

SUPREME COURT OF NOVA SCOTIA
Citation: Vaughn v. Hayden, 2009 NSSC 235

Date: 20090717

Docket: Bwt No. 212166

Registry: Bridgewater

Between:

Donald Max Vaughn

Plaintiff

v.

Dr. David S. Hayden and Dr. David S. Hayden Inc., a body corporate,
incorporated under the laws of the Province of Nova Scotia

Defendants

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Judge: The Honourable Justice Glen G. McDougall

Heard: June 11, 2009, in Bridgewater, Nova Scotia

Subject: Summary Judgment on evidence pursuant to **Civil Procedure Rule**
13.04

Summary: The plaintiff sued the defendant for complications arising from carpal tunnel release surgery. Approximately one month after surgery the plaintiff had to be admitted to hospital for treatment of cerebral infection. He alleged that the infection was caused by the defendants' negligence. The defendants obtained two experts' reports which concluded that the plaintiff's condition was not the result of any negligence on the part of the defendants. The plaintiff did not have the opinion of an expert to support his allegations.

Issue: What is the applicable test on a motion for summary judgment under the new **Civil Procedure Rule** 13.04?

Result: The new **Rule** on summary judgments has not altered the existing two-part test. The initial burden is on the party advancing the motion to show that there is no genuine issue requiring trial. It then falls to the opposing party to establish, on the facts that are not in dispute, that the claim has a real chance of success. The pleadings only serve to indicate the laws and facts in issue. The pleadings are not, *per*

se, evidence. A party who wishes to challenge the motion must present evidence by way of affidavit(s) or cross-examination or other means permitted by a judge.

The defendants succeeded by establishing that there was no genuine issue for trial. The plaintiff failed to lead any evidence which would demonstrate a real chance of success.

The motion for summary judgment was granted dismissing the plaintiff's claim.

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