

Belcourt v Stan Dean et al, 2015 NWTSC 15.cor1
Date corrigendum filed: 2015 06 08
Date: 2015 04 28
Docket: S-1-CV-2013-000070

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

MARVIN BELCOURT AND LYNN BELCOURT
Plaintiffs

- and -

STAN DEAN AND SONS LIMITED, RUSKIN CONSTRUCTION LIMITED, ANDREW RUSKIN, A.K.A.
ANDREW PURDEY, WORKERS SAFETY AND COMPENSATION COMMISSION

Defendants

Corrected judgment: A corrigendum was issued on June 8, 2015; the corrections have been made to the text and the corrigendum is appended to this judgment.

MEMORANDUM OF JUDGMENT

A) INTRODUCTION AND BACKGROUND

[1] On May 15, 2013, The Plaintiffs, Marvin and Lynn Belcourt, filed a Statement of Claim in this Court seeking \$2,000,000.00 in damages against the Defendants, Stan Dean and Sons Limited (Stan Dean), Ruskin Construction Limited (Ruskin), Andrew Ruskin, and the Workers' Safety and Compensation Commission (WSCC).

[2] Several motions filed by the parties were heard at a Special Chambers hearing held on January 27 and 28, 2015. This Memorandum of Judgment sets out my conclusions with respect to each of those motions.

1. Overview

[3] The claim arises from injuries sustained by Mr. Belcourt in an accident that occurred near Wrigley on September 16, 2009. It is undisputed that at the time of the accident, Mr. Belcourt was working as a truck driver and was under the employ of Stan Dean.

[4] Mr. Belcourt was injured as a load was being transferred from a tractor-trailer onto a barge. The chain and winching device that were being used to transfer the load broke, recoiled, and struck him. This caused him significant injuries.

[5] It is undisputed that following this accident, Mr. Belcourt received some compensation benefits from the WSCC. Whether that compensation was sufficient, however, is very much in issue.

[6] Mr. and Mrs. Belcourt allege that the WSCC has refused to acknowledge the full extent of the injuries that Mr. Belcourt suffered in the accident; that the WSCC has refused to reimburse many of the expenses that they incurred to get him the medical treatment he needed after the accident; that the WSCC

failed to investigate the circumstances of the accident and that had such an investigation taken place, it would have revealed that the conditions at the work site were very unsafe. They claim that the WSCC should have sued Mr. Belcourt's employers for negligence.

[7] The lawsuit against the other Defendants is based on the claim that they allowed the work to take place under unsafe conditions at this work site, and that they failed to provide Mr. Belcourt adequate assistance after the accident.

[8] Mr. and Mrs. Belcourt claim that as a result of Mr. Belcourt's inability to work and the inadequate compensation that he has received from the WSCC, they are now in a very precarious financial position. They say that they have had to live off their savings, re mortgage their home, and that they are now broke.

2. The motions

[9] The first motion was filed by Mr. and Mrs. Belcourt on October 30, 2014. In that motion they seek a reinstatement of Mr. Belcourt's WSCC benefits; an order that the Royal Canadian Mounted Police commence an investigation into the circumstances of the accident; and summary judgment granting their claim. Alternatively, they seek an order setting the matter down for trial.

[10] The second motion was filed on November 20, 2014, by the WSCC. In it, the WSCC asks that the Statement of Claim be struck.

[11] The third motion was filed by Stan Dean and Ruskin on December 12, 2014. These Defendants seek an order for summary judgment dismissing the action against them. In the alternative, they seek a stay of the proceedings pending a determination by the Workers' Compensation Appeals Tribunal as to whether they are immune from civil suit.

[12] Mr. and Mrs. Belcourt filed another motion on December 17, 2014. They do not claim any new or additional relief in this motion. My understanding is that they filed that motion to state their opposition to the motions filed by the Defendants and to reiterate their wish to proceed with their action.

