

1 plaintiff was attempting to negotiate an "S" curve that leads
2 from 2nd Avenue on to 3rd Avenue in the vicinity of Vancouver
3 Street here in the City of Prince George.
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6 An agreed statement of fact was filed in which the
7 defendant admitted in part that the plaintiff was at the time
8 of the accident insured by the defendant for, inter alia,
9 damage caused by collision. The only issues I am required to
10 consider therefore are whether or not the defendant has
11 established, on a balance of probabilities, a breach by the
12 plaintiff of a regulation of the defendant that would bar the
13 plaintiff from recovery of his loss.
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16 The defendant alleges the plaintiff was in breach of
17 the defendant's regulations governing the policy in four
18 respects.
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20 The breaches set up as defences are that the plaintiff:
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- 22 (1) Was operating his automobile while he was under the
- 23 influence of alcohol to such an extent that he was
- 24 incapable of proper control of the vehicle.
- 25 (2) Was operating his automobile in a race or speed test
- 26 when the accident occurred.
- 27 (3) Failed to report the accident to the police "as soon as
- 28 possible" as required by s. 61 of the Motor Vehicle Act,
- 29 and
- 30 (4) Failed to remain at the scene of the accident or
- 31 immediately return thereto as required by s. 62 of the
- 32 Motor Vehicle Act.

33 There was evidence that over a period of some five
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1 hours prior to the accident, the plaintiff had consumed
2 seven or eight drinks of a mixture of whisky and Seven-Up.
3 According to the plaintiff's evidence these would seem to
4 have been quite light drinks so far as the proportion of
5 alcohol in them was concerned. He testified that while he
6 could feel some effect from the alcohol, he did not consider
7 his driving ability to have been affected by what he had been
8 drinking.
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10 The accident itself might tend to place the plaintiff's
11 assessment of his condition in doubt. It occurred, he said,
12 when he was attempting to overtake another automobile. He
13 said he had been driving in the second lane from the right
14 side of 2nd Avenue (which is a one way street in the area
15 where the accident occurred). He was immediately behind the
16 automobile he wished to pass. He commenced to accelerate
17 to pass the vehicle ahead of him and at the same time moved
18 his automobile into the right hand lane, just before
19 reaching the point where 2nd Avenue curves to the left
20 before it jogs to the right again to merge into 3rd Avenue.
21 Suddenly the plaintiff said he noticed that the lane he was
22 in led not around the curve, but into the entrance to the
23 parking lot at the rear of the Provincial Government Building
24 that is situated on the north-west corner of 3rd Avenue where
25 the 2nd Avenue diversion joins 3rd Avenue. When he realized
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the lane he was driving in did not continue around the curve, the plaintiff said he tried to make a sharp turn to the left. This maneuver resulted in his losing control of his automobile and it continued on until it collided first with a guy-wire on the power pole and then into the pole itself.

The plaintiff's explanation as to how the accident happened does not seem to be consistent with a set of skid marks noticed by a police officer shortly after the accident. Those skid marks lead from the left lane and not the right lane to where the plaintiff's car came to rest after the accident.

Another fact that makes me doubt the accuracy of the plaintiff's evidence is that he and three companions fled from the accident scene before the police arrived to investigate. This, coupled with the fact that the plaintiff admitted to having been involved in several accidents prior to the one in question makes me suspect he had a guilty mind and may have fled to avoid being arrested for an offence involving driving while having consumed a prohibited amount of liquor.

Although the accused's explanation of how the accident happened and his action immediately after the accident makes me suspicious, I cannot on the basis of suspicion alone

conclude that it is more likely than not that he was, as a result of the consumption of alcohol incapable of the proper control of his automobile at the time of the accident. This defence must therefore fail.

The second defence raised was, that at the time of the accident the plaintiff was involved in a race or speed test. This defence is based on no more than the facts that the vehicle the plaintiff was trying to pass was, like that of the defendant, a sports car and that by his own admission the plaintiff was travelling at a speed approximately 30 KmH in excess of the posted limit of 50 KmH. This evidence is totally inadequate to justify the inference that the plaintiff was racing or engaged in a speed test at the time of the accident.

The 3rd and 4th defences that are pleaded are both based on the provisions of Regulation 136 (b) of the regulations made pursuant to the Insurance (Motor Vehicle) Act.

As far as is applicable, that regulation provides:

136. The Corporation is not liable under this Division.
- (b) to an insured in respect of loss or damage the insured is required under section 61 or 62 of the Motor Vehicle Act to report to the police if the insured, without reasonable cause and to the prejudice of the Corporation, has not complied with the applicable section.

Section 61 (2) of the Motor Vehicle Act provides that where, as here, an accident causing damage to property apparently exceeding \$400.00 occurs in a city, the person driving or in charge of the vehicle shall report the incident to a police officer and furnish the information respecting the incident required by the police officer, "as soon as possible and in any case within 24 hours after the incident." Section 62 of the same Act provides in part that, "the driver or operator ... of a vehicle that is ..., involved in an accident on a highway shall, (a) remain at or immediately return to the scene of the accident."

