IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20230713
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 BCS856 and Ecotech Restoration Inc.

Defendants

Before: The Honourable Justice Blake

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:	P. King
Counsel for the Defendants, All Perils Claims (2019) Inc., Square One Insurance Services Inc., and The Mutual Fire Insurance Company of Canada:	C. Manning
Counsel for the Defendants, Allianz Global Corporate & Speciality, Aviva Insurance Company of Canada, Claimspro, Hub International Coastal Insurance Brokers, Lloyd's Underwriters, Marc Lipman, Attorney in Fact in Canada for Lloyd's Underwriters and Temple Insurance:	M. Libby O. Li
Counsel for the Defendant, and The Owners, Strata Plan BC856:	C. Bakker (April 11, 2023) R. Sohal (July 13, 2023)

Place and Dates of Hearing:	Vancouver, B.C. April 11 and July 13, 2023
Place and Date of Judgment:	Vancouver, B.C. July 13, 2023

Table of Contents

I. INTRODUCTION

[1] The appellant, Pauline King, appeals from two orders made by Master Robertson on January 30, 2023 (the "Orders"). The first order was made upon the application of the defendant respondents Square One Insurance Services Inc., The Mutual Fire Insurance Company of British Columbia, and All Perils Claim (2019) Inc. (collectively the "Defendant Insurers"), and the master ordered that pursuant to s. 12(8) of the *Insurance Act*, RSBC 2012, c. 1 [*Insurance Act*] Ms. King is to appoint a representative for the dispute resolution process within 7 days of the date of the Order, and that she was to pay special costs to those defendants, fixed at $5,000. The second order was made upon the application of the defendants, Aviva Insurance Company of Canada, Allianz Global Corporate & Specialty, Temple Insurance Company, Lloyd's Underwriters, Marc Lipman, Attorney in fact for Lloyd's Underwriters, Hub International Coastal Insurance Brokers and Claims Pro (collectively the "Defendant Strata Insurers"), and the master made an identical order.

II. BRIEF BACKGROUND

[2] The appellant is the owner of Unit #1702 at a strata complex located at 1005 Beach Avenue, Vancouver, BC (the "Unit"). On April 6, 2019, she shut off the water in the Unit and left the country.

[3] On April 7, 2019, a water leak occurred beneath her Unit. On April 21, 2019, she returned home to find extensive water damage. Shortly thereafter, she filed an insurance claim under her homeowner's policy.

[4] A dispute arose amongst the parties regarding liability. Ultimately, on November 24, 2020, the appellant invoked the Dispute Resolution Process under s 12 of the *Insurance Act* (the "DRP"), as required by her homeowner's insurance policy. Specifically, she invoked two DRPs: one in her capacity as the insured under her homeowner's policy and a second in her capacity as an insured under the strata's insurance policy.

[5] The two DRPs moved forward, but the appellant's position was that the process was overly complicated, lengthy, costly, and in her opinion unfair to her. As part of the DRP process, each party must have an appointed representative to deal with the umpire and the other parties' representatives. While the appellant had a representative in the DRP until July 2021, at that time her representative withdrew. She says that despite her best efforts, she has been unable to find and retain a new representative for the DRPs.

[6] On April 6, 2021, the appellant commenced this action herein for her losses and damages associated with the Unit (the "Action"). The Defendants are the various insurance companies, syndicates, carriers, brokers, adjusters, and other parties as set out in the notice of civil claim.

[7] On August 27, 2021, the appellant filed a Notice of Application in the Action for the DRP to be terminated and the issues to be consolidated with this Action. That application was heard before Justice Skolrood (as he then was) on April 14, 2022. On June 10, 2022, the application was dismissed.

[8] Justice Skolrood's reasons set out a number of observations that are relevant, including that the "the DRP is a mandatory process that was initially triggered by the plaintiff" (at para. 45); and that "the matters in issue before the Umpire fall squarely within the terms of the statutory Condition 11 set out in s. 29 of the Act" (at para. 45). He also noted that "It would be antithetical to the principles of proportionality, efficiency and fairness to require the parties to essentially start all over and engage in a lengthy and potentially expensive court process": at para. 47. See *King v. Aviva Insurance Company of Canada*, 2022 BCSC 973 [*King*], at paras 45 and 47.