B) LEGAL FRAMEWORK

1. Applications for Summary Judgment

[13] Two of the motions before the Court are motions seeking summary judgment. The Rules of the Supreme Court of the Northwest Territories, R-010-96 (the Rules of Court) include provisions that deal with summary judgment applications:

174. (1) A Plaintiff may, after a defendant has delivered a statement of defence, apply with supporting affidavits or other evidence for summary judgment against the defendant on all or part of the claim in the statement of claim.

(...)

175. A defendant may, after delivering a statement of defence, apply with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

176. (1) In response to the affidavit material or other evidence supporting an application for summary judgment, the respondent may not rest on the mere allegations or denials in his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

(2) Where the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

(3) Where the Court is satisfied that the only genuine issue is the amount to which the applicant is entitled, the Court may order a trial of that issue or grant judgment with a reference or an accounting to determine the amount.

[14] On an application for summary judgment, the question is whether there is a genuine issue for trial. The party applying for summary judgment has to show that its case is manifestly clear and beyond doubt. The responding party has an evidentiary burden to show that there is a genuine issue for trial. *Valic v. Workers' Compensation Board*, 2010 NWTSC 97, Paragraph 22; *Paul's Aircraft Services v. Kenn Borek Air Ltd.*, 2012 NWTSC 69, Paragraph 10.

[15] At the same time, the Court's role on a summary judgment application is not to engage in a full assessment and weighing of the evidence, or to resolve conflicts in the evidence. The assessment of the evidence must be limited to a determination of whether there is a genuine issue for trial. *Paul's Aircraft Services v. Kenn Borek Air Ltd.*, supra, Paragraph 11; *Leard v. Yellowknife (City) et al.*, 2014 NWTSC 82, Paragraph 8.

2. Application to Strike the Statement of Claim

[16] Rule 129 of the Rules of Court sets out the Court's power to strike a Statement of Claim:

129. (1) The Court may, at any stage of a proceeding, order that

(a) any pleading in the action be struck out or amended, on the ground that

(i) it discloses no cause of action or defence, as the case may be,

(ii) it is scandalous, frivolous or vexatious,

(iii) it may prejudice, embarrass or delay the fair trial of the action, or

(iv) it is otherwise an abuse of the process of the Court; and

(b) the action be stayed or dismissed or judgment be entered accordingly.

(2) No evidence is admissible on an application under subrule (1)(a)(i).

(3) This rule applies with such modifications as the circumstances require to an originating notice and a petition.

As I already mentioned, the WSCC's motion is based on Subrule 129(1)(a)(i): the WSCC argues that the Statement of Claim discloses no cause of action.

[17] Unlike summary judgment applications, applications to strike are not decided on the basis of evidence. Where such an application is brought by a Defendant, as is the case here, the Court must assume that the facts alleged in the Statement of Claim are true and consider whether the Plaintiff's case has any chance of success. The examination must be a cautious one. A Statement of Claim should only be struck if it is plain and obvious, and beyond doubt, that there is no chance of success. *Fulowka v. Whitford*, [1996] N.W.T.J. No. 95 (C.A.); *Anderson v. Bell Mobility Inc.*, 2008 NWTSC 85.

3. Statutory scheme that governs the compensation of injured workers

[18] In the Northwest Territories, the Workers' Compensation Act, S.N.W.T. 2007, c.21, as amended (the Act), is the statute that governs the compensation of workers who are injured during the course of their employment.

[19] Part 4 of the Act creates a comprehensive framework and decision-making structure to administer claims for compensation. Subsection 90(2) makes it clear that all claims for compensation must be dealt with through that framework:

90. (...)

(2) All claims for compensation shall be determined pursuant to the Act.

Workers' Compensation Act, Subsection 90(2).

