

CITATION: Core Birchcliff Ltd. Partnership et al. v. Raw Design Inc. et al. ONSC 6276
COURT FILE NO.: CV-23-00002913-0000
DATE: 20241113

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: CORE BIRCHCLIFF LIMITED PARTNERSHIP, BIRCHCLIFF CORE HARBOUR INC., MAZENGA BUILDING GROUP LTD., and CORE DEVELOPMENT GROUP LTD.

Plaintiffs

AND:

RAW DESIGN INC., PIERRE-ALEXANDRE LE LAY and ROLAND ROM COLTHOFF

Defendants

BEFORE: Firestone RSJ

COUNSEL: *C. Afonso and C. Breukelman*, Plaintiffs

C. Simco and M. Marrie, Defendants

Heard: In-Writing

ENDORSEMENT

[1] The defendants Raw Design Inc., Pierre-Alexandre Le Lay and Roland Rom Colthoff (the “defendants”) bring this motion for an order transferring this action from Milton (Central West Region) to the Toronto Region. This motion is brought pursuant to Rule 13.1.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “*Rules*”) and the procedures set forth in the Consolidated Civil Provincial Practice Direction amended February 1, 2024, (the “*Practice Direction*”). The plaintiffs Core Birchcliff Limited Partnership, Birchcliff Core Harbour Inc., Mazenga Building Group Ltd. and Core Development Group Ltd. (the “plaintiffs”) oppose the motion.

[2] In accordance with the Practice Direction, I am to determine this motion in writing in my capacity as the Regional Senior Judge for the Toronto Region.

[3] For the reasons that follow, I order that this action be transferred from Milton to Toronto.

Factual background

[4] This action is in relation to a multi-unit residential townhome development project (the “project”) located in the City of Toronto. The plaintiffs issued a request for proposals for architectural services relating to the project. The defendant architectural firm was subsequently retained to provide architectural services regarding the project pursuant to a written contract dated January 12, 2017. The plaintiffs allege that damages were sustained as a result of the defendants’ negligence and breach of contract.

Applicable legal principles

[5] Rule 46.01 provides that the trial of an action shall be held in the county where the proceeding was commenced or to which it has been transferred under Rule 13.01.02 unless the court orders otherwise. Rule 13.1.02 and the Practice Directions direct how a change of venue motion should proceed. Subsection (2) of the Rule provides:

...[t]he court may, on any party’s motion, make an order transferring the proceeding to a county other than one where it was commenced, if the court is satisfied,

- (a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or
- (b) that a transfer is desirable in the interest of justice, having regard to,
 - (i) where a substantial part of the events or omissions that gave rise to the claim occurred,
 - (ii) where a substantial part of the damages were sustained,
 - (iii) where the subject-matter of the proceeding is or was located,
 - (iv) any local community’s interest in the subject matter of the proceeding,
 - (v) the convenience of the parties, the witnesses, and the court,
 - (vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,

- (vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits.
- (viii) Whether judges and court facilities are available at the other county, and
- (ix) Any other relevant matter.

[6] Subsection (2)(a) has no application. There is no suggestion that a fair hearing cannot be held in Milton.

[7] The factors set forth in Rule 13.1.02(2)(b) are to be applied holistically. No one of the enumerated factors is more important than the other. These factors are to be examined together and balanced in order to determine whether a requested transfer is desirable in the interests of justice: *Darteh v. Gross*, 2017 ONSC 2479, at paras. 8-9; *Hilson v. 1336365 Alberta Ltd.*, 2017 ONSC 4990, at paras. 12-13; *Chatterson et. al. v. M&M Meat Shops Ltd.*, 2014 ONSC 1897, 68 C.P.C. (7th) 135 (Div. Ct.), at para. 22; *Siemens Canada v. Ottawa (City)* (2008), 93 O.R. (3d) 220 (S.C.), at para. 25; and *Walcott v. Zheng*, 2021 ONSC 4679, at paras. 20, 22-23.

[8] In applying the “holistic approach” it is important to recognize that the balancing of the Rule 13.1.02(2)(b) factors is not a purely numerical or mathematical counting exercise: *Bruce Power L.P. v. BNT Canada, L.P.*, 2018 ONSC 5968.

[9] At first instance a plaintiff(s) is entitled to commence a proceeding at any court location: *Chatterson*, at para. 14. If the plaintiff’s choice of venue is reasonable and the defendant challenges that venue, then a comparison of the two venues is required. The defendant must establish that its proposed choice of venue is significantly better than the one chosen by the plaintiff: *Chatterson*, at paras. 28-29; *Walcott*, at para. 28.

Analysis

[10] The subject matter of this proceeding, namely the project is located in the City of Toronto. No part of the project is located in the Town of Milton. Further, the contractual agreement was negotiated in the City of Toronto, and all events and alleged omissions giving rise to this proceeding occurred in the City of Toronto. All building permits were issued by the City of Toronto.

[11] The registered office address of the four corporate plaintiffs is in the City of Toronto. The corporate defendant is located in the City of Toronto. The two individual defendants reside in the City of Toronto. Counsel for all parties are located in Toronto.

[12] The plaintiffs argue that one of its most important witnesses resides in Mississauga and two of their primary witnesses are located in Markham and Vaughan, respectively. The defendants submit that their potential third-party witnesses are located in Toronto or communities directly to the north of Toronto.

[13] The plaintiffs argue that a transfer of this action from Milton to Toronto is not desirable in the interest of justice because doing so will cause delay in scheduling the trial date, pre-trial date and motion dates. This submission cannot be considered in isolation.

[14] This proceeding was commenced in 2023 and pleadings were closed in March 2024. It appears that no steps have been taken to advance the litigation since that time.

[15] In applying the factors under Rule 13.1.02(2)(b) holistically to the factual matrix of this proceeding, I am satisfied that there is no rational connection to Milton and that, on balance, Toronto is a substantially better venue. Counsel are at liberty to use the procedural tools available to them under the *Rules* to ensure the action proceeds in an orderly and timely fashion.

[16] In this regard, following the transfer of this action to the Toronto Region, I direct that a case conference be scheduled before me pursuant to Rule 50.13(1) to establish a timetable for the proceeding.

[17] I encourage the parties to agree on the costs of this motion. If they cannot, the defendants are to deliver their written cost submissions of no more than two pages by November 20, 2024. The plaintiffs are to deliver their responding submissions of the same length by November 27, 2024. Any reply is to be delivered by December 2, 2024.

Firestone RSJ.

Date: November 13, 2024