

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Greenpower Motor Company Inc. v. Oldridge*,
2023 BCSC 315

Date: 20230303
Docket: S1914285
Registry: Vancouver

Between:

Greenpower Motor Company Inc.

Plaintiff

And

**Phillip Oldridge, John Doe Trustee #1 of Phillip Oldridge In Trust,
Envirotech Electric Vehicles Inc., EVT Motors Inc., Envirotech Drive Systems
Incorporated and Envirotech Drive Systems Incorporated**

Defendants

And

Fraser Atkinson

Defendant by way of
Counterclaim

Before: Master Muir

Reasons for Judgment

In Chambers

Counsel for the Plaintiff and Defendant by
way of Counterclaim:

K. Sandulescu

Counsel for the Defendants:

E.M. Hatch

Place and Date of Hearing:

Vancouver, B.C.
January 20, 2023

Place and Date of Judgment:

Vancouver, B.C.
March 3, 2023

Introduction

[1] This was an application by the plaintiff, Greenpower Motor Company Inc. (“Greenpower”), for extensive document disclosure from the defendants, Envirotech Electric Vehicles Inc., EVT Motors Inc., Envirotech Drive Systems Incorporated and Envirotech Drive Systems Incorporated (collectively, the “EVT defendants”).

[2] The notice of civil claim includes allegations that the defendant, Phillip Oldridge, was a founder of Greenpower in 2010, a senior officer of Greenpower until June 12, 2019 and a director until July 2, 2019. Greenpower produces electrically powered vehicles.

[3] It is alleged that Mr. Oldridge, amongst other things in breach of his fiduciary duty to Greenpower, was actively involved in the formation and development of the EVT defendants and products produced by them which compete with Greenpower products. It is alleged that Mr. Oldridge and the EVT defendants conspired to advance the interests of the EVT defendants to the detriment of Greenpower.

[4] It is further alleged that Mr. Oldridge has been a director of Envirotech Electric Vehicles Inc. since its incorporation in 2017.

[5] Greenpower also alleges that Mr. Oldridge assisted the EVT defendants in soliciting Greenpower’s customers, including Green Commuter Inc., San Diego Airport Authority, and Zero Nox Inc.

[6] In the course of all of this, it is alleged that Mr. Oldridge wrongly used confidential information acquired by virtue of his position with Greenpower to advance the interests of the EVT defendants.

Legal Principles

[7] Rule 7-1 of the *Supreme Court Civil Rules* [Rules] sets out a two-tiered approach to production of documents. Rule 7-1(1) provides the first tier:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

[8] In *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2021 BCCA 322, the Court of Appeal noted:

[93] The first tier of the document disclosure process applies generally. Rule 7-1(1)(a) requires parties to list documents that are or have been in their possession or control and could, if available, be used by any party to prove or disprove a material fact, as well as those documents to which a party intends to refer at trial. Material facts are facts that a party must prove to make out their claim or defence. The parties must list all documents that prove or disprove, or can assist in proving or disproving, material facts at the first instance, serve the list and fulfill these listing requirements on an ongoing basis: Rules 7-1(1) and (9). While this disclosure obligation is narrower than the broad standard in *The Compagnie Financière et Commerciale du Pacifique v. The Peruvian Guano Co.* (1882), 11 Q.B.D. 55, which applied under predecessor Rule 26, first tier disclosure will be adequate in many cases and, therefore, all that is required: *Natural Trade [Ltd. v. MYL Trading Ltd.]*, 2019 BCSC 1368] at para. 19; *XY[, LLC v. Canadian Topsires Selection Inc.]*, 2013 BCSC 584] at para. 31; *Imperial Parking Canada Corporation v. Anderson*, 2014 BCSC 989 at paras. 15–19.

[9] Rule 7-1(10) of the *Rules* allows for an application for additional documents under Rule 7-1(1) and Rule 7-1(11) provides for the second tier of production:

- (11) If a party who has received a list of documents believes that the list should include documents or classes of documents that
- (a) are within the listing party's possession, power or control,
 - (b) relate to any or all matters in question in the action, and
 - (c) are additional to the documents or classes of documents required under subrule (1) (a) or (9),

the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the listing party to

- (d) amend the list of documents,

- (e) serve on the demanding party the amended list of documents, and
- (f) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16).