[20] Section 82 establishes the WSCC and section 91 sets out its jurisdiction. Subsection 91(1) gives the WSCC exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under the Act. Subsection 91(2) further elaborates by identifying several specific matters that are

captured by that exclusive jurisdiction. These include, for example, whether a medical condition is an injury that arose during the course of employment; to what extent a worker's earning capacity has been impaired by an injury; the amount of compensation an injured worker is entitled to receive.

[21] Subsection 91(4) speaks to the finality of decisions made by the WSCC:

91. (...)

(4) Every decision of the Commission is final and conclusive, subject to

(a) the Commission's power to reconsider any matter previously dealt with by it;

(b) a person's right under section 113 or 114 to have a decision of the Commission reviewed by its Review Committee; and

(c) a person's right under section 128 to appeal a decision of the Review Committee to the Appeals Tribunal.

Workers' Compensation Act, Subsection 91(4).

[22] The first level of decision-making in the structure created by the Act is established by Section 92. Initially, decisions are made by a member of the WSCC staff who has the delegated authority to do so. The delegation of that decision-making authority comes from the President of the WSCC.

[23] Subsection 92(4) contemplates a reconsideration of any decision made. If a party is dissatisfied with a decision, that party can ask that the decision be reconsidered at that first decision-making level.

[24] The next decision-making level is the Review Committee, which is established by section 112. Claimants or employers who are dissatisfied with a decision may request that the Review Committee review the matter.

[25] The Review Committee is composed of members of the staff designated by the President of the WSCC. The Review Committee has various powers, including the power to consider new evidence, hear oral argument from the parties, and refer the matter back for reconsideration by the staff member who made the original decision. The Review Committee may confirm, vary or reverse the initial decision. Workers' Compensation Act, section 116.

[26] Decisions of the Review Committee are final and conclusive, subject to the right of appeal to the Appeals Tribunal. That is the last level of review in the framework created by the Act.

[27] The Appeals Tribunal is established by section 126 of the Act:

126. (1) The Appeals Tribunal has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions in respect of

(a) an appeal of a decision of the Review Committee and;

(b) whether a person is immune from action pursuant to this Act.

(2) Subject to sections 131 and 132, a decision of the Appeals Tribunal is final and conclusive.

(3) No action may be maintained or brought against the Appeals Tribunal in respect of any act or decision done or made by it in the honest belief that it was within its jurisdiction.

Workers' Compensation Act, section 126.

[28] Subsection 126(2) provides that decisions of the Appeals Tribunal are final and conclusive. The only exception are situations referred to in sections 131 and 132. Those provisions refer to powers attributed to the Governance Council established under the Act, and are not relevant in the present case.

[29] Unlike the Review Committee, the Appeals Tribunal is not a decision-making body that is internal to the WSCC. It is an independent tribunal. The Act sets out specific factors that are to be taken into account when appointing its members:

118. (2) When selecting persons for appointment to the Appeals Tribunal, the Minister shall ensure that

(a) each member of the Appeals Tribunal has experience and an interest in workers' compensation issues, and

(i) has been a member, of at least five years good standing, of a law society of a territory or province;

(ii) has at least five years experience as a member of an administrative tribunal or a court; or

(iii) has other qualifications that can reasonably be considered to be equivalent to those described in subparagraphs (i) and (ii); and

(b) a sufficient number of members are appointed for the Appeals Tribunal to effectively perform its functions.

Workers' Compensation Act, Subsection 118(2).

[30] Overall, the Legislative intent that emerges from these provisions is that all claims for compensation are to be dealt within the framework created by the Act. Any doubt about that is dispelled by section 133, which speaks directly to the powers of the courts in this area:

133. Except where there has been a denial of natural justice or an excess of jurisdiction, no act by or decision of the Commission, including the Governance Council and the Review Committee, or the Appeals Tribunal, may be questioned or reviewed by any court, and for greater certainty no act by, decisions of or proceeding before the Commission or Appeals Tribunal may be restrained by injunction, prohibition, or other process or proceedings in any court.

