

CANADA / JUDGMENT

1385673 BC Ltd. v. Nobox Limited

2025 BCSC 325

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 325 1385673 BC Ltd. v. Nobox Limited

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

1385673 BC Ltd. v. Nobox Limited,

2025 BCSC 325

Date: 20250110

Docket: S240567

Registry: Vancouver

Between:

1385673 BC Ltd.

Plaintiff

And

Nobox Limited, Jeremy Errol Jacob and

Heycast Ltd.

Defendants

Before: Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J.V. Ensom

Counsel for the Defendants,

Nobox Limited and Jeremy Errol Jacob

J.V. Murray

Place and Date of Hearing:

Vancouver, B.C.

January 10, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 10, 2025

- [1] THE COURT: This is my decision in this matter. As I am providing my reasons for judgment orally at the conclusion of the hearing, in the event a transcript is requested I reserve the right to make editorial changes. Such editing would not change the reasoning behind or the outcome of my decision.
- [2] This is an application by the plaintiff, seeking an adjournment of the trial currently scheduled for 15 days to commence on March 24, 2025. They seek special costs of this application payable forthwith, or, in the alternative, ordinary costs.
- [3] By way of background, the plaintiff company is in the business of the acquisition and development of software and technology assets, including web-based and mobile platforms and applications.
- [4] The defendant Nobox Limited ("Nobox") owned and operated StaffConnect, an event management and staffing business. The nature of their business is the licencing of web-based and mobile platforms to event management companies to manage staff, clients, scheduling, payroll and other functions.
- [5] The defendant, Jeremy Errol Jacob ("Mr. Jacob"), owns and controls Nobox.
- [6] The defendant, HeyCast Ltd. ("HeyCast"), is a company that appears to be incorporated and operating in New Zealand. In social media, Mr. Jacob describes himself as involved with HeyCast as a co-founder and the chief technology officer ("CTO").
- [7] HeyCast did not respond to this action. Default judgment has been obtained against HeyCast, with damages and costs yet to be assessed.

- [8] The plaintiff alleges that HeyCast's business is licencing the use of web-based platforms and related applications. They claim that HeyCast's web-based and mobile platforms are entirely or, at least, substantially, based and reliant on StaffConnect's confidential information and intellectual property that the plaintiff says they acquired pursuant to an asset purchase agreement in November 2022.
- [9] In the pleadings, the plaintiff alleges that in September 2022 they entered into negotiations with Nobox with respect to the acquisition of all of StaffConnect's assets. Pursuant to the terms of the Asset Purchase Agreement ("APA"), the plaintiff purchased from Nobox all of the assets that were used in the StaffConnect business. The purchase price was \$800,000 USD to be paid in instalments from April 2023 to July 2024.
- [10] Other terms in the APA included that Nobox would not engage, directly or indirectly, in a business similar to StaffConnect for a period of two years. Mr. Jacob entered into a consulting agreement with respect to the plaintiff's operation of StaffConnect.
- [11] The plaintiff says that Nobox breached the APA in the following manner. That it failed to deliver StaffConnect platforms that could perform the functionality required to maintain and expand its business without the need for extraordinary maintenance; that Nobox failed to deliver certain assets; and that Nobox failed to insure that the plaintiff had access to all accounts, systems, and records of StaffConnect. Therefore, they claim losses and damages from the defendants.
- [12] Further, the plaintiff has pled that they entered into a consulting agreement with Mr. Jacob. He was to act as a consultant on a full-time basis for a term of one year. He would be paid a monthly fee. Also, that Mr. Jacob agreed not to engage in a business similar to or in competition with StaffConnect anywhere in locations in the countries of Canada, US, New Zealand, Hong Kong, or Australia for a period of two years.
- [13] With respect to Mr. Jacob, the plaintiff alleges that he breached the consulting agreement by failing to provide consulting services on a full-time basis and because of his involvement with HeyCast, a competitive business, he used and disclosed StaffConnect's confidential information in furtherance of HeyCast's business. The plaintiff alleges this also caused them loss and damages.
- [14] Nobox filed a counterclaim and they allege that the plaintiff breached the APA by failing to pay the necessary instalments of the purchase price. They claim damages for breach of contract and they also seek an order that the plaintiff return assets of StaffConnect to Nobox.
- [15] The plaintiff filed this notice of civil claim on January 26, 2024. On February 22, 2024, the defendants, with the exception of Heycast, filed and served their response and counterclaim. On March 14, 2024, the plaintiff filed and served its response to the counterclaim. The history of the litigation continues as follows.

