

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Shier v. Copper Mountain Mining Corporation*,  
2024 BCSC 451

Date: 20240318  
Docket: S227589  
Registry: Vancouver

Between:

**Rodney Shier**

Plaintiff

And

**Copper Mountain Mining Corporation**

Defendant

Before: Associate Judge Hughes

## **Reasons for Judgment**

Counsel for Plaintiff:

A. Pearson

Counsel for Defendant:

E.A. Kirkpatrick

Place and Date of Hearing:

Vancouver, B.C.  
March 1, 2024

Place and Date of Judgment:

Vancouver, B.C.  
March 18, 2024

[1] The plaintiff applies, pursuant to Rule 7-2(18) to (25) of the Supreme Court Civil Rules [*Rules*], B.C. Reg. 168/2009 for an order that the defendant provide answers and documents in response to outstanding requests from the examination for discovery of the defendant's representative Gil Clausen ("Mr. Clausen") conducted on November 1, 2023. The defendant objects on the basis that all relevant requests have already been addressed.

[2] The plaintiff was a long-time senior employee and Chief Financial Officer ("CFO") of Copper Mountain Mining Corporation ("Copper Mountain"). His employment was terminated on August 23, 2022. At issue in this action is whether the plaintiff's employment was terminated for cause.

[3] The cause of the plaintiff's termination stems from his late filing of insider trading reports regarding his trades in the defendant's stock. In compliance with Canadian securities laws, Mr. Shier was required to file trading reports on the System for Electronic Disclosure by Insiders ("SEDI"). He does not dispute the fact that he filed late reports for trades that occurred between February and April 2022, after having been contacted by a compliance officer from the BC Securities Commission (the "Commission") in August 2022. The plaintiff pleads that the defendant is precluded from relying on the late filing as cause for his termination due to the defendant's condonation of similar actions on the part of other officers and directors.

[4] At the time of termination, the plaintiff's base salary exceeded \$400,000 per year. In addition, he was paid bonuses and held stock options. If he was terminated without cause, the plaintiff would be entitled to a significant severance package pursuant to the terms of his employment contract. Some of the requests in issue relate to quantification of damages in the event that the plaintiff is successful in this action.

[5] At the examination of Mr. Clausen, 16 requests were left on the record and sought in the plaintiff's February 9, 2024 notice of application. The defendant initially promised responses by December 15, 2023, but only responded to those requests

by letter dated February 21, 2024. The plaintiff is satisfied with many of the responses, but seven of those requests remain in dispute.

[6] Rule 7-2(18) requires a witness to answer all questions within their knowledge or means of knowledge regarding any matter not privileged relating to a matter in question in the action.

[7] As set out in *No Limits Sportswear Inc. v. 0912139 B.C. Ltd.*, 2015 BCSC 339:

[10] The scope of discovery is defined by the pleadings. Generally a wide scope is given on examination for discovery because of the nature of cross-examination. It will not always be apparent that a question will produce relevant evidence: *Kendall v. Sun Life Assurance Company of Canada*, 2010 BCSC 1556 at paras. 8 and 10. *Kendall* also stands for the proposition that in general unless a question is clearly irrelevant it should be answered and objections saved for trial. Applications of the kind before me add to the cost of litigation and should, as a rule, be avoided.

[8] I will deal with each of the requests in issue.

**Request 1: Produce any in-house material maintained by Copper Mountain concerning the monitoring of the company's daily share price and trading volumes on the Toronto Stock Exchange, in particular for the period beginning August 23, 2022, and continuing up until the time that Hudbay purchased Copper Mountain in June 2023.**

[9] This item relates to quantification of the plaintiff's damages in the event that he is successful in this action. The daily share price and trading volumes of Copper Mountain stock is publicly available information. How the defendant monitors that information is not relevant to the issues between the parties.

[10] The defendant is not required to answer this request.

**Request 2: Identify the circumstances involving Copper Mountain where an employee was fired by the company for the late filing of insider reports. If there are such employees, produce any documents relating to them.**

[11] This request relates to the plaintiff's reply pleading regarding condonation. The defendant says that the reply is not properly responsive to the defendant's pleading of just cause in that it does not respond to the totality of the circumstances

alleged by the defendant to constitute just cause. As a result, the defendant says this request is not relevant. I disagree. The plaintiff is entitled to explore the issue of condonation, and this request is relevant to that issue.

[12] The defendant shall answer this request.

**Request 3: Identify any circumstances involving Copper Mountain where an employee was disciplined by the company for the late-filing of insider reports. If there are such employees, produce any documents relating to them.**

[13] This request is related to request 2, and the same analysis applies.

[14] The defendant shall answer this request.

**Request 4: Inquire of Mr. Dowling and advise whether Mr. Dowling was aware in March and April 2022 that there was an obligation to file an initial insider trading report within ten days of becoming an insider.**

[15] Mr. Dowling was the chairman of the board of the defendant, and the plaintiff says that he filed his initial insider trading report late. The answer provided by the defendant was “Mr. Dowling was aware in March and April 2022, of the obligation to file an insider report for any security trading in designated window periods”. This answer is not responsive. The question is about Mr. Dowling’s awareness of his obligation to file a report within ten days of becoming an insider.

[16] The defendant shall answer this request.

**Request 8: Given the amount of Mr. Shier’s STIP bonus in 2021, advise as to what amount Copper Mountain says would have been payable under paragraph 5.5(b) of Exhibit 5, if Mr. Shier had been dismissed without cause.**

[17] The STIP bonus is the Short-Term Incentive Plan. The request asks the defendant to calculate what the plaintiff’s entitlement would have been had he been dismissed without cause. The witness’ answer was that the accountants and the lawyers would be able to determine the amount.

[18] I agree with the defendant’s submission that this request calls for a legal position in relation to hypothetical circumstances, not a matter of fact. It asks for an

interpretation of the terms of the plaintiff's employment contract, which is a question of law, and as such is improper.

[19] The defendant is not required to answer this request.

**Request 10: Referring to the chart in Exhibit 14, at page SHI134, have Copper Mountain generate the same line for Mr. Shier assuming that he was terminated without cause on August 23, 2022 instead of being terminated without cause on December 31, 2021.**

[20] This request is similar to request 10, and the same analysis applies.

[21] The defendant is not required to answer this request.

**Request 11: Advise how much money Copper Mountain says that Mr. Shier would have been entitled to receive if he was terminated without cause as of August 23, 2022, and show how each element of that amount is calculated.**

[22] This request is also similar to request 10, and the same analysis applies.

[23] The defendant is not required to answer this request.

**Costs**

[24] Although the plaintiff has only been partially successful with respect to the seven disputed requests, the defendant did not provide responses to any of the requests until after this application was filed. Accordingly, the plaintiff shall have his costs of this application from the defendant in any event of the cause.

“Associate Judge Hughes”