[10] As noted in *Barrie*, at paras. 96 and 97, the second tier of document production is more akin to the former *Peruvian Guano* standard and, as a result, there is a burden on the party seeking production to justify the demand.

[11] In *Kaladjian v. Jose*, 2012 BCSC 357, Justice Davies held:

[62] I have also concluded that the narrowing of the discovery obligations of parties and most particularly the removal of the *Peruvian Guano* “train of inquiry” test of relevance will generally require a defendant to provide some evidence to support an application for additional documents, whether demand is made under Rule 7-1(11) or Rule 7-1(18).

[63] A requirement for evidentiary support recognizes the difference between the scope of examination for discovery and the scope of document discovery under the present Rules and will allow considerations of proportionality to be addressed in specific cases.

[64] A requirement for evidentiary support in requests for additional documents and third party records also prevents against unwarranted “fishing expeditions” based solely upon *pro forma* pleadings.

Demands for Document Production

[12] Demands for production of documents have been made by Greenpower under both Rules 7-1(10) and (11) of the *Rules*. An initial demand under Rule 7-1(10) was made on February 12, 2021, which the EVT defendants say was fulsomely responded to on April 30, 2021.

[13] There was then an examination for discovery of a representative of the EVT defendants in May 2021. There were over one hundred outstanding requests, including requests for document production.

[14] Following this, the action was apparently held in abeyance while the parties undertook some negotiations.

[15] On October 10, 2022, Greenpower made a new demand for production of documents based on Rule 7-1(10) and the broader standard provided for in Rule 7-1(11). The EVT defendants say that this demand was deficient for several reasons.

They rely on, among other things, *Ackert v. At Nature's Door Owner's Association*, 2021 BCSC 778, where Justice Wilkinson held:

[18] The plaintiffs' requests are very broad and they simply assert the documents are "relevant" to the claims. The only "specificity" or particularization the plaintiffs set out is that the documents are linked to particular allegations in the pleadings. This may be sufficient for first tier production under Rule 7-1(10). However, as noted, that "relevance" has now been diminished as some of the claims of relief originally sought by the plaintiffs have been dismissed and the relevant period of time with regard to the remaining claims has been limited.

[19] A demand under Rule 7-1(11) requires the applicant to demonstrate a connection between the documents sought and the issues beyond a mere possibility. There must be an "air of reality" between the documents and the issues in the action: *Addison v. Whitefox Technologies Ltd.*, 2014 BCSC 633 at para. 28.

[20] As the Association points out, the intent of R. 7-1(11) is to inform the opposing party of the basis for the broader disclosure request with sufficient particularity so that there can be a reasoned answer to the request: *Balderson v. Aspin*, 2011 BCSC 730 at para. 29. Applicants who ignore the process risk having their application adjourned or dismissed: *Balderson* at para. 26.

[21] It is not enough to claim a demand is made pursuant to Rule 7-1(10) and/or Rule 7-1(11). There is a clear process under these rules, starting with a demand made under Rule 7-1(10). The plaintiffs' failure to follow that clear process, the fact they bundled their demands, and supplemented their demands within the application materials themselves, make it very difficult for the court to adjudicate their document production application. No doubt, this is the same difficulty the Association faced in responding to the demands and which it tried to clarify with the plaintiffs. [Emphasis in original.]

[16] Greenpower also sought responses to the outstanding requests from the discovery of the EVT defendants. As the turnaround time was deemed too short by the EVT defendants, an application was brought and the court apparently allowed the EVT defendants to provide their responses to Greenpower's request for production by November 21, 2022.

[17] Despite that, this application was filed on November 21, 2022, which was before Greenpower would have had a chance to ascertain what documents had been produced in response to the outstanding discovery requests.

[18] The EVT defendants say that all documents properly disclosable under Rule 7-1(10) have been produced and that they have produced documents based on the broader relevancy test in Rule 7-1(11), despite their position that the demand made was inadequate.

