

CANADA / JUDGMENT

Jordan v. Stewart

2009 BCSC 641

COURT

Supreme Court of British Columbia

DECIDED

22 January 2009

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2009 BCSC 641 Jordan v. Stewart IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jordan v. Stewart, 2009 BCSC 641 Date: 20090122 Docket: M072172 Registry: Vancouver Between: Patrick Joseph Jordan Plaintiff And: Thomas Barton Stewart Aileen Cynthia Stewart Defendants Before: The Honourable Madam Justice Bruce Oral Reasons for Judgment In Chambers January 22, 2009 Appearing on his own behalf: Patrick Jordan Counsel for the Defendants: L.J. Mackoff Place of Trial/Hearing: Vancouver, B.C.

- [1] THE COURT: Mr. Mackoff, I have every sympathy for you and the members of your firm in having to deal with this case and if Mr. Jordan would retain legal counsel to deal with this matter, or even just seek some legal advice, I think that you and whoever hears this case in trial will be far better served, and certainly Mr. Jordan will be far better served. The old adage that a person who is his own lawyer has a fool for a client --
- [2] PATRICK JORDAN: I should --
- [3] THE COURT: -- is well deserved in this case. It is quite apparent, Mr. Jordan, that you have -- please do not speak and interrupt me. Thank you. It is quite apparent that you have really lost sight of what is important in this case and have failed to get on with taking the necessary steps to make sure that you, as the plaintiff, are properly managing your case and getting ready for trial and being prepared for the end of the month which is the date set for trial.
- [4] You had issues with regard to the interrogatories with Mr. Mackoff, the defendants' counsel, but you failed to come to court. You had issues with regard to the discoveries, but you failed to come to court. You had issues with regard to the failure to properly disclose documents, and yet you failed to come to court.
- [5] We are here now on the eve of trial and Mr. Mackoff has no discoveries, he has had very little discovery of any evidence from you in terms of your documents. He has had to go to third parties to get that information, and he has worked very hard, as we can see from all the documents filed, to try and deal with your requests.

- [6] Nevertheless, I am not going to grant his application to dismiss your statement of claim for one reason, and that is even though you have dillydallied about with all of your correspondence and telephone calls, there is one item in your requests that I think he has been mistaken in. There is some authority for the proposition that when you claim litigation privilege with respect to documents, you have to list the documents and describe them sufficiently so that the person who is receiving that list can understand the nature of the document and decide whether or not they are going to make an objection and come to court to contest that non-disclosure. I do not think, in reading the list of documents provided, that you have done that correctly.
- [7] It is not up to Mr. Mackoff to take out redacted portions of documents received as a result of a Freedom of Information request. If there are documents in the possession of ICBC that should be disclosed, they will be disclosed in their entirety. However, if there are documents that are not disclosed because they are privileged, then he will have to describe them sufficiently, but briefly, so you understand what they are. Then you will have a chance to come to court to argue about that.
- [8] But my order is going to be conditional. I do not think that it is appropriate that I postpone your examination for discovery until such time as all of those documents have been produced and litigated because I do not think any of that is going to be relevant to your discovery.
- [9] I am going to order, as a condition of dismissing the application brought by Mr. Mackoff, that you will present yourself for discovery by Mr. Mackoff at his offices on or before the 30th of January. That is next -- you have got a week. All next week you can --
- [10] PATRICK JORDAN: Today's the 22nd.
- [11] THE COURT: Sorry, the 22nd. So you will be discovered and you will present yourself for discovery between now and the 30th of -- that is your choice. What day is good for you?
- [12] MR. MACKOFF: Well, My Lady --
- [13] THE COURT: Do you have any time? I am going to vacate the trial dates.
- [14] MR. MACKOFF: I understand you're going to vacate the trial dates, but --
- [15] THE COURT: You are not available?
- [16] MR. MACKOFF: I'm available on the 28th, the first day of the trial, and in view of what has occurred to date, I'm suggesting that my calendar should be accommodated and that would be the 28th.
- [17] THE COURT: Are you available on the 28th?
- [18] MR. MACKOFF: The 28th of January.
- [19] THE COURT: That is the day it will be, then.

- [20] PATRICK JORDAN: Just one thing --
- [21] THE COURT: Be quiet, Mr. Jordan. You have had your opportunity.
- [22] PATRICK JORDAN: Just one --
- [23] THE COURT: Mr. Jordan, you are going to be examined starting at 10 o'clock in the morning at Mr. Mackoff's offices on the 28th of January, 2009, and you will stay there and give your discovery under oath until he is finished. Do you understand that?
- [24] PATRICK JORDAN: As I mentioned to Mr. Mackoff previously, I have a problem sitting and with my neck.
- [25] THE COURT: You can have appropriate breaks.
- [26] PATRICK JORDAN: Well, I have suggested no more than three hours at one time.
- [27] THE COURT: You will be staying there with appropriate breaks until he is finished.
- [28] PATRICK JORDAN: I cannot stay there seven hours. It's physically impossible for me to do.
- [29] THE COURT: You will stay there until you are finished. Do I have to say it again?
- [30] PATRICK JORDAN: I'm just -- I'm just saying I can't do it.
- [31] THE COURT: All right.
- [32] PATRICK JORDAN: If I'm physically discomfited, I won't -- I won't put myself at physical injury. You have no idea what happens. I have to be very careful.
- [33] THE COURT: Mr Mackoff, what would be an appropriate time period to provide a list of these documents that are claimed to be litigation privileged?
- [34] MR. MACKOFF: Today's Thursday. I'll have them by 4 o'clock tomorrow, My Lady.
- [35] PATRICK JORDAN: Can I ask that you order him to release all documents with the names?
- [36] THE COURT: Just be quiet, Mr. Jordan. Mr. Mackoff is going to provide to you, Mr. Jordan, a list of those documents that -- with a brief description that he has claimed are litigation privileged, and he will provide them to you tomorrow, the 23rd of January, 2009, by 4 o'clock.
- [37] PATRICK JORDAN: Could we get the names of the defendants that have been redacted and removed, please? That's pretty standard, isn't it? It'll save a lot of questions down the road, you know.
- [38] THE COURT: You can discover the Stewarts and you can ask them, but I am not going to require him to make any further disclosure of documents on that issue. You have lost on that issue. I am sorry.
- [39] PATRICK JORDAN: Well, that's not justice.
- [40] THE COURT: Now, in the event that you wish to discover Mr. Stewart and Mrs. Stewart --

