

THE QUEEN'S BENCH
GENERAL DIVISION
ST. BONIFACE CENTRE

BETWEEN:

CHAVA SHAKED, also known as EMMALEE MANDEL,
and the said EMMALEE MANDEL,

Plaintiff,

- and -

INSURANCE COUNCIL OF MANITOBA (ICM)
and RANGER INSURANCE,

Defendants.

ENDORSEMENT SHEET

SITTING DATE: October 4, 2019

JUDGE: Mr. Justice D.J. Kroft

APPEARANCES/COUNSEL:

Chava Shaked (self-represented)

Plaintiff

Michael G. Finlayson

Defendant Insurance Council of Manitoba (ICM)

Jeffrey J. Palamar/Erika J.B. Day

Defendant Ranger Insurance

ENDORSEMENT:

INTRODUCTION

[1] This is a motion for summary judgment dismissing the plaintiff's claim against the defendant Insurance Council of Manitoba (ICM). For the following reasons, ICM's motion is granted.

FACTS

Material

[2] ICM's evidence is set out in the affidavit of Barbara Palace Churchill sworn March 29, 2019.

[3] The plaintiff's evidence is set out in her affidavit of execution sworn April 30, 2019.

[4] I also reviewed ICM's motion brief and supplementary motion brief and the plaintiff's reply to the memorandum re summary judgment hearing.

[5] There were no cross-examinations other than the questions and answers contained in a letter from ICM's counsel dated August 22, 2019, to the plaintiff (see Schedule A to this endorsement).

The Claim Generally

[6] The plaintiff's statement of claim was filed March 1, 2019. The plaintiff is representing herself.

[7] The statement of claim reads more like a detailed narrative than a traditional pleading, and it is difficult to isolate, among other things, the allegations against the defendant Ranger Insurance (Ranger) from the allegations against ICM. The allegations generally arise from the plaintiff's employment as an insurance agent at Ranger and events surrounding and following the termination of her employment in 2009. These events include the plaintiff having to move away from Winnipeg for several years, returning in 2016, and the requirement for her to pass examinations in order to re-qualify as an insurance agent.

[8] The plaintiff seeks damages of \$55 million from the defendants.

The Allegations against ICM

[9] After carefully reviewing the statement of claim, it appears to me that the allegations against ICM are:

(a) ICM acted inappropriately with respect to the challenge examination the plaintiff took on October 28, 2016.

(b) ICM refused to provide to the plaintiff a copy of Ranger's July 27, 2009 letter to ICM regarding the termination of the plaintiff's employment with Ranger.

(c) ICM colluded with other organizations in Manitoba and Ontario to deny rights and benefits to the plaintiff to which she would otherwise have been entitled.¹

[10] In paragraph 2 of her statement of claim, the plaintiff alleges that ICM's conduct breached "[her] legal rights under Provincial and Federal Insurance law and [her] Canadian Charter of Human Rights and Freedoms".

THE LAW

[11] The principles applicable to a motion for summary judgment are set out both in the Manitoba *Court of Queen's Bench Rules*, Man. Reg. 553/88 as amended by Man. Reg. 130/2017, and the case law.

[12] As for the rules, I refer to the following:

Granting summary judgment

20.07(1) The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

Powers of judge

20.07(2) When making a determination under subrule (1), the judge must consider the evidence submitted by the parties and he or she may exercise any of the following powers in order to determine if there is a genuine issue requiring a trial:

¹ This allegation was more prominent at the hearing of the motion for summary judgment than in the written material.

- (a) weighing the evidence;
- (b) evaluating the credibility of a deponent;
- (c) drawing any reasonable inference from the evidence;

unless it is in the interests of justice for these powers to be exercised only at trial.

