IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jazette Enterprises Ltd. v. Amit,*
2023 BCSC 226

Date: 20230131
Docket: S195403
Registry: Vancouver

Between:

Jazette Enterprises Ltd. and Go Forward Solutions Limited

Plaintiffs

And

Alon Amit, Beadle Raven, LLP, R. James Beadle, Chen, Sheng Chang Tek Fu, Sandeep Prabhakar Khursude, Mega General Trading (FZE), Asan Global (FZE), Globe General Trading (FZE), 1106449 B.C. Ltd., Gordon Reyes Buted Viado & Blanco, Pacifica Software Group, Inc., Global Compliance Associates Inc. Felixes G. Banting, and Pacifica Ventures Inc.

Defendants

Before: The Honourable Madam Justice Hardwick

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:	H. Shapray, KC
Counsel for the Defendants Beadle Raven, LLP and R. James Beadle (by video):	C. Dennis, KC M.A.J. Ferreira

No other appearances

Place and Date of Hearing:	Vancouver, B.C. January 25 and 26, 2023
Place and Date of Judgment:	Vancouver, B.C. January 31, 2023

[1] **THE COURT:** These are my oral reasons for judgment in respect of the notice of application filed by the defendants Beadle Raven LLP and R. James Beadle. Said application was filed December 28, 2022.

Overview

[2] The relief sought in the application by the Beadle defendants, as I shall refer to them, and as slightly amended during the submissions of counsel to reflect some delays in having the matter heard, is as follows:

> 1. that the claim of the plaintiffs be dismissed and their notice of civil claim be struck out for non-compliance with the *Supreme Court Civil Rules*.
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> 2. In the alternative, that Charlotte Payne be ordered to attend in Vancouver, British Columbia, to be examined for discovery at 10:00 a.m. on a date on or before February 28, 2023, to be chosen at the discretion of counsel for the Beadle defendants, failing which the claim will be dismissed and the plaintiffs' notice of civil claim be struck for non-compliance with the *Supreme Court Civil Rules*.
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> 3. In the further alternative, that Keith Helman be ordered to attend in Vancouver, British Columbia, to be examined for discovery at 10:00 a.m. on a date on or before February 28, 2023, to be chosen at the discretion of counsel for the Beadle defendants, failing which the claim be dismissed and the plaintiffs' notice of civil claim be struck out for non-compliance with the *Supreme Court Civil Rules*.
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> 4. That the Beadle defendants be granted leave to serve Charlotte Payne with interrogatories, which are attached as Schedule A to the aforementioned notice of application, by delivering interrogatories to counsel for the plaintiffs, and that Ms. Payne provide responses to the interrogatories within 14 days of service.

[3] The Beadle defendants further seek costs of this application in any event of the cause and costs thrown away in respect of the previous discoveries which were scheduled for Charlotte Payne in November of 2022 and the discovery of Keith Helman, who was scheduled for December of 2022.

[4] The relief sought is opposed by the plaintiffs on the basis that the appropriate representative of the plaintiffs to be examined for discovery is Luis Pablo Laplana-Moraz, who I shall refer to as Mr. Laplana.

[5] Counsel for the plaintiffs also effectively filed a cross-application seeking this same relief. That cross-application was not filed with sufficient notice under the *Supreme Court Civil Rules* and requires this Court to grant short leave to abridge the service requirements. Although the late delivery of the cross-application is less than ideal given that the issue has been live between the parties for some time, as I will come back to, I consider it in the interests of justice to allow the applications to be heard together as they are intrinsically related, and I can see no material evidence that could be proffered by the Beadle defendants to oppose the cross-application other than that which they are relying upon in support of their primary application.

Factual Background

[6] The plaintiffs are two foreign corporations, one being incorporated in Saint Vincent and the Grenadines, and the other being incorporated in the Republic of Mauritius. The plaintiffs are engaged in the business of online gambling, specifically the website sportsbook.ag, which I will define as “the Website.” This is a gross simplification of the overall corporate structure used to operate this enterprise. I was provided a flowchart which makes this clear. However, for the limited purposes of this application, it is not necessary, in my view, to further describe the corporate web in place to operate the Website. Needless to say, it is not contested that it is complex.

