

CANADA / JUDGMENT

# Khela v. Sidhu et al.

2004 BCSC 971

## COURT

Supreme Court of British Columbia

## DECIDED

19 July 2004

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2004 BCSC 971 Khela v. Sidhu et al IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Khela v. Sidhu et al., 2004 BCSC 971 Date: 20040719 Docket: S45007 Registry: Kelowna Between: Sarbjeet Kaur Khela Plaintiff And Sarjant Singh Sidhu Defendant And Insurance Corporation of British Columbia Third Party Before: The Honourable Mr. Justice Brooke Reasons for Judgment Counsel for the Plaintiff: A.B. Paige Appearing on his own behalf: S.S. Sidhu Counsel for the Third Party: D.H. Pihl, Q.C. Date and Place of Hearing: June 11, 2004 Kelowna, B.C.

- [1] The third party applies pursuant to Rules 26(1), 26(10), and 27(25) for an order that the plaintiff in this family compensation action provide a copy of the transcript of the examination for discovery of her late husband, Amrit Paul Singh Khela, in an action out of the Kelowna registry of this court under No. 29926, Amrit Paul Singh Khela v. Jetander Singh Tung (Khela v. Tung). The plaintiff resists this application on the basis that there is no real and substantial connection between Khela v. Tung and this action. She says that the actions relate to different persons and different losses.
- [2] The facts are these. On May 14, 1994, Amrit Paul Singh Khela was involved in a motor vehicle accident, in which he sustained serious injuries. As a result, he commenced an action for damages, including loss of income and loss of opportunity. At the time of the accident, he was self-employed in a farming operation under the name of Valley Fresh Produce. Mr. Khela was examined for discovery in April 1997 and his claim was settled in September 1997. On October 3, 1998, Mr. Khela was involved in a second accident and died as a result of the injuries he sustained. This action is brought by his spouse on her own behalf and for the three children of her and her late husband for loss of financial support. While there has been extensive document disclosure, the third party seeks production of the transcript of the late Mr. Khela's examination for discovery in the Tung action.
- [3] The third party relies on Rule 26(1), which enables a party to demand discovery of documents in another party's possession or control relating to any matter in question in the action. The transcript in issue is in the possession or control of the plaintiff or her counsel, and the question is whether it relates to any matter in question in this action. In *Dufault v. Stevens* (1978), 6 B.C.L.R. 199 (B.C.C.A.), the leading case of *Cie Financière du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.D. 55 (C.A.) was applied where this was said at p.

65: ...every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may -- not which must -- either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary. I have put in the words "either directly or indirectly," because, as it seems to me, a document can properly be said to contain information which may enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary, if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences...

- [4] This demonstrates the broad and inclusive construction given to the words "relating to any matter in question in the action..."
- [5] I am satisfied that the transcript the third party seeks may contain information which may fairly lead the third party to a train of inquiry which will either advance its own case or damage the case of the plaintiff. As such, I am satisfied that it is appropriate for the court to order production of that transcript for inspection and copying in accordance with Rule 26(10). I do so on the basis that the transcript will not be further copied by the third party, nor given to any stranger to this action, nor used for any other purpose than this action. I wish to emphasize that the order for production in no way may be seen as an order respecting the admissibility of the transcript in this action or as authorizing its use in the cross-examination of the plaintiff.
- [6] Here, I mention that the third party's application is also made pursuant to Rule 27(25), which enables a copy of the transcript of the examination for discovery to be obtained by any party of record, the person examined, "or by any other person as the court for special reason may permit". What may be a "special reason" has been considered by this court in *Ashton v. A.E. LePage (B.C.) Ltd.* (1992), 65 B.C.L.R. 210 where Madam Justice Allan found the sworn evidence of a defendant in an earlier and related proceeding was a sufficient "special reason" and made an order under Rule 27(25). Similarly, in *Scuzzy Creek Hydro & Power Inc. v. Tercon Contractors Ltd.*, [1998] B.C.J. No. 2585, Mr. Justice Hood found that while the parties and the issues in the two actions were not identical that there were sufficient connection "as regards parties, subject matter and the evidence to be given by the witness on both occasions, to constitute the actions related actions..." (para. 23). Justice Hood also referred at para. 21 to the decision of the Court of Appeal in *Kyuquot Logging Ltd. v. British Columbia Forest Products Ltd.*, [1986] 5 B.C.L.R. (2d) 1, where he said: Access to, and the use of, the evidence given by a witness in another proceeding has always been a most important tool or practice in the trial process, vital to the orderly and efficient conduct of litigation, as MacLaughlin, J.A. [sic] put it in *Kyuquot*, and in the search for the truth.
- [7] Unlike in *Ashton* and in *Scuzzy Creek*, the transcript sought here is not that of a party or of a witness in this action, and those decisions are accordingly distinguishable.

[8] Nevertheless, I find that the transcript may contain information relating to a matter in question in this action and accordingly must be produced for inspection and copying at a time and place the parties may agree upon. Failing agreement, of course, the matter may be brought back before me.

[9] Costs in the cause. "T.R. Brooke, J." The Honourable Mr. Justice T.R. Brooke

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