[9] The appellant did not appeal this decision. While she does not agree with his factual findings, nor his ultimate determination, that is not relevant to this appeal. However, despite the dismissal of her application, the appellant's position continues to be that the DRP is limited in scope and the Action must proceed in order to fully address the issues in the dispute, many of which she says go beyond the damages she has experienced.

[10] On September 13, 2021, at the appellant's request, she and the Defendant Insurers made an agreement to accept service of all materials in the action by way of email. This agreement has never been withdrawn and remains in place at the time of the relevant service of materials leading to the hearing before the master. There is no such agreement between the Defendant Strata Insurers and the appellant.

[11] Further, notwithstanding Justice Skolrood's reasons for judgment, the appellant did not appoint a DRP representative as required under the *Insurance Act*. After their numerous requests that she do so were ignored, on October 20, 2022, the defendant insurers filed a notice application in this Action, which sought the appointment of a representative for the appellant in the DRP. That application was scheduled to be heard on December 6, 2022. On October 28, 2022 the Defendant Strata Insurers also filed a notice of application, seeking the same relief, and scheduled to be heard at the same time. On October 24, 2022, the Defendant Insurers served their notice of application dated October 20, 2022, by email to the appellant’s email address for service.

[12] On November 23, 2022, the appellant objected to the December hearing proceeding by way of application and took the position that it should proceed by petition. She advised the defendants of her position, namely that both applications both sought orders that were outside the scope of the Action, as the appointment of a new representative pertained exclusively to the DRP and had nothing to do with the Action, particularly as Justice Skolrood had ruled that the DRP process must proceed separately. She argued it was inappropriate and improper for the defendants in the Action to seek orders concerning to the DRP by way of an application within the Action, but that in her opinion the appropriate procedural step would be for the parties of the DRP to seek the appointment of a representative in the DRPs by way of filing a petitioner.

[13] The chronology of events after this is important, and so I will set it out here:

a) on November 25, 2022, Mr. Li, co-counsel for the Defendant Strata Insurers agreed to the adjournment on behalf of the parties bringing the application, on the condition it proceed in January 2023. The appellant was further asked to hold her dates, after providing them, so the applications could proceed as rescheduled;

b) on November 26, 2022, the appellant provided January 30, 2023, as an available date, advised the respondents that she would be out of the country beginning on January 9, 2023 and reiterated her position regarding the jurisdictional issue;

c) on November 28, 2022, Mr. Libby, co-counsel for the Strata Insurers agreed to the appellant's demand to proceed by way of petition simply to "get on with things" and confirmed both respondents' availability for January 30, 2023. Mr. Libby confirmed the applications would be re-set for that date; and

d) On November 28, 2022, counsel for the Defendant Insurers echoed Mr. Libby's comments and re-confirmed the new hearing date of January 30, 2023.

[14] In his correspondence on November 28, 2022 to the appellant, counsel for the Defendant Strata Insurers specifically noted:

> Your position is curious given that you brought your earlier application to set aside the dispute resolution process in the confines of the within action, and not by way of separate petition. Despite that apparent inconsistency, the insurers simply want to get on with things – including the dispute resolution process that Justice Skolrood declined to set aside and re-affirmed is mandatory here. So if you are dead set on having this addressed by way of a new petition (which strikes me as inefficient and more costly) then we will convert our application into a petition and serve it upon you shortly. I trust this addresses your procedural concerns.
>
> [Emphasis added.]

[15] The respondents adjourned their applications, and advised the appellant they would be filing petitions. The appellant argues vehemently that she understood this

to mean that both of the sets of respondents conceded that proceeding by way of a new petition was the appropriate method of proceeding. Further, she maintains this is the proper way to seek the relief being sought by the respondents, as was granted by the master in the two Orders.