[13] As for case law, I refer to the very recent Manitoba Court of Appeal decision in *Dakota Ojibway Child and Family Services et al. v. M.B.H.*, 2019 MBCA 91 (CanLII). The court states that while at all times the persuasive burden of proof (balance of probabilities) remains with the moving party, the evidentiary onus is as follows:

- First, the moving party must establish on the evidence and other material before the court that at the motion for summary judgment, there can be a fair and just determination of the case on its merits (para. 108).
- If established, the responding party must establish on the evidence and other material why a trial is required (para. 109).
- The responding party cannot rest on the mere allegations or denials in the pleadings, but must set out, in affidavit material or other evidence, specific facts showing there is a genuine issue requiring a trial (para. 101).

ANALYSIS

[14] I will address each of the allegations summarized in paragraph 9 of this endorsement.

ICM acted inappropriately with respect to the October 28, 2016 challenge examination.

[15] In her affidavit, the plaintiff alleges she was told or led to believe by ICM that a passing grade on the ICM re-licensing examination was 60 percent rather than 75 percent and that ICM was unclear in respect of requirements generally. She alleges further that ICM wrongfully changed the passing grade from a lower percentage to 75 percent. To her affidavit, the plaintiff attached certain of her correspondence with ICM and, during submissions, she referred to other oral communication.

[16] In her affidavit, Ms. Palace Churchill attests, among other things:

- ICM is authorized to establish educational, training and other standards and qualifications required for the licensing of insurance agents.
- Where an insurance agent has been unlicensed for more than twelve months, they must meet certain educational requirements and pass a written examination.
- In accordance with regulations, the General Insurance Council has established the General Insurance Agents Licensing Rules specifying courses that are acceptable prerequisites to obtaining a licence.

- Since March 2005 (fourteen years ago), the General Insurance Council has required a grade of at least 75 percent on the Level 1 general insurance agent licensing challenge examination. There has been no recent change to that grade.
- The education and/or examination to obtain a Level 1 General Agent Licence and a Level 2 General Agent Licence is described on ICM's web page. In respect of both Level 1 and Level 2, the web page confirms the ICM exam consists of 100 multiple-choice questions, a grade of 75 percent is required to pass, and the examinations are two hours long.
- Between July 28, 2016 and August 15, 2016, communications between ICM and the plaintiff included:
 - On July 28, 2016, the plaintiff contacted ICM seeking information concerning the educational requirements for Level 1 and Level 2 general insurance agents in Manitoba and the related challenge examinations.
 - On July 29, 2016, the plaintiff wrote to ICM confirming the conversation and requesting permission to take the Level 2 general insurance agent challenge examination and thereby forgo the Level 1 challenge examination.
 - On August 3, 2016, ICM advised the plaintiff she would have to re-qualify for a Level 1 general insurance agent licence. ICM provided the plaintiff with a hyperlink to the relevant registration form. The plaintiff confirmed receipt of the form.
 - On August 8, 2016, ICM provided further information to the plaintiff concerning the Level 1 challenge examination. The information included a hyperlink to an information sheet concerning the Level 1 and Level 2 challenge examinations. The information sheet referenced the number of questions and length of the challenge examinations as well as the 75 percent grade requirement to pass.
 - On August 11, 2016, the plaintiff confirmed ICM's requirement of her to take the Level 1 and Level 2 challenge examinations and further confirming the information that was emailed to her concerning the Level 1 challenge examination. Included with the plaintiff's email was the information sheet referenced in the previous paragraph.
 - On August 12, 2016, the plaintiff emailed ICM certain questions, including the question, why was ICM's pass mark 75 percent when another organization's (IBAM's) pass mark was 60 percent?
 - On August 15, 2016, ICM responded to all the questions, including confirmation that the required grade to pass the Level 1 challenge examination was 75 percent. ICM also provided the plaintiff with information regarding alternative means to obtain the education necessary to qualify for her Level 1 general insurance agent licence.

