

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Haugan v. Beeton,
2025 BCSC 54

Date: 20250114
Docket: 2261071
Registry: Prince George

Between:

Dallas Barrie Haugan and Nicole Louise Haugan

Plaintiffs

and

**Shane Leslie Beeton, Terryll Lawney Beeton, Rodney Walker,
Jenny Higham, Your Real Estate Centre dba Royal LePage Aspire
Realty, Rodney Howard Croome, and Hometech Energy Solutions Inc.**

Defendants

Corrected Judgment: The text of the judgment was corrected on the front cover
on January 16, 2025

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiffs:

M.M. Hajivandi

Counsel for the Defendants, Rodney Walker,
Jenny Higham and Real Estate Centre dba
Royal LePage Aspire Realty:

O.C. Hyatt

Place and Date of Hearing:

Prince George, B.C.
October 7, 2024

Place and Date of Judgment:

Vancouver, B.C.
January 14, 2025

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Introduction

[1] These are reasons for judgment on an application by the plaintiffs/applicants for an order that the defendants, Rodney Walker and Jenny Higham, attend examinations for discovery in Prince George, British Columbia, in person on a mutually agreeable date. The applicants also seek costs.

[2] The named defendants will be referred to hereafter as “the respondents”. The respondents oppose the application.

[3] The applicants purchased a property located at 1055 Muralt Road, Prince George, B.C., having a legal description of:

PID: 005-666-848, Lot 8 District Lot 613 Cariboo District Plan 19003 on September 20, 2020, with a possession date of December 2, 2020
(the “Property”).

[4] The respondents were the real estate agents representing the sellers in the sale of the Property. The respondents were acting on behalf of Royal LePage Aspire Realty, and both reside and practice as real estate agents in Prince George.

[5] On July 14, 2022, the applicants filed a Notice of Civil Claim in the Prince George Registry, claiming that the vendors misrepresented the Property. The applicants also claimed that the respondents misled the applicants into purchasing the Property.

[6] The applicants are seeking to conduct examinations for discovery of the respondents in person in Prince George, British Columbia. The respondents take the position that their examinations for discovery can only proceed virtually by Zoom or a similar platform. Counsel for the respondents, Oana Hyatt, has refused to attend the examination for discovery of respondents in person in Prince George.

Background Facts

[7] On July 11, 2023, counsel for the applicants, Mohammad Hajivandi, wrote to Ms. Hyatt seeking dates for the in-person examination for discovery of Rodney

Walker between November 13, 2023 and November 30, 2023. Ms. Hyatt responded on the same day advising that she and Mr. Walker were available by Zoom on November 14, 15, 16 or 17, 2023.

[8] On July 12, 2023, Mr. Hajivandi wrote to Ms. Hyatt stating: “Thank you for your quick response. I trust Mr. Walker has no issues attending in person. Please confirm.” Ms. Hyatt responded: “No, Mr. Walker and I will both attend by Zoom, thanks.”

[9] Mr. Hajivandi responded that an examination for discovery of Mr. Walker had been set down on Tuesday, November 14, 2023 at the offices of applicants’ counsel in Prince George, British Columbia, and an appointment was delivered therewith. Ms. Hyatt acknowledged receipt of the appointment but advised that she and Mr. Walker would not be attending in person.

[10] On September 28, 2023, Mr. Hajivandi wrote to Ms. Hyatt stating:

“As mentioned before, we expect counsel for the defendant to adhere to the *Rules*, specifically Rule 7-8(7), which requires your client’s in person in attendance”.

[11] On September 28, Ms. Hyatt replied:

“No. Your request is unreasonable and fails to show any prejudice your client suffers by having this on Zoom. Unless you get a court order, my client and I will not be attending.”

[12] A Zoom link was scheduled thereafter for November 14, 2023, at 10:00 am. On that date at 9:38 am, Ms. Hyatt advised: “We will need a new date as I have scheduled other matters for today.”

[13] On November 17, 2023, Mr. Hajivandi wrote to Ms. Hyatt as follows:

“Further to the matter above, we would like to set dates for Examination of Discovery of the Defendants, Jen Higham and Rodney Walker. Kindly advise of your clients’ availability during the week of January 22, 2024, and January 29, 2024. Please note this would be in person discovery.”

