

CITATION: Rastorguev v. Granatex, 2023 ONSC 2870
COURT FILE NO.: CV-18-7607
DATE: 2023 05 12

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Ilya Rastorguev, Andrey Rastorguev and Margarita Tirskikh, Plaintiffs

AND:

Granatex Construction Corp., Gro Holding Corporation, Mariusz Granat and Nicol Granat, Defendants

BEFORE: Conlan J.

COUNSEL: Mr. O. Bykov, for the Plaintiffs

Ms. J. Hamilton, for the Defendants

HEARD: May 10, 2023

ENDORSEMENT ON MOTION

I. The Background

[1] In Milton, on May 10, 2023, the Court heard a short motion brought by the Plaintiffs, Ilya Rastorguev, Andrey Rastorguev, and Margarita Tirskikh. They want to amend their Statement of Claim. The Defendants, Granatex Construction Corp., Gro Holding Corporation, Mariusz Granat, and Nicol Granat, oppose the motion.

[2] The current Statement of Claim asks for, among many other things, specific performance of two share purchase agreements and equitable damages in the amount of \$1,500,000.00.

[3] The proposed amendments to the Statement of Claim are substantial and include multiple claims for general damages.

[4] On November 16, 2021, Justice Chozik heard a motion brought by the Defendants, seeking an order for specific performance of the said share purchase agreements. In Her Honour's Endorsement dated November 22, 2021, the Defendants' motion was granted.

Substantial indemnity costs were ordered against the Plaintiffs. It was not a difficult decision for Her Honour to make. As was pointed out in Justice Chozik’s Endorsement, “[s]pecific performance was sought by the plaintiffs in their Statement of Claim. Specific performance was agreed to by the defendants in their Statement of Defence...[t]o continue this litigation when there is agreement as to the result of the action amounts to an abuse of the court’s process...”.

[5] On February 7, 2022, Justice Mills heard a motion for directions to settle the wording of the releases, the parties having then already executed the share purchase agreements. Justice Mills sided with the Defendants and, again, substantial indemnity costs were awarded against the Plaintiffs. In Her Honour’s Endorsement, Justice Mills stated that “[t]he releases attached to the signed share purchase agreements dated December 6, 2021 shall therefore be amended to include the following language: ‘...the Releasors...shall be at liberty to continue their claims or counterclaims (as the case may be) as set out therein for: (a) equitable damages or compensation that may be available arising from the delay in the performance of the share purchase agreements...which agreements were ordered to be specifically performed by Justice Chozik...’”.

II. Decision

[6] The Court shall grant leave to amend the Statement of Claim on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment – Rule 26.01 of the *Rules of Civil Procedure*.

[7] In my view, a clear example of prejudice that cannot be compensated for by costs or an adjournment is to permit a party to amend its pleading in a way that runs directly contrary to a court order made previously in the same proceeding. That, I find, is precisely what the Plaintiffs are trying to do here.

[8] In making the Order that Her Honour did on February 7, 2022, Justice Mills was clearly delineating what residual claims could proceed to trial, in other words, what residual claims were not captured by the releases attached to the two share purchase agreements that had been specifically performed. Those residual claims that could proceed to trial, as per the Order of

Justice Mills, were those for “equitable damages or compensation...arising from the delay in the performance of the share purchase agreements”.

[9] Yet, in the face of that Order, and the unequivocal wording of it, the Plaintiffs now propose to, just five months before the scheduled trial date in October 2023, substantially amend the Statement of Claim to ask for general damages, and general damages that have nothing to do with any delay in the performance of the share purchase agreements.

[10] The general damages being sought in the proposed amendments are with regard to one of the Defendant’s alleged failure to file corporate taxes (paragraph 41 of the draft Amended Claim), that same Defendant’s alleged misappropriation of income from a specific project (paragraph 50 of the draft Amended Claim), a Ford F150 truck that has allegedly not been returned by the Defendants (paragraph 52 of the draft Amended Claim), and other items. These are not matters that could possibly come under the umbrella of permissible claims for trial not captured by the releases, as per the Order of Mills J. They are, really, entirely new claims that are not part of the same factual matrix that underlies the dispute between the parties.

[11] For these reasons, the proposed amendments to the Statement of Claim cannot be allowed. The Plaintiffs’ motion is, therefore, dismissed.

[12] The Court will receive written submissions on costs if they cannot be resolved between the parties. The successful Defendants shall file their written submissions within thirty (30) calendar days after the date of this Endorsement, and the Plaintiffs shall file their written submissions within fifteen (15) calendar days after their counsel is in receipt of the Defendants’ submissions. No reply is permitted. Each submission shall be limited strictly to two pages in length, excluding attachments.

Conlan J.

Date: May 12, 2023