- On August 15, 2016, the plaintiff sent an email thanking ICM for answers, indicating the "answers are totally clear; which is great because now I know what's fully expected of me".
- The plaintiff wrote the Level 1 challenge examination on October 28, 2016. The cover page of the examination explains that the examination consists of 100 multiple-choice questions, lasts two hours, and requires a grade of 75 percent to pass.
- The plaintiff achieved 65 percent – a failing grade. Her results were posted the same day as the examination.

[17] After considering all the evidence in the plaintiff's and Ms. Palace Churchill's affidavits, I find ICM has established on the evidence that there can be a fair and just determination of this issue on the merits and that the plaintiff has not established that a trial is required to determine whether ICM acted inappropriately with respect to the challenge examination.

[18] ICM acted appropriately.

ICM refused to provide to the plaintiff a copy of Ranger's July 27, 2009 letter.

[19] In response to the plaintiff's allegation that ICM failed to provide her with a copy of Ranger's July 27, 2009 termination letter, the evidence shows:

- On June 11, 2018, the plaintiff made a written request for a copy of the termination letter and, on July 13, 2018, ICM provided a copy of that letter.
- On July 13, 2018, the plaintiff acknowledged receipt of the information.

(See exhibits attached to the plaintiff's affidavit of execution.)

[20] In the circumstances, I am satisfied I can fairly and justly determine whether ICM refused or delayed in providing to the plaintiff a copy of Ranger's July 27, 2009 letter and that the plaintiff has not established why a trial is required.

[21] I find ICM did provide the letter to the plaintiff in a reasonable period of time.

ICM colluded with other organizations in Manitoba and Ontario to deny rights and benefits to the plaintiff to which she would otherwise have been entitled.

[22] Scattered throughout the plaintiff's statement of claim, affidavit and oral submissions was the suggestion ICM took active measures to influence other bodies in Manitoba and Ontario with the purpose of preventing her from pursuing work in the insurance industry and depriving her of her rights and benefits to which she might otherwise be entitled.

[23] Simply put, the evidence filed by the plaintiff does not support this allegation either directly or by inference.

[24] As noted in paragraph 13 of this endorsement, the obligation was on the plaintiff to put her best evidentiary foot forward at the hearing of this motion. The court cannot simply wait based on assertions by a party that further or better evidence is coming down the road.

[25] Again, I find I am in a position to fairly and justly determine this issue. I find no foundation in the evidence or otherwise to conclude the collusion allegation requires a trial. I dismiss that allegation.

[26] In respect of all the allegations against ICM, ICM relies on section 8(1) of *The Insurance Act*, C.C.S.M. c. I40, which provides:

Immunity of superintendent and others

8(1) *No action or proceeding may be brought against any of the following persons for anything done, or omitted to be done, in good faith, in the exercise or intended exercise of a power or duty under this Act or the regulations:*

(a) the superintendent or a person employed in the office of the superintendent or acting under the superintendent's instructions;

(b) *an insurance council established under section 396.1 or a member or employee of an insurance council.*

[Emphasis added.]

[27] In my opinion, there is no credible evidence filed by the plaintiff suggesting ICM, a member or an employee of ICM, acted other than in good faith. The statutory bar in section 8 of *The Insurance Act* further supports my conclusion that summary judgment of all the plaintiff's claims against ICM is appropriate in this case.

CONCLUSION

[28] The motion for summary judgment dismissing the plaintiff's claim against ICM is granted.

[29] Should either party wish to address costs, I will make myself available.

[30] ICM's counsel should draft a proposed form of order and submit it to me to review and issue. Although it need not contain the parties' approval as to form, a copy of the proposed form of order should be sent to the plaintiff at the same time it is sent to me.

DATE: October 22, 2019

JUDGE  **J.**

Copies of this Endorsement Sheet have been sent to counsel and to the plaintiff on October 22, 2019.