[14] On the same date, Ms. Hyatt wrote:

Again, we are not doing this in person unless you get a court order to that effect. I am not sure why we are going around in circles on this matter. I will canvass my clients' availability for a Zoom discovery.

[15] On November 28, 2023, Ms. Hyatt wrote to Mr. Hajivandi as follows:

"I confirm that my clients, Rod Walker and Jen Higham are available for a Zoom discovery on January 29, 30 or 31, 2024. I expect Ms. Higham's discovery will take very little time, given she had nothing to do with this transaction."

[16] In reply on the same date, Mr. Hajivandi wrote:

"You need to apply to have your clients appear virtually....I cannot speak to Ms. Higham's involvement, but her examination turned necessary after the examination of the defendant."

[17] On December 19, 2023, Ms. Hyatt wrote:

"My January calendar is filling up quickly. If you wish to book dates for your discovery of Mr. Walker and Ms. Higham, I now only have Jan 31 and Feb 1 available by Zoom. I do have some other Feb dates left if you would like me to canvass any with my clients."

[18] Ms. Higham, filed an affidavit in this application in which she states:

"I am uncomfortable attending my examination for discovery in person while Ms. Hyatt attends remotely. This process is intimidating. I would prefer that any examination for discovery of me to be conducted with all parties attending by Zoom videoconference."

[19] Mr. Walker stated the same explanation, in the same words, for refusing to attend an examination for discovery in person in Prince George.

[20] The nearest registry to where the respondents reside is the Prince George Registry.

Applicable Supreme Court Civil Rules

[21] Rule 7-2(11) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [BC Rules] governs the location at which an examination for discovery must be conducted:

(11) Unless the court otherwise orders or the parties to the examination for discovery otherwise agree, an examination for discovery must take place at a location within 30 kilometres of the registry that is nearest to the place where the person to be examined resides.

[22] Rule 7-2(11) is expressed in determinative language, that is, the examination for discovery must take place at a location within 30 kilometres of the registry that is nearest to the place where the person to be examined resides; in this case, Prince George.

Analysis

[23] The respondents relied on *Bockhold v. Richardson GMP Limited*, 2021 BCSC 2581. In *Bockhold*, the lawyer for the parties to be examined resided in Toronto, Ontario, and the examination for discovery was to take place in Vancouver, British Columbia. The lawyer preferred not to travel. While COVID-19 restrictions were being eased at the time, long distance air travel was still viewed as undesirable due to the risk of disease transmission encountered while flying for long periods. In *Bockhold* at para. 48, Master Elwood, as he then was, relied on Justice Baker's comments in *Hudema v Moore*, 2020 BCSC 1502:

[23] Counsel for the respondent advised me that he has consulted with the reporting agencies and they have protocols in place to conduct discoveries remotely during the pandemic. While in ordinary times it is unusual for parties to conduct discoveries over video technology such as Skype or Zoom, these are not ordinary times. During the pandemic, witnesses' evidence is often called in trials using these technologies, mediations are routinely now being conducted using remote technology, and discoveries are being conducted routinely using video technology. Given the pandemic, I would easily grant an order that the parties may attend discoveries using remote technologies. The judicial system must adapt and ensure that the participants are safe during these times as they continue to advance their litigation.

[24] The Court in *Bockhold* recognized that it may be intimidating for any witness to be cross-examined in an examination for discovery. However, the issue in *Bockhold* was fundamentally tied to the COVID-19 pandemic; the reason the witness may have had to attend the discovery without their counsel present was due to the risk of transmission and infection. It is worth noting that there was no reference to Rule 7-2(11) in *Bockhold*. That said, there has been no change to Rule 7-2(11) for

many years, and virtual discoveries became the norm only during the COVID-19 pandemic, when public health directives and physical distancing requirements prevented discoveries from proceeding in person.

[25] In the case at bar, it appears, based on the affidavits of the respondents, that the sole reason of substance for the examinations for discovery to occur by video is to convenience legal counsel otherwise located in Vancouver. It is understandable that the respondents would be more comfortable if their lawyer was present in the same room for the examination for discovery. However, the reason for counsel's absence is not related to the COVID-19 pandemic and a risk of infection. The cases which grant virtual discoveries on this basis are distinguishable from the case at bar.

