



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-18-00593636-00CL DATE: 28 November 2022

NO. ON LIST: 2

TITLE OF PROCEEDING: Randhawa v. Randhawa et al

BEFORE MADAM JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Aaron Kreaden	Swinderpal Singh Randhawa	akreaden@stikeman.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Jayson Thomas	Rana Partap Sing Randhawa	jthomas@loonix.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Natalie Levine and John Picone	For the Receiver	nlevine@cassels.com jpicone@cassels.com
Robert MacDonald	Sukhdeep, Subeet & Nimrat Randhawa	rmacdonald@foglers.com

ENDORSEMENT OF JUSTICE KIMMEL:

1. The applicant Paul Randhawa (“Paul”) seeks the following relief by his motion returnable today:
 - a. an Order that Rana Partap Singh Randhawa ("Rana") is solely responsible for all fees and expenses of the Receiver (defined below) and its counsel, such that:
 - i. any amounts previously paid from the estate of RGC (defined below) for the fees and expenses of the Receiver and its counsel shall be applied against Rana's share in the proceeds of the sale of RGC ("Rana's Share");
 - ii. any future amounts paid for the fees and expenses of the Receiver and its counsel shall be applied against Rana's Share; and
 - iii. if Rana's Share is insufficient to cover any portion of the fees and expenses of the Receiver and its counsel, such that any portion of those fees and expenses are applied to Paul's share in the proceeds of the sale of RGC, an Order requiring Rana to indemnify Paul for such amounts;
 - b. an Order requiring Rana to pay Paul's legal costs incurred in connection with the receivership on a full indemnity basis;
 - c. an Order compelling Rana to deliver the documents listed in the Notice of Examination attached at Schedule "A" (the "Examination Documents") within 20 days;
 - d. an Order that Sukhdeep Randhawa ("Sukhdeep"), Nimrat Randhawa ("Nimrat"), and Subeet Randhawa ("Subeet") (collectively, the “related parties”) each attend an Examination in Aid of Execution on dates to be chosen by Paul (the “Related Party Rule 60.18 (6) Examinations”).
2. Rana has now agreed to a consent order for the production of the Examination Documents sought by sub-paragraph 1(c) of Paul’s motion.

Rana’s Adjournment Request – Terms, Including Timelines for Certain Consent Matters

3. Rana seeks an adjournment of the relief sought in sub-paragraphs (a) and (b) of Paul’s motion that, if granted, seek to make Rana solely responsible for all of the costs of the Receiver and its counsel and all of Paul’s costs of the receivership on a full indemnity basis, which Rana estimates could lead to an order for him to pay approximately \$1.5 million (the “Costs Indemnity”). Yesterday, Rana served a motion seeking to compel the Receiver to attend a Rule 39.03 examination on the Costs Indemnity aspects of Paul’s motion. The first time that Rana indicated that he would be seeking to examine the Receiver under Rule 39.03 was not until November 18, 2022. No mention of this was made when this motion was scheduled by McEwen J. back in September of this year.
4. Although Rana suggests that this request could not be pursued under the Rules until after he had delivered his responding material on this motion, there was nothing to stop him from making the request to examine the Receiver earlier so that it could be considered as part of the scheduling of this motion. It would be disingenuous to suggest that Rana did not appreciate when this motion was scheduled that the Receiver’s report(s) were being relied upon by Paul in support of the Costs Indemnity aspect of it. The Costs Indemnity aspect of this motion had been raised on an earlier motion. Those aspects were adjourned and a consent order was signed on October 1, 2021 at that earlier return. Rana has known since then that Paul relied upon the receiver’s report(s) in support of the Costs Indemnity.
5. An order for leave to examine a court appointed officer on reports prepared for the court would be extraordinary. In response to Rana’s first suggestion on Friday November 18, 2022 that he wished to question the Receiver on the Costs Indemnity aspects of Paul’s motion, the Receiver offered on the following business day, November 21, 2022, to answer appropriate written

questions. Rana did not avail himself of this opportunity but instead persisted in his motion for leave to examine the receiver under Rule 39.03, which was served only yesterday and has not yet been filed or scheduled.