- [41] PATRICK JORDAN: It's illegal to withhold the names in those documents.
- [42] THE COURT: Mr. Jordan --
- [43] PATRICK JORDAN: It's illegal.
- [44] THE COURT: -- you will take out an appropriate appointment. You know how to do it. You will serve an appointment on Mr. Mackoff with the appropriate conduct money. Your failure to do so will result in you not being able to discover the defendants and, in addition, if you fail to do so, it will not be grounds for a further adjournment of the trial. In other words, you have to get going on this. You have to take out an appointment to discover the defendants. If you do not, you cannot claim to the trial judge, "I need an adjournment because I haven't discovered the defendants."
- [45] PATRICK JORDAN: Okay. He's supposed to make this list of documents, correct?
- [46] THE COURT: Yes. He will have it to you tomorrow.
- [47] PATRICK JORDAN: And we already have some documents from him where he sets out the names of the defendant. Now, how am I to get those names of the defendants?
- [48] THE COURT: You can ask them questions in examination for discovery.
- [49] MR. MACKOFF: There's one issue -- one problem with -- we can produce the list by four, but Mr. Jordan does not have an -- he only has a box for service, so --
- [50] PATRICK JORDAN: You can send it special delivery.
- [51] MR. MACKOFF: I can't -- special delivery won't get there by 4 o'clock.
- [52] THE COURT: All right.
- [53] PATRICK JORDAN: Well, you can send it parcel post. If it gets --
- [54] MR. MACKOFF: Is there an address that we could courier to him? I'm willing to incur the expense of a courier.
- [55] PATRICK JORDAN: Send it priority post, but parcel post, it will be there within 24 hours. That's fine with me.
- [56] MR. MACKOFF: Well, okay, we agree to send it by 4 o'clock tomorrow, then.
- [57] THE COURT: Okay.
- [58] PATRICK JORDAN: But --
- [59] THE COURT: He is going to send it by priority post tomorrow at 4 o'clock and that is sufficient.
- [60] PATRICK JORDAN: And I don't mind if it takes you an extra day and he's -- do a little more thorough job.

- [61] THE COURT: The next part of my order is that in the event that you wish to examine for discovery the defendants, you will do so before the 31st of March, 2009. You have got two months and you must take out an appointment, a proper appointment and serve it with conduct money on Mr. Mackoff, and the appointment must be sometime between February and March. So you have got two months.
- [62] PATRICK JORDAN: So just to be clear, he's going to produce a list of documents. I'm not happy with the list of documents, for example. So there's nothing stopping me, then, at this point of making a motion and having anything he wants to not release or any documents that have been redacted --
- [63] THE COURT: Then it will be up to you to get back to court --
- [64] PATRICK JORDAN: Okay, nothing stopping me from doing that. All right. Okay, fine.
- [65] THE COURT: Mr. Mackoff?
- [66] MR. MACKOFF: Your order is conditional upon Mr. Jordan appearing for discovery --
- [67] THE COURT: Yes, it is.
- [68] MR. MACKOFF: -- on the 28th of January, and Mr. Jordan should be made aware by the court that simply stating in a letter or a late night phone message that he doesn't like our list of documents is not a basis for him failing to appear. And on that same note, My Lady, I'm going to ask that the court -- that Your Ladyship be seized of this matter so that if Mr. Jordan fails to appear on the 28th of January, 2009, it's not necessary to come back and spend two hours of the court's time with another judge dealing with that. And finally, My Lady, notwithstanding the fact that Mr. Jordan has succeeded in an application that he didn't bring, I'm going to request that in these circumstances that you fix costs in the amount of \$1,000 payable in any event of the cause; not forthwith, but in any event of the cause.
- [69] THE COURT: Okay.
- [70] PATRICK JORDAN: I, of course, object to that.
- [71] THE COURT: Mr. Jordan, just hold it for a second. You do understand that my order is conditional upon you attending for discovery on the 28th? In other words, if you fail to attend --
- [72] PATRICK JORDAN: I un -- I un --
- [73] THE COURT: -- for any reason, Mr. Mackoff can come back here --
- [74] PATRICK JORDAN: Yeah, yeah, yeah. I understand that.
- [75] THE COURT: -- before me and I will strike your statement of claim and your writ. Do you understand that?

