Federal Court Cour fédérale

Date: 20250317

Docket: T-1059-22

Citation: 2025 FC 491

Edmonton, Alberta, March 17, 2025

PRESENT: Madam Associate Judge Catherine A. Coughlan

BETWEEN:

SEYLYNN (NORTH SHORE) DEVELOPMENT LIMITED PARTNERSHIP

Plaintiff

and

DENNA HOMES GROUP and ABO TAHERI

Defendants

AND BETWEEN:

ABO TAHERI

Plaintiff by Counterclaim

and

SEYLYNN (NORTH SHORE) DEVELOPMENT LIMITED PARTNERSHIP, SEYLYNN (NORTH SHORE) PROPERTIES PHASE II LIMITED PARTNERSHIP, DENNA HOMES GROUP, DENNA DEVELOPMENT CORP., DENNA PROPERTIES CORP., and ABBASALI SHAPOUR HOSSEINI

Defendants by Counterclaim

ORDER AND REASONS

[1] The Plaintiff/Defendant by Counterclaim, Dr. Abbasali Shapour Hosseini (Dr. Hosseini), brings this motion for an order granting him relief from the implied undertaking rule, so that he may use transcripts from the examinations for discovery of the Plaintiff by Counterclaim, Dr. Abo Taheri (Dr. Taheri), in a separate proceeding in the British Columbia Supreme Court. That proceeding, styled as *Mirage Trading Corporation v Rouzbeh Rabiei Ghahroud and others*, Vancouver Registry, SCBC action no. S-244258, is a Petition for shareholder oppression (the "Shareholder Oppression Proceeding").

[2] Dr. Taheri opposes the relief sought on the basis that Dr. Hosseini has not met his onus to show that such broad and exceptional relief should be granted, and, in any case, he contends that he would suffer prejudice if the relief were granted.

[3] For the reasons that follow, I am not persuaded that the relief should be granted and accordingly, the motion will be dismissed.

I. Background

A. *Federal Court Action*

[4] The underlying action in this Court was commenced by a Statement of Claim issued in 2022 (the "Trademark Proceeding"). The action concerns the ownership, use, infringement, and passing off of certain trademarks and trade names — the DENNA Trademarks and Trade Names. The Plaintiff/Defendant by Counterclaim, Seylynn (North Shore) Development Limited Partnership (Seylynn LP), alleges that it owns the DENNA Trademarks and Trade Names.

[5] By Counterclaim, Dr. Taheri asserts ownership based on his use of DENNA in Iran beginning in 1995. Dr. Taheri claims that with his express permission and licence, Seylynn LP only used the DENNA Trademarks and Trade Names beginning in 2011. That licence to use the DENNA Trademark, Dr. Taheri asserts, was contingent upon his continued involvement in managing the Seylynn limited partners (LPs). In April 2021, Dr. Taheri claims the licence was revoked when he was ousted as a managing partner. The ouster involved the LPs' limited partners, including Teknocan Properties Inc. (Teknocan) and Pan Pacific Business Corporation (Pan Pacific). Dr. Hosseini is the director and shareholder of Pan Pacific.

[6] The action has progressed as a specially managed proceeding. On February 29, 2024, at the request of the parties, I issued a Protective Order. That Order protects and maintains the confidentiality of specific documents, information, and transcripts to be produced during the course of the proceeding. Included in the Protective Order is a provision delineating the requirements of the implied undertaking rule as follows: "[u]nless otherwise specifically indicated, nothing in this Order is intended to vary or modify the implied undertaking rule." The Order also provides that all information should be kept confidential and should not be disclosed to anyone except in accordance with the terms of the Order.

[7] Examinations for discovery were completed earlier this year. Dr. Taheri was examined on January 22, 2025, and January 24, 2025. It is the resulting transcripts that are subject of this motion.

B. *Shareholder Oppression Petition*

[8] On June 21, 2024, pursuant to section 227 of the *Business Corporations Act*, SBC 2002, c 57, Mirage Trading Corporation (Mirage) commenced a Shareholder Oppression Proceeding by

way of Petition in the British Columbia Supreme Court. Dr. Taheri is a shareholder and manager of Mirage. The Petition was initially served on Rouzbeh Rabiei (Mr. Rabiei), Teknocan, and MAJ Enterprises Inc. On July 5, 2024, additional parties applied to be added as parties. In an Order dated August 26, 2024, Norseyl Properties Ltd., AXA Consulting Services Inc., and Pan Pacific were added as parties to the Shareholder Oppression Proceeding.

