

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20230130
Docket: S-213776
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: Master Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Defendants Aviva Insurance
Company of Canada, Allianz Global
Corporate & Specialty, Lloyd's Underwriters,
Marc Lipman, Attorney in Fact in Canada for
Lloyd's Underwriters and Temple Insurance
Company:

O. Li

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

C. Manning
Z. Fang

Counsel for the Defendant The Owners,
Strata Plan BCS856:

C.J. Bakker

No other appearances

Place and Date of Trial/Hearing:

Vancouver, B.C.
January 30, 2023

Place and Date of Judgment:

Vancouver, B.C.
January 30, 2023

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] The application before the court today is being brought under s. 12(8) of the *Insurance Act*, R.S.B.C. 2012, c. 1 for the appointment of a representative on behalf of the plaintiff with respect to ongoing dispute resolution processes that are being undertaken with respect to this insurance claim.

[3] In reasons for judgment issued 2022 BCSC 973, Mr. Justice Skolrood, as he then was, provided the background with respect to an application brought in this action by the plaintiff. That application was for a declaration that the mandatory dispute resolution process commenced under the *Insurance Act* and one that was, in fact, triggered by herself, be terminated.

[4] Ms. King, the plaintiff, is not in attendance today. I am advised that she was served with the application and that she responded by way of email on January 29, 2023. I have been given a copy of her email and I have read it. She is taking the position that the application ought not proceed today. In particular, she 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.

[5] The applicants disagree and while they did, for some time, entertain the possibility of filing a petition to appease the plaintiff and essentially take that issue off the table, they are not proceeding in that fashion today and have taken the court through various correspondence with the plaintiff which suggest that she has demonstrated a dilatory or avoidant approach to this litigation. For example, there is correspondence indicating that Ms. King travels in and out of the country, the result of which is to make herself unavailable both for court applications and for service.

[6] With the filing of a new petition, new personal service would be required absent an application or an order for substituted service, making it, the defendants argue, impractical to proceed in that fashion.

[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.

[8] Their position today is that this application for the appointment of a representative is ancillary to and part of the enforcement of the order of Mr. Justice Skolrood, as he then was.

[9] In this respect, the entered order provides:

1. The Plaintiff's application for an order that a dispute resolution process ("DRP") commenced under s. 12 of the Insurance Act, R.S.B.C. 2012, c. 1 (the 11Act11) be terminated and that the matters in dispute in that process be determined by the Court in this proceeding, is hereby dismissed.

[10] In dismissing the application, the following was specifically noted:

[48] I acknowledge that the plaintiff has lost the services of her designated representative and that she is statutorily barred from acting in that capacity personally. However, I accept the defendants' position that given the plaintiff's knowledge of the facts and issues and the degree of preparation she exhibited on this application, she can likely find someone to stand as even a bare nominee to present her case.

[11] Despite that comment being *obiter*, it is clear that the court, in dismissing the application to terminate the dispute resolution process, expected that the mandatory requirement of having a representative would be complied with.

[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.

[14] For the purpose of the record, I specifically order that the applications, as there are two, one by each set of insurers, are both granted on the terms sought.

[15] With respect to costs, there is a request that costs be ordered on a special costs basis, relying on s. 12(9) of the *Insurance Act*, and the decision of *Westland Insurance Company v. Pouden*, 2021 BCCA 156 at para. 121. The comments of the court in *Westland* are applicable here. The actions of the plaintiff what I referred to earlier as a dilatory approach to having a resolution of these issues.

[16] It has been six months since Mr. Justice Skolrood rendered his decision, at which time it ought to have been clear that the dispute resolution process would be proceeding, and notwithstanding that, and the delivery of these application materials and the correspondence relating to it going back for months, the plaintiff has taken no steps to further and move this process forward. As such, I agree it is appropriate to order special costs, so I do order special costs to both parties.

[17] CNSL O. LI: Thank you, Your Honour. We have two forms of a vetted order, if I can hand them up?

[SUBMISSIONS RE FORM OF ORDER AT 2:42:10 TO 2:48:22 P.M.]

[18] THE COURT: For the sake of any transcript of these reasons for judgment, the relief specifically being sought was appointment of alternatively two different counsel that have been involved in this matter, or alternatively that the plaintiff appoint a representative within seven days of the date of this order.

[19] I am making the latter order, because I do not think it is appropriate to appoint somebody specifically without them being before the court and knowing that they are

willing to act and that proper arrangements have been made for their remuneration. I cannot compel somebody to act in absence of that, so I will make the order that the respondent appoint a representative within seven days of the date of this order.

“Master Robertson”