

CANADA / JUDGMENT

Hill v. Dhanda

2024 BCSC 2145

COURT

Supreme Court of British Columbia

DECIDED

26 November 2024

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2024 BCSC 2145 Hill v. Dhanda IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hill v. Dhanda, 2024 BCSC 2145 Date: 20241126 Docket: V25088 Registry: New Westminster Between: Tiena Hill Plaintiff And Gurpinderjit Singh Lally and Sadaugar Singh Dhanda in their capacity as the Litigation Guardians of Jayden Kewal Dhanda and Jordan Dhanda Defendants Before: Associate Judge Hughes Reasons for Judgment Counsel for Plaintiff: G. Banipal Counsel for Defendants: F. Ju Place and Date of Hearing: New Westminster, B.C. November 22, 2024 Place and Date of Judgment: New Westminster, B.C. November 26, 2024

- [1] This action concerns the estate of Mukhtiar (Mike) Dhanda (the "Deceased"), who died intestate on June 10, 2022. The plaintiff claims to have been the common law spouse of the Deceased for at least two years immediately prior to his death. The defendants are the litigation guardians of the Deceased's two minor children.
- [2] This action was commenced as a petition proceeding. On June 13, 2023, Justice Tammen converted the petition to an action and ordered that there be a trial on the sole issue of whether, at the time of the Deceased's death, Ms. Hill was the spouse of the Deceased as defined in s. 2 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA]. The trial was to be set for no more than five days.
- [3] The trial was scheduled for January 22, 2024, but that trial was adjourned at the Trial Management Conference as it was determined that five days would be insufficient. The trial has been rescheduled for nine days commencing January 6, 2025, just five weeks from the date of hearing of this application.
- [4] Before the court is an application by the defendants, pursuant to Rule 7-1(10), seeking production of a number of documents by the plaintiff. The defendants say that the documents in question are in the plaintiff's possession or control and could be used to prove or disprove a material fact. The parties were able to narrow the scope of the document requests, but those still in issue are the following:
- a) Unredacted bank statements for all of the plaintiff's bank accounts for the duration of the plaintiff's relationship with the Deceased;

- b) Unredacted credit card statements for the plaintiff's credit cards for the duration of the plaintiff's relationship with the Deceased;
 - c) Statements for all investment accounts held by the plaintiff from June 2019 to June 2022;
 - d) All other records relating to any joint bank accounts between the plaintiff and the Deceased;
 - e) Income tax returns of the plaintiff from 2015 to 2022;
 - f) The plaintiff's RRSP statements from 2015 to 2022;
 - g) Complete text exchange printout between the plaintiff and the Deceased from June 2020 to June 2022;
 - h) Copies of any auto insurance policies held by the plaintiff from 2012 to 2022; and
 - i) Copies of speculation tax declarations for three properties from 2018 to 2022.
- [5] Rule 7-1 governs discovery and inspection of documents. The portions of R. 7-1 that are relevant to this application are as follows: List of documents
- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record. Party may demand documents required under this rule
 - (10) If a party who has received a list of documents believes that the list omits documents or a class of documents that should have been disclosed under subrule (1) (a) or (9), the party may, by written demand, require the party who prepared the list to
 - (a) amend the list of documents,
 - (b) serve on the demanding party the amended list of documents, and
 - (c) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16). Party may demand additional documents
 - (11) If a party who has received a list of documents believes that the list should include documents or classes of documents that
 - (a) are within the listing party's possession, power or control,
 - (b) relate to any or all matters in question in the action, and

- (c) are additional to the documents or classes of documents required under subrule (1) (a) or (9), the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the listing party to
 - (d) amend the list of documents,
 - (e) serve on the demanding party the amended list of documents, and
 - (f) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16). Response to demand for documents
- (12) A party who receives a demand under subrule (10) or (11) must, within 35 days after receipt, do one of the following:
- (a) comply with the demand in relation to the demanded documents;
 - (b) comply with the demand in relation to those of the demanded documents that the party is prepared to list and indicate, in relation to the balance of the demanded documents,
 - (i) why an amended list of documents that includes those documents is not being prepared and served, and (ii) why those documents are not being made available;
 - (c) indicate, in relation to the demanded documents,
 - (i) why an amended list of documents that includes those documents is not being prepared and served, and (ii) why those documents are not being made available. Application for production of documents
- (13) If a party who receives a demand under subrule (10) or (11) does not, within 35 days after receipt, comply with the demand in relation to the demanded documents, the demanding party may apply for an order requiring the listing party to comply with the demand. Court may alter requirements
- (14) On an application under subrule (13) or otherwise, the court may
- (a) order that a party be excused from compliance with subrule (1), (3), (6), (15) or (16) or with a demand under subrule (10) or (11), either generally or in respect of one or more documents or classes of documents, or
 - (b) order a party to
 - (i) amend the list of documents to list additional documents that are or have been in the party's possession, power or control relating to any or all matters in question in the action, (ii) serve the amended list of documents on all parties of record, and (iii) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16).

