

Federal Court



Cour fédérale

Date: 20240326

Docket: T-1702-23

Citation: 2024 FC 474

Toronto, Ontario, March 26, 2024

PRESENT: Associate Judge Trent Horne

BETWEEN:

LAWNEY ROSEBROOK

Plaintiff

and

**HILL TIMES PUBLISHING INC. / PUBLICATIONS
HILL TIMES INC.,
CANADIAN ANTI-HATE NETWORK,
AND MARK SLAPINSKI**

Defendants

ORDER AND REASONS

[1] This is an action for infringement of copyright and moral rights. It has been brought as a simplified action.

[2] Rule 295 of the *Federal Courts Rules*, SOR/98-106 (“Rules”) states that:

List of documents

295 A party to a simplified action may serve, in lieu of an affidavit of documents, a

Liste de documents

295 La partie à une action simplifiée peut, au lieu de signifier un affidavit de

complete list of all the documents in the party's possession, power or control that are relevant to a matter in issue in the action.

documents, signifier aux autres parties la liste de tous les documents pertinents qui sont en sa possession, sous sa garde ou sous son autorité.

[3] The plaintiff has served a list of documents. A schedule has been set for examinations for discovery. Since this is a simplified action, examinations for discovery will be in writing (Rule 296).

[4] The defendant Canadian Anti-Hate Network ("CAHN") and the plaintiff cannot agree on when the documents set out in the plaintiff's list of documents should be served. CAHN wants them now so that discovery questions can be prepared. The plaintiff says that when Rules 94, 100, and 296 are read together, CAHN is only entitled to receive the documents as part of answers to discovery questions.

[5] CAHN and the plaintiff have exchanged emails setting out their positions, and agree that the issue should be resolved by the Court. CAHN submitted a letter to the Court on March 22, 2024 with submissions, and attached the emails. The plaintiff wrote to the Court on March 22, 2024 as well.

[6] Other than motions relating to jurisdiction or to strike, interlocutory motions in a simplified proceeding are returnable only at the pre-trial conference (Rule 298). I am satisfied that this impasse should be resolved now to permit the discoveries to proceed in a timely way. This should not be taken as an invitation for further interlocutory motions. I note that the litigation timetable proposed by the parties contemplated refusals motions after the discoveries,

and such motions were not included in the scheduling direction dated March 11, 2004. That was not an oversight.

[7] I cannot fault the plaintiff's reading of the Rules. Rule 295 states that a party in a simplified action may serve a list of documents in lieu of an affidavit of documents. Rule 295 does not (unlike Rule 228 which applies to an affidavit of documents) oblige the producing party to make the documents available for inspection or produce copies.

[8] In a simplified proceeding, examinations for discovery are conducted in writing (Rule 296). Written examinations are addressed in Rules 99 and 100. Rule 100 states that Rule 94 (which applies to directions to attend) applies to written examinations, with such modifications as are necessary. I therefore cannot agree with CAHN that Rule 94 is irrelevant to the proceeding.

[9] I do, however, agree with CAHN that delaying service of the plaintiff's documents until after discovery questions have been served is inefficient. Proceeding in this manner would be contrary to the guiding principles of Rule 3.

[10] The Court's Case and Trial Management Guidelines for Complex Proceedings and Proceedings under the *PM(NOC) Regulations*, most recently amended October 18, 2023, state that examinations for discovery shall be conducted by way of a single comprehensive examination. This proceeding does not appear to be particularly complex, however, I see no reason why simplified proceedings should not also aim to complete examinations for discovery in a single exchange of questions and answers. Delaying production of documents until after discovery questions have been served impairs the ability to ask focused and directed questions in

the first instance. Postponing disclosure of documents will no doubt lead to requests for follow-up discovery. All of this can be avoided by producing the documents now.

[11] The plaintiff has already collected and listed relevant and non-privileged documents. There is no prejudice whatsoever if those documents are produced now. The plaintiff submits that CAHN demands a *de facto* affidavit of documents, obfuscating the purpose of simplified actions. The plaintiff argues that CAHN must bring a motion to remove this action from the operation of Rule 295 pursuant to subrule 298(3). That approach would be impractical; there is a much simpler solution.

[12] I have no difficulty exercising my discretion under Rules 54, 55, and 385 to compel the plaintiff to produce copies of all documents in the list of documents to enable the timely and efficient completion of discoveries. The documents will be ordered produced forthwith with the goal of maintaining the existing discovery schedule.

[13] The Court has complete discretion over the amount and allocation of costs (subrule 400(1)). While the plaintiff had a position that could be justified by a close reading of the Rules, the position put form over substance. At a high level, the Supreme Court has recognized the need for a culture shift in civil litigation, a shift that entails simplifying pre-trial procedures (*Hryniak v Mauldin*, 2014 SCC 7 at para 2). The obvious practical answer to this problem was for all parties to exchange their documents before written discovery questions are served. Costs of the motion will therefore be awarded to CAHN.

[14] In the hopes of avoiding further intervention, the parties are reminded that the Guidelines also state that no discovery questions are to be taken under advisement, and that questions should

be answered (including under reserve of objection – subrule 95(2)) unless clearly improper or prejudicial, or would require the disclosure of privileged information.

ORDER in T-1702-23

THIS COURT ORDERS that:

1. The plaintiff shall, by no later than March 28, 2024, produce to all parties a copy of every document set out in the list of documents served pursuant to Rule 295 of the *Federal Courts Rules*, SOR/98-106.
2. To the extent other parties have not served copies of documents set out in their lists of documents on all other parties, they shall do so by March 28, 2024.
3. Costs of the motion are payable by the plaintiff to Canadian Anti-Hate Network in any event of the cause.

"Trent Horne"
Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1702-23

STYLE OF CAUSE: LAWNEY ROSEBROOK v HILL TIMES
PUBLISHING INC. / PUBLICATIONS HILL TIMES
INC., CANADIAN ANTI-HATE NETWORK, AND
MARK SLAPINSKI

**MATTER CONSIDERED IN WRITING WITHOUT THE PERSONAL APPEARANCE
OF THE PARTIES**

ORDER AND REASONS: HORNE A.J.

DATED: MARCH 26, 2024

WRITTEN REPRESENTATIONS BY:

Fred Wu FOR THE PLAINTIFF

Brendan J. Hughes FOR THE DEFENDANT
HILL TIMES PUBLISHING INC. /
PUBLICATIONS HILL TIMES INC.

May M. Cheng FOR THE DEFENDANT,
CANADIAN ANTI-HATE NETWORK

SOLICITORS OF RECORD:

FREDERICK WU FOR THE PLAINTIFF
PROFESSIONAL
CORPORATION
Barrister and Solicitor
Toronto, Ontario

ORP Law
Barristers and Solicitors
Toronto, Ontario

FOR THE DEFENDANT
HILL TIMES PUBLISHING INC. /
PUBLICATIONS HILL TIMES INC.

Dipchand LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE DEFENDANT
CANADIAN ANTI-HATE NETWORK