

IN THE SUPREME COURT OF BRITISH COLUMBIA

PRINCE GEORGE, B.C.  
March 5, 1984

JACOB GUENTHER & JAKE L. )  
GUENTHER LOGGING, )  
  
PLAINTIFF )  
  
AND: )  
  
CRAIG FRASER-EASTON and )  
THE INSURANCE CORPORATION )  
OF BRITISH COLUMBIA, )  
  
DEFENDANTS )

REASONS FOR  
JUDGMENT OF  
WALLACE, S.C.J.

D.E.M. JENKINS, ESQ.,  
D. BYL, ESQ., appearing for the Plaintiffs  
G. KINCAID, ESQ., appearing for the Defendants

THE COURT: (oral) Despite the very able submissions of Mr. Jenkins, I find the Plaintiff has not satisfied the onus upon him of establishing, on the balance of probability, that is - a preponderance of the evidence - that the vehicle was driven at the time of the accident by the Defendant Fraser-Easton or alternatively by some unknown third party.

This conclusion necessarily involves a finding that I do not accept the Plaintiff's evidence. In fact, I'm of the opinion neither Mr. Guenther nor Mr. Fraser-Easton are credible witnesses. Both gave prior statements to insurance adjustors that were admittedly false. The Plaintiff had considerably to gain by making such a statement.

In the statement, Exhibit 2, he states and I quote:

"As Craig and I were leaving the airport, this guy came up to us and asked if we were going into town as he needed a ride. We told him that we would take him as far as Finnings as we wanted to continue on drinking. As Craig and I had been drinking, I asked this guy to drive the truck. I don't recall this man's name. He was white, about 24 to 30 years of age and less than 6 feet tall. this guy got into the driver's seat, I got into the middle and Craig on the right passenger side. We did not put on our seatbelts. The vehicle is equipped with two sets of lap and shoulder and lap belts for the middle passenger. We did not drink at any time in the vehicle."

Now, Mr. Guenther's explanation for giving that statement on October 30, 1980 was that he admitted it was false but that he was really reciting hearsay, what he had been told by Mr. Fraser-Easton and that was why he said he didn't sign the statement. When the original was produced to him, it was apparent that he not only signed it but that he initialled the very passage which I have read. The statement states several matters in the first person. He does not say in the statement I was told by Mr. Fraser-Easton that certain things took place but rather said that he, Mr. Guenther, had asked this unknown third party to drive the truck. He said he didn't recall the man's name and he said 'I got into the middle seat'.

I can only draw the one inference that the statement was designed to mislead the investigators and it reflected deliberately false statements by the Plaintiff.

The independent witness called on behalf of the Plaintiff does not assist the Plaintiff in light of the contradictory

statements which he made -albeit innocent - the one immediately after or shortly after the accident where he advised the authorities that he said 'when the truck passed us, I couldn't tell how many people were in the pick-up.' That statement was given on November 15, 1980. In light of that, his statement at the trial; as the pick-up went by, he saw three people in the cab, can only be attributed to reconstruction.

I have the same grave doubt about the credibility of Fraser-Easton and specifically I reject his evidence that he told Cst. Clapp at the scene of the accident that Mr. Guenther was driving. I do, however, accept his evidence that he was not prepared to commit perjury and that at the time of the criminal trial of Mr. Guenther, he advised Mr. Guenther that he would not lie under oath.

In the light of these findings, the Plaintiff's claim must be dismissed with costs payable to I.C.B.C. The action against Mr. Fraser-Easton is dismissed but without costs. Since both parties were defended by Mr. Kincaid, perhaps the easiest method to allow the Defendants 50% of their tax costs. Unless counsel have any other submissions in that regard that is the order I will make. This case is adjourned.

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