April

6th, 2009.

[17] MS. BRUN: Your Honour, just to clarify --

[18] THE COURT: Oh, sorry, that's the wrong letter. That's an earlier letter. Okay. The letter in question is dated May 14th, 2010, and the letter states that in a dental malpractice claim such as this the claimant is required to provide a medical legal report in order for the claim to have any chance of success. It says the report must be written by a qualified expert and must set out the following: (1) the standard of care to be applied under all the circumstances; (2) whether the standard of care was breached in this case; and (3) whether the alleged damages resulted from the breach.

[19] What occurred was the claimant apparently contacted a number of dentists and could not find anyone who would write the requisite report. She finally -- just a moment. Madam Clerk, do you have the report that was marked? Thank you.

[20] She finally found a dental expert named Dr. John Nasedkin, who specializes apparently in advising dentists in special cases and also, I believe, from what I was told about his website, in medical legal reports. In any event, the claimant did obtain a report from Dr. John Nasedkin, and I do not know if I am pronouncing that correctly, but it is spelled

N-a-s-e-d-k-i-n, and I have had the report marked Exhibit 1 in this proceeding.

[21] Had this report spoken to the elements of proof required in this kind of a claim and provided any support or for validation of the claimant's claim, I would have extended the period allowed to file the report and had the matter set for trial. The difficulty is that this report does not support the claimant's claim, and in fact states that much of the problem the claimant is having with her teeth, and I take it also her jaw, is emotional.

[22] I will not review the report in detail. I have had it marked as an exhibit. It is a fairly extensive report. It does not specify in detail the work that was done by the defendant. It does not specify the standard of care and it does not offer an opinion that the work done by the defendant was in any way below the standard of care. It speaks more to the problems faced by the claimant, her preoccupation with these matters and her attempt to collect more and more information and essentially operate as her own dental advisor.

[23] What did you wish to say? You have your hand up.

[24] OLGA RADISSON: You don't get to say -- do your own research before you go in to see the dentist; you can ask a

thousand questions? Well, that was my first mistake. I shouldn't have done any research, I shouldn't have asked a bunch of questions, but he does say not all of her work is standard. He said most of it is standard, not all of it, but he doesn't go into specifics of what he's talking about, that all I can think of is the whitening was given to me out of treatment sequence and so was the night guard.

[25] THE COURT: All right. In summary, I am not satisfied that this report would be sufficient to establish the claimant's claim against the defendant. I find that the claim has virtually no chance of success. I find that if the matter went ahead it would be appropriate for the defendant to ask for a penalty and costs because the claimant would have proceeded with virtually no chance of success and with a report that does not support her claim.

[26] I am going to dismiss the claim on the basis that this claim has virtually no chance of success. I am not going to dismiss it on the basis of non-compliance with Her Honour Judge Gallagher's order because the claimant did attempt to comply and she has produced a report, albeit late, and she did have difficulties finding a dentist who would even speak to the matter at all.

[27] But there is simply no chance of success here, and it

would not be fair to either party to have this matter continue. The claimant would risk substantial penalties and costs and the defendant would continue to incur legal and other costs, so the claim is dismissed.

(REASONS FOR JUDGMENT CONCLUDED)