

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stiftung v. Abadian*,
2025 BCSC 2586

Date: 20251211
Docket: S2210261
Registry: Vancouver

Between:

Benuva Stiftung

Plaintiff
Defendant by way of Counterclaim

And:

Sean Abadian aka Ehsan Abadian and Sea Investments Ltd.

Defendants
Plaintiffs by way of Counterclaim

And:

Amir Abadian

Defendant

Before: The Honourable Justice Dley

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

M. Nied

Counsel for the Defendants Sean Abadian
aka Ehsan Abadian and Sea Investments
Ltd.:

D.L.R. Yaverbaum

Place and Date of Hearing:

Vancouver, B.C.
December 11, 2025

Place and Date of Judgment:

Vancouver, B.C.
December 11, 2025

[1] **THE COURT:** This is an application made by the defendant asking that a scheduled examination for discovery be postponed until at least March 15, 2026.

[2] This action was commenced in December of 2022. The plaintiff claims that the defendants owe approximately \$20 million with respect to moneys advanced.

[3] The plaintiff had brought a summary judgment application. That was adjourned on the basis that an examination for discovery of the defendant was necessary. I am advised that no trial date has been set because the plaintiff intends to proceed summarily with the information that might be derived from an examination for discovery of the defendant.

[4] The facts that lead up to this application are somewhat in dispute, and it depends upon which version of facts is correct. The plaintiff argues that they have been seeking examination for discovery dates and that the defendant has not been agreeable. The defendant's position is that he has been agreeable, but it is only as a result of medical issues that he is unable to attend for an examination for discovery now. He says that based on his doctor's report, the examination should be postponed for some three to four months, which would put us into February or March, as he prefers.

[5] The defendant's assets have been frozen as a result of a Mareva injunction. Negotiations had taken place between the parties. The defendant had requested a \$200,000 advance from the frozen assets in order to fund ongoing litigation. It was finally agreed that \$60,000 would be advanced to the solicitors for the defendant, and everyone agreed that the defendant would attend for an examination for discovery on October 28, 2025.

[6] The issue of the advance had been proposed as far back as April of 2025. It was apparent that counsel for the defendant was engaged in a lengthy trial and would not be available until some time in the fall. The funds were released to counsel for the defendant on or about October 14, 2025.

[7] On October 17, counsel for the defendant wrote and indicated that the defendant would be unable to attend as a result of a medical opinion. Counsel was refusing to release the medical opinion. The medical opinion is dated October 14, 2025. Dr. Barnett writes:

To whom it may concern:

For medical reasons, I have advised my patient, Ehsan Abadian, that he should delay or postpone a court discovery planned for the end of this month for at least three to four months. It would adversely affect his health if it was to go forward at this time.

[8] Counsel for the plaintiff then sought to set another date and provided an appointment to discover for December 1, 2025. Discussions had taken place where counsel for the defendant had indicated that they were going to file an application to adjourn the discovery. Ultimately, that application was filed returnable December 3, after the appointed discovery date.

[9] A medical report has now been provided dated November 3, 2025, from Dr. Barnett, and she provides further information. She writes:

To whom it may concern:

My patient, Mr. Abadian, has depression and anxiety accompanied by trauma-related symptoms, including suicidal ideation and memory impairment. It is my opinion that participating in a court discovery at this time would expose him to a highly stressful and potentially hostile environment which would significantly exacerbate his mental-health conditions and place him at risk of self-harm. Given his current state, I strongly recommend that the upcoming court discovery be postponed for a period of approximately three to four months. This delay would allow Mr. Abadian sufficient time to continue receiving therapy, medical care, and supportive rehabilitation. Following this period, his condition can be reassessed to determine his ability to participate safely.

Furthermore, I advise that any future court discovery be conducted virtually, with frequent breaks and if necessary divided into multiple shorter sessions. The proceeding should take place in a controlled and supportive environment, such as his home, to minimize psychological distress and ensure his well being. These recommendations are made in the interest of Mr. Abadian's health and safety and to ensure any legal process involving him proceeds in a manner that is both humane and medically appropriate.