[16] On December 8, 2022, the Defendant Insurers filed their petition in Vancouver Registry No. S229884. The petition sought the appointment of a representative for the appellant in the DRP and was delivered to the appellant via email only on December 16, 2022. On December 14, 2022, the Defendant Strata Insurers filed their petition in Vancouver Registry No. S229985. That petition also sought the appointment of a representative for the appellant in the DRP and was delivered to the appellant via email on December 16, 2022. I note both petitions sought the same relief that had previously been sought in the notices of application, and were based upon the same facts and the same legal basis.

[17] The respondents then attempted to personally serve the appellant. They both retained process servers to personally serve the petition materials, but despite several attempts at service, the process servers were unsuccessful. Likewise, they both reached out to the appellant between December 29, 2022 and January 9, 2023, trying to arrange either acceptance to being served by email, or to arrange a convenient time for the appellant to be served by way of a process server. The appellant refused to be served by email, and advised both sets of respondents she had “a lot going on” before she left for her trip, and she was unable to confirm a time for personal service to be effected.

[18] On January 9, 2023, the appellant left the country on her scheduled trip. She put an out-of-office message on her email account, advising she was out of the country and would not be checking her emails.

[19] Notwithstanding that the respondents had previously agreed to convert their applications into petition, when they were unable to properly serve the appellant with the petitions, they reverted back to the Notices of Application and scheduled them for hearing via Requisition without the appellant’s consent. On January 10, 2023, the

respondents advised the appellant they were proceeding with their applications on the previously agreed upon date of January 30, 2023.

[20] On January 17, 2023, the Defendant Strata Insurer delivered their requisition to have their application heard on January 30, 2023, by regular mail and email.

[21] On January 25, 2023 at 9:19 am, the Defendant Insurers served their requisition on the appellant by email at her email address for service, re-scheduling the application to proceed on January 30, 2023.

[22] On January 26, 2023, the joint application record index was served on her by email. On January 26, 2023, the Defendant Strata Insurer served their application record index on the appellant by regular mail and email.

[23] The appellant responded on January 29, 2023, reiterating her position, and asking counsel to provide her position to the court, which they did at the January 30, 2023 hearing. In her email the appellant advised she had been out of the country, and had only returned two days ago. She noted that the notices of application were scheduled to be heard on January 30, 2023, and she wrote:

> …I have previously advised you all of my position with respect to these Applications. My position is that the court does not have the jurisdiction to deal with this Application in the civil action, and it must proceed by Petition. It was appropriate for me to bring the previous Application in the civil action proceeding, because the relief sought was to join the DRP process with the action in question. That is not the case here, as the relief relates solely to the DRP proceeding and has nothing to do with the civil action. The civil action is a claim for damages.
>
> On the 28th November 2022, Mr. Libby and Ms. Manning confirmed that they were both converting their Applications to a Petition. It then appears that due solely to the fact that you were both unable to serve me the Petition by personal service before I left the country, that the parties have decided to switch back to the original Applications. It is important to note that I had been asked in November 2022 to hold the 30th and 31st January 2023 by Mr. Li, but I had not been notified of anything being official set down for either of these dates before I left the country on the 9th January 2023.
>
> [Emphasis added.]

[24] She went on to discuss her agreement with counsel for the Defendant Strata Insurers that she be served with application materials personally, and she concluded:

> I repeat my previous statement that I object to these Applications proceeding on jurisdictional grounds. If you still intend to go ahead tomorrow, then please ensure that the court is aware of my objections on jurisdictional and procedural grounds, and the fact that I haven't been legally served on this matter.
>
> If you proceed with the hearings, I will be seeking costs based on the fact that notice was given of the jurisdictional and procedural issues, and you elected to proceed anyway.

