

Citation: I.C.B.C. v. Phung et al.
2003 BCSC 297

Date: 20030225
Docket: S004631
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Insurance Corporation of British Columbia

Plaintiff

AND:

**Van Luong Phung, Van Hien Phung, Tong Van Vu, Soi Thi Le,
Paul Hung Doan, Vinh Van Le, Huong Thi Vu, Hung Manh Nguyen,
Lien Thi Le, Thanh Son Le, Thanh Phu Trinh, Tuyen Van Do,
Van Khai Tang, Tuan Duc Bui, Thi Ha Truong, Van Hong Nguyen, Quoc Nam Tran, Van Dao
Nguyen, Quang Dung Tran,
Thi Phuong Pham, Van Long Do, Loan Thi Nguyen, and Lin Nguyen and Van Tan Pham**
Defendants

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR JUSTICE HARVEY

(IN CHAMBERS)

Counsel for the Plaintiff: F.G. Potts
B. Martyniuk

Counsel for the Defendant,
Van Luong Phung: D.E. Komori

The Defendant, Van Khai Tang: Appearing on his own behalf

The Defendant, Tuyen Van Do: Appearing on his own behalf

Date and Place of Hearing: February 24, 2003
Vancouver, BC

[1] The defendant Phung applies under the relevant rule to have the plaintiff's Statement of Claim against him struck for non-compliance with Rule 2(2), essentially related to the failure to disclose documents in a timely fashion.

[2] It is of importance to note that the position of the said defendant was predicated in large part upon the trial of the action proceeding at Vancouver on today's date, February 24th. In this regard, for reasons which I do not think necessary to set out here, it has been agreed that the trial of the action against but two of the defendants will proceed on March 10, 2003 at Vancouver.

[3] In its initial framing, the action herein on the part of the plaintiff against the defendants included allegations of conspiracy. The action however has now been reduced to where the plaintiff proceeds against only two of the named defendants and such an allegation has been withdrawn. Further, the extensive documentation that related to the action as initially contemplated is no longer necessary.

[4] In the particular, there is some basis for the application presently under consideration in that certain documents and list of witnesses were not produced and made until, relatively speaking, late in the day. The disclosure which has been made is now virtually complete.

Further, I was informed during the course of the application that in relation to adjusters' notes, additional particulars will be provided at an early date related to the authors of such notes and other related matters.

[5] The short answer to the present application is that whatever fault has occurred has been rectified and any non-compliance in the first instance was not intentional and may well have been excusable in view of the complexity of the matter initially, particularly here where the documents in relation to the matter were voluminous.

[6] For these reasons, the application is dismissed.

[7] The defendant is entitled to its costs in preparation for and attendance upon the application.

"R.B. Harvey", J."
The Honourable Mr. Justice R.B. Harvey