**Copies to: Ms. Chava Shaked
102 Fisherville Road
Toronto ON M2R 3C2**

**Mr. Michael G. Finlayson
Marr Finlayson Pollock LLP**

**Mr. Jeffrey J. Palamar/Ms. Erika J.B. Day
Taylor McCaffrey LLP**



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File No: 10567129

August 22, 2019

VIA EMAIL

Ms Chava Shaked
102 Fisherville Road
Toronto, ON M2R 3C2

Dear Ms Shaked:

Re: Shaked v. Insurance Council of Manitoba et al
Queen's Bench File No. CI-19-06-02745

I write further to your email of August 17, 2019, wherein you asked seven questions of my client which I believe you say arise in the context of the motion for summary judgment dismissing that my client has caused to be filed. For convenience, the questions are numbered and reiterated hereunder, along with my client's answers thereto.

1. Why did Ranger Insurance report to ICM and establish a record of my employment on the ROI federally that I was not fit to be an insurance broker? On what basis, please provide particulars.

ICM is unaware of any report in which Ranger says that the plaintiff is unfit to be an insurance broker. ICM is unaware of any federal or other record established by Ranger that indicates that the plaintiff is unfit to be an insurance broker.

2. Why did the ICM accept this without question? Please provide particulars.

ICM did not "accept" this (which I assume refers to the supposed assertion by Ranger that the plaintiff is unfit to be an insurance broker), as there was no such report or record capable of being accepted.

3. Why did the ICM give me such a hard time giving me any info whatsoever toward renewing my license?

ICM acted in accordance with its standard procedures and practices in providing the plaintiff with any information requested.



4. Why did the ICM not publish my test result online as they said they would within a week?

ICM's records indicate that the result of the plaintiff's examination was added to ICM's online portal at 4:30 p.m. on Friday, October 28, 2016, the same day that the plaintiff wrote the examination. Once it had been added to ICM's online portal, the result or mark was available to be accessed at any time by the plaintiff through that portal. As indicated by Ms Barbara Palace Churchill in her affidavit of March 29, 2019, ICM received an email from the plaintiff dated Sunday, October 30, 2016, at 8:50 a.m. and in that email the plaintiff indicated that she was shocked to have failed the examination. It follows that the plaintiff was aware of the result of her examination no later than October 30. ICM is unaware why the plaintiff would suggest within this question why the plaintiff's "test result" was not published online within a week of her writing the examination.

5. Why did the ICM not allow me to rebut through their recognized process of the business council?

ICM does not understand this question

6. Why did Barbara Palace Churchill lie to me when she said she would provide me with my information they had on file regarding my roe.

ICM provided the plaintiff with the information they had on file. No one at ICM lied to the plaintiff.

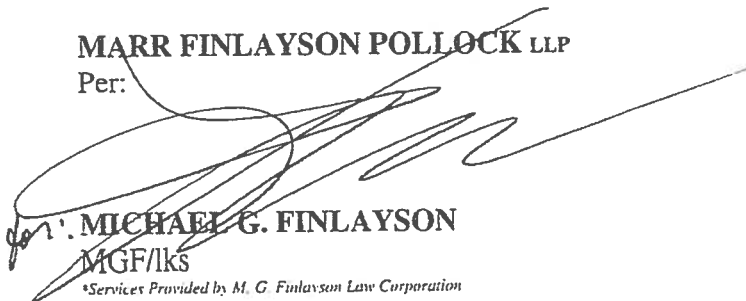
7. Why did Barbara Palace Churchill ignore my emails, phone calls requesting it and why did she ignore those of the lawyer I was forced to hire to get my legally accessible [sic] information? On what basis did she ignore it?

Neither Barbara Palace Churchill in particular nor ICM generally ignored any request of the plaintiff. Because of potential privacy concerns, ICM sought legal advice in the context of the plaintiff's request, after receiving which advice the "ROE" was released to the plaintiff. Again, this issue is clarified in the affidavit of Barbara Palace Churchill of March 29, 2019.

Yours truly,

MARR FINLAYSON POLLOCK LLP

Per:



for: MICHAEL G. FINLAYSON
MGF/lks
*Services Provided by M. G. Finlayson Law Corporation