
CANADA / JUDGMENT

Lasaleta v. Elliott

2020 BCSC 1104

COURT

Supreme Court of British Columbia

DECIDED

18 June 2020

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2020 BCSC 1104 Lasaleta v. Elliott

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lasaleta v. Elliott,

2020 BCSC 1104

Date: 20200618

Docket: M187293

Registry: Vancouver

Between:

Candelaria Lasaleta

Plaintiff

And:

Ian David Elliott, Michael King Lasaleta

and Moises S. Lasaleta

Defendants

And:

Ian David Elliott

Third Party

Before: The Honourable Madam Justice Francis

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

N.W. Peterson

Counsel for the Defendant and Third Party Ian David Elliott:

M. Jhaj

Written Submissions of the parties dated:

June 16, 2020

Place and Date of Reasons:

Vancouver, B.C.

June 18, 2020

- [1] THE COURT: This is an application brought by the defendant for an order that the plaintiff disclose certain documents, including employment and medical records. Additionally, the defendant seeks an extension of time to serve responding expert reports as well as an adjournment of the trial. I am giving these reasons orally. If a transcript of these reasons is ordered, I reserve the right to make amendments for clarity and grammar. The substance of these reasons will not change.
- [2] This application is being dealt with by written submissions pursuant to a practice directive issued by the Chief Justice on April 27, 2020, entitled "COVID-19 Expansion of Civil and Family Matters: Applications by Written Submission" and indexed as "COVID-19 Notice No. 14." That notice is clear that the court will only hear an application by written submissions if the applicant has chosen one issue to be determined by way of written submissions.
- [3] The applicant in this case, the defendant, appears to be primarily seeking document disclosure but has in his relief sought added a section entitled "Other Issues Still In Dispute" and appears to be asking the court to make two additional orders: an extension of time to serve responding expert reports and an adjournment of the trial, which is set for August 10, 2020.
- [4] The applicant has not made any legal argument in support of these two additional items of relief, and it is not entirely clear from the application materials whether the applicant is seeking to have the court adjudicate these two matters, which would not be in compliance with the practice directive, or simply alluding to additional relief that the applicant intends to seek in a future application.

- [5] Regardless of the applicant's intention in raising the two additional issues of extension of time and adjournment of the trial, in accordance with the practice directive, I will only consider and determine in this application the primary issue raised in the written submissions application that was before me, which was the document production sought by the defendant.
- [6] As is often the case in the months immediately preceding a trial, document production has been an evolving process in this proceeding. The state of document production as it stood on May 27, 2020, when the notice of application was filed is not the same as it is today. In the notice of application, the applicant seeks the following three document production orders:
- 1) Within seven days from the date of the pronouncement of this order, the plaintiff shall provide to the solicitor for the applicant a complete copy of the plaintiff's employment file from McDonald's Restaurants of Canada for the period January 1, 2013, to the present date.
 - 2) Within seven days of receipt of an entered copy of this order, Dr. Wai-Tat David Luk shall prepare and deliver to the solicitor for the applicant one certified legible copy of all records in his possession pertaining to the plaintiff, including copies of all handwritten notes, letters to physicians, consultation reports, lab reports, test results and radiological reports, excluding x-rays and medico-legal reports, relating to the treatment and services rendered to the plaintiff for the period August 30, 2014, to the present date.
 - 3) Within seven days of receipt of an entered copy of this order, Nicola Valley Hospital and Health Centre shall prepare and deliver to the solicitor for the applicant one certified legible copy of all records in its possession pertaining to the plaintiff, including copies of all handwritten notes, letters to physicians, consultation reports, lab reports, test results and radiological reports, excluding x-rays and medico-legal reports, relating to the treatment and services rendered to the plaintiff for the period August 30, 2016, to the present date.
- [7] Since the application was filed, counsel for the plaintiff has provided counsel for the defendant with the requested records from Dr. Wai-Tat David Luk, and the requested records from Nicola Valley Hospital and Health Centre. The only remaining issue between the parties on this application is whether the plaintiff has provided a complete copy of the plaintiff's employment file from McDonald's Restaurants of Canada for the period January 1, 2013, to the present date.
- [8] In reply written submissions, the defendant applicant has asked for a different order than the one sought in the notice of application as it pertains to the plaintiff's employment records. Instead of seeking document disclosure of employment records from the plaintiff under Rule 7-1(13), as the notice of application states, in his reply written argument, the defendant states that he now seeks an order under Rule 7-1(18) compelling Harpo Restaurants Ltd. to disclose documents relating to the plaintiff's employment.
- [9] There are three reasons why I decline to grant the order sought by the applicant in his reply written submissions:

- 1) The notice of application makes no reference to an order for production by Harpo Restaurants, and instead seeks an order that the plaintiff produce the plaintiff's employment file from McDonald's Restaurants of Canada. It is not open to the defendant, in reply written submissions, to seek a different order than the order sought in the notice of application, particularly where the plaintiff has had no notice of the defendant's application for third party disclosure, nor any opportunity to respond.
 - 2) Harpo Restaurants Ltd. has not, as far as I can tell, been given any notice of this application, which is required by Rule 7-1(18).
 - 3) In any event, for reasons discussed below, I am satisfied that all of the documents in the possession and control of Harpo Restaurants Ltd. relevant to the plaintiff's employment history have been disclosed to the defendant in this litigation. Therefore, even if proper notice had been given of the third-party disclosure order now being sought by the defendant, I would decline to grant it.
- [10] I will turn next to consider the relief that is actually sought in the notice of application as it pertains to the plaintiff's employment history. The defendant seeks an order that the plaintiff provide a copy of her employment file from McDonald's Restaurants of Canada Ltd.
- [11] The plaintiff has provided evidence to support the following facts:
- 1) McDonald's Restaurants of Canada produced those records in its possession and control relating to the plaintiff's employment on June 9, 2020, to plaintiff's counsel. Those documents consisted of T4 documents, a record of employment and a payment history.
 - 2) James Harper, owner of Harpo Restaurants Ltd. has confirmed that he does not have a file for the plaintiff, and he has no documents to produce.
 - 3) The plaintiff does not have any records in her own possession and control relating to her employment with McDonald's Restaurants of Canada other than those that she has already disclosed.
- [12] The plaintiff has satisfied me that all reasonable efforts have been made to locate her employment records, and those records that are in her possession and control have been produced. Therefore, I decline to order the relief sought at para. 1 of the defendant's notice of application.
- [13] As I noted before, I will not deal with the defendant's application for an extension of time to file responding expert reports, nor the application for an adjournment of the trial, because those matters were not properly before me in this written submissions application. However, as it may assist the parties in moving forward, I will say if those matters were before me, I would decline to grant the relief sought by the defendant. The defendant does not require an extension of time to file responding expert reports, since the deadline has not yet expired and as I have found, the defendant is presently in possession of complete documentary disclosure from the plaintiff on the matter in issue.

[14] With respect to the adjournment of the trial, I am satisfied that the plaintiff took reasonable steps to obtain the documents sought by the defendant and successfully obtained those documents in a timely manner. The last documents to be disclosed, being the McDonald's Restaurants of Canada employment records, were produced by McDonald's Restaurants of Canada on June 9, 2020, and forwarded to defence counsel the same day. The defendant was in possession of all the documents they needed to proceed to the August 10, 2020 trial two months prior to the commencement of trial. In these circumstances, it is my view that the defendant would be unlikely to succeed in an application for an adjournment if one were properly brought.

[15] With respect to costs, I order that the plaintiff shall have her costs in the cause.

"Francis, J."

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Prepared on 28 October 2026 · Esheria