- [76] PATRICK JORDAN: I understand that, and the only thing, I guess, if I stop to think about it, today is -- what's the date? Is today Thursday?
- [77] THE COURT: The 22nd.
- [78] PATRICK JORDAN: Wednesday? No, tomorrow's my birthday, 60th. Wow, and I can walk. I'm happy, I can walk. A year ago I could hardly --
- [79] THE COURT: Please, Mr. --
- [80] PATRICK JORDAN: Anyway --
- [81] THE COURT: -- Jordan.
- [82] PATRICK JORDAN: -- so what I was going to ask was -- I'm buying stocks all the time so -- is today Tuesday or Wednesday?
- [83] MR. MACKOFF: Thursday, January the 22nd, 2009.
- [84] PATRICK JORDAN: Okay, so the following Monday, if I could -- next week would be a Thursday, I believe, the 28th, or Wednesday, because I would like to talk to -- I've got the names of a couple of lawyers that some people gave me who deal with -- personal injury lawyers, right?
- [85] THE COURT: Yes.
- [86] PATRICK JORDAN: And I think it's probably a good idea at this stage to get one, and so I would like that to the -- made to the following Monday.
- [87] THE COURT: No, you will be examined for discovery on the 28th of January, as I have ordered, and if you fail to attend, Mr. Mackoff may appear before me and apply to have your claim struck.
- [88] PATRICK JORDAN: Okay. The other issue is, though -- and I --
- [89] THE COURT: And that order is not conditional upon Mr. Mackoff providing -- I am sorry, that order --
- [90] PATRICK JORDAN: No, no, I understand. I understand.
- [91] THE COURT: -- does not have anything to do with --
- [92] PATRICK JORDAN: With the documents --
- [93] THE COURT: -- any subsequent argument about the documents.
- [94] PATRICK JORDAN: Okay, but --

- [95] THE COURT: Subsequently you can come to court and say, "Mr. Mackoff didn't properly disclose this document," or, "I want this document, I say it's not covered by litigation privilege," but you cannot use that as an excuse not to attend discovery. There are no excuses. You have to attend. Do you understand that?
- [96] PATRICK JORDAN: Okay, there's still the matter of the outstanding order from July 31st, and I think you might want to deal with it.
- [97] THE COURT: This is an order for you to produce documents.
- [98] PATRICK JORDAN: Yes, and --
- [99] MR. MACKOFF: And to sign authorizations.
- [100] PATRICK JORDAN: Yeah.
- [101] THE COURT: To sign authorizations for the production of documents.
- [102] PATRICK JORDAN: Yeah, and the problem -- he got, I think it was May 24th, 2004, up to July 31st, MSP billing records, if I'm not correct, yet he sends me a letter, "Here's a list of 14" -- or actually 13 -- sorry, how many have we got? We have actually -- and I've actually put these -- 10 and 11. I don't know if it's in there.
- [103] THE COURT: Yes, I have seen it.
- [104] PATRICK JORDAN: Okay, you have 11, and then [indiscernible] therapist, Louise Dyck [phonetic]. I put that in my list of documents. I have those documents. My understanding with the order is it's only valid up to May -- to the date it was given, which would be May, 2004 -- May 23, 2004. His first order from Seymour Medical Clinic was May 23rd forward, and then -- but his MSP billing records he got an order from May 23, 2004. So some of these doc -- now he sends me this letter and there's a list of 10 doctors, okay, but he's not asking for the authorization from them from May 23, 2004, forward, he's asking for me to give him authorization since the very first time I've ever seen these people.
- [105] MR. MACKOFF: I wasn't prepared to respond to this, but --
- [106] PATRICK JORDAN: That's not what, from my understanding of the court order, it's for. There's a cover letter with it. I had it here somewhere.
- [107] THE COURT: I know I did see that, but I was not sure --
- [108] PATRICK JORDAN: I don't think -- you know, I don't think it was actually in that file.
- [109] THE COURT: Yes, it is.
- [110] PATRICK JORDAN: The actual letter. This list of doctors may well be there, but the part where -- because I got it -- the part where he wants since the first time I've ever seen them, and you could be going back 15 years.

- [111] THE COURT: Well, it does say in the authorizations that you want -- I am looking at one to Michael -- Dr. Michael Polay [phonetic] --
- [112] PATRICK JORDAN: Yeah.
- [113] THE COURT: -- "Release copies of all clinical records and other medical information including consultation reports," et cetera, et cetera, "from the first visit to the present date, as well as any x-ray reports."
- [114] PATRICK JORDAN: Any sort of reports, for example. My understanding of that court order, it would only apply from May 23, 2004, forward. Would that not be --
- [115] MR. MACKOFF: Now, the order was made, I'm looking at it, on the 31st of July. We asked for the Medical Services Plan claim history for one year from pre-accident to the present, and Mr. Jordan should understand he has an ongoing obligation to produce documents with or without an order.
- [116] PATRICK JORDAN: And as we both do. As we both do.
- [117] THE COURT: Well, if you want to present your claim, you have to produce documents about your medical history.
- [118] MR. MACKOFF: But paragraph 3 is that the plaintiff execute --
- [119] PATRICK JORDAN: But to a certain --
- [120] MR. MACKOFF: -- that the plaintiff execute authorizations for release of medical information for all medical professionals listed on the Health Insurance of British Columbia printout.
- [121] THE COURT: Yes, there is no date there.
- [122] MR. MACKOFF: That's not the limitation. PATRICK JORDAN: And actually it's handwritten, "As above. As above. As above."
- [123] THE COURT: No, the order does not.
- [124] MR. MACKOFF: The entered order does not.
- [125] PATRICK JORDAN: Actually, I've got the handwritten note where it says, "As above." I've got a copy of it here, actually.
- [126] THE COURT: Oh, the clerk's notes.
- [127] PATRICK JORDAN: Yeah.
- [128] THE COURT: Well, the clerk's notes do not govern. It is the order.
- [129] PATRICK JORDAN: No, the master himself signed it. It's his handwriting. It's a photocopy where it refers to, "As above."

