IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yen v. Ghahramani,*
2023 BCSC 2081

Date: 20231127
Docket: S220213
Registry: Vancouver

Between:

Vincent Yen and 0756383 B.C. Ltd.

Plaintiffs

And

**Frederick Ghahramani, 0751846 B.C. Ltd.,
AirG Employee Share Ownership Plan Ltd. and airG Inc.**

Defendants

And

Vincent Yen, Canfleet Logistics Ltd., Studypug Inc., Studypug Holdings Inc., Studypug USA Inc., Studypug Holding (HK) Limited, Studypug (HK) Limited, Manitoulin Global Forwarding Inc., airG Services Inc. and Tai Management Ltd.

Defendants by Counterclaim

Corrected Judgment: The text of the judgment was corrected at paragraphs 26 and 45 on November 30, 2023.

Before: Master Bilawich

Reasons for Judgment

Counsel for the Plaintiffs:	B. J. Cabott
Counsel for the Defendants Frederick Ghahramani and 0751846 B.C. Ltd.:	J. D. Shields

No other appearances.

Place and Date of Hearing:	Vancouver, B.C. October 17, 2023
Place and Date of Judgment:	Vancouver, B.C. November 27, 2023

Introduction

[1] This action involves complex commercial litigation in which the plaintiffs seek oppression remedies against the defendants. The defendant airG Inc. has filed a counterclaim against the plaintiffs. I set out a brief summary in *Yen v. Ghahramani*, 2023 BCSC 229 at paras. 7-17.

[2] On this application, the defendants Mr. Ghahramani and 0751846 B.C. Ltd. (collectively, the "Ghahramani Defendants") seek orders:

a) Striking the plaintiffs' Response to Notice to Admit; and

b) Requiring the plaintiffs to respond fully to each of the admissions sought in their Notice to Admit within one week.

[3] The plaintiffs oppose all of the relief sought on the basis that the application is an abuse of process. The Ghahramani Defendants previously applied for relief in relation to this same Response to Notice to Admit, which was dismissed. They say this application is an improper attempt to re-litigate the same issue.

Background

[4] On March 1, 2023, the Ghahramani Defendants served the plaintiffs with a lengthy Notice to Admit, seeking admission of 1,804 paragraphs spanning 224 pages. Counsel offered to give the plaintiffs six weeks to respond to it rather than the normal fourteen days provided for in Rule 7-7(1)(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 ("*SCCR*").

[5] On March 13, 2023, the plaintiffs delivered their Response to Notice to Admit, stating:

> The Plaintiffs Vincent Yen and 0756383 BC Ltd. deny each fact, the admission of which is requested in paragraphs 1 to 1,804 in the Notice to Admit.

[6] On March 15, 2023, the Ghahramani Defendants filed an application seeking orders that:

a) The applicants may examine each of the plaintiffs [for discovery] for an additional 180 hours;

b) The applicants may send interrogatories to the plaintiffs [i.e. convert the Notice to Admit into interrogatories]; and

c) The Trial set for June 10, 2024 for 24 days be adjourned generally and rescheduled for new date, for 34 days.

[7] The plaintiffs opposed all of the relief sought. On June 21, 2023, the application came before Master Robertson. On August 16, 2023 she issued Reasons, indexed as *Yen v. Ghahramani*, 2023 BCSC 1421. They include (paraphrasing):

a) Para. [3] – The application is brought by the Ghahramani Defendants as a result of what they argue is the plaintiffs' unreasonable refusal to answer the Notice to Admit;

b) Para. [4] – The plaintiffs argue the Notice to Admit is, on its face, an abuse to which they were entitled to respond with a one sentence bare denial, without explanation, as it is not their role to parse through over 200 pages to determine if any entries are appropriate;

c) Para. [18] – The 1,804 admissions sought are replete with both entries which could not reasonably be expected to be answered as framed for various reasons, including lack of clarity or context, and ones that should not be contentious;

d) Para. [35] – There is little doubt that the plaintiffs denied the facts in their entirety, as they were entitled to do under R. 7-7(2)(a). An almost identical denial was found to be proper in *Luu v. Wang*, 2009 BCSC 860;

e) Para. [36] – The Ghahramani Defendants conceded that if the Response to Notice to Admit is found to be a bare denial under R. 7-7(2)(a), then it would be one that the plaintiffs were entitled to make. However, they argue that the court could still consider whether the plaintiffs were acting

