

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan VIS 6701 v.  
Travelers Insurance Company of Canada,*  
2023 BCSC 524

Date: 20230403  
Docket: S212352  
Registry: Vancouver

Between:

**The Owners, Strata Plan VIS 6701**

Plaintiff

And

**Travelers Insurance Company of Canada**

Defendant

Before: The Honourable Master Scarth

## Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

A. Bayley

Counsel for the Defendant:

D. Curtis  
S. Malthouse

Place and Date of Hearing:

Vancouver, B.C.  
February 8, 2023

Place and Date of Judgment:

Vancouver, B.C.  
April 3, 2023

[1] The defendant insurance company issued a policy of home warranty insurance to the plaintiff in 2008 to cover warrantable building defects on the plaintiff's common property. It now seeks further and better particulars of the defects which are the subject of the plaintiff's action seeking relief under the policy. The defendant says that such particulars are necessary for the orderly conduct of the litigation.

[2] The plaintiff, over the period from 2010 to 2018, provided the defendant with four notices as required by the policy:

Notice of Claim

1.1 Within a reasonable time after the discovery of a Defect and before the Expiry Date of the applicable Warranty coverage, an Owner must give Travelers Guarantee Company of Canada and the Builder written notice in reasonable detail that provides particulars of any specific alleged Defects which may be covered by the Warranty.

[3] On this application, the plaintiff says that it is sufficient to refer to the notices of claim delivered to the defendant pursuant to the policy, and that no further particularization of the defects upon which the action is based is required at this time.

[4] While the main focus of the application is particulars of the defects, the defendant also seeks particulars with respect to the claims of bad faith, special damages and breaches of the policy.

**BACKGROUND**

[5] The plaintiff filed its notice of civil claim on March 15, 2021 alleging that the defendant had failed to perform its duties under the insurance policy, and is in breach of the policy and its duty of good faith. The plaintiff seeks a declaration that the defendant is obliged to effect immediate repairs of the defects, as well as damages for breaches of the policy, including exemplary and punitive damages.

[6] The plaintiff served the defendant with the notice of civil claim on February 28, 2022.

[7] On March 15, 2022, the defendant served a demand for particulars on the plaintiff as required by R. 3-7(23). In the cover letter, counsel for the defendant stated:

This demand is not exhaustive. It sets out those particulars which we require to properly respond to the Claim.

[8] There was correspondence back and forth between counsel. Counsel for the plaintiff took the position that the defendant could expect additional particulars in the fullness of time, but not at this juncture, stating:

Applying for particulars or a dismissal at this relatively early stage is an unnecessary waste of resources. I have just been through this on a similar strata/construction file with an overzealous defence counsel who brought the same application that you are contemplating. Their application was unsuccessful.

...at the very least it is premature to apply for particulars or a dismissal.

[9] Counsel for the defendant did not agree with this assessment and pressed for particulars.

[10] By letter dated July 22, 2022, plaintiff's counsel responded to the demand for particulars. In closing, counsel stated that they required the response to notice of civil claim by August 12, 2022.

[11] Defendant's counsel took the position that the response "fails to provide sufficient particulars to define the scope of the issues in the action and to allow Travelers to meaningfully respond." However, as required by the plaintiff, the defendant filed its response to notice of civil claim on August 12, 2022. In its response, the defendant takes issue with each of the plaintiff's claims and seeks dismissal of those claims.

[12] This application was filed August 30, 2022 and attaches as Appendix "A" the particulars sought by the defendant in its March 15, 2022 demand served on the plaintiff.

[13] In its response to the application, the plaintiff, while relying on the particulars already provided in their July 2022 letter, includes other particulars of the defects on which its action is based.

### **ISSUE**

[14] Are the particulars set out in the defendant's demand for particulars "necessary" as that term is used in R. 3-7(18) such that the court should exercise its discretion under R. 3-7(22) in favour of the applicant?

### **LAW**

[15] In *Cansulex v. Perry*, [1982] B.C.J. No. 369 (C.A.), the Court of Appeal set out the purposes of particulars as follows:

- (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;
- (3) To enable the other side to know what evidence they ought to be prepared with and to prepare for trial
- (4) To limit the generality of the pleadings;
- (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.

