

CITATION: Pittsburgh Steel Group v. Libfeld, 2025 ONSC131
COURT FILE NO.: CV-22-682228
DATE: January 6, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Pittsburgh Steel Group v. Corey Sean Libfeld;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Connor Marino (and Theodore B. Rotenberg) for Corey Sean Libfeld;
Anthony J. O'Brien for Pittsburgh Steel Group.

RULING: December 2, 2024.

ENDORSEMENT

[1] This endorsement provides the written reasons in support of the oral ruling I made in this motion on December 2, 2024.

[2] The defendant, Mr. Libfeld, brought this motion for an order staying this action or, in the alternative, prohibiting the plaintiff, Pittsburgh Steel Group ("PSG"), from adducing three types of evidence: evidence concerning the health and safety issues arising from the removal of the steel erector cables on the project; evidence concerning the payments Mr. Libfeld made to his structural engineering consultant, Matthew Kieffer (the principal of Kieffer Consulting Engineering) on this project; and evidence concerning the issues raised in the complaint Zoran Radonjic, the principal of PSG, filed with the Professional Engineers Ontario ("PEO") in May, 2024 concerning Mr. Kieffer and the rulings and deliberations made by the PEO. The basis for the motion was that Mr. Radonjic violated the deemed undertaking rule, Rule 30.1.01, when he filed with the said complaint seven (7) documents he had obtained through the discovery process in this action.

[3] I ruled that Mr. Radonjic and PSG had indeed violated the deemed undertaking rule by filing these seven documents. I did not, however, stay the action. I ruled instead the following:

- a) that PSG is prohibited from adducing evidence at trial about the payments Mr. Libfeld made to Mr. Kieffer and his firm in this action,
- b) that PSG is prohibited from adducing evidence about the deliberations and rulings of the PEO concerning the Radonjic complaint against Mr. Kieffer, and
- c) that PSG must pay the penal motions costs amount of \$17,000 to Mr. Libfeld on or before February 1, 2025, failing which there will be a motion on March 10, 2025 at 2:30 p.m. for 60 minutes to determine whether the action should be struck and the claim for lien discharged on account of this failure to pay.

- [4] The following were my reasons for making this decision:
- a) There was no dispute that the deemed undertaking rule, Rule 30.1.01, applies to this action. This is a construction lien action, but the rule is not inconsistent with the *Construction Act*, R.S.O. 1990, c. C.30 (“CA”). The purpose of the rule is to protect the privacy of parties and encourage them to make full disclosure; see *Perell and Morden, The Law of Civil Procedure in Ontario, 5th Edition*, paragraph 7.273. That purpose is served in lien actions as it is served in other civil actions. Therefore, by operation of CA section 50(2), namely the section that specifies that the *Rules* apply to lien actions to the extent they are not inconsistent with the CA, the deemed undertaking rule applies.
 - b) There is also no dispute that Mr. Radonjic violated the deemed undertaking rule as alleged. The issue was the proper sanction to be imposed.
 - c) The process contemplated by Rule 30.1.01 involves obtaining leave of the court in advance of any disclosure, which leave is to be given only where the “interests of justice” outweigh any prejudice to the parties from the disclosure. Mr. Radonjic did not obtain this leave. However, the evidence satisfied me that he did so without knowledge of the rule and without legal advice or assistance.
 - d) Determining the proper sanction to be imposed for a disclosure to a regulatory body such as the PEO involves a balancing of public interests, namely the balancing of the public interest represented by the PEO in advancing competent and safe design and construction against the public interest represented in the deemed undertaking rule in promoting full disclosure in civil proceedings; see *Canamed Ltd. v. Gill*, 2018 ONSC 5495 (CanLII) at paragraph 11. Here Mr. Radonjic asserted in his affidavit that he was concerned about the competence of Mr. Kieffer and public safety given Mr. Kieffer’s alleged role in allowing the alleged premature removal of the steel erector cables. Mr. Radonjic’s assertion about public safety was uncorroborated and suspect. He also did not disclose any credentials he had to make such an assertion.
 - e) The evidence satisfied me, on the other hand, that in fact the main reason for Mr. Radonjic’s conduct was to influence the outcome of this case by discrediting Mr. Kieffer, a key defendant witness. In his affidavit he drew the analogy with making a complaint against a doctor or lawyer and using the finding in that proceeding in a civil action against the doctor or lawyer. There was also the email he sent to his own expert witness just before filing the complaint stating he had just turned down a settlement offer and was anticipating trial scheduling in the near future. The reasonable inference to be drawn from this evidence is Mr. Radonjic intended to use the complaint to advance his case in this action. That is exactly the conduct the implied undertaking is meant to discourage; see *Canamed, supra*, para. 11. Hence, the need for real deterrence.
 - f) However, I was not prepared to stay this action, as was requested by the defendant. Mr. Radonjic’s actions were not contemptuous. As stated earlier, he acted out ignorance of the rule. He apologized for having breached the rule. I note that in *Konstan v. Berkovits*, 2014 ONSC 786 (CanLII) at paragraph 39 Justice Firestone decided not to stay a defence after he found there was no contemptuous conduct. While Mr. Radonjic’s breach did lead to the

PEO process, there may be a public safety issue in the end that justifies it. That is for the POE to determine.

- g) After consideration, I determined that the best course of action was to insulate this action from any undue influence the PEO process may have on it and to impose on PSG a penal award of costs concerning this motion as a deterrence. I also determined that PSG should not be allowed to use evidence about Mr. Libfeld's payments to Mr. Kieffer, as that evidence was of marginal probative value and was improperly disclosed. However, I found that the other requested restrictions on the PSG evidence, such as requested prohibition against the use by PSG of evidence about the health and safety of removing the steel erector's cables, were an unnecessary and prejudicial restriction on PSG's ability to prosecute its case. Such evidence would be necessary to determine whether the defendant had contributed to the claimed damages.
- h) After reviewing the uploaded costs outlines and hearing submissions, I determined that the defendant was claiming substantial indemnity costs for this motion of about \$17,000. As a deterrence, I decided to require that PSG pay this amount to the defendant and to do so in the near future under threat of a possible dismissal order in the event of a failure to pay.

[5] That is what led me to make the ruling I made.

DATE: January 6, 2025

ASSOCIATE JUSTICE C. WIEBE