CITATION: Coface North America Insurance Company v. Sampson, 2024 ONSC 331
COURT FILE NO.: CV-23-00709688-0000
DATE: 20240115

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Coface North America Insurance Company, applicant

-and-

Janet Sampson, respondent

BEFORE: Robert Centa J.

COUNSEL: Ryan A. Morris and Gregory Sheppard, for the applicant

Nadia Campion and Tyler Morrison, for the respondent

Lauren Tomasich and Jayne Cooke, for the intervener, Magna Tyres USA, LLC

HEARD: January 10, 2024

ENDORSEMENT

[1] Coface North America Insurance Company brings this urgent application to enforce a letter of request issued by the United States District Court, Middle District of Florida, Orlando Division. The order of the Florida Court requests the assistance of this court to obtain the evidence of Janet Sampson for use in a proceeding commenced by the intervener, Magna Tyres USA, LLC against Coface. Ms. Sampson, an Ontario resident, is the former office manager of Magna Tyres Canada, a subsidiary of Magna Tyres USA.

[2] For the reasons that follow, I grant the application.

[3] Given the urgency of the application, I am releasing this decision as soon as possible. I have carefully reviewed all of the facts, even if I do not refer to all of them in these reasons. I will address the primary arguments raised by Ms. Sampson and the intervener, Magna Tyres USA.

Facts

[4] In February 2020, Magna Tyres USA obtained a policy of international credit insurance from Coface.

[5] In May 2020, Magna Tyres USA filed insurance claims in the amount of $1.2 million based on unpaid invoices issued to three companies that bought goods from Magna Tyres USA (the "Three Buyers"). The Three Buyers disputed the validity and the amount of the alleged debts, so Coface invoked the insurance policy's dispute provision and suspended coverage pending the resolution of the disputes. Magna Tyres USA believed that the Three Buyers

had not raised a legitimate dispute to trigger the dispute provision. Magna Tyres USA sued Coface seeking an order that it pay out the claims.[1]

[6] Coface defended the action on the basis that it appropriately invoked the dispute provision and asserted affirmative defences that there was no coverage for Magna Tyres USA's claims because:

a. the insurance claims are not based on "valid and legally sustainable indebtedness," including where one or more of the Three Buyers was not truly Magna's contractual counter-party;

b. the underlying debts arise from the breach of an applicable law or regulation, including, but not limited to, laws and regulations governing fraudulent business practice; and

c. Magna Tyres USA failed to disclose to Coface in its application for insurance any information detrimental to the creditworthiness of the Three Buyers.

[7] At around the same time that it commenced the action against Coface, Magna Tyres USA became involved in separate litigation with the Three Buyers in California, Florida, and Texas. In early 2021, Ms. Sampson appears to have executed declarations for use in those proceedings at the request of one or more of the Three Buyers. The declarations appear to be unhelpful to Magna Tyres USA's interests in its litigation with the Three Buyers and suggest that Magna Tyres USA took dishonest steps in order to maximize insurance coverage for its receivables. The declarations prompted Magna Tyres Canada to sue Ms. Sampson for violating a confidentiality agreement. They eventually resolved that action.

[8] Coface observed that nearly 20% of the documents produced by Magna Tyres USA in the Florida litigation contained references to Ms. Sampson and Magna Tyres USA provided Ms. Sampson's name in response to three of Coface's interrogatories. Coface also obtained the declarations in the name of Ms. Sampson.

[9] Not surprisingly, Coface asked Magna Tyres USA to depose Ms. Sampson. Magna Tyres USA declined on the basis that Ms. Sampson was a former employee who lived in Ontario. Coface then moved before the Florida court for a letter of request to obtain the evidence of Ms. Sampson for use at trial. Coface indicated that it wished to cover the following topics during Ms. Sampson's oral examination:

a. Ms. Sampson's employment tenure with Magna, including her job responsibilities, her co-worker Alessandro Vitale, and their respective terminations of employment with Magna;

[1] *Magna Tyres USA, LLC v. Coface North America Insurance Company*, Case No. 6:22-cv-02176-CEM-DCI, United States District Court, Middle District of Florida, Orlando Division.

b. Magna's policies, procedures and practices for procuring credit risk insurance; Magna's practices of extending credit to its customers whose debts were insured by Coface;

c. Magna's awareness of its customers' credit risks;

d. Ms. Sampson's communications with the Three Buyers and their representatives;

e. Ms. Sampson's 2021 declarations submitted in connection with Magna's litigations with the Three Buyers in California, Florida, and Texas; and

f. Magna's lawsuit against Ms. Sampson arising out of the 2021 declarations she submitted, including the settlement thereof.