[25] Attached to that email were two appendices, one an email from Ms. King dated November 26, 2022, in which she set out her objection to the notices of application being brought at any time in the within action, confirmed she was available on January 30, 2023, and set out her position that any application would take more than 2 hours. That appendix included an email sent by Ms. King to all counsel on November 23, 2022, in which she noted expressly:

> Therefore, it is inappropriate and improper for the defendants in the Civil Action to now seek orders concerning the DRP by way of an application in the Action. The appropriate procedural step would be for the parties to the DRP seeking the appointment of a representative to commence a petition through this process (as was done in *Westland Insurance Company Limited v. Pounden*, 2020 BCSC 264, which is relied upon by the defendants).
>
> In light of the above, I ask the applicants please reconsider their approach in light of this jurisdictional issue and adjourn the December 6 notice of application should not have been brought in the first place.

The second appendix was an email confirming her agreement with counsel for the Defendant Strata Insurers to accept all documents electronically, except for application materials.

[26] On January 30, 2023, the Defendant Insurers and the Defendant Strata Insurers attended before the master to proceed with their respective notices of application in the appellant's absence. The appellant had not filed a response to either of the two applications at that time, did not attend the hearing and did not request an adjournment. The respondents have confirmed that they did provide the

master with a copy of the appellant's email of January 29, 2023, together with the two appendices.

[27] Master Robertson confirmed in her unpublished oral reasons for judgment that she had been given a copy of Ms. King's email of January 29, 2023 and that she had read it: at para. 4. She expressly noted that Ms. King:

> [4]…is taking issue with the way that the application is being brought, not necessarily with the merits of it, but rather that, in her view, in order to seek this relief the applicants here today would have to commence a petition and proceed by way of hearing of petition to get the relief sought.

[28] The master noted:

> [7] I asked the parties to be very clear with me as to the basis on which the court could make the order as sought in the action that is before the court today, namely the action commenced by Ms. King seeking damages arising from the water claim that is the basis of the underlying action itself, and to explain why the matter was not *functus* as a result of the determination by Mr. Justice Skolrood on June 10, 2022.

[29] She granted the Orders sought, and noted in her reasons for judgment that:

a) the Defendants had provided documentary evidence which suggested that the appellant has "*demonstrated a dilatory or avoidant approach to this litigation*" (at para. 5);

b) the appointment of a representative is ancillary to and part of the Order of Justice Skolrood, made June 10, 2022 (para. 13); and

c) it had been six months since Justice Skolrood had issued his decision and the appellant had taken no steps to further the DRP (para. 16).

[30] Ultimately, the master determined that it was clear that Justice Skolrood, in dismissing the application to terminate the dispute resolution process, "expected that the mandatory requirement of having a representative would be complied with": at para. 11. She went on to address the basis upon which she was satisfied it was appropriate to order that the appellant appoint a representative:

> [12] Rule 13-2(7) of the Rules of Court provides that if a mandatory order has been pronounced and is not obeyed, the court may, in addition to making a contempt order, make such other order to require the act to be done insofar as it is practicable to be doing so.
>
> [13] While the order did not specifically require that process to be taken, reading the reasons in conjunction with the order as pronounced, I am satisfied that making the order as sought today is ancillary to it, such that the court is not *functus* with respect to the issue of representation at the dispute resolution process. As such, I find that it is appropriate to make the order as sought within this action.

III. STANDARD OF REVIEW

[31] While the appellant initially took the position that matters pertaining to the Court's inherent jurisdiction are questions of law, and so that standard of review is correctness, citing *Janson Estate v. Kvist,* 2018 BCSC 1701, to her credit, she ultimately agreed with the respondents that the appropriate standard of review for a purely interlocutory decision of a master is not to be interfered with unless it is clearly wrong. See: *Abermin v. Granges Corporation* (1990), 45 BCLR (2d) 188 affirmed in *Kondori v. New Country Appliances Inc.*, 2017 BCCA 164 at para. 16

[32] Where an order decides only issues regarding the procedural right to pursue a remedy, it is classified as an interlocutory order: see *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2011 BCCA 320 at para 8.