unreasonably in refusing to make admissions and grant the orders sought accordingly. In their view, there must be a consequence when a party is unnecessarily "obstreperous and difficult";

f) Para. [47] – Having found the Response to Notice to Admit was properly made by the plaintiffs under R. 7-7(2)(a), it was not open the to court at this stage to order that the [requests for] admissions are to be answered, or a justification made for not answering them through some other means, whether that be an order compelling compliance as was done in *Whalen*, through conversion into an interrogatory as was done in *Bene (Oval) Development Ltd. v. 1148538 B.C. Ltd.*, 2020 BCSC 1608 [*Bene*] and *Gross v. Peak Products Manufacturing Inc.,* 2023 BCSC 971, or through extended discovery rights as discussed in *Bene*; and

g) Para. [65] – The application was dismissed in its entirety, but on a without prejudice basis. Specifically, either party may bring an application at a later time on new evidence and a full legal basis under Rules 7-2(2) [time limits on examinations for discovery], 7-3(1) [discovery by interrogatories] or 12-1(9) [orders respecting trial dates] but not on the basis which is that of the current application, i.e. based on the Denial.

[8] The term "Denial" is defined in para. [14] of her Reasons as the text of the denial in the Response to Notice to Admit.

[9] It is my understanding that the Ghahramani Defendants did not file an appeal in respect of Master Robertson's order.

[10] On August 16, 2023, about six minutes after the reasons were released to the parties, the Ghahramani Defendants' counsel wrote to plaintiffs' counsel requesting their available dates for the present application.

[11] On August 18, 2023, the Ghahramani Defendants filed their current application. I pause to note that the first item of relief sought in the current application actually states that the applicants seek an order striking "the Plaintiffs'

Response to these Defendants' Notice of Application" [underlining added]. This appears to be a typographical error. The parties argued the application on the basis that the Ghahramani Defendants seek an order striking the Response to Notice to Admit. My analysis proceeds on this basis.

Position of the Parties

Ghahramani Defendants

[12] The Ghahramani Defendants argue that by responding to the entirety of the Notice to Admit with a one-line blanket denial in their Response to Notice to Admit, the plaintiffs failed to properly expediate the litigation and make all proper admissions. They say this is scandalous, frivolous, vexatious or otherwise an abuse of process of the court. Counsel suggests recent decisions highlight the importance of parties engaging with the substance of a notice to admit. They rely on the court's discretion to strike out a document under Rule 9-5(1) and say abuse of process includes circumstances where the process of the court is not being fairly or honestly used and acts which are manifestly groundless, without foundation or which serve no useful purpose, paraphrasing *McHale v. Webb*, 2016 SKQB 9 at para. 13.

[13] Faced with a Notice to Admit, a receiving party has three options under Rule 7-7(2)(a), (b) and (c). Counsel argues the plaintiffs did not specifically deny the truth of the facts set out in the Notice to Admit, did not set out reasons why they could not make the admissions sought, or any of them, and did not set out grounds for refusing to make the admissions sought. Even if there has been a denial under sub-rule (a), counsel argues the court should have residual discretion to require the recipient to engage with each individual item for which an admission is sought and provide an explanation for each individual refusal. Counsel describes this latter point as a developing area in the law.

[14] Counsel argues that the recourse to costs in Rule 7-7(4), if the trial judge finds a denial or refusal to admit was unreasonable, does not mean anything. The act of failing to engage properly with the Notice to Admit is contrary to a party's

obligation to resolve the plaintiffs' claims expeditiously, efficiently and cost-effectively under Rule 1-3.

Plaintiffs

[15] The plaintiffs say this application is an abuse of process. The Ghahramani Defendants are attempting to re-litigate issues addressed by Master Robertson in the previous application.

[16] The plaintiffs also originally raised arguments in their application response based on the application being a collateral attack on Master Robertson's order and issue estoppel, but counsel chose not to pursue those lines of argument at the hearing and was content to only argue abuse of process.

[17] Counsel points out that Master Robertson found the Response to Notice to Admit constituted a denial and this had been properly done in accordance with Rule 7-7(2)(a). She found no further explanation or justification was necessary or appropriate in the circumstances.

