

CANADA / JUDGMENT

Bell v. James

2020 BCSC 443

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 443 Bell v. James

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bell v. James,

2020 BCSC 443

Date: 20200326

Docket: S193227

Registry: Victoria

Between:

Patricia Darlene Bell and Natasha Colleen Bell, by her Litigation Guardian,

Patricia Darlene Bell

Plaintiffs

And:

Anna Sita James

The Manufacturers Life Insurance Company

Defendants

Before: The Honourable Mr. Justice Johnston

Reasons for Judgment

In Chambers

Counsel for Patricia Darlene Bell and Natasha Colleen Bell, by her Litigation Guardian, Patricia Darlene Bell:

A. Mujtabah

Counsel for Anna Sita James:

K. Doerksen

The Defendant, The Manufacturers Life Insurance Company did not appear

Place and Date of Hearing:

Victoria, B.C.

January 22, 2020

Place and Date of Judgment:

Victoria, B.C.

March 26, 2020

FACTS AND PROCEDURAL HISTORY

- [1] Colin Stephen Roy Bell (the "Deceased") died in Winnipeg, Manitoba on July 11, 2019, apparently by suicide. The plaintiff, Patricia Bell was his wife, from whom he was separated at the time of his death. The plaintiff, Natasha Bell was his daughter. When he died, the Deceased's life was insured under a group life insurance policy administered by the Manufacturers Life Insurance Company ("Manulife"). Patricia Bell was the beneficiary under the policy. Two months before the death, Manulife received a beneficiary change form that contained both typewritten indications and handwritten indications. The typewritten indications purported to remove Patricia Bell as beneficiary and substitute Natasha Bell as to 50% of the life insurance proceeds, and the defendant Anna James ("Ms. James") as to 50% of the life insurance proceeds. However, the beneficiary change form contained writing that purports to further alter the division of insurance proceeds so Natasha Bell's portion is reduced to 30% and Ms. James' portion is increased to 70%. These further purported alterations are defined in the pleading as the "Changes", and are handwritten, but are not initialled.
- [2] In this action, the plaintiffs sue the defendants Ms. James and Manulife, alleging that Ms. James orchestrated the Changes by coercing the Deceased, by bringing overbearing pressure on the Deceased, and by unduly influencing the Deceased. The plaintiffs also allege that the defendant, Ms. James, owed a duty of care to seek help for the Deceased when she noticed he appeared disassociated from reality, she breached this duty by negligently failing to inquire into his mental state or to seek help for him, and thus materially contributed to his death. The plaintiffs further allege that the defendant, Ms. James, has been unjustly enriched by being named a beneficiary to the life insurance policy which they assert was paid for by property of the marriage between Patricia Bell and the Deceased. The plaintiffs say this reallocation of life insurance proceeds deprived Natasha Bell of her expected

entitlement to the entire insurance proceeds and this expectation was shared between Patricia Bell and the Deceased.

- [3] The defendant, Ms. James, delivered a jurisdictional response as permitted in Rule 21-8 of the Supreme Court Civil Rules, B.C. Reg. 168/2009. She disputes this Court's jurisdiction over her, arguing that this Court lacks territorial competence, formerly referred to as jurisdiction simpliciter. In her jurisdictional response the defendant, Ms. James, also takes the position that British Columbia is not the appropriate jurisdiction in which to litigate the issues raised in the notice of civil claim (*forum non conveniens*). *Forum non conveniens* does not arise in this application, as Ms. James has deferred that issue until the question of territorial competence is decided. The plaintiffs do not object to splitting the issues in that way; if this application results in a finding that this Court has territorial competence, Ms. James will separately apply for an order that the Court exercise its discretion to decline jurisdiction.
- [4] In this first application Ms. James applies to strike the notice of civil claim on the ground that it does not allege facts that, if true, would establish that this Court has jurisdiction over her.

