

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *King v. Aviva Insurance Company of
Canada,*
2023 BCSC 1909

Date: 20231031
Docket: S213776
Registry: Vancouver

Between:

Pauline King

Plaintiff

And:

**Aviva Insurance Company of Canada, Allianz Global Corporate & Specialty,
Temple Insurance Company, Lloyd's Underwriters, Marc Lipman, Attorney in
Fact in Canada for Lloyd's Underwriters, Hub International Coastal Insurance
Brokers, ClaimsPro, The Mutual Fire Insurance Company of British Columbia,
Square One Insurance Services Inc., All Perils Claims (2019) Inc., The Owners,
Strata Plan BCS 856 and Ecotech Restoration Inc.**

Defendants

Before: Master Bouck

Reasons for Judgment

The Plaintiff appearing on her own behalf:

P. King

Counsel for the Defendants,
Aviva Insurance Company of Canada,
Allianz Global Corporate & Specialty,
Temple Insurance Company,
Lloyd's Underwriters, Marc Lipman,
Attorney in Fact in Canada for Lloyd's
Underwriters, HUB International Coastal
Insurance Brokers, and ClaimsPro (the
"Strata Insurers"):

O. Li

Counsel for the Defendants,
Square One Insurance Services Inc.,
The Mutual Fire Insurance Company of
British Columbia, and
All Perils Claims (2019) Inc. (the “Home
Insurers”):

C. Manning

Counsel for the Defendants,
The Owners Strata Plan BCS856 (the
“Strata”),

C. Bakker

Place and Date of Trial/Hearing:

Vancouver, B.C.
September 27, 2023

Place and Date of Judgment:

Vancouver, B.C.
October 31, 2023

The Application

[1] Pursuant to a notice of application filed on September 13, 2023, the plaintiff seeks broadly worded document disclosure orders against all of the defendants. The relief sought by the plaintiff is found at Schedule A to these reasons.

[2] The defendant Ecotech did not file an application response. The remaining defendants all say that the application is unnecessary and misguided and ask for a \$2,500 each lump sum cost award payable by the plaintiff forthwith.

[3] For reasons that follow, the plaintiff’s application is dismissed with costs awarded to the appearing defendants in any event of the cause at a Scale or level to be determined by the trial judge.

Background

[4] The affidavit material filed by the plaintiff is voluminous. A scaled down version of that evidence will be described so as to give the application some context. For economy’s sake, some of the factual background is taken verbatim from the notice of application and the defendants’ responses.

[5] The plaintiff is the owner of a condominium located in the “Alvar” building with a civic address of #1702-1005 Beach Avenue, Vancouver, B.C. (the “Unit”). The Alvar is owned by the defendant Strata. This litigation arises from water damage to the flooring, kitchen cabinets, tiles and paint in the Unit that occurred in April 2019 while the plaintiff was out of the country (the “Water Loss”). Remediation steps for the Water Loss have not been completed, although fault for that circumstance has yet to be determined.

[6] At the time of the Water Loss, the plaintiff held a homeowner’s insurance policy that had been issued by the defendant Square One Insurance Inc. (“SQ1”). The defendant Mutual Life Insurance Company (“Mutual Life”) is the underwriter of that policy.

[7] The Strata Insurers had issued a policy of insurance to the defendant Strata.

[8] The defendant All Perils was retained by SQ1 to adjust the Water Loss, while the Strata Insurers retained the defendant ClaimsPro for that purpose.

[9] The two insurers and the plaintiff could not agree on the value of the damage caused by the Water Loss to the Unit as well as the nature and extent of remediation required.

[10] In November 2020, the plaintiff invoked two dispute resolution processes pursuant to s. 12 of the *Insurance Act*, R.S.B.C. 2012, c. 1, (the “DR Process”). The DR Process is intended to address the respective insurers’ liability for the Water Loss and the cost and scope of remediation.