- [130] THE COURT: Well, the master has made -- has signed the order.
- [131] PATRICK JORDAN: There is some handwritten stuff here, an order of costs with cause, et cetera. This got a little messed up here. And somewhere on here -- I mean, as you say, it went a year back pre-accident. I know -- if I were to have a lawyer, for example, I know that if there's something irrelevant --
- [132] THE COURT: It seems unusual that you would have it since he was born. You do not want, really, documents that far back, do you?
- [133] PATRICK JORDAN: No.
- [134] MR. MACKOFF: No, no, I don't want them that far back. And if Mr. Jordan wants new authorizations from 2004, that's fine as well. All I want to know is -- to have a snapshot of what we would be entitled to in any event.
- [135] THE COURT: So you are content with the one year prior to the accident?
- [136] MR. MACKOFF: I am content with one year prior to the accident.
- [137] THE COURT: So --
- [138] PATRICK JORDAN: And one thing I would add to that, as I started to say, if a lawyer was sitting here, he'd probably be giving consent to redact information from the medical records which is completely irrelevant to the injuries.
- [139] THE COURT: It is called a Halliday order.
- [140] PATRICK JORDAN: Yeah, yeah. Now, for --
- [141] THE COURT: That requires --
- [142] MR. MACKOFF: But, you know, we adjourned the application for a month because Mr. Jordan couldn't make it on the date that was set with sufficient notice, and then he didn't show up again. If he wanted a Halliday --
- [143] PATRICK JORDAN: You know --
- [144] THE COURT: Sssh.
- [145] MR. MACKOFF: If he wanted a Halliday order, he could've asked for a Halliday order --
- [146] THE COURT: I know.
- [147] MR. MACKOFF: -- and while Your Ladyship has expressed -- has shown great patience and wisdom in dealing with Mr. Jordan --
- [148] PATRICK JORDAN: I agree.

- [149] MR. MACKOFF: -- Mr. Jordan is now going to be, in my -- and I put this on the record, emboldened by what has occurred here today and will render our job all that more difficult, and that's why I'm willing to make that --
- [150] PATRICK JORDAN: No, sir.
- [151] MR. MACKOFF: -- accommodation.
- [152] PATRICK JORDAN: It won't render it more difficult.
- [153] THE COURT: Mr. Jordan, I am not acceding to that request for a Halliday order. The documents cannot be used for any other purpose than this litigation. You do not need a Halliday order. Mr. Mackoff will give you new authorizations that will restrict his request to a one-year period prior to the date of the accident and that is sufficient.
- [154] PATRICK JORDAN: I have all these records, by the way, and I offered to provide them some time ago.
- [155] THE COURT: Well, pack them up in a box and send them over to him, but first, because he is just as suspicious of you as you are of him, I want you to sign those authorizations when you get them.
- [156] PATRICK JORDAN: What if --
- [157] THE COURT: You do not want to give Mr. Mackoff anymore ammunition to have your claim struck out which he could have if you fail to produce these authorizations so he can obtain the documents.
- [158] PATRICK JORDAN: That's why I'm bringing this up. What if there are documents in here which I've created for the purposes of litigation?
- [159] THE COURT: There are no documents from your doctors that are for the purpose of litigation.
- [160] PATRICK JORDAN: Why? If I pay for a document, it can be created for the purpose of litigation, can it not? MRI reports could be created for the purpose of litigation.
- [161] THE COURT: No. You saw these doctors -- you are not going to get that kind of an order.
- [162] PATRICK JORDAN: If I paid \$875 for two -- I did it twice, two MRIs, one --
- [163] THE COURT: The only exception would be if you had a medical-legal report prepared by a doctor who examined you or did not examine you, then you do not have to disclose that to Mr. Mackoff if you do not intend to use it at trial.
- [164] PATRICK JORDAN: My understanding was any document which I've paid for -- like, if I pay for an MRI in a private clinic, I paid for it and that's my document, and if I choose to keep it for the purpose of litigation, use it or not use it, the fact of the matter is -- I mean, I've got a picture of my spine and my neck and it shows the damage there. Thank God for MRIs

because in the old days with x-rays, you'd just be a guy complaining with neck pain and you wouldn't have any proof of anything, right? So I probably don't mind producing that, and one of the doctors here on the list is the one who referred me, okay? So -- but, you know, some of this stuff f--

[165] THE COURT: Mr. Mackoff?

[166] MR. MACKOFF: This man has put his health in issue. The law is clear. There is no privilege. As Your Ladyship has correctly pointed out, if he retains someone for the purpose of writing a medical-legal report, he is entitled to claim privilege over it until he chooses to serve it pursuant to Rule 40A, and then the privilege over that opinion is lost as well.

[167] THE COURT: But otherwise, you do not. You see, if you go to a doctor and you get some medical treatment --

[168] PATRICK JORDAN: I understand that.

[169] THE COURT: -- including an MRI, the defendants are entitled to discovery of that record.

[170] PATRICK JORDAN: The difference is the doctor in this case is simply referring -- provides a referral to an MRI clinic. I have to pay for this. It's not part of our healthcare system.