Workers' Compensation Act, section 133.

[31] I have referred to the framework created by the Act at some length because that framework is crucial in disposing of the motions before the Court: the Act creates a stand-alone system to deal with the compensation of workers who are injured while at work. The decision-making and review processes are mapped out very clearly, and only subject to judicial review in the very narrow circumstances referred to in section 133: a denial of natural justice or an excess of jurisdiction.

[32] In the broader context of civil litigation, this regime is exceptional, in that it channels all proceedings through a stand-alone decision-making structure, leaving only a very limited role for the courts in the adjudication of disputes. But in the domain of compensation of injured workers, this type of regime is not unusual at all: on the contrary, it is the norm in Provinces and Territories across Canada.

[33] I now turn to the analysis, in light of this legal framework, of the issues raised by the motions before the Court.

C) ANALYSIS

1. Preliminary observations

a) Amendment to style of cause

[34] The relationship between the two corporate Defendants, and their link to various individuals, is explained in the affidavit of Sarah Howse, filed by the corporate Defendants. Ms. Howse is the Chief Financial Officer for Ruskin.

[35] The details provided about the relationships between the various Defendants are not of any consequence in the disposition of any of the motions before the Court. But an issue did arise during the hearing, about the non-corporate Defendant, Andrew Ruskin. In her affidavit Ms. Howse deposes that one Andrew Purdey is the sole Director of Stan Dean, and that she is not aware of any individual named "Andrew Ruskin" who has any connection with the Defendant corporations, or with any other corporate entities associated to them.

[36] It seemed clear, during the hearing, that the person that Mr. and Mrs. Belcourt identified as "Andrew Ruskin" in the Statement of Claim, and in their submissions, is the person that the corporate Defendants identify as "Andrew Purdey". All parties were in agreement that to avoid any possible confusion as to who would be affected by rulings made on these motions, the style of cause could be amended to add the name "Andrew Purdey" as an alias for Andrew Ruskin.

b) The evidence to be considered

[37] These motions proceeded on the basis of affidavit evidence. As already noted, the corporate Defendants filed Ms. Howse's affidavit in support of their motion. The WSCC did not file any affidavits because, as noted above, evidence cannot be adduced on the type of application it has brought.

[38] Mr. and Mrs. Belcourt filed an affidavit, attaching a large number of documents as exhibits. Among other things, the exhibits include some of the correspondence between Mr. Belcourt and various officials at the WSCC, and many notes and reports relating to medical examinations that he underwent after the accident.

[39] Mr. and Mrs. Belcourt represented themselves at the hearing. In their submissions, some of the things they said were more in the nature of evidence than in the nature of submissions. It is not unusual for this to happen when litigants represent themselves in court proceedings: for lay persons, it is easy to confuse what constitutes evidence and what constitutes submissions.

[40] In disposing of these motions, the Court can only consider facts that have been established in accordance with the rules of evidence. This requires, among other things, that the information be presented to the Court under oath. Things said from counsel table during submissions are not evidence.

[41] In addition, evidence must be adduced through a witness or deponent who has personal knowledge of the facts deposed to. The evidence offered by that witness must also be in the range of subject matters that the witness is, under the rules of evidence, entitled to testify or depose about.

[42] I have kept this in mind in assessing the use that I can make of the things Mr. and Mrs. Belcourt said during their submissions. I must add, though, that given the applicable legal framework, even if I were to treat everything Mr. and Mrs. Belcourt said during their submissions as admissible evidence, and accept it as true, it would not make a difference in the disposition of the motions.

2. Mr. and Mrs. Belcourt's motion

[43] As noted above at Paragraphs 13 to 15, a summary judgment application can only be granted if the applicant establishes that there is no genuine issue for trial.

[44] It was very apparent to the Court during the hearing that Mr. and Mrs. Belcourt are profoundly convinced that the many medical problems that Mr. Belcourt suffers from today were all caused by the September 2009 accident. It also appears that this belief is based in part on things they were told by various people they have consulted.

