Federal Court  Cour fédérale

Date: 20110615

Docket: T-583-09

Citation: 2011 FC 706

[ENGLISH TRANSLATION]

Montréal, Quebec, June 15, 2011

Present: Maître Richard Morneau, prothonotary

BETWEEN:

PLANIFICATION-ORGANISATION-PUBLICATIONS SYSTÈMES (POPS) LTÉE
and
ELIZABETH POSADA

Plaintiffs

and

9054-8181 QUÉBEC INC.
and
PHILIPPE CHAPUIS
and
BENOÎT BAZOGE

Defendants

and

9054-8181 QUÉBEC INC.
and
PHILIPPE CHAPUIS
and
BENOÎT BAZOGE

Plaintiffs by counterclaim

and

PLANIFICATION-ORGANISATION-PUBLICATIONS SYSTÈMES (POPS) LTÉE
and

ELIZABETH POSADA

Defendants by counterclaim

REASONS FOR ORDER AND ORDER

[1] This is a motion by the defendants essentially to rule on objections and obtain the production of undertakings.

Background

[2] The merits of this case are reflected in two Court orders dated October 28, 2009 and January 20, 2010, and the Court does not intend to add anything further here.

[3] It is important to note that this motion arose from two examinations for discovery sessions involving the plaintiff Posada. The first examination on July 16, 2009 was held before the defence filed and before the defendants' counterclaim was filed. Later, following the production of the plaintiff's affidavit of documents, Ms. Posada was questioned on December 1, 2010.

Analysis

Questions to be answered and documents to be produced during an examination for discovery: General principles applicable

[4] In *Reading & Bates Construction Co. and al v Baker Energy Resources Corp. and al* (1988), 24 C.P.R.(3rd) 66, Mr. Justice McNair provided a general, six-point review in which he defined the parameters for a question or document to be considered relevant in points 1 to 3, and

then in points 4 to 6 provided a series of circumstances or exceptions under which exceptionally, ultimately, a question does not have to be answered or a document does not have to be produced.

[5] The Court said the following in pages 70 to 72:

> 1. The test as to what documents are required to be produced is simply relevance. The test of relevance is not a matter for the exercise of the discretion. What documents parties are entitled to is a matter of law, not a matter of discretion. The principle for determining what document properly relates to the matters in issue is that it must be one which might reasonably be supposed to contain information which may directly or indirectly enable the party requiring production to advance his own case or to damage the case of his adversary, or which might fairly lead him to a train of inquiry that could have either of these consequences: *Trigg v. MI Movers Int'l Transport Services Ltd*. (1986), 13 C.P.C. (2d) 150 (Ont. H.C.); *Canex Placer Ltd. v. A.-G. B.C.* (1975), 63 D.L.R. (3d) 282, [1976] 1 W.W.R. 644 (B.C.S.C.); and *Compagnie Financiere et Commerciale du Pacifique v. Peruvian Guano Co.* (1882), 11 Q.B.D. 55 (C.A.).
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> 2. On an examination for discovery prior to the commencement of a reference that has been directed, the party being examined need only answer questions directed to the actual issues raised by the reference. Conversely, questions relating to information which has already been produced and questions which are too general or ask for an opinion or are outside the scope of the reference need not be answered by a witness: *Algonquin Mercantile Corp. v. Dart Industries Canada Ltd.* (1984), 82 C.P.R. (2d) 36 (F.C.T.D.); affirmed 1 C.P.R. (3d) 242 (F.C.A.).
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> 3. The propriety of any question on discovery must be determined on the basis of its relevance to the facts pleaded in the statement of claim as constituting the cause of action (...)
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> 4. The court should not compel answers to questions which, although they might be considered relevant, are not at all likely to advance in any way the questioning party's legal position: *Canex Placer Ltd. v. A.-G. B.C.*, supra; and *Smith, Kline & French Laboratories Ltd. v. A.-G. Can.* (1982), 67 C.P.R. (2d) 103 at p. 108, 29 C.P.C. 117 (F.C.T.D.).

> 5. Before compelling an answer to any question on an examination for discovery, the court must weigh the probability of the usefulness of the answer to the party seeking the information, with the time, trouble, expense and difficulty involved in obtaining it. Where on the one hand both the probative value and the usefulness of the answer to the examining party would appear to be, at the most, minimal and where, on the other hand, obtaining the answer would involve great difficulty and a considerable expenditure of time and effort to the party being examined, the court should not compel an answer. One must look at what is reasonable and fair under the circumstances: *Smith, Kline & French Ltd. v. A.-G. Can.*, per Addy J. at p. 109.
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> 6. The ambit of questions on discovery must be restricted to unadmitted allegations of fact in the pleadings, and fishing expeditions by way of a vague, far-reaching or an irrelevant line of questioning are to be discouraged: *Carnation Foods Co. Ltd. v. Amfac Foods Inc.* (1982), 63 C.P.R. (2d) 203 (F.C.A.); and *Beloit Canada Ltee/Ltd. v. Valmet Oy* (1981), 60 C.P.R. (2d) 145 (F.C.T.D.).
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> [Emphasis added.]