Reply by Ghahramani Defendants

[18] The Ghahramani Defendants created their own court form entitled "Reply". It is a lengthy reply to the plaintiffs' response to this application. Despite the plaintiffs having abandoned collateral attack and issue estoppel, counsel incorporated these concepts into his argument regarding abuse of process.

[19] They argue that in their previous application they sought (a) additional time to examine each of the plaintiffs for discovery and (b) conversion of their Notice to Admit into interrogatories. That involved different relief than they are seeking on the present application, namely striking the Response to Notice to Admit and requiring the plaintiffs to provide a detailed response to each individual item for which admissions are sought in the Notice to Admit.

[20] Counsel argues that the necessary elements of res judicata, collateral attack, issue estoppel and abuse of process are not present here. Those require that there

be a previous final decision on the merits, which is lacking here. Counsel also says that collateral attack or issue estoppel must be present for there to be an abuse of process. This is an entirely new interim application which seeks different relief.

[21] Counsel says there can be no suggestion of abuse of process on an interlocutory application where the previous order is not final and does not determine issues on the merits. Even if the court concludes any of the foregoing doctrines could arguably apply here, it has discretion to not apply them where that would work an injustice.

Applicable Law

Response to Notice To Admit

[22] Rule 7-7(2) sets out the options for responses to a notice to admit:

> **Effect of notice to admit**
>
> (2) Unless the court otherwise orders, the truth of a fact or the authenticity of a document specified in a notice to admit is deemed to be admitted, for the purposes of the action only, unless, within 14 days after service of the notice to admit, the party receiving the notice to admit serves on the party serving the notice to admit a written statement that
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> (a) specifically denies the truth of the fact or the authenticity of the document,
>
> (b) sets out in detail the reasons why the party cannot make the admission, or
>
> (c) states that the refusal to admit the truth of the fact or the authenticity of the document is made on the grounds of privilege or irrelevancy or that the request is otherwise improper, and sets out in detail the reasons for the refusal.

[23] Sub-rule (4) provides that if a party unreasonably refuses to admit the truth of a fact or authenticity of a document specified in a notice to admit, the court may order costs consequences:

> **Unreasonable refusal to admit**
>
> (4) If a responding party unreasonably denies or refuses to admit the truth of a fact or the authenticity of a document specified in a notice to admit, the court may order the party to pay the costs of proving the truth of the fact or the authenticity of the document and may award as a penalty additional costs, or deprive a party of costs, as the court considers appropriate.

[24] In *Bene* at para. 16, Master Harper noted that a party responding to a notice to admit is entitled to do so by simply invoking “denied”. They are not obliged to set out a justification for doing so:

> **16** The defendant was entitled to respond to the notice to admit by simply invoking "denied" as Rule 7-7(2)(a) permits. The response is not sworn evidence and requires no justification for the position taken. If the position is unreasonable, the only recourse is an award of costs pursuant to Rule 7-7(4).

[25] A denial is treated differently than a refusal to admit. When a party refuses to give the admissions sought, sub-rules (b) or (c) each require that they set out in detail the reason(s) for their refusal.

Collateral Attack

[26] Collateral attack was summarized in *Sood v. Hans*, 2023 BCCA 138 [*Sood*] at paras. 51-52 and 54-55:

> **51** In my view, the most appropriate analytical framework to assess this appeal is the doctrine of collateral attack, which is an application of the flexible doctrine of abuse of process.
>
> **52** A court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. Such an order may not be attacked collaterally. A collateral attack is an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment: *C.U.P.E.* at para. 33, citing *Wilson v. The Queen*, [1983] 2 S.C.R. 594 at 599.
>
> **…**
>
> **54** The principles concerning collateral attack were recently reviewed by this Court in *M.K. v. British Columbia (Attorney General)*, 2020 BCCA 261 [*M.K.*]. The appellant in *M.K.* had unsuccessfully sought an order for child support retroactive to her daughter's birthdate. After the Supreme Court of Canada denied her leave application she commenced a new action challenging the constitutional validity of the federal and provincial child support regimes, claiming that under the *Charter*, child support awards should always be retroactive to a child's birthdate. The action was dismissed as a collateral attack on the earlier order.
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> **55** In explaining that the new action was a collateral attack on the previous order, Justice Dickson pointed out that to determine whether a claim constitutes a collateral attack, the court should ask whether the claim, or any part of it, amounts in effect to an appeal of an existing order: *M.K.* at para. 33; *Krist v. British Columbia*, 2017 BCCA 78 at para. 47. A claim will amount "in effect" to an appeal of an existing order if it seeks to invalidate, or

otherwise challenge the legal force of, the order: *M.K.* at para. 33; *Lamb v. Canada (Attorney General)*, 2018 BCCA 266 at para. 94.