[16] In the recent decision of *Steelhead LNG Limited Partnership v. Arc Resources Ltd.*, 2022 BCCA 128, the Court of Appeal states that:

[22] The purpose served by an order for the production of particulars changes as the litigation progresses. At each stage, there is some tension between enabling the plaintiff to explore legitimate lines of inquiry, and enabling the defendant to effectively respond to the claim. The balancing required of the trial judge in managing litigation to give effect to these objectives is delicate. Substantial deference is owed to the judge. For that reason, there is a large body of jurisprudence in the trial court with respect to applications for particulars, but relatively little appellate consideration of the applicable rule.

[23] In my view, while we should restate the fundamental principles with respect to orders for the production of particulars, we should not lay down

hard and fast rules and should refrain from attempting to reconcile cases which may be in tension with each other.

[17] The Court in *Steelhead*, at para. 26, refers with approval to the view expressed by Fitzpatrick J. in *British Columbia (Director of Civil Forfeiture) v. PacNet Services Ltd.*, 2018 BCSC 2251:

[23] The court in *Cansulex* did not set out any hierarchy of the above objectives. As such, the exercise in discretion will be informed by the particular circumstances at play and involves balancing these objectives as a whole. For example, some objective may be more relevant in some cases than others. The overarching consideration in applying the *Cansulex* principles is to ensure the integrity of the justice system if upheld: *Powell v. 349131 B.C. Ltd.*, [1992] B.C.J. No. 1088 (S.C.) at para. 61. This integrity is best protected when litigation is allowed to proceed in a fair manner toward a just resolution between the parties.

[18] I have concluded for the following reasons that in order to limit the generality of the pleadings and to allow the defendant to know the case it has to meet, it is necessary that the plaintiff provide the particulars demanded by the defendant.

## **THE PARTICULARS SOUGHT**

### **A. Particulars of Defects**

[19] The defendant's demand, attached as Appendix "A" to these reasons, seeks particulars of the defects referred to in paras. 10, 11 and 12 of the notice of civil claim which state:

10. At all material times the Plaintiff complied with its duties under the Policy and in addition delivered to the Defendant prompt written notice in reasonable detail of all specific defects covered by the 15 month, two year, five year and ten year warranties (the "Defects") and all such Defects are valid claims covered and qualified under the Policy.

11. Further, the Plaintiff has delivered to the Defendant a number of notices of defects and demands to take action and in addition engaged mandatory mediation and claims inspection procedures including site meetings but the Defendant has inexplicably and in bad faith either refused or neglected or both to respond either satisfactorily or at all and thereby breached all of the Defendant's duties as particularized under paragraph 9 with the consequence that substantial defects remain unremediated, thereby causing loss and damage to the Plaintiff.

12. Specifically, in breach of the Policy as aforesaid and in breach of the duty of good faith, the Defendant has not abided by the terms of the Policy in

either a timely or responsive manner or at all and has not addressed, repaired or resolved or made payment respecting the Defects, notwithstanding repeated demands made by the Plaintiff that the Defects be resolved and remedied and the Plaintiff has suffered extensive loss and damage on account of the Defects and the breach by the Defendant of the Policy...

[20] The defendant seeks a list of each specific defect - including those which are alleged to remain unremediated, or not addressed or repaired or resolved - the nature of each specific defect, and the location of each specific defect: see Appendix "A" to these reasons, paras. 1(b), 2(c), 4, and 8.

[21] The plaintiff submits that further particulars are not required because the defendant is already aware of the contents of the notices of claim delivered by the plaintiff under the policy which speak for themselves. The submission is that these notices of claims have been incorporated by reference into the notice of civil claim, including by way of the response to demand for particulars. Specifically, the demand response refers to two notice of claims delivered to the defendant in November 12, 2010 and November 12, 2013. The cover letters refer to separate documents including the "Weir Report" and the "Baker Warranty Review". In its application response, the plaintiff also refers to a notice of claim delivered to the defendant on November 9, 2018.

[22] I do not accept this submission by the plaintiff. First, the notice of civil claim does not provide particulars of the notices of claim themselves. The response to the demand for particulars provides some information on the dates on which notices of claim were allegedly delivered to the defendant. This information is not complete and was expanded on in the response to this application. I accept the defendant's submission that this does not clarify the situation, and that the particulars at para. 1(a) and 2(a) of Appendix A so that the defendant knows the case it has to meet.