[33] I am satisfied that the two Orders are not determinative of any of the substantive issues in the action; but rather address the procedural matter as to the necessity for the appellant to appoint a DRP to be able to proceed. In these circumstances, I find that the appropriate standard of review is whether the master was "clearly wrong". To establish the master was clearly wrong, the appellant must prove that she erred in principle, took wrong matters into consideration, failed to take into consideration relevant factors, or that the decision resulted in a manifest unfairness: see *PDI Steel Inc. v. KPA Engineering Ltd.*, 73 BCAC 16 at para 8

IV. ISSUES

[34] The appellant's appeal raises the following issues:

a) Did the respondents properly affect service of their notice of application, heard January 30, 2023?

b) Was it proper for the respondents to proceed by application, instead of by way of petition?

c) Did the master have the authority to order the appellant to appoint her own DRP representative?

V. ANALYSIS

A. Did the respondents properly affect service of their notices of application heard on January 30, 2023?

[35] The appellant's position is that pursuant to Rule 4-3(1)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] the respondents failed to effect service of the two petitions on her, as she did not consent to service via email. She stresses that she did not agree to accept service of the petitions via email and so says they were not properly served on her prior to her leaving the country on January 9, 2023.

[36] However, the respondents did not proceed with the petitions. After the appellant was unable to be served with the petitions, and given her refusal to cooperate with such service, they proceeded with their two notices of application.

[37] Our Rules provide for what is appropriate service. When the appellant filed her notice of civil claim on August 6, 2021, she provide an address for service at Hotel Le Soleil, 567 Hornby St., Vancouver, B.C., V6C 2E8.

[38] Rule 8-1(8) requires that application materials be served at least 8 business days before the hearing date. Rule 4-2(2)(b) permits service of documents by ordinary mail to a party's address for service. Rule 4-2(4) deems that any document sent for service by ordinary mail is served one week later on the same day of the week as the day of mailing.

[39] Rule 8-1(21.1) specifies that an application that has been adjourned generally can be reset by serving a filed requisition at least 2 business days before the date set for hearing.

[40] The notice of application of the Defendant Strata Insurers dated October 28, 2022, was sent to the appellant by both email and regular mail on November 14, 2022. The filed requisition setting the notice of application to be heard on January 30, 2023 was mailed to the appellant on January 17, 2023, and so pursuant to Rule 4-2(4), service by mail was deemed to have been effected on January 24, 2023.

[41] The notice of application of the Defendant Insurers was emailed to the appellant on October 24, 2022, pursuant to an agreement they had with the appellant that she would accept service of all materials in the action by email. Rule 4-1(2)(c) allows an email address as an address for service, and so service was completed upon her on that date, pursuant to Rule 4-2(2)(d) and 4-2(6)(a).

[42] On January 25, 2023 at 9:19 am, the Defendant Insurers served their requisition on the appellant by email at her email address for service, re-scheduling the applications to proceed on January 30, 2023, in compliance with Rule 8-1(21.1). For the reasons set out above, service was completed upon the appellant on that date.

[43] Finally, on January 26, 2023, the joint application record index was served on her by email. On January 26, 2023, the Defendant Strata Insurer served their application record index on the appellant by regular mail and email.

[44] While the appellant argues that as she was out of the country, and had turned on her out-of-office notification that she would not be checking email, and so accordingly email and mail service in January 2023 was ineffective, that argument has no basis in the service regime as set out in our Rules. Our Rules provide for deemed service by way of ordinary mail; and so the materials mailed to the appellant are properly deemed to have been served a week later pursuant to Rule 4-2(4). The fact she now says she did not receive those documents does not affect the deemed

service of those materials mailed to her. Likewise, pursuant to her agreement with the Defendant Insurers, the emails she received were deemed to have been received by the appellant when sent. Putting her out-of-office on does not negate this deemed service.

[45] I find the appellant was properly served with the notices of application, the supporting affidavits, and the requisitions setting the hearing for January 30, 2023. I also note than on January 29, 2023, the appellant wrote to the respondents requesting they provide her position, as set out in that email, at the hearing. I accept this is evidence the appellant knew the hearing date, and also knew the subject matter of the hearing. The appellant did not request an adjournment of the hearing.

[46] Accordingly, I do not accept the appellant's argument that the manner in which the respondents proceeded with the application was "both inappropriate and improper".

