

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Perry v. General Motors Canada*,
2024 BCSC 1857

Date: 20241008
Docket: S218173
Registry: Vancouver

Between:

Richard Perry

Plaintiff

And

**General Motors Canada and Dueck Richmond Chevrolet Buick Cadillac GMC
Ltd.**

Defendants

Before: The Honourable Justice Hoffman

Reasons for Judgment

The Plaintiff, appearing in person:

R. Perry

Counsel for the Defendant General Motors
Canada:

E. Pitre

Counsel for the Defendant Dueck Richmond
Chevrolet Buick Cadillac GMC Ltd.:

N. Liu

Place and Date of Trial/Hearing:

Vancouver, B.C.
September 12, 2024

Place and Date of Judgment:

Vancouver, B.C.
October 8, 2024

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Background

[1] The plaintiff, Mr. Perry, brought this application for an order that two redacted documents disclosed by General Motors Canada (“GMC”) in this proceeding be disclosed in an unredacted form.

[2] In the underlying proceeding commenced on September 15, 2021, Mr. Perry alleges breach of contract, breach of warranty, deceit, fraudulent misrepresentation and conspiracy against GMC and Dueck Richmond Chevrolet Buick Cadillac GMC Ltd. (“Dueck”).

[3] Mr. Perry’s claim relates to difficulties that he had with a 2013 GMC Terrain vehicle he purchased as a used vehicle in October 2019. Mr. Perry alleges his vehicle used excessive oil. He further alleges that when he raised the issue with Dueck, Dueck required him to test his vehicle over 25 times and then conspired with GMC to dismiss his warranty claim. Mr. Perry also claims that the defendants have forged documents.

[4] The redacted documents in question are two customer service logs kept by the defendant GMC. These logs recorded conversations and actions relevant to Mr. Perry’s complaints about his vehicle and the alleged failure of GMC to honour the vehicle warranty.

[5] These documents were produced on GMC’s amended list of documents dated September 19, 2023. GMC redacted these documents on the basis of litigation privilege, solicitor-client privilege and settlement privilege. Mr. Perry takes the position that these redactions are inappropriate and alleges that GMC is intentionally concealing relevant evidence.

[6] The court held an in camera hearing to review the privilege claimed by GMC. Only counsel for GMC was present for this portion of the hearing.

Legal Framework

[7] Before analyzing whether the redactions are properly grounded, I will set out the applicable rules and the law with respect to each class of privilege claimed.

[8] Document production in litigation is governed by Rule 7-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR]. Rule 7-1(6) and (7) govern how parties may assert privilege over documents. These rules provide as follows:

Claim for privilege

(6) If it is claimed that a document is privileged from production, the claim must be made in the list of documents with a statement of the grounds of the privilege.

Nature of privileged documents to be described

(7) The nature of any document for which privilege from production is claimed must be described in a manner that, without revealing information that is privileged, will enable other parties to assess the validity of the claim of privilege.

[9] Accordingly, a claim of privilege must be made in a party's list of documents alongside an explanation of the nature of the document and the class of privilege being claimed. These descriptions must be sufficient to allow the opposing party to assess the validity of the privilege claim.

[10] The party asserting privilege has the onus to prove that it applies.

[11] The leading decision articulating the test for determining whether litigation privilege applies to a specific document is *Raj v. Khosravi*, 2015 BCCA 49. At paras. 8–9, the BC Court of Appeal set out the test as follows:

[8] In determining whether litigation privilege applies to a particular document, Mr. Justice Wood, writing for the Court in *Hamalainen*, set out the following two-part test at para. 18:

1. Was litigation in reasonable prospect at the time it was produced, and
2. If so, what was the dominant purpose for its production?

[9] Each aspect of the two-part test involves a factual determination. The onus is on the party claiming privilege to establish on a balance of probabilities that both parts of the test are met in connection with each document that is subject to the claim (*Hamalainen* at para. 19).

[12] As recognized in *Lo v. Penticton (City)*, 2022 BCSC 2230 at para. 31, where it is possible to delineate in a document between portions that are covered by litigation privilege and portions that are not, the court may permit information to be severed from the document in order to preserve litigation privilege.

[13] The Supreme Court of Canada describes solicitor-client privilege as “considerably broad and all-encompassing”: *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 16. It extends “to all communications made within the framework of the solicitor-client relationship” and covers all consultations for legal advice regardless of whether litigation has been commenced: *Pritchard* at para. 16, quoting from *Descôteaux et al. v. Mierzwinski*, [1982] 1 S.C.R. 860 at 893, 1982 CanLII 22. It also covers advice provided by in-house counsel: *Pritchard* at para. 21.

[14] As stated by the Court of Appeal, “[a] common way of expressing the breadth of the privilege once the context of the solicitor-client relationship has been established is that the privilege attaches to the continuum of communications in which the solicitor provides advice”: *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219 at para. 33.