[9] In the Shareholder Oppression Proceeding, Mirage alleges that based on its minority shareholding in Teknocan, it reasonably believed and expected that Dr. Taheri would have a seat on the board of directors of Teknocan and have a role in the management of Teknocan. Further, Mirage asserts that Dr. Taheri was the sole director of Teknocan from its incorporation in 2011 until 2020. Thereafter, Mr. Rabiei nominated himself to become a director of Teknocan and in 2022, Dr. Taheri was removed from the board.

[10] Among other relief, Mirage seeks an Order that it be bought out of Teknocan at fair market value. In support of the Shareholder Oppression Proceeding, Dr. Taheri swore two affidavits: one dated June 7, 2024, and a second on November 21, 2024. Dr. Taheri was not cross-examined on either of his affidavits.

[11] The Shareholder Oppression Proceeding is scheduled for hearing on April 28, 2025. The Petition will be heard based on the affidavit evidence filed by the parties and the submissions of counsel; there is no oral witness testimony.

C. *Present motion*

[12] On January 28, 2025, immediately following the examination for discovery of Dr. Taheri in the Trademark Proceeding, counsel for Dr. Hosseini requested that Dr. Taheri consent to release

Dr. Hosseini from the implied undertaking of confidentiality in respect of the discovery transcripts for use in the Shareholder Oppression Proceeding. When Dr. Taheri refused, Dr. Hosseini filed the present motion.

[13] Dr. Hosseini advances two main arguments in support of his motion. First, he asserts that the material facts underpinning both proceedings are substantially the same as are some of the parties. Thus, he argues, there should be virtually no prejudice to Dr. Taheri if Dr. Hosseini is permitted to introduce the examination for discovery transcripts in the Shareholder Oppression Proceeding. Second, Dr. Hosseini claims that Dr. Taheri's affidavit evidence is at odds with his evidence taken on discovery and the public interest supports the lifting of the implied undertaking in such circumstances for the purposes of impeachment.

II. Legal Principles

[14] "The implied undertaking rule precludes a party to a civil proceeding from using information another party was compelled to produce for any purpose other than that proceeding": *Iris Technologies Inc v Canada*, 2024 FCA 36 at para 1 [*Iris*]. The undertaking applies automatically and is a continuing obligation that survives the end of litigation and is extinguished only when the information is used in open court or is otherwise made public: *Iris* at para 1; *Juman v Doucette*, 2008 SCC 8, [2008] SCR 157 [*Juman*]; *Fibrogen, Inc v Akebia Therapeutics Inc*, 2022 FCA 135 [*Fibrogen*].

[15] The common law doctrine of implied undertaking is well-entrenched and exists whether there is also a protective order or confidentiality agreement between the parties. As described by Mr. Justice Rennie, "[t]he [implied] undertaking is made to the Court and is enforceable by

motion": *Fibrogen* at para 44. Its objective is to preserve, as much as practicable, a litigant's privacy rights in the face of full and compulsory discovery: *Live Face on Web, LLC v Soldan Fence and Metals (2009) Ltd*, 2017 FC 858 at para 12.

[16] As the Supreme Court of Canada counsels in *Juman*, the implied undertaking is not to be interfered with lightly. Nevertheless, courts retain discretion to grant relief against the implied undertaking where there are "exceptional circumstances" warranting such relief. On a motion for relief, the applicant must demonstrate to the court, on a balance of probabilities, the existence of a public interest of greater weight than the values the implied undertaking is designed to protect: the efficient conduct of litigation and privacy: *Juman* at para 32.

[17] This requires the court to evaluate the existence of a special circumstance and to weigh the injustice between the parties should the relief be granted: *Visx Inc v Nidek Co*, 1998 CanLII 7628 at paras 4-5 (FC); *Juman* at para 41.

III. Analysis

A. *Are there any exceptional circumstances?*

[18] In *Juman*, the Supreme Court of Canada affirmed that if discovery material in one action is sought to be used in another action with the same or similar parties and the same or similar issues, the prejudice to the examinee is virtually non-existent and leave should be granted: *Sanofi-Aventis Canada Inc*, 2008 FC 320 at para 21; *Gleadow v Nomura Canada Inc*, [1996] OJ No 668 at para 9 (Ont. Gen. Div.)(QL/Lexis).

