

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20120302  
Docket: M105377  
Registry: Vancouver

Between:

**Jeremy Vendrasco**

Plaintiff

And:

**Robert Gillcash and Akemi Gillcash**

Defendants

Before: Master Baker

## **Oral Reasons for Judgment**

In Chambers  
March 2, 2012

Counsel for the Plaintiff:

J.S. De Vita

Counsel for the Defendants:

D. Weinrath

Place of Hearing:

Vancouver, B.C.

[1] **THE COURT:** This is an application by the defence arising from a motor vehicle accident which occurred in November of 2008. The plaintiff is, and certainly was at the material times, an auto body repairman and one of the more interesting facts surrounding these applications is that he was married subsequent to the accident, specifically married in August of 2009.

[2] Most of the aspects of the application have been either resolved or adjourned leaving only two things: number 1, paragraphs 6(f) and (g) and number 2, of course, paragraph 10, the costs provision. 6(f) asks for "Full names and addresses for the plaintiff's high school and soccer friends, Jeff and Tony." Paragraph (g) asked for photos from the plaintiff's pre-wedding photo shoot in the park and of the wedding, including any photos of the plaintiff carrying his wife and/or dancing.

[3] Taking the first request, namely, Jeff and Tony, Mr. Vendrasco admitted during discoveries that he played soccer at times surrounding the accident or in some proximity to the accident. He said that it was casual, it was not formally organized, and that he played with high school friends, and he named Jeff, Tony, and a third person. He was asked then for the last names of the three parties. He was able only to give the third name -- or the last name of the third person leaving Jeff and Tony as outstanding requests.

[4] Subsequent to that, in a letter dated February 28, counsel replied providing -- and I acknowledge Ms. De Vita's point on this, in a letter providing the names, addresses, or phone numbers of seven or eight other witnesses, but the response in respect of Jeff and Tony was:

Our client has not been in touch with these people since he was 16 or 17 years old, almost 12 years ago. He has no knowledge of their last names or current whereabouts. We are unable to provide this information.

This, with respect, is in substantial, if not complete, contradiction to what I take from his examination for discovery. I mean, I draw no more inferences than what anybody reading the discovery would reasonably understand him to say, "Recently or in proximity to the accident, I played soccer with Jeff and Tony." So this response, given apparently on instructions and, of course, hearsay coming from counsel, is a contradiction and that contradiction has to be addressed. The defence is entitled to that.

[5] Given that response, I am directing that - and this falls partly on the response by Ms. De Vita who indicated a willingness on the part of her client to do this - Mr. Vendrasco is directed to provide an affidavit explaining the contradiction. I will leave it on those terms and, on that basis, 6(f) is adjourned. It is a condition of the adjournment that he provide that affidavit. In the event he is unwilling to provide that affidavit, then the defence has liberty to examine him further at an examination for discovery on that point without further order. So that should resolve that one way or the other, and I say it is the affidavit of Mr. Vendrasco that is required, and not of counsel or staff on hearsay.

[6] The more pressing issue is the question of photos. There is no question that certain facts are established that Mr. Vendrasco was married in August of 2009, that there was a pre-wedding casual, I will call it, photo shoot in June of 2009, that these occurred during a period in which Mr. Vendrasco has claimed disability in whole or in

part. Part of his claims address back and neck pain and, yes, Ms. De Vita is correct when she says that is by no means the entirety or possibly even the major portions of his claims for disability; that he is claiming that he was concussed, I guess, knocked out; that there are issues arising from that. But I am satisfied that the evidence indicates, including screen shots from a surveillance video taken of the pre-wedding photo shoot, that the photos are relevant, that they may well prove or disprove a material fact, specifically Mr. Vendrasco's physical abilities and physical disabilities.

[7] One screen shot, for example, shows him lifting. We assume it is him, I will say. I agree with Ms. Weinrath's submission that it is poor quality, but the evidence is that it was taken, as I say, by surveillance. There is no denial that it is him in the pictures, he and his fiancée, and in one of the three shots, he is shown lifting or carrying her. I am satisfied that this certainly justifies the production of the photos.

[8] The photos in respect to the wedding, they will not be all wedding photos. They will be all wedding photos including Mr. Vendrasco in any activity. At his option, those photos can be provided with other faces obscured.

[9] I am keenly aware of the element of intrusion and privacy issues. Master Bolton in *Watt v. Meier* was emphatic and clear in that, but what takes this case from *Watt v. Meier* is the context. I do not think there is any disagreement here that in *Watt v. Meier*, the injuries claimed had very little, if anything, to do in Master Bolton's mind with wedding photos. In this case, they absolutely do.

[10] Also, I should note that Master Scarth's decision that was submitted to me were first occasions like *Dufault v. Stevens*, *Boxer v. Reesor*. These are cases decided under the old regime, of course, of *Peruvian Guano*: any documents leading to a path of inquiry, et cetera. I want to be clear on that. The case before me is more circumscribed and relevance is not the test, materiality is, and I am satisfied that the photos in question would prove or disprove material factors, or certainly assist in the proving.

[11] There was a request made by Ms. De Vita that if the order is to go, there should be a direction that the defence produce its entire investigative file that relates to the three screen shots. Well, there is no application before the court. It is for the defence to take that under advisement if they wish and that is for, as Ms. Weinrath said, a future time. The plaintiff can certainly make the request and the file or the video will either be produced or not.

[12] So the order will go on as requested with the proviso that the wedding photos are the ones including, obviously, just -- or including Mr. Vendrasco.

[13] Is that it? I think that is it, and you want costs?

[14] MS. WEINRATH: Yes.

[15] THE COURT: Ms. De Vita, costs? That is about the right response.

[16] MS. DE VITA: Yes.

[17] THE COURT: I do not take yes to be agreeing; there is not a good reason to argue against it. The defence is entitled to their costs. So they will have their costs of this application in any event.

[18] MS. WEINRATH: When is the affidavit to be produced?

[19] THE COURT: I beg your pardon?

[20] MS. WEINRATH: When is the affidavit to be produced?

[21] THE COURT: Oh, two weeks, 14 days for the affidavit.

  
Master Baker