

Court of King's Bench of Alberta

Citation: Zeinali v Petroliam Nasional Berhad (Petronas), 2023 ABKB 699

Date: 20231208
Docket: 2203 09757
Registry: Edmonton

2023 ABKB 699 (CanLII)

Between:

Hossein Zeinali

Plaintiff

- and -

Petroliam Nasional Berhad (Petronas) and Petronas Energy Canada Ltd

Defendants

**Reasons for Decision
of the
Honourable Justice G.S. Dunlop**

1. Introduction

[1] The plaintiff seeks an order compelling answers to undertakings given and questions refused at a questioning on March 14, 2023. He also seeks costs of the application and questioning.

2. Background

[2] The plaintiff filed a statement of claim on June 23, 2022 against two defendants: Petroliam Nasional Berhad (Petronas) and Petronas Energy Canada Ltd. One of the defendants, Petronas Energy Canada (hereafter, "Petronas") filed a statement of defence on July 4, 2022. The

other defendant, Petroliam Nasional Berhad (Petronas) (hereafter, “Berhad”) has not yet filed a defence.

[3] On August 12, 2022 an applications judge granted an order for service *ex juris* on Berhad.

[4] On December 6, 2022, Petronas filed an application for summary dismissal and a supporting affidavit of Giantommaso Colaneri. The affidavit is brief, merely 4 pages plus a signing page. In a nutshell, the application and affidavit assert that Petronas and Berhad, while related, are separate legal entities and that any relationship the plaintiff had with either company was with Berhad, and not with Petronas. Mr. Colaneri’s affidavit also states that Berhad has no connection to Alberta.

[5] On December 12, 2022, Berhad filed an application to set aside the August 12, 2022 service *ex juris* order and stay the action as against it on the grounds of jurisdiction simpliciter and *forum non conveniens*.

[6] On March 14, 2023 the plaintiff, acting for himself and without a lawyer, questioned Mr. Colaneri on this affidavit. The court reporter recorded five undertakings.

[7] On March 27, 2023 Petronas provided responses to three of those undertakings and refused to answer the two undertakings taken under advisement.

[8] On September 6, 2023, Fraser, J, who is Case Management Justice of this file, ordered that if the plaintiff intended to apply for answers to questions and undertakings refused from the March 14, 2023 questioning, he was required to file that application by September 13, 2023 and schedule it to be heard in morning justice chambers no later than October 13, 2023.

[9] The plaintiff filed his application on September 12, 2023 and it came before me in morning chambers on October 6, 2023. As there were too many questions and undertakings to address in morning chambers, I seized myself of the application and ordered the defendants to file written submissions by October 20, 2023 and the plaintiff to file written submissions by November 3, 2023. I received those written submissions on October 20, 2023 and November 2, 2023.

[10] The plaintiff’s materials (his application and affidavit filed September 12, 2023 and his written submission filed November 2, 2023) are confusing. Much of his material is argument that might be relevant on the hearing of the applications for summary judgment and to set aside the order for service *ex juris* but is not relevant to the application before me which is for an order that Mr. Colaneri or Petronas provide better answers than they have provided to date.

[11] The application before me turns on two simple issues:

- Was the question or undertaking asking a proper question, in the sense that the answer could be relevant and material to the defendants’ applications?
- If so, was it answered?

[12] Unfortunately, the plaintiff’s questions of Mr. Colaneri were often confusing resulting in it being unclear what was being asked as a question or undertaking. The court reporter provided her paraphrase of the undertakings she identified in the transcript. While I rely on the court reporter’s transcription of what was said during the questioning, I do not rely on the court

reporter's version of the undertakings. I have read the transcript and reached my own conclusion about what was asked. In most cases, I agree with the court reporter's wording.

[13] In some cases, the plaintiff's questions were unintelligible. In part that is because the plaintiff, Mr. Colaneri, and Petronas' lawyer were talking at the same time during the questioning. In many cases that occurred because the plaintiff interrupted the other people when they were speaking. In addition, even when no one was interrupting anyone else, the plaintiff's questions were frequently impossible to understand because of the plaintiff's phrasing. Unintelligible questions cannot be answered.

3. Undertakings

[14] The plaintiff identifies seven undertakings in his application. I will deal with the first three as a group.

3.1. Transcript pages 43 – 56

[15] The plaintiff's application identifies three undertakings given on pages 51 – 55 of the transcript. The court reporter identified three undertakings there as well, using a larger page range of 45 – 56. These undertakings were paraphrased by the court reporter as follows:

UNDERTAKING 1 – To advise whether the plaintiff's July 11 and July 25, 2022 affidavits in support of the substitutional order were served on Petronas Energy Canada Ltd.