[23] Second, it does not follow that, having allegedly received notices of claims under the policy, the defendant is adequately informed about the defects which are the subject of this action. A defendant should not have to "discern the issues by ploughing through a mass of paper much of which, if relevant at all, amounts merely

to evidence”: McLachlin & Taylor at 3-115, citing *Maxwell Shuman & Co. v. Busch*, [1995] B.C.W.L.D. 092, 1994 CarswellBC 46. This would be the result if, as the plaintiff suggests, the defendant here has to go through the notices of claim and the accompanying reports in order to discern the case it has to meet in this action.

[24] While the plaintiff’s action is clearly contingent on the notices of claim delivered under the policy, it is fair to conclude that the plaintiff must particularize the defects which form part of the action, rather than relying almost entirely on general references to the notices of claim. The question then becomes how much detail is required.

[25] In *The Owners, Strata Plan BCS 1348 v. WVC Phase III Limited Partnership*, 2016 BCSC 1053, the defendant architecture firm applied for particulars. The notice of civil claim in *WVC* already provided specifics of the defects and is a useful illustration of how such claims can be pled. The list of defects which form the basis for the claim was broken into separate headings identifying the defects, their nature and location, and the resulting property damage. Despite this specificity, Warren J. ordered further particulars, finding that they were required to make sure the issues were narrowed for the trial, then eight weeks away, while not requiring all the detail sought by the defendant applicant.

[26] I am mindful that the case before Warren J. was a claim in negligence. Further the plaintiff relies on the early stage of the proceeding, submitting that the demand for particulars here is premature. However, even taking the different cause of action and stage of the proceeding into account, the contrast between the notice of civil claim here and that originally filed in *WVC* is considerable. The plaintiff already has the information necessary to provide particulars as to the nature and location of the defects as this information was allegedly provided in the notices of claim delivered under the policy. This applies equally to defects alleged to be unremediated, not addressed, repaired or resolved.

[27] The defendant also seeks particulars of the “alleged loss and damage caused by each of the alleged remaining defects” referred to in para.11 of the notice of civil

claim: Appendix A, para. 5. In response, the plaintiff submits that causation is the subject of ongoing investigations and will be addressed by experts in due course.

[28] While the plaintiff may not need to link any specific defect to specific property damage (see *WVC*, at para. 5), it is appropriate to require the plaintiff to provide particulars of property damage to the extent of its knowledge. For example, the notice of civil claim in *The Owners, Strata Plan BCS 4340 v. National Home Warranty Group Inc.*, 2016 BCSC 2463, alleges that the resultant damage from defects includes such things as water ingress into the condominium, fire damage from defective or improperly installed exhaust pipe for diesel power generator, failed and/or corroded plumbing systems, to name a few (see para. 84). It appears from the plaintiff's response to the demand for particulars that it has the benefit of a report commissioned in 2017 which addresses unremediated defects. Rather than simply referring to the report in its response to the demand for particulars, thus requiring the defendant to parse through it, the plaintiff should provide particulars as to the damage caused by such defects based on the information available to it at this time.

[29] Overall, while I recognize that this action is in its early stages, the defendant is entitled to the particulars necessary to understand the extent of its liability at this point while leaving room for the plaintiff to "explore legitimate lines of inquiry": *Steelhead*, para. 22. It seems to me that the particulars sought by the defendant can and should be provided while allowing for further particulars at a later stage, i.e. the lists of defects can be made non-exhaustive.

### **B. Particulars of the Defendant's Conduct and Bad Faith**

[30] The defendant seeks particulars of the conduct by it which gives rise to the alleged "bad faith" referred to in para. 11 of the notice of civil claim.

[31] The plaintiff submits that its pleading is sufficient as it stands. But this amounts to a statement, at para. 11, that the defendant has failed to respond to the notices of claim, thereby breaching all of its duties under the policy (listed at para. 9 of the notice of civil claim). As in *National Home Warranty*, the "allegations...are stated largely in general terms; there is little, if any factual specificity": para. 45.



There the court concluded that the pleading, an amended notice of civil claim, was deficient and should be further amended because “it was significantly lacking in material facts that speak to how the defendants are said to have breached the warranties made, or duties owed”: para. 60; see also *WVC*, para.5.

[32] I accept the submission of the defendant that the same conclusion should be reached here. There will be an order for particulars of the conduct of the defendant which is alleged to give rise to the breach of duty of good faith.

### **C. Particulars of the Amount of the Loss and Special Damages**

[33] The plaintiff submits that it is premature to order particulars relating to special damages, and that it would be inefficient to provide special damage piecemeal.