[7] Beadle Raven LLP is a law firm which operates in the Province of British Columbia. R. James Beadle is the founder of the firm and a practising member of the Law Society of British Columbia, but resides in Panama City, Panama.

[8] The notice of civil claim in this matter has been amended some four times. In the fourth amended notice of civil claim, the plaintiffs seek to recover some approximately $18 million CDN from the Beadle defendants. Stated broadly, the claim is that the plaintiff, Jazette, was the lawful owner of some $18 million CDN generated by the Website which were stolen by certain rogues involved with the enterprise, including a Mr. Gould and a Mr. LaCascia, and misappropriated funds were paid through a trust account operated by the Beadle defendants.

[9] The Beadle defendants deny liability on various grounds. The scope of those defences is presently in dispute. Specifically, following the filing of the fourth amended notice of civil claim, the Beadle defendants amended their response to civil claim on December 20, 2022. The amendments to the response to civil claim resulted in an application to strike portions of the pleadings by the plaintiff. That application ultimately went before a master, and the appeal of the resulting order was heard by Justice Wilkinson of this Court and is currently under reserve, or at least was as of the hearing of this application last week.

[10] It is conceded, notwithstanding the current dispute as to the pleadings, that the plaintiffs were not clients of the Beadle defendants, and there was no solicitor/client relationship as between them.

[11] There is a trial date presently scheduled for April of 2023. The trial management conference is scheduled for tomorrow, February 1, 2023, which is why I have endeavoured to deliver these oral reasons for judgment in the most timely way possible, having regard to the fact that I heard this application in the middle of a lengthy trial over which I am still presiding. In the event a transcript of these reasons is ordered, I do reserve my right to edit for grammar and style and include any citations which I may have inadvertently omitted, but the substance of my decision will not change.

Chronology of Appointing an Appropriate Representative for Discovery

[12] The theft of the funds which underlie the claims in this action and the other litigation brought in Qatar occurred, as noted, back in 2016. Having regard to the

complex nature of the operations underlying the Website, which I have noted above, Mr. Laplana was retained to conduct what I will describe broadly as a forensic audit to determine if funds had been misappropriated and then trace those funds. Mr. Laplana had no prior involvement with the plaintiffs prior to his engagement in this capacity. He is not an employee, officer, or director. Mr. Laplana is, as described by counsel for the Beadle defendants, effectively a hired gun. However, I also recognize the submission by counsel for the plaintiffs that throughout this litigation, the Beadle defendants have relied upon the findings of Mr. Laplana, which are included in his affidavits sworn in this proceeding.

[13] I will pause at this juncture to note that there was some evidence introduced at the application, under objection, which suggests that Mr. Laplana himself is engaged in certain unsavory business practices. I have given no weight to that evidence, and it is limited to a few media reports. I specifically have no proof as to the truth of the contents of these assertions other than the fact that I accept these media reports were released on the dates indicated.

[14] Regardless of my decision as to whom the appropriate discovery representative is of the plaintiffs, I strongly anticipate that Mr. Laplana will be a witness at the trial of this proceeding and that the assessment of the credibility and the reliability of his findings will be within the purview of the trial judge in this matter upon hearing *viva voce* evidence and cross-examination. Importantly, though, the affidavit of Mr. Laplana confirms that the “ultimate beneficial owners” of the plaintiff Jazette are Charlotte Payne, Keith Helman, and Steven Choi.

[15] There is some other, albeit limited, evidence in the application record consistent with Charlotte Payne and Keith Helman having at least some involvement with the enterprise operated by the plaintiffs. The most significant, in my view, being that:

a) Charlotte Payne holds a “key person licence” issued by the financial services regulatory commission of Antigua and Barbuda;

b) Charlotte Payne and Keith Helman were individuals who retained Mr. Laplana on behalf of the plaintiff Jazette.