[26] In *Hamilton Horizon Developments Ltd. v. Triple P Investments Inc., et al*, (13 July 2022), Vancouver S200672 (B.C.S.C.), Justice Giaschi declined to grant an order that the examinations for discovery be conducted virtually. The applicants in *Hamilton* resided in Prince George, the disputed property was in Prince George, and the action involved the interpretation of the contract for purchase and sale of that property. Giaschi J. found that there were no reasons to proceed by way of virtual discovery, other than the convenience of the applicant's counsel in not having to travel to Prince George and her clients not having to pay for that travel: at para. 3. The Court also noted that the cost of the application itself would approach the expenses of any attendance at examinations for discovery in Prince George.

[27] I find the circumstances in the case at bar to be similar to those in *Hamilton*. The respondents have provided no reason as to why the examinations ought to be conducted virtually.

[28] The respondents, relying on *Hyраниuk v. Mauldin*, 2014 SCC 7, submit that conducting the examinations via Zoom would promote the efficiency and increase timely and affordable access to justice. *Hyраниuk* discusses the impact that "undue process and protracted trials, with unnecessary expense and delay" can have on access to justice and the "fair and just resolution of disputes": at para. 24. While the Supreme Court in *Hyраниuk* focused on summary judgment motions, I accept that the

principle of proportionality has a broad application. Pursuit of efficiency and convenience, however, can cause delay. The Supreme Court noted this risk in *Hyраниuk*:

[32] [...] While summary judgment motions can save time and resources, like most pre-trial procedures, they can also slow down the proceedings if used inappropriately. While judges can and should play a role in controlling such risks, counsel must, in accordance with the traditions of their profession, act in a way that facilitates rather than frustrates access to justice. Lawyers should consider their client's limited means and the nature of their case and fashion proportionate means to achieve a fair and just result.

[29] As was the case in *Hamilton*, the time, and likely the expense, associated with this application surpasses the time and cost of the respondents' counsel travelling from Vancouver to Prince George. This is not a case where counsel works and resides in another province or another country, nor is this a case where the parties are in different areas of Canada or the world. The applicants and the respondents are all in Prince George.

[30] Further, while I accept the principles in *Hyраниuk*, and that I have the discretion under Rule 7-2(11) to grant a virtual discovery, this discretion is based on what is just and convenient for the parties: *Huang v. Silvercorp Metals Inc.*, 2016 BCSC 778 at para. 15. With regard to venue, it is the convenience of the party being examined and not that of counsel that is to be considered: *Baldface Mountain Lodge Limited Partnership v Swan Engineering*, 2013 BCSC 2198 at para. 15; *Scott v. Fresh Tracks (Canada) Inc.*, 2023 BCSC 1724 at para. 29.

[31] In submissions, there was some discussion of the differences between the *BC Rules* and those in Ontario. The Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 [*Ontario Rules*] provide for various methods of attending an examination for discovery. Rule 1.08(8) of the *Ontario Rules* allows examinations to be conducted in person, by telephone conference, or by video conference. The *BC Rules* do not provide the same flexibility to litigants: while the parties may agree on a location for the examination, there is no provision for alternate modes, such as by telephone or video conference.

[32] The *Ontario Rules* and the varying forms they explicitly permit bear little weight on the application of the *BC Rules*. The exercise of my discretion must be grounded in the *BC Rules*. The default position under Rule 7-2(11) is that examinations for discovery be conducted in person: *Hamilton* at para. 2. Any change to the default prescribed in Rule 7-2(11) must, as our Court of Appeal stated in *Ribeiro v. Vancouver (City)*, 2004 BCCA 482 at para. 3, be duly enacted.

Conclusion

[33] There was no evidence on this application that would support the exercise of the Court’s discretion to order that the examinations for discovery of the respondents be conducted via Zoom, or otherwise than in person.

[34] It is ordered that the respondents must attend examinations for discovery in person in Prince George, that is, where they reside. Counsel is not required to attend, but their failure to attend with the respondents is not a valid reason upon which the respondents may refuse to attend their respective examinations.

[35] Counsel have a demonstrated capacity to arrange the date or dates for those discoveries, as noted above. I rely upon counsel to arrange suitable dates in a cooperative fashion.

[36] The plaintiffs are entitled to costs of this application payable by the respondents forthwith after assessment on the basis of ordinary difficulty.

“Ball, J.”