[27] In *Saskatoon Credit Union Ltd. v. Central Park Enterprises Ltd.*, [1988] B.C.J. No. 49, 1988 CanLII 2941 (SC) at paras. 32-33, per McEachern CJSC:

> [32] … no one can relitigate a cause of action or an issue that has previously been decided against him in the same court or in any equivalent court having jurisdiction in the matter where he has or could have participated in the previous proceedings unless some overriding question of fairness requires a rehearing.
>
> [33] The exceptions to the foregoing include fraud or other misconduct in the earlier proceedings or the discovery of decisive fresh evidence which could not have been adduced at the earlier proceeding by the exercise of reasonable diligence: …

Issue Estoppel

[28] The elements of issue estoppel were summarized in *Sood* at para. 48:

> **48** Issue estoppel is a branch of *res judicata*, which precludes the re-litigation of issues previously decided in court in another proceeding. For issue estoppel to be successfully invoked, three preconditions must be met: (1) the issue must be the same as the one decided in the prior decision; (2) the prior decision must have been final; and (3) the parties to both proceedings must be the same, or their privies: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 23 [*C.U.P.E.*."].

[29] In *Jazette Enterprises Ltd. v. Amit*, 2023 BCSC 180 at para. 23:

> **23** Second, issue estoppel and *res judicata* do not apply to interlocutory orders where the underlying order is not a final decision: *410675 Alberta Ltd. v. Trail South Developments Inc.*, 2001 ABCA 274 at para. 12; *Dawgs* at paras. 12-13; *Gubbels* at para. 48; *Concord Pacific Acquisitions Inc. v. Oei*, 2020 BCSC 832 at para. 81, aff'd 2022 BCCA 16; *Gateway Casinos LP v. B.C. Government and Service Employees' Union*, 2007 BCCA 465 at para. 8; *Sandhu v. Surrey (City)*, 2021 BCSC 2519 at para. 13. The appellants submit that R. 9-5(1) applications seek a final order and therefore any resulting decision is a final order, even where the Court does not strike a claim. The order of Fleming J. is clearly not a final order determining issues between the parties or findings of fact which would otherwise be left to the trial judge. The justice limited herself to the issue before her: whether the plaintiffs' claim was bound to fail. Her analysis did not entail making any findings of fact, and certainly no findings on the merits of the claim that would be binding.

Abuse of Process

[30] Abuse of process is described in *Toronto (City) v. Canadian Union of Public Employees (CUPE), Local 79*, 2003 SCC 63 at paras. 35-55. I will not reproduce the entire passage here. At para. 37:

> **37** In the context that interests us here, the doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would ... bring the administration of justice into disrepute" (*Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, *per* Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63)). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
> > The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).
> >
> > [page 103]
> >
> > One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added.]

[31] See also the summary in *The Owners, Strata Plan BCS3702 v. Hui*, 2023 BCSC 1420 at para. 25:

> **25** As explained in *Krist*, the abuse of process doctrine is designed to prevent actions that violate principles of judicial economy, consistency, finality and the integrity of the administration of justice: at para. 52. It prevents re-litigation, essentially for the purpose of preserving the integrity of the court's process. Collateral attack is one application of the larger doctrine of abuse of process, and to determine whether a claim constitutes a collateral attack one should inquire into whether the claim, or any part of it, is an appeal of an order: *Sood v. Hans*, 2023 BCCA 138 at para. 51-58. The doctrine of abuse of process also encompasses the doctrine of ulterior or improper purpose, and the principle of *res judicata*: see *1125003 BC Ltd. V. The Owners, Strata Plan KAS 1886*, 2022 BCSC 1142 at para. 26; *Babavic* at paras. 17-18.

[32] And in *Simpson v. Koenigsberg*, 2018 BCSC 499 at para. 40:

> **40** Abuse of process is not limited to cases where a claim or an issue has already been decided in other litigation, but it is a flexible doctrine applied by the court to values fundamental to the court system. Canadian courts have

> applied the doctrine of abuse of process to preclude re-litigation in circumstances where the strict requirements of issue estoppel are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and integrity of the administration of justice. See *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473.