[16] In this regard, I refer to the affidavit #1 of Mr. Laplana in the application record, which states *inter alia* as follows at paras. 3–5:

> 3. Since the fourth quarter of 2016, I have been engaged in assisting the Plaintiff, Jazette Enterprises Ltd., ("Jazette") and subsequently Go Forward Solutions Ltd. ("Go Forward") (the "Plaintiffs") to investigate the theft and assist in the recovery of some EUR 34 Million belonging to Jazette.
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> 4. In or about October 2016, I was approached by Charlotte Payne, Keith Helman and Stephen Choi, who informed me that they were the "ultimate beneficial owners" or "UBO(s)" of Jazette's business. The UBOs are identified by the Defendant herein, Aaron Gould, "Gould" in his Amended Response to Civil Claim as the Jazette principles or "Sportsbook Insiders". At that time, the UBOs retained me to investigate and advise on the recovery of Jazette's funds that they believed were in Dubai and/or under the control of persons identified in the Amended Notice of Civil Claim ("NOCC") herein as Chen, Sheng Chang Tek Fu Chen (aka "Sonny Chen" or "Sonny") and Sandeep Prabhakar Khursude ("Sandeep") and their companies identified in paragraphs 11, 12, and 14 of the NOCC herein, namely Globe General Trading (FZE) ("Globe"), Mega General Trading (FZE) ("Mega") and Asan Global (FZE) ("Asan") (collectively the "Dubai Defendants").

[17] There was also evidence before me that Charlotte Payne and Keith Helman signed off on certain settlement documents and releases related to the misappropriation of funds in another jurisdiction. These proceedings involved some of the funds referred to in Mr. Laplana's affidavit that I just read into the record.

[18] Throughout the course of this litigation, there have been discoveries of various defendants, including Mr. James Beadle on behalf of the Beadle defendants. There is no suggestion in the materials that Mr. Beadle, or his counsel, was uncooperative in arranging those discoveries. In September of 2021, the Beadle defendants sought, through plaintiffs' counsel, the availability of Charlotte Payne for a discovery. Dates were not proffered, the most important reason being that the plaintiffs' position was that Mr. Laplana was the most knowledgeable representative and that he should be discovered instead of Charlotte Payne. This, as noted, remains the position of the plaintiffs.

[19] The issue of the appropriate representative of the plaintiffs for discovery in this proceeding remained dormant, at least it appears from the record, for some approximately 11 months. This is in part due to an application to strike the pleadings, which was ultimately heard by Justice Fleming of this Court in July of 2022 and an unsuccessful mediation between the parties in May of 2022. In addition to these events, the litigation does appear to have proceeded in a manner that can be described as “fits and starts”.

[20] The issue of the discovery of the representative of the plaintiffs was again raised in early August 2022. At that point, the plaintiffs’ counsel did initially agree to Charlotte Payne being examined and the proposed dates in early October 2022. On September 23, 2022, however, counsel for the plaintiffs withdrew those dates and notified counsel for the Beadle defendants that Charlotte Payne had a severe back ailment.

[21] Counsel did not agree on another date for the discovery of Charlotte Payne, and so counsel for the Beadle defendants unilaterally issued an appointment for discovery of Charlotte Payne for November 22 and 23, 2022. Conduct money was provided on the understanding that Charlotte Payne was living in London, England, and while the date was unilaterally chosen, it was served in accordance with the timing requirements mandated by the *Supreme Court Civil Rules*. Very shortly thereafter, counsel for the plaintiffs advised that Charlotte Payne would not be attending in Vancouver and that the conduct money provided would be returned. This resulted in an offer from counsel for the Beadle defendants to travel to London, England, to conduct the discovery, but that offer was declined.

[22] Charlotte Payne then provided a comprehensive affidavit, which is before me for the purposes of this application. It provides some history regarding the matter, but the two most important takeaways from the affidavit that I will note are as follows. Charlotte Payne denies being a director, officer, employee, agent, or external auditor of either corporate plaintiff. Charlotte Payne provides some details as to her back condition referred to above, the medication she is taking, and

deposes to her inquiries and efforts about obtaining surgery for this condition. Consistent with the advice that Charlotte Payne should not be attending for her discovery, she did indeed not attend, and there is a certificate of non-attendance in the evidence in the application record before me.