[10] Magna Tyres USA opposed Coface's motion. It submitted that Ms. Sampson's testimony was not relevant, and that the deposition would be burdensome and delay the case. Magna Tyres USA submitted that Ms. Sampson's testimony was not sufficiently relevant to support a letter of request because her testimony would not be credible. Magna Tyres USA submitted that Ms. Sampson would not be credible because she had retracted previously made statements after Magna Tyres USA sued her for violating a confidentiality agreement.

[11] Judge Daniel C. Irick rejected all of the Magna Tyres USA's submissions, and found that Coface had made a reasonable showing that Ms. Sampson's evidence was properly discoverable and that the issuance of letters rogatory was appropriate. He explained as follows:

> Plaintiff's argument that Ms. Sampson's testimony is not sufficiently relevant to support a request for her deposition is premised primarily on the assertion that Ms. Sampson's testimony is not credible. Ms. Sampson's alleged lack of credibility stems from the claim that she retracted previously made statements after Plaintiff sued her for violating a confidentiality agreement. However, Plaintiff cites no case law for the proposition that a witness's credibility is a factor the Court should consider in determining whether it should permit the deposition of that witness, whether in the context of a request for letters rogatory or not. In fact, at the hearing, Plaintiff could offer no support for this proposition. Even assuming the credibility of the potential deponent is an issue before the Court, Plaintiff could not establish—neither in its response nor at the hearing—that Ms. Sampson retracted her previous statements because they were false.
>
> The deposition of Ms. Sampson does not appear to be unduly or disproportionately burdensome to Plaintiff, and Plaintiff offers only conclusory argument in relation to burden. Indeed, Plaintiff already has a presence in Ontario and has even litigated against Ms.

> Sampson in Ontario. Any burden to Plaintiff associated with the deposition is limited to actually conducting the deposition and is not cause to deny Defendant's request.
>
> Nor will the issuance of letters rogatory in relation to Ms. Sampson unduly delay this case. Plaintiff's concerns about the deposition delaying the progress of this case are unfounded. With four months left until the discovery deadline, and nine months until the scheduled trial date, there is ample time to conduct the proposed deposition. Further, as stated at the hearing, any delay in conducting the deposition may simply not be deemed good cause to extend any deadline in the Case Management and Scheduling Order, so the Court can appropriately manage any risk of undue delay going forward.
>
> In sum, the Court is persuaded that Defendant has "made a reasonable showing that the evidence sought" is properly discoverable under Rule 26(b)(1). Likewise, the issuance of letters rogatory appears to be "necessary and convenient." Accordingly, the Court finds the issuance of letters rogatory is appropriate under the circumstances of this case.[2]

[12] Coface now moves in Ontario for an order to recognize and enforce the letter of request and, therefore, to compel Ms. Sampson to be examined under oath. Ms. Sampson opposes the request for relief. Magna Tyres USA intervened to support Ms. Sampson's position.

Legal principles

[13] Ontario residents are not compellable witnesses in U.S. proceedings and U.S. courts do not have the jurisdiction to compel individuals or corporations that are resident in Ontario to be deposed, give evidence, or produce documents for use in U.S. proceedings.[3] To overcome this limitation, a U.S. court may issue a request to a judge of the Ontario Superior Court of Justice to perform an act which, if done without the sanction of this court, would constitute a violation of Canadian sovereignty. In this case, a court in Florida has requested this court to compel Ms. Sampson to be examined under oath by counsel for Coface.

