

CANADA / JUDGMENT

Chabara v. Richmond

2022 BCSC 2357

COURT

Supreme Court of British Columbia

DECIDED

13 December 2022

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2022 BCSC 2357 Chabara v. Richmond IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Chabara v. Richmond, 2022 BCSC 2357 Date: 20221213 Docket: S227406 Registry: New Westminister Between: Sean Chabara and Mercedes Uhrin Plaintiffs And Melissa Richmond, dba Melissa's Bright Beginnings Childcare Center, Xian Feng Li, Wan Juan Zhang, and Deborah Schiller Defendants And Melissa Richmond, dba Melissa's Bright Beginnings Childcare Center, Xian Feng Li, and Wan Juan Zhang Third Parties Before: Master Nielsen Oral Reasons for Judgment In Chambers Counsel for the Plaintiffs: M.A. McDonald Counsel for the Defendant, Melissa Richmond, dba Melissa's Bright Beginnings Childcare Center: M. Gartner Place and Date of Hearing: New Westminister, B.C. December 13, 2022 Place and Date of Judgment: New Westminister, B.C. December 13, 2022

- [1] THE COURT: This is an application brought by the plaintiffs for three orders. The first order sought is that the defendant Melissa Richmond, doing business as Melissa's Bright Beginnings Childcare Centre, produce all correspondence between her and her insurer, Intact Insurance Company, which refers to the possible liability of Intact to satisfy the whole or any part of a judgment granted in this action or to indemnify or reimburse Melissa Richmond doing business as Melissa's Bright Beginnings Childcare Centre for any money in satisfaction of the whole or any part of a judgment, including any letter of breach of coverage or denial of coverage to the defendant Richmond.
- [2] The second order sought is that the defendant, Melissa Richmond, doing business as Melissa's Bright Beginnings Childcare Centre, attend for a further examination for discovery to be questioned on the issue of coverage by Intact, including any breach of coverage or denial of coverage. The final order sought is for costs.
- [3] The plaintiff's case arises out of tragic circumstances. A 23-month old child exited the premises where she was at day care going through a gate to another property, through its gate to where there was a pool, and the child drowned in the pool. There are three insurers involved. One insurer is for the day care centre itself, another insurer is for the home where the day care centre was located, and a third insurer is for the home where the pool was located. The insurer Intact is the insurer for the day care centre itself.

- [4] Negotiations have been ongoing in terms of settlement. There has been no settlement, and I am advised that two of the three insurers are not prepared to entertain settlement unless the third, Intact, chips in for damages, or at least explains the reason for its denial of coverage. Those are the circumstances which give rises to this application.
- [5] At the defendant day care operator's examination for discovery, she advised insurance coverage had been denied, but would not answer any questions regarding the reasons for that denial or produce correspondence that explained the denial of coverage.
- [6] The plaintiffs seeks orders compelling the production of correspondence and a further examination for discovery on the basis that the insurance coverage itself is relevant, as is any reason for the denial of insurance coverage. The plaintiffs submit they are prima facie entitled to answers to the questions regarding the insurance policy and the denial of coverage. They rely on Supreme Court Civil Rule 7-1(3), which compels the production of the insurance policy. They also rely on Supreme Court Civil Rule 7-2(19)(b), which provides, in part, without limiting subrule (18), unless the court otherwise orders, a person being examined for discovery must answer any question within his or her knowledge or means of knowledge that is related to, (b) the amount of money available under the policy and any communication from an insurer denying or limiting liability under the policy.
- [7] I do not have a transcript of the examination for discovery with the itemized questions or answers thereto, but I do have the affidavit of counsel, Mr. Joseph Prodor, who attests at para. 5 of his second affidavit sworn on December 1, 2022, that: In her discovery on November 15, 2022, the defendant Richmond testified that she was being denied coverage by Intact. She testified she had given all correspondence, written and electronic, between herself and Intact to her counsel at Narwal Litigation, Miranda Gartner. Her counsel, Miranda Gartner, objected to further questions concerning the basis for Intact's denial and objected to producing correspondence concerning denial of coverage. Had I been allowed to continue questioning, I would have directed the witness to the Intact correspondence and continued questioning on some or all of the correspondence.
- [8] The defendant opposes the orders sought. They submit that the scope is beyond what is permitted by the rules, and that there are timing issues as well as certain formal matters that have not been complied with, namely a formal demand for documents. There is also a time limitation that has not been complied with in terms of a formal demand. Counsel for the plaintiffs points out that the court can alter technical requirements where appropriate. He refers to Supreme Court Civil Rule 7-1(14). To the extent required, I am going to grant that amendment and address the demands sought.
- [9] There is very little law on the topic. There is the BC Court of Appeal decision in *Meghji v. British Columbia (Ministry of Transportation and Highways)*, 2014 BCCA 105. The decision arises from a costs application that occurred subsequent to the resolution of the case. At para. 116 the BC Court of Appeal states:

- [116] Because the disclosure of insurance was intended to assist the parties in assessing their prospects of recovery upon judgment and to encourage settlement of claims where the limits of insurance coverage would play some role in weighing the value of settlement offers, we are of the view that the trial judge was correct to find the availability and extent of insurance coverage was relevant to costs.
- [10] Although not directly on point, I find the decision helpful. Here we have a coverage issue which is standing as an impediment to the ability of the plaintiffs to engage in settlement discussions because two of the insurers simply will not play ball, with the third insurer not being involved, or at least disclosing the reasons why it is refusing to grant coverage.
- [11] In my view, Supreme Court Civil Rules 7-1(3) together with s. 7-2(19)(b) makes the requested information and communications from the insurer denying or limiting liability under the policy clearly relevant and compellable in the circumstances.
- [12] The first two orders sought by the plaintiffs are granted. The plaintiffs will have their costs of the application in the cause. "Master Nielsen"

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