[11] The plaintiff filed her notice of civil claim on April 6, 2021 (the “NOCC”), seeking the following remedies:

1. Judgment against the Strata Insurers for damages and loss suffered by the plaintiff that are covered under the Strata Policy.
2. Judgment against Mutual Fire for damages and loss suffered by the plaintiff that are covered under the Homeowners Policy.
3. Damages for breach of the Strata Policy, breach of fiduciary duty and breach of good faith and fair dealing by Mutual Fire and All Perils.
4. Damages for breach of the Homeowners Policy, breach of fiduciary duty and breach of good faith and fair dealing by Mutual Fire and All Perils.
5. Damages against the defendant Strata Insurers, ClaimsPro, HUB, Square One and All Perils for conspiracy to cause economic harm to the plaintiff by refusing to act in good faith and deal fairly with the plaintiff in addressing her claims under the Homeowners Policy and the Strata Policy.
6. Damages for breach of the Ecotech Contract by Ecotech.

7. Alternatively, damages for negligence against Ecotech as bailee of the Plaintiff's Goods.
8. Damages against the Strata for breach of its duty to repair the loss and damage to the Unit for which it is responsible.
9. Damages against the Strata for acting in a significantly unfair manner toward the plaintiff and an order that the plaintiff is not required to sign an Assumption of Liability with respect to the plaintiff's kitchen repair.
10. Judgment for further damages and loss suffered by the plaintiff caused by the acts or omissions of the defendants or some of them arising as a result of the inordinate and ongoing delay in repairing the Unit.
11. Interest as provided by the *Court Order Interest Act*.
12. Special costs, alternatively, costs.

[12] By June 2021, the plaintiff was refusing to participate in the DR Process. Instead, the plaintiff brought an application to terminate those processes and have the issues of the "scope and cost of repairs" to the Unit be determined in this proceeding. The court dismissed the application and ordered the plaintiff to pay costs to the Home Insurers and the Strata Insurers at Scale B: *King v. Aviva Insurance Company of Canada*, 2022 BCSC 973. When the plaintiff still resisted, the insurers each brought an application compelling that participation. The plaintiff did not appear on the applications and later argued that she was not properly served. On January 30, 2023, the court granted the orders sought by the insurers and awarded each the sum of \$5,000 in special costs payable by the plaintiff and, in the alternative, costs of the application at Scale B. The plaintiff's appeals of these two orders were dismissed by Blake J. on July 13, 2023. The insurers were each awarded \$2,000 in costs to be paid by the plaintiff forthwith. The Blake J. cost awards have not been paid as of the date of the hearing of this application. As an aside, the alternative cost awards made in the January 30, 2023 orders are

seemingly contradictory but nothing turns on this point for the purposes of this application.

[13] Meanwhile, the document discovery process has been underway since at least August 2022. The defendants have all delivered lists of documents, including more recently these amended lists: the Strata on October 11, 2022; Ecotech on October 20, 2022; the Strata Insurers on February 23, 2023; and the Home Insurers on July 27, 2023.

[14] On November 12, 2022, the plaintiff delivered a written request to all of the defendants seeking more information and some documentation. The request is not framed as a demand under SCCR 7-(10) or (11). The request is described on pages 6 and 7 of the notice of application.

[15] The plaintiff remained dissatisfied with the defendants' responses, or perceived lack thereof, to her requests. Accordingly, on November 26, 2022, the plaintiff reiterated the same request in writing but this time made mention of SCCR 7-1 (10) and (11).

[16] On January 8, 2023, the plaintiff issued a further SCCR 7-1 (10) and (11) demand to the Strata.

[17] The responses from the various defendants to the plaintiff's demands are reproduced in the notice of application. The plaintiff acknowledges that the defendants have partially responded to her requests. Nonetheless, the plaintiff remains dissatisfied with the majority of the responses received.

[18] In submissions, the plaintiff also complained about the method of the delivery of the lists, the format of lists and/or that certain documents were produced in electronic rather than paper form.

[19] Examinations for discovery have yet to be conducted and no trial date has been set.