[15] The purpose and effect of settlement privilege is described in *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 [*Sable Offshore*] at para. 2:

[2] The purpose of settlement privilege is to promote settlement. The privilege wraps a protective veil around the efforts parties make to settle their disputes by ensuring that communications made in the course of these negotiations are inadmissible.

[16] Settlement privilege is not confined to documents that are expressly marked “without prejudice”. Rather, it extends to all documents created by the parties with an intent to settle a dispute. It will continue to apply even if a resolution is not reached: *Sable Offshore* at paras. 14–16. It belongs to both parties in a dispute and cannot be unilaterally waived or overridden by either of them: *Stancor Enterprises Ltd. v. Fiorvento*, 2022 BCSC 1842 at para. 94, citing *Bellatrix Exploration Ltd. v. Penn West Petroleum Ltd.*, 2013 ABCA 10 at para. 26.

[17] Under Rule 7-1(20), where a party objects to production on the grounds of privilege and this objection is questioned, the court may inspect the document for the purpose of deciding the validity of the objection.

Positions of the Parties

[18] GMC submits that the customer service records include summaries of

- a) internal conversations and email correspondence between various GMC employees and members of the GM/GMC executive review team;
- b) telephone conversations and email correspondence between various members of the GMC executive review team and the plaintiff;
- c) telephone conversations and email correspondence between various members of the GMC executive review team and representatives of Dueck; and
- d) communications between the GMC executive review team and its legal counsel, particularly regarding the administration of a potential warranty claim.

[19] GMC submits that the redactions made to the customer service records for litigation, solicitor-client and settlement privilege are valid and meet the requirements established in the case law.

[20] Mr. Perry seeks disclosure of all internal communications between the GMC in-house legal counsel and the GM Executive Review Team regarding his warranty claim as well as relating to any communications made to Mr. Perry regarding his claim. Mr. Perry alleges that GMC is not entitled to claim privilege over this information because “it is concealing corporate crime and procedural abuse”.

Analysis

[21] At the in-camera hearing, counsel for GMC compared the redacted and unredacted documents for the court. With a few minor exceptions noted below, I am

satisfied that the portions of the documents redacted have been validly withheld on the basis of settlement, litigation and solicitor-client privilege.

[22] The customer service logs produced by GMC are appended to affidavit #7 of May Chong dated April 11, 2024, as exhibits M and N. Exhibits M1 and N1 are the unredacted versions of the same documents.

[23] Upon reviewing Exhibits M and M1, there are two redactions to the first customer service log, one on page 16 and another on page 43. Each redaction strikes out a portion of an email from Mr. Perry to GMC. Counsel for GMC clarified at the hearing that these redactions were made on the basis of settlement privilege. I am satisfied that the portions of the two emails redacted attract settlement privilege and that this privilege belongs to both GMC and Mr. Perry. Since GMC does not wish to waive the privilege, there is no basis for me to order disclosure of the redacted information.

[24] Exhibits N and N1 contain redactions to the second customer service log on the basis of litigation, solicitor-client and settlement privilege.

[25] The customer service log attached as Exhibit N begins on July 29, 2021, approximately six weeks before Mr. Perry commenced his claim. The entry for August 3, 2021, which was disclosed by GMC in this litigation without any redactions, contains an email from Mr. Perry in which he indicates that he will be suing GMC for warranty fraud. As such, there was a reasonable prospect of litigation from that point forward.

[26] I am satisfied that the redactions on pages 1–3 and 25–28 are valid on the basis of litigation privilege. These entries were created for the dominant purpose of responding to the litigation that Mr. Perry threatened to bring in his August 3, 2021 email. However, in my view, the redaction on page 26 should be shortened to only the first three lines.

[27] The redactions on pages 10, 12, 14, and 17–19 are made on the grounds of solicitor-client privilege. These redactions are justified because they protect

communications referencing legal advice received from the legal department of GMC.

[28] I am satisfied that the redactions at pages 6–9 and 16 are justified on the basis of settlement privilege. The information redacted at pages 10, 12 and 14 containing legal advice also contains information attracting settlement privilege.

[29] There is nothing in the redacted material that would substantiate the allegations of Mr. Perry that GMC has engaged in corporate abuse or that would justify lifting the privileges claimed.

[30] I find that GMC has not fully complied with the requirements of Rule 7-1(6). The redactions made to Exhibits M and N do not indicate the specific privilege being claimed. GMC must remedy this by producing a version of the document that labels each redaction with the class of privilege claimed.

Conclusion

[31] Aside from the minor adjustments I have directed in respect of labelling the redactions and shortening the redaction on page 26 of Exhibit N, Mr. Perry’s application for disclosure of an unredacted version of the customer service records is dismissed.

[32] The defendant GMC is entitled to its costs for this application on Scale B payable in any event of the cause.

“Hoffman J.”