LEGAL FRAMEWORK

- [5] Until 1990, this Court exercised jurisdiction over "foreign defendants only if they were within British Columbia at the time of the action, if they submitted to the court's jurisdiction by agreement or attornment, or if they were served *ex juris* pursuant to Rule 13(1) of the Rules of Court, B.C. Reg. 221/90, which listed the grounds upon which service *ex juris* could be effected" (*Stanway v. Wyeth Pharmaceuticals Inc.*, 2009 BCCA 592, leave to appeal ref'd [2010] S.C.C.A. No. 68 [*Stanway*] at para. 5). As summarized by the Court in *Stanway* at paras. 5, 18-19, this approach to determining jurisdiction simpliciter relied upon procedure-based rules by which a court typically decided whether, based upon the material facts alleged in the plaintiff's pleadings, there was a real and substantial connection between British Columbia and either the defendant or the cause of action. That approach to determining jurisdiction simpliciter has been replaced by the substantive rules governing territorial competence set out in the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 [CJPTA].
- [6] Territorial competence is defined in s. 1 of the CJPTA:
- "territorial competence" means the aspects of a court's jurisdiction that depend on a connection between
- (a) the territory or legal system of the state in which the court is established, and
 - (b) a party to a proceeding in the court or the facts on which the proceeding is based.
- [7] That territorial competence is governed by Part 2 of the CJPTA as can be seen from s. 2:
- 2 (1) In this Part, "court" means a court of British Columbia.

(2) The territorial competence of a court is to be determined solely by reference to this Part.

[8] Territorial competence is governed by s. 3 of the CJPTA which provides:

3 A court has territorial competence in a proceeding that is brought against a person only if

- (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
- (b) during the course of the proceeding that person submits to the court's jurisdiction,
- (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
- (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
- (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[9] The plaintiffs agree with the defendant Ms. James that of the bases for establishing territorial competence as enumerated under s. 3, the only subsection that applies to these circumstances is found in subsection 3(e), and the question to be answered on this application is whether there is "a real and substantial connection between British Columbia and the facts on which the proceeding against [Ms. James] is based."

[10] What constitutes a real and substantial connection for the purposes of s. 3(e) is defined in s. 10:

10 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding

- (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,
- (b) concerns the administration of the estate of a deceased person in relation to
 - (i) immovable property in British Columbia of the deceased person, or
 - (ii) movable property anywhere of the deceased person if at the time of death he or she was ordinarily resident in British Columbia,
- (c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to
 - (i) property in British Columbia that is immovable or movable property, or

(ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia,

(d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:

(i) the trust assets include property in British Columbia that is immovable or movable property and the relief claimed is only as to that property;

(ii) that trustee is ordinarily resident in British Columbia;

(iii) the administration of the trust is principally carried on in British Columbia;

(iv) by the express terms of a trust document, the trust is governed by the law of British Columbia,

(e) concerns contractual obligations, and

(i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,

(ii) by its express terms, the contract is governed by the law of British Columbia, or

(iii) the contract

(A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

(B) resulted from a solicitation of business in British Columbia by or on behalf of the seller,

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia,

(g) concerns a tort committed in British Columbia,

(h) concerns a business carried on in British Columbia,

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in British Columbia, or

(ii) in relation to property in British Columbia that is immovable or movable property,

(j) is for a determination of the personal status or capacity of a person who is ordinarily resident in British Columbia,

(k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia, or

(l) is for the recovery of taxes or other indebtedness and is brought by the government of British Columbia or by a local authority in British Columbia.

[11] The plaintiffs argue that subsections (a), (c)(i), (g), and (h) apply to create a presumption in favour of territorial competence.

[12] Section 7 of the CJPTA, which is relevant to this application, provides:

Ordinary residence -- corporations

7 A corporation is ordinarily resident in British Columbia, for the purposes of this Part, only if

- (a) the corporation has or is required by law to have a registered office in British Columbia,
- (b) pursuant to law, it
- (i) has registered an address in British Columbia at which process may be served generally, or
- (ii) has nominated an agent in British Columbia upon whom process may be served generally,
- (c) it has a place of business in British Columbia, or
- (d) its central management is exercised in British Columbia.

[13] The parties have referred to a number of authorities, from which I take the following propositions:

- Territorial competence under the CJPTA equates to jurisdiction simpliciter: *Purple Echo Productions, Inc. v. KCTS Television*, 2008 BCCA 85 [Purple Echo] at para. 31.
- As summarized by the Court in *Roth v. Interlock Services, Inc.*, 2004 BCCA 407 [Roth] at para. 15, which I note dealt with the law as it stood prior to the introduction of the CJPTA:

[15] The correct approach to the question of jurisdiction simpliciter is outlined in two decisions of this Court which were pronounced the same day: *Furlan v. Shell Oil Co.*, (2000), 77 B.C.L.R. (3d) 35, 2000 BCCA 404 at paras. 14-16, leave to appeal to S.C.C. refused, [2000] S.C.C.A. No. 476 (Q.L.), and *AG Armeno Mines and Minerals Inc. v. PT Pukuafu Indah* (2000), 77 B.C.L.R. (3d) 1, 2000 BCCA 405 at paras. 14, 19. The first step is to examine the plaintiff's pleading to determine whether it alleges "jurisdictional" facts sufficient to establish a real and substantial connection to the defendant or to the cause of action. Affidavit evidence of facts relevant to jurisdiction simpliciter is admissible when the facts are not alleged in the plaintiff's pleading because they are not material facts, or when they are, are not particularized in the pleading in sufficient detail to enable determination of the issue. If those unpleaded jurisdictional facts are contentious, the plaintiff bears the burden of showing a good arguable case that they can be established. Affidavit evidence is also admissible for the purpose of demonstrating that the plaintiff's claim is tenuous and without merit. In that situation, the plaintiff must show a good arguable case.

The Court in *Purple Echo* at para. 34 reiterated this approach under the CJPTA:

[34] In my view, consonant with the comments of Smith J.A. in Roth and those of Mackenzie J.A. in *Furlan v. Shell Oil Co.*, 2000 BCCA 404, 77 B.C.L.R. (3d) 35, referred to in *MTU Maintenance Canada Ltd. v. Kuehne & Nagel International Ltd.*, 2007 BCCA 552, [2007] B.C.J. No. 2433 (QL), where jurisdictional facts are not pleaded, affidavit evidence can be adduced to meet the requirement of the Rule. It would be a startling departure from existing jurisprudence if the consideration of jurisdiction were confined solely to the pleadings with no opportunity for a plaintiff to support jurisdiction with evidence. It also is my view that the nature of the inquiry does not change merely because evidence is adduced. The objective is to determine whether there are facts alleged, which if true, would found jurisdiction. The court is not charged with the task of determining whether the facts are true. A plaintiff need show only an arguable case that they can be established.

- A "real and substantial connection" must be substantial; a fleeting or relatively unimportant connection will not suffice. See *Beals v. Saldanha*, 2003 SCC 72 at para. 32, which I note was decided in the context of enforcing a foreign monetary judgment.

- Where jurisdiction is in issue, the task is to determine whether there are facts either alleged in the pleadings or supported with evidence which, if true, would found jurisdiction. The court is not charged with determining whether the facts pleaded are true. A plaintiff need show only an arguable case that the facts can be established. See *Purple Echo* at para. 34.

- Rather than jurisdiction simpliciter depending on the procedural rules as was the case before the CJPTA, territorial competence is now determined exclusively by the substantive rules set out in the CJPTA. See *Stanway* at para. 12.

- As explained by the Court in *Olney v. Rainville*, 2009 BCCA 380 [Olney] at para. 24:

[24] It might be thought that the words "real and substantial connection between British Columbia and the facts on which a proceeding is based" mean that there must be a connection between the province and the material facts that are essential to the establishment of the claim. There are indications, however, that the words are to be more broadly construed.

- As stated by the Court in *Olney* at para. 26:

[26] [T]he broad range of the presumptions [in s. 10 of the CJPTA] indicates that in some circumstances, British Columbia courts will have territorial competence notwithstanding that the antecedent facts of a case are not closely connected with the province. In particular, the fact that British Columbia law is applicable to a case may be a basis for territorial jurisdiction, as may the fact that the consequences of a decision will be closely connected to the province.

ANALYSIS

[14] The first step as required by the Court in Roth as endorsed by the Court in Purple Echo is to examine the plaintiffs' pleading in search of factual allegations sufficient to establish a real and substantial connection between this province and the facts on which the proceeding is based, which has been broadly interpreted to include in certain circumstances the domicile of the plaintiff: Olney at paras. 30-34. However, this is no easy task in this case.

Unfortunately, the notice of civil claim is replete with summaries of evidence, including obvious hearsay evidence such as in para. 25 of part 1: "Some of these people who knew or were aware of Anna warned the Deceased that she was a dangerous person with a volatile personality," irrelevancies such as in para. 48 of part 1: "This is not the first time that Anna has had such a negative effect on a partner. Anna's first husband, Paul James, killed himself in 2003, shortly after divorcing her.", and, in para. 50 of part 1, this scandalous allegation: "Anna has a reputation around her community for being a bad character who steals from her partners and intentionally subjects them to serious mental distress." There is also argument, such as in para. 87 of part 1: "The Deceased's whole life was his daughter, Natasha." The notice of civil claim also contains lengthy quotes from authorities cited. These are just some examples of the obfuscations that make it difficult to winnow any jurisdictional facts from the amended notice of civil claim.

