

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Truly Social Games, LLC v. East Side Games Group Ltd.*,
2025 BCSC 1871

Date: 20250918
Docket: S231406
Registry: Vancouver

Between:

Truly Social Games, LLC and Truly Social Games Vancouver Inc.

Plaintiffs

And

**East Side Games Group Ltd., Eastside Games Inc., Jason Bailey,
Joshua Nilson, Andrew Bernard, Muhammed Bin Khalid, Beamble Inc., and
Hashbang Inc.**

Defendants

And

Patrick Tougas, Cooper Dubois, Craig Williams, Joe Bonar, and John Doe

Defendants by way of Counterclaim

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs and Defendants by
way of Counterclaim Patrick Tougas,
Cooper Dubois, Craig Williams, and Joe
Bonar:

T. Cohen, KC

Counsel for the Defendants Jason Bailey,
East Side Games Group Ltd., Eastside
Games Inc., and Joshua Nilson:

K. Scorer

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
September 15, 2025

Place and Date of Judgment:

Vancouver, B.C.
September 18, 2025

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, context, background, and citations if a transcript were to be ordered provided the final disposition did not change, particularly given that I issued the reasons on an urgent basis. I have made such edits without affecting the final disposition.

[2] The defendant applicants (the “Eastside Defendants”) seek an order for document disclosure by the plaintiffs and defendants by counterclaim, excluding John Doe (the “Truly Social Parties”).

[3] In addition to opposing the orders for what are the more typical reasons as to relevance and/or vagueness of the request, the Truly Social Parties also oppose the application on the basis that the disclosure being sought is too late and is being brought in what they describe as a strategic effort to compel an adjournment of the trial which is currently scheduled to commence on October 6, 2025, for 25 days. A trial adjournment application was set, I understand, for yesterday. I understand that reasons on that adjournment are being delivered on September 22, 2025.

Background

[4] By way of a very brief background, which I acknowledge is likely over simplistic, the underlying claims arise from an alleged breach of software development and publishing agreements (“Development Agreements”) and a membership interest purchase agreement (“MIPA”), between the plaintiffs and East Side Games Group Ltd. (“East Side”), involving various online games referred to as Archer, Fantasy Idle, Master, and Trailer Park Boys (the “Games”).

[5] The allegations, put briefly and in a non exhaustive summary, are that after an earlier successful partnership in developing and publishing prior games, the Truly Social Parties were induced into entering into the Development Agreement and the MIPA based on various representations or misrepresentations, including as to various supports that would be provided for the Games’ development, with those supports not being provided as agreed to and/or represented.

[6] A further allegation is that East Side wrongfully terminated the relationship and Development Agreements and MIPA, and conspired with the other defendants to deprive the Truly Social Parties of their revenue and/or intellectual property and confidential information regarding the Games.

[7] By way of counterclaim, the East Side Defendants allege that the Truly Social Parties used East Side's intellectual property and copyright information, including source codes, game mechanics, visual assets, and game play systems as developed under the Development Agreements and expressly assigned to East Side under those agreements, to develop or to clone that data and confidential information into new games which the Truly Social Parties then profited from, and that the defendant by counterclaim, Patrick Tougas, defamed East Side.

[8] In terms of the procedural history, the notice of civil claim was filed February 28, 2023, with a response and counterclaim being filed by the East Side Defendants on March 17, 2023, and the other defendants filing their response shortly thereafter. In the counterclaim, the East Side Defendants claim for damages from the plaintiffs' alleged breaches of the Development Agreements and MIPA, and other relief as noted above. An amended notice of civil claim was filed on January 8, 2024 to incorporate certain claims that had been advanced by the Truly Social Parties in a separate action filed in Oregon which was dismissed on the basis of *forum non conveniens*, with the amended response of the East Side Defendant then being filed January 8, 2024. A notice of trial setting the 25-day trial commencing on October 6, 2025 was filed on April 8, 2024.

[9] In a two-day hearing on June 3 and 4, 2024, the East Side Defendants sought to have the claim dismissed on a summary basis as well as security for costs. Reasons for those applications were issued on July 15, 2024, with both applications being dismissed and costs being awarded to the Truly Social Parties.