UNDERTAKING 2 – To advise when Mr. Colaneri first saw the plaintiff's July 11 and July 24, 2022 affidavits.

UNDERTAKING 3 – To advise who sent the plaintiff's July 11 and July 24, 2022 affidavits to Petronas Energy Canada Ltd. (Taken Under Advisement).

[16] In my view it is necessary to start reading at page 43 of the transcript to understand what undertakings were asked for and given. Based on my own reading of the transcript, I agree with the court reporter's wording of those three undertakings, except that I think the reference to a July 24, 2022 is a mistake Mr. Colaneri made at one point in the transcript which was picked up by the plaintiff and the court reporter. I am reasonably certain there are just two affidavits, one dated July 11, 2022 and the other dated July 25, 2022. Nothing turns on which date is correct.

[17] The responses of Petronas to those questions were:

UNDERTAKING NO. 1

The Plaintiff's affidavits sworn in this action on July 11, 2022 and July 25, 2022 were not served on Petronas Energy Canada.

UNDERTAKING NO. 2

September 28, 2022

UNDERTAKING NO. 3 (TAKEN UNDER ADVISEMENT)

Refused. The questioning of Mr. Colaneri was in relation to Petronas Energy Canada's application for summary dismissal filed December 6, 2022 and the application of Petroliam Nasional Berhad filed December 12, 2022 to stay the

action against it on jurisdictional grounds. The information sought by the undertaking request is not relevant to those applications.

[18] I agree with Petronas that undertaking 3 is irrelevant to the applications for summary judgment and to stay the action on jurisdictional grounds. It makes no difference to the outcome of those application who sent the plaintiff's affidavits to Petronas. Similarly, the first two undertakings are also irrelevant. None of these three undertakings was a proper question.

3.2. Transcript pages 65 – 66

[19] The plaintiff's application refers to an undertaking on page 66 of the transcript. In my view it is necessary to start reading at page 65.

[20] The court reporter worded that undertaking as follows:

UNDERTAKING 4 – To determine what business Petronas Carigali Canada B.V. operates.

[21] Petronas' response was:

Petronas Carigali Canada B.B. is a holding company.

[22] I am not sure that question is relevant, but I don't need to decide that, because the undertaking was given without reservation, and it was answered.

3.3. Transcript pages 66 – 71

[23] The plaintiff's application identifies an undertaking on pages 70 – 71. The court reporter did not identify an undertaking on these pages. In my view it is necessary to read the transcript starting at page 66 to understand whether an undertaking was given and what it was. Based on my reading, I find that Mr. Colaneri gave an undertaking on these pages, which was to advise who owns Petronas Carigali Canada B.V., the corporation shares.

[24] In its written submissions, Petronas argued that the ownership of Petronas Carigali Canada B.V. is irrelevant. It may be, but Mr. Colaneri gave that undertaking at page 66, line 19 and confirmed that he had given it at page 70, line 24 to page 71, line 1. The undertaking was not taken under advisement, so it is too late to object that it is irrelevant. Having given the undertaking, Mr. Colaneri and Petronas must provide a response.

3.4. Transcript pages 112 – 114

[25] The plaintiff's application refers to an undertaking at page 113 of the transcript. The court reporter identified one at page 114. In my view it is necessary to read pages 112 – 114 to understand what was requested and what has given. The court reporter's version is:

UNDERTAKING 5 – To provide the source of the communication of the plaintiff's affidavits in support of the substitution order from Petronas Energy Canada Ltd. (Taken Under Advisement)

[26] Petronas used a different wording of this undertaking in its response. Its wording is:

To provide the record(s) related to how Petronas Energy Canada received the Plaintiff's July 11 and July 25, 2022 affidavits.

[27] Based on my reading of the transcript, I agree with the wording in Petronas' undertaking response.

[28] Petronas' response to this undertaking was:

Refused. The questioning of Mr. Colaneri was in relation to Petronas Energy Canada's application for summary dismissal filed December 6, 2022 and the application of Petroliam Nasional Berhad filed December 12, 2022 to stay the action against it on jurisdictional grounds. The information sought by the undertaking request is not relevant to those applications. Further, the records sought are privileged.

[29] I agree with Petronas that records showing how it received the plaintiff's affidavits are irrelevant. They may be privileged as well. Petronas took the undertaking under advisement and then objected to providing a response, which it had grounds to do. The plaintiff is not entitled to an answer to this question.

3.5. Transcript pages 117 – 118

[30] The plaintiff's application refers to an undertaking on these pages. The court reporter did not note one there. I have read those pages and the surrounding pages of the transcript. No undertaking was requested, and none was given.