[171] THE COURT: It does not matter if you paid for it.

[172] PATRICK JORDAN: But I don't mind. I don't mind.

[173] THE COURT: So Mr. Mackoff is going to send you, along with all his other material --

[174] PATRICK JORDAN: [Inaudible/overlapping speakers] letters.

[175] THE COURT: -- new authorizations. You will sign those, all right?

[176] PATRICK JORDAN: Mm-hmm.

[177] THE COURT: And part of my order is that you will sign them and return them to Mr. Mackoff --

[178] PATRICK JORDAN: I have all these records anyway.

[179] THE COURT: You will sign the authorizations and return the authorizations signed to Mr. Mackoff. You will --

[180] MR. MACKOFF: Can we just make it within 48 hours upon receipt? We're going to send them out as soon as we can tomorrow, but --

[181] PATRICK JORDAN: Yeah, we've got to allow a little bit for mail and, you know, I have things --

[182] MR. MACKOFF: He just has to put them back in the mail within 48 hours unless Your Ladyship has a better -- a better option in terms of a date certain.

- [183] PATRICK JORDAN: Well, why don't you send them -- why don't you send them with your list of documents at the same time?
- [184] THE COURT: That is what --
- [185] MR. MACKOFF: Well, that's what I intend to do.
- [186] THE COURT: Yes.
- [187] PATRICK JORDAN: Okay? All right, now --
- [188] THE COURT: Okay, so provided they are sent with the list of documents which is going to be received by you -- or going to be mailed --
- [189] PATRICK JORDAN: You know, I could've brought --
- [190] THE COURT: -- by 4 o'clock on the 23rd of January, 2009, you will have to get those authorizations back to Mr. Mackoff.
- [191] PATRICK JORDAN: Is this all going to be written down for me, or am I supposed to be making notes here?
- [192] THE COURT: He should have those documents on the 28th of January. When you go for discovery --
- [193] PATRICK JORDAN: Oh.
- [194] THE COURT: -- you are going to have them in your hands and you are going to give them to --
- [195] PATRICK JORDAN: Well --
- [196] MR. MACKOFF: The authorizations.
- [197] PATRICK JORDAN: -- I can --
- [198] THE COURT: The authorizations.
- [199] PATRICK JORDAN: Now, they are on my list of documents already, okay?
- [200] THE COURT: It does not matter.
- [201] PATRICK JORDAN: Yes, I --
- [202] THE COURT: Listen to the words I am saying.
- [203] PATRICK JORDAN: So don't bother giving them, the ones I have already have, then? Is that what you're saying?
- [204] THE COURT: He wants the authorizations so he can get the documents himself.
- [205] PATRICK JORDAN: So don't bother giving him any. I'll do -- if I want to, I can, but it doesn't matter, right? He can still get them, okay?

- [206] THE COURT: List them on your list of documents.
- [207] PATRICK JORDAN: I have.
- [208] THE COURT: If he wants copies of them, he will request copies of them, but I want -- on the 28th of January, you will hand him directly those signed authorizations for medical information.
- [209] PATRICK JORDAN: Okay, that's fine. That's fine. Now, there's still two other outstanding issues here in this order. For some reason, I don't know -- I tell people I'm a businessman and I'm self-employed. I tell the ICBC adjuster I sell jewellery as one of my businesses. He writes down that I do watch repairs. I can't even change a battery in a watch. I don't know where that idea come from. You want employment records or something, or names of employers. I'm a businessman. I don't have an employer, okay? I don't have an employer.
- [210] MR. MACKOFF: There's an order for tax returns.
- [211] PATRICK JORDAN: We'll deal with that, but first --
- [212] MR. MACKOFF: The authorizations --
- [213] PATRICK JORDAN: -- this employment stuff. I'm a businessman and I don't have a boss. I'm my own boss.
- [214] THE COURT: Well, that is fine. Then put that down in writing.
- [215] PATRICK JORDAN: It says in my statement of claim.
- [216] THE COURT: Well, put it down -- just disclose it to Mr. Mackoff.
- [217] PATRICK JORDAN: This is all part of my claims for damages, what I do and what I can't do and all this stuff and everything, right? Now, as far as the tax returns go, you want it up to 2007 -- '99 to 2007. There's bit of an issue here. I was looking up a case he was involved in, actually, in New Westminster --
- [218] THE COURT: Mr. Jordan, just get to the point. It is already 10 to four and you have taken a long time with this.
- [219] PATRICK JORDAN: I have my tax returns up until -- I don't owe the tax department any money, but I haven't filed the actual return for two-oh-six and two-seven. They actually owe me money. I paid the money and under the law they're not charging me any interest or any penalty because I paid them the money. I filled out the return, but, you know, I forget things sometimes and because it doesn't cost me anything, I haven't sent the returns in. So, no, there's not a notice of assessment back, okay? So I can't comply with that order, okay? I have the returns --
- [220] THE COURT: File them.