- [16] On March 14, 2024, Mr. Funt, acting as counsel for the defendants, emailed Mr. Ensom, acting as counsel for the plaintiff, suggesting the parties set dates for pre-trial matters such as exchanging documents, conducting discovery and setting trial dates. Mr. Funt inquired as to whether HeyCast had been served as HeyCast's counsel would be a necessary participant in the scheduling.
- [17] Counsel for the defendants, Nobox and Mr. Jacob, indicated they were not in a position to accept service on behalf of HeyCast. Accordingly, on April 1, 2024, the plaintiff served HeyCast with the notice of civil claim. They did so through a director in New Zealand.
- [18] On June 3, 2024, other counsel for the defendants, Ms. Murray, advised Mr. Ensom they had reserved a trial date for 9 to 10 days in September 2025, but they also indicated that there were some trial dates available for the same length in December 2025.
- [19] Within a couple of days after that, counsel for Nobox followed up their request for trial dates and also requested from plaintiff's counsel availability for a summary trial, possibly as early as August. At that time, no discoveries had been conducted.
- [20] On June 7, 2024, Mr. Ensom sent a letter to defendants' counsel taking a number of positions. The most relevant was that he advised he was available on certain dates in August for a potential summary trial but indicated that he objected to the matter being set at that time as the matter was still in the very early stages of the litigation. There was also lack of clarity as to what order would be sought at summary trial by the defendants and on what grounds. Plaintiff's counsel also advised that they were available for trial in September 2025 but he was of the view that 9-10 days would be insufficient. He gave reasons for that position and suggested that perhaps the trial should be set for 15 days. He further reserved the right to seek an adjournment if they proceeded with setting a 9 to 10 day trial in September 2025.
- [21] As further background to this position that was taken, the plaintiff was still seeking documents that related to HeyCast. I will refer to those documents later. On June 26, Ms. Murray sent a letter to Mr. Ensom stating that "not all of HeyCast's documents are in the possession or control of Mr. Jacob or Nobox," and indicated at that time they would be proceeding unilaterally to set the trial. Reasonably, given the previous correspondence, the plaintiff expected it would be set for September or December 2025.
- [22] Also, in June 2024 the plaintiff's principal, Mr. Tasker, scheduled for himself a parental leave of absence which would be from February 12 to May 12, 2025 and it was based on the anticipated due date of his first child.
- [23] In 2024 Mr. Ensom had a busy trial schedule that included a lengthy trial that would occupy most of his time in the Fall of 2024. On July 11, 2024, Mr. Ensom confirmed with defendants' counsel that he had very limited availability at that time.

- [24] On July 12, 2024, Nobox delivered their list of documents and it contained 198 documents. On that date, defendants' counsel indicated that they would be setting an examination for discovery of Mr. Tasker, as the selected representative of the plaintiff and that it would be set for September 16, 2024.
- [25] On July 21, 2024, Mr. Ensom wrote to the defendants' counsel and he referred to a number of procedural difficulties, including a lack of document production from the defendants. He also indicated that Mr. Tasker would be available to be examined on September 16 but because of what he referred to as "the incomplete state of document production", that Mr. Jacob's discovery would have to be conducted at a later date.
- [26] As he was asked about his availability for trial in March 2025, Mr. Ensom advised that although he was available for trial in March 2025, he was concerned about a number of things, including that there would be insufficient time to complete the necessary discovery and the commissioning of expert reports. Furthermore, two of the plaintiff's key witnesses were not available; namely, Mr. Tasker, for the reasons outlined above, and also Mr. Holmes, who would be travelling for a family event which had been scheduled prior to the commencement of this action.
- [27] Accordingly, Mr. Ensom indicated he did not agree with the trial proceeding in March, 2025 and suggested that when the next dates roll out 18 months later, they would probably be able to get a date in February 2026, noting that would be a short period of time after what was originally discussed as trial dates in September and December 2025.
- [28] On July 26, 2024, Mr. Funt advised that he would proceed with Mr. Tasker's discovery and that he had received instructions to set the trial for March 24, 2025. On July 30, 2024, Mr. Ensom replied that the plaintiff will seek an adjournment of the trial for the reasons that are outlined above. With respect to the discovery process, the evidence indicates the following.
- [29] On August 1, 2024, the plaintiff delivered its list of documents containing roughly 1,600 documents and it was provided on the express basis that the list was not yet complete, as the defendants had requested the plaintiff deliver a "full Slack data export" of all Mr. Jacob's conversations. This would likely result in extensive disclosure of documents, likely thousands of pages. Mr. Ensom advised at that time an amended list of documents would be delivered at a later date.
- [30] On September 6, 2024, the plaintiff delivered a demand for production of documents which included documents related to the use and functionality of HeyCast. Within the documents that were demanded, there would be the complete HeyCast source code, design documentation, issue tracking records, testing records and other related documents. Prior to that formal demand, the plaintiff had already made it known that they required these documents from HeyCast, which they believed would be available to Mr. Jacob as the co-founder.