[10] The plaintiff filed its trial brief on August 8, 2025, and the East Side Defendants filed theirs on August 18, 2025. In the East Side Defendants' trial brief they specifically identified that they anticipated an application would be brought for

production of documents. On August 19, 2025, the East Side Defendants sought an adjournment of the trial by consent from the Truly Social Parties. On August 21, 2025, the Truly Social Parties did not consent to that adjournment request. This application was then filed August 25, 2025.

[11] Turning then to the history of the document production leading up to this application. There has been an extensive level of document production, which aside from the allegation of the Truly Social Parties that the extent of it constitutes a “document dump” by the East Side Defendants, the level and nature of documents or volume of documents is somewhat expected given the nature of the agreements between the parties, their business enterprises, and the claims being advanced.

[12] In short, in entering into this litigation it must have been with the full knowledge of the parties that this would be a document intensive case.

[13] The Truly Social Parties have, to date, delivered four lists of documents, those being delivered on April 30, 2024; May 30, 2024; January 24, 2025; and September 11, 2025. The demand for documents delivered to the Truly Social Parties by the East Side Defendants as is the basis for this application was delivered on August 16, 2024; in other words, before the plaintiff delivered its third and fourth list of documents.

[14] The demand indicates that it is being made pursuant to R. 7-1(10) and, alternatively, under R. 7-1(11) with broad categories of documents being requested with words such as “all documents related to” preceding various categories such as the “code base,” “code documentation, including without limitation, all user manuals, technical specifications, design documents, and coding guidelines” for all versions of the games or “all documents relating to internal communications, including chats, snapchats, emails, text messages, and letters between the plaintiffs and related parties, their employees or agents, in relation to the games, or such communication between them and “third parties.”

[15] There are some 20 categories of documents described in this manner set out in the letter, with an accompanying chart by which the basis of relevance of each category is set out.

[16] When no specific response was received, a follow-up letter was sent on December 11, 2024. In response, by letter of August 28, 2025, the Truly Social Parties advised that they disagreed as to the scope of relevance and that the requests were “overly broad, immaterial to the action, and in some circumstances not in keeping with the object of proportionality that is foundational to Rule 7-1 and the object of the *Rules*.”

[17] Counsel also noted that to review and provide documents was not proportional. For example, it is noted that “all document relating to code base for all versions of the two new games would, aside from the issue as to relevance, require a significant undertaking to accomplish and would require the Truly Social Parties to review confidential and copyrighted information when there are specific allegations as to the misuse by the East Side Defendants of such information.” As have the East Side Defendants, the Truly Social Parties provided a specific response to each category of demand in an included schedule for ease of reference. As noted, thereafter, two lists of documents were then produced by the Truly Social Parties.

[18] Both sides of this application take issue with the disclosure of the other. Interestingly, both sides also point to the other’s approach to document disclosure or demands as justification for their own positions. For example, the Truly Social Parties say the defendants produced some 390,000 pages of pdf documents in what is described, as previously noted, as a “document dump”, without a list of documents that in any way provided meaningful descriptions, while subsequently refusing to provide a proper list despite stating their intentions to bring the summary trial and security for costs application. For its part, the East Side Defendants point to the Truly Social Parties’ documents demand as a precedent for their own broad and/or vague demands.

Legal Framework

[19] The parties did not disagree during submissions as to the general framework for document disclosure applications, although the Truly Social Parties argue that it is unclear whether the East Side Defendants are bringing this application under subrule (10) or (11).

[20] As is clear in the demand letter, it is being brought under subrule (10) or, alternatively, subrule (11). For the purposes of that latter basis for the claim, the basis for relevance is set out as required under that subrule.

[21] The parties do not disagree as to the formal requirements for the demand under the two rules in terms of the first tier considerations being met, as noted in *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322, at para. 93, and the second tier being akin to the *Peruvian Guano* standard as confirmed in *Kaladjian v. Jose*, 2012 BCSC 357, at para. 62 to 64.