- [221] PATRICK JORDAN: -- from prior years. Yeah, I have to file them and we're going to have to wait --
- [222] THE COURT: Have you sent Mr. Mackoff your returns from the years 1999 until 2002?
- [223] PATRICK JORDAN: No, because he never asked for them.
- [224] THE COURT: He did. The order says --
- [225] PATRICK JORDAN: The order says for the whole period.
- [226] THE COURT: Yes.
- [227] PATRICK JORDAN: The whole period.
- [228] THE COURT: From '99 to 2007.
- [229] PATRICK JORDAN: Yes, the whole period.
- [230] THE COURT: Well, you have not complied with this order because you have not sent any of your tax returns.
- [231] PATRICK JORDAN: Because I said I couldn't comply with that. He's asking for '99 to two-oh-seven and I can't comply with it because I haven't -- I paid the money. I don't owe a penny, all right?
- [232] THE COURT: Give him 1999, 2000, 2001, 2002 --
- [233] PATRICK JORDAN: I have them.
- [234] THE COURT: -- 2003 --
- [235] PATRICK JORDAN: Notice of assessments or something.
- [236] THE COURT: -- 2004, 2005. Then file your 2006 and 2007 so you can comply with the request for the balance of the years. Do you understand?
- [237] PATRICK JORDAN: And now I've got to do two-oh-eight and -- but the next thing. In this day and age, if these things end up in discovery, sitting in a courthouse file, my tax returns, with my social security number, my financial information there --
- [238] THE COURT: All of this information is only disclosed for the purposes of this trial. It cannot be used for --
- [239] PATRICK JORDAN: But it ends up --
- [240] THE COURT: -- other purposes.
- [241] PATRICK JORDAN: It ends up in a courthouse file and any member of the public can come in and request it.
- [242] THE COURT: It will not end up in a courthouse file.

- [243] PATRICK JORDAN: I saw one he was involved in, in New Westminster --
- [244] THE COURT: Mr. Jordan. Provide the information. You have already been ordered to do so by Master Donaldson and you have done nothing to comply with that order.
- [245] PATRICK JORDAN: I said I couldn't comply with that order.
- [246] THE COURT: Well, you can comply with that order. You already have possession of all of those income tax returns that you have filed.
- [247] PATRICK JORDAN: Yes, I do. For prior years, yes.
- [248] THE COURT: Send them to Mr. Mackoff.
- [249] PATRICK JORDAN: Are they never going to end up in a courthouse file? Can we be sure of that? Could you please make that --
- [250] THE COURT: This is for the purpose of the litigation.
- [251] PATRICK JORDAN: I know, but they end up in the discovery files, don't they?
- [252] THE COURT: They are not in a discovery -- there is no discovery file.
- [253] PATRICK JORDAN: I've seen them in courthouse files, people's income tax returns.
- [254] THE COURT: Well, they may be, but --
- [255] PATRICK JORDAN: And with social security numbers, financial information, in this day and age of identity theft -- I mean, they --
- [256] THE COURT: I cannot make any such orders, but I can tell you that the law is that the documents that Mr. Mackoff receives pursuant to this order are only to be used for the purpose of this litigation.
- [257] MR. MACKOFF: And Mr. Jordan's concern, My Lady, is he's probably seen tax returns in books of documents that have been produced by a plaintiff who wants to prove an income loss claim and chooses to produce those documents. If Mr. Jordan wants to assert that he's not claiming any income loss --
- [258] PATRICK JORDAN: No.
- [259] MR. MACKOFF: -- if he wants to make that concession, then he will not need to produce anything.
- [260] PATRICK JORDAN: Actually, I could [inaudible/fast speech] this case without giving any income tax returns, but that's beside the point, but I'm not going to do that.
- [261] THE COURT: I will tell you this. Unless you produce them for trial as your documents --
- [262] PATRICK JORDAN: I know.

- [263] THE COURT: -- they will not necessarily become part of the record at all, but then you may not be able to prove your claim for income loss.
- [264] PATRICK JORDAN: But --
- [265] THE COURT: So if you already have these, I want you to bring all of -- a copy of each one of those years of income tax returns from 1999 to 2005 --
- [266] PATRICK JORDAN: The notice of assessments. Notice of assessments.
- [267] THE COURT: Well, do you have copies of your returns?
- [268] PATRICK JORDAN: The notice of assessments is the only thing that's valid as far as income goes, you know, because a tax return, unless it's --
- [269] THE COURT: Do you have a tax return for those years?
- [270] PATRICK JORDAN: Yes, but the notice of assessment is the one that's authority.
- [271] THE COURT: The order says tax returns and assessments, so on the 28th, when you go for discovery, you will also bring copies of all the income tax returns for the years inclusive of 1999 to 2005, and your notices of assessment.
- [272] PATRICK JORDAN: But is that going to end up in a courthouse file with my social security number on it?
- [273] THE COURT: Do you understand what I am saying?
- [274] PATRICK JORDAN: I understand what you're saying and I can do that, assuming they're in one of my boxes which I'll find, but --
- [275] THE COURT: Mr. Mackoff?
- [276] PATRICK JORDAN: -- is that going to end up in a courthouse file?
- [277] MR. MACKOFF: Well, there's an order to produce them and that's what we're looking for, and --
- [278] PATRICK JORDAN: Which I'm going --
- [279] MR. MACKOFF: -- in addition, because of his failure to comply with the order of Master Donaldson now for six months --
- [280] PATRICK JORDAN: I haven't --
- [281] THE COURT: Yes.
- [282] MR. MACKOFF: -- I'm asking for a further order that any medical records that are presently in his possession be produced at the discovery on the 28th as well which does not obviate his requirement to sign authorizations, that should be made clear, but in order to expedite or facilitate the discovery process that's probably an appropriate order as well.