Legal Framework

[20] The law governing document disclosure obligations under SCCR 7-1 is fully canvassed in *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322 at paras. 92 to 101. The principles with respect to disclosure orders under SCCR 7-1 (11) (the second tier) are paraphrased in the submissions of the defendant Strata:

In order for the Court to determine whether a party is obliged to produce a document (that has not yet been produced), pursuant to Rule 7-1(11), the Court needs to be satisfied that:

- a. The requesting party has made a written demand that identifies the document(s) with “*reasonable specificity*” and indicates why they should be produced (Rule 7-1(11)(a));
- b. The document(s) are within the listing party’s “possession, power or control”;
- c. The document(s) “relate” to any or all matters in question in the action;
- d. Production of the document(s) are “proportionate” to the action, when considering the amount involved, importance of issues, and complexity of the proceeding.

Analysis

[21] Although much of the oral argument addressed the content of the plaintiff’s written demands for document disclosure, the actual orders sought in the notice of application do not mirror those demands. It is not the role of the court to substitute or improve upon language used in the notice of application unless there is an obvious misnomer or mistake that can be rectified without prejudicing any of the parties. That is not the case here. The court must assume that the plaintiff intended to seek the actual orders described in Schedule A. Nevertheless, I have considered the

demands and responses fully in my deliberations so as to avoid a second application being brought relying on the same evidence but seeking more specific orders.

[22] The defendants all take essentially the same position on this application:

- Each has fulfilled their obligations under SCCR 7-1 to list relevant documents, recognizing that the obligation is ongoing should more relevant documents come within the party's power, possession or control
- Much of the plaintiff's demand for further documentation is a request for evidence or requires the creation of a document
- Documents that relate to the scope and cost of repairs to the Unit and liability for those costs might be relevant in the DR Process but are not material or relevant to the issues that will be adjudicated upon in this proceeding
- The plaintiff has provided no evidence to support further document disclosure pursuant to SCCR 7-1(10) or (11) but rather bases the demands and this application on suspicions that the defendants are withholding relevant documents and/or counsel have not done their due diligence in requesting documents from their respective clients
- The orders sought include production of documents that are not within the particular defendants' power, possession or control
- The demands are, in any event, disproportionate to the issues to be determined in the proceeding.

[23] Moreover, the Home Insurers are still in the process of providing additional document disclosure and say that this application is entirely unnecessary. The Home Insurers note that the documents said by the plaintiff to be missing or withheld are exhibited to Ms. King's affidavit.

[24] Technical issues with respect to the electronic lists and documents are being addressed by the defendants. In some instances, a password to access a document

or list has expired; in one case, a virus may have corrupted a particular file; and the blank pages complained of by the plaintiff is simply the result of a logo, picture, or social media icon being embedded in the original email document but not then appearing in the transmission of that document. In other words, there has been no tampering with the documents.

[25] Although trite law, it is worth stating that the plaintiff bears the onus of proving on a balance of probabilities that the defendants' document disclosure has been deficient under either the first or second tier or both. That onus has not been met.

[26] First, I accept the defendants' submissions that by virtue of the DR Process, the plaintiff's pleas with respect to the value of the insured property, the nature of repairs required and the amount of the loss or damage will not be determined in this proceeding: *King v. Aviva*, para. 45. As such, no documents are required to be listed by any of the parties that might prove or disprove a material fact related to those issues even if such documents are within that party's power, possession or control. On that basis, it is no surprise that Ecotech declined to file a response to the application as the NOCC pleads that this defendant was involved in "the scope of work and pricing relating to the remediation and repair of the Unit." Nevertheless, the plaintiff continues to press the defendants for production of documents in these categories.

[27] For clarity, the defendants' document disclosure obligations can only relate to the plaintiff's claim for damages for failing to act in good faith and the delay damages.

[28] Second, the court is not authorized under SCCR 7-1 to order a party to extend their document search to entities and individuals not named in the proceeding: *Choy v. Stimpson*, 2021 BCSC 1071 at para. 7. The relief sought in paras. 3 to 7 must be dismissed on that basis alone.

[29] Third, while the plaintiff complains about the defendants' method of listing certain documents, there is no "correct" format as sought to be ordered in items 9

and 10: *G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada* (1992), 14 C.P.C. (3d) 74 (B.C.S.C.) at para. 23. In any event, the plaintiff's concerns with respect to the electronic documents and the manner in which emails are listed are being addressed by counsel. This aspect of the application is dismissed.