[22] As noted in *Imperial Parking Canada Corporation v. Anderson*, 2014 BCSC 989, at para. 24, when considering the second or more broader scope of discovery under sub (11) the preceding demand must be accompanied by a written demand identifying the additional documents “with reasonable specificity” and must include “an indication of the reason why such additional documents or classes of documents should be disclosed in this case.”

[23] The court in *Lit v. Hare*, 2012 BCSC 1918, at para. 68 warned against demands that are overly broad and vague, or that lack the specificity that is needed and that the failure to provide that may be fatal to the application.

[24] In undertaking an analysis under either tier of discovery relevance is determined by the pleading, as noted in *Burgess v. Buell Distribution Corporation*, 2012 BCSC 1494, at paras.16 to 17 and *Lit, supra*, at para. 27. Thus, the demand must, having regard to the pleadings, be probative of a material fact, meaning that it may either prove or disprove a material fact under the first tier or relate to all matters in question in the action under the second. However, when making a demand under

the second there must be “some evidence” of the potential relevance of those additional documents, *Lit, supra*, at para. 27.

[25] As noted in *Imperial Parking, supra*, at para. 21: “Casual *pro forma* approaches to discovery obligation are to be avoided.” In making that comment the court specifically noted that counsel have an ethical and professional duty to be diligent and act with scrupulous integrity with respect to the pursuit and assessment of what documents must be produced and what documents need not be produced. While, as noted at para. 26, counsel can reasonably disagree, proper and professional conduct does not permit deliberate non-disclosure, nor knowing disregard of the *Rules* based on cynical assumptions regarding strategy or cost. The *Rules* demand good judgment and utmost integrity when counsel are fulfilling their obligations for discovery, both in terms of the requests for discovery and in answering them.

Analysis

[26] Under that framework the practice of relying on both subrule (10) and (11) at the same time or in the alternative is not, in my view, in keeping with the obligation of counsel. As noted, they are to avoid casual *pro forma* approaches to document disclosure. It should not fall to the recipient of any such demand to guess as to what evidentiary standard is being relied upon for the demands being made. Similarly, it does not fall on the recipient to have to guess as to the scope of the documents that are being demanded. Each demand must be sufficiently particularized so that the provider does not have to guess as to whether a document may or may not fall within the ambit of that request.

[27] It is also not an answer, as suggested by the East Side Defendants that the other party’s requests were similarly too broad and difficult to meet. It goes without saying that there is no “tit for tat” or “two wrongs make a right” element to the *Rules*. It is unhelpful to the efficient resolution of chambers matters when counsel point fingers at each other suggesting that the other’s conduct has been worse, rather than address the merits of the application that is before the court. Here, the requests

are broad. However, whether it is too broad is very much a matter of context of this particular application.

[28] Much of the broadness arises from the nature of the documents and the underlying enterprise. For example, “all documents evidencing source codes and relating underlying technological data” for the games that existed under the Development Agreements, and the two games that are alleged to have been improperly cloned by using those same codes and data are, by their very nature, broad in scope and will be difficult to produce. It is not clear in the materials before me that a request for that information could be sufficiently narrowed. However it is clear what is being sought.

[29] Regardless as to that scope, the East Side Defendants are, for the purpose of this application, notably relying upon the pleadings to satisfy the court that the scope of the demand is appropriate and that the documents are relevant. The East Side Defendants did not take the court to any specific evidence as to relevance. That the demands are largely based on the pleadings, or appear to be for all intents and purposes a first tier demand, is significant given the timing of this application, given the argument advanced by the Truly Social Parties as to the delay in making this application.

[30] If the document demands are based on the pleadings there is no reason why the demand and an application arising from the provider’s refusal or neglect to respond could not have been brought in a more timely way. In this respect, the Truly Social Parties’ argument is that the East Side Defendants made a decision to -- and although I am paraphrasing -- not put its own litigation tackle in order pending the outcome of the summary judgment application, choosing to only turn its mind to the issue upon that summary trial application being dismissed, and a change of counsel occurring, is a strategic decision and one that should not be countenanced by the court.

