

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Triple Z Property Holdings Ltd. v. Ercon Holdings Ltd.*,  
2025 BCSC 2179

Date: 20251027  
Docket: S236652  
Registry: Vancouver

Between:

**Triple Z Property Holdings Ltd. and West One Enterprises Ltd.**  
Plaintiffs

And

**Ercon Holdings Ltd.**  
Defendant

And

**Eternity Properties Inc.**  
Defendant by Counterclaim

Before: Associate Judge Robertson

## Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs and the Defendant  
by Counterclaim:

F. Finn

Counsel for the Defendant:

S. Gallagher  
M. Swanson

Place and Date of Hearing:

Vancouver, B.C.  
October 27, 2025

Place and Date of Judgment:

Vancouver, B.C.  
October 27, 2025

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered given that some matters were abbreviated in the interests of time. I have made such edits without affecting the substance or final disposition.

[2] The defendant, Ercon Holdings Ltd. (“Ercon”) brings this application for a direction that certain objections raised at a July 4, 2025 examination for discovery of the representative of the plaintiff, Triple Z Property Holdings Ltd. (“Triple Z”), were improper and an order compelling a further attendance for the purposes of those questions to be asked, as well as, although not included in the notice of application itself, such other questions that arise therefrom.

[3] The plaintiffs say, firstly, that the scope of the questions is too broad and irrelevant, and secondly, that as a result of a clarification, it is clear that the information that the representative has on these facts arises in his role as a representative of other companies related to Triple Z which he cannot be compelled to answer, including because of business confidentiality concerns.

**Background and Issues in Dispute**

[4] The underlying dispute concerns three contracts of purchase and sale (the “CPSs”) of adjoining undivided bare lots in Abbotsford, recently rezoned for commercial use, specifically for an automobile vehicle dealership or similar use (“CAM”). Ercon was the vendor under those CPSs. The defendant by counterclaim, Eternity Properties Inc. (“Eternity”), was the originally named purchaser in respect of two of the CPSs, with the agreements being assigned to Triple Z as purchaser. The plaintiff, West One Enterprises Ltd. (“West One”), is the purchaser of the third lot.

[5] The plaintiffs allege that the defendants breached the CPSs by failing to complete certain site-servicing work prior to an outside date, which they say fell on September 23, 2024 (the “Outside Date”) after various extensions were granted, and that the defendants acted in bad faith in performance of their obligations under the CPSs.

[6] The relief being sought includes specific performance on the basis that these properties are unique properties by virtue of the CAM zoning, specific to a proposed expansion of the Langley Auto Mall. They also seek damages for breach of the CPSs, in the alternative.

[7] On July 4, 2025, the representative of Triple Z, Mr. Chohan, was examined for discovery. During the course of that discovery, counsel for the defendant sought to examine Mr. Chohan as to other properties that had been purchased by the plaintiffs subsequent to the Outside Date, they say to investigate to things:

- a) whether the plaintiffs mitigated their damages; and
- b) whether the plaintiffs were able to or did obtain alternative or replacement property such that the remedy of specific performance is not the appropriate remedy in the circumstances.

[8] Relevant portions of the discovery include, as examples, the following questions (this is not a complete quotation, which some intervening questions being omitted):

- Q Since September 28, 2023, have you, through Eternity or Triple Z, bought any properties?
- A We bought lots of properties, yeah.
- Q Okay. Since September 28, 2023?
- A Oh, yeah.
- Q And what's the purpose of those properties?
- A Development sites.
- Q What kind of development sites?
- A Industrial.
- Q What kind of industrial?
- A Why is that relevant? I don't think that's any of your business.
- Q I think it's very much my business, sir.
- A Why?
- Q What kind of industrial?
- A Why is that your business?

Q Are you objecting to the question?

[9] At this point counsel for Triple Z interjected to ask for the relevance of the question to be explained, to which counsel answered:

You're seeking specific performance. You're saying the properties are unique. I'm trying to figure out if there is alternative properties.

[10] A dialogue between counsel then ensued, with counsel for the plaintiffs indicating that he was going to object to the question on the basis that it was limited to the auto mall property that was in issue. Although before any further questions were asked, the witness interjected with "that's none of your business."

[11] The questioning continued as follows:

Q What properties have you purchased since September 28, 2023?

A That's none of your business.

Q What properties have you purchased through Eternity or Triple Z since September 28, 2023?

[12] At which point counsel objected with the following:

Well, I don't think that any property acquisition is relevant. I think you ask him about similar properties.

