

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mega Cranes Ltd. v. Petersen*,  
2023 BCSC 2357

Date: 20231106  
Docket: S2013134  
Registry: Vancouver

Between:

**Mega Cranes Ltd.**

Plaintiff

And:

**Kelly Petersen**

Defendant

Before: The Honourable Mr. Justice Morley

## **Oral Reasons for Judgment**

(In Chambers)

Counsel for the Plaintiff:

T. D. Goepel

Counsel for the Respondent:

C. Veinotte

Place and Date of Trial/Hearing:

Vancouver, B.C.  
November 6, 2023

Place and Date of Judgment:

Vancouver, B.C.  
November 6, 2023

[1] **THE COURT:** These are oral reasons for judgment. If anyone orders a written transcript of these reasons, that transcript may be edited. I may correct typographical or grammatical errors or misspoken words. I may add full citations and quotes from authorities or evidence. I may expand on matters referred to in point form verbally or clarify the reasons in minor ways, such as by adding organizational features like headings or sub-headings. The thrust of the reasons will not change nor will the result.

[2] This is an application under Rule 7-1 to list documents demanded by the plaintiff, Mega Cranes Ltd., over which solicitor-client privilege is claimed by the defendant Kelly Petersen.

[3] The underlying action arises out of a dispute between two brothers, Kerry Hawley and Mr. Petersen. Mr. Hawley and Mr. Petersen jointly operated Mega Cranes Ltd. until Mr. Hawley ousted Mr. Petersen in June 2020. In this action, Mega Cranes Ltd., now under the leadership of Mr. Hawley, alleges that Mr. Petersen misappropriated various corporate assets. Among those assets are said to be certain trust funds paid to the trust account of Gould Goodwin & Co., Barristers and Solicitors.

[4] At paragraphs 49 to 53 of the amended notice of civil claim, Mega Cranes alleges that Gould Goodwin & Co. held \$79,147.22 in trust for it as of October 3, 2019. Mega Cranes says an unknown amount of this money was transferred at Mr. Petersen's instructions, either to him, to companies he controlled, or to others, in breach of fiduciary duty. It alleges that Mega Cranes' lawyer's request for information relating to these trust funds, dating back to January 2021, have so far gone unanswered by Gould Goodwin & Co. or by Mr. Petersen.

[5] Mega Cranes is therefore asking for an order requiring Mr. Petersen to amend his list of documents to list, under Part 1, all documents relating to the relevant paragraphs of the amended notice of civil claim. In particular, it is asking for:

- a) all correspondence relating to the source of the trust funds;

- b) all correspondence relating to the payment of the funds into the trust fund of Gould Goodwin & Co.;
- c) all correspondence relating to the payment of trust funds out of the trust account of Gould Goodwin & Co.; and
- d) banking documents relating to the payment of trust funds out of the trust account of Gould Goodwin & Co., including where those funds went.

[6] Mr. Petersen does not deny that these records relate to matters in question in this action. They appear to be in the custody of David Goodwin, who the parties agree is counsel for Mr. Petersen.

[7] It appears there has been some issue in the past as to whether Mr. Petersen was entitled to ask for these documents from Mr. Goodwin. In my view, I think it is trite law that a client is entitled to the documents from their solicitor with very limited and inapplicable exceptions.

[8] It follows then that these documents are ones that must be listed, either under Part 1, if not privileged, or under Part 4, if some privilege is claimed.

[9] It has become clear in the course of oral argument that Mr. Petersen is not, or at least no longer, alleging that *all* the records requested would legitimately be subject to solicitor-client privilege, although some may be. Since Mega Cranes is asking for an order that all these documents be listed under Part 1, however, I must resolve the issue of solicitor-client privilege to the extent that I order where the documents must be listed.

[10] Mega Cranes says the documents in their entirety are either not privileged because they relate to facts rather than legitimately confidential communications between lawyer and client or, if they are privileged, that the crime or fraud exception to solicitor-client privilege applies.

[11] In light of the concessions that have been made, I am going to order that all the documents related to these parts of the amended notice of civil claim be listed, whether in Part 1 or Part 4.

[12] So as to avoid greater delay and expense to the parties are necessary, I am going to further order that those records that I can find, based on what is before me, not to be subject to solicitor-client privilege should be listed in Part 1. This, it should go without saying, is without prejudice to a further application by Mega Cranes Ltd. in relation to specific documents listed in Part 4 in the future.

[13] On the evidence before me, there were at least two transactions involving settlement monies owed to Mega Cranes that went into Mr. Goodwin's trust account. Those are settlement funds in relation to a claim with respect to Confort Contracting Co. Ltd. and a different one in relation to Vertex Builders Ltd. It is clear to me that there is no legitimate claim for solicitor-client privilege in relation to any communications between Gould Goodwin & Co. and third parties, i.e., persons other than Mr. Petersen, in relation to either of these two transactions. If, as Mr. Goodwin insists, he has not been Mega's lawyer, then it is difficult to see how he could have engaged in solicitor-client privileged communications in relation to these transactions which are, by all accounts, on behalf of Mega.