- [283] PATRICK JORDAN: On one hand I thought you want me to sign these so you can get them from the doctor yourself.
- [284] THE COURT: Well, if you have already got them, he wants -- why do not you bring them all so he can have a look at them?
- [285] PATRICK JORDAN: I made photocopies and things --
- [286] THE COURT: Good. All right.
- [287] PATRICK JORDAN: -- like that, but --
- [288] MR. MACKOFF: But he should understand that he still has to execute the authorizations because --
- [289] PATRICK JORDAN: So that's just extra work for me.
- [290] THE COURT: Yes, it is, but you are the -- this is your claim.
- [291] PATRICK JORDAN: Yeah, but the only reason --
- [292] THE COURT: Listen.
- [293] PATRICK JORDAN: -- I'm sitting here today is because that guy backed into me and threw me in the ground, and that's a fact. He was negligent.
- [294] THE COURT: Okay, Mr. Jordan, on the 28th you are going to bring copies of all the medical documents you have got in your possession, the medical records --
- [295] PATRICK JORDAN: Well, from May 23rd forward.
- [296] THE COURT: Yes.
- [297] PATRICK JORDAN: 2004 forward.
- [298] THE COURT: Four. You are going to bring the signed authorizations with you. You are going to bring all of your income tax returns and all your assessments in your possession --
- [299] PATRICK JORDAN: From '99.
- [300] THE COURT: -- from '99 to 2005 on January 28th. In regard to 2006 and 2007, you are going to file your income tax returns and you are going to send to Mr. Mackoff copies of those filed income tax returns --
- [301] MR. MACKOFF: Well, he'll -- the authorizations -- the way that CRA works is --
- [302] THE COURT: The authorizations will --
- [303] MR. MACKOFF: Because of privacy provisions, he has to execute authorizations --

- [304] PATRICK JORDAN: Actually, I don't have to execute authorizations. If you want, I'll get a lawyer in for the taxes and I'll give the tax returns to him, or he can get them and he can give them to Mr. Mackoff directly. That's quite a common practice, that the lawyer involved -- I have the tax returns myself and I filed them and I've got the notice of assessments which is going to show it corresponds, et cetera. I don't think he needs the authorization to deal with directly with them. Case after case, the lawyer for the plaintiff is --
- [305] THE COURT: Mr. Jordan, given the way this matter has been proceeding, very slowly and --
- [306] PATRICK JORDAN: Very badly on his part in my view.
- [307] THE COURT: -- by your conduct, I want you to bring signed authorizations for disclosure of the income tax returns to Mr. Mackoff on January 28th as well so he can obtain them himself directly.
- [308] PATRICK JORDAN: There's one other --
- [309] MR. MACKOFF: I have an even better idea.
- [310] PATRICK JORDAN: What's that?
- [311] MR. MACKOFF: Rather than mess around with post office boxes, I will have the authorizations at the discovery on May 23, 2004, that are listed in Master Donaldson's order and you simply need to order that he will execute them on the same day. That makes it --
- [312] PATRICK JORDAN: On the condition that he produces a proper list of documents.
- [313] THE COURT: No.
- [314] PATRICK JORDAN: Otherwise -- because I know he's not going to do it.
- [315] THE COURT: I have already said that that is not a condition of my order that you attend discoveries and produce documents. This order is only designed to allow you some time to get moving on your case.
- [316] PATRICK JORDAN: And under -- the law and case law in British Columbia is that all investigation stages of ICBC have to be released in their entirety.
- [317] THE COURT: Mr. Jordan. Mr. Jordan, we are going backwards.
- [318] PATRICK JORDAN: That includes investigations of liability, and he's not -- that's the law.
- [319] THE COURT: Mr. Jordan, I --
- [320] PATRICK JORDAN: That's the law.
- [321] THE COURT: Mr. Jordan, be quiet.
- [322] PATRICK JORDAN: That's the law. That's the law in British Columbia.
- [323] THE COURT: Be quiet, Mr. Jordan.

- [324] PATRICK JORDAN: That's the law. That's the law.
- [325] THE COURT: Okay, I think that --
- [326] PATRICK JORDAN: That's the law.
- [327] THE COURT: You are to provide -- however you do it, you are to provide signed authorizations for disclosure of income tax returns on the 28th of January to Mr. Mackoff, as well as for the authorizations to disclose medical records --
- [328] PATRICK JORDAN: This man has worked as a prosecutor for the income tax department. I don't --
- [329] THE COURT: Mr. Jordan --
- [330] PATRICK JORDAN: What?
- [331] THE COURT: -- listen to me.
- [332] PATRICK JORDAN: I heard what you're saying, but you're not hearing what I'm saying the laws of discovery are.
- [333] THE COURT: No, I have heard a lot of what you have said, all right? If you do not do any of those things --
- [334] PATRICK JORDAN: What is he going to do in return? Nothing.
- [335] THE COURT: Mr. Mackoff will --
- [336] PATRICK JORDAN: He will not produce a proper list.
- [337] THE COURT: Mr. Mackoff will be at liberty to apply to have your claim struck out and I will be seized of this matter and --
- [338] PATRICK JORDAN: He will not produce the documents according to law.
- [339] THE COURT: -- I am imposing costs in any event of the cause in the amount of \$800 for a half day appearance.
- [340] PATRICK JORDAN: What about my costs?
- [341] THE COURT: And they are payable on or before the 27th of February, 2009.
- [342] MR. MACKOFF: Thank you, My Lady.
- [343] PATRICK JORDAN: You want me to pay him money?
- [344] THE COURT: Yes, I do.
- [345] PATRICK JORDAN: I'm not paying him money.
- [346] THE COURT: Well, I am sure I will have Mr. Mackoff back before me on this matter, Mr. Jordan.

