

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20150303  
Docket: M138317  
Registry: Vancouver

Between:

**Myung Soon Lee**

Plaintiff

And

**Ekaterina Bekasova**

Defendant

Before: Master Baker

## **Oral Reasons for Judgment**

In Chambers

Counsel for the Plaintiff:

M.J. Bauer

Counsel for the Defendant:

K.J. Koltunskia

Place and Date of Hearing:

Vancouver, B.C.  
March 3, 2015

Place and Date of Judgment:

Vancouver, B.C.  
March 3, 2015

[1] **THE COURT:** This is an application for production either of documents or delivery of particulars in respect of a motor vehicle accident that occurred in November of 2012. There is some complexity to it because the plaintiff, as I understand it, was or is a restaurateur. At approximately the same time as the accident occurred she had a Korean Restaurant that she was in the process of winding down or selling. There is some argument that she has worked for various restaurants, et cetera, or has interests or not, depending on how you look at it, in other undertakings. So there is some complexity to it.

[2] Before I go there, I need to comment on the materials. I am in complete agreement and sympathy with the defence in respect of the materials delivered in response. The case authorities that were offered on that point, namely *Dupre v. Patterson*, 2013 BCSC 1561, a decision of Madam Justice Adair; and the reasons of Master Bouck in *Zecher v. Josh*, 2011 BCSC 311, simply repeat and reinforce, if that is ever necessary, the requirement for adequate and appropriate responses. It is interesting to read the reasons where comments are made from the bench that the judge and masters are entitled to appropriate responsive materials to understand the case. There is a step before that – we are skipping a step there. Opposing counsel are entitled to know what the response is, and it just will not do for us to go into the wayback machine and throw ourselves back to a time 15 or 20 years ago when a bare bones application was filed, some general reference was made to the *Rules*, sometimes right, sometimes not, and off we go. The times when counsel learned the nature of the response on the steps of the courthouse are long passed. I have to say the materials in response to the defence application today, in my respectful view, are not appropriate and are not in keeping with the *Rules*. Whatever the response today, I would have been prepared to order costs in any event simply on that principle. It just does not work any more to do that.

[3] Moving on though, thankfully some of the issues today were resolved by consent; today, the day of the application. In going to the application itself my understanding is that paragraphs 2(c), (d) and (e) will be adjourned because a

consent has been reached, referencing over to paragraph 8 whereby the claims in paragraph 8(c), (d) and (e) will be dismissed by consent.

[4] Also by consent are paragraphs 4, 5 and 6, leaving the balance of the application outstanding.

[5] There has been some discovery conducted, and some of these issues are apparently related to, or outstanding from, the discovery. Paragraph 1 I am persuaded is appropriate. I think that the particulars or the details, or the identities even of these parties, are appropriate and relevant. It perplexes me that a party can buy a restaurant off somebody, make payments over four or five years, and then only a few years ago complete the sale and then say, "...but I do not remember who they are". It just taxes the credibility to accept that position and I frankly do not.

[6] Paragraph 2 asks for particulars. We discussed this at length because discoveries have already been conducted and there is no rule, as I said during submissions, to preclude particulars after discovery. But many cases say "...well we will not order particulars yet, conduct your discovery and then talk to us".

[7] No position was taken in the discovery opposing any questions based on the limits placed by pleadings, but today paragraph 2(a) seems to be less important, as I understand the case. Mr. Bauer, counsel for Ms. Lee, has advised the court that there was no claim going to be made in respect of her previous restaurant Woo Ree Jip Restaurant. On that basis I will adjourn paragraph 2(a). I understand there was further discovery proceeding, and if there are further particulars arising or issues arising respecting past income loss, I guess we will hear about it.

[8] I am also adjourning paragraph 2(b). Some questions were asked; a few. Mr. Bauer referred us to them. She seemed to answer them. I do not think her answers were too confusing, but I can understand if a few supplementary questions would be asked about that. If that does not give the defence enough direction to respond at trial, then this matter may be brought back. So paragraphs 2(a) and (b) are adjourned, Mr. Registrar.

[9] Paragraph (f) is justified. Housekeeping services, the claim is still active, so particulars in respect of that will be given.

[10] Paragraph 3 will be given. I am told today by Mr. Bauer, again in the absence of any materials, that simply she does not have the documents requested by paragraph 3(a). Again, it strikes me as curious in the extreme, but she should produce them. It just strikes me as very unusual and unwise thing for a party who has and operates a business to do, if for no other reason than to deal with potential CRA issues. I mean nothing by that except to say it is always possible. Why would they not keep those documents?

[11] Paragraph 3(b) relates to Hanok Restaurant Limited. Mr. Bauer says today, again in the absence of any material, that she does not really have an active interest in that, she is just, you know, involved in name only. But she is a director. That is not denied, and as a director she has access to financial statements, to corporate documents, including contracts, et cetera, so she will produce them, as she will, paragraphs 3(d) and (e).

[12] Paragraph 7 is a standard term requiring the applicant pay the reasonable costs subject to further assessment down the road. That will go.

[13] In respect of paragraph 8, paragraphs (a), (b) and (f) are adjourned. Paragraph (c), (d) and (e) have already been adjourned pending a consent dismissal of those terms. But the other terms I will adjourn pending the delivery of the information I have directed, and a possible further examination for discovery.

[14] Costs?

[SUBMISSIONS]

[15] THE COURT: I tipped my hand. Costs in any event of the cause. I am going to summarily fix them today in accordance with schedule 3 of the *Rules of Court* at Scale B, contested matter, one half day \$550, together with \$120 disbursements

tacks on the tariff item. So with tax that is \$736 all in. Payable in any event, but not forthwith.

[16] MS. KOLTUNSKA: With respect to paragraph (c), (d) and (e) you are granting those orders for the dismissal of those portions?

[17] THE COURT: Yes, thank you. I was thinking there would be paperwork following. But yes, paragraphs 8(c), (d) and (e) are granted. Those claims for accelerating the depreciation for damage to her personal property and for expenses and wage loss of family members, save and except for housekeeping services, are dismissed.

“Master Baker”