- [31] On September 8, 2024, Mr. Ensom wrote to defendants' counsel, again referring to his request that the March 2025 trial date adjourned and that a more suitable date be obtained in 2026. Specific reasons were provided, which included that there would be two key witnesses for the plaintiff unavailable and of most concern would be Mr. Tasker. Mr. Ensom again took the position that it was unlikely that all of the necessary pre-trial steps could be completed before the trial date.
- [32] Furthermore, Mr. Ensom referred to his other trial commitments that would occupy most of his time until at least November or December 2024. He noted that the defendants had previously proposed a date as late as December 2025, so there was no urgency to proceed in March 2025 and no prejudice if that date was adjourned. He also noted that if they obtained trial dates on the next opening in October, there would be trial dates likely available in April 2026.
- [33] On September 16, 2024, the discovery of Mr. Tasker proceeded. On October 16, 2024, Nobox responded to the written demand pursuant to Rule 7-1 and delivered an amended list of documents, now containing just over a thousand documents. They further advised that other documents relating to HeyCast that were referred to earlier were not within the possession or control of Nobox or Mr. Jacob. The plaintiff delivered an amended list of documents on December 3, 2024, now listing approximately 1,700 documents.
- [34] On December 23, 2024, Mr. Ensom wrote to the defendants' counsel regarding what they considered deficiencies in the document production, again confirming that HeyCast's technical documents had not been provided. Accordingly, that left the plaintiff with having to consider whether to pursue production of the documents from Nobox and Jacobs through a court application or directly from HeyCast. As HeyCast is outside of the jurisdiction, it would likely require a two-step process, ultimately requiring a court application in New Zealand.
- [35] There are essentially two grounds for seeking the adjournment. One is the circumstances of Mr. Tasker not being available either for the trial dates or to prepare for the trial. Furthermore, the plaintiff says that the action is not ready for trial. They point out the following.
- [36] Pleadings were only finalized about four months ago when the counterclaim was amended by Nobox. The participating parties were only settled about three months ago when default judgment against HeyCast was obtained by the plaintiff. Furthermore, despite the demand the defendants have failed to produce the relevant documents related to HeyCast and its technical documents. As I indicated, this may require pursuing production either from Nobox and Jacob or from HeyCast in New Zealand.

- [37] Without adequate document disclosure the plaintiff says that they are unable to obtain the expert evidence that they need for the trial. The plaintiff is seeking an expert report from Dr. Mesbah, who is an assistant professor at UBC in electrical and computer engineering. He would provide the expert evidence regarding the functionality of HeyCast, including whether its source code or other underlying technical architecture is based on StaffConnect's confidential information or intellectual property.
- [38] An affidavit has been provided from Dr. Mesbah and he advises that he has reviewed the notice of civil claim, particularly regarding the allegations against HeyCast. He confirms that he is being asked to provide expert opinion with respect to whether the use and functionality of HeyCast is substantially similar to StaffConnect; whether HeyCast has a global client base comparable to StaffConnect; whether HeyCast's web platform and related mobile application are entirely or substantially based on and reliant on StaffConnect's confidential information and the intellectual property that was acquired by the plaintiff pursuant to the APA.
- [39] Dr. Mesbah says he will provide an opinion in relation to these allegations and in detail he sets out the technical documents that he requires. He says that once he receives those documents, he will be in a position to advise the court as to how much time he would need to complete his report. At this time, the complexity and size of the code and the volume of outstanding documentation is unknown to him. Having said that, if required to give a specific estimate for this project and given his prior experience in software analysis projects, that it typically requires a few months of work and analysis to prepare a report.
- [40] With respect to the unavailability of Mr. Tasker, he is the sole director of the plaintiff. He has provided an affidavit wherein he deposes that he is responsible for the strategic oversight of the plaintiff's operation, as well as providing instructions to counsel in connection with this litigation. He says he was the one responsible for negotiating the APA and the consulting agreement on the plaintiff's behalf and that Mr. Jacob was his counterparty in the negotiations and that the content of the discussions between them are contested issues in this action.
- [41] The plaintiff says that Mr. Tasker's importance to the plaintiff's case is also demonstrated by the fact that he was the representative chosen by the defendants for discovery.
- [42] In his affidavit he deposes that his fiancé is pregnant with their first child and the due date is February 12. In June 2024 he scheduled a parental leave of absence from all of his duties with the businesses from February 12 to May 12, 2025. However, he deposes that in November his fiancé's pregnancy was diagnosed as a high-risk pregnancy. Therefore, he has decided to extend his parental leave to commence on January 12, 2025 and it would still continue until May 12, 2025. He deposes they do not have the financial resources or family available to provide care of his fiancé and their newborn in his absence.