- [347] PATRICK JORDAN: Well, you know, I've been treated like a piece of garbage by the healthcare system, by ICBC, and you know what? I've made up my mind. I'm 60 years old tomorrow and I'm having trouble working and earning a living and I don't want to spend my life's savings sitting in the rain. I'm going to Mexico, ladies and gentlemen.
- [348] THE COURT: So you are not appearing for discovery on the 28th of January?
- [349] PATRICK JORDAN: I will appeal this decision. I am not paying him \$800 for [inaudible/paper rustling].
- [350] THE COURT: Are you appearing for discovery on the 28th of January?
- [351] PATRICK JORDAN: I will not make that decision at the moment. As I say, I am -- I could change my mind, but I'm not paying \$800 because this should be with the cause of the action. Simple as that. He should not be paid now. It should be with the cause of the action. I've spent thousands of dollars of my own medical care, MRIs, physio --
- [352] THE COURT: Mr. Jordan, I am of the view --
- [353] PATRICK JORDAN: -- you name it.
- [354] THE COURT: -- that costs in the event of the cause are warranted given the amount of delay --
- [355] PATRICK JORDAN: It's his delay.
- [356] THE COURT: -- and for failure to bring on timely applications to --
- [357] PATRICK JORDAN: It's his delay.
- [358] THE COURT: -- the court in regard to any of the matters --
- [359] PATRICK JORDAN: He has not produced a proper list of documents --
- [360] THE COURT: -- that you have complained of today.
- [361] PATRICK JORDAN: -- he has not disclosed document which according to law I'm entitled to and, you know, it's bad enough I --
- [362] THE COURT: Mr. Mackoff, in the event that Mr. Jordan does not appear for discovery on the 28th of January, I will hear your application on short notice. I will be in Penticton on those days, but if you -- I will let the registry know --
- [363] PATRICK JORDAN: I may well be in Mexico then.
- [364] THE COURT: -- that I will be available to hear your application --
- [365] PATRICK JORDAN: I refuse --
- [366] THE COURT: -- on short notice.
- [367] PATRICK JORDAN: -- to pay the \$800 to him and --

[368] MR. MACKOFF: My Lady --

[369] PATRICK JORDAN: -- I refuse -- I just refuse. I refuse.

[370] MR. MACKOFF: -- again to obviate the need to serve a short leave requisition, may I ask that this hearing, then, be adjourned to the 29th of January, 2009, and that I appear by telephone for that purpose?

[371] THE COURT: Yes, I grant that request.

[372] MR. MACKOFF: Thank you.

[373] PATRICK JORDAN: I'm not paying \$800.

[374] THE COURT: Please provide Madam Registrar with a telephone number where you can be --

[375] PATRICK JORDAN: He has it. He has it.

[376] THE COURT: Madam Registrar with a telephone number where you can be reached --

[377] PATRICK JORDAN: Oh, don't you have it? Okay. I'm not paying him \$800.

[378] THE COURT: -- for the purpose of the application on the 29th.

[379] PATRICK JORDAN: 604 -- what application?

[380] THE COURT: Which will be at 9:30 in the morning.

[381] MR. MACKOFF: Thank you, My Lady.

[382] PATRICK JORDAN: I'm not paying him \$800.

[383] THE COURT: This is an application --

[384] PATRICK JORDAN: I'm still not paying him \$800.

[385] THE COURT: Mr. Jordan, we are adjourning the application to strike the statement of claim to 9:30, the 29th of January, by telephone conference in the event that you fail to attend for your examination for discovery on the 28th. Okay, thank you.

[386] PATRICK JORDAN: Am I getting a copy of all this?

[387] MR. MACKOFF: I will draft an order.

[388] THE COURT: Oh, will draft the order and I will dispense with signatures as to form.

[389] PATRICK JORDAN: Aren't you making up this or -- like, [inaudible/rapid speech] --

[390] THE COURT: At some point you will be able to have the clerk's notes from --

[391] PATRICK JORDAN: Because he doesn't do things the way they're supposed to be done, but \$800 that I have to pay him, I won't pay him.

- [392] THE COURT: I believe that, Mr. Jordan.
- [393] PATRICK JORDAN: I have lost of my savings since -- I sold my house in the fall thinking I can buy another one, right? I didn't realize --
- [394] THE COURT: I think these proceedings are at an end and, Mr. Sheriff --
- [395] PATRICK JORDAN: I have lost --
- [396] THE COURT: -- if you want to escort Mr. Jordan --
- [397] PATRICK JORDAN: \$350,000.
- [398] THE COURT: -- out of the courtroom. Thank you.
- [399] THE SHERIFF: Do you need a phone number, My Lady?
- [400] THE COURT: Yes.
- [401] PATRICK JORDAN: 604-254-2566. I refuse to pay him any money.
- [402] THE COURT: Well, I am hoping I will not hear from you on the 29th, then, and that you will attend for examination for discoveries.
- [403] PATRICK JORDAN: Not if I have to pay him \$800.
- [404] THE COURT: Well, one is not conditional upon the other. Thank you.
- [405] PATRICK JORDAN: Well, aren't they? What if I don't pay the \$800?
- [406] THE SHERIFF: We're going to have to lock the courtroom, sir, so you're --
- [407] PATRICK JORDAN: I know. I've got parking issues, too. "Bruce J."
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