4. Refused Questions

[31] The plaintiff's application lists seventeen places in the transcript where he says Mr. Colaneri refused to answer a question. His application numbers those questions 1 – 17. I have collected those seventeen into thirteen groups.

4.1. Transcript pages 12 – 22 (Application Question 1)

[32] The plaintiff's application refers to a refused question on page 14 of the transcript, but it is necessary to read pages 12 – 22 to understand what was asked and what was answered. At this point in the questioning, the plaintiff asked a series of questions about Petrogas' affidavit of records. Many of the plaintiff's questions were hard to understand. Many were irrelevant. Mr. Colaneri and Petronas' lawyer asked questions of the plaintiff to try to clarify what was being asked, mostly without success. No intelligible question was refused by Mr. Colaneri or Petronas in this section of the questioning.

4.2. Transcript pages 28 – 33 (Application Questions 2 – 3)

[33] The following exchange took place between the plaintiff and Petronas' counsel at lines 8 – 18 on page 28 of the transcript:

Q MR. ZEINALI: Your answers are also binding on the corporation Petroliam Nasional Berhad (Petronas), correct?

MR. HANNAN: Objection. The witness is not a representative of Petroliam Nasional Berhad (Petronas). He's here today as the corporate representative of Petronas Energy Canada. Petroliam Nasional Berhad (Petronas) is a distinct party in this litigation. So, you may take the position that his evidence is binding on Petroliam Nasional Berhad (Petronas), but that's not a question for this witness.

[34] The plaintiff's question was improper. Petronas' objection was correct. Mr. Colaneri is a witness who provided an affidavit. The plaintiff was entitled to ask him questions about fact, not

legal questions. Mr. Hannan, as Petronas' counsel, could state a position on a legal question which he did. After that position was stated, the plaintiff should have moved on. Whether Mr. Colaneri's answers are binding on any party, and the legal implications of that, are questions for the court, not a witness, such as Mr. Colaneri.

[35] The plaintiff repeated essentially the same question several times in the next few pages and in each case the question was properly objected to. This pattern of repeating questions that had been answered or objected to continued throughout the questioning. That was improper conduct by the plaintiff.

4.3. Transcript pages 35 – 37 (Application Question 4 – 5)

[36] The plaintiff asked first what partnerships Petronas had been in since 2017 and then what affiliates it had had since 2017. Petronas objected to both questions. The objections were proper. The question as put was too broad. If the questions had been, was Petronas in partnership with Berhad and was Berhad an affiliate of Petronas during the time period referred to in the pleadings, the questions would have been proper. As the plaintiff phrased the question, it was a fishing expedition.

4.4. Transcript pages 38 – 41 (Application Question 6)

[37] At pages 38 – 41 of the transcript the plaintiff repeatedly asked whether his affidavits were served only on Berhad and not on Petronas. Petronas repeatedly objected. The objection was correct. Whether, when and on whom the plaintiff's affidavits were served is irrelevant to the two applications filed by the defendants in December 2022. However, in the portion of the questioning that followed, at pages 43 – 56, an undertaking was given to advise whether the two affidavits were served on Petronas and that undertaking was answered by Petronas.

4.5. Transcript pages 46 – 47 (Application Question 7)

[38] The plaintiff asked Mr. Colaneri whether the defendants cooperated in this action. Whether they did or not is irrelevant to the defendants' applications. It is also a question that calls for privileged communications, pursuant to both litigation and solicitor client privilege. Petronas' objection to this question was proper.

4.6. Transcript page 49 (Application Question 8)

[39] The plaintiff asked the following question at page 49 of the transcript:

Where did Petronas Canada find all the documents about the plaintiff that you and Petronas Canada's expert team from various groups in Petronas Canada which couldn't find a single record about the plaintiff?

[40] Petronas did not object to this question; counsel sought clarification. Ultimately this became two undertakings taken under advisement, on pages 50 – 56 and 112 – 114 of the transcript. In its responses to undertakings, Petronas refused to provide answers, which it was entitled to do, as set out earlier in these reasons.

4.7. Transcript pages 57 – 58 (Application Question 9)

[41] The plaintiff's questions at pages 57 – 58 of the transcript are confusing. First, he asked when Petronas received the commencement documents. Counsel asked whether he meant the statement of claim. The plaintiff then said commencement documents could be affidavits as well. Counsel disagreed. Then the plaintiff added a substitutional service order to his definition of

commencement document. Counsel objected to a question using such a broad and inaccurate definition of commencement document. He also objected to any further questions about when a document was received by Petronas on the grounds of relevance. The objection was proper on both points.