- [43] The defendants oppose the application for an adjournment. Mr. Jacob has provided an affidavit and in it he deposes that the defendants were only paid \$140,000 of the \$800,000 purchase price. He was heavily relying on those funds being paid pursuant to the agreement for a number of reasons and as a result he has been unable to launch projects due to lack of funds for marketing. Furthermore, he has been forced to sell his own personal assets and seek payment of loans that he has made to others. He deposes that his financial hardship is such that he had to move back with his parents to save money and has cancelled travel plans.
- [44] Mr. Jacob notes that in the plaintiff's amended list of documents there are a number of Slack messages that had been edited after the commencement of the litigation. These Slack messages include conversations between him and a Mr. Stewart, who is connected with the plaintiff. Mr. Jacob recalls Mr. Stewart sending a message stating that "HeyCast is stunning" and he was hoping that the next version of StaffConnect would be as good, thereby seeking to obtain more information about HeyCast. However, those messages were deleted from the conversations produced by the plaintiff. The defendants submit that the plaintiff's knowledge of HeyCast prior to entering into the APA is an issue in this litigation. As reasons for why the trial should not be adjourned, the defendants submit the following.
- [45] They argue that this application was not brought in a timely manner as the plaintiff had notice of the trial date since July 2024. Accordingly, they waited approximately seven months to bring this application and the application, when it was brought, was within three months of the trial. This was despite numerous requests from the defendants that they bring their adjournment application promptly as they were preparing for trial.
- [46] The defendants say that the plaintiff, since the date this action was commenced, has failed to diligently pursue steps to move the action forward and has obstructed the defendants' attempts to move towards a speedy and expeditious resolution.
- [47] The examples that they provide include failing to schedule examinations for discovery of the defendants despite having opportunities to do so. Mr. Tasker failing to prepare or be adequately prepared for his discovery, resulting in 66 requests being left on the record. The plaintiff failed to reply to the defendants' document demand in a timely manner despite numerous demands. The plaintiff estimated the trial of 15 days citing the need for numerous expert reports and failed to serve or obtain those reports by the deadline pursuant to the Rules, or, for that matter, failing to take reasonable steps to have expert reports obtained.
- [48] The defendants further submit that the plaintiff cites as the reason for not obtaining an expert report was due to the defendants' failure to provide the HeyCast documents, although the plaintiff was advised well in advance that the defendants were not in possession or control of those documents.

- [49] Furthermore, the defendants argue that with respect to prejudice, if this trial is adjourned the defendants will suffer financial hardship as a result of the plaintiff's failure to pay the purchase price pursuant to the APA. They point out that the Rules require an expeditious and speedy resolution of the matter on its merits. If this trial is adjourned the trial would now likely be in June 2026.
- [50] They submit the plaintiff is not taking its obligations as a litigant seriously and that if the trial is delayed, the plaintiff will likely continue to delay the progress of the litigation, all of which will cause the defendants to incur significant legal fees.
- [51] Finally, if an adjournment is granted, the defendants propose that it be on a condition that the next trial date be preemptory upon the plaintiff and a case planning conference be ordered.
- [52] Counsel agree on the legal principles with respect to an application to adjourn a trial. Rule 12-1(9) provides that the court may order the adjournment of a trial and the considerations are set out in *Navarro v. Doig River First Nation*, 2015 BCSC 2173, that include the following:
- the expeditious and speedy resolution of matters on their merits;
 - the reasonableness of the request;
 - the grounds or explanation for the adjournment;
 - the timeliness of the request;
 - the potential prejudice to each party;
 - the right to a fair trial;
 - the proper administration of justice; and
 - the history of the matter, including deliberate delay or misuse of the court process.

