

Court of King's Bench of Alberta

Citation: Taylor v Hendrix, 2025 ABKB 261

Date: 20250428
Docket: 2401 18694
Registry: Calgary

Between:

Elizabeth Taylor

Plaintiff

- and -

**Denise M. Hendrix, Rafael Enrico Badiola, Han Chen, Equitable Bank, Denise M. Hendrix
Professional Corporation**

Defendants

**Endorsement
of the
Associate Chief Justice
D.B. Nixon**

[1] On March 27, 2025, the Plaintiff submitted an Application for Exemption to the Court, which was filed March 24, 2025. That Application requested the Court to grant an order exempting the parties from the required dispute resolution process pursuant to r 4.16(2) of the *Alberta Rules of Court*, Alta Reg 124/2010 (the “Rules”).

[2] Subsequently, the Plaintiff and Mr. Blake Hafso, of McLennan Ross LLP, as counsel for three of the Defendants, Denise M. Hendrix, Rafael Enrico Badiola, and Denise M. Hendrix Professional Corporation (collectively, the “Hendrix Defendants”), made numerous written submissions to the Court. The parties to the Action also copied the Court on their communications, in a series of emails dated March 31 – April 7, 2025.

[3] Based on the submissions received, the Court understands that various other steps have been taken by the parties, as summarized below:

- Two of the Defendants, Equitable Bank and Han Chen, were noted in default on February 11, 2025. However, it appears that a filed copy has not yet been provided to the Hendrix Defendants.
- The Plaintiff served the Defendants with a litigation plan on February 28, 2025. On April 1, 2025, counsel for the Hendrix Defendants proposed a form of litigation plan and advised the Plaintiff that failing the ability of the parties to reach agreement, he would bring a motion for the Court to set a litigation plan.
- The Plaintiff attempted to schedule a case conference.
- On March 27, 2025, the Plaintiff requested from the Defendants a revised reply to the Notice to Admit Facts.
- On March 27, 2025, counsel for the Hendrix Defendants filed an Application to Strike the Statement of Claim, as against the Hendrix Defendants. The application is scheduled to be heard by an Applications Judge in Chambers on May 22, 2025.
- On March 28, 2025, the Plaintiff served an Affidavit of Records and a Notice to Attend for Questioning. Counsel for the Defendants advised that the Defendants’ “document production will not be due until May 28, 2025, at the earliest.”
- On March 28, 2025, counsel for the Hendrix Defendants advised the Plaintiff that questioning was premature given the outstanding Application to Strike.
- On April 4, 2025, the Plaintiff filed an Application and supporting Affidavit for a Procedural Order, Support Order and Notice to Produce an Affidavit of Records.
- Counsel for the Hendrix Defendants advised that he will be bringing an Application to Stay, pending the Application to Strike the Statement of Claim.

[4] *Rule 4.16(2)* allows the Court to waive the requirement for parties to participate in a mandatory, good faith dispute resolution process, but only if certain conditions are met. These circumstances include the following:

- a) before the Action started, the parties engaged in dispute resolution process and the parties and the Court believe that a further dispute resolution process would not be beneficial;
- b) the nature of the claim is not one, in all the circumstances, that will or is likely to result in an agreement between the parties;
- c) there is a compelling reason why a dispute resolution process should not be attempted by the parties;
- d) the Court is satisfied that engaging in a dispute resolution process would be futile; or
- e) the claim is of such a nature that a decision by the Court is necessary or desirable.

[5] The Plaintiff alleges that there is a compelling reason why a dispute resolution process should not be attempted. In support of this position, she alleges that the nature of the claim is not one that is likely to result in an agreement, engaging in a dispute resolution process would be futile, and that the claim is of such a nature that a decision by the Court is necessary or desirable.

[6] The Plaintiff argues that the Defendants' alleged wrongdoing which is the basis for the Statement of Claim is indicative of the behaviour the Plaintiff expects of the Defendants in a dispute resolution process. For example, the Plaintiff alleges that the Defendants have refused to engage or respond, are obstructing the litigation process, are utilizing unfair procedural tactics, and have failed to comply with the *Rules*. While I acknowledge these assertions by the Plaintiff, I note that the Hendrix Defendants have not had the opportunity to refute such allegations or to bring forward their own evidence. In any event, there is no compelling evidence before the Court of such conduct in connection with the litigation process after the Plaintiff's Statement of Claim was filed. Rather, the evidence before the Court indicates that while it appears there may be some disagreement as to what constitutes reasonable timelines and what are the appropriate steps to take, the Hendrix Defendants have an active application to be heard. Further, there is evidence of an ongoing dialogue between the parties with respect to the litigation plan.

[7] Based on my review of the evidence and analysis of the law, I find that the circumstances for a waiver of the dispute resolution process are not met in the present Action. I make this determination because I am not satisfied that: (i) there has been a previous dispute resolution process; (ii) the nature of the claim is one that is unlikely to result in an agreement between the parties; (iii) there is a compelling reason why a dispute resolution process should not be attempted; (iv) engaging in a dispute resolution process would be futile; or (v) a Court decision is necessary or desirable.

[8] Given the above, I instruct the parties to exhaust the normal procedures, as provided for in the *Rules*, before one or both parties seeks a waiver pursuant to r 4.16(2), if at all. Although the Court understands the Plaintiff's desire for expediency, it would be premature to waive the dispute resolution process at this stage or otherwise circumvent the normal processes, given that the litigation is in the very early stages. The parties are encouraged to prepare for the upcoming applications and to finalize the litigation plan in the interim.

[9] As a final comment, while there was a reference to document production of the Hendrix Defendants being due "at the earliest", I find that this is inappropriate because it makes delivery of the documentation uncertain for the Plaintiff. I trust that this uncertainty will be addressed in the litigation plan so that all the parties have an understanding of the applicable timelines and dates for the Action.

Dated at Calgary, Alberta this 28th day of April, 2025.

D.B. Nixon
A.C.J.C.K.B.A.

Appearances:

Ms. Elizabeth Taylor – Written Submission
Plaintiff

Mr. Blake Hafso – Written Submission
McLennan Ross LLP

For Defendants, Denise M. Hendrix, Rafael Enrico Badiola, and Denise M. Hendrix
Professional Corporation