

 **McKee v. Marroquin**

Ontario Judgments

Ontario Superior Court of Justice

G.M. Miller J.

Decembe 29, 2020.

File No.: CV 17-3604-00

**[2020] O.J. No. 5990**

Between David McKee, and Shanelle Marroquin et al

(6 paras.)

## **Counsel**

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Cindy Leung, for Plaintiff.

Surina Sud, for Defendants.

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## **ENDORSEMENT**

### **G.M. MILLER J.**

**1** In this motion for production the Plaintiff argues that leave should not be granted as the matter is already set down for trial and the circumstances do not meet test of substantial or unexpected change in circumstances whereby it would be manifestly unjust not to order production.

**2** This matter was set down for trial in May 2020 and per the direction of the Pre-trial Justice any motions for further productions were to occur by February 2020. The trial did not proceed as scheduled due to the global pandemic and the resultant suspension of court operations. The trial is now scheduled to proceed in May 2021.

**3** In August 2020 the Defendant obtained surveillance evidence which would appear to contradict the Plaintiff's testimony at 2018 discoveries as to his ability and frequency of golf playing. The Defendant seeks production of records - not privileged and available to the Plaintiff - from the golf club where he is a member and was seen playing in August 2020.

**4** The Defendant disclosed the surveillance evidence immediately upon receipt and immediately requested production, receiving no response. The Defendant repeatedly requested production without response over the next three months with no response, leading them to seek this relief from the Court,

**5** I am satisfied that the Defendant is entitled to this production pursuant to Rules 30.04(5) Rule 30.06 ( c) 30.01 (1) (b) and 48.04(2) (i).

**6** On the issue of costs I have reviewed the Costs Outline provided by the Defendant and find it is proportional to the issue and the work done. In these circumstances where the conduct of counsel for the Plaintiff being simply unresponsive to repeated requests for production full indemnity costs are justified. Order to go as per draft order amended and signed by me.

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