

In the Court of Appeal of Alberta

Citation: Raymond v Koorbatoff, 2025 ABCA 150

Date: 20250429
Docket: 2401-0154AC
Registry: Calgary

Court of King's Bench Docket: 1710 00733

Between:

Terry Raymond

Respondent
(Plaintiff)

- and -

Ben Koorbatoff

Appellant
(Defendant)

Court of King's Bench Docket: 2310 00227

And Between:

2171528 Alberta Ltd.

Appellant
(Applicant)

- and -

Terry Raymond

Respondent
(Respondent)

The Court:

**The Honourable Justice Bernette Ho
The Honourable Justice April Grosse
The Honourable Justice Joshua B. Hawkes**

**Memorandum of Judgment
Delivered from the Bench**

Appeal from the Order by
The Honourable Justice C.S. Anderson
Dated the 9th day of May, 2024
Filed on the 21st day of November, 2024
(Docket: 1710 00733; 2310 00227)

**Memorandum of Judgment
Delivered from the Bench**

Grosse J.A. (for the Court):

[1] This is an appeal from a chambers decision compelling answers to four undertakings refused in the course of questioning on an affidavit.

[2] The respondent Terry Raymond is a judgment creditor of the appellant Ben Koorbatoff. Mr Raymond caused a civil enforcement agency to seize a Corvette vehicle that he believed had been purchased by Mr Koorbatoff. Mr Koorbatoff objected to the seizure on the basis that he did not own the Corvette. At the same time, the appellant 2171528 Alberta Ltd (“217”) brought an originating application to release the seizure, claiming that the Corvette belonged to 217 and that Mr Koorbatoff had no exigible interest in it. The sole director and shareholder of 217 is Moriah Klessens, who is the adult interdependent partner of Mr Koorbatoff. The undertakings at issue arose in the course of questioning Ms Klessens on her affidavit in support of 217’s application. The undertakings relate to production of certain corporate and accounting records of 217.

[3] Decisions of a chambers judge regarding questioning are subject to a deferential standard of review: *Moser v Real Estate Council of Alberta*, 2019 ABCA 384 at para 4. This Court will only interfere if there is an error in principle, a misapprehension of the facts or if the decision is unreasonable: *Moser* at para 4.

[4] The chambers judge concluded that the information sought by the undertakings would significantly assist the court in determining the matters at issue and that it would not be disproportionately onerous for Ms Klessens to answer the undertakings. The chambers judge took into account that the undertakings were requested in the context of questioning on an affidavit and the more limited scope for undertakings in that context. The chambers judge found that the record included evidence of suspicious circumstances surrounding Mr Koorbatoff’s role in the purchase of the Corvette and evidence that could support a finding that Mr Koorbatoff was in actual or apparent possession of the Corvette. The chambers judge concluded that Mr Raymond was entitled to test Ms Klessens’ evidence regarding a resolution purporting to authorize Mr Koorbatoff to carry out the purchase of the Corvette on behalf of 217, the source of funds for 217’s purchase of the Corvette, and to generally test the credibility of Ms Klessens’ evidence about the ownership of the Corvette.

[5] For the purposes of this application, the parties agree that if Mr Koorbatoff was in actual or apparent possession of the Corvette, there could be a presumption that Mr Koorbatoff has an interest in the Corvette. However, the appellants argue that the chambers judge ignored evidence they adduced to rebut any such presumption. They also argue that the chambers judge failed to

consider that Mr Raymond is attempting to enforce his judgment against 217 instead of Mr Koorbatoff.

[6] These arguments misconstrue the issue before the chambers judge. The chambers judge was not deciding whether Mr Koorbatoff had an exigible interest in the Corvette or whether the seizure should be released. She was not deciding whether Mr Koorbatoff was presumed to have an interest in the Corvette or whether any such presumption had been rebutted. Rather, she was deciding whether the refused undertakings were relevant to those issues and whether requiring answers to the undertakings would be disproportionate in the circumstances.

[7] The chambers judge correctly identified the issues that would ultimately be before the court and we defer to her assessment of relevance, materiality and proportionality. The appellants have not identified any error of principle or misapprehension of the facts in her assessment, and we see no reviewable error in her conclusion that the information sought by the disputed undertakings should be disclosed.

[8] The appeal is dismissed.

Appeal heard on April 14, 2025

Memorandum filed at Calgary, Alberta
this 29th day of April, 2025

Grosse J.A.

Appearances:

G.L. Walters
for the Respondent

P. Osadetz
for the Appellants