

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Varner v. Vancouver (City)***,  
2009 BCSC 371

Date: 20090223  
Docket: S032834  
Registry: Vancouver

Between:

**Gary Varner**

Plaintiff

And:

**“John Doe” and “Richard Roe” and the City of Vancouver**

Defendants

Before: The Honourable Mr. Justice Ehrcke

## **Oral Reasons for Judgment**

February 23, 2009

Counsel for Plaintiff

P. Kent-Snowsell

Counsel for Defendants

K. F. W. Liang

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** On May 26, 2003, the plaintiff with the assistance of his counsel, Mr. Kent-Snowsell, filed a writ of summons and statement of claim seeking damages against the defendants for alleged false arrest and assault arising out of an incident in which he was bitten by a police dog on July 31, 2002. The City of Vancouver filed a statement of defence on August 28, 2003, and an amended statement of defence on October 27, 2008. On behalf of his client, Mr. Kent-Snowsell filed a trial certificate on February 5, 2009, for a seven-day trial commencing today, February 23, 2009.

[2] Mr. Kent-Snowsell now applies on this first day set for trial for an order under Rule 16(4) of the **Rules of Court** permitting him to withdraw as counsel for the plaintiff. The application is opposed by counsel for the defendant, City of Vancouver. Rule 16(4) provides:

16(4) Where a solicitor who has acted for a party in a proceeding has ceased to act and the party has not given a notice of change in accordance with subrule (1), the court, on the application of the solicitor, may declare that the solicitor has ceased to be the solicitor acting for the party and, where applicable,

- (a) that the solicitor's office is not the address for delivery of the party and give directions as to a new address for delivery, and
- (b) that the solicitor's fax number for delivery may no longer be used for delivery and give directions for a new fax number for delivery.

[3] Mr. Kent-Snowsell previously attempted to withdraw using the procedure set out in Rule 16(5) which provides:

16(5) As an alternative to proceeding under subrule (4), a solicitor who has ceased to act for a party who has not given a notice of change

under subrule (1) may serve on that party a notice of intention to withdraw in Form 10A and deliver a copy of it to all other parties of record.

[4] Mr. Kent-Snowsell served a notice of intention to withdraw in Form 10A along with a covering letter. He has filed an affidavit of service showing personal service on the plaintiff on February 13, 2009. The covering letter to the plaintiff states:

Despite our repeated attempts to meet with you to prepare your case and obtain instructions, you continually cancel our meetings. This case is set for an 8 day trial, which starts in 10 days. I therefore enclose a Notice of Intent to Withdraw as Solicitor.

You will have to obtain other counsel, or attend at the start of your trial on February 23, 2009 to get an adjournment. We cannot possible [*sic*] prepare your case for trial without your input and co-operation.

[5] Counsel for the defendant City of Vancouver filed a notice of objection to withdrawal of solicitor on February 17, 2009. The plaintiff himself has not filed such an objection. Because of the City of Vancouver's objection, Mr. Kent-Snowsell now applies to withdraw under Rule 16(4) pursuant to the provisions of Rule 16(10) which provide:

16(10) If, within the time referred to in subrule (7), an objection has been filed in the registry, the solicitor may apply on notice to each party who has filed an objection for an order under subrule (4).

[6] The City of Vancouver objects to the withdrawal of counsel because it does not want an adjournment of the trial. It wants to defend this action and has come to court today ready to proceed. It submits that it would be prejudiced by any adjournment not only because it has done all the preparation for the currently scheduled trial, but also because it has an essential witness who is able to testify

this week but who, because of health reasons, may not be able to testify at another time if the trial is adjourned.

[7] I am satisfied that Mr. Kent-Snowsell's application to withdraw should be granted. I accept his representations to me today that he would be placed in an impossible position if the trial were to proceed today and he was expected to perform the duties of counsel for the plaintiff in light of the fact that his client has not in recent weeks cooperated in meeting with him and is not here in court today.

[8] I am satisfied that the plaintiff was effectively put on notice about the consequences of a withdrawal of solicitor by the letter served upon him on February 13, 2009. By reason of the personal service of that letter, the plaintiff must be taken to know that the trial would be starting today and that if he wanted to obtain an adjournment, he would either have to retain other counsel or would have to appear himself in court to request an adjournment. He has done neither. He has not done anything to indicate any objection he might have to the withdrawal of Mr. Kent-Snowsell as counsel, and he has not done anything to indicate any desire to have this trial adjourned.

[9] Accordingly, pursuant to Rule 16(4), I declare that Mr. Kent-Snowsell has ceased to be the solicitor acting for the plaintiff and his office and fax number are no longer the address for delivery of the plaintiff. The plaintiff's new address for delivery is 406 - 540 Helmcken Street, Vancouver, British Columbia, V6K 2E8.

[10] Pursuant to Rule 16(12), the order for withdrawal becomes effective when it is delivered on a party. That rule states:

16(12) An applicant who obtains an order under subrule (2) or (4) shall deliver a copy of the order to all parties of record and, until it is delivered, a party is entitled to proceed on the basis that there has been no change of solicitor or address for delivery.

[11] I am prepared to grant a short adjournment of a day or two in order to permit Mr. Kent-Snowsell to enter the order and deliver it to the plaintiff.

[12] I will hear submissions from counsel as to how we proceed from here and how long the trial should be adjourned.

(SUBMISSIONS BY COUNSEL)

[13] The matter is adjourned to Wednesday, February 25, 2009, at 10:00 o'clock, and the draft order shall include as item number 3 that the trial of this matter shall proceed on Wednesday, February 25, 2009, at 10:00 a.m.

The Honourable Mr. Justice Ehrcke