Analysis and Decision - The Documents Sought

[19] The document production sought is extensive. Generally speaking, I agree with the EVT defendants that the demands advanced under Rule 7-1(11) in Greenpower’s letter of October 10, 2022 are lacking the rationale necessary to engage the dialogue contemplated by these rules. As the Court of Appeal noted in *Barrie*:

[100] In *XY*, Justice Voith, then of the Supreme Court of British Columbia, discussed the salutary objects of Rules 7-1(10)–(14), quoting from *Lit v. Hare*, 2012 BCSC 1918 at para. 67. In *Lit*, Justice Fitch, then of the Supreme Court of British Columbia, explained that Rule 7-1 is designed to promote: (1) dialogue between the parties on document disclosure issues; (2) informal resolution of disagreements; and (3) failing resolution, targeted disclosure applications. As Justice Voith noted in *XY*, the exchange of correspondence required between counsel articulating their respective positions is consistent with the goal of proportionality and, where informal resolution is not reached, it also serves to crystallize those positions for the court: *XY* at paras. 22–23.

[20] The EVT defendants provided a table indicating their response to each category of documents sought. I will deal with each.

[21] Where orders are made for production, they are for documents that are within the EVT defendants’ possession, power, or control.

a) All communications between persons associated with the EVT defendants about the following matters at issue in the action

i. Phillip Oldridge's ownership, directly or indirectly, in the EVT defendants

[22] The EVT defendants take issue with this category, saying such documents would not be probative of a material fact, nor relevant to any matter in issue.

[23] That is clearly not the case, however. It is alleged that Mr. Oldridge was actively involved in the development of the EVT defendants and was a director of Envirotech Electric Vehicles Inc. That is allegedly in breach of his fiduciary duty to Greenpower. As a result, documents evidencing an ownership interest that Mr. Oldridge held in the EVT defendants would be relevant to prove or disprove a material fact. The order is granted for their production.

ii. Any efforts made by Phillip Oldridge on behalf of the EVT defendants

[24] The EVT defendants assert that this demand is vague and overly broad, and point out that it is not limited in time to the period when such efforts were alleged to be wrongful. Regardless, the EVT defendants say that they have produced some documents that would fall into this category.

[25] In their letter of April 30, 2021 in response to the demand, counsel for the EVT defendants asserted that the EVT defendants maintain the position taken in the response to civil claim—i.e., a denial that Mr. Oldridge made efforts on behalf of the EVT defendants.

[26] That is not an answer, however. In the notice of civil claim, there are clearly pleaded factual circumstances to which such documents would be material. The order will go for the production of any such documents that existed on or before July 2, 2019.

iii. Phillip Oldridge's role in the defendants

[27] Counsel for the EVT defendants also relied on their denial in the response to civil claim to assert that any such documents are irrelevant.

[28] As above, that is not an answer. There are facts pleaded such that documents showing Mr. Oldridge had a role with the EVT defendants would be relevant. Documents that existed on or before July 2, 2019 will be produced.

iv. Greenpower's business, including its products, manufacturers, customers, target markets, potential customers and strategies

[29] This demand is so broad that it can only be categorized as a fishing expedition. There are no parameters in time, topic or source. Presumably, it would capture any document obtained by the EVT defendants that in any way touched on Greenpower. This is denied.

v. The EVT defendants' efforts to design, manufacture, and market the competing products

[30] This was not pursued, as it was not included in the original demand.

vi. The EVT defendants' association with Zero Nox Inc. and their efforts to market and their efforts to market and sell the competing products, as described in the notice of civil claim at para. 37(a)

[31] This was not pursued as it was not included in the original demand.

vii. The EVT defendants' association with Adomani Inc. and their efforts to partner with the EVT defendants to manufacture, market, and sell the competing products, as described in the notice of civil claim at paras. 37(d)-(e)

[32] This was not pursued as it was not included in the original demand.

viii. The EVT defendants' association with E-Motion Motors and their efforts to market and sell the competing products

[33] There is no mention of E-Motion Motors in the notice of civil claim, there is no reason advanced for the demand and there is no evidence that demonstrates either the existence of such documents or their relevance to the claim. This is denied.

ix. Any financing solicited or raised by the EVT defendants as a direct or indirect result of Phillip Oldridge or any information provided by Phillip Oldridge

[34] The EVT defendants argue that this is too broad, capturing financing after Mr. Oldridge left his positions with Greenpower. They point out that no reason was provided for the demand.

