

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hui 789 Development Ltd. v. Fraserway
RV Limited Partnership,*
2023 BCSC 2458

Date: 20231124
Docket: S216625
Registry: Vancouver

Between:

Hui 789 Development Ltd.

Plaintiff

And

Fraserway RV Limited Partnership

Defendant

Before: Associate Judge S. Hughes

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

C. Rubinstein

Counsel for the Defendant:

H. Parsons

Place and Date of Hearing:

Vancouver, B.C.
November 22, 2023

Place and Date of Judgment:

Vancouver, B.C.
November 24, 2023

[1] **THE COURT:** These are my oral reasons on the plaintiff's notice of application filed November 7, 2023, seeking production of documents. I have made minor edits to make the decision more readable in written form, but the substance and result have not changed.

[2] This is a dispute between the plaintiff landlord and its tenant, the defendant. The defendant is a company that is involved in the sale and leasing of recreational vehicles and operates from a number of different properties. The defendant has operated an RV rental and servicing business at premises located in Delta since in or about 1989. In 2018, the plaintiff purchased the Delta property from the previous owner and became the defendant's landlord.

[3] There is a dispute between the parties as to whether the defendant's tenancy was month-to-month or the subject of a lease agreement entered into in 2016 between the defendant and the previous owner of the property. The 2016 lease agreement was for an initial five-year term, expiring November 30, 2021, with two options to renew the term of the lease for additional five-year periods.

[4] In May 2021, the defendant delivered notice that it was exercising its option to renew under the 2016 lease. Whether the plaintiff was ever bound by the 2016 lease and whether the renewal option was or could be validly exercised by the defendant are very much in dispute.

[5] On September 29, 2023, the plaintiff filed and served a notice of application seeking a number of items of relief. Paragraph 4 of that notice of application sought the following document disclosure:

An order that Fraserway produce its applicable insurance policies for the period of September 2018 to present in respect of its occupation of the premises located at 747 Cliveden Place, Delta, British Columbia (the "Premises").

[6] The September 29, 2023 notice of application came on for hearing before Justice McDonald on October 20, 2023. The defendant objected to the document disclosure application on procedural grounds, as the plaintiff failed to make a proper

written demand pursuant to Rule 7-1(10) or (11). Justice McDonald declined the document production order as the application was not properly brought pursuant to Rule 7-1. Paragraphs 2 through 6 of her unreported oral reasons for judgment are as follows:

[2] I will deal first with the request for the production of the insurance policy information. That insurance policy information is sought in the notice of application under the auspices of the contract between the parties, namely, the lease, and there is an allegation that the tenant is required to provide the landlord with copies of the insurance documentation.

[3] At the hearing of this notice of application, counsel for the plaintiff submitted that the application was also brought pursuant to Rule 7-1(1) and (17) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [Rules]. The parties have exchanged lists of documents, and the insurance documentation was not a document listed by the defendant on its list of documents. This is not an application seeking production of a document that has been listed by a party.

[4] Rule 7-1(17) provides that the court may order the production and inspection of a document. Counsel provided the court with a citation to a case where the court has made such an order. However, I am concerned that the notice of application does not actually seek the production of the document pursuant to Rule 7-1.

[5] I am informed by counsel for the defendant that the defendant will be producing the document as if it had been demanded, and that that document will be produced in fairly short order within approximately a week of today's date. However, the defendant opposes the application for an order to be issued pursuant to Rule 7-1.

[6] I am declining the relief sought by the plaintiff in its notice of application under Item 4 for an order for the production of the applicable insurance policies because that request for relief was not brought pursuant to Rule 7-1. However, I grant the plaintiff leave to seek that relief if the insurance policies are not delivered as indicated by the counsel for the defendant in the time frame indicated today.

[7] On October 24, 2023, four days after the hearing before Justice McDonald, counsel for the defendant provided plaintiff's counsel with a copy of the defendant's current commercial insurance policy for the premises. Copies of that correspondence and policy are appended to the fourth affidavit of Patrick Blink, CFO of Fraserway, filed November 14, 2023.

[8] On November 7, 2023, the plaintiff filed the within application with a similar, but slightly more detailed request for:

... all of its applicable insurance policies, both general liability insurance and Insurance Corporation of British Columbia policies, for the period of September 2018 to present in respect of [the defendant's] occupation of the premises located at 747 Cliveden Place, Delta, British Columbia (the "Premises").