[10] Counsel for the plaintiff has indicated that they would be amenable to a further examination for discovery date in late January. That is in accordance with a

letter dated October 17, 2025, from defendant's counsel, who in anticipation of the October 28 examination for discovery said the following:

We write with respect to the upcoming discovery of Mr. Abadian scheduled for October 28, 2025. Mr. Abadian's physician has recommended this week that Mr. Abadian should delay this discovery for three to four months. We have a note from Mr. Abadian's doctor providing this recommendation, which we can provide if required. The medical reasons for this postponement are unrelated to the facts at issue in the action, and for privacy reasons we do not intend to disclose them. We would propose that the examination be set for the week of January 26, 2025.

[11] Counsel now resiles from that position saying that the most recent letter from Dr. Barnett would extend that three to four months and push the anticipated discovery date into February.

[12] I have been referred to the decision of Justice Dillon in *Wei v. Chiu*, 2019 BCSC 441. At para. 35, Justice Dillon states that any excuse given for non-attendance must be examined in the context of the history of steps taken to examine for discovery. At para. 38, the Dillon J. states:

[38] The other doctors' notes are quite simply inadequate to provide lawful excuse for failure to attend at an examination for discovery. Stress itself is unlikely to found lawful excuse (*Dhillon* at para. 79; *Han v. Cho*, 2008 BCSC 1621, at para. 20). The standard is that it is medically impossible to attend, or that the party is physically incapable of attending (*Dhillon* at para. 79; *Kalcsa v. Read Media Inc.*, 2016 BCSC 248, at para. 20).

[13] In referring to *Wei*, I do not take those passages to preclude excuses that relate to mental health. If a party's mental health is to be affected to such a state that it would create harm, then that is a significant factor to consider.

[14] In assessing the overall contextual background of this application, it becomes apparent that any dates that are to be set between counsel are always going to be subject to cancellation by the defendant based on health reasons. Dr. Barnett had alerted everyone to that prospect because she says in her November 3 letter that even though the upcoming court discovery should be postponed for approximately three to four months, Mr. Abadian's condition would still need to be reassessed in order to determine his ability to participate safely.

[15] The inferences that I draw from all the evidence that I have been referred to, is that Mr. Abadian simply does not wish to attend an examination for discovery.

[16] In my view, it is simply too coincidental that the advance was made to counsel in exchange for an agreement to an examination for discovery. Once the money was paid, then the issue of medical disability arose.

[17] I am also cognizant that Mr. Abadian has participated in other court proceedings since his initial diagnosis in 2019 of mental-health issues.

[18] In my view, there is prejudice to the plaintiff if the examination for discovery is simply put off on an indefinite basis. Litigation is to be conducted, hopefully, in a speedy and convenient fashion to all parties.

[19] What has occurred here, simply adds to the expense and often times the criticism of the justice system, where cases take far too long to complete and result in a series of unnecessary applications, all of which cost time and expense.

[20] In my view, the proposals that have been set forward by the plaintiff are reasonable. It is suggested that if the examination for discovery is to be set at a future date, then the following should apply:

- 1) Mr. Abadian must attend for an examination for discovery no later than January 30, 2026.
- 2) Mr. Abadian shall forthwith provide the plaintiff with 10 dates that he would be available from January 12 to January 30.
- 3) Mr. Abadian may not take any steps in this proceeding until he submits to an examination for discovery.
- 4) If Mr. Abadian fails to attend the examination for discovery, his and the corporate defendants' defence and counterclaim should be struck.
- 5) Mr. Abadian must attend his examination for discovery in person.

[21] I am not in a position to rule at this stage on what the consequences should be if Mr. Abadian fails to attend, but I am in a position to make the order that he does attend. While I have commented favourably on the positions taken by the plaintiff, the only orders that I am prepared to make today are:

- 1) That Mr. Abadian attend for an examination for discovery no later than January 30, 2026.
- 2) That he provide forthwith, 10 dates that he is available for discovery between January 12 and January 30, 2026.
- 3) That he must attend his examination for discovery in person, and he is not permitted to demand frequent breaks other than in the ordinary course.

[22] Do counsel have submissions with respect to costs?

(SUBMISSIONS ON COSTS)

[23] THE COURT: All right. In the circumstances of this case, I find it unreasonable that the plaintiff has had to resort to the extent that they have. The plaintiff has a right to examine the opposing party for discovery. They have been roadblocked, in my view unreasonably, and accordingly I am going to order that costs be payable to the plaintiff in any event of the cause. They need not be paid forthwith.

“Dley J.”