The plaintiff attended at a lawyer's office before noon on the morning of the accident. A letter setting out the plaintiff's version of how the accident happened together with other information was prepared by his lawyer and delivered to the police at about 4:00 the same afternoon. However, had the plaintiff not fled from the accident scene, he could have made the report required to the officer who attended to investigate within minutes of the happening of the accident. His report (assuming it could be made by his lawyer on his behalf) was therefore not made "as soon as possible after the accident" as required by s. 61. It is also apparent that by fleeing from the accident scene the plaintiff was in breach of the statutory obligation imposed

1 on him by s. 62 (1) (a) of the Motor Vehicle Act.

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3 It is not enough that the defendant should be able to
4 establish that the plaintiff was in breach of the requirements
5 of either s. 61 and 62 of the Motor Vehicle Act. To avoid
6 liability it must also prove that (a) the plaintiff had no
7 reasonable cause for failing to fulfill his statutory duty,
8 and (b) the failure was to the prejudice of the Corporation.
9 No intelligible explanation or excuse was advanced by the
10 plaintiff for his failure to report the incident to the
11 police as soon as possible or for failing to remain at the
12 scene. This leaves the question of whether the omissions of
13 the plaintiff or either of them were "to the prejudice of the
14 Corporation."
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17 Counsel for the plaintiff submitted that neither the
18 failure of the plaintiff to report the accident to the
19 police "as soon as possible" nor his failure to remain at
20 the scene had been proved by the defendant to have been to its
21 prejudice. I agree that the failure to report the accident
22 immediately has not been demonstrated to have been
23 prejudicial to the defendant's interests. The required
24 information was in the hands of the police approximately 15
25 hours after the accident. It was conveyed by the police to
26 the Corporation. Any delay between the time the police
27 received the information about the accident from the
28 plaintiff's lawyer until that information was conveyed by the
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police to the defendant cannot be attributed to the plaintiff. In any event it was not, as I recall, suggested that any delay on the part of the plaintiff in making the required report in any way prejudiced the Corporation.

The failure of the plaintiff to remain at the scene of the accident is the last defence that must be considered. It is to be remembered that the plaintiff admitted to having consumed alcohol during the five hours preceding the accident. He was, by his own admission travelling at a speed significantly in excess of the posted limit when the accident occurred. Finally the immediate cause of the accident seems to have been the plaintiffs inability to control the course of his vehicle when he was suddenly faced with a situation fraught with danger. These circumstances, coupled with the plaintiff's flight from the scene of the accident, amply justified the defendant's suspicion that the plaintiff may have been incapable of properly controlling his vehicle as a result of the consumption of alcohol.

The officer who attended the scene of the accident testified that if the plaintiff had been there and had admitted to him that he had consumed the amount of alcohol prior to to the accident that the plaintiff admitted to in court, he would have required him to submit to a breathalyzer test to determine the amount of alcohol in his blood.

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By his action the plaintiff deprived the defendant of an opportunity to establish a defence to the claim on the grounds of a breach of regulation 55 (8).

At law, the expression, "to the prejudice of" may be equated to, "to the detriment of the legal interests of". It is clearly detrimental to the legal interests of the defendant to be deprived of the opportunity to obtain facts which might prove the existence of an absolute defence to a claim. To suggest that the plaintiff's flight from the scene could only be regarded as prejudicial to the defendant if it could prove that had he remained at the scene and submitted to a breathalyzer test, the result of such test would have proved him to have been substantially impaired, is to beg the question. If the defendant could prove that independently, the plaintiff's action in failing to remain at the scene would be irrelevant. Accordingly, I find that the defendant has proved that the appellants failure to comply with the requirements of s. 62 of the Motor Vehicle Act was to the prejudice of the defendant.

It was submitted on behalf of the plaintiff that, if I found any of the defences raised by the defendant to have been proved I should relieve him from the consequences of his conduct. It was suggested that s. 21 of the Law and Equity Act bestows jurisdiction on the court to grant such relief.

1 With respect to what my brother, the Honourable Judge
2 Robinson had to say by way of obiter dicta in K. & P.
3 Construction Ltd. v. I.C.B.C. (1983), 49 B.C.L.R. 278, I am
4 not persuaded that this court has any jurisdiction to grant
5 relief from a statutory forfeiture; see Trans-West
6 Developments Ltd. v. The City of Nanaimo (1979), 17 B.C.L.R.
7 307. Although the regulations made by the Lieutenant-
8 Governor in Council pursuant to Insurance (Motor Vehicle) Act
9 may in some respects resemble contractual terms, they
10 nonetheless comprise subordinate legislation. This being
11 so I consider myself bound, at least by the rules of comity,
12 to follow the decision of Andrews, J. in the Trans-West case.
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15 If I am in error in concluding I do not have the
16 jurisdiction to grant relief in the circumstances of this
17 case, I would in any event decline to do so. The plaintiff's
18 actions are solely responsible for his present predicament.
19 It would fly in the face of all the long established rules of
20 equity to relieve him of the consequences of his own
21 intentional wrong doing.
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24 The action is dismissed with costs to the defendant.
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