[34] This submission is contrary to the approach generally taken by the court which is to require that special damages be pled in the body of the notice of civil claim, as well as in the relief sought, and that they be pled as they become known. Particulars are required as to the amount of the loss, the damages suffered and how that amount was made up and calculated. Such information is not evidence as it merely provides information: *McLachlin & Taylor* at 3-120 to 3-121.

[35] The objective of requiring such particulars is to ensure that a defendant knows the extent of its exposure. In *WVC*, Justice Warren ordered that to the extent that costs already incurred were capable of calculation, particulars should be provided, e.g. cost of investigating defects, repairing defects, increased maintenance costs, increased property management cost, cost of investigating damage to common property, loss of rental income, living out expenses and financing costs: see *WVC*, para. 11.

[36] The notice of civil claim, at para. 12, lists similar types of costs to those listed in *WVC*. It can be assumed that they are capable of calculation to date, specifically costs of investigation and repair to the defects, increased maintenance costs, increased property management costs, and extensive legal and engineering expense. These should be particularized as requested by the defendant.

**D. Particulars of Alleged Breach of the Policy**

[37] The defendant seeks particulars of the alleged breaches of the policy, including deadlines and mandatory conditions in the policy that the defendant allegedly failed to meet: Appendix “A”, paras.10 and 11.

[38] The plaintiff says that such particulars are unnecessary, given the knowledge of the defendant. However, I conclude, once again, that the defendant is entitled to some specificity in the allegations related to breach and that the particulars demanded by the defendant should be provided by the plaintiff.

**SUMMARY**

[39] The plaintiff is to provide the particulars demanded by the defendant as set out in Appendix “A”.

[40] The defendant has been successful on this application and tried to achieve the same result without coming to court. Accordingly, the defendant is entitled to its costs of this application in any event of the cause.

“Master Scarth”

**Appendix “A”**

**APPENDIX “A” – PARTICULARS REQUESTED**

Pursuant to Rules 3-7(23), the Defendant, Travelers Insurance Company of Canada, demands further and better particulars of the Plaintiff’s Notice of Civil Claim as follows:

1. With respect to paragraphs 10 of Part 1 of the Claim, provide particulars of:
  - a. when the alleged written notices referred to in that paragraph were delivered to Travelers;
  - b. the alleged “specific defects” that were described in the written notices, including a list of each specific defect, the nature of each specific defect, and the location of each specific defect; and
  - c. the factual basis for the allegation that the alleged “Defects” are “valid claims covered and qualified under the Policy”.
2. With respect to paragraph 11 of Part 1 of the Claim, provide particulars of:
  - a. when the alleged notices of defects were delivered to Travelers;
  - b. when the alleged demands were delivered or made to Travelers; and
  - c. the alleged “specific defects” that were described in the written notices, including a list of each specific defect, the nature of each specific defect, and the location of each specific defect.
3. With respect to paragraph 11 of Part 1 of the Claim, provide particulars of the conduct of Travelers that gives rise to the alleged “bad faith” referred to in that paragraph.
4. With respect to paragraph 11 of Part 1 of the Claim, provide particulars of the alleged “substantial defects” that remain unremediated, including a list of each specific defect, the nature of each alleged remaining defect and the location of the alleged remaining defects.
5. With respect to paragraph 11 of Part 1 of the Claim, provide particulars of the alleged loss and damage caused by each of the alleged remaining defects.
6. With respect to paragraph 11 of Part 1 of the Claim, provide particulars of the alleged breaches of duty referred to therein.
7. With respect to paragraph 12 of Part 1 of the Claim, provide particulars of the conduct of Travelers alleged to give rise to the breach of the duty of good faith referred to therein.
8. With respect to paragraph 12 of Part 1 of the Claim, provide particulars of the alleged “Defects” that have not been addressed, repaired or resolved, including a list of each specific defect, the nature of each specific defect, and the location of each specific defect.

- 2 -

9. With respect to paragraph 12 of Part 1 of the Claim, to the extent that the alleged damages listed in paragraphs 12(a) through (g) are special damages, provide particulars of the special damages.
10. With respect to paragraph 13 of Part 1 of the Claim, provide particulars of the alleged breaches of the Policy, including the deadlines in the Policy that Travelers allegedly failed to meet.
11. With respect to paragraph 13 of Part 1 of the Claim, provide particular of the mandatory conditions in the Policy that Travelers allegedly failed to meet.