[19] Dr. Hosseini argues that in the Shareholder Oppression Proceeding, the Court will have to consider the reasonable expectations of the parties and examine the parties' conduct to determine whether there were any reasonable expectations: *BCE v 1976 Debentureholders*, 2008 SCC 69. To assist in that inquiry, Dr. Hosseini asserts that he needs to rely on the transcripts from the trademark examinations to challenge Dr. Taheri's reasonable expectations in the Shareholder Oppression Proceeding.

[20] Dr. Hosseini acknowledges that the issues are not the same in both proceedings, but he claims that there are issues, including Dr. Taheri's alleged ouster from Teknocan, that are common to both proceedings. Further, he urges the Court to rely on British Columbia jurisprudence for the proposition that the onus of showing a sufficient connection between the two proceedings is not heavy and that any doubt should be resolved in favour of the moving party: *Norseyl Properties Ltd v Mirage Trading Corporation*, 2024 BCSC 1990 [*Norseyl*] at para 22; *Knight Piesold Ltd v Tercon Contractors Ltd*, 1998 CanLII 5684 (BC SC) [*Scuzzy Creek Hydro & Power Inc v Tercon Contractors*] at para 20 [*Scuzzy*].

[21] Dr. Taheri disagrees that the parties and issues are similar. In fact, Dr. Taheri argues that there is no connection between the proceedings and Dr. Hossieni has failed to demonstrate the requisite nexus between the proceedings to support the relief sought.

[22] Further, Dr. Taheri argues that there is no evidence before the Court as to the manner in which the transcripts will be used. This failure to explain the intended use to which the transcripts will be put is, Dr. Taheri claims, fatal to the motion.

[23] In my view, while it may be arguable that there is some commonality between the parties in each proceeding in the sense that Dr. Taheri and Dr. Hosseini are directors and shareholders of Mirage and Pan Pacific, respectively, it is beyond doubt that in their personal capacities, neither Dr. Taheri nor Dr. Hosseini are parties to the Shareholder Oppression Proceeding.

[24] Equally, I am not persuaded that the issues are similar or that they overlap. The discovery transcripts were created in the context of a trademark proceeding. While that proceeding might tangentially touch upon issues that may also be live in the Shareholder Oppression Proceeding, fundamentally, the relief sought in each proceeding is different. The trademark action is directed at the ownership and use of the DENNA Trademark and Trade Names. Issues with respect to Dr. Taheri's ouster will not resolve the ownership issue. As noted in *Juman* at para 36:

> … courts have generally not favoured attempts to use the discovered materials for extraneous purpose, or for an action wholly unrelated to the purposes of the proceeding in which discovery was obtained in the absence of some compelling public interest …

[25] In my view, Dr. Hosseini has failed to demonstrate the commonality of parties and issues sufficient to warrant granting the discretionary relief. I pause to note that I would have come to that conclusion whether my assessment was based on a balance of probabilities or on the lower standard urged upon me in *Norseyl* — the outcome would not have changed. I hasten to add that in *Scuzzy*, the British Columbia Supreme Court qualified this lower threshold's application to circumstances where there is no evidence that substantial detriment or injustice will be done to the witness. More will be said of that later in these reasons.

B. ***Is there a public interest of greater weight?***

[26] Dr. Hosseini relies on this Court's decision in *Gilead Sciences, Inc v Teva Canada Ltd,* 2016 FC 31 [*Gilead Sciences*], to argue that privacy interests protected by the implied undertaking rule will yield to a higher public interest if a deponent has previously given inconsistent or contradictory evidence. Dr. Hosseini argues that *Gilead Sciences* is consistent with the general principle that it is in the interests of justice to ensure a party relies upon consistent versions of the same facts across different proceedings.

[27] In his motion materials, Dr. Hosseini appends a chart setting out a list of 18 alleged inconsistencies between Dr. Taheri's two affidavits and answers given during examinations for discovery. Dr. Hosseini asserts that his justification for relief from the implied undertaking is rooted in the inconsistent evidence provided by Dr. Taheri in the two proceedings: *Lac d'Amiante du Québec Ltée v 2858-0702 Québec Inc*, 2001 SCC 51 at para 77. Specifically, Dr. Hosseini argues that this inconsistent evidence should not be kept from the British Columbia Supreme Court, owing to the significant relief Dr. Taheri is seeking from Dr. Hosseini's company, Pan Pacific. Further, Dr. Hosseini posits that if he is not relieved from the implied undertaking rule, the judge presiding over the Shareholder Oppression Proceeding will be deprived of relevant evidence demonstrating Dr. Taheri's inconsistent evidence on material issues, thus undermining the court's "fact-finding mission."