B. Was it proper for the respondents to proceed by way of application, instead of by way of petition?

[47] The appellant argues that the respondents had clearly advised her that they were proceeding by way of petition; and says she was entitled to rely on this and to expect them to comply with the service rules for petitions (namely, to personally serve her with each of the petitions).

[48] She says it was unfair and improper for the respondents to commence the petitions and represent to her that they would be proceeding by petition, and then revert back to proceeding by notice of application when she was knowingly out of the country.

[49] I note that it was the appellant's own actions, in agreeing to having the matter heard on January 30, 2023, and then refusing to cooperate to allow personal service to be effected, that ultimately resulted in the respondents' decision to revert back to setting down their notices of application. That was as a direct result of her actions, and she cannot now avoid the consequences by arguing it was unfair of them not to

proceed with the petitions that she ensured could not be properly served upon her personally.

[50] Further, she argues that pursuant to Rule 1-2(4) that the application must have been brought by way of a petition because it was being brought under an enactment other than the Civil Rules. She also relies upon *Westland Insurance Company Limited v. Pounden,* 2020 BCSC 264 (*Westland*) and says the appropriate method to seek an order under the above section is by petition, as was done in that case.

[51] In an email from Mr. Libby, counsel for the Defendant Strata Insurers, dated January 10, 2023, he outlined the difficulty the respondents had had with personal service on the appellant:

> In several emails, both Charlotte and I have outlined the problems our process servers have had serving you personally with the petition materials, given the secure nature of your building. They cannot access your suite or floor without being "buzzed in" – but your unit is not listed on the intercom directory, and they have no way of seeking entry and access to your floor. We have both suggested scheduling a convenient time and place for our process servers to meet you and hand over the documents, but you have not agreed to that. As you appear to be leaving the country in very short order, it appears it will be impossible to serve the petition in time for the January 30th hearing date that we have all previously agreed to. It is not clear how we might ever effect service of the petitions absent sheer luck or incurring significant cost. We have asked for your input as to methods of service but have not had a reply. The ongoing delay benefits no one.
>
> As a result, it is now the intention of my clients and Charlotte's clients to proceed with the hearing of their Notices of Application filed on October 28, 2022 and October 20, 2022 respectively, for orders that you appoint a dispute resolution process representative. As you know, those applications and the petitions are essentially identical in nature and seek the same relief based upon the same evidence.

[52] I am satisfied that the respondents were entitled to proceed in the manner in which they did. Rule 1-2(4) provides specifically that if an application is for other than a final order, as here, it may be brought by application. As I have already determined, the orders sought were not final orders, but were rather procedural interlocutory orders. As such, I am satisfied that bringing the notices of application was permitted by Rule 1-2(4)(b).

[53] While the appellant relies upon *Westland*, in that decision the Court did not need to determine the appropriate method to bring such an application, and so I did not find it to be of assistance in reaching my determination.

[54] The appellant argues that there was no nexus or connection between the Action and the DRP, once Justice Skolrood dismissed her application, and so it was inappropriate for the master to consider that the order was ancillary to the one made by Justice Skolrood. I cannot accept this argument. It is clear that in her notice of civil claim, and in the response to civil claim, there are several allegations of fact and law, related to the DRP, that are in significant dispute between the parties in the action. I need say no more about those issues, which will need to be dealt with when the trial of the action is heard. However, given Justice Skolrood's clear determination that the DRP process must continue, I am satisfied that the master was not clearly wrong in determining that the orders she granted were ancillary to the order of Justice Skolrood, and so were appropriately brought by way of notice of application.

[55] Further, I am also satisfied that the master appropriately placed reliance on Rule 13-2(7), which provides for the enforcement of orders. This Rule has been described as one designed "…to provide an actual remedy, one that is real and workable, to those who have court orders that are not being obeyed. Contempt proceedings penalize the person disobeying the order, but do not necessarily result in compliance with the order"*: see Halford v. Halford* 1999 CanLii 6658 (BCSC).