[14] There is a third disputed transaction. I make no orders in relation to where these records should be listed today, but that is, of course, without prejudice to Mega Cranes Ltd. making an application in the future after these are listed in Part 4.

[15] The other issue that arises is whether the crime/fraud exception to the principle of solicitor-client privilege applies to any of the communications directly between Mr. Goodwin and Mr. Petersen. With one exception, I have no evidence before me that would rise to the level that would be necessary to establish this exception.

[16] The one exception is a document that is dated December 20, 2019, and purports to be a resolution consented to in writing by a director and officer of Mega

Cranes Ltd., executed by Kelly Petersen, and attached to it is an assignment and acknowledgment, also executed on December 20, 2019, on behalf of Kelly Petersen. The effect or purported effect of these two documents is to transfer trust monies held by Gould Goodwin & Co. on behalf of Mega Cranes Ltd. to a company in which Mr. Petersen had an interest and Mr. Hawley did not.

[17] It is not necessary, and it would be inappropriate, for me to make any findings that this transaction was, in fact, in breach of fiduciary duty of Mr. Petersen as an officer of Mega Cranes Ltd. But I find that the documents between Mr. Petersen and Mr. Goodwin need to be disclosed, notwithstanding the general principle of solicitor-client privilege.

[18] Mr. Petersen purported to be acting as a director and officer of Mega Cranes Ltd., which means that if Mr. Goodwin provided him any advice as to what he should be doing in that role, it could not -- consistent with Mr. Goodwin's insistence that he had never represented Mega itself -- be legal advice. On this basis, solicitor-client privilege would not attach. If, on the other hand, Mr. Goodwin was acting as Mr. Petersen's lawyer and facilitating a transfer of value contrary to what would be a clear fiduciary duty, then the crime/fraud exception would be made out. Either way, the communications between Mr. Petersen and Mr. Goodwin in relation to this transaction need to be listed in Part 1.

[19] I therefore order as follows:

- 1) Subject to paragraph 3 of this order, the defendant, Kelly Petersen, must amend his list of documents to list, under either Part 1 or Part 4, all documents in the possession of Gould Goodwin & Co., Barristers and Solicitors, relating to paragraphs 49 to 53 of the amended statement of claim.
- 2) The amended list of documents must be delivered to the plaintiff, Mega Cranes Ltd., no later than 4:00 p.m. on November 20, 2023.

- 3) The following documents must be listed in Part 1 of the amended list of documents:
- a) all banking documents and trust ledgers relating to the payment of trust funds into and out of the trust account of Gould Goodwin & Co. to the credit of Mega Cranes Ltd.;
  - b) all correspondence between Gould Goodwin & Co. and persons other than Mr. Petersen relating to the payment of settlement funds in relation to Confort Contracting Co. Ltd. and Vertex Builders Ltd.;
  - c) all communications, including direct communications between Kelly Petersen and Gould Goodwin & Co., in relation to the December 20, 2019, resolution consented to in writing by director and officer of Mega Cranes Ltd., executed by Kelly Petersen;
  - d) all communications, including direct communications between Kelly Petersen and Gould Goodwin & Co., in relation to the assignment and acknowledgment executed December 20, 2019, by Kelly Petersen.

[20] Mr. Veinotte, do you want to say anything more about costs?

[21] CNSL C. VEINOTTE: I think my friend wants his costs in any event, but I would say -- of course, I am going to say costs in the cause. I got some stuff I want. One caveat about November 20th, however. As I was saying to Mr. Goepel out in the hallway, this isn't one of these orders where my client has these documents in a box. I have to deal with Mr. Goodwin. Could we say November the 20th or further agreement of counsel, or push the date at least till the 27th?

[22] THE COURT: Yes. I mean, I think there might be some use to having a date, but what do you say, Mr. Goepel?

[23] CNSL T. GOEPEL: We're totally content on November 27th, if that's when we can get it by.

[24] THE COURT: Okay. Madam Registrar, November 20 should be changed to November 27. As to costs, Mr. Goepel, what do you have to say?

[25] CNSL T. GOEPEL: Again, as we said, we've been demanding these documents for about two years. They've never been listed. We had to bring a formal demand under Rule 7-1. They refused to produce anything. We brought a notice of application. They filed a response refusing to produce anything. It wasn't till this morning, about 7:30, I got an email saying they'll produce some things. We already booked a full day of chambers. It's our submission there should be costs in any event of the cause.

[26] THE COURT: I order costs in any event of the cause in the circumstances.

“J. G. Morley, J.”  
The Honourable Mr. Justice Morley