

Court of King's Bench of Alberta

Citation: Elite Scaffolding Systems Inc v Gemini Contracting, 2026 ABKB 319

Date: 20260427
Docket: 2501 15175
Registry: Calgary

Between:

Elite Scaffolding Systems Inc.

Plaintiff/Applicant

- and -

Gemini Contracting, Perry Nordin, and Natalie Nordin

Defendants/Respondents

Reasons for Decision of the Honourable Justice M.H. Bourque

[1] Elite Scaffolding Systems Ltd. (**Elite**) applies for a Norwich Order (*Norwich Pharmacal Co v Customs & Excise Commissioners*, [1973] 2 All ER 943) to obtain disclosure of third-party information to locate and trace funds paid to Gemini Contracting (**Gemini**), Perry Nordin (**Perry**), and Natalie Nordin (**Natalie**) (collectively, **Respondents**).

[2] On this application, the evidence before me consists of a supporting affidavit of Emmanuel Kpoanu (Supporting Affidavit), affirmed on January 9, 2026, the transcripts of his cross-examination, and his answers to undertakings. The Respondents have not filed any affidavit evidence on this application, though they advanced legal submissions.

[3] Mr. Kpoanu and his wife acquired the shares of Elite through a holding company on June 20, 2025. Prior to July 2025, Perry and Natalie, who are spouses, were employed by Elite as General Manager and Office Administrator, respectively. According to Elite's allegations, and

without its knowledge, Perry and Natalie formed or used Gemini as a competing partnership and used their positions at Elite to divert work, customers, and revenue from Elite to Gemini. Elite alleges that Perry and Natalie took advantage of the fact that Elite is a unionized shop and Gemini is not by underbidding Elite's own quotes to obtain work for Gemini for their own account. Elite submits that the nature of the alleged scheme makes it difficult to identify all instances of diverted work and to trace the proceeds using Elite's internal records alone, such that independent third-party transaction records are required. For the reasons that follow, I agree.

[4] The parties agree that the leading authority in Alberta concerning Norwich Orders is *Alberta Treasury Branches v Leahy*, 2000 ABQB 575 [*Leahy*], aff'd 2002 ABCA 101. Typically, Norwich orders have been granted to identify wrongdoers, find and preserve evidence that substantiates or supports actions against known or unknown wrongdoers, determine whether an action exists, and trace and preserve assets (see also: *AARC Society (Alberta Adolescent Recovery Centre) v Sparks*, 2019 ABQB 87 (*AARC*) at para 21).

[5] In *Leahy*, Mason J. set out a number of factors to be considered in determining whether it is in the interests of justice to grant a Norwich Order (at para 106). These considerations guide the court's equitable and discretionary decision. They are not a purely mechanical checklist; the court must also consider proportionality and any countervailing interests, including confidentiality and privacy, when deciding whether (and on what terms) disclosure should be ordered:

- i. Whether the applicant has provided evidence sufficient to raise a valid, *bona fide* or reasonable claim;
- ii. Whether the applicant has established a relationship with the third party from whom the information is sought, such that it establishes that the third party is somehow involved in the acts complained of;
- iii. Whether the third party is the only practicable source of the information available;
- iv. Whether the third party can be indemnified for costs to which the third party may be exposed because of the disclosure, some refer to the associated expenses of complying with the orders, while others speak of damages; and
- v. Whether the interests of justice favour the obtaining of the disclosure.

1. Has Elite provided evidence sufficient to raise a valid, *bona fide* or reasonable claim?

[6] The short answer is yes. I accept the evidence in the Supporting Affidavit of several instances that demonstrate that this requirement has been met.

a) Simson Maxwell

[7] In the first instance, a May 19, 2023 email from Simson Maxwell sent to Elite's "info" inbox asks Elite to bid on scaffolding work similar in scope to that which Elite had previously performed for that party. Attached to the email was a Gemini invoice dated May 6, 2019, for \$12,813, a Simson Maxwell Purchase Order dated 4/5/2019, with Elite listed as the Vendor, for the same amount, as well as Simson Maxwell Purchase Invoice dated 5/6/2019 showing Elite as the "Pay To:" party. I find this evidence supports a reasonable inference, sufficient at this stage, that in 2019 Gemini invoiced for work that Elite had reason to believe was its work, or was performed using Elite's standing with the customer.

b) The Restoration Network Calgary Inc.