[13] Further questioning continued along the lines of what similar type (that being industrial development) properties were being looked at with further answers being given along the lines of "its none of your business", and a refusal to answer the questions. Counsel for Triple Z concluded that line of inquiry as follows:

I am going to object on the basis of relevance that you can't ask him about any and all property acquisition that a company has made, when he's told you he's in the business of acquiring properties.

[14] The examination was then adjourned on the basis that an application would be brought to compel answers to these questions, leading to today's application. Notably, there is some time between the July 4, 2025 discovery date and the filing of this notice of application, which was done on September 12, 2025. That delay is one of the concerns of counsel for the plaintiffs today.

[15] Further, since that examination for discovery, the answer given by Mr. Chohan that "we" have purchased a lot of properties was clarified in correspondence between the parties and with an affidavit filed before the court today. Specifically, Mr. Chohan deposes as follows in his affidavit sworn in opposition to the application:

5. This answer was an error. Since September 28, 2023, Triple Z and Eternity have not bought any properties. The properties that I was referring to were bought by other companies in which I am involved.

6. During the examination, Mr. Swanson also asked me about the purpose for acquiring those other properties. I answered that the properties were purchased as industrial development sites. However, I did not wish to provide additional information about those industrial development properties because I consider information about their specific uses and planned future uses as well as the name of the entities that own them to be private and confidential business information, and the companies that are involved wish to keep the information private and confidential.

7. I can confirm that none of the properties I have been involved in acquiring since September 28, 2023, have been used for any automobile or vehicle businesses, including the sale, leasing, or servicing of vehicles, and there are no plans to use the properties for any such businesses.

[16] The dispute as to answering of these questions and going down this line of inquiry ultimately comes down to the parties' interpretation of their cases based on the pleadings. There is no doubt specific performance is being sought in the notice of civil claim and that the claim is made that the properties are unique. That is denied in the response to civil claim.

[17] In other words, what will be squarely in issue at trial will be whether the property is, in fact, unique such that specific performance or damages are an appropriate remedy, and whether the plaintiffs mitigated their damages by looking for similar alternative property in place of these lands.

**Issues in Dispute**

[18] The plaintiffs say the questions are inappropriate on the following grounds:

- a) The questions as asked are not relevant.

- b) The requests made are overly broad in that the questions are related to "any property" purchased, which is not proportional particularly given that the "companies" who may have purchased such properties are not identified, or, for that matter, when the number of those "companies" isn't known, as it could be one or it could be 10+ related companies who purchased the property.
- c) There is no probative value in this line of inquiry or, alternatively, any probative value is outweighed by the prejudice in answering those questions. They argue that the probative value is limited by the late nature of the request. Simply, it is too late for the defendants to do anything with it, particularly given that it will take some time to gather the answers, although this argument is made while not disclosing how many companies or how many purchases there may be. As such, the plaintiffs submit, it is too late to get a rebuttal report, which is one of the bases on which Ercon initially indicated they were seeking the information. The prejudice in answering the questions arises because it will require disclosure of confidential business information of these other companies, which in itself is another reason to oppose the production.
- d) Even if relevant and not overly broad, Mr. Chohan cannot be compelled to answer questions that he knows not as the representative of Triple Z, but the related parties.
- e) As noted above, the information as to what related parties may be purchasing, and the reason for their purchases, is confidential business information.

**Analysis**

**Relevance**

[19] The application is brought pursuant to Rules 7-2(18) and (25) of the *Supreme Court Civil Rules*. Rule 7-2(18) sets out the scope of an examination for discovery as being:

... any question within the person's knowledge or means of knowledge regarding any matter, not privileged, relating to a matter in question in the action ...

[20] As described in *Nelson and District Credit Union v. Fiserv Solutions of Canada, Inc.*, 2017 BCSC 1139, at para. 29, that the test on an application under R. 7-2(25) is the same as the test on an application for production of documents under the second tier of production, that being, whether or not the inquiry is relevant to a matter in question in the action, as defined by the pleadings.

[21] As noted in *Kendall v. Sun Life Assurance Company of Canada*, 2010 BCSC 1556, at paras. 10 and 11:

[10] Because of the nature of cross-examination and the generally wide scope of examinations for discovery, it will not always be clearly apparent that a single question will produce relevant evidence. Nevertheless, unless it is very clear that the answers may not be relevant to the issues, the better course is to allow the questions: *Cominco* at paras. 9, 63. In this regard, it has to be kept in mind that what might be a permissible question on discovery, without objection, is not a concession that the question, and evidence it adduces, is admissible at trial.

[11] The legal authorities emphasize the proposition that an examination for discovery is a cross-examination, and counsel for the examinee must not unduly interfere or interrupt the examination.

