

CITATION: 2493572 Ontario Inc v. Diamond Luxury Builders Inc et al., 2024 ONSC 269
COURT FILE NO.: CV-23-00000983-0000
DATE: 2024 01 11

SUPERIOR COURT OF JUSTICE – ONTARIO

491 Steeles Avenue East, Milton ON L9T 1Y7

RE: 2493572 ONTARIO INC., plaintiff

AND:

DIAMOND LUXURY BUILDERS INC.
DIAMOND LUXURY DEVELOPMENTS CORP.
And IMRAN AHMED, defendants

BEFORE: Justice C. Conlan

COUNSEL: Angela Assuras, for the plaintiff
Shazad Siddiqui, for the defendants

HEARD: January 11, 2024, by video conference

ENDORSEMENT

- [1] First, the moving party Plaintiff asks for an order that the individual Defendant, Ahmed, deliver an affidavit of documents within thirty calendar days after today. That relief is denied.
- [2] Why? Because it makes no common sense. The noting in default and default judgment against the two corporate Defendants are about to be set aside, on consent, and the three Defendants then intend to file one pleading, and counsel for the Defendants conceded today in oral submissions that it would be reasonable for the Defendants to deliver their joint affidavit of documents within thirty calendar days after the close of pleadings (that is, after pleadings have been served and filed by all parties). I agree. Although it may be true that the Plaintiff *can* demand that Ahmed deliver his own affidavit of documents now, it makes no common sense to do so.

- [3] Second, the moving party Plaintiff also asks for an order adjourning those portions of the amended motion that pertain to the two corporate Defendants. That request is denied as well.
- [4] Why? Because a court that lacks jurisdiction to make an order cannot obtain jurisdiction simply by adjourning the matter to a date after something is expected to happen that will enable the court to make the order requested on day one. The two corporate Defendants, today, are not required to deliver any affidavit of documents and/or to permit counsel for the Plaintiff to inspect any documents – those Defendants have been noted in default and are the subject of a default judgment. Today, the action is effectively over against those Defendants. Unless and until the noting in default and default judgment have been set aside, the Court has no authority to make the order sought against the corporate Defendants. There is nothing to adjourn.
- [5] Third and finally, the moving party Plaintiff asks for an order that counsel for the Defendants send to counsel for the Plaintiff copies of documents that are the subject of a prior Request to Inspect Documents [Form 30C, under Rule 30.04(1) of the *Rules of Civil Procedure*] delivered by counsel for the Plaintiff. That request is granted. This Court orders that copies of the said documents shall be provided to counsel for the Plaintiff within thirty calendar days after today.
- [6] Why? Because, notwithstanding the clear wording of Rule 30.04(3), which, counsel for the Defendants is correct, provides that the inspection is to take place at the office of the lawyer of the party served with the Form 30C, it makes no common sense to require that in these circumstances. And common sense still matters in civil litigation. This Court is required to liberally construe the *Rules* to secure the most expeditious and least expensive determination of every civil proceeding, and I would add every step in every civil proceeding, on its merits – Rule 1.04(1).

- [7] It is a waste of time and money to have Plaintiff's counsel or a designate travel to Defendants' counsel's office to look at documents that nobody disputes are available and are relevant and which would undoubtedly fall within Rule 30.03(2)(a) and, thus, be produced to Plaintiff's counsel in any event. Frankly, and with respect, in this era of electronic disclosure, Rule 30.04(3) reads like a stubborn throwback. It should not be demanded to be strictly complied with in all instances, no matter what, especially where, as here, there was a prior offer by counsel for the Defendants to provide copies of the documents in question, albeit not on the immediate terms sought by counsel for the Plaintiff.
- [8] There has been some divided success on the motion. No costs.

Conlan J.

Date: January 11, 2024