[6] In addition, the list of exceptions in points 2, and 4 to 6 of *Reading & Bates* is not intended to be strictly exhaustive, in my opinion.

[7] In many situations, the balance the Court refers to in point 5 of *Reading & Bates* is required.

[8] Indeed, as mentioned in *Faulding Canada Inc. v. Pharmacia S.p.A.* (1999), 3 C.P.R. (4th) 126, page 128:

> [...] the general tendency of the courts to grant broad discovery must be balanced against the tendency, particularly in industrial property cases, of parties to attempt to engage in fishing expeditions which should not be encouraged.

[9] Rule 242 of the *Federal Court Rules* (the Rules) includes a warning to that effect. Paragraphs 242(1)*b*) to *d)* read as follows:

242. (1) A person may object to a question asked in an examination for discovery on the ground that	**242.** (1) Une personne peut soulever une objection au sujet de toute question posée lors d'un interrogatoire préalable au motif que, selon le cas :
(…)	(…)
(*b*) the question is not relevant to any unadmitted allegation of fact in a pleading filed by the party being examined or by the examining party;	*b*) la question ne se rapporte pas à un fait allégué et non admis dans un acte de procédure déposé par la partie soumise à l'interrogatoire ou par la partie qui l'interroge;
(*c*) the question is unreasonable or unnecessary; or	*c*) la question est déraisonnable ou inutile;
(*d*) it would be unduly onerous to require the person to make the inquiries referred to in rule 241.	*d*) il serait trop onéreux de se renseigner auprès d'une personne visée à la règle 241.

Defendants' motion

[10] The motion under consideration includes certain objections or questions that need to be ruled on. As required by this Court, the parties produced two joint tables (one for the July 16, 2009 examination and one for the December 1, 2010 examination) that in the Court's opinion, include the gist of the reasons for or against answering any question to be allowed.

[11] The Court has consequently reproduced these tables and entitled them "Table for July 16, 2009" and "Table for December 1, 2010" respectively.

[12] After considering the parties' motion records and hearing from their counsel, and given the relevant principles of case law—including both the aforementioned and those raised by the parties—the Court has marked each of the said tables with a double line ("‖") in the margin for any or any part of a party's reasoning for each question to be allowed if, ultimately, this question should or should not be answered. This double line in the margin can therefore be found in either of the last two columns of the tables.

[13] In relation to the Table for July 16, 2009, during the continuation of Ms. Posada's questioning at her expense, at a location and on a date to be determined by the parties within the next twenty (20) days, the plaintiffs will have to respond to the following objections:

- Objections 19, 20, 26, 31, 32 and 33.

as well as any reasonable questions that arise out of the aforementioned dismissed objections or objections otherwise withdrawn by the plaintiffs.

[14] In addition, the Court considers that objections 3 and 9 have now been sufficiently addressed with the information included in the table.

[15] In relation to the Table for December 1, 2010, during the continuation of Ms. Posada's questioning at her expense, at a location and on a date to be determined by the parties within the next twenty (20) days, the plaintiffs will have to respond to the following objections:

- Objections 2 to 4 and undertaking 1, seeing as the Court understands that the plaintiffs withdrew their objections in that regard.
- Objection 12 under categories B and C,
- Objections 16, 18, 24 and 25.

as well as any reasonable questions that arise out of the aforementioned dismissed objections or objections otherwise withdrawn by the plaintiffs.

[16] As for the questions relating to objections 13 and 14, the Court more specifically considers that the plaintiffs have now sufficiently answered these questions. They therefore do not have to be answered any further.

[17] As for the answers to undertakings by either party during the examinations held thus far, and as discussed in Court, these undertakings must be answered in the next twenty (20) days.

[18] Any other remedy sought by either party in his or her motion record is dismissed. Specifically, the Court does not consider that the situation during Ms. Posada's questioning is such that an exception to the usual practice must be made or that an order must be issued for the continuation of her questioning to be carried out before the Court.

[19] Furthermore, the tables are deemed to be part of these reasons for order and order, but will be sent via email under separate cover by the Registry to the parties' counsel.

[20] As for costs for this motion, given the overall divided success in this matter, the Court ultimately considers that costs should follow the outcome of this case.

"Richard Morneau"

Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-583-09
STYLE OF CAUSE:	PLANIFICATION-ORGANISATION-PUBLICATION SYSTÈMES (POPS) LTÉE and ELIZABETH POSADA v. 9054-8181 QUÉBEC INC. and PHILIPPE CHAPUIS and BENOÎT BAZOGE
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	June 13, 2011
REASONS FOR ORDER:	PROTHONOTARY MORNEAU
DATED:	June 15, 2011

APPEARANCES:

Daniel O'Connor	FOR THE PLAINTIFFS/ DEFENDANTS BY COUNTERCLAIM
Jean-Marie Fontaine	FOR THE DEFENDANTS/ PLAINTIFFS BY COUNTERCLAIM

SOLICITORS OF RECORD:

Daniel F. O'Connor Pointe-Claire, Quebec	FOR THE PLAINTIFFS/ DEFENDANTS BY COUNTERCLAIM
Borden Ladner Gervais Montréal, Quebec	FOR THE DEFENDANTS/ PLAINTIFFS BY COUNTERCLAIM