



Form 109

This is the 2nd Affidavit of Rebecca Alexander in this case and was made on 22/AUG/2016

No. S158569
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LISA THOMSON

PLAINTIFF

AND:

A.R. THOMSON GROUP

DEFENDANT

AFFIDAVIT

I, Rebecca Alexander, of 1100 – 570 Granville Street, Vancouver, British Columbia, SWEAR (OR AFFIRM) THAT:

1. I am a legal assistant with the law firm of Fraser Litigation Group, solicitors for the Defendant A.R. Thomson Group in the within action and, as such, have personal knowledge of the facts and matters hereinafter deposed to, save and except where the same are stated to be made upon information and belief, and, as to such facts, I verily believe the same to be true.
2. Attached hereto and marked as Exhibit "A" to this my Affidavit is a true copy of the transcript of the proceedings in chambers on June 28, 2016 in this action.
3. Attached hereto and marked as Exhibit "B" to this my Affidavit is a true copy of the oral reasons for judgment of Master Scarth dated June 28, 2016 in this action.

SWORN (OR AFFIRMED) BEFORE ME
at Vancouver, British Columbia,
on 22/AUG/2016

A Commissioner for taking Affidavits for British Columbia

ANDREA J. PIERCY
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REBECCA ALEXANDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20160628
Docket: S158569
Registry: Vancouver

Between:

Lisa Thomson

Plaintiff

And

A.R. Thomson Group

Defendant

Before: Master Scarth

Oral Reasons for Judgment

Counsel for the Plaintiff:

A.J. Piercy

Counsel for the Defendant:

D.H. Coles

Place and Date of Hearing:

Vancouver, B.C.
June 28, 2016

Place and Date of Judgment:

Vancouver, B.C.
June 28, 2016

This is Exhibit " B " referred to in the
affidavit of Rebecca Alexander
sworn before me at Vancouver
British Columbia, this 22 day of
August, 2016
Andrea Piercy
A Commissioner for taking Affidavits
within the Province of British Columbia

[1] **THE COURT:** In this application the plaintiff seeks an order that the representative of the defendant, Al Thomson, attend and submit to a further examination for discovery and answer questions previously objected to by his counsel at the April 5, 2016 examination for discovery. Those questions are set out in an appendix, a copy of which has been provided to me. The plaintiff also seeks a general order as to what additional questions might be answered. There is also an order sought prohibiting Mr. Thomson from discussing the unanswered questions with counsel before the continuation of the discovery, and reference to the appropriate length of the continued discovery, as well as an application for special costs of the continued discovery.

[2] This is an action involving family members and a family business. The plaintiff is seeking an order compelling the defendant to reinstate her as a partner in circumstances where she was removed from the partnership in 2009 as a result of the activities of her now ex-spouse, which were considered to be in conflict with the family business. The plaintiff alleges that there was an oral agreement with the family patriarch reached in 2009 that she would be reinstated once the litigation involving her ex-husband was resolved. She alleges that when she sought reinstatement she was told it would not happen. She therefore commenced this action.

[3] In its amended response to the notice of civil claim, specifically paragraphs 33 through 36, the defendant alleges that it would not be appropriate to reinstate her to the partnership because of various actions and behaviour by the plaintiff -- I am summarizing here -- and as a result of that behaviour and those actions, to include her again in the partnership would be disruptive and harmful to the business of the defendant.

[4] An examination for discovery was conducted of Mr. Thomson by Mr. Coles and he attempted to ask questions with respect to behaviour of other partners in the family business. Those questions were objected to and counsel for the defendant at the discovery, Mr. Fraser, made a statement as to his view of the scope of the

discovery, essentially confining any questions to the plaintiff's behavior and her relationship with other partners, and objecting to any questions as to the relations amongst other partners in the family business.