[28] In his response, Dr. Taheri acknowledges the potential impeachment function that appropriately attaches to the use of the transcripts but argues that Dr. Hosseini is simply trying to impeach his credibility at large and in the absence of a fair process. First, he notes that the

18 allegedly inconsistent responses either reveal no inconsistencies at all or are taken out of context and clarified elsewhere in the transcripts.

[29] Second, he argues that using the transcripts to impeach prior inconsistent evidence is highly prejudicial because Dr. Hosseini failed to challenge the alleged inconsistencies properly by putting them to Dr. Taheri and allowing him the opportunity to respond. This, he says, offends the rule in *Browne v Dunn*, 1893 CanLII 65 (FOREP), requiring a party who seeks to challenge the credibility of a witness by calling contradictory evidence to give the witness the opportunity to address the alleged inconsistency.

[30] Third, Dr. Taheri argues that Dr. Hosseini had the opportunity to cross-examine him on his affidavits but did not do so. In addition, although the examinations for discovery were held months after the affidavits were filed, Dr. Hosseini failed to put to the alleged inconsistencies to Dr. Taheri during the examinations. It was only the day after the examinations concluded that Dr. Hosseini requested that Dr. Taheri waive the implied undertaking.

[31] Fourth, Dr. Hosseini has failed to tender evidence in this motion specifying how the transcripts will be used to impeach Dr. Taheri's credibility in the Shareholder Oppression Proceeding. Dr. Taheri notes that the Shareholder Oppression Proceeding will not have live witnesses and there is no opportunity for him to respond to the allegations of inconsistent evidence. This, Dr. Taheri asserts is highly prejudicial.

[32] On this latter point, and before me, counsel for Dr. Hosseini suggested that any concerns about procedural fairness are “red herrings” because the British Columbia Supreme Court will have procedural safeguards in place to prevent any abuses. In any case, Dr. Hosseini contends that Dr. Taheri can simply file an affidavit in response if he chooses to do so.

[33] While I am confident that all courts in Canada operate within procedurally fair guardrails, the fact remains that Dr. Hosseini has not filed any evidence in this motion as to how he intends to use the transcripts. If the intended use is for the purposes of impeachment, he has failed to put the alleged inconsistencies to Dr. Taheri and afford him the opportunity to explain them. Dr. Hosseini had Dr. Taheri’s affidavits for months before the examinations but did not put the alleged inconsistent evidence to Dr. Taheri during the examinations. Although counsel for Dr. Hosseini attempted to justify this failing by saying that he could not have anticipated Dr. Taheri changing his evidence, the fact remains that the two days of examinations were held over the course of three days. That gave the examining party an opportunity to review the evidence provided on the first day of examination and address any purported inconsistencies on the second day. Dr. Hosseini simply failed to avail himself of the opportunities he had to challenge Dr. Taheri’s evidence. That failure does not justify the granting of exceptional relief.

[34] I am satisfied that Dr. Hosseini’s failure to file evidence as to how the transcripts will be used and the obvious potential for prejudice to Dr. Taheri is fatal to his motion. To grant the relief would be improper and would run afoul the proper administration of justice.

[35] Accordingly, I am not persuaded that I should grant the exceptional relief sought and the motion is dismissed.

IV. Costs

[36] Dr. Taheri seeks his costs of this motion. As the successful party, I see no reason to depart from the presumption that the successful party is entitled to costs. The submissions did not address the quantum of costs and if the parties are unable to agree on a quantum, they may submit written submissions not to exceed five pages within 20 days of the date of this Order.

ORDER in T-1059-22

THIS COURT ORDERS that:

1. The motion is dismissed.

2. Dr. Taheri shall have his costs in this matter.

3. The parties shall, within 20 days from the date of this Order, if they are unable to agree on a quantum of costs, serve and file written submissions not exceeding five pages.

"Catherine A. Coughlan"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1059-22
STYLE OF CAUSE:	SEYLYNN (NORTH SHORE) DEVELOPMENT LIMITED PARTNERSHIP v DENNA HOMES GROUP AND ABO TAHERI and ABO TAHERI v SEYLYNN (NORTH SHORE) DEVELOPMENT LIMITED PARTNERSHIP, SEYLYNN (NORTH SHORE) PROPERTIES PHASE II LIMITED PARTNERSHIP, DENNA HOMES GROUP, DENNA DEVELOPMENT CORP., DENNA PROPERTIES CORP., AND ABBASALI SHAPOUR HOSSEINI
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DATED:	MARCH 17, 2025

APPEARANCES:

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