

CANADA / JUDGMENT

Siy Estate v. Siy

2022 BCSC 777

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 777 Siy Estate v. Siy

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Siy Estate v. Siy,

2022 BCSC 777

Date: 20220511

Docket: S206217

Registry: Vancouver

Between:

The Estate of Robert Huai Lin Siy, Deceased

Plaintiff

And

Ronald S.T. Siy, Conrad S.S. Siy, Marion N.K. Siy also known as Marion Hubbard, Janette N.G. Siy also known as Janette May, Edlyn N.T. Siy also known as Edlyn Pattyn, Alvin S.H. Siy, Paula Corinne Siy also known as Paula Askew, Jocelyn G. Siy, Andrea G. Siy also known as Andrea G. Yu, and Evelyn Cajucom Siy

Defendants

Before: Master Bilawich

Reasons for Judgment

Counsel for the Plaintiff, by videoconference:

S. Hickey

Counsel for the Defendants, by videoconference:

T. Boyar

S. Arrandale

Place and Date of Hearing:

Vancouver, B.C.

April 11, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 11, 2022

Introduction

- [1] By application filed March 14, 2022, the plaintiff applies for an order that the defendants provide a "further comprehensive response" to a demand for particulars made February 3, 2022, or alternatively for leave to serve interrogatories on the defendants containing the questions raised in the demand for particulars.
- [2] The defendants oppose all of the relief sought.

Background

- [3] As the majority of the persons mentioned in these reasons have the same surname, for clarity I will refer to them by their given names. I intend no disrespect by doing so.
- [4] Brian Siy ("Brian") as administrator of the estate of his father, Robert Siy ("Robert"), deceased, started this action on June 12, 2020. In the notice of civil claim, he alleges as follows:
- a) Provident Enterprises Ltd. ("Provident") is a B.C. company. It owned and managed a property located at 1265 West 13th Avenue, Vancouver from February 1972 to January 2020.
 - b) On December 17, 1996, Robert acquired legal and beneficial ownership of 540 shares of Provident from his brother Andrew Siy ("Andrew"), bringing Robert's total shares in that company to 2,300 (the "Shares").
 - c) On August 20, 1997, a share transfer (the "1997 Transfer") occurred whereby all of Robert's Shares were transferred to the defendants.
 - d) On or about August 22, 1997, Robert suffered stroke while golfing, was admitted to hospital and in a coma until his death on August 27, 1997.

- e) The 1997 Transfer took place pursuant to a power of attorney and was executed by Robert's brother, Albert Siy ("Albert"), without consideration, without Robert's knowledge and approval and without Robert intending to transfer the beneficial interest to the defendants.
- f) On January 13, 2020, Provident sold its property for \$19,600,000, after which it repurchased the shares of its shareholders, including the defendants.
- g) In or about January 2020, the defendants sold the 2,300 shares and received proceeds totalling \$3,897,894 (the "Proceeds"). The plaintiff says that due to the 1997 Transfer, the defendants hold the Proceeds in resulting trust for the plaintiff.
- [5] The defendants are all nephews and nieces of Robert. Ronald, Conrad, Marion, Janette, Edlyn and Paula are children of Albert. Jocelyn, Natalie, Andrea and Mark are children of Andrew. Brian is Robert's only child.
- [6] Robert was resident in the Philippines when he died. He was survived by his wife Diana Ma and Brian. Ms. Ma died June 14, 2014. Brian says he discovered his father had owned the Shares on January 29, 2020 and made demand that the Proceeds be turned over to Robert's estate on June 5, 2020.
- [7] Brian pleads that his uncle Albert transferred to him 550 shares on April 18, 2003 and a further 381 shares on April 30, 2014, for a total of 931 shares. Brian later sold 882 of those shares for \$1,494,785.03 and pleads that he is prepared to set off that amount, plus the value of the remaining shares he received from Albert against the amount the defendants collectively owe to Robert's estate.
- [8] The legal basis for the plaintiff's claim is resulting trust and unjust enrichment.
- [9] On September 14, 2020, the defendants filed their response to civil claim. They deny all of the plaintiff's claims. Among other things, they allege that the 540 shares that Andrew transferred to Robert on December 17, 1996 were still beneficially owned by Andrew following the transfer.
- [10] It is the plaintiff's position that the defendants have failed to plead adequate particulars of paras. 10, 11, 17, 20 and 27 of part 1, division 2 of the response to civil claim. Those are as follows:
 - 10. In response to paragraph 29 of Part 1 of the Notice of Civil Claim, the Defendants specifically deny that the August 20, 1997 share transfer (the "1997 Transfer") was executed without consideration, without the knowledge or approval of Robert Siy and/or without the intention of Robert Siy to transfer beneficial ownership of those shares to the Defendants, and put the plaintiff to strict proof thereof.
 - 11. In further response to paragraph 29, the Defendants say that Robert Siy and/or his estate received the following benefits in connection with the 1997 Transfer:
 - a. Payment in the amount of \$783,932.00;