[56] I am satisfied it was proper for the respondents to proceed by way of notice of application. I find nothing clearly wrong with the master's conclusion that when Justice Skolrood dismissed the appellant's application to terminate the DRP, he expected that the mandatory requirement that she appoint a representative be complied with, and so the applications brought were ancillary to the earlier order of Justice Skolrood.

C. Did the Master have the authority to order the appellant to appoint her own DRP representative?

[57] The appellant argues that the relief granted by the master was outside of her jurisdiction, as it related to matters concerning the DRP and should properly have been brought by petition.

[58] She relies upon s. 12(8) of the *Insurance Act*, which provides:

> (8) If
>
> > (a) a party to a dispute resolution process fails to appoint a representative in accordance with subsection (4), or
> >
> > (b) a representative fails or refuses to act or is incapable of acting and the party that appointed that representative has not appointed another representative within 7 days after the failure, refusal or incapacity,
>
> on application of the insurer or insured, on 2 days' notice to the other, the Supreme Court may appoint a representative.

[59] She argues that as the *Insurance Act* uses the language "may appoint a representative", it was therefore only open to the court to appoint an actual representative and it was not open to the court to order the appellant to appoint a representative. Accordingly, she says that the Orders went outside the language of the enabling statute and were therefore outside the court's jurisdiction. The appellant argues her interpretation is supported by Rule 1-2. Finally, she argues that the Action is a lawsuit for damages and does not concern the DRP, which is a separate statutory process governed by section 12 of the *Insurance Act.* She argues that the master did not have jurisdiction to make orders concerning the DRP process, including an order that the appellant appoint a representative.

[60] First, these issues were not clearly raised before the master, nor did the appellant provide a clear articulation of these issues to be given to the master. I accept the respondents' argument that appeal courts, generally, do not consider submissions that were not advanced in the proceeding giving rise to the order under appeal: see *Gorehnstein v. British Columbia (Employment Standards Tribunal),* 2016 BCCA 457 at paras. 44 and 45.

[61] While the Defendant Insurer's argue it is inappropriate for me to consider this ground of appeal, the Defendant Strata Insurer's argue it would be appropriate for me to consider, in a restrained approach. Given the appellant had indicated in her email of January 29, 2023 that she had a jurisdictional basis for objecting to the relief sought, I will consider her argument that the master did not have the statutory authority to make the orders she did.

[62] Second, s.12 (4) of the *Insurance Act* specifically requires the insured to "appoint a dispute resolution representative", and if they fail to do so, s. 12 (8)(a) allows the other party apply to the court to order compliance. There are two particularly relevant principles of statutory interpretation which fully support the master's approach.

[63] Firstly, section 8 of the *Interpretation Act,* RSBC 1996, c. 238 states:

> Enactment remedial
>
> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[64] To interpret s. 12(4) of the *Insurance Act* so narrowly as to preclude the court from making the type of order the master did would be fundamentally inconsistent with the objects of that legislation (and specifically, the legislative objectives in establishing the dispute resolution process). The purpose of the process as set out in s. 12 is an alternative dispute resolution mechanism, clearly intended to reduce the duration and expense of traditional litigation, and to encourage the early settlement of dispute outside of court: see *King* at para. 30 and 32; quoting from *Westland* at para. 65.

[65] Finally, it is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at par. 27.

[66] To interpret s. 12(4) of the *Insurance Act* so narrowly as to preclude the court from making the type of order made by the master did would be fundamentally inconsistent with the objects of the legislation.

[67] It would lead to an absurd result if s.12 (8) of the *Insurance Act* was interpreted strictly to mean that the Court cannot require an insured to appoint her own representative where she refuses to do so. Such an interpretation would allow an uncooperative insured to frustrate indefinitely the DRP – simply by refusing to identify a representative who was willing to act in that capacity. A court would be left with no practical or effective remedy to grant. It makes no sense to say that a court cannot order someone to do something that a statute specifically requires them to do.

[68] Furthermore, and as discussed above, the court has authority under Rule 13-2 (7) to require a party to comply with a previous court order.