[15] Stripped of evidence and argument, the basic outline pleaded in the notice of civil claim alleges:

- the Deceased died, apparently by suicide, in Winnipeg Manitoba on July 11, 2019;
- the plaintiff Natasha Bell is his daughter;
- the plaintiff Patricia Bell was the Deceased's wife, from whom he was living separate and apart at the date of death;
- Patricia Bell is the Deceased's personal representative named in his will, and she has received a grant of probate in the province of Manitoba;
- the Deceased's life was insured under a group life insurance policy covering members of the Canadian Armed Forces, and administered by the defendant Manulife;
- Patricia Bell had been designated as the beneficiary under the Deceased's life insurance policy;
- on May 21, 2019 a form to change the beneficiary of the Deceased's life insurance policy was submitted. This document had typed insertions that provided that the beneficiaries of the life insurance policy were to become the plaintiff Natasha Bell as to 50% and the defendant Ms. James as to 50%. The typewritten insertions were crossed out by pen, and 70% was handwritten next to Ms. James' name, and 30% written next to Natasha Bell's name;
- the handwritten portions were not initialled;

· it appears from the notice of civil claim that the change of beneficiary form was signed by the Deceased.

[16] On that framework, the plaintiffs hang their pleaded evidence and argument addressed above. In the notice of civil claim, the plaintiffs appear to: describe circumstances surrounding the purported alterations to the change of beneficiary form that the plaintiffs say are suspicious; outline evidence supporting the pleading of undue influence, including allegations of bad character on the part of the defendant Ms. James; and present evidence related to coercion, wrongful death and unjust enrichment.

[17] Adding to the difficulty presented by the notice of civil claim, in "Part 1: Statement of Facts," it appears that the plaintiffs accept that the Deceased validly changed the beneficiary under his life insurance policy from Patricia Bell as sole beneficiary to Natasha Bell and Anna James as to 50% each. The facts pleaded all seem to relate to challenging the purported change from 50% to each of Natasha Bell and Anna James to 70% to Anna James and 30% to Natasha Bell (the "Changes").

[18] But in "Part 2: Relief Sought" the notice of civil claim seeks:

1. A declaration that the 2019 Change of Beneficiary Form is null and void on the ground that there was suspicious circumstances surrounding its preparation.
2. A declaration that the Deceased was unduly influenced to make the changes to the Life Insurance Plan.
3. A declaration that Anna was unjustly enriched by the change in beneficiary designation of the Life Insurance Plan.
4. Damages against Anna for wrongful death of the Deceased.
5. A declaration that Natasha is the sole beneficiary of the Life Insurance Plan.
6. An order that Manulife pay the benefits of the Life Insurance to Natasha as the sole beneficiary.
7. Cost.
8. Such further orders as this honourable court deems just and equitable in the circumstances.

[19] The first two prayers for relief are not directed at the Changes, but seem to be directed instead at the beneficiary change form that removes Patricia Bell as beneficiary and substitutes Natasha Bell and Anna James as equal beneficiaries. If the plaintiffs succeed in their first request, the proceeds will be payable entirely to Patricia Bell. That may also be the result if the second declaration sought is granted.