[53] As further stated by Justice Dillon in *Navarro* at para. 19:

However, the paramount consideration is the interest of justice in ensuring that there will remain a fair trial on the merits of the action

[54] Also, as set out in para. 19:

Because the overall interests of justice must prevail at the end of the day, courts are generous rather than overly strict in granting adjournments, particularly where granting the request will promote a decision on the merits

[55] Furthermore, as set out in *Navarro* at para. 25:

Any prejudice to be suffered by either side must be weighed and balanced. However, it is non-compensable prejudice that is pivotal

[56] The plaintiff submits that adjournments may be granted even though the applicant may be at fault for the action not being ready for trial. They refer to the decision of Justice Gomery (then of this court) in *Conseil scolaire francophone de la Colombie-Britannique*, 2023 BCSC 1554. In that case, the court noted at para. 17:

The incomplete state of the Conseil's document production is a powerful consideration favouring an adjournment because there is a substantial risk of unfairness and a wrong result in [sic] the trial proceeds before discovery is concluded. Full discovery of documents founds adequate oral discovery. Without full discovery, expert witnesses cannot be properly instructed. A trial that takes place without the full discovery required under the rules could easily become a shambles. The state of discovery would become an issue at trial. The opposing parties would seek adverse inferences that might or might not be justified on consideration of information that was not before the court.

[57] Justice Gomery determined that an adjournment was in the interests of justice in order to ensure that there would be a fair trial of the action and that there was a substantial risk of unfairness and likely a wrong result if the trial proceeded before discovery was concluded. He found it to be an overwhelming consideration and further noted that the risk of unfairness was the fault of the applicant and its counsel. He further noted the opposing party would likely suffer prejudice, nonetheless, even though it is due to the fault of the applicant that they were not ready for trial, the adjournment was granted.

[58] In response to some of the arguments in opposing the adjournment, the plaintiff says with respect to the timing of the application, it is actually brought within four months of the defendants' confirmation that Nobox would not agree to an adjournment of the trial. Since that time, plaintiff's counsel has been unavailable to prepare the application due to the other court commitments, which included the lengthy trial referred to earlier.

[59] I find that there would be significant prejudice to the plaintiff if the adjournment is refused. The plaintiff would be effectively precluded from obtaining proper disclosure and other pretrial discovery necessary to prosecute the action. They would also be prevented from advancing the necessary expert evidence on issues that are of central importance to this litigation.

[60] Furthermore, the plaintiff would be impaired in presenting its case at trial as Mr. Tasker, as the directing mind, would not only be unavailable to testify at the trial but also for the preparation in advance of the trial. Meanwhile, I do not find that the defendants have demonstrated any significant non-compensable prejudice that may arise if the trial is adjourned. Furthermore, I note that at one time the defendants were content to proceed with the trial either in September or December 2025.

- [61] With respect to some of the other considerations, such as an expeditious and speedy resolution of the matter, Justice Dillon stated that usually the question is whether or not there has been a previous adjournment and, if so, the reasons for that prior adjournment. If circumstances have not changed, the subsequent application will likely not be successful.
- [62] This is the first trial date that was set and is to commence in just over one year from the commencement of the proceeding. I find that adjourning this trial will, by most standards, still result in an expeditious and speedy resolution of the matter.
- [63] As for the timeliness of the request, Justice Dillon noted that when an application is made at the opening of a trial for an adjournment on the grounds that a party cannot proceed or is not prepared to proceed, that clearly weighed against granting an adjournment.
- [64] Here, the trial is still some time away and the plaintiff has made it known to the defendants for several months the reasons why they cannot proceed with the trial in March. I accept the explanation provided by plaintiff's counsel for the delay in bringing forward this application.
- [65] As for the grounds or explanation for an adjournment, Justice Dillon at para. 24 stated:
- simple neglect to get properly ready for a hearing, while irksome for the other party, will still usually lead to an adjournment on the theory that the prejudice to the person denied the adjournment will be greater than prejudice to the person who is forced to accept an adjournment. It would be unjust to decide, without more, that a party who has been less than diligent will be forced to go to trial unprepared
- [66] The defendants argue that the plaintiff has not diligently pursued this matter and perhaps seeks to delay the matter because they are not prepared. I have difficulty accepting that submission. It is clear from the correspondence that has been provided that the technical documents of HeyCast are of importance in this action and that they are needed in order for the plaintiff's expert to provide his report for the trial. That report is a vital and essential part of the trial preparation.
- [67] It was clear to the plaintiff likely by October, 2024 that the technical documents were not going to be provided without a court application. Even if steps were taken immediately thereafter, putting aside the explanation that plaintiff's counsel was not available, it is very unlikely that those documents, particularly if they had to be obtained directly from HeyCast, would ever be provided to the expert in time for the expert to prepare a report within the 84-day deadline, or, for that matter, prior to the current trial date.
- [68] The other important explanation for an adjournment is Mr. Tasker's circumstances that were made known to the defendants many months ago. If anything, the circumstances have become even more critical as they are now having to deal with a high-risk pregnancy. I find it is reasonable in the circumstances for Mr. Tasker to want to be available and to put aside his business pursuits during the pregnancy.