[8] The second instance involves work done for The Restoration Network Calgary Inc. on two separate occasions. In particular, the first project involved erecting scaffolding at an address in Bragg Creek on or about June 13, 2023 and removing it on or about July 24, 2023. Contemporaneous emails show the client emailing with Mr. Nordin at his Elite email. On September 7, 2023, Restoration Network Corp. forwarded to Ms. Nordin's Elite email an Interac email confirmation: "Your money transfer to PERRY NORDIN was deposited", which prompted Ms. Nordin to email Mr. Nordin asking, "Where is the payment from Restoration Network? I billed for it in July and it is entered?" Elite's GPS monitoring records confirm that Elite trucks attended the Bragg Creek address on June 13, 2023 and July 24, 2023. I am satisfied that this evidence supports a reasonable claim that Mr. Nordin appropriated work from Elite and used Elite's resources to perform the work.

c) Highline Electrical Contractors – SAIT Project

[9] In May 2024, Highline emailed Mr. Nordin at his Elite email asking for a quote for a scaffolding project at SAIT, to which he responded \$5,200. The email correspondence suggests that the scaffolding setup and dismantling were scheduled at SAIT for May 21 and 24, respectively. Elite's GPS logs show that Mr. Nordin's Elite truck attended at SAIT on May 20, 2024 and May 24, 2024. On June 3, 2024, Mr. Nordin sent an email to Highline's Service Manager, who then forwarded it to accountspayable@highline.ca (cc'ing Mr. Nordin's Elite email address), noting "Please see the attached and *I will make the changes within Jonas to reflect the correct company name*" (emphasis added). Attached appear to be two Gemini invoices dated May 31, 2024, noting the activity as "To erect & dismantle scaffold – SAIT", referencing two separate purchase order numbers: one for \$4,400 and the other for \$4,900. I am satisfied that this evidence supports a reasonable claim that Mr. Nordin and/or Gemini appropriated work from Elite and used Elite's resources in connection with the work.

d) GFL Environmental

[10] On November 4, 2025, in response to an Elite quote, GFL emailed Mr. Kpoanu:
The quote looks great, since the company has been purchased, I was paying "Gemini Contracting" before with [Mr. Nordin]. I will need to get you set up in our vendor payment system asap.

[11] GFL provided Mr. Kpoanu with a September 5, 2024 email from Mr. Nordin's personal email account, attaching a July 30, 2024 Gemini Contracting invoice for \$8,197 plus GST.

[12] I am satisfied that this evidence supports a reasonable claim that Mr. Nordin and/or Gemini appropriated work from Elite and that Gemini received payment for those services.

e) Engelhart Construction

[13] On or about February 6, 2025, Mr. Nordin provided an Elite quote to Engelhart Construction for scaffolding work, originally in the amount of \$48,700, later revised to \$49,250. On July 3, 2025, Mr. Kpoanu obtained payment terms from Engelhart showing that Engelhart had paid Gemini on two separate occasions for the erection and dismantling of scaffolding: on March 6, 2025, \$45,507; on April 21, 2025, \$38,115. Both invoices included a 10% customer appreciation discount and a 2% discount for early payment, the March 6, 2025 invoice indicating

“within 72 hours”. Engelhart also provided a copy of an April 21, 2025, Workers’ Compensation Board – Alberta account clearance letter for Gemini Contracting.

[14] On August 30, 2025, Mr. Kpoanu emailed Engelhart Construction asking that they confirm the following:

Based on our conversations, you indicated Perry Nordin, our General Manager at the time had indicated you [*sic*] to that Gemini Contracting was a non-union arm of Elite Scaffolding Systems Inc. and proceeded to provide you with a revised quote to perform the work at a cheaper cost.

[15] On September 2, 2025, Engelhart Construction responded, “please see my response below in red”:

Yes, from what I recall, Perry called me up and offered a cheaper price if we used his non-union company and paid the invoice quickly. I believe the payment was requested to be paid around 72 hours.

[16] I am satisfied that this evidence supports a reasonable claim that Mr. Nordin and/or Gemini appropriated work from Elite.