[45] That said, legal causation is rarely a straightforward, clear-cut issue. The same is true for medical diagnosis. Similarly, issues about whether a workplace is safe or unsafe engage many considerations. Expert evidence is often needed in this area, especially where the case involves a disputed allegation of negligence. Finally, even apart from issues of liability, assessing the amount damages in personal injury cases is a complex undertaking in itself.

[46] In short, the issues raised by Mr. and Mrs. Belcourt in this litigation are not simple. When these types of claims go to trial, parties usually have to call expert evidence, and indeed, the outcome may well depend on how competing expert evidence is assessed. Under the circumstances, it can hardly be said that it is beyond doubt that Mr. and Mrs. Belcourt will succeed on their claim such that it can be disposed of by way of summary judgment.

[47] As for the request to order a reinstatement of Mr. Belcourt's WSCC benefits, granting that relief would be in direct conflict with section 91 of the Act, which gives the WSCC exclusive jurisdiction to determine whether a person is entitled to compensation, and in what amount. Clearly, this Court has no jurisdiction to grant that particular relief.

[48] This Court also has no jurisdiction to order that a criminal investigation be commenced into the circumstances of the September 2009 accident. In criminal matters, the role of courts is to hear trials, decide whether guilt has been established to the required standard of proof, and if so, impose penalty. Courts do not have jurisdiction to order the R.C.M.P., or any other agency, to commence a criminal investigation.

[49] Mr. and Mrs. Belcourt seek, in the alternative, an order setting this matter down for trial. I cannot grant this request either. The Rules of Court set out a number of procedural steps that must have taken place before a trial date can be set. These processes are designed, among other things, to ensure that each party has full disclosure of the other parties' cases. They are also designed to ensure that the Court has all the information it needs before setting a trial date. Here, many of these steps have not taken place. From a procedural standpoint, this matter is far from ready to be set for trial.

[50] For those reasons, I am unable to grant any aspect of the relief that Mr. and Mrs. Belcourt seek in their motion.

3. The WSCC's motion

[51] The WSCC seeks to have the Statement of Claim struck on the ground that it discloses no cause of action. The specific allegations against the WSCC are outlined at Paragraphs 9 to 12 of the Statement of Claim:

9) As a result of the accident the Plaintiff was referred to the Defendant Worker's Safety and Compensation Commission (Commission) for treatment and compensation.

10) The Plaintiff states that the Defendant Commission failed to adequately support the Plaintiff in that the Commission failed to adequately care for the Plaintiff by denying that the Plaintiff suffered the injuries that occurred to the Plaintiff and the subsequent loss of care and treatment has caused the Plaintiff further pain and suffering including:

- a. Possible loss of the Plaintiff's left leg;
- b. Restricted range of motion in his left leg;
- c. Consistent knee and leg pain;
- d. Consistent left leg pain;
- e. Incontinence;
- f. Sexual dysfunction;
- g. Lower back pain;
- h. Left leg cramping above the knee;
- i. Ankle numbness;

- j. Arms cramping in both arms
- k. Left arm muscle partial rupture;
- l. Lack of proper sleep and rest.

11) The Defendant Commission has continuously refused to provide pay [sic] to the Plaintiff Marvin Belcourt expenses for:

- a. Medi Vac plane from Peace River Alberta for surgery on the Plaintiff Marvin Belcourt's Leg;
- b. Paying for any medical trips and expenses incurred for the medical trips;

12) The Plaintiff has consistently complained to the Defendant Commission and as of the 28th day of February, 2013 the Defendant Commission refused to adjust the previous rulings by the Commission and its employees.

[52] These Paragraphs set out two bases for the claim against the WSCC. The first is for having failed to provide Mr. Belcourt care and treatment following his accident. The second is for not having granted him adequate financial compensation for the injuries he suffered.