[14] Section 60 of the *Ontario Evidence Act* and ss. 46 and 47 of the *Canada Evidence Act* authorize this court to order the production of documents and the examination under oath of Ontario residents at the request of a foreign country.[4] There are four statutory preconditions for enforcing a letter of request:

---

[2] Internal citations to the record and caselaw omitted.
[3] *Skymark Properties Corporation, Inc. v. 63263101 Canada Inc. (First Line Canadian Investment Group)*, 2023 ONCA 861, at para. 12; *Perlmutter v. Smith*, 2020 ONCA 570, 152 O.R. (3d) 185, at para. 36; *Actava TV, Inc. v. Matvil Corp*., 2021 ONCA 105, 457 D.L.R. (4th) 138, at para. 39.
[4] *Ontario Evidence Act*, R.S.O. 1990, c. E.23; *Canada Evidence Act*, R.S.C. 1985, c. C-5.

a. a foreign court, desirous of obtaining testimony in relation to a pending civil, commercial or criminal matter, has authorized the obtaining of evidence;

b. the party from whom the evidence is sought is within the jurisdiction of Ontario;

c. the evidence sought from the Ontario party is in relation to a pending proceeding before the foreign court or tribunal; and

d. the foreign court or tribunal is a court or tribunal of competent jurisdiction.[5]

[15] The parties agree that all four of the statutory preconditions are met in this case. Meeting the statutory prerequisites is necessary but not sufficient to justify granting a letter of request. The fundamental principle to be applied in considering such a request is recognition of the comity of nations: that one sovereign nation voluntarily adopts or enforces the laws of another out of deference, mutuality, and respect. As a result, a foreign request is to be given full force and effect unless it is contrary to the public policy, or otherwise prejudicial to the sovereignty or the citizens, of the jurisdiction to which the request is directed.[6] This court is required to show due deference to the U.S. court that, after a hearing, concluded that the Ontario witness's evidence is necessary to ensure that justice is done in the U.S. proceeding.[7] The Ontario court does not sit as an appellate court in respect of the decision of the U.S. court.[8]

[16] The Court of Appeal for Ontario has identified six guideposts, which are not exclusive, that are to be considered by a court when considering whether or not to exercise its discretion to enforce a letter of request:

a. Is the evidence sought relevant?

b. Is the evidence sought necessary for trial and will it be adduced at trial if admissible?

c. Is the evidence sought not otherwise obtainable?

d. Is the order sought contrary to public policy?

e. Are the documents sought identified with reasonable specificity?

---

[5] *Ontario Evidence Act*, s. 60 and *Canada Evidence Act*, s. 46; *Actava*, at para. 40.
[6] *Perlmutter*, at para. 21; *Gulf Oil Corp. v. Gulf Canada Ltd*., [1980] 2 S.C.R. 39; *R. v. Zingre*, [1981] 2 S.C.R. 392, at p. 401; *Presbyterian Church of Sudan v. Taylor*, (2006), 275 D.L.R. (4th) 512 (Ont. C.A.), at para. 17.
[7] *Zingre*, at p. 401; *Ontario Service Employees Union Pension Trust Fund v. Clark* (2006), 270 D.L.R. (4th) 429 (Ont. C.A.), at para. 22.
[8] *Connecticut Retirement Plans and Trust Funds v. Buchan*, 2007 ONCA 462, 42 C.P.C. (6th) 116, at para. 13.

f. Is the order sought not unduly burdensome, having in mind what the relevant witnesses would be required to do and produce if the action was tried here?[9]

[17] Ontario courts will enforce letters rogatory that are not contrary to the public policy of Canada and Ontario, and if there is no prejudice to the sovereignty or the citizens of Canada.[10]

[18] I will now consider the issues raised by Ms. Sampson and Magna Tyres USA in opposition to Coface's request to enforce the letter of request.

The order sought is not contrary to public policy

[19] Ms. Sampson submits that enforcing the letter of request would be contrary to public policy. She submits that she was "coerced" into giving the declarations on behalf of the Three Buyers and that this coerced evidence should not have been placed before the Florida court. In a related submission, Ms. Sampson submits that it would be unfair to confront her with this "coerced" evidence in an examination under oath. Neither of Ms. Sampson's submissions has any merit.