[23] Counsel for the Beadle defendants then unilaterally scheduled a discovery of Keith Helman for December 12, 2022, and served a notice of appointment in this regard on counsel for the plaintiffs. It was also served within the necessary notice requirements of the *Supreme Court Civil Rules*, but again, was scheduled unilaterally. Shortly after the service of that appointment, counsel for the plaintiffs advised that Keith Helman was not the appropriate representative to be discovered and would not be attending the discovery. This is what occurred, and again, I have a certificate of non-attendance in evidence before me. I do not, however, have any affidavit evidence from Keith Helman concerning his involvement in the enterprise or regarding the Website.

Application to Strike the Claim Summarily

[24] As set forth above, the Beadle defendants first seek an outright dismissal of the claims on the basis of non-compliance with the *Supreme Court Civil Rules*.

[25] Dismissal of the plaintiffs' claims as a result of failure to have a representative attend for discoveries is a draconian remedy: *McIsaac v. Healthy Body Services Inc.*, 2007 BCCA 580. It is a particularly draconian remedy in this circumstance given that the plaintiffs are offering to put forward Mr. Laplana to be discovered. Said another way, the plaintiffs are not refusing discovery entirely, but there is a clear dispute as to who is the appropriate representative. This dispute dates back to 2021.

[26] Further, granting this relief at this juncture would not be consistent with the usual two-stage process, as there has been no prior order made compelling attendance of any representative on behalf of the plaintiffs. In this regard, I again refer to *McIsaac v. Healthy Body Services Inc.*, where the Court of Appeal said as follows at para.9:

> [9] The chambers judge referred to a two stage process that is usually followed on an application to strike pleadings for failure to attend an examination for discovery. This process was described by Mr. Justice Taggart in *Neeld v. Pezamerica Resources Corp.*, [1985] B.C.J. No. 2356 (QL) (C.A.):
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> > [28] As I understand it, the usual practice in these matters is that when a motion such as that presented by the plaintiffs comes on for hearing, unless there are unusual circumstances apparent to the Chambers judge, an order is made directing the person subject to examination for discovery to attend at a stipulated time and place. It is usual in the course of such an application for the judge to intimate that that will be the last opportunity to avoid such an examination for discovery. If an appearance pursuant to that order is not made, then counsel for the party adverse in interest is generally at liberty to proceed to seek an order for the action against the other party to proceed as if no appearance had been entered and no defence filed. So, the process is really a two stage process.

[27] The principle of proportionality under the *Supreme Court Civil Rules* must also be considered, and in that regard, it must be noted that this claim involves some $18 million CDN. On this point, the possible liability of the Beadle defendants is obviously highly contentious, and I make no findings of fact in this regard. However, it is clear on the face of the evidence in the application before me that some $18 million CDN did indeed pass through the trust account operated by the Beadle defendants. The scope of the defences available to the Beadle defendants to respond to those claims is presently under consideration by the Court as noted.

[28] In the circumstances, I am satisfied this is not just a trifling or nuisance claim. It is instead a serious claim, which ought to be determined on its merits on the basis of a full and proper evidentiary record. Accordingly, having regard to these findings, I am not satisfied that it is appropriate for me to exercise my discretion to dismiss the notice of civil claim summarily at this stage of the proceeding on the basis of the dispute as to who is the appropriate representative to be examined on behalf of the plaintiff.

Law Regarding Appointment of Representative for Discovery

[29] Rule 7-2 of the *Supreme Court Civil Rules* is the governing rule addressing examinations for discovery in civil proceedings. Discoveries are, as submitted by

counsel for the Beadle defendants, quite arguably the most important and powerful mechanism for pre-trial investigation. This is confirmed by this Court in *Executive Inn Inc. v. Pfeffer*, 2005 BCSC 1677, at paragraph 22. They are generally also not optional. In this regard, I was referred to the following quote, albeit somewhat dated, of Master Baker in *S.L.L. v. D.S.L.*, 2005 BCSC 1358, at paragraph 13, which is apt:

> [13] An appointment to examine is not an invitation to a party, requiring only an RSVP. Unless the parties and counsel agree otherwise, or unless the court relieves the examinee from attendance, that party must attend as required by the appointment (assuming, of course, that other requirements such as conduct monies and adequate notice have been met).

