

COPY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20101130
Docket: M102857
Registry: New Westminster

Between:

Insurance Corporation of British Columbia

Plaintiff

And:

**Christopher Paul, Richard Alyea, Michael Cheng,
also known as Wing Kam Lo also known as Hung Kai Peng,
and Kenneth Chiu**

Defendants

Before: Master Caldwell

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff

P. Martyniuk

Counsel for Defendant Richard Alyea

D. Sue-A-Quan

Place and Date of Hearing:

New Westminster, B.C.
November 30, 2010

Place and Date of Judgment:

New Westminster, B.C.
November 30, 2010

- [1] **THE COURT:** These are competing applications brought by the Insurance Corporation of British Columbia as plaintiff seeking an order that the defendant Richard Alyea attend for examination for discovery and an offsetting application brought by the defendant Richard Alyea seeking that the Insurance Corporation of British Columbia as plaintiff provide particulars of the allegations being levelled against him prior to his attending at discovery.
- [2] In general form the pleadings indicate, on behalf of ICBC, that certain of the defendants were involved in a scheme and/or conspiracy to create what are colloquially known, I suppose, as fake licences.
- [3] They had a process whereby a certain image of a person appeared on a licence accompanied by a false name, or the name of another real person is perhaps a better way of putting it.
- [4] It is alleged that this process was facilitated by a former employee of ICBC, Mr. Chiu, and the process essentially – I will not go into detail – was when a fake licence was required, the individuals who would take part in the photograph/name swap would be directed to go in and see Mr. Chiu, who would then orchestrate the taking of the photographs and the putting on of the identification such that the desired combination was reached.
- [5] On at least one occasion this was done to accomplish, apparently, a person who was under a driver suspension and had no licence getting a new licence in another name with his likeness on that driver's licence.
- [6] Were the matters to stop there, there probably would not be any issue, but the pleadings go on to say that, as may or may not be a mystery, certain of these individuals who obtained the fake licences went on to be arguably poor drivers and to get into car accidents, whereupon other people, it is alleged, may have been injured.
- [7] That is where it gets a little complicated, because it is quite clear to me that the pleadings say that the plaintiff seeks remedy against all of the defendants for

what amounts to, as I take it, all of the damages done, including the damages that arose from the car accidents, et cetera.

[8] The defendant Alyea seems to say, I may have been in for the licence fraud, but I do not see how they connect me to the other stuff, and he is seeking particulars prior to attending discovery. He also seeks particulars as to various damages which the plaintiff alleges it has suffered as a result of this situation.

[9] I have been directed to a variety of case law, in my view most importantly the cases of *Insurance Corporation of British Columbia v. Sam* and the case of the *Insurance Corporation of British Columbia v. Da Qing Sun* and others.

[10] The first of those mentioned cases, a decision of Mr. Justice Coultas, quotes the Honourable Madam Justice Southin, as she then was, at para. 20 in her decision in *Proconic Electronics Ltd. v. Wong*. She then in that decision quotes from an English decision, *Waynes Merthyr Co. v. Radford & Co.*, an 1896 case, which says:

The Lord Justice did not lay down any such general proposition as that contended for by the defendants counsel, and in my opinion there is no such general rule. There is no hard and fast rule as to the class of cases in which particulars should precede discovery, or discovery be ordered before particulars; but the judge may exercise a reasonable discretion in every case after carefully looking at all the facts, and taking into account any special circumstances.

[11] At para. 21 Madam Justice Southin, as she then was, goes on to say:

In my opinion, Examinations for Discovery will likely clarify any uncertainties that the defendant may have in relation to the allegations made against them. Therefore, I refuse this application pending the conclusion of Examinations for Discovery. The application may be renewed, if necessary, at that time.

[12] Mr. Justice Stewart in the decision of *ICBC v. Da Qing Sun and others* addressed a similar matter. Reading at para. 8, he says:

In a nutshell, the case is one in which the plaintiff alleges that the defendant Yu was one of a number of individuals who were parties to a tort arising out of allegedly false claims being made in connection with what was purported to be a motor vehicle accident on September 3rd, 1996.

This was, as indicated there, an allegation of conspiracy for staged car accidents.

[13] He then refers to the pleadings and goes on at para. 14, particularly para. 14(2), and he says:

Having said that, the decision whether to order particulars is always case and situation specific. I say that the courts of this province have balanced the competing interests in cases where fraud or conspiracy to defraud are alleged and come down on the side of a rule to the effect that where, as here, the statement of claim sufficiently identifies the alleged agreement or agreements and the parties to the agreement but states overt acts specific to a given defendant in only general terms, the court will not order further particulars, if at all, until examinations for discovery have been had.

[14] He goes on at subpara. (3) in, as counsel has described it, more colourful language and says as follows:

As I said above, the courts of this province have balanced the competing interests of the plaintiff and of the defendant in this specific kind of case and come down on the side of the rule referred to above. Obviously the courts have decided that to do other would be to hand those alleged to be fraudsters a deadly weapon. What fraudster worthy of the name could not shape his answers on discovery so as to admit only what he knows the plaintiff knows and drop all else he, the fraudster, knows into a black hole? Inherently the question is not whether the plaintiff could at this time supply more detail if ordered to do so, but whether the case at bar is caught by case law which says the order will not be made at this stage of the proceedings in any event. I say this case, the case at bar, is caught by that case law noted above.

[15] That decision was appealed and leave was denied, so I take it as good law. I am in concert with the comments of both Mr. Justice Coultas, Madam Justice Southin and at least the earlier comments of Mr. Justice Stewart as to the general track which the courts of this province have taken in cases where conspiracy and conspiracy to commit fraud are the allegations.

[16] To require the provision of particulars beyond that which I see appearing in the statement of claim herein serves, in my view, no purpose at equity or at law and simply attempts to require the plaintiff to provide information which is really in the specific and unique knowledge of the defendant or defendants.

[17] In my view, the answer here is reasonably clear: discoveries should be done and then the issue of particulars may be addressed. There is no requirement to provide particulars further than that which appears in the pleadings.

[18] It is clear that the defendant does not agree with the pleading of the plaintiff and wishes to limit the type of damage and connection. The plaintiff on the other hand wishes to tie all defendants to all actions. That, to me, seems to be a question of law as applied to the facts of the particular case. Whether or not that extension will be available to the plaintiff will be a question for the trial judge, but what their argument is is beyond question. The particulars sought do nothing to further flesh that out and in my view even on that basis would not be orderable.

[19] The application of the plaintiff for an order compelling the defendant Richard Alyea to attend discovery is granted.

[20] Have you gentlemen organized a date, or do you want deadlines? You have got trial coming up in February.

[21] MR. SUE-A-QUAN: Yes. In the notice of application it was just within 30 days from the date of the order.

[22] THE COURT: Well, within 30 days seems appropriate. The application of the defence for particulars is adjourned generally.

[23] They were offsetting applications. I will just deal with it as a single application. Costs will be to the plaintiff in any event of the cause.

[24] MR. MARTYNIUK: Thank you, Your Honour.

[25] THE COURT: Thank you.

[26] MR. SUE-A-QUAN: Thank you, Your Honour.


Master Caldwell