4.8. Transcript pages 70 – 73 (Application Questions 10 – 11)

[42] On page 70 of the transcript the plaintiff showed a document to Mr. Colaneri and asked him to identify it as Berhad’s “Integrated Report 2021, which shows the Petronas structure and its wholly owned subsidiaries”. Petronas’ counsel pointed out that Mr. Colaneri could not verify where the plaintiff had obtained the document. Then the plaintiff said all he wanted was for Mr. Colaneri to read the document and say what the document says. Ultimately counsel’s objection was resolved by the plaintiff’s clarification.

[43] On the pages that follow Mr. Colaneri acknowledged that the document shows Petronas International Corporation Limited to be a wholly owned subsidiary of Berhad and he agreed that Berhad indirectly owns one hundred percent of Petronas.

[44] There were no objections on these pages except one which was resolved by the plaintiff’s clarification.

4.9. Transcript page 75 – 85 (Application Question 12)

[45] Beginning on page 75 of the transcript, the plaintiff presented a document to Mr. Colaneri and asked Mr. Colaneri to confirm what the document says, which Mr. Colaneri did. At page 79, counsel said:

... if you have more of these, the witness isn’t here today to read documents that you’ve brought. If you have questions, the witness can try to answer questions on the documents, but he’s not here to read more documents.

[46] That was a reasonable position to take. Mr. Colaneri was there as a witness to provide evidence, not merely to read documents or confirm the contents of documents. At page 84 in the transcript the plaintiff proposed marking a document as an exhibit and counsel agreed it could be an exhibit for identification but not a full exhibit. He was entitled to take that position because Mr. Colaneri testified that he did not recognize the document.

4.10. Transcript page 103 (Application Question 13)

[47] At page 103 of the transcript the plaintiff asked whether a passage he read out loud came from an official document of Berhad and Mr. Colaneri answered, “It seems to be from the Integrated Report of 2021.” The plaintiff then asked the same question again and counsel objected on the basis that the question had already been answered. That was a proper objection, in the context of this examination which involved many repeated questions by the plaintiff and a very aggressive and combative style adopted by the plaintiff. In a different context it might be acceptable to ask the same question more than once.

4.11. Transcript pages 108 – 112 (Application Question 14)

[48] The plaintiff repeatedly asked questions about the defendants retaining and instructing counsel. Petronas repeatedly objected. Those questions were not proper because they were both irrelevant and they sought information protected by solicitor client privilege.

4.12. Transcript pages 125 – 126 (Application Question 15 – 16)

[49] Mr. Colaneri confirmed that Petronas received the statement of claim on June 24, 2022, but he refused to answer whether Petronas informed Petroliam about the statement of claim. The basis of counsel’s objection was that whether that happened is irrelevant. I agree. It is also likely subject to litigation privilege.

4.13. Transcript pages 139 – 140 (Application Question 17)

[50] On pages 139 and 140 of the transcript the plaintiff asked Mr. Colaneri why Petronas brought a summary judgment application when it did, rather than earlier. Counsel objected on the grounds the answer would not be relevant to the defendants’ applications. I agree. In addition, the question called for information protected by solicitor client privilege.

5. Conclusion

[51] Petronas and Mr. Colaneri shall provide a response to the following undertaking:

Advise who owns Petronas Carigali Canada B.V., the corporation shares.

[52] All other aspects of the plaintiff’s application are dismissed.

[53] The defendants have been almost entirely successful on this application. For that reason, as well as the obstructionist and combative behaviour of the plaintiff during Mr. Colaneri’s questioning, the plaintiff shall pay the defendants’ costs of this application including Mr. Colaneri’s questioning on March 14, 2023. The plaintiff’s claim seeks damages of \$3.5 million, so column 5 of Schedule C applies. The defendants are entitled to items 5(1) and 5(2) for a full day of questioning and item 8(1) for an application where briefs were required, for a total of \$6,750 in fees. The defendants are also entitled to reasonable disbursements and GST.

[54] Petronas’ counsel shall prepare an order reflecting my decision. I invoke r 9.4(2)(c) so the plaintiff’s approval of the order is not required. The clerk may sign the order on my behalf.

Heard on the 6th day of October, 2023

With written submissions received on October 20, 2023 and November 2, 2023.

Dated at the City of Edmonton, Alberta this 8th day of December, 2023.

G.S. Dunlop
J.C.K.B.A.

Appearances:

Hossein Zeinali
for the Plaintiff

J. Kelly Hannan/Andrea C. Lutsch
for the Defendants