2. Has Elite established a relationship with the third party from whom the information is sought, such that it establishes that the third party is somehow involved in the acts complained of?

[17] The short answer is yes.

[18] As the Court of Appeal has recognized, financial institutions are often innocently and unwittingly “mixed up” in wrongdoings: *B(A) v D(C)*, 2008 ABCA 51 (*ABCD*) at para 14, affirming 2007 ABQB 516. The evidence before me suggests that at least 5 financial institutions may be involved in the Respondents' alleged wrongdoing.

[19] Elite’s records revealed documentation suggesting that the Respondents maintained accounts at, or used services of, the Bank of Montreal, the Toronto-Dominion Bank, the Bank of Nova Scotia, First Calgary Financial, and Alberta Treasury Branches; and that Ms. Nordin had a banking relationship with the Bank of Montreal. The evidence goes beyond a bare assertion of customer status. In particular, Elite located a March 31, 2025 to April 30, 2025 TD account statement in Mr. Nordin’s name showing a deposit of \$38,115 on April 22, 2025 with a description “Engelhart Const MSP”, closely matching Engelhart’s payment information described earlier in these reasons. Elite also discovered a void cheque for a Bank of Montreal account held in Gemini’s name in Ms. Nordin’s Elite outbox, attached to an email chain related to work Gemini completed for Bedrock Natural Stone. On this record, I am satisfied that the identified institutions are plausibly “mixed up” (innocently) in the alleged wrongdoing by having processed or held relevant transactions or account information connected to the alleged diversion and receipt of funds.

[20] I am satisfied that Elite has established a relationship with the aforementioned financial institutions, establishing their innocent and unwitting involvement in the acts complained of.

3. Has Elite established that the third party is the only practicable source of the information available?

[21] The short answer is yes.

[22] The unchallenged evidence before me is that Mr. Nordin and Ms. Nordin would send quotes based on union rates, on behalf of Elite to Elite's customers. Elite alleges that, in some instances, they then prepared a lesser quote for the same work, representing that the work would be done by Gemini, which they characterized as a non-union arm of Elite. Elite further alleges that work was then done using Elite resources, while Gemini, not Elite, was paid for the work.

[23] In questioning, Mr. Kpoanu acknowledged that the instances described in the Supporting Affidavit comprise the sum of those instances he is presently aware of where work has been diverted from Elite in favour of the Respondents. That is not particularly surprising given that the evidence demonstrates that Mr. Nordin, in particular, used his personal email address to conduct Gemini business. Further, during questioning, Mr. Kpoanu explained that he was aware of evidence suggesting that Elite emails had been deleted and that Elite records may have been tampered with. On the record before me, I conclude that the extent of the alleged wrongdoing cannot be fully ascertained through Elite's internal records alone.

[24] I am also satisfied that the ordinary discovery process, on its own, would be inadequate to allow Elite to fully gather and test evidence of the alleged diversion and to fully ascertain the extent of the alleged loss. This is a case where independent third-party records are sought to corroborate (or refute) what may be obtained from the Respondents through discovery and to permit tracing of payments. As noted in *Musson Cattell Mackey Partnership Architects Designers Planners v Maki*, 2014 BCSC 2439 (*Maki*) at para 22, the court may consider whether the evidence can realistically be obtained through ordinary steps. I accept Mr. Kpoanu's evidence that when he confronted Mr. Nordin in July 2025, asking him whether he had ever done work for Engelhart, Mr. Nordin denied it, notwithstanding the documentary record obtained from Engelhart. In these circumstances, limiting Elite to discovery alone would leave it without a practicable means to independently verify completeness and to trace proceeds.

[25] Further, the cases cited by the Respondent for the proposition that a Norwich Order should not be granted if the normal discovery process would suffice are all distinguishable. In *AARC*, Justice Dilts found that the alleged wrongdoers were already known and that the application did not seek to identify unknown wrongdoers, evaluate a cause of action, or trace and preserve assets. Rather, the third parties against whom the Norwich Order was proposed to be obtained were not the only sources of the information sought, and the information had already been addressed in questioning of the defendants.