Application to Interlocutory Proceedings

[33] The foregoing principles have been found to apply to interlocutory proceedings. See for example, *Paterson v. Reeves*, 2002 BCSC 1341 at paras. 25-26:

> C. Application of the maxim to interlocutory proceedings
>
> **25** The Alberta decisions of *Talbot v. Ocean Oil Corp.*, [1977] A.J. No. 47 (C.A.) and *Pocklington Foods Inc. v. The Queen in Right of Alberta* (1995), 123 D.L.R. (4th) 141 (Alta. C.A.) concluded that the principles of res judicata and issue estoppel did not apply to procedural interlocutory applications. However, at p. 112 of *Talbot*, Clement J.A. further noted that a rehearing of an application remained "subject to control by the exercise of judicial discretion in determining whether it is frivolous or vexatious in all the circumstances then appearing."
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> **26** The 1992 edition of Sopinka, Lederman and Bryant's *Law of Evidence in Canada* provides, at p. 996, that "res judicata will apply in a subsequent application if the applicant relies merely on his or her own failure to present certain material...". The footnote to this passage lists Talbot as one of two cases that stand in contradiction to the general rule.

[34] In *Bonthoux v. Elizabeth Fry Society of Greater Vancouver*, 2023 BCSC 1603 at paras. 21 and 25, Justice Chan noted that principles of issue estoppel are applicable to interlocutory applications, following *Paterson*.

[35] The plaintiffs also point to an Alberta authority, *Anokhina v. Banovic*, 2018 ABQB 1012 at paras. 17-18:

> **17** With regard to finality, Mr. Virk asserted that there is no binding authority holding that *res judicata* applies to interlocutory applications. That is a dubious proposition as no coherent system of justice would permit repeated re-litigation of the same interlocutory issue in the same matter, conceivably week after week. The Court of Appeal states at para 38 of *Ernst*:
>
> > **38** A decision need not determine the entire subject matter of the relevant litigation in order to meet the second precondition. Rather, the precondition is met where a decision finally disposes of a substantive right between the parties. Consequentially, "a final disposition in an interlocutory proceeding may give rise to issue

> estoppel in a different proceeding:" *Res Judicata, supra* at 86 and 182.
>
> **18** If a final disposition of an interlocutory matter may give rise to issue estoppel in a different proceeding, then surely it would have the same effect in the same proceeding.

Analysis

[36] A preliminary issue to be determined is whether this application constitutes an attempt to re-litigate an issue that has already been addressed, or which the Ghahramani Defendants could have addressed in the previous application, and if so, whether this renders the present application an abuse of process.

[37] The Ghahramani Defendants argue that the issues they raised in the previous application were their request for 180 hours of additional examination for discovery of both plaintiffs and leave to send interrogatories to the plaintiffs (i.e. convert the Notice to Admit into interrogatories). They say Master Robertson's order only disposed of those specific items of relief, and her reasons for doing so are *obiter* which is not binding on the court for purposes of subsequent interlocutory applications in this action. In this application, they seek different relief. They also note that Master Robertson indicated her order was "without prejudice" and suggest para. 65 of her Reasons, namely the sentence ending, "… i.e. based on the Denial", is ambiguous and unclear.

[38] In the previous application, the Ghahramani Defendants sought alternative forms of relief based on their position / argument that the Response to Notice to Admit constituted an unreasonable refusal by the plaintiffs to make sensible admissions and meaningfully engage with the Notice to Admit. They argued in the alternative that even if the Response to Notice to Admit was found to be a denial, the court still had discretion to require the plaintiffs to respond to individual items for which admissions are sought in the Notice to Admit. See in this regard para. 36 of Master Robertson's Reasons.

[39] The authorities the Ghahramani Defendants relied on in the previous application included *Bene* and *Nouhi v. Pourtaghi*, 2021 BCSC 1779 [*Nouhi*]. *Nouhi*

refers to *The Whalen Company v. Olympic International Agencies Ltd.*, 2017 BCSC 1771 [*Whalen*]. These same authorities were also central to the present application.