[31] In short, the Truly Social Parties argue that it lays entirely at their feet that this is now coming on the eve of trial, but that such a strategic decision is one that not

ought prejudice the Truly Social Parties by frustrating their ability to prepare for trial by forcing them to undertake a lengthy document disclosure process instead of concentrating on their own trial preparation. That document disclosure would be a complicated and lengthy process, must have been well known by these parties as soon as the pleadings were closed and issues defined given the nature of these enterprises and issues in dispute. Leaving it to the last minute is contrary to the object of the *Rules* and obligations of counsel referenced in *Imperial Parking, supra*.

[32] At its simplest, the Truly Social Parties argue that if the East Side Defendants were properly fulfilling their obligations towards document disclosure and felt that the Truly Social Parties' disclosure was inadequate after delivery of the second amended list of documents, when the demand letter was first written, they should have taken timely steps to bring an application then rather than do so one month prior to trial in reliance on a vague and broad demand made over a year earlier when circumstances as to disclosure have subsequently changed given the further lists of documents and disclosure made since then.

[33] They also note that without comparing or updating the demand to reflect this subsequent disclosure, it is not clear that those documents, insofar as they may be relevant, which is not admitted, have not already been provided.

[34] While the Truly Social Parties did not specifically reference *Forstved v. Kokabi*, 2018 BCSC 111, their argument does largely mirror Justice Kent's comments which he made further to those in *Imperial Parking*, which was relied upon by the Truly Social Parties. At para. 17 of *Forstved v. Kokabi*, Justice Kent noted as follows:

The theme I am attempting to express is that last-minute scrambling and last-minute demands for extensive production of additional documents will not be endorsed by the court. Trial time is a precious commodity and efficiency is required for the system to work effectively and in a manner that is fair to all participants. Parties should approach preparation for trial and any related applications to compel additional production much earlier than was evidently done in this particular case.

[35] I made similar comments in *Kaur v. Bual*, 2021 BCSC 998, at para. 5, after reviewing *Forstved, supra*, as well as other decisions that stand for the similar propositions:

All of these cases come down to the fact that in order for documents to be produced in this second tier process for document disclosure, absent special circumstances they should be sought in a timely way and must be relevant. In short, a defendant's lack of preparation and timely trial preparation does not entitle them to a last-minute application for production of documents that may impair trial preparation.

[36] I would add that such tactics should similarly not impair the trial date itself. In that context, the special circumstances that might justify a late application would include a change in circumstances or a course of discovery that was only determined to exist late in the day. Here, this course of discovery was known for well over a year.

[37] In *Kaur, supra*, I also noted that such late applications may affect the analysis of whether the documents being sought have a probative value, where, as may be the case of many of these documents being sought today, a third party such as an expert will have to review them, for example, to compare the source codes to the games to opine on whether they are, in fact, a clone, such that the documents on their own will not be of assistance to the trier of fact or be probative in resolving the issues even if the turnaround for disclosure could occur prior to the trial date.

[38] This application is simply being brought too late in the day given the nature of the documents being sought, the knowledge that the East Side Defendants must have had as to the complexity of such document production, such that leaving it to the last minute was not in keeping with the obligations of counsel as noted above in *Imperial Parking*, and the prejudice to the Truly Social Parties in terms of their trial preparation or, perhaps, more significantly, if it results in a sacrifice of the 25-day trial, which cannot be easily reset.

Conclusion and Orders

[39] I dismiss the application given its last-minute timing but do so on a without prejudice basis. If the trial date is adjourned or does not go ahead due to unavailability of court time the application may be reset. Nothing in these Reasons is meant as a determination on the merits as to relevance. I am not seized for the purpose. However, counsel are free to seek time before me given my familiarity if they wish to do so.

[SUBMISSION ON COSTS]

[40] **THE COURT:** There is the added circumstance here of a late changing counsel which often comes with a fresh review of matters. So, I think in the circumstances it is appropriate to order costs in the cause.

[41] Thank you.

“Associate Judge Robertson”