[53] On the first aspect, the WSCC argues that its mandate does not include providing treatment to injured workers and that as a result, no cause of action lies against it for failing to do so.

[54] As noted above at Paragraph 20, the jurisdiction and mandate of the WSCC are set out at section 91 of the Act. Nothing in that provision, or any other provision of the Act, gives the WSCC the mandate to provide treatment to injured workers. I therefore agree that in this respect, the Statement of Claim does not disclose a cause of action against the WSCC.

[55] The second aspect of the claim, which is what Mr. and Mrs. Belcourt's action against the WSCC is fundamentally about, is that the WSCC has refused to grant Mr. Belcourt adequate compensation for the injuries he sustained. The difficulty with a civil suit against the WSCC on that basis is that it is prohibited by the Act itself, more specifically by section 90:

90. (1) No action lies for the recovery of compensation from the Commission, and no action may be maintained or brought against the Commission, in respect of any act done or decision made by it in the honest belief that it was within its jurisdiction.

(2) All claims for compensation shall be determined pursuant to this Act.

[56] This is not the first time an injured worker attempts to sue the WSCC for compensation. In other cases, this Court has explained why the type of action commenced by Mr. and Mrs. Belcourt cannot succeed under the statutory framework created by the Act:

With respect to the plaintiff's claim to entitlement to workers' compensation benefits and damages, even if those aspects of his pleading are true, the plaintiff is confronted by the legislative prohibitions on action. The current Workers' Compensation Act, enacted on April 1, 2008, provides that no action lies for the recovery of compensation; that all claims for compensation shall be determined pursuant to the Act; and, that the defendant has exclusive jurisdiction to determine all matters and questions arising under the Act, including questions of entitlement and amount of compensation: see ss. 90 and 91. The predecessor legislation, the Workers' Compensation Act, R.S.N.W.T. 1988, c. W-6, had similar provisions. Section 7 granted the defendant exclusive jurisdiction and s. 12 precluded an action for the recovery of compensation and provided that all claims for compensation shall be determined by the defendant.

Therefore, there can be no cause of action with respect to this aspect of the claim. (...)

Valic v. Workers' Compensation Board, *supra*, Paragraphs 20-21.

[57] The legal framework that governs these matters has not changed in any material way since Valic was decided. This Court's comments in that case squarely apply to this one: even if the things set out in the Statement of Claim are assumed to be true, the Act specifically prohibits an injured worker from suing the WSCC for compensation. The only exception to this prohibition is for decisions not made by the WSCC in the honest belief that it was acting within its jurisdiction. There is no suggestion of that here.

[58] It follows that even on the most generous interpretation possible of the Statement of Claim, and with cautious examination, it is beyond doubt that the action against the WSCC has no chance of success. For that reason, the application to strike the Statement of Claim against the WSCC must be allowed.

4. Stan Dean and Ruskin's motion

[59] I turn to Stan Dean and Ruskin's application for summary judgment. These Defendants argue that there is no genuine issue for trial against them, and that they are entitled to summary judgment dismissing the claim. If their position in this regard is not successful, they ask, alternatively, that there be a stay of proceedings on this action pending a determination by the Appeals Tribunal that they are immune from suit.

[60] They argue that the action should be dismissed against them immediately for two distinct reasons. First, they argue that the Act creates an absolute bar to suing an employer as a result of injuries sustained by a worker during the course of that worker's employment. Second, they argue that if the Act does not bar this action, then the Limitations of Actions Act, R.S.N.W.T., 1988, c. L-8 does.

[61] The following excerpts of sections 62 and 64 of the Act are relevant:

62. (1) No action may be brought, by or on behalf of an eligible claimant, against a worker or an employer in respect of a personal injury, disease or death suffered by another worker arising out of and during the course of his or her employment.

(...)

