IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20130830
Docket: M101754
Registry: Vancouver

Between:

Linda Solar

Plaintiff

And

**David Miolla, Franco-Lucas Management Inc.
carrying on business as
Boone County Cabaret and Woods Sports Pub Inc.,
carrying on business as Woody's Nightclub**

Defendants

And

Insurance Corporation of British Columbia

Third Party

Before: Master Muir

Oral Ruling

In Chambers

Counsel for the Plaintiff:	T. Petrick B. Souza, Articled Student
Counsel for the Defendant Woods Sports Pub Inc.:	T. Pettit
Place and Date of Hearing:	Vancouver, B.C. August 30, 2013
Place and Date of Judgment:	Vancouver, B.C. August 30, 2013

[1] **THE COURT:** This is an application by the plaintiff for copies of documents or information that remains outstanding from requests from the examination for discovery of Mr. Zimmerman, a representative of Woods Sports Pub, that was held on March 14, 2013.

[2] The background is that the plaintiff was injured in a motor vehicle accident in which she was a passenger in car of the defendant Miolla. The plaintiff and Mr. Miolla met at Woods Pub and then went on together to the other defendants' establishment. It is alleged, inter alia, that Mr. Miolla was intoxicated due to drinking at Woods Pub.

[3] Both the plaintiff and the defendant Miolla suffered brain injuries in the accident.

[4] The plaintiff seeks evidence of the quantity of alcohol consumed by Mr. Miolla at Woods Pub.

[5] Items (a) and (b) of para. 1 are adjourned generally. They are not being proceeded with.

[6] With respect to item (c), the question is:

> Advise whether a contract exists with Genesis Security and provide a copy of the contract if such a contract exists.

[7] The plaintiff wants to know what obligations Genesis Security had regarding the patrons. The defendant says that they have responded to this saying that they no longer have a copy of any such contract with Genesis Security covering the time in question.

[8] In my view, there being no evidence that the defendants have such a contract, there will be no order that they produce such a contract. If the plaintiff wants to obtain a copy of such a contract, it would be most appropriate to obtain it from Genesis.

[9] The next order sought is in para. (d), which says:

> Advise who was working for Genesis Security on October 31, 2009.

[10] The defendant has advised the plaintiff that they do not know who was working for Genesis on that night, they have no records, and advise them to seek that information from Genesis Security. Regardless, the defendant Woods Pub did inquire with Genesis Security and received no response. In my view, they have no obligation to go farther, and therefore 1(d) is also dismissed.

[11] With respect to (e):

> Provide copies of receipts from the night of the accident, including all tabs and bills.

[12] This is a bar that seats close to 300 people. It was close to capacity on the night in question, which was Halloween night, October 31, 2009. Evidence that has been provided from a friend of the plaintiff who was with her until approximately half an hour before the plaintiff left Woods Pub indicates that they were drinking very conservatively and had two drinks during the evening. There is no evidence of over-consumption by the plaintiff or by the defendant, Mr. Miolla, the gentleman whom she apparently met at that bar and proceeded with to another bar in order to carry on the evening.

[13] The request engages privacy concerns of the other patrons of the bar that evening. The relevant documents will be few among the hundreds of tabs and receipts that evening. This also engages the concern that the request is not proportional to the issue.

[14] The defendant Woods Pub submits that this application is not properly brought, as it is not brought under R. 7-1 at all, it is brought under R. 7-2, and that even if it could be said that it was brought under R. 7-1, that the foundation for an application under that rule has not been established. I agree that a party applying for production of documents, even if those documents are requested in an examination for discovery, must bring that application under R. 7-1.

[15] It is clear that the documents that are sought are not documents that could directly prove or disprove a material fact. The plaintiff says that by virtue of counsel's letter of March 15, 2013, the demand contemplated by R. 7-1(11) has been sufficiently made such that the operation of that sub-section of R. 7-1 and the wider document production available under that and subsequent sub-sections of the rule is engaged. I will accept that for present purposes, despite the fact that the application is not brought under R. 7-1.

[16] The fact is, however, that there is no evidence that provides some "air of reality", as is referenced in the cases on these sub-rules, to connecting the documents sought to anything relevant in this litigation. There is no evidence before me that the plaintiff drank heavily at this bar or that the gentleman that she met was drinking heavily at this bar.

[17] The defendant has already advised counsel for the plaintiff that there are no receipts or bills with either the plaintiff's or the defendant Miolla's names on them. The plaintiff says that the plaintiff drank an 'unusual' drink, being vodka and diet coke and that producing the receipts might show excessive consumption of that drink and be some evidence of over-serving of Mr. Miolla. Her evidence was, however, that when she first arrived she bought four drinks, and only drank one of them herself. That evidence alone points to the unreliability of connecting receipts to consumption. The plaintiff says that Mr. Miolla bought her one drink at this bar, but that it was not her usual drink.

[18] Producing all tabs and bills from this establishment is unlikely to produce anything probative or anything that would lead to a line of inquiry with respect to the accident.

[19] Even if tabs, bills or receipts showed that vodka and diet coke drinks were purchased in the approximately ½ hour that her friend was not with the plaintiff, or that an unusual number of diet coke and vodka drinks were purchased that night, in my view the very limited benefit of that evidence (if any) is outweighed by the

considerations of privacy and proportionality engaged in producing all of the receipts and tabs from this evening.

[20] Similarly with respect to (f), the request is for "all personnel files of all employees." That request is made on the basis that those might show that there was some problem with over-serving or that there were reprimands for over-serving, including on the night in question. There is absolutely no evidence that over-serving was ever an issue.

[21] The evidence of Mr. Zimmerman, the defendant Woods' representative, is that he has never reprimanded anyone for over-serving and is not aware of anyone having been reprimanded for over-service. So again there is no evidentiary basis to support an order for the personnel files. The defendant submits it is clearly a fishing expedition, and I agree.

[22] With respect to (g), this is a request is for production of the Woods Pub new taxi policy. Apparently a taxi policy was put in place by Woods Pub in response to new liquor laws in 2010. The speculation by the plaintiff is that this will somehow show that they were rectifying some defect in their own policies at the time. In my view, that is an extremely long bow, and there is absolutely no evidence of that in any event. In the circumstances, that is also denied.

[23] The next issue is a request for a continued examination for discovery of Mr. Zimmerman. The discovery, as I said, was conducted in March. It was adjourned. There has been no appointment resetting the examination for discovery. There has been no refusal to attend. Counsel for the defendant Woods Pub advised counsel for the plaintiff in June that Mr. Zimmerman was available for a continuation of his examination for discovery. It was not reset. I am not prepared to make any order with respect to a continuation of his discovery in the circumstances.

[24] The fact is that the plaintiffs are facing a summary trial application next week, and the defendant Woods is concerned, and rightly so, that the plaintiff's delay in

continuing her examination for discovery should not interfere with their right to have that summary trial proceed if possible.

[25] As a result the application of the plaintiff is denied with costs in the cause.

Master Muir