[69] At para. 25, Justice Dillon states:

Prejudice to the parties if an adjournment is granted or is not granted must be considered. Any prejudice to be suffered by either side must be weighed and balanced.

[70] I accept that there is some financial hardship that may be visited upon or has been visited upon Mr. Jacob in not obtaining his purchase price but I do not find that there is non-compensable prejudice to the defendants. Whereas, the prejudice to the plaintiff if they were forced to proceed to trial in March would be significant.

[71] At para. 26, Justice Dillon further states:

Overall delay in the history of proceedings may be a factor. Prolonged delay due to tactical considerations may be inexcusable and result in injustice to the other side because a fair trial is no longer possible

[72] I cannot find there has been overall delay in this proceeding. If there has been any delay it is likely as a result of the plaintiff being thwarted in their effort to obtain the technical documents referred to earlier.

[73] I am satisfied that after considering all of the factors set out in the Navarro that they weigh heavily in favour of an adjournment, specifically, as I have indicated, given the unavailability of Mr. Tasker and that the trial is not ready to proceed. I cannot see how a fair trial on its merits can be achieved unless all documents that the plaintiff requires have been obtained and provided to their expert, so that they can obtain an opinion on what will be a crucial issue in this matter.

[74] Furthermore, it appears that at trial credibility will be an issue. There are private discussions that took place between Mr. Tasker and Mr. Jacob, and the trial judge will have to determine who to believe. It is critical that Mr. Tasker be available for the trial.

[75] I will now deal briefly with the request for special costs sought by the plaintiff. They argue that special costs should be awarded on the basis that the opposition to this application for an adjournment lacked any merit and there was no evidence to support any opposition for the adjournment.

[76] The plaintiff refers to the decision of Justice Giaschi in *Seyedalikhani v. Mansouri*, 2023 BCSC 1902. In that case, the party had brought an action for an improper purpose or motive and then persisted with the claim when it was plain and obvious that it was bound to fail. The court ordered that special costs were warranted for the following reasons:

[97] First, in my view, it was plain and obvious from the outset that this claim was bound to fail. Second, the plaintiff knew, or ought to have known, that his action would have an intimidating and chilling effect on the ICCRC proceedings. Moreover, he continued with the action even after the second complaint was made against him. I infer that the plaintiff's purpose and motive in commencing and continuing this action was to dissuade the defendants from cooperating with the Discipline Committee. This is sufficient to attract an

award of special costs.

- [77] I find the Mansouri case to be clearly distinguishable. In order to award special costs, the court must find that the conduct of the defendants in unilaterally setting the trial date and opposing this application was reprehensible conduct that is deserving of rebuke by the court.
- [78] The Rules allow for a party to unilaterally set trial dates and if the other party seeks an adjournment, they can file an application to adjourn the trial.
- [79] I do not conclude that the defendants were seeking a litigation advantage by pursuing this early trial date. I accept that Mr. Jacob has reasons for wanting to get this matter resolved. As he was entitled to do so, he instructed his counsel to set the trial date, albeit unilaterally. I cannot find in doing so and then by opposing this application, that it reaches the level of reprehensible conduct. Accordingly, the orders that I am making are as follows.
- [80] The trial currently set for March 24, 2025 is adjourned generally. As the plaintiff was successful in its application, they are entitled to costs of this application but it will be ordinary costs at Scale B and will be payable in any event of the cause.
- [81] As this is the first trial date that was adjourned and I found that the plaintiff had sufficient grounds for seeking this adjournment, I am not imposing any conditions on the plaintiff such as the next trial dates being peremptory upon them. So, that application is dismissed.
- [82] I am not directing that the parties shall arrange a case planning conference. Counsel is experienced in these matters and they can set one at their own request if they wish.

"Krentz A.J."

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