[26] The facts here are also distinguishable from those in *ABCD*. That case involved an application to ascertain whether 5 individuals and corporations controlled by them were involved in fraud, theft or misappropriation of the plaintiff's funds and identify other potential wrongdoers, to find and preserve evidence that may substantiate or support an action against them, and to trace and preserve funds in those individuals' bank accounts. In the Queen's Bench, the application failed because the applicants were unable to establish a valid, *bona fide*, claim against the unknown potential defendants (para 29, QB Decision), alternate practicable sources of information existed (para 33, QB Decision), and the plaintiff already had all the information it required (para 40, QB Decision). In upholding the Queen's Bench decision, the Court of Appeal posited that the applicant had offered "no valid reason why the normal discovery process" would not suffice (para 17, CA Decision).

[27] As I previously found, in this case, the ordinary discovery process will not suffice, on its own, because it is not a practicable substitute for obtaining independent third-party transaction

records that can corroborate what is produced and permit tracing of proceeds. When confronted, the Respondents denied knowledge of the Engelhart work, notwithstanding the evidence described above. Even if the Respondents provide information in discovery, without independent records, Elite would have a limited ability to test completeness and accuracy in respect of payments received, the routing of funds, and any onward transfers. In my view, the third-party financial institutions are the only practicable independent source of transaction-level evidence necessary for tracing and verification on the record before me.

[28] *Worthware Systems International Inc. v Raysoft Inc.*, 2022 FC 1492 is also distinguishable, *inter alia*, because the application constituted a collateral attack on a previous order, the third party was not the sole source of information, the application was made 4 years after the action was commenced, and the plaintiff knew “from the outset all of the key facts about how the alleged infringement operated” (para 31).

[29] I also find that *GEA Group AG v Flex-N-Gate Corporation*, 2009 ONCA 619 is distinguishable because (at para 98) “many of the critical facts necessary to advance such causes of action were in GEA’s possession” including (at para 99) “the nature, timing, and apparent purpose of the frauds were known, as was the identity of the suspected wrongdoer or wrongdoers” and (at para 101) “substantial evidence existed concerning the alleged fraudulent conveyances”.

4. Can the third party be indemnified for costs to which the third party may be exposed because of the disclosure, including the associated expenses of complying with the order?

[30] Elite has provided its undertaking to indemnify the third parties.

5. Do the interests of justice favour the obtaining of the disclosure?

[31] The Respondents argue that Elite has not satisfied this factor because the normal discovery process suffices and because there is little risk that the sought financial information will disappear or that the financial institutions will destroy banking records.

[32] I have previously explained why I have concluded that the ordinary discovery process will not suffice on its own in this case. Although financial institutions are subject to statutory record-retention regimes, they are not required to keep records indefinitely. As time passes, there is an increasing risk that the sought records will no longer be readily locatable or will have been destroyed in the ordinary course. As of the date of the hearing before me, the Respondents had not yet filed a Statement of Defence. Instead, they had sought particulars to the statement of claim, and I was advised that a special application to deal with that contested matter before an Applications Judge had been scheduled. In assessing the interests of justice, I also consider proportionality and the countervailing interests engaged by compelled disclosure of banking information, including confidentiality and privacy. Here, the order is sought for the legitimate purpose of tracing and verifying payments allegedly received in connection with diverted work, and the evidence provides a reasonable basis to believe the requested information will materially assist in doing so. The financial institutions are, on the record before me, innocently “mixed up” in the alleged wrongdoing. The Applicant has provided an undertaking to indemnify the third parties for reasonable compliance costs. Balancing these considerations, and given the apparent strength of Elite’s *bona fide* claim on the evidence before me, the Respondents’ demonstrated lack of candour when confronted about the Engelhart work, and the fact that disclosure through

the ordinary discovery process is, at best, months away, I conclude that the interests of justice favour granting the Norwich Order on terms that are limited to what is reasonably necessary for the purposes of tracing and verification.

[33] For all of these reasons, the application is granted, and a Norwich Order shall issue.

Heard on March 4, 2026.

Dated at Calgary, Alberta, on April 27, 2026.

M.H. Bourque
J.C.K.B.A.

Appearances:

Justin Lambert, Bennett Jones LLP
for the Applicant

Ryan Pelletier, Pelletier Litigation
for the Respondent