IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan 4668 v. Culos Development (1996) Inc.,* 2023 BCSC 1454

Date: 20230726
Docket: S-210170
Registry: Vancouver

2023 BCSC 1454 (CanLII)

Between:

The Owners, Strata Plan 4668, Amanvir Oberoi, Peter Northcott and Mundeep Singh

Plaintiffs

And

Culos Development (1996) Inc., Richard Hunter Architect Inc., K. Richard Hunter, HPF Engineering Ltd., Neal D. Rogers, North River Plumbing and Heating Ltd., Westway Plumbing & Heating (2011) Inc., Western Canada Fire Protection (Kamloops) Ltd., Evans Fire Protection Ltd., John Doe General Contractor, John Doe Warranty Provider and John Doe Contractor

Defendants

And

Culos Development (1996) Inc., Richard Hunter Architect Inc., K. Richard Hunter, HPF Engineering Ltd., Neal D. Rogers, North River Plumbing and Heating Ltd., Westway Plumbing & Heating (2011) Inc., Evans Fire Protection Ltd. and Western Canada Fire Protection (Kamloops) Ltd.

Third Parties

Before: Master Hughes

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	C. Smith
Counsel for the Defendants and Third Parties Richard Hunter Architect Inc. and K. Richard Hunter:	S. Gladders
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. July 19, 2023
Place and Date of Judgment:	Vancouver, B.C. July 26, 2023

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[1] **THE COURT:** The plaintiffs commenced this action against Richard Hunter Architect Inc. and K. Richard Hunter (collectively "the Architects") and the other named defendants, claiming damages arising from the failure of a fire suppression system at the plaintiffs' residential strata complex in Kamloops known as Landmark Place on or about January 11, 2019.

[2] The claim is that a pipe in the attic space of the building failed, allowing an extensive amount of water to escape and cause damage to the building. The cause of the failure is alleged to have been a coupling that separated from an elbow fitting, due to freezing of remnant water in the fire suppression system, and inadequate tightening of the fitting.

[3] K. Richard Hunter was retained as the Coordinating Registered Professional, a defined term in the *B.C. Building Code*, B.C. Reg. 295/98 to coordinate the design work and field reviews of the registered professionals for Landmark Place.

[4] The plaintiffs plead improper design, installation and inspection of the fire suppression system, and failure to ensure that the system was properly winterized. They plead that the Architects were retained “to provide professional architectural services, including but not limited to conducting field reviews and coordinating designs of all professional engineers involved in the design and construction of the fire suppression system of the Building” (notice of civil claim, para. 19(b)).

[5] On this application, the Architects seek further and better particulars of the claims made against them by the plaintiffs pursuant to Rule 3-7(22) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 (“Rules”) and document production related to those claims pursuant to Rule 7-1(13) and (14).

[6] The allegations against the Architects are in negligence and are contained in paragraphs 32 and 33, inclusive, of the notice of civil claim. They include some broad allegations, such as "failing to ensure that the Fire Suppression System was designed in accordance with all applicable industry standards, building codes,

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plumbing codes, fire codes, bylaws and regulations” (notice of civil claim, para. 33(k)).

[7] On July 5, 2022, the Architects delivered a demand for further and better particulars pursuant to Rule 3-7(23). On July 15, 2022, the plaintiffs responded saying, "We believe that our pleadings are sufficiently particular; but in addition, we are unable to provide further particulars until document and oral discovery are completed, as the particulars you are seeking are currently unknown to us". Discoveries have not yet been conducted.

[8] It is trite law to say that pleadings are foundational. The pleadings define the issues of fact and law to be determined and give the parties fair notice of the case they have to meet. The parties' disclosure obligations are determined by the pleadings.

[9] The function of particulars was discussed by the Court of Appeal in the leading case of *Cansulex Ltd. v. Perry,* [1982] B.C.J No 369 at paragraph 15:

> (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
>
> (2) to prevent the other side from being taken by surprise at the trial;
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> (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial;
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> (4) to limit the generality of the pleadings;
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> (5) to limit and decide the issues to be tried, and as to which discovery is required, and
>
> (6) to tie the hands of the party so that he cannot without leave go into any matters not included.

[10] Particulars are intended to delineate the issues between the parties and are not intended to request material in the nature of disclosure that relates in the way in which the issues will be proven (*Forgotten Treasures International Inc. v. Lloyd’s Underwriters*, 2019 BCCA 485 at para. 22; *Samaroo v. Canada (Revenue Agency)*, 2013 BCSC 482 at para. 4).

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[11] In *Norman v. Maple Ridge (District)*, 2016 BCSC 1387 which bears considerable similarities to the case at bar, Jenkins J. ordered that the plaintiffs provide particulars of negligence claimed against a structural engineering firm with respect to basement water ingress. The claims in that case, as against the engineering firm, Leung, were general in nature, without reference to specific bylaws, codes, drawings, work, inspections and testing, which may or may not have been carried out during the design and construction process. Justice Jenkins ruled that Leung was entitled to know particulars of the case being made against it before an examination for discovery.

