

CANADA / JUDGMENT

Robb v. Sloan

2020 BCSC 945

COURT

Supreme Court of British Columbia

DECIDED

16 June 2020

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2020 BCSC 945 Robb v. Sloan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Robb v. Sloan, 2020 BCSC 945 Date: 20200616 Docket: S180702 Registry: Vancouver Between: Sandra Robb Plaintiff And Robin Sloan and Barbara Jane Paris Defendants Before: Master Harper (via telephone conference) Oral Reasons for Judgment Re Application to Set Aside an Appointment for an Examination for Discovery In Chambers Counsel for the Plaintiff, appearing via telephone conference: D.J. Manson Counsel for the Defendant, Robin Sloan, appearing via telephone conference: J.K. Lockhart Counsel for the Defendant, Barbara Jane Paris: Not appearing at this hearing Place and Date of Hearing: Vancouver, B.C. June 16, 2020 Place and Date of Judgment: Vancouver, B.C. June 16, 2020

- [1] THE COURT: The parties to this action are sisters. They are involved in a dispute concerning real property in Roberts Creek, BC originally owned by their parents. The plaintiff took out an appointment to examine for discovery Dr. John Sloan, the husband of the defendant, Robin Sloan. Robin applies to set aside the appointment.
- [2] The appointment for the examination for discovery was issued pursuant to Rule 7-2(6) of the Supreme Court Civil Rules [Rules], which says that subject to subrule (9), which does not apply in this case, a person for whose immediate benefit an action is brought or defended may be examined for discovery. The question is a factual one, and the parties agree that the test that applies here is largely fact-driven. The question is whether Dr. Sloan is a person for whose immediate benefit the action is defended.
- [3] Dr. Sloan is obviously not a party to this action. In drafting her pleadings, the plaintiff must have conceded that Dr. Sloan was not a proper party and that no relief could be sought against him. The argument that Dr. Sloan should be examined for discovery is founded on three bases:
- 1) that the immediate benefit to Dr. Sloan is to protect the investment of \$800,000 which he and Robin put into the building of the house on their portion of the Roberts Creek property;
 - 2) Dr. Sloan will have an immediate benefit if the plaintiff's claim to partition of the property is defeated; and

- 3) if the action is dismissed, it will protect Dr. Sloan from the loss of his home.
- [4] All of these three factors are linked together.
- [5] It is conceded that Dr. Sloan has relevant evidence to give in this proceeding, and that he would be subject to a pre-trial examination pursuant to Rule 7-5 on the assumption that the protocols set out in that rule were followed. However, the plaintiff seeks an examination for discovery so that she can obtain admissions from Dr. Sloan which she intends to use at trial as admissions against Robin. I find this to be a startling result of the application of the rule. In my view, what is appropriate is that the rule providing a right to examine Dr. Sloan as a witness be applied.
- [6] There are very few cases on Rule 7-2(6). I would hazard a guess that that is because the result sought is an extraordinary one and one that is far outside the fact patterns of most litigation. The leading case is *Concord Pacific Acquisitions Inc. v. Oei*, 2018 BCSC 1308. In that case, an examination for discovery of a person who stood to benefit from the litigation as a partner was sought. The relevant passages in the decision are set out at paras. 41 and 42. In para. 41, the court reviews a previous decision, *Clayton v. Garrett (Guardian ad litem of)*, [1993] B.C.J. No. 2215 (S.C.), but found that decision went too far.
- [7] Mr. Justice Voith determined that Clayton should not be followed. At the end of para. 41, he says this:
- [41] To be clear the benefit that Mr. Norum might receive was not an "immediate benefit" that arose from Ms. Clayton's action. Instead, it was an "immediate benefit" that flowed from the separate and independent understanding/agreement that he had reached with Ms. Clayton.
- [8] At para. 42, Voith J. held: So too in this case, whatever benefit Mr. Chen may receive if Concord is successful in this action is not an "immediate benefit" that flows or ensues from the action. Mr. Chen has no status in the action and the resolution and determination of the issues in the action will not, without more, confer any benefit on Mr. Chen. Instead, any benefit that Mr. Chen may ultimately receive would be a product of the separate and independent agreement that he reached with Concord and/or Mr. Oei. I do not consider that benefit "immediate", and I do not consider that it falls within the purview of Rule 7-2(6).
- [9] The reasoning of Voith J. in para. 42 of *Concord Pacific* applies directly to this case, in my view. Any benefit that Dr. Sloan might receive from a dismissal of the action is an indirect benefit and subject to any separate agreement, if any, that he has with his wife. The notion that Dr. Sloan should be examined because he is the person most knowledgeable about the key meetings and agreements does not, in my view, put this case into Rule 7-2(6) of the Rules. Robin is the proper person to be examined for discovery.
- [10] Pursuant to Rule 7-2(18), which is the examination for discovery rule, Robin will have to answer any question within her knowledge or means of knowledge regarding any matter not privileged relating to a matter in question in the action. In order to comply with this obligation, Robin may be required pursuant to Rule 7-2(22) to inform herself and the

examination may be adjourned for that purpose. This process might be cumbersome and awkward, and I would not criticize the plaintiff for seeking an agreement from Robin, through her counsel, that Dr. Sloan stand in Robin's stead and be examined for discovery in her place. Obviously that request has not met with favour from Robin, and she is asserting her right as a defendant to have carriage of the defence of the claim against her. I think this matter can be sensibly determined by simply directing the plaintiff to the provisions of Rule 7-5, and that is where the relief should lie.

- [11] So with those brief reasons, I make the order sought, and if a transcript of my reasons is requested, I reserve the right to edit for clarity, but the result will not change.
- [12] Now I turn to submissions on costs. [SUBMISSIONS ON COSTS]
- [13] THE COURT: I take the view that this is one of those procedural steps that might obviously not reflect the eventual outcome of trial. Therefore, costs will be to Robin Sloan in the cause. "Master Harper"

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Prepared on 25 October 2026 · Esheria