- [20] The defendant, Manulife, took no part in this jurisdictional application. This is understandable given that s. 75 of the Insurance Act, R.S.B.C. 2012, c. 1 in combination with the pleadings in paras. 6 and 7 of part 1 of the notice of civil claim would support an arguable case that Manulife is ordinarily resident in British Columbia leading to a finding of territorial competence under s. 3(d) of the CJPTA.
- [21] In its response to civil claim, Manulife admits that: it issued the policy of group insurance in question to a branch of the Department of National Defence; the Deceased's life was insured for \$400,000 under the policy; Patricia Bell was designated sole beneficiary under the policy in 2007; Manulife received a designation/change of beneficiary form in May 2019 that corresponds to the form described in the notice of civil claim; Ms. James claimed 70% of the policy proceeds following the Deceased's death; Patricia and Natasha Bell have disputed the beneficiary designation change of May 2019; and, Manulife does not know to whom it should pay the insurance proceeds. Manulife pleads ss. 24 and 82 of the Insurance Act which would allow Manulife to pay the insurance money it admits it owes into court.
- [22] As there is nothing connecting Ms. James to British Columbia, this Court's territorial competence depends on finding a real and substantial connection between British Columbia and the facts on which the proceeding against Ms. James are based.
- [23] Section 10 of the CJPTA creates a rebuttable presumption that a real and substantial connection exists between the facts on which the action is based and this province if the plaintiffs can show that this action falls within the matters set out in subsections (a) through (l) of s. 10, which are set out above.
- [24] At para. 22 of *Stanway*, the Court stated with respect to the presumption:
- [22] The presumption of a real and substantial connection in s. 10 is a mandatory presumption with basic facts. The basic facts are those set out in s. 10(a) through (l), which are taken to be proven if they are pleaded. While the presumption is rebuttable, it is likely to be determinative in almost all cases.
- [25] The plaintiffs argue that their claims as pleaded fall under s. 10, subsections (a), (c)(i), (g) or (h) of the CJPTA. In the alternative, they argue that they can establish territorial competence at common law, citing *Olney v. Rainville*, 2008 BCSC 753 at para. 32 (reversed by the Court of Appeal in 2009 BCCA 380) and *Pope & Talbot (Re)*, 2009 BCSC 1014 [*Pope and Talbot*] at para. 75.
- [26] I will deal with each of the sub-sections argued. I will first address whether the pleadings contain an arguable case as related to each subsection. I will then collectively address whether the adduced affidavit evidence gleans an arguable case under any of subsections 10(a), c(i), (g), or (h). I will then address the plaintiffs' alternative argument with respect to establishing territorial competence at common law.

Section 10(a): Do the pleadings raise an arguable case that the proceeding is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in movable property in British Columbia?

- [27] The plaintiffs argue that the life insurance policy and the proceeds from the life insurance policy are movable property in British Columbia. Their argument is based partly on the fact that part of the proceeds of the policy are payable to Natasha Bell who lives in this province, and partly on the fact that Manulife, as a national insurer, carries on business in British Columbia.
- [28] The plaintiffs plead the Insurance Act, R.S.B.C. 2012, c. 1. Section 64 of that statute gives them a right of action to enforce payment, and s. 75 gives them the right to sue in British Columbia. Section 75 of the Insurance Act overrides any conflicting provisions of the CJPTA, due to s. 12 of the CJPTA.
- [29] Additionally, if I assume, without deciding, that there is an arguable case that the proceeding brought against Manulife is brought to enforce or determine proprietary rights to life insurance proceeds that would constitute a chose in action, those claims, or the right of action conferred by ss. 64 and 75 of the Insurance Act are between the plaintiffs and Manulife, and do not involve the defendant Ms. James.
- [30] The plaintiffs argue that their action concerns rights over movable property in British Columbia. They claim that the proceeds of the life insurance policy and the life insurance policy itself are movable property in British Columbia. They offer no authority in support of their assertion that the policy and its proceeds are movable property, or that the policy and its proceeds are located in British Columbia, beyond the fact that Manulife as the insurer carries on business here.
- [31] For the purposes of this subsection, I accept that the life insurance proceeds are movable property. I also accept that the life insurance proceeds are located in British Columbia as the right to call for payment of those proceeds is located where the beneficiary or beneficiaries are located. That establishes an arguable case for territorial competence over claims against Manulife under s. 10(a), but does not assist in establishing an arguable case for territorial competence over Ms. James under this subsection.
- [32] Indeed, the plaintiffs plead no facts that could give rise to a claim against Manulife. While they plead that Ms. James has claimed 70% of the policy proceeds from Manulife, they do not plead that either of the plaintiffs has sought payment under the policy from Manulife and been denied.
- [33] The plaintiffs argue that presumptive facts that establish a real and substantial connection to British Columbia are pleaded in paras. 5(a) to (c) of part 3 of their amended notice of civil claim. These paras. read:

5. Pursuant to s. 3(e) of the Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28 (CJPTA), there is a real and substantial connection between British Columbia and the facts on which the proceeding against Anna is based. In particular, the Plaintiffs say that the following provisions of s. 10 of the CJPTA indicate a presumptive real and substantial connection between the facts of this proceed [sic] and British Columbia:
- a. Pursuant to s. 10(a), this action is brought to enforce, assert, declare or determine proprietary or possessory rights in movable property in British Columbia. The Life Insurance Plan is a movable property that is held by ManuLife, which is authorized to transact insurance in British Columbia. The proceeds of the Life Insurance Plan is payable to Natasha, or in the alternative, Patricia, who are both ordinarily resident in British Columbia;
 - b. Pursuant to s. 10(c)(i), this action is brought to interpret, rectify, set aside or enforce the Change of Beneficiaries Form in relation to property in British Columbia that is movable. The facts in this proceeding relates [sic] to the enforcement of the Change of Beneficiaries Form, which concerns the Life Insurance Plan, a movable property in British Columbia;
 - c. Pursuant to s. 10(h), this action concerns the Life Insurance Plan administered by Manulife, which is a business carried on in British Columbia: see *Pope and Talbot Ltd. (Re)*, 2009 BCSC 1014.
- [34] There are no facts pleaded here, so the plaintiffs' position is not improved by recourse to part 3 of the notice of civil claim. There are no facts pleaded elsewhere in the notice of civil claim that support an arguable case that the proceeding is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in movable property in British Columbia.

Section 10(c)(i): Do the pleadings raise an arguable case that this action is brought to interpret, rectify, set aside or enforce a contract or other instrument in relation to movable property in British Columbia?

- [35] "Instrument" is defined in Black's Law Dictionary, 4th ed, as "A written document; a formal or legal document in writing, such as a contract, deed, will, bond, or lease. Anything reduced to writing, a document of a formal or solemn character". The beneficiary change form is an "instrument" within the meaning of s. 10(c)(i).
- [36] While the facts alleged in the pleading do not make it clear whether the validity of the beneficiary change form as typed is questioned, as opposed to only the handwritten notations on the typed form, the notice of civil claim does raise an arguable case with respect for the need to interpret the beneficiary change form.
- [37] The question becomes then whether the beneficiary change form was made in relation to movable property in British Columbia.

- [38] The beneficiary change form determines who receives the insurance proceeds. If it is null and void as the plaintiffs seek in part 2 of the notice of civil claim, the pleading says that Patricia Bell is the sole beneficiary; if it is valid and operative, the question becomes whether, properly interpreted, it acts to divide the proceeds equally or unequally between Natasha Bell and Anna James. Both issues may be affected if the undue influence or coercion alleged in the pleading is proven.
- [39] Insurance proceeds are payable in money, and payable to the beneficiary named in the policy or a valid beneficiary change form. I accept that the insurance proceeds are movable property. I accept that the insurance proceeds are located where the beneficiaries are: British Columbia.
- [40] Thus, there is an arguable case raised in the pleadings that the action as presently pleaded falls within the presumption set out in s. 10(c)(i).
- [41] This satisfies the territorial competence requirement.
- [42] I will nonetheless address subsections (g), (h), the adduced affidavit evidence, and the plaintiffs' alternative argument with respect to establishing territorial competence at common law.

Section 10(g): Do the pleadings raise an arguable case that a tort has been committed in British Columbia?

- [43] In written argument, the plaintiffs add that s. 10(g) of the CJPTA applies because they allege in their notice of civil claim that they "suffered a tort (i.e., an economic loss) in British Columbia as a result of Ms. James' Conduct." This conduct presumably relates to the alleged suspicious circumstances, undue influence, unjust enrichment, and wrongful death, all of which occurred in Manitoba. The plaintiffs say that a cause of action in tort arises in British Columbia if a person suffers a loss in British Columbia. They rely on *The Original Cakerie Ltd. v. Renaud*, 2013 BCSC 755 [Original Cakerie] for the proposition that, according to the plaintiffs, "a cause of action in tort arises in British Columbia if a person suffers a loss in British Columbia."
- [44] The plaintiffs have not shown that economic loss is a tort recognized by law. Economic loss is a type of damage that may be awarded on proof of a tort, as in *Rivtow Marine Ltd. v. Washington Iron Works*, [1974] S.C.R. 1189, where the tort was a breach of a duty to warn of a known defect, and economic loss directly attributable to that breach was held recoverable.
- [45] Facts capable of establishing essential elements of the tort of unlawful interference with economic interests have not been pleaded, nor have facts that would support a finding that the tort of intimidation has been committed by Ms. James.
- [46] Section 10(g) does not assist the plaintiffs in this case.