- [6] The plaintiff served her initial list of documents on September 25, 2023, within the time frame ordered by Justice Tammen.
- [7] The defendants' first document demand was sent on September 17, 2023, prior to receipt of the plaintiff's list of documents. Accordingly, that demand was not a proper demand pursuant to Rule 7-1(10), as the list of documents had not yet been served.
- [8] The defendants conducted an examination for discovery of the plaintiff on October 16, 2023. On November 30, 2023, counsel for the defendants sent a letter to plaintiff's counsel reiterating the requests made at discovery. That letter did not refer to the Rules.
- [9] On October 22, 2024, counsel for the defendants advised plaintiff's counsel that they had not received a response to their November 30, 2023 letter, and requested a response by November 5, 2024. The subject application was filed on November 7, 2024.
- [10] In *Edwards v. Ganzer*, 2012 BCSC 138, Associate Judge Bouck summarized the principles governing document production under Rule 7-1:
- [41] I understand the principles outlined in these various decisions, together with the applicable Rules, to be as follows:
- a. The initial production obligation under Rule 7-1 (1) (a) (i) is limited to what is required to prove or disprove a material fact: *Biehl v. Strang* at para. 14;
 - b. Rule 7-1(10) allows the opposing party to issue a written demand requiring the listing party to amend the original list and produce documents that should have been disclosed under Rule 7-1(1)(a)(i);
 - c. In addition, Rule 7-1(11) allows the opposing party to issue a written demand requiring the listing party to amend the list and produce documents which ought to be disclosed under a test "close to" that set out in *Compagnie Financiere et Commerciale du Pacifique v. Peruvian Guano Company* (1882), 11 Q.B.D. 55 at 63, (the "Guano test"): *Global Pacific* at para. 9;
 - d. The distinction between the two types of disclosure provided for under Rule 7-1 is stated in *Global Pacific* as follows: The question is whether a document can properly be said to contain information which may enable the party requiring the document either to advance his own case or damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, or if it may have either of those two consequences. Therefore, it is acknowledged that the initial disclosure under Rule 7-1(1) relates to a materiality requirement, but that a party can apply to the court, as the defendant did here, for broader disclosure pursuant to Rule 7-1(14). (my emphasis.) Para. 9
 - e. Both the demand by the requesting party and the response of the opposing party should be set out in writing addressing the terms and criteria used in Rule 7-1. Whether the demand and response provide sufficient particularity is a matter of the court's discretion;

- f. If an application is brought under Rule 7-1(13) for the listing or production of documents, the court may either order compliance with the demand, excuse full compliance, or order partial compliance: Rule 7-1(14);
 - g. The objectives of the SCCR, including proportionality, may be taken into account by the court when exercising its discretion under Rule 7-1(14). The proportionality rule can be applied to either expand or restrict the required production of documents: *Global Pacific* citing *Whitcombe v. Avec Insurance Managers Inc.*, 2011 BCSC 204.
- [42] Interestingly, a party may be excused from compliance with Rule 7-1(1) generally, but the court is not given the specific power to order compliance with a demand made for the listing and production of the so-called "materiality" documents. Rule 7-1(14) only specifically allows for an order requiring compliance with a broader disclosure demand under Rule 7-1(11): *Global Pacific*; *Burgess v. Buell Distribution Corp.* Whether this distinction is an oversight or intentional is difficult to say. It might well be the former, given that Rule 7-1(13) contemplates a compliance order by the court if a demand for the "material" documents is issued. The distinction is more fully canvassed in *Burgess v. Buell Distribution Corp.* at para. 15.
- [11] The issue noted by Bouck A.J. in para. 42 of *Edwards v. Ganzer* may explain the dearth of authorities on applications under subrule (10), and why all of the authorities referred to by counsel on this application dealt with demands pursuant to subrule (11). Notably, subrule (14) has not been amended since 2010.
- [12] The importance of compliance with the Rules related to document production was discussed by Mr. Justice Fitch (as he then was) in *Lit v. Hare*, 2012 BCSC 1918:
- [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 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.
- [13] The only document requests made after receipt of the plaintiff's list of documents were those reiterating the requests from the examination for discovery of the plaintiff. As in *Lit v. Hare*, requests for documents made in the context of examinations for discovery are not to be regarded as sufficient substitutes for compliance with the Rules.
- [14] Accordingly, the defendants' application for document production from the plaintiff is dismissed. The costs of this application are payable by the defendants in any event of the cause, but not payable forthwith. "Associate Judge Hughes"

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Prepared on 26 October 2026 · Esheria