

CANADA / JUDGMENT

Joda v. Bell

2023 BCSC 1958

COURT

Supreme Court of British Columbia

DECIDED

6 October 2023

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2023 BCSC 1958 Joda v. Bell IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Joda v. Bell, 2023 BCSC 1958 Date: 20231006 Docket: M174786 Registry: Vancouver Between: Dalia Joda Plaintiff And Keeghan Bell and Janet Lee Bell Defendants And Insurance Corporation of British Columbia Third Party Before: Master Robertson Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: C. Wagner W. Seidlík, Articled Student Counsel for Janet Lee Bell and ICBC: C. Alikashani Place and Date of Trial/Hearing: Vancouver, B.C. October 6, 2023 Place and Date of Judgment: Vancouver, B.C. October 6, 2023

- [1] THE COURT: The application today is for production of clinical and employment records in a motor vehicle accident matter where the motor vehicle accident occurred on September 8, 2015. There have been a series of discoveries with continuations, with a trial that is now scheduled for June 17, 2024, for 10 days.
- [2] The dispute here is not that the documents are subject to production or are irrelevant, or any procedural issue terms of the demand complying with the Supreme Court Civil Rules, but rather whether or not they ought to be delivered at all. Specifically, while many of the orders being sought are proceeding without opposition, the dispute arises with respect to how the records of treating practitioners in Alberta ought to be obtained.
- [3] In particular, the issue arises as to whether or not the plaintiff should provide to the defendants authorizations so that they may seek the records themselves, which means they will also pay those third-party suppliers directly, or whether or not the plaintiff should request the documents from the third-party suppliers and provide them to the defendants on the basis that the defendants will reimburse them for the costs, which the defendants say they agree to do.
- [4] After submissions, it remains unclear as to why there is resistance to one form over the other. It seems unnecessary to come to court on this sort of dispute. However, the plaintiff's position is supported by case law.
- [5] The decision of *Seller v. Grizzle*, 1994 CanLII 887 (BC SC) ("Seller"), involved an application where the court considered the difference between whether or not such records are in the "care and control" of the plaintiff. Specifically, in commenting upon clinical records of a

plaintiff's treating practitioners the court considered whether they were in the plaintiff's control, noting that they were in the plaintiff's power to obtain, however, that they were not necessarily in their possession or control. In that case, given that such records were not in the plaintiff's actual possession, the plaintiff was not obliged to either list or produce them. The court noted as follows: The right of the patient is to have access to the documents and to obtain copies of those documents at his or her own expense. If copies are obtained, those are documents in the control of the patient. But I see nothing in the Rules of Court which requires the patient to obtain copies simply for the purpose of disclosure and production to the opposite party.

- [6] The plaintiff relies on that decision here and argues that there is nothing that obligates them to go out and seek and request the records themselves, despite that they do not object to their relevance or production.
- [7] The secondary issue with respect to carrying the costs for obtaining such records is, perhaps, what is driving this particular bus. Nonetheless, the plaintiff relies on Seller as authority for the proposition that they have no obligation in the first instance to obtain them.
- [8] There is always a logistical impediment in obtaining records outside of the province, given the lack of this court's jurisdiction over non-parties outside of British Columbia. To address this, this court has confirmed that it may be appropriate to order authorizations where the court doesn't have this territorial jurisdiction over the third-party suppliers, despite arguments by plaintiffs that a court cannot order "consent".
- [9] However, in doing so, rarely does the issue of who is sending out the authorization arise. Even if privacy concerns arise, the form of the authorization can be done on Halliday terms. Thus, the issue of who is going to order the records comes down to who is going to be liable to pay for them in the first instance.
- [10] Cases that have gone on to consider Seller have, in that respect, been more in the context of payment of the clinical records, including *Solomon v. McLean*, 2016 BCSC 1765.
- [11] Ultimately, I am bound to follow Seller. As I cannot make an order compelling the plaintiff to obtain documents, I make the order that the authorizations will be provided to the defendant, for the defendant to send out, which means that the defendant will be liable for payment to the third party suppliers.
- [12] That will require some consequential amendments to the order, but I am sure you can work on that over the lunch break and come back at 2:00 p.m. with that for signature. I will, just to make it easier, add a term that the order can be signed electronically and in counterpart to enable you to finalize it over PDF without all of you having to come back. I guess you can play rock, paper, scissors as to which of you will bring the order back up for signature and entry. "Master Robertson"

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