[12] In *The Owners, Strata Plan BCS 4340 v. National Home Warranty Group*, 2016 BCSC 2463 on an application to strike portions of the notice of civil claim, the court said at paragraph 63:

> [63] It is not the role of this Court to specify how the plaintiff should articulate its claim or what material facts should or should not be included. However, there are four principal areas that warrant consideration:
>
> 1. recognizing there is an important distinction between material facts and the evidence that the plaintiff will rely upon to prove its claim, the pleadings should include the relevant material facts that have already revealed themselves through the investigation of the alleged Condominium defects, expert reports that have been obtained, and/or other information gathered as a result of repairs made;
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> 2. when incorporating material facts, particular attention should be paid to specifying the work that is said to have been done by each of the named defendants in the design, development and construction of the Condominium; the specific acts or omissions that the plaintiff says constitute a breach of warranty or any duty owed to it; and to the extent feasible, how these acts or omissions have factually contributed to, caused or resulted in the Condominium's "Defects", "Resultant Damage" or "Dangerous Defects";
>
> 3. any assertions made about a defendant's role in the "Defects", "Resultant Damage" or "Dangerous Defects" should factually align and be consistent with the known roles of, and work completed by that same defendant; and,
>
> 4. where the plaintiff asserts acts or omissions on the part of a defendant that purportedly stand in violation of a building code, bylaw or statutory provision, the pleadings should identify the building code, bylaw or provision in question and include the material facts in support of the alleged non-compliance.

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[13] The court in *The Owners, Strata Plan BCS 4340 v. National Home Warranty Group* also commented on the generalized language and tendency to attach all wrongs to all defendants, rather than distinguishing between them. The pleading in the case at bar suffers from some of the same concerns, in that the same allegations of breaches in negligence are pleaded as against multiple defendants.

[14] In *Kimpton v. Canada (Attorney General of),* 2002 BCSC 67 Macaulay J. held that the particulars of the Building Code should be provided, stating:

> [35] The building code is over 400 pages in length and is divided into 9 parts with attached appendices. The topics range from fire protection to plumbing services. I agree with the Province that not every provision can be in issue and that the Province should not have to speculate as to which particular provisions are at issue.

[15] I agree with the defendant Architects that the pleadings lack sufficient specificity. Three examples from paragraph 33 of the notice of civil claim are as follows:

> 33(c) failing to retain reasonably skilled and competent agents, employees and subcontractors . . .

-- but without identifying those that are alleged not to have been reasonably skilled or competent.

> 33(g) proceeding with the installation of the Fire Suppression System when it knew or ought to have known that the design of the Fire Suppression System was not in compliance with industry standards and/or applicable bylaws and regulations, or was inadequate to ensure freeze protection;

-- without specifying which industry standards, bylaws, and regulations are applicable, and:

> 33(h) failing to provide proper instructions and directions respecting installation of the Fire Suppression System to ensure that they were installed in accordance with the design and/or the applicable building codes and standards;

-- again, without specifying those instructions and directions, to whom they ought to have been provided, and the applicable building codes and standards.

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[16] With respect to the particulars sought in this case, the plaintiffs simply make a blanket statement that the pleadings are sufficiently particularized and they do not respond to each individual item.

[17] Using the plaintiffs' all-or-nothing approach, I am exercising my discretion to grant the order sought in paragraph 1 of the notice of application. The plaintiffs shall provide further and better particulars of their claim as against the Architects within 14 days of the pronouncement of this order, including but not limited to particulars of their claims as set out in the form attached as Schedule A to the notice of application.

[18] Turning now to the application for document production, just as the claims against the Architects lack specificity, the Architects' demand for document production is similarly deficient. The Architects acknowledge that their request is framed in overly broad and vague terms, and blame this on the lack of specificity in the pleadings.

[19] As noted in *Lit v. Hare*, 2012 BCSC 1918. it is difficult for the court to adjudicate on a document production application where what is sought is “all documents not yet produced” in broadly-defined categories.

[20] In the case at bar, the list of documents sought simply parrots the claims made against the Architects in the notice of civil claim. Some are a clear fishing expedition, and others are more appropriately requested at an examination for discovery. None of the descriptions are sufficient to allow the plaintiffs to identify the specific documents sought.

[21] Accordingly, I am dismissing the application sought in paragraph 2 of the notice of application.

[22] And, unless counsel wish to make submissions as to costs, my view is that success is divided and each party should bear their own costs.

[23] Counsel?

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[24] CNSL S. GLADDERS: Thank you, Your Honour. Briefly on costs, I would submit that the bulk of the application and the bulk of the time spent on the application was focused on the particulars demand, and that application was only necessary because of the deficient pleadings. The document demand goes in hand with that and it is overly broad, but I would say that the application was generally only necessary due to the problematic particulars in the pleadings and we would request cost in the cause.

[25] THE COURT: Mr. Smith?

[26] CNSL C. SMITH: I would agree with Your Honour that success on the applications was divided, it was two applications, and the costs should be split evenly.

[27] THE COURT: That was my initial inclination, although I agree with Ms. Gladders that the bulk of the submissions, the bulk of the time spent on this application, was with respect to the application for particulars. We did not spend an awful lot of time on the document production request, which was rightly acknowledged as being overly broad.Costs will go to the Architects in the cause.

"Master Hughes"

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