[69] In all of these circumstances, I cannot accept that this court does not have the jurisdiction to make the orders made by the master, from which these appeals are taken. I am satisfied the master was not clearly wrong in determining it was not appropriate that she appoint either of the two individuals suggested by the applicants, as she had no evidence they were willing to accept their appointment. I also find she was not clearly wrong in electing to order the alternative relief, namely, ordering the appellant to appoint a representative within 7 days of the Order.

VI. CONCLUSION

[70] The appellant has failed to establish the master was clearly wrong when she made the two orders. Both appeals are accordingly dismissed.

[71] With respect to costs, each set of respondents seek an order setting their costs at a fixed amount, and each propose $2,000, inclusive of all taxes and disbursements. The appellant argues that she has experienced significant financial hardship, and so the costs order of the master are inappropriate, and so it would be inappropriate for any costs order to be made on this appeal. However, as her

appeal has been dismissed, I am satisfied that the respondents are entitled to their costs of this appeal. The proposed amount is an appropriate amount, and I order the appellant to pay to each set of respondents' costs in the amount of $2,000, forthwith.

[72] Finally, I wish to address the issue of proportionality. Our Rules clearly provide in Rule 1-3(1) that the objective of the Rules "is to secure the just, speedy and inexpensive determination of every proceeding on its merits". Since October of 2022 the parties have been at odds with respect to what are clearly procedural orders. They have has now taken a day and a half on this appeal. It is my sincere hope that the parties will now be able to move forward with the substance of the issues before them and not spend more time and resources on matters of procedure.

[73] That concludes my reasons. Is there anything arising from them? Yes, Ms. King.

[74] PAULINE KING: With respect to the costs, I do not have the money to pay them forthwith. I -- I think I -- I mentioned about the cost of my mortgage. The -- if I add the mortgage and my strata fees and my property tax, it is over 70 percent of my income, without even the bank -- the bank raising the rates again yesterday. I have exhausted my savings. I don't have money for -- to pay a lawyer to represent me. I have not paid my disability lawyer since last summer.

[75] THE COURT: Well, there are two existing orders that you pay $10,000 from the underlying application, and you have my point on these orders. That is an issue you can address with counsel for the defendants, but it is an issue that is properly dealt with them by way of negotiating when and how those payments are made.

[76] CNSL C. MANNING: We request that the requirement for Ms. King to sign the order be dispensed with, as we have had difficulty in the past, and that is created greater delay in getting that signature.

[77] THE COURT: Ms. King.

[78] PAULINE KING: Do I -- to I have to sign it now?

[79] THE COURT: You do not have to sign it now, but what Ms. Manning is requesting is that your execution of the order be dispensed with. I am inclined, given how difficult this matter has been, to agree with that. What I order is that your endorsement on the order be dispensed with, but that counsel provide you with both an unentered copy as soon as it is filed, and with a filed copy of the order in due course. I say that because getting filed copies back can take some time, and I would like you to have a record as soon as possible of what the order says.

[80] PAULINE KING: I am sorry, but I actually do not understand anything that is being said right now.

[81] THE COURT: All right.

[82] PAULINE KING: And I would rather speak to -- if I get some legal advice before I agree to anything.

[83] THE COURT: Well, it is not for you to agree. I am satisfied --

[84] PAULINE KING: Okay. Well --

[85] THE COURT: -- with the difficulties --

[86] PAULINE KING: -- to sign something, I do not really know what I am not -- what I am signing.

[87] THE COURT: All right. My decision is that your appeals are dismissed.

[88] PAULINE KING: Yes.

[89] THE COURT: And that you are to pay costs of $2,000 forthwith. The order will simply record what my reasons for judgment have determined. Given the procedural difficulties that I have seen firsthand in this file, I am going to dispense with your endorsement of that order. You will get a copy as soon as counsel prepare it and send it for entry, and you will also, I am telling them, get an entered

copy of that order. Probably early next week you will get a copy from both counsel that you could take to any lawyer to get legal advice on. I do hope this helps move this matter forward and that everybody can get a final resolution. Thank you.

[90] As these were oral reasons, they have been edited where necessary and quotes from the caselaw have been inserted, but the overall substance and result has not changed.

"Blake, J."