[35] There is, however, a plea in the notice of civil claim that in 2018 and 2019 Mr. Oldridge helped raise money for EVT, presumably in breach of his fiduciary duty to Greenpower. Documents with respect to such efforts would be relevant to a material fact. The EVT defendants will produce any such documents that existed on or before July 2, 2019.

x. The EVT defendants' efforts to solicit business from current or prospective customers of Greenpower, including, but not limited to, the solicitations described in the notice of civil claim at para. 37(i)

[36] The EVT defendants submit that this demand is simply too broad and further that it is incapable of answer as the EVT defendants cannot know who Greenpower's "current or prospective customers" are. While that is true, there are customers identified in the notice of civil claim, being Green Commuter Inc., San Diego Airport Authority, and Zero Nox Inc. To the extent that there are documents relating to solicitations of business from these entities, they will be relevant to a material fact and should be disclosed. Although the EVT defendants also say that they do not have any such relevant or material documents "based on their knowledge of the plaintiff's customers", this order will go, but only as to the four companies identified.

xi. The EVT defendants' efforts to obtain eligible vehicle status on the California HVIP voucher program

[37] The EVT defendants say that these documents have been produced. I accept that. This is dismissed with leave to apply should evidence disclose the existence of other relevant documents.

xii. The EVT defendants' role in, or knowledge of, any of the manipulative sales as described in the notice of civil claim at para. 51

[38] The EVT defendants say they do not have any such documents. I accept that. This is dismissed with leave to apply should evidence disclose the existence of other relevant documents.

- b) All communications between Phillip Skinder and any person associated with the EVT defendants, including Phillip Oldridge, regarding the relevant matters, including any emails and text messages**

[39] The EVT defendants submit that these communications are duplicates to those already dealt with above and further say that 1,130 emails sent and received by Mr. Skinder have been produced. I agree - there is no indication that these communications have not been captured already. This is dismissed with leave to apply should evidence disclose the existence of other relevant documents.

- c) All documents in the possession or control of the EVT defendants, which would include documents with manufacturing details, marketing materials, financing materials, and regulatory submissions, that reference**
 - i. A 25-foot electric passenger van, which competes directly with Greenpower's EV Star+;**
 - ii. A class 3 transit van, which competes directly with Greenpower's EV Star;**
 - iii. A 6-meter electric logistics van, which competes with Greenpower's EV Star Cargo and EV Star Cargo+; and**
 - iv. Various other models of an all-electric passenger van and an all-electric cargo, which competes with Greenpower's EV Star product line.**

[40] The EVT defendants object to this very broad demand for a variety of reasons, including that it trenches on highly sensitive and confidential information that will have nothing to do with the issues in the action. They submit that such documents should only be producible if they were “obtained or created as a result of, or relate to, the wrongful conduct”. I agree.

[41] The EVT defendants also assert that they “have taken all reasonable and necessary steps to locate and produce all material and relevant documents that would fall into this category, to the extent that they exist”. I accept that. This is dismissed with leave to apply should evidence disclose the existence of other relevant documents.

- d) All communications between the EVT defendants and government bodies, including but not limited to the California DMV and the California Air Resources Board, regarding the EVT defendants' obtaining eligible vehicle status on the California HVIP voucher program, as well as all documents submitted to, or obtained from, such government bodies, including executive orders and voucher listings**

[42] The EVT defendants object to production of this class of documents as being irrelevant. They point out that no reason has been advanced for their production and that it is not clear what issues, if any, these documents might relate to. That is true, further, it is obvious that this demand would capture documents that are completely irrelevant to the claims advanced. The EVT defendants also say they have produced some documents that would be captured under this head. This is dismissed with leave to apply should evidence disclose the existence of other relevant documents.

- e) All documents, including drafts and final versions, that relate to the EVT defendants' financing, marketing, sales, products, manufacturers, customers, target markets, potential customers, business strategies and shareholders, which would include but are not limited to: open item lists, investor presentations, financial models, prospectuses, and sales briefs; and**

[43] The breadth of this demand is such that it can only be characterized as a fishing expedition. This is dismissed.

- f) All documents that record the ownership of the EVT defendants, including the central securities registrar for each entity**

[44] Central Securities Registers for the EVT defendants have already been produced. Other than that, it is unclear what Greenpower is seeking. This is dismissed.

Costs

[45] As the EVT defendants have been substantially successful in resisting this application, they will have their costs in the cause.

“Master Muir”