[22] Further, as noted at para. 18, the scope for discovery is broad, and objections should be tempered:

[18] A largely "hands off" approach to examinations for discovery, except in the clearest of circumstances, is in accord with the object of the Rules of Court, particularly the newly stated object of proportionality, effective July 1, 2010. Allowing wide-ranging cross-examination on examination for discovery is far more cost-effective than a practice that encourages objections, which will undoubtedly result in subsequent chambers applications to require judges or masters to rule on the objections. It is far more efficient for counsel for the

examinee to raise objections to the admissibility of evidence at trial, rather than on examination for discovery.

[23] Based on the above, an initial line of inquiry at a discovery is intended to be relatively broad, although not unlimited. There must be a nexus in that the questions or line of inquiry must be one that would reasonably touch on, or would reasonably be expected to give rise to a further line of inquiry touching on, the issues in dispute between the parties at the outset, with the goal of further narrowing that focus to relevant and admissible evidence, having regard to the concepts of proportionality as found in the Rules.

[24] As to the relevance of the information, even if Mr. Chohan's clarified evidence is accepted that the parties who purchased subsequent properties were not the plaintiffs themselves but related parties, the defendants rely on *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51 (CanLII), [2012] 2 SCR 675, at paras. 57 to 59:

[57] The defence raised by Southcott, which was accepted by the trial judge, was that the purchases by Ballantry Group of development lands in the GTA were purchases which would have been made in any event, regardless of whether Southcott purchased the Board's property. However, it is no answer to say that other companies in the same corporate group would have purchased the other available lands in any event. It was clear from the testimony of the president of Southcott and co-owner of Ballantry that the Ballantry Group was always purchasing promising development land and that the different companies were simply used as different vehicles to invest.

[58] It was a choice on the part of the principals of the Ballantry Group as to which corporate entity would be used for each purchase and they elected not to use Southcott. In addition, the trial judge found that "[t]he plaintiff[s] proposed development here was not complex, but rather a relatively straightforward plan for the development of 48 semi-detached residential units" (para. 132). In these circumstances, a straightforward development could have been carried out on a different property by Southcott, had it wanted to mitigate its loss. This corresponds to the modern reality recognized in Semelhago that "[r]esidential, business and industrial properties are all mass produced much in the same way as other consumer products" (para. 20).

[59] As the Court of Appeal concluded (paras. 25-26), the Ballantry Group's purchases of other properties was evidence that other suitable development lands were available and the decision not to purchase them in Southcott's name was based on other considerations. I agree with the Court of Appeal that the trial judge erred in failing to consider these purchases as evidence of other available and comparable development properties.

[emphasis added]

[25] I am satisfied that the particulars as to replacement property and whether other property that may be suitable or may be argued to be suitable replacements for the subject property that were purchased after the Outside Date are relevant to the remedy of specific performance and the issue of mitigation in terms of damages if specific performance is not an appropriate remedy.

### **The Scope of the Request**

[26] As noted, Ercon seeks particulars as to any industrial development land purchased after the Outside Date.

[27] The plaintiffs argue that whether the property is unique is based solely on the CAM zoning, i.e. whether there are other properties specifically zoned for the similar specific purposes of a use associate with an auto mall.

[28] The defendants disagree on that point, relying on Mr. Chohan's further evidence that at the time of the sale closing, it was not clear to the plaintiffs what use they would be making of the property once they purchased them, for example, if they would be developing the property and leasing it out to others that might operate in the automotive industry. As they had not formed a plan for the use, and specifically do not say that they wanted to operate a car dealership business next to an auto mall, its uniqueness may not necessary be tied exclusively to CAM zoning, as opposed to commercial or industrial use property that they could develop, and lease, or develop and operate themselves, in any industry.

[29] In support of the argument that "similar" property may include development property that is zoned for other industrial uses Ercon refers to the plaintiffs' own appraisal evidence which, in valuing the property does so with the highest and best use being "industrial development lands", a much more general characterization. Although, I note that in valuing the property its status is clearly identified in the appraisal as being CAM zoned. I cannot see how that determines the uniqueness of the property, or relevance to the issues in dispute.

[30] Ultimately, it will be for the presider to determine if the plaintiff's claim that the property is unique is based on it being CAM zoned, as opposed to industrial development lands suitable for any business.

[31] I agree with Ercon that the scope is not too broad by virtue of it relating to industrial development property. It is too narrow the line of inquiry, and contrary to the principles noted above, to limit the scope to only properties that have CAM zoning. The determination of whether industrial development land that is not CAM zones is in fact suitable replacement property is better left for trial.