64. (1) Any cause of action that an eligible claimant may have against any other person in respect of a personal injury, disease or death suffered by a worker, arising out of and during the course of his or her employment, vests in the [WSCC]

(2) The [WSCC] shall conduct a cause of action vested in the [WSCC] under subsection (1) in good faith for the benefit of all eligible claimants.

Workers' Compensation Act, Sections 62 and 64.

[62] The term "eligible claimant" is defined at section 1 of the Act as meaning "a person who has claimed compensation or who is entitled to claim and receive compensation".

[63] The combined effect of these provisions is unambiguous. Eligible claimants cannot launch an action against an employer based on a workplace injury because any cause of action that arises from such an injury vests in the WSCC. In the present case, this means that any cause of action that might exist against Mr. Belcourt's employers arising from the September 2009 accident vested in the WSCC by operation of the Act. The WSCC is the only party that could possibly have a cause of action against Mr. Belcourt's employers, arising from the injuries he sustained in that accident.

[64] There is no question that in taking away from injured workers the right to sue their employer following a workplace injury, the Act takes a lot of control away from them. But that is a fundamental element of this type of compulsory, no-fault insurance scheme. The benefit, for injured workers, is that it

also takes away from them the burden of having to undertake potentially costly and complex litigation in order to be compensated for workplace injuries.

[65] I also agree with the corporate Defendants that, quite apart from this action being barred for the reasons explained above, it is also barred by the Limitation of Actions Act. Pursuant to subsection 2(d) of that legislation, the limitation period for a personal injury claim based on negligence is two years after the cause of action arose.

[66] The civil suit against Mr. Belcourt's employers is based on allegations of dangerous conditions at the work site and on a failure by his employers to care for him appropriately after the accident. Mr. Belcourt knew about these circumstances at the time of the accident. There is no suggestion that he discovered any of these circumstances later.

[67] Mr. Belcourt may not have been aware of the extent of his injuries at the time. And he certainly could not have known then what the long-term consequences of his injuries would be. But the facts that his claim is based on - unsafe conditions at the work site and lack of assistance to him immediately after the accident - were known to him in September 2009.

[68] Mr. and Mrs. Belcourt commenced their civil action against his employers in May 2013, more than three and a half years after the accident. By then, the limitation period had passed. As a matter of law, any cause of action that they may have had against Mr. Belcourt's employers is now extinguished.

[69] Because Mr. and Mrs. Belcourt's action against Mr. Belcourt's employers is statute barred, there is no genuine issue to be tried. As a result, Stan Dean and Ruskin's application for summary judgment must be granted.

5. Other recourses available to Mr. and Mrs. Belcourt

[70] The outcome of these proceedings does not leave Mr. and Mrs. Belcourt without recourse. The evidence adduced on these applications shows that Mr. and Mrs. Belcourt have not exhausted their avenues for appeal under the framework set out in the Act. In particular, they have not appealed the decisions of the Review Committee to the Appeals Tribunal.

[71] During his submissions Mr. Belcourt said that he sent a complaint to the Appeals Tribunal and that this complaint was ignored. But Mr. Belcourt's belief that the Appeals Tribunal ignored his correspondence is contradicted by some of the evidence that he himself filed.

[72] Mr. Belcourt filed a postal receipt showing that he mailed something to the Appeals Tribunal on September 28, 2012 (Exhibit B). One of the documents that he filed as part of Exhibit "F" to his affidavit sworn November 18, 2013, is a letter addressed to him, from the Registrar of the Review Committee, dated October 4, 2012. In that letter, the Registrar advises Mr. Belcourt that the Appeals Tribunal has forwarded his "request dated September 27, 2012" to the Review Committee. The letter goes on to explain the respective roles of the Review Committee and of the Appeals Tribunal.