[20] First, I find that Ms. Sampson was not coerced to sign the declarations. A statement is coerced when the declarant is deprived of a free choice to admit, deny, or refuse to answer.[11] I find that Ms. Sampson has not demonstrated that she was deprived of a free choice. Indeed, she has not demonstrated that her free choice was compromised to any significant degree. In her affidavit, Ms. Sampson points to the following factors as amounting to coercion:

a. In March 2021, she received a telephone call from a principal of one of the Three Buyers and his lawyer;

b. The lawyer told her that she would not be violating any of her confidentiality obligations to Magna Tyres Canada if she spoke to them and would not get in any trouble if she did speak with them;

c. The lawyer told her that if she did not cooperate with them, he would subpoena her to testify in the California court at her own expense, which she did not want to do because of the COVID pandemic and her husband's immunocompromised status;

d. The lawyer told her that if she agreed to sign a declaration, she would not have to travel to California.

---

[9] *Adler v. Deloitte Touche Tohamtsu,* 2022 ONCA 855, 165 O.R. (3d) 314, at para. 14; *Perlmutter*, at para. 24; *Friction Division Products, Inc. and E.I. Du Pont de Nemours & Co. (No. 2)* (1986), 56 O.R. (2d) 722 (H.C.J.), at p. 732; *Cunix v. Sol Global Investment Corp*., 2023 ONSC 4845, at para 17.
[10] *Actava*, at paras. 41–42, 51
[11] *R. v. Hart*, 2014 SCC 52, [2014] 2 S.C.R. 544, at para. 192, per Karakatsanis J., dissenting, but not on this point.

e. She agreed to sign a declaration, reviewed and revised the declaration, and signed it.

f. She found the process stressful, was worried that she would have to travel to California if she did not sign the settlement, and relied on the lawyer's advice that signing the statement would not violate her settlement agreement.

[21] This is Ms. Sampson's evidence at its highest. I have no evidence before me from the lawyer for one of the Three Buyers, so I have no idea how he would describe the call. In any event, even taking Ms. Sampson's uncontradicted evidence at face value, nothing about that call rises to the level of coercion. Ms. Sampson was not denied of a free choice regarding whether or not to sign the declaration.

[22] Ms. Sampson states that she trusted the lawyer's advice to the effect that signing the declarations would not breach her obligations. She states that she did not think she needed to get her own lawyer because she was receiving legal advice from the lawyer for one of the Three Buyers. Ms. Sampson does not state, however, that she was told that she was not allowed to consult with her own lawyer. She does not suggest that there were any obstacles to her obtaining legal advice regarding whether she could be required to give evidence in the California proceeding, or regarding whether signing the declaration might violate her agreement with Magna Tyres Canada.

[23] I do not see any threats or inducements that come close to demonstrating that Ms. Sampson was coerced into signing the declarations.

[24] Second, Ms. Sampson has not demonstrated that the inducements or misrepresentations described above diminished the reliability of her statement in any way. Nowhere in her affidavit does Ms. Sampson say, for example, "I signed false declarations because I was coerced to do so. None of the things I said in the declarations are true."[12] Instead, the conclusion of her affidavit reads as follows:

> Unfortunately, upon reflection, I believe I was misled into signing the declarations by Mr. Singh and his lawyer, who represented to me that I would not be in breach of the Settlement Agreement. It is my belief that Mr. Singh and his lawyer took advantage of their positions of authority and my vulnerability. In the absence of independent legal advice, they convinced me that I was required to sign a declaration in violation of obligations I owed to Magna Canada under the Settlement Agreement. Based on their representations, I believed signing a declaration was my only alternative to spending my own personal money to travel to California to testify in the middle of the COVID-19 pandemic.

[12] I note that Ms. Sampson states that there is one inaccuracy in one of the declarations. That single minor issue can easily be addressed during the examination and does nothing to undermine the balance of the declarations.

[25] I accept that Ms. Sampson may regret having become involved in this web of litigation, but that certainly does not create a public policy reason not to enforce the letter of request.

[26] Third, even if Ms. Sampson was coerced into signing the declarations, and I have found that she was not, that would not mean that her evidence about the declarations or the events described in the declarations would be inadmissible. Ms. Sampson relies on several criminal cases that stand for the uncontroversial proposition that the state cannot coerce evidence out of an accused and then use that evidence against the accused at a criminal trial.[13] With respect, this case is not at all like a Mr. Big operation.