6. Needless to say, I am not impressed by the timing of this request by Rana, nor with his conduct in having not even attempted to proceed with written questions to the Receiver. It does not help matters that Rana is in default of a previous significant costs award against him arising from the arbitration proceedings, although he claims he is unable to pay these costs.
7. However, before deciding the Costs Indemnity aspects of Paul's motion that are predicated on the Receiver's fifth report (among other things, including prior orders of the court dating back to May of 2021), I will give Rana one further opportunity to avail himself of the Receiver's offer to answer written questions.
8. In the exercise of my discretion and pursuant to Rule 37.13 (1) I am granting the requested adjournment by Rana of the Costs Indemnity aspects of Paul's motion on the following terms:
 - a. Rana shall deliver his questions for the Receiver in writing by December 1, 2022.
 - b. The Receiver has agreed to respond to proper questions within one week of receiving Rana's written questions.
 - c. If, after considering the Receiver's responses, Rana still considers it appropriate and advisable to proceed with his motion for leave to examine the Receiver under Rule 39.03, he shall first deliver a fresh (or supplementary) motion record in support of such motion (notice of motion and supporting evidence that shall incorporate the exchange of written questions and answers) by no later than December 12, 2022, after which he may appear before me (at the case conference to be set during the week of December 19, 2022 per my direction in (i) below) at which time further directions will be provided concerning Rana's Rule 39.03 motion; to be clear, Rana may not proceed with this motion until it has been further vetted by me and the motion may be disposed of at the next case conference if the court is not persuaded, based on Rana's material, that the relief sought should be granted; if the motion is to be scheduled, a timetable will be set for the responding materials and anything further that may be required before it is heard.
 - d. At the same time as he delivers his written questions to the Receiver (on or before December 1, 2022), Rana shall pay \$7,500 to the Receiver to cover the anticipated up front costs of the Receiver to respond to Rana's written questions. This is without prejudice to any request for these costs to be re-allocated as between Paul and Rana at the return of the Costs Indemnity aspects of Paul's motion.
 - e. The Receiver's costs for responding to Rana's questions are not capped at this estimated amount of \$7,500. Any additional costs shall be paid by Rana at first instance, subject to re-allocation as provided for in (d) above.
 - f. Rana shall forthwith (which under the Rules means within 30 days) pay costs thrown away for today in the amount of \$2,500 to each of the Receiver and Paul in respect of Rana's adjournment request, which might have been avoided if the issue of this examination had been raised earlier and/or if Rana had availed himself earlier of the Receiver's offer to receive and answer written questions.
 - g. Rana shall (on consent) produce the Examination Documents requested by Paul's Notice of Motion at sup-paragraph 1 (c) and listed in Schedule A thereto, and shall also answer any outstanding undertakings from his previous examinations, within 20 days of today.
 - h. Rana shall forthwith pay to Paul all-inclusive costs of the motion for production of the Examination Documents in the amount of \$2,500.
 - i. The Costs Indemnity aspects of Paul's motion at sub-paragraphs 1 (a) and (b) of his Notice of Motion are adjourned to a date to be set at a case conference before me to be scheduled for 30 minutes during the week of Dec 19, 2022. Counsel are directed to request this appointment as soon as possible.

j. In the meantime, the existing preservation order shall remain in place.

The Related Party Rule 60.18 (6) Examinations

9. After hearing submissions with respect to the Related Party Rule 60.18(6) Examinations, I directed that the parties to the 2022 Action commenced by Paul who are also party to this proceeding and whose counsel were before the court today set a timetable for completing the pleadings and discoveries in that 2022 Action. The requested Related Party Rule 60.18(6) Examinations shall be completed at the same time that Paul examines those parties for discovery in the 2022 Action. That avoids a multiplicity of examinations on overlapping issues, while at the same time allows for the examinations for discovery of the related parties (and Rana) in the 2022 Action to be used for enforcement purposes in this action should that be considered to be appropriate by Paul without putting him offside of the deemed undertaking Rule 30.1. Consistent with Rule 1.04, I consider this to be the most just, expeditious proportionate and least expensive manner of proceeding, having regard to the written and oral submissions of the parties on this aspect of Paul's motion.
10. The following timetable shall apply to the parties to the 2022 Action who are before the court on this motion:
 - a. The defendants shall deliver their statements of defence by the end of this week;
 - b. The plaintiff(s)' reply, if any, shall be delivered in accordance with the Rules.
 - c. Affidavits of documents shall be exchanged within 60 days after the plaintiff(s)' reply has been delivered or the time for its delivery has expired; and
 - d. Oral examinations for discovery shall be completed by March 31, 2023.
11. To be clear, I do consider that Paul has met the requirements for an order under Rule 60.18(6) (a) to examine the related parties. I am satisfied that they may have knowledge of the matters set out in sub-rule 60.18(2). Further, I am satisfied that Paul has exhausted all means that could be reasonably expected to be pursued against Rana in the circumstances of this case by attempting to get information and documents from him directly through an, albeit less than fruitful, examination in aid of execution of Rana himself. This fits the requirements laid down by the Court of Appeal in *CIBC v. Sutton* (1981), [1981 CanLII 1886 \(ON CA\)](#), 34 O.R. (2d) 482, at paras. 4 and 5; See also *Waxman v. Waxman*, 2015 ONSC 135 at para 33. I do not agree that prospect of any continued examination of Rana must be completely closed given Rana's evidence to date about his dealings with the related parties, which has been less than forthcoming.
12. My order and directions in 9 and 10 above are intended to streamline the questioning because of the anticipated overlap and the potential for mischief and disagreement about the proper scope of the individual examinations which can be avoided by conducting the examinations of the related parties (for discovery and under Rule 60.18(6)) at the same time.
13. The other defendants to the 2022 Action shall be provided with a copy of this order and encouraged to adhere to the same timetable for pleadings and discovery, and all parties to that action are encouraged to agree to a discovery plan that adheres to the time deadlines that have been ordered herein. While that action is not on the commercial list, parties are expected to cooperate with timetabling and discovery in all matters on the regular civil list. Those other parties to the 2022 Action are expected to participate in any discoveries conducted of the parties who are bound by this order in which they have an interest, unless they have a good reason for not doing so.
14. Given the outcome, no costs are awarded to either Paul or the related parties in respect of the Related Party Rule 60.18(6) Examinations.

15. The orders and directions contained in this endorsement shall have the immediate effect of a court order without the necessity of a formal order being taken out, although any party may take out a formal order by following the procedure in Rule 59.

A handwritten signature in black ink that reads "Kimmel J.". The letters are cursive and fluid, with a distinct loop for the 'K' and a trailing flourish at the end.

KIMMEL J.