Section 10(h): Do the pleadings raise an arguable case that this action concerns a business carried on in British Columbia?

[47] Beyond the fact that Manulife carries on business here, there is nothing in the pleadings to suggest an arguable case that this action against Ms. James concerns a business carried on in British Columbia.

Was there evidence adduced from which an arguable case for territorial competence can be established?

[48] The application record contains two affidavits, both sworn by counsel for the plaintiffs. It is not clear why this was done, as the facts deposed in both appear to be based on instructions given to counsel by the plaintiffs, with no explanation offered as to why the plaintiffs could not swear their own affidavits, while other portions of the affidavits appear to be argument of counsel. Evidence from counsel on anything other than uncontroversial matters of pure formality is discouraged generally, and where unavoidable, counsel ought not to speak to their own affidavit.

[49] In written argument, the plaintiffs say that the affidavit evidence with respect to s. 10(g) of the CJPTA was required by Rule 21-8, which governs jurisdictional disputes. The plaintiffs rely on *Western Aerial Applications Ltd. v. Turbomeca USA, Inc.*, 2009 BCSC 123, in which an Alberta corporation applied to set aside two third party notices served on it in a British Columbia action. The Alberta applicant argued that the third party notices did not allege any facts which would give the British Columbia court jurisdiction over it. The Court agreed that the pleadings did not allege facts upon which jurisdiction could be determined, and the question was whether those facts could be supplied through affidavit evidence.

[50] After reviewing a number of authorities, the Court concluded that evidence was admissible to prove jurisdictional facts not set out in the pleadings, relying on *Roth*, and that the evidence need only raise a good arguable case that the jurisdictional facts can be established, relying on *Purple Echo*. See also *Original Cakerie* at para. 22.

[51] In this case, the two affidavits do not add any evidence from which an arguable case for jurisdiction can be gleaned under any of subsections 10(a), (c)(i), (g), or (h).

Are there common law principles at play?

[52] The plaintiffs argue in the alternative that, if the facts on which they base their action do not fall under any of the categories listed in subsections 10(a), (c)(i), (g), or (h) of the CJPTA, the court may apply common law principles relating to the determination of territorial competence, citing *Olney v. Rainville*, 2008 BCSC 753 (reversed by the Court of Appeal in 2009 BCCA 380) at para. 32 and *Pope and Talbot* at para. 75.

[53] *Olney* concerned an action brought in British Columbia to determine the paternity of a child born in Switzerland to a mother, Ms. Olney, who lived in France, worked in Switzerland, but was domiciled in British Columbia. Mr. Rainville, the person registered as the child's father

and granted parenting rights in a French divorce decree, lived in Quebec and until separating from Ms. Olney, divided his time between Quebec and France. The man whom the mother alleged was the child's biological father had no apparent connection to British Columbia. The Court of Appeal found that there was very little connection between British Columbia and the facts necessary to establish the claim. However, the Court found that the words of s. 3(e) of the CJPTA should be broadly construed, and noted that the mother's domicile was in this province, which meant that the child in question was also domiciled here. The Court stated this was sufficient to found territorial competence. The domicile issue distinguishes Olney from this case as pleaded.

- [54] Pope and Talbot applied Olney, stating at para. 75: "Where a case does not fit into any of the categories set out in s. 10, common law principles may be applied." The plaintiffs have not pled nor adduced any common law principles that would apply to the facts of this case. The plaintiffs are required under s. 10 to "prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based." They have not done so.
- [55] Neither authority assists the plaintiffs in this case to show a real and substantial connection between the facts they plead against Ms. James and British Columbia.

CONCLUSION

- [56] I conclude that the pleadings in this case raise an arguable case under s. 10(c)(i) of the CJPTA that this Court has territorial competence over the claims made against Ms. James, and dismiss the application.
- [57] The applicants should not have been allowed to split their case as they have: in retrospect, the Court should not have heard only the territorial competence issue, and should have required the defendant Ms. James to either bring an application to determine the forum non conveniens question if her territorial competence argument failed, or abandon the non conveniens argument. It is appropriate to discourage such an approach through a costs order.
- [58] The plaintiffs are entitled to their costs of this application.

"The Honourable Mr. Justice Johnston"

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