[27] In response to my question, counsel for Ms. Sampson could not identify a single civil case that had adopted this rule. Indeed, aside from evidence protected by the substantive law of privilege, the common law rule of evidence is the opposite: the manner in which evidence is obtained, no matter how improper or illegal, is not an impediment to its admission at common law.[14] The rationale for the general inclusionary rule has been stated as follows:

> The trier of fact should have the benefit of all relevant evidence, irrespective of how it was obtained. If illegal or improper acts committed in the acquisition of evidence do not affect its probative value, they should not distract the court from its primary task of fact finding.[15]

[28] I do not accept Ms. Sampson's submissions that the role of the U.S. lawyer on the call, even if it violated the Law Society of Ontario's Rules of Professional Conduct, or her desire to avoid travelling to California during COVID, justify departing from the general inclusionary rule. There is no evidence before me that any of the acts undermined the probative value of the evidence that she gave in the declarations or that she will give in accordance with the letter of request.

[29] In conclusion, the fact that the Florida court considered the declarations does not violate any Canadian public policy that would justify not enforcing the letter of request.

The evidence sought is relevant

[30] The truth-seeking function of a trial creates a starting premise that all relevant evidence is admissible.[16] Evidence is logically relevant when it has any tendency to prove or disprove a fact in issue.[17] On an application to enforce a letter of request, the threshold for relevance

---

[13] *R. v. Zammit* (1993), 13 O.R. (3d) 76 (C.A.): admitting accused's coerced confession would render trial unfair by requiring accused to confront evidence that he would not otherwise have faced; *R. v. Hart* [2014] 2 S.C.R. 544: where the state recruits an accused into a fictitious criminal organization of its own making and seeks to elicit a confession from him, any confession made by the accused to the state should be treated as presumptively inadmissible unless the Crown overcomes the presumption.

[14] Sidney N. Lederman, Michelle K. Fuerst, and Hamish C. Stewart, *The Law of Evidence in Canada* (6th ed.), at para. 9.1.

[15] *Chandra v. CBC*, 2015 ONSC 3945, at para. 18; *The Law of Evidence*, at para. 9.3.

[16] *R. v. Grant*, [2015] 1 S.C.R. 475, at para. 18

[17] *R. v. Corbett*, [1988] 1 S.C.R. 670, at p. 715; *R. v. Watson* (1996), 30 O.R. (3d) 161 (C.A.), at para. 33.

is low.[18] I am only assessing relevance, not admissibility, credibility, or weight, all of which are for the Florida court to determine at trial.[19]

[31] In my view, the evidence that Coface seeks to obtain from Ms. Sampson is plainly relevant to the matters in dispute. Given the three affirmative defences advanced by Coface in the Florida proceeding, Ms. Sampson's first-hand recollections about the topics listed in the letter of request are all relevant to the Florida proceeding. The affidavit filed by Coface demonstrates this clearly:

> 13. Based on Magna's disclosure in the US Action, I understand that Ms. Sampson served as Magna's office manager between January and June 2020. In that role, she oversaw Magna's order processing, invoicing, collections, banking, and accounting. In this capacity, Ms. Sampson was a point of contact between Magna and Coface concerning the Policy.
>
> 14. Based on her employment duties and contact with Coface, Ms. Sampson has knowledge concerning Magna's policies, procedures, and practices for procuring credit risk insurance, its practices of extending credit to its customers whose debts were insured by Coface, including the Three Buyers, and its awareness of its customers' credit risks. Notably, more than one-fifth of the 2,705 documents produced by Magna in the US Action contain references to Ms. Sampson and Magna provided Ms. Sampson's name in response to three of Coface's interrogatories.

[32] Standing alone, this evidence satisfies me that Ms. Sampson has relevant evidence to contribute to the Florida action. Moreover, the declarations indicate that Ms. Sampson appears to have information relevant to the Florida action and, in particular, Coface's affirmative defences. As Coface states in its affidavit:

> These [declarations], which are in the public court record, raise significant questions concerning the nature of Magna's relationship with the Three Buyers, the legitimacy of the debts underlying the invoices giving rise to the insurance claims, and the truthfulness of representations made by Magna when it procured the Policy from Coface in February 2020. These issues lie at the core of Coface's affirmative defences in the US Action.