**Probative Value**

[32] I accept Ercon's argument that although they intended to use the evidence initially for rebuttal reports, which it is now likely too late to obtain, that there is probative value to the information for the purpose of cross examination of the plaintiff's witnesses. There is value to obtaining this information, notwithstanding how close it is to the trial date.

**Information relating to related parties**

[33] In *Forliti (Guardian of) v. Woolley*, 2002 BCSC 858, at para. 9(b), the court noted that:

... questions may not be put which are relevant only to issues between the party conducting the discovery and another party (not being examined).

[34] The issue from the plaintiffs' perspective is that these questions are precisely the opposite of that, being ones that go to the issues involving a different party, namely Triple Z's related parties.

[35] The plaintiffs also point to the whole of R. 7-2 which refers solely to examinations of "parties of record" and specifically R. 7-2(2), whereby it is stated that examinations for discovery conducted are to be "of a party of record".

[36] Mr. Chohan was being examined as the representative of Triple Z only. As such, Triple Z argues he is not compelled to answer questions about other parties,

or provide information he would know only by being a representative of that other party.

[37] Notably, Mr. Chohan refuses to give the identity of those parties so that the tools of discovery of non-parties could be used. At his discovery, in the course of making the above inquiries, Mr. Chohan refused to answer as to the names of any of the companies, once again saying it was none of the defendant's business.

[38] Further, the line of inquiry arose because of Mr. Chohan's answers, and his use of the royal "you" and royal "we" without identify the entity which he meant.

[39] The rules do allow a mechanism for non-parties to be examined and, while I agree with the plaintiffs that this is not it, the confusion lies solely at Mr. Chohan's feet.

[40] To the extent there is any confusion as to who may have purchased similar properties, how Triple Z may be related to them, and whether Mr. Chohan is in fact an authorized representative of them, such that such property purchases may fall within that found to be relevant under *Southcott, supra*, it lays entirely at his feet. He was intentionally vague, or downright non-responsive in that regard.

[41] The purpose of the Rules is to promote efficiency having regard to the proportionality. I am advised that the value of these properties is approximately \$20 million.

[42] This is not a minor or trifling matter before the courts, and it is appropriate that, to use the sentiment set out in *Kendall, supra*, that the parties be entitled to a wide initial scope of examination at discovery, with the scope then being narrowed appropriately to the point of a focused evidentiary record being put before the court at trial.

[43] A party cannot obstruct disclosure and then use the lack of particulars as a result as a means to avoid what is a proper line in inquiry from coming to light in the course of discovery through other means. The conduct of Mr. Chohan at his

discovery is an attempt to use the Rules in a way that is antithetical to the goal in ensuring that a fair trial can be heard on the merits after full and proper discovery. He ought to answer the questions even if they relate to other parties.

[44] Even if I am wrong on that point, I am not satisfied that he cannot answer the questions as a representative of Triple Z. There is no evidence to suggest that the companies are isolated from one another. The use of the royal “we” suggests they are not. Given the nature of the operations, Triple Z would likely, as a related party under an umbrella group of companies, be aware of the development land purchases of the other companies under that same umbrella.

### **Confidentiality of Business Records**

[45] As to the argument that the purchases of other properties by related parties is confidential, I fail to see how companies owning property and perhaps what they paid for it, information that is available on public databases such the BC Assessment Authority and the Land Title Registry, can be said to be confidential.

[46] In fact, had Mr. Chohan answered even the simple question of who the related companies were, Ercon could have conducted those searches and obtained much of the information without need for a further discovery. Again, this is an issue of his own making that it must now be addressed on further discovery.

[47] The nature and business intention with respect to those properties may have more of a confidential bent to them in terms of being subject to an overall business strategy, however there is no evidence to support any particular privacy concern.

[48] I agree with counsel for Ercon that the implied undertaking of confidentiality governs this matter and that is sufficient to satisfy that no improper use will be made of the information should it be slightly outside what would otherwise be available on publicly available government searches and web sites.

### **Conclusion and Orders**

[49] I make the orders as sought in the notice of application under para. 1.

[50] I will add under para. 2 that it is to compel Mr. Chohan to attend a further examination for discovery to answer the questions in the attached as Appendix A to the notice of application without objection and any further questions arising because of those answers.

**Costs**

[51] The obstructive nature in which the answers were given on discovery given the broad scope that discovery is intended to take is deserving of some comment, and I think it is appropriate that such comment be by way of costs in any event of the cause.

“Associate Judge Robertson”