IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wu v. Ma,*
2024 BCSC 1403

Date: 20240724
Docket: S229749
Registry: Vancouver

Between:

Hong Fang Wu

Plaintiff

And

Zhiyong Ma and Ying Wang

Defendants

Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment

Counsel for the Plaintiff:	Y. Wong
The Defendant, appearing in person:	Z. Ma
Place and Date of Trial/Hearing:	Vancouver, B.C. July 24, 2024
Place and Date of Judgment:	Vancouver, B.C. July 24, 2024

[1] The plaintiffs apply in two proceedings for orders requiring the defendant, Mr. Ma, to provide his list of documents and provide answers in writing to requests made to him at his examination for discovery and his examination in aid of execution. Mr. Ma made no objections to any of these requests.

[2] To date, Mr. Ma has not responded nor provided his list of documents. By email, Mr. Ma told counsel for the plaintiff that he would respond to the requests made at his examination by July 31, 2024. However, in his application responses, he opposes orders being made requiring him to respond by that date or any other date.

[3] Mr. Ma did not appear at the hearing when the matter was called, so only counsel for the plaintiff made submissions at the hearing. However, Mr. Ma later attended chambers and appeared at 2:00 p.m. on July 24th, which is the time the court had set to give oral reasons.

[4] Notwithstanding that he did not appear when the matters were initially called, for reasons that he explained and which I accept, I permitted Mr. Ma to make submissions prior to giving oral reasons. Mr. Ma opposes the orders sought because he wants an adjournment to consider the material.

[5] However, I note that he provided application responses and there was correspondence with him about what the plaintiff would include in the application record. Mr. Ma also submitted that he intended to respond to the requests by the end of the month in any event. I find no basis to grant an adjournment.

[6] Ms. Wong, counsel for the plaintiff, brought to my attention that in seeking the orders requiring Mr. Ma to respond in writing to the requests made at his examinations, there is authority standing for the principle that the court cannot require a party to respond to outstanding discovery requests in writing.

[7] In *LaPrairie Crane (Alberta) Ltd. v. Triton Projects*, 2012 BCSC 1594, Associate Judge Bouck considered a request by a party to require the opposing

party following examination for discovery. In that case, requests were made at discovery that were not objected to when they were made.

[8] At para. 34, Bouck A.J. notes that a party who does not receive responses has a remedy under Rule 7-2(22) to (24), but notes that the court has no power to order that answers to outstanding discovery questions be put in writing. For that proposition, the court cites *Diachem Industries Ltd. v. Buckman Laboratories Canada, Ltd.* (1994), 91 B.C.L.R. (2d) 312 at p. 314 [*Diachem*].

[9] In *Diachem*, which involved former Rule 27(22) and (23), which have now been overtaken by Rule 7-2, there were outstanding requests made at discovery. When the examining party sought answers and requested, as per customary practice, that they be provided in writing, the examined party refused to supply them in writing, insisting that there was no rule requiring the answers to be supplied in writing. In *Diachem*, Associate Judge Patterson notes that in the text of Rule 27(22) and (23), and unlike present Rule 7-2(23), there was no rule authorizing the examining party to request answers in writing. On that basis, Patterson A.J. concludes at paras. 8-9, no authority existed to support answers in writing except for "customary practice". Patterson A.J. said that absent express agreement, "the court has no power to order the questions to be answered in writing".

[10] In my view, Rule 7-2(23) provides a clear basis for the court to require a party to provide responses to examination for discovery requests made under subrule (22) by letter. If the court did not have this authority, a party seeking to rely on Rule 7-2(23) would have no way to enforce a permissible request that a response be provided by letter.

[11] Subrule 7-2(23), addresses the concern raised in *Diachem* that (at that time), there was no authority to support a party's request to have responses to examination for discovery requests provided in writing. I also find that ordering written responses to requests made at an examination for discovery is consistent with the object of the rules set out in Rule 1-3 because it eliminates a situation where, if an examined

party refuses the request to provide responses in writing, a continuation of the oral examination would have to be scheduled.

[12] In my view the goal of securing a just, speedy and inexpensive determination of a proceeding on its merits would be significantly undermined were a requesting party left with the ability to request responses in writing pursuant to R. 7-2(23), but without a mechanism to enforce that request through a court order if the examined party did not comply with that request.

[13] Therefore, the orders sought in part 1 of the plaintiff's notices of application filed in action no. S-229749 and S-182040 are granted.

"E. McDonald J."