[33] I disagree with Magna Tyres USA's submission that Ms. Sampson has little if any relevant first-hand knowledge that is relevant to the Florida action. First, Magna Tyres USA's submission that the Florida litigation "largely involves Coface's wrongful use of the dispute clause" in the insurance policy is inaccurate. It overlooks entirely the substantive

---

[18] *Cunix*, at para. 34.
[19] *Friction*, at p. 732.

defences raised by Coface. Although Magna Tyres USA asserts that "Ms. Sampson cannot offer any relevant testimony regarding the insurance claims because she does not have any direct knowledge or credible information regarding them," this is entirely contradicted by the evidence Ms. Sampson provided in the declarations. Indeed, if Ms. Sampson had no relevant evidence to give, one wonders why Magna Tyres USA has devoted such efforts to avoid Ms. Sampson testifying under oath. In any event, I am satisfied that Ms. Sampson's evidence is clearly relevant.

[34] Similarly, I reject Magna Tyres USA's suggestion that Ms. Sampson's evidence is not necessary. Magna Tyres USA's submission conflates credibility with necessity. I am not in a position to assess the ultimate credibility of Ms. Sampson's evidence. It will be for the Florida court to assess her credibility. In my view, Ms. Sampson's evidence is necessary.

[35] In my view, Coface has amply demonstrated that Ms. Sampson has relevant evidence to give in the Florida action.

The evidence sought is not otherwise obtainable

[36] I am satisfied that the information Coface seeks from Ms. Sampson is not otherwise obtainable. Neither Ms. Sampson nor Magna Tyres Canada is a party to the U.S. proceeding. Coface has requested that Magna Tyres USA make Ms. Sampson available for a deposition and as a witness at trial, and they declined to do so. I am satisfied that Ms. Sampson has unique knowledge and evidence relating to matters in the Florida action because she was a key point of contact among all of the Magna Tyres entities, the Three Buyers, and Coface. There is no evidence that any other Magna employee was similarly situated or could provide evidence of similar value.[20]

[37] I do not accept the submissions of Ms. Sampson and Magna Tyres USA that the evidence could be obtainable from Sanjeet Singh Veen, who controls one of the Three Buyers. While Mr. Veen may have some relevant evidence to offer, it seems obvious to me that he is no substitute for Ms. Sampson, who will be able to offer evidence from the inside about what Magna Tyres USA and Magna Tyres Canada knew and did.[21] I reject Magna Tyres USA's somewhat remarkable submission that evidence from the Three Buyers could be of equivalent value to that of a former employee of its related company.

[38] I am satisfied that Coface has demonstrated that the information sought in this letter of request is not otherwise obtainable.

Recognizing the letter of request would not impose undue burdens on Ms. Sampson

[39] I do not accept Ms. Sampson's submissions that recognizing the letter of request would be unduly burdensome.

---

[20] *Treat America Limited v. Nestlé Canada Inc*., 2011 ONCA 560, at para. 24; *Connecticut Retirement Plans and Trust Funds v. Buchan*, 2007 ONCA 462, at para. 19.
[21] *Perlmutter v. Smith*, 2020 ONCA 570, at paras. 38-39.

[40] Coface only seeks one day of oral examinations. The letter of request does not require Ms. Sampson to produce any documents. The scope and nature of the examination, therefore, is not particularly burdensome.

[41] Ms. Sampson submits that she "is subject to settlement agreements with Magna Tyres Canada that may result in further repercussions if breached." I do not accept this submission because Ms. Sampson did not place those agreements before the court. Instead, Ms. Sampson only included certain passages from those agreements in her affidavit. This practice is to be discouraged. The court should not be asked to interpret a document that it cannot review in totality. Moreover, any private agreement to maintain confidences must yield to a court order to provide relevant evidence.[22]

[42] Ms. Sampson submits in her factum that if she is required to be deposed in the Florida action, she "will need to retain Canadian and US counsel at significant cost to her" and that testifying will place "financial stress" on her. I do not accept this submission. First, Ms. Sampson does not state in her affidavit that she would be required to pay for her legal fees for the deposition or that paying for her legal fees for the deposition would impose a burden on her. There is, therefore, no evidence to support her submission. Second, I am not satisfied that she will, in fact, be required to pay for her legal fees if the deposition proceeds. During the hearing, I asked counsel for Ms. Sampson, "Who is paying your fees today?" I was advised that one of the Magna Tyres entities was paying Ms. Sampson's legal fees for this application. Given the record before me, I do not find that recognizing the letter of request would place undue financial burdens on Ms. Sampson.