[40] In each of those cases, responses to notices to admit were found to constitute refusals to admit which did not comply with the requirements of Rule 7-7 by failing to provide adequate reasons for the refusal. In each case, the court ordered that the offending response to notice to admit be struck out. In each case the court concluded that simply ordering that the matters for which admissions had been sought in the notice(s) to admit be deemed admitted would be an unduly draconian result. The alternate remedies identified amongst these three cases included:

a) **Option 1**: Allowing the responding party to tender a new or amended response to notice to admit. This was ordered in *Whalen* and *Nouhi*;

b) **Option 2**: Converting the notice to admit into interrogatories, to force the responding party to answer via affidavit. This was ordered in *Bene*; and

c) **Option 3**: Increasing the amount of time the issuing party had to examine the responding party for discovery. This option was mentioned in *Bene.*

[41] In the previous application, the Ghahramani Defendants sought Option 3 or alternatively Option 2. In this application they seek Option 1. However, in both applications, the relief is being sought to address exactly the same alleged deficiency with the Response to Notice to Admit. The Ghahramani Defendants could easily have requested Option 1 as alternative relief in their previous application without requiring any other edits to the application.

[42] In *Sood* at paras. 39-41, the court of appeal noted that a litigant has an obligation to bring all available arguments it wishes to advance to the original hearing of an issue:

> **Failure to make all available arguments**
>
> 39 It has long been held that a litigant must bring all available arguments it wishes to advance to the original hearing of an issue. If a litigant fails to do so, the general rule is that it is not permitted to come back another time to revisit the issue: *McKnight v. Hutchison*, 2022 BCCA 27 at para. 125.
>
> 40 This is a rule of considerable antiquity, and is generally traced back to this passage in the judgment in *Henderson v. Henderson*, (1843) All E.R. Rep. 378:

> In trying this question, I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.
>
> [Emphasis added.]

41 A more recent articulation of the same concept can be found in the Supreme Court of Canada judgment in *Danyluk v. Ainsworth Technologies Inc.,* 2001 SCC 44:

> [18] The law rightly seeks a finality to litigation. To advance that objective, it requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so. A litigant, to use the vernacular, is only entitled to one bite at the cherry...

[43] In my view, this principle can reasonably be applicable to an interlocutory application in appropriate circumstances. Judicial economy, consistency, "finality" of decisions dealing with interim issues and integrity of the administration of justice are also important and relevant considerations for the purposes of interim proceedings. It would be a perverse result if the Ghahramani Defendants could make repeated applications to address essentially the same issue before a series of presiders until they get their desired result. Switching to different alternate relief does not render the present application materially different than the previous one heard by Master Robertson. She heard and rejected the same arguments. Counsel has not suggested there is any material change since that hearing which could possibly justify a re-hearing.

[44] In the previous application, Master Robertson found that the Response to Notice to Admit constituted a denial rather than a refusal to admit. She found the denial was properly made pursuant to R. 7-7(2)(a) and that it was not open the to court at this stage to order that the [requests for] admissions were to be answered,

or a justification given for not answering them through some other means, as was done in *Whalen*, *Nouhi* and *Bene*. Her conclusion is consistent with what is set out in *Nouhi* at para. 16. The present application simply ignores these conclusions and I am asked to reach the opposite conclusions.

[45] At Reasons para. 65, Master Robertson indicated that her dismissal of the previous application was made without prejudice to the Ghahramani Defendants' ability to make subsequent applications on new evidence regarding additional time for discovery, interrogatories or adjournment of trial, but not based on the "Denial" [i.e. the Response to Notice to Admit]. The present application directly conflicts with this aspect of her order.

[46] If the Ghahramani Defendants disagree with Master Robertson's order, they had the option of appealing it. They did not do so. Simply repeating the application with minor changes is a clear abuse of process. The application is dismissed.

Costs

[47] The plaintiffs seek special costs payable forthwith. They say an abuse of process is by its nature reprehensible and deserving of rebuke in the form of special costs. They refer me to *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at paras. 53-57, *Daum v. Gorrell*, 2018 BCSC 225 at paras. 32-33 and 41, and *Krist v. British Columbia*, 2017 BCCA 78 at paras. 50-52 and 56-58.

[48] While I have concluded this application was an abuse of process, it appears to be an isolated event. I do not consider that it rises to the level of reprehensible conduct necessary to warrant special costs. The issues addressed were relatively complex, so it is appropriate that the Ghahramani Defendants pay the plaintiffs party and party costs at Scale C in any event of the cause, but not forthwith.

"Master Bilawich"