

IN THE SUPREME COURT OF BRITISH COLUMBIA

COPY

Date: 20111214
Docket: M070137
Registry: Vancouver

Between:

Wayne Robert Tompkins

Plaintiff

And:

Tawnya Ley Bruce

Defendant

And:

Insurance Corporation of British Columbia

Third Party

Before: The Honourable Mr. Justice Curtis

Ruling on Calling Lay Witness

December 14, 2011

Counsel for the Plaintiff

K. Munro
& L. Trach

Counsel for the Third Party

B. Devlin
& J. Cahan

Place of Trial:

Vancouver, B.C.

Tompkins v. Bruce

[1] **THE COURT:** Well, counsel, I understand why you would like to call Mr. Simm, but I do not myself, from what I understand of the case, view him as crucial as you might think he is.

[2] I see the letter that Mr. Simm sent to Mr. Tompkins. I can readily infer from that that Mr. Tompkins and Mr. Simm were not getting on. I am certainly not going to want to get into the solving the issue of who did or did not fix whose furnace properly, because that is not really going to help me decide this issue.

[3] I already know he did not get along with Mr. Simm. I know the nature of the disputes between them. I have heard Mr. Tompkins' evidence about that. And so I would say first and foremost, I do not think Mr. Simm is really all that relevant.

[4] Secondly, the new *Rules* say that you must give a list of your witnesses no later than 28 days before the trial, or the Trial Management Conference. There is a Trial Management Brief, which happened to be late filed; that is not a big deal, a late filing, but it just adds to the approach, I guess. Although the defendant knew that Mr. Simm existed, the Trial Management Brief says "lay witness number one" and "lay witness number two". This not only does not conform with the *Rules*, but if permitted would deliberately frustrate them.

[5] The purpose of knowing who the witnesses are is so that the other side can prepare their case, and the Judge, if they want, can order a statement concerning the witnesses, as well as estimate the proper length of trial.

[6] At the Trial Management Conference, September 30th, a direction was given that the witness list will be provided at a subsequent date. The name of the witness was not provided until after that date. The explanation is that the address for the witness was not discovered until later.

[7] In the circumstances of this case, I am not prepared to allow Mr. Simm to testify, because one, I do not think his evidence is going to be particularly relevant in the circumstances of the case; two, his name was not disclosed, although it was known at the Trial Management Conference, and three, his name was not disclosed

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although known, on the date that the Trial Management Conference Judge had directed that his name be given.



The Honourable Mr. Justice Curtis