[5] I have been given the appendix with the list of questions that were objected to. I have already stated in the course of submissions that in my view the defendant's position that the plaintiff's behaviour was too disruptive for the family business makes the question of what is the norm for the family business relevant, that is what behaviour is tolerated or considered not to affect the business of the company, and as a result, questions with respect to the relationship of other partners are relevant.

[6] Having said that in general terms I am being asked to address specific questions. Turning to the list at appendix A.

[7] Question 187 is not a question so I am not going to require it. It is an introductory statement.

[8] Question 191:

Since the partnership was formed in 1997, to the knowledge of Mr. Thomson, Sr., from any other relationship between the parties become strained?

In my view that is a broad question, but it is not overly broad and it is required to be answered. I had thought that it might be limited as to its scope in time, but apparently the partnership now includes all the family members which it included in 1997. In those circumstances it seems appropriate to go back to 1997.

[9] Question 192:

Mr. Thomson, I understand that Todd Thomson and Gordon Thomson have engaged in physical altercations from time to time; is that true?

This question relates to behaviour of partners which has occurred and has been tolerated. I find that is relevant and this question should be answered.

[10] Question 193:

Mr. Thomson, have you in the course of the partnership ever had any fallings out with any of your partners?

Again, in my view that is a relevant question and should be answered.

[11] Question 195:

Since the creation of the partnership have any of the partners in your view done anything that seriously damaged their relationship with their siblings?

This is phrased in a way which appears to elicit information about interpersonal relationships, but Mr. Coles has stated in his submissions that he is referring here to their working relationship, and in my view, given that clarification, this question should be answered.

[12] Similarly, question 196, in my view, should be answered to the extent that it refers to the working relationship with other partners.

[13] Question 197: This question asks about the failure of partners to communicate with each other. That is referenced in the response to the notice of civil claim as one of the behaviours exhibited by the plaintiff which results in the defendant's view of her as being inappropriate for reinstatement. In my view the question is appropriately asked and should be answered.

[14] Question 202:

Have you ever been justifiably concerned about the behaviour of any other partners?

The word "justifiably" I think is taken from the response because at paragraph 35 that is the language used there. In my view it should be answered.

[15] Question 297 I think is too broad and need not be answered.

[16] Question 488: This was not really addressed in submissions. When reading it the first time I was wondering what evidence it seeks to elicit. In my view it is not relevant on the basis of what I determined to be the scope of relevance here.

Therefore I will not require question 488 to be answered, or question 489 for the same reason.

[17] I will make the order in the terms set out in paragraph 1 but without the wording that I have indicated should be removed; that is that Mr. Thomson answer additional questions related to the relationship between and among the plaintiff's siblings and parents. That is too broad. I have indicated in my view what the scope of the questioning is. I will include the term "all other proper questions arising from the answers given".

[18] Paragraph 2 of the application seeks an order that Mr. Thomson not discuss the questions with counsel. I was concerned that that requires a finding of misconduct on the part of counsel attending the examination for discovery on behalf of the defendant. However, Mr. Justice Willcock, as he then was, in *Nwachukwu v. Ferreira*, 2011 BCSC 1755, confirms that the term sought is appropriate in an order such as this.

[19] As to the duration of the continued discovery, there has already been 4.5 hours of discovery, and a total of seven is permitted. Therefore a further 2.5 hours is permitted. I would not think that it will take you that long to pursue this line of questioning, Mr. Coles, but according to the *Rules* you are entitled to another 2.5 hours. If it assists the parties in knowing how long at the outside this examination would be, then I will include that term.

[20] MR. COLES: Your Honour, if you would not mind, I think it would be of some assistance.

[21] THE COURT: That is fine: 2.5 hours.

[22] There is an application for special costs and it seems to me, Mr. Coles, having reviewed the discovery transcript, there is no basis for that application, so it is dismissed.

[23] The plaintiff has been largely successful on this application. She is entitled to her costs of this application in any event of the cause.

[24] Thank you.

Master S. Scarth