

Citation: Nguyen v. I.C.B.C.
2003 BCSC 84

Date: 20030116
Docket: S024789
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SON NHU NGUYEN

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE BENNETT

Mr. Son Nhu Nguyen

Appeared in person

Counsel for the I.C.B.C.

Frank Potts
& Brad Martyniuk

Date and Place of Hearing:

January 6, 2003
Vancouver, BC

[1] This is a related application to that made in *I.C.B.C. v. Hoang et al.* #S004632. Reference may be made to the Reasons for Judgment which are released simultaneously with these Reasons.

[2] In action #S004632, I upheld Master Baker's decision to strike the defendant Mr. Nguyen's counterclaim on the basis that it discloses no cause of action.

[3] The applicant/defendant, I.C.B.C., now moves to strike the new statement of claim filed by Mr. Nguyen, pursuant to Rule 19(24)(a) and (d), on the basis that it discloses no reasonable cause of action and is an abuse of process.

[4] The new statement of claim filed by Mr. Nguyen is worded in almost identical language as the counterclaim in action #S004632. In other words, in spite of having his counterclaim struck out, Mr. Nguyen made no effort to correct its deficiencies when he filed his statement of claim.

[5] The applicant/defendant, I.C.B.C., submitted that the matter was *res judicata*, relying on the decision of *Chrisgian v. BC Rail*, [1992] B.C.J. No. 1567. In that case, the issues had already been litigated to a conclusion. That is not the situation in this case. Here, the issues have not been litigated.

[6] However, as mentioned, Mr. Nguyen has filed a statement of claim in almost the exact language as the counterclaim that was struck out. Therefore, for the reasons stated in *I.C.B.C. v. Hoang et al.*, the statement of claim is struck out as it is "plain and obvious" that it does not set out a reasonable cause of action.

[7] Further, I find that filing a fresh statement of claim in the same language as the earlier counterclaim amounts to an abuse of process, as it continually requires the other litigant, here I.C.B.C., to respond. It is "plain and obvious" that permitting the filing of documents which

have already been struck is an abuse of process.

[8] This ruling does not prevent the plaintiff from amending his statement of claim, if he properly sets out his claim.

[9] The application is allowed. Costs will be in the cause.

"E.A. Bennett, J."
The Honourable Madam Justice E.A. Bennett