[73] It is reasonable to infer that the documents that the Registrar refers to in her letter are the documents that Mr. Belcourt had mailed to the Appeals Tribunal on September 28, 2012, and that Exhibit B relates to. The letter from the Registrar of the Review Committee demonstrates that the Appeals Tribunal did not ignore Mr. Belcourt's correspondence. On the contrary, the Appeals Tribunal forwarded it to the Review Committee. That was a proper course of action because at the time, the Review Committee was still examining the matter.

[74] Ultimately, the Review Committee did not grant the relief that Mr. Belcourt was seeking. At that point, the next level of review became, and still is, the Appeals Tribunal. There is no evidence that Mr. Belcourt ever filed an appeal to the Appeals Tribunal after the Review Committee made its last decision on the matter. That step, an appeal to the Appeals Tribunal, is what Mr. and Mrs. Belcourt need to take to pursue this matter, and advance the arguments that they presented to this Court at the January 2015 hearing about the level of compensation he should have been granted by the WSCC.

[75] Much of the information presented to this Court, (evidence about Mr. Belcourt's health before and after this accident, evidence that supports his position that the conditions he suffers from now are the result of the accident, the impact that these events have had on him and Mrs. Belcourt financially and otherwise), is information that should be presented to the Appeals Tribunal.

[76] To be clear, the outcome of these motions has nothing to do with whether there is or is not merit to Mr. and Mrs. Belcourt's claim that the WSCC has not correctly assessed Mr. Belcourt's entitlement to compensation. On issues related to the adequacy of the compensation granted to Mr. Belcourt by the WSCC, the result simply stems from the fact that this Court is not a forum legally available to Mr. and Mrs. Belcourt to litigate those issues.

[77] The Court empathizes with Mr. and Mrs. Belcourt's situation. It was apparent during the hearing that this has been a terrible ordeal for them and that they have both suffered tremendously, emotionally, physically and financially, since this accident occurred. As counsel for the WSCC said himself, some of the submissions made at the hearing were compelling. Those submissions, and the evidence about the impact that this accident had on both Mr. and Mrs. Belcourt, should be presented to the Appeals Tribunal.

D) CONCLUSION

[78] For these reasons:

1. Mr. and Mrs. Belcourt's application for summary judgment is dismissed;
2. The WSCC's application to have the Statement of Claim struck, as against the WSCC is granted;
and
3. Stan Dean and Ruskin's application for summary judgment is granted.

[79] Parties wishing to make submissions as to costs should contact the Registry within fourteen days of the filing of this Memorandum of Judgment and indicate whether they want to do so by way of written submissions or orally. The Court will issue further directions in due course, if needed.

“L.A. Charbonneau”

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
28th day of April 2015

The Plaintiffs, Marvin Belcourt and Lynn Belcourt, represented themselves

Counsel for the Defendants Stan Dean and Sons Limited
and Ruskin Construction Ltd: Amy Groothuis

Counsel for the Defendant Workers' Safety and
Compensation Commission: Gordon A. McKinnon

Corrigendum of the Memorandum of Judgment

of

The Honourable Justice L. A. Charbonneau

1. Errors occurred in Paragraph 2.

Paragraph 2, second line sentence read:

[2](...) hearing held on January 26 and 27, 2015 (...)

Paragraph 2, second line sentence has been corrected to read:

[2](...) hearing held on January 27 and 28, 2015 (...).

2. The citation has been amended to read:

Citation: Belcourt v Stan Dean et al, 2015 NWTSC 15.cor1

(Changed text to document has been underlined.)

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- and -

STAN DEAN AND SONS LIMITED, RUSKIN CONSTRUCTION LIMITED, ANDREW RUSKIN, A.K.A.
ANDREW PURDEY, WORKERS SAFETY AND COMPENSATION COMMISSION

Defendants

Corrected judgment: A corrigendum was issued on June 8, 2015; the corrections have been made to the text and the corrigendum is appended to this judgment.

MEMORANDUM OF JUDGMENT OF THE
HONOURABLE JUSTICE L.A. CHARBONNEAU