[30] Lastly, the order sought in item 2 is overly broad and offends the targeted document production that this type of application is intended for: *Barrie*.

[31] Before concluding this aspect of the reasons, I must observe that in their responses to the plaintiff's requests, the defendants have gone above and beyond what is required of each them under SCCR 7-1 and given generous interpretation to the nature of those requests. I find nothing wanting in the defendants' document disclosure to date.

[32] In the result, the plaintiff's application is dismissed in its entirety.

Costs

[33] With the dismissal of the application, the usual order would be to award each of the appearing defendants party/party costs in the cause: SCCR 14-1 (12)(b). The lump sum cost award proposed by the defendants exceeds those party/party costs for this full day hearing: SCCR, Appendix B, Schedule C. The Strata Insurers suggest that the figure of \$2,500 is a reasonable estimate of that party's costs to prepare for and attend at this application. That submission seems to be a request for special costs. Such an order is not outside of the realm of possibilities here. In her submissions, the plaintiff suggested that the defendants "appear to be working together to deny me information" and that the Strata Insurers were "using the representation of one counsel to hide documents of the individual insurers". Ms. King also made a statement in court that impugned the professionalism of one counsel who was not present at the application. These types of statements, made without any evidentiary basis, may well be deserving of rebuke by the court and thus support an award of special costs: *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424 @ para.11.

[34] However, I am mindful that orders for special costs should be made sparingly and that the plaintiff, as a self-represented individual, might be entitled to at least a warning from the court before such an order is made. Nevertheless, having found that the application is entirely without merit, I conclude that the defendants appearing should be entitled to their costs in any event of the cause, with the level or Scale of costs to be determined by the trial judge.

Drawing and Entering the Order

[35] As the applicant, the plaintiff has the responsibility to draw and enter the order pronounced in these reasons. Unless the parties appearing on this application otherwise agree, I direct that the order be submitted to the Vancouver registry for my endorsement by no later than November 23, 2023. If the order has not been submitted by that date, additional directions from the court will be follow.

“Master C. P. Bouck”

Schedule A

Part 1: ORDER(S) SOUGHT

1. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendants shall prepare and mail or deliver to the Plaintiff, all documents/records requested in this Application.
2. The Defendants shall produce and deliver to the Plaintiff, within thirty-five (35) days of this Order, an 'Amended List of Documents' listing all records that are or have been in their power or control relating to any matter in question in this action.
3. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant The Owners Strata Plan BCS856 shall extend their document search to their Property Management Company, Quay Pacific Property Management, and shall prepare and mail or deliver to the Plaintiff, all documents/records that are relating to any matter in question in this action.
4. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant The Owners Strata Plan BCS856 shall extend their document search to their former plumber Elafon Mechanical Ltd., and shall prepare and mail or deliver to the Plaintiff, all documents/records that are relating to any matter in question in this action.
5. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant The Owners Strata Plan BCS856 shall extend their document search to their plumber Pacific West Mechanical Ltd., and shall prepare and mail or deliver to the Plaintiff, all documents/records that are relating to any matter in question in this action.
6. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant The Owners Strata Plan BCS856 shall extend their document search to Divine Flooring., and shall prepare and mail or deliver to the Plaintiff, all documents/records that are relating to any matter in question in this action.
7. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant All Perils Claims (2019) Inc., shall extend their document search to On Side Restoration Services Ltd., and shall prepare and mail or deliver to the Plaintiff, all documents/records that are relating to any matter in question in this action, including all original photos and video taken at the Plaintiff's home.
8. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendants shall ensure that all parties are in possession of the same version of the documents.
9. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant the Plaintiff's Insurers shall separate and list their documents individually in their List of Documents in the correct format.
10. Within seven (7) days following receipt of an entered copy of the Order for which this application is made, the Defendant the Strata's Insurers shall separate and list their documents individually in their List of Documents in the correct format.
11. The Plaintiff shall have the costs of this Application.