[43] Ms. Sampson submits that if she is required to provide evidence in the Florida proceeding, she may suffer adverse reputational consequences. Even if that is true, that is not the type of burden that would justify me failing to give full force and effect to an order of the Florida court.

[44] Ms. Sampson submits that she faces the risk of a perjury finding if she is compelled to give evidence in the Florida proceeding. I do not give effect to that submission. First, it is entirely speculative. In her affidavit, Ms. Sampson does not state what her evidence would be on the examination pursuant to the letter of request. I have no idea whether she will affirm or depart from the evidence she provided previously. Moreover, any consequences she may face are no reason to deprive the Florida court of her truthful and sworn evidence.

[45] I also reject Magna Tyres USA's submission that Coface delayed unduly in seeking Ms. Sampson's evidence or that her evidence would be a "time-consuming distraction." Ms. Sampson's evidence can be obtained efficiently and promptly. It should not interfere at all with the timetabling of the Florida litigation.

---

[22] *Bortnikov v. Rakitova*, 2015 ONSC 1163, at para. 22, citing with approval *Harmony Shipping Co SA v. Saudi Europe Line Ltd*, [1979] 3 All ER 177 (Eng. C.A.); *Aetna Insurance Co of Canada v. Mason and Co.*, 1998 ABQB 1082, 236 A.R. 49, at para. 1.

[46] I find that no undue burden will be placed on Ms. Sampson if she is required to provide evidence in the Florida proceeding.

Justice does not require denying recognition to the Florida order

[47] Ms. Sampson submits that the interests of justice require this court to deny the letter of request. I disagree.

[48] While I accept that the US discovery rules provide for broader discovery, the interests of justice do not require this court to refuse to enforce the Florida letter of request. Canadian sovereignty is not undermined by granting this request.

[49] While I do not think this is a necessary component of the analysis, based on the record before me, I would have no hesitation granting leave to Coface to examine Ms. Sampson as a non-party under rule 31.10 if this was an Ontario proceeding.[23]

[50] In my view, the interests of justice plainly require Ms. Sampson to provide truthful evidence, under oath, for use in the Florida proceedings.

There is no need for the Florida court to reconsider the letter of request

[51] Ms. Sampson submits that I should send the letter of request back to the US court to determine whether or not it would issue the letter of request without consideration of the declarations.

[52] For the reasons set out above, I see no reason to do so. In my view, the declarations would be properly admissible in evidence in Ontario. I was presented with no evidence that the declarations were not admissible under Florida law on a motion to obtain a letter of request.

[53] For the reasons set out above, I am satisfied that I should recognize and enforce the letter of request. I see no reason to send the request back for reconsideration.

---

[23] 31.10 (1) The court may grant leave, on such terms respecting costs and other matters as are just, to examine for discovery any person who there is reason to believe has information relevant to a material issue in the action, other than an expert engaged by or on behalf of a party in preparation for contemplated or pending litigation.
(2) An order under subrule (1) shall not be made unless the court is satisfied that,
(a) the moving party has been unable to obtain the information from other persons whom the moving party is entitled to examine for discovery, or from the person the party seeks to examine;
(b) it would be unfair to require the moving party to proceed to trial without having the opportunity of examining the person; and
(c) the examination will not,
(i) unduly delay the commencement of the trial of the action,
(ii) entail unreasonable expense for other parties, or
(iii) result in unfairness to the person the moving party seeks to examine: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

No further restrictions are necessary

[54] Ms. Sampson requests that I place a series of restrictions on the letter of request.

[55] First, Ms. Sampson asks that I order that Coface is not allowed "to put the Declarations to Ms. Sampson in an effort to diminish her credibility or at all." For the reasons set out above, I see no reason to restrict the examination in this way. Indeed, this restriction could interfere profoundly with the truth-seeking function of the Florida court. I reject this request.