[30] Although *S.L.L.* is a family law matter, it was decided before separate rules were introduced for civil and family matters, and in any event the discovery rules are substantially similar, even after the separation. The question here primarily turns on Rule 7-2(5)(c), which applies when a party to be examined is not an individual. The entirety of that rule provides as follows:

> (5) Unless the court otherwise orders, if a party to be examined for discovery is not an individual,
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> a) the examining party may examine one representative of the party to be examined.
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> b) the party to be examined must nominate as its representative an individual, who is knowledgeable concerning the matters in question in the action, to be examined on behalf of that party, and
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> c) the examining party may examine
>
> (i) the representative nominated under paragraph (b), or
>
> (ii) any other person the examining person considers appropriate and who is or has been a director, officer, employee, agent or external auditor of the party to be examined.

[31] As I described to counsel at the hearing of the application, the requirement for nominating a representative where there is a corporate party is because the opposing party may not be in a position to know whom they wish to discover and require a suggestion. It is just a suggestion, however, and the rule as described

above does not allow the party receiving an appointment to discovery to have a veto on selecting an alternative representative unless the court otherwise orders.

[32] The application of this rule in this particular factual matrix turns on whether the representative sought by the Beadle defendants on behalf of the plaintiffs falls within the scope of R. 7-2(5)(c)(ii). There is evidence before me that Charlotte Payne is not a director, officer, employee, or external auditor of either corporate plaintiff. Is she, however, an agent?

[33] In considering this issue, I have reviewed the recent decision of Justice Veenstra of this Court in *R.A.B. Properties Ltd. v Canadian Horizons (182A) Development Corp.*, 2022 BCSC 1716. Given the significance of this decision to my ultimate conclusion, I am going to read into the record paragraphs 88 to 94 and 96 to 99 of that decision, as they are directly on point. Starting at para. 88:

> **Analysis**
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> [88] The purpose of an examination for discovery is to secure evidence that will support the examining party's case or disprove the case of the party being examined, to understand the case to be met and discover the strengths and weaknesses of the other's case, and to secure admissions which may dispense with more formal proof at the hearing: *The Conduct of Civil Litigation in British Columbia*, s. 18.1. Its essence is to provide the parties a means to uncover the truth so that the true facts may be presented at trial. In many cases, it narrows the divide between the parties as to what is actually in dispute and informs and encourages resolution through settlement.
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> [89] The *Supreme Court Civil Rules* generally permit one examination for discovery of each named party (with limited exceptions). Where a corporation is a party to an action, the determination of the appropriate witness to be examined is governed by Rule 7-2(5).
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> [90] Rule 7-2(5) provides for the party being examined to nominate as its representative an individual who is knowledgeable concerning the matters in question in the action: Rule 7-2(5)(b). However, the examining party is not bound to examine that person, but may select as the person to be examined any other person, so long as that person "is or has been a director, officer, employee, agent or external auditor" of the party being examined: Rule 7-2(5)(c).
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> [91] If the party to be examined objects to the person selected by the examining party, it can do so either:
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> a) On the basis that the person does not fall within one of the roles listed in Rule 7-2(5)(c)(ii); or

b) on the basis of the court's discretion to override the examining party's choice of witness, reflected in the words "unless the court otherwise orders" at the beginning of Rule 7-2(5).

[92] The decision under appeal turned on the first of these matters. Having ruled that Mr. Robbie was not an "agent", the Master concluded that she did not need to consider whether to exercise her discretion to order that he not be examined.

[93] With respect to the second issue, I note that a party seeking to displace the examining party's choice of witness based on this discretion must demonstrate that the choice of witness gives rise to overwhelming prejudice: *XS West Construction Group v. Brovender*, 2021 BCSC 917 at paras. 18-19. As noted in *MacDonald v. Roth*, 2000 BCSC 1670 at para. 26:

> [26] Our Court of Appeal has consistently recognized that the examining party has "the right at first instance to select the representative who is to be examined". In one decision adopted by our Court of Appeal, it was recognized that "serious injustice might be done if the right of examination for discovery was in any way to be regulated by the adverse party".