[9] The defendant again objects on the basis that the process set out in Rule 7-1 has not been followed. No written demand was made until October 31, 2023. Rule 7-1(13) provides that the plaintiff may file an application for production of documents if the defendant has not complied with a demand within 35 days. The 35-day deadline does not elapse until December 5, 2023.

[10] In response to this procedural argument, the plaintiff says:

- (1) The defendant was given notice of the plaintiff's document demand when the September 29, 2023, application was served, which was more than 35 days before filing this application;
- (2) Justice McDonald granted leave to the plaintiff to renew its application if the insurance policies were not delivered as indicated by counsel; and
- (3) The object of the rules would be furthered if this application is now determined on its merits, rather than adjourning again for procedural reasons.

[11] In *Lit. v. Hare*, 2012 BCSC 1918, Justice Fitch, as he then was, said:

[65] Compliance with R. 9-1(7) and (8) of the SCFR (and its equivalent in the SCCR, R. 7-1(10) and (11)) is not optional and failure to observe its requirements will not readily be forgiven. I do not read *Przybysz* as suggesting otherwise, nor do I think that it particularly assists the applicant in this case. In fact, the case sounds a clear cautionary note about the failure to observe the requirements of this Rule. While I note that *in Balderston v. Aspin*, 2011 BCSC 730 [*Balderston*], a similar application for document production was entertained on its merits in the face of non-compliance with the companion civil rule, that was a case where no objection was taken by the party from whom additional documents were sought. The parties in that case essentially agreed to proceed on the basis that the request for the listing and/or production of additional documents had been made and declined.

[66] Further, I do not accept the applicant's contention that requests for documents made in the context of examinations for discovery or the filing of the application itself should be regarded as sufficient substitutes for compliance with the terms of the Rule itself. While granting relief from non-compliance may, at first blush, seem expedient, doing so without good cause may also work to undermine the important objectives the Rule is designed to foster.

[67] The Rule is designed to promote dialogue between the parties, informal resolution of document production disagreements where that is possible and, where it is not, targeted litigation that focuses on those well-defined issues that remain contentious. The Rule operates to restrain the impulse to litigate document production issues as a course of first resort where those issues might be resolved through discussion, including by requiring the parties to articulate and defend their respective positions. In my view, the Rule is also designed to facilitate the adjudicative process by narrowing the issues and argument and particularizing, to the extent possible, the documents or categories of documents sought before an application is made. As Master Bouck observed in *Balderston*, at para. 29, in the context of the SCCR:

The intent of Rule 7-1(11) is to inform the opposing party of the basis for the broader disclosure request in sufficient particularity so that there can be a reasoned answer to the request. The Rule allows the parties to engage in debate or discussion and possibly resolve the issue before embarking on an expensive chambers application.

[12] Plaintiff's counsel relies on the decision of this court in *Lindgren (Guardian ad litem of) v. Parks Canada Agency*, 2017 BCSC 721, for the proposition that the objectives of the rules are better served by dealing with a matter on its merits rather than dismissing it on procedural grounds or adjourning it. By my reading of *Lindgren*, the court found that the requirements in Rule 7-1 had been complied with despite the collegial and less formal nature of the correspondence between counsel.

[13] Justice Fitch's comments in *Lit v. Hare* are the answer to the plaintiff's first and third arguments. Compliance with the *Rules* is not optional. A notice of application is not a substitute for a proper document demand pursuant to Rule 7-1(10) or (11). The *Rules* are in place for a reason and the objectives of the *Rules* are not served by skirting them.

[14] Justice McDonald's reasons unfortunately do not assist the plaintiff. At para. 5 she says:

I am informed by counsel for the defendant that the defendant will be producing the document, as if it had been demanded, and that that document will be produced in fairly short order within approximately a week of today's date.

[Emphasis added.]

[15] The defendant did indeed produce the current insurance document in less than a week. I cannot tell if the document delivered by the defendant on October 24, 2023, is that which their counsel told Justice McDonald would be delivered. I do not have the benefit of the full transcript or even an excerpt indicating what counsel committed to. In the absence of evidence to the contrary, I conclude that counsel fulfilled his professional obligation to follow through on the commitment he made to this court.

[16] Accordingly, I find that the plaintiff has once again not followed the process mandated by Rule 7-1, and I am dismissing the application on that basis. Even if I had considered the merits, I am not satisfied that the plaintiff has laid out an adequate foundation for the order it seeks, particularly with respect to the request for a copy of the defendant's ICBC fleet insurance policy for its vehicles.

[17] The plaintiff's notice of application filed November 7, 2023, is dismissed. Costs to the defendant in the cause.

[18] Thank you, counsel.

“Associate Judge Hughes”