[56] Second, Ms. Sampson asks that I order "that all evidence given by Ms. Sampson be confidential and subject to a protective order." I see no reason to do so. The order Ms. Sampson seeks would be a significant interference with the open court principle. All court proceedings are presumptively open to the public. This is a central feature of a liberal democracy and court openness is essential to the proper functioning of our democracy.[24] Open judicial proceedings are crucial to maintaining the independence and impartiality of the courts, public confidence and understanding of their work and ultimately the legitimacy of the process.[25] Open courts provide a guarantee that justice is administered in a non-arbitrary manner according to the rule of law, and thereby foster public confidence in the integrity of the court system and understanding of the administration of justice.[26] Ms. Sampson made no submissions to demonstrate that she meets the test in *Sherman Estate* in order to obtain such an order.[27] I would not require that Ms. Sampson's evidence be treated as confidential and be subject to a protective order.

[57] Third, Ms. Sampson requests that I order Coface to bear the costs of the examinations. Coface has undertaken to reimburse Ms. Sampson for the fees and costs incurred by Ms. Sampson in complying with an order enforcing the Letters Rogatory, including costs incurred in relation to the oral examination, such as the court reporter, video recorder, and other administrative costs. Ms. Sampson goes further and asks that I order Coface to pay her legal fees for the examination. As a general rule, the cost of retaining counsel, if desired, should be an expense of the witness and not the examining party.[28] As noted above, Ms. Sampson did not provide any evidence that she will be personally responsible for any legal fees incurred. For the reasons set out above, I decline to order Coface to pay for her legal fees for the examination.

[58] Fourth, Ms. Sampson asks that I order that the examination take place pursuant to the Ontario *Rules of Civil Procedure*, but she has made no submissions explaining why that would be necessary or appropriate. Paragraph 10(a) of the letter of request specifically requests that the examination be conducted by Coface's US counsel pursuant to the United States Federal Rules of Evidence and the United States Federal Rules of Civil Procedure. I see no reason to deny that request.

---

[24] *Sherman Estate v. Donovan*, 2021 SCC 254, 458 D.L.R. (4th) 361, at paras. 1 and 30.
[25] *Vancouver Sun (Re)*, 2004 SCC 43, [2004] 2 S.C.R. 332, at paras. 23 to 26.
[26] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 SCR 480, at para. 22.
[27] *Sherman Estate v. Donovan*, 2021 SCC 254, 458 D.L.R. (4th) 361.
[28] *Lafarge Canada Inc. v. Khan*, 2008 CanLII 6869 (ON SC), at para 80.

[59] Fifth, Ms. Sampson requests that I order that the examination take place over videoconference but made no submissions explaining why that would be necessary or appropriate. Paragraph 9 of the letter of request specifically requests that I compel Ms. Sampson

> to appear before a person empowered under Ontario law to administer oaths and take testimony and give testimony under oath or affirmation on the topics listed in Schedule A, by questions and answers upon oral examination by the counsel of record in the United States proceeding, at a convenient location in or near Toronto, Ontario.

[60] In the circumstances, I am not prepared to require the examination to take place over videoconference, although the parties may agree to proceed that way.

Conclusion and costs

[61] For the reasons set out above, I grant an order giving effect to the Letters Rogatory issued by the US Court, and specifically:

a. an order that Ms. Sampson be required to attend an examination via videoconference before a Commissioner, at a date mutually agreed upon by the parties no later than January 26, 2024, to answer questions orally under oath or affirmation in the U.S. Action (the "Examination"), such Examination to be conducted by one or more members of Duane Morris LLP, attorneys for the Defendant in the US Action, in accordance with the rules and procedures applicable to the US Action;

b. an order appointing an Official Court Reporter in the Province of Ontario (or his or her delegate, provided that person is an Official Court Reporter in the Province of Ontario) as the Commissioner before whom the evidence at the Examination is taken; and

c. an order that the evidence at the Examination shall be recorded by video and stenographic means and reduced to writing by the Official Court Reporter; and

d. an order that Coface be entitled at any time to seek leave to vary this order, and/or seek the advice and direction of this Court as to the implementation of the order.

[62] I will remain seized of this matter and any party may arrange a case conference through my judicial assistant if necessary.

[63] None of the parties sought the costs of this application. I award no costs.

Robert Centa J.

Date: January 15, 2024