[94] It is noteworthy that when a corporate party to be examined is nominating its representative, there is no restriction as to the role that individual played with respect to that corporate party. The only requirement is that the party be "knowledgeable". However, when the examining party elects to examine an individual of its own choice, that individual must fall within the listed categories of director, officer, employee, agent or external auditor. This list of categories has the function of placing a limit on who may be chosen. However, as noted in *Karl's Sporthaus*, the categories have been interpreted broadly rather than narrowly.

[34] Skipping to paragraph 96:

[96] Justice Craig in *Karl's Sporthaus*, in establishing the broad scope to be given to the word "agent" in Rule 7-2(5)(c)(ii), referenced the object of the *Supreme Court Civil Rules*, which now appears in Rule 1-3(1):

> The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

[97] Providing a broad definition of agency for purposes of this discovery rule eliminates the need for detailed consideration of the general law of agency in advance of discovery in order to determine whether an individual meets the test of agency. It eliminates the need to make a preliminary conclusion as to what may be a disputed issue at trial (i.e., whether or not the person is an agent), best determined after full discovery, and which may require consideration of viva voce evidence. In this way, the approach contributes to the just, speedy and inexpensive determination of proceedings.

[98] There is another important feature of the broad approach that also contributes substantially to the just, speedy and inexpensive determination of an action "on its merits". Ultimately, discovery plays a truth-finding role and

> the ability to examine a knowledgeable witness is key to uncovering the truth and thereby deciding a case on its merits. The broad approach taken in cases like *Karl's Sporthaus* reflects the important role Rule 7-2(5)(c)(ii) plays in providing a reasonable limit on the range of individuals that may be selected by an examining party for discovery, while respecting the important truth-seeking function of an examination for discovery.
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> [99] The existing test to determine whether a person is an agent for purposes of Rule 7-2(5)(c)(ii) requires consideration of whether the person does something for the party in a representative capacity. In my view, the Master in this case added to that test consideration of whether the person also has a shared identity and a commonality of interests.

Conclusion Regarding the Appointment of a Representative for Discovery

[35] Counsel for the Beadle defendants has had the opportunity to review the affidavit of Charlotte Payne. Therein Charlotte Payne deposes to her lack of or limited knowledge of the material facts underlying the plaintiffs' claims. It may be that the Beadle defendants are thus making an improvident decision to utilize their right of discovery of a representative who will not be of assistance in obtaining the information and/or admissions which assist in advancing their defences to the claims of the plaintiffs.

[36] However, it is not for this Court to question the litigation strategy of the Beadle defendants. The question for this Court is whether, based on the above-quoted law, Charlotte Payne is the appropriate representative under the *Supreme Court Civil Rules*. In this regard, I have concluded that she is. In concluding this, I do recognize that there is some evidence before me as to the medical condition of Charlotte Payne.

[37] Although it is a bit dated, I accept Charlotte Payne does have a medical condition with her back that impacts on her functioning and which she is actively receiving treatment for and seeking further treatment for. I am not satisfied, however, that this medical condition prevents Charlotte Payne from being discovered at all.

[38] In this regard, I note that plaintiffs in personal injury proceedings who have significant medical issues, possibly of a similar variety, are frequently examined for

discovery. Accommodations may be required such as more frequent breaks, shorter days and so forth.

[39] In family law matters, a party who has experienced family violence and possibly even have a protection order in place may need to attend a discovery in the presence of their former spouse who was responsible for the family violence. Again, reasonable accommodations are required, but the party is still tendered for discovery in accordance with their applicable rules.

[40] I have also taken into account the prior offer of counsel for the Beadle defendants to travel to London previously to conduct the discovery of Charlotte Payne. Had the issue truly just been limitations on Charlotte Payne's ability to travel for medical reasons, this would have resolved all such issues. I appreciate this would have potentially required an adjustment of dates, as counsel for the plaintiffs may have had other obligations which impacted travel, but those options were not canvassed. The option was rejected. I conclude that was because counsel for the plaintiffs had become firm in their position that Mr. Laplana was a more appropriate representative, as is consistent with the current cross-application brought by the plaintiffs. Summing up the above, I simply cannot conclude that there is overwhelming prejudice, as described in the above case law of *R.A.B.* by Justice Veenstra.

Orders Made

[41] As indicated above, I am dismissing the relief sought at paragraph 1 of the notice of application brought by the Beadle defendants. I am granting the relief sought at paragraph 2 of the notice of application of the Beadle defendants, with the substitution that the discovery shall occur on or before February 28, 2023, with leave to apply to extend that date in the event that the reasons for judgment of Justice Wilkinson have not been released to the parties by February 17, 2023. I am making this additional order as it is trite, and counsel is very experienced, to recognize that pleadings define the relevance of the scope of discovery. Where the pleadings are materially in dispute, it raises difficulties, and I can foresee a possible further

application to deal with objections and to compel answers on discovery on the basis of disputed pleadings, which will only delay the action which has already been extant for some four years.

[42] I also do recognize that this is in effect a guillotine-type order. However, having regard to the approaching trial date and the efforts that have been made by counsel for the Beadle defendants to otherwise arrange examinations for discovery without success to date, I consider this to be a situation where such an order is appropriate. I thus exercise my discretion accordingly.

[43] Paragraph 3 is dismissed in light of my granting the relief sought in paragraph 2.

[44] Finally, while I have granted short leave to consider the plaintiffs' notice of application, and it is factored into my analysis, I am, as will be apparent from by above orders, ultimately dismissing the relief sought.

Costs

[45] The Beadle defendants have been substantially successful in these applications. Costs pursuant to the *Supreme Court Civil Rules* are a matter which lie at the discretion of this Court. The court also has the discretion to award special costs in respect of an application or applications. The law on these points is again trite. Before turning briefly to the law on special costs, I will note that while this matter is very contentious and I have concerns about the reluctance of the plaintiffs to produce a representative for discovery, I ultimately do not see the conduct of the plaintiffs as yet reaching the very high threshold for special costs.

[46] Specifically, special costs are an exceptional and punitive remedy intended to punish a litigant for reprehensible conduct: *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352, at paragraph 37. "Reprehensible conduct" is broadly defined and includes scandalous or outrageous behaviour as well as milder forms of misconduct deserving of rebuke. In this regard I refer to the seminal case of *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570 (B.C.C.A.); as well as the

somewhat more recent case of *Leung v. Chang*, 2014 BCSC 1243, at paragraph 42. In addition to being punitive, the Court of Appeal decision in *Gichuru v. Smith*, 2014 BCCA 414, confirms that special costs are generally intended to indemnify a successful party.

[47] In a similar vein it has been stated that special costs serve to distance the court from the conduct at issue. In this regard, I again refer to the *Westsea Construction* decision at paragraph 37. I see no reason to deny the Beadle defendants their costs of this application and the cross-application as a single set of costs in the cause on the basis of this being a matter of ordinary difficulty. The application for special costs is dismissed.

[48] For the benefit, if necessary, of any other member of this Court assessing these costs in due course, I am going to order that costs be assessed at if this was a one-day matter. In saying this, and for the record, I recognize that between the hearing and the delivery of these reasons, these applications have actually occurred over portions of three separate days. However, the practical reality is that this matter could have been heard and concluded in a single day but for scheduling challenges, and the costs appropriately should reflect that. Similarly, the cross-application effectively mirrors the response to the application, as described above, and as such a separate costs order for the cross-application would be in my view duplicative.

[49] As for costs thrown away, as sought at paragraph 5 of the notice of application, this relief is granted. The plaintiffs failed to tender a representative for discovery despite having been properly served with a notice of appointment and conduct money. The Beadle defendants were entitled to note the non-attendance and have tendered that evidence before me properly as part of their application. The disbursements associated with those discoveries incurred with the court reporter attending and providing the certificate of attendance are thus awarded to the Beadle defendants as costs in any event of the cause, which are payable forthwith.

[50] Those are my reasons for judgment.

"Hardwick J."