- b. Payment of capital gains tax owing by Robert Siy and/or his estate in the amount of \$94,358.94; and
 - c. Such further and other particulars as may be proven at trial.
17. In response to paragraph 39 of Part 1 of the Notice of Civil Claim, the Defendants say that Robert Siy and/or the Estate of Robert Siy were aware, or ought to have been aware, of the 1997 Transfer at the time of the transfer and at various times thereafter including, without limitation, at the time his estate was administered in the Philippines.
20. In further response to paragraph 40, the Defendants say that they became liable for taxes and other expenses upon the sale of the Andrew Siy Shares and/or the Robert Siy Shares and otherwise changed their position upon receipt of these funds through the purchase of new property and the payment of debts and other financial obligations.
27. The 1997 Transfer was effected with the knowledge and consent of Robert Siy, or in the alternative, pursuant to a power of attorney granted by Robert Siy to his brother, Albert Siy on or about July 18, 1985 which authorized him to take the following steps:
- (a) Make, draw, accept, sign, endorse, negotiate, issue, discount, pledge, renew, retire, transfer, pay, satisfy, or otherwise deal with shares, and every kind of security, whether negotiable or not;
 - (b) Sell, alienate or otherwise dispose of and to purchase, exchange or otherwise acquire and deal in or deal with at any time or from time to time any property, moveable or immovable, real, personal or mixed, for such consideration and upon such terms and conditions as the said attorney may deem advisable; and
 - (c) Subscribe for, accept, purchase, sell, transfer, surrender and in every way deal with shares and securities of every kind and description on such terms and conditions as the said attorney may approve.
- [11] At part 1, division 2, para. 28 of the response to civil claim, the defendants say they were not involved in the 1997 Transfer, except insofar as they received shares in Provident.
- [12] On March 8, 2021, the plaintiff filed a notice of trial returnable September 12, 2022 for 10 days. This was recently adjourned by consent to May 29, 2023 for 10 days.
- [13] In January and February 2022, the parties exchanged lists of documents.
- [14] On February 3, 2022, the plaintiff sent a demand for particulars to the defendants, focused on paras. 10, 11, 17, 20 and 27 of part 1, division 2 of the response to civil claim. The particulars demanded include:

1. In reference to paragraph 10 of the Response to Civil Claim, provide particulars of the consideration received by Robert Siy for the August 20, 1997 share transfer (the "1997 Transfer"), including what was received, when it was received, including dates and times, and from whom.
2. In reference to paragraph 10 and 27 of the Response to Civil Claim, provide particulars of the knowledge Robert Siy had with respect to the 1997 Transfer and how and when he obtained that knowledge and from whom.
3. In reference to paragraph 10 of the Response to Civil Claim, provide particulars of the approval given by Robert Siy to the 1997 Transfer including who it was given to, how it was given and when, including the dates and times.
4. In reference to paragraph 10 of the Response to Civil Claim, provide particulars of how Robert Siy made his intention known with respect to the 1997 Transfer to transfer beneficial ownership of shares to the Defendants (the "Intention"), who was made aware of his Intention, when he/she or they became aware of his Intention inclusive of the date and time he/she or they were made aware, how he, she or they became aware of his Intention and what was communicated to her/him or them.
5. In reference to paragraph 11 (a) of the Response to Civil Claim, provide particulars of the payment in the amount of \$783,932.00 to Robert Siy and/ or his estate, how was it paid, by who, to who and on what date and time.
6. In reference to paragraph 11 (b) of the Response to Civil Claim, provide particulars of who paid the Capital Gains Tax, what was the method of payment, when was it paid including the date and time, whether it was paid on behalf of Robert Siy or his estate and whether an acknowledgement of payment was received and if an acknowledgement of payment was received by who, when and how was it received.
7. In reference to paragraph 11 (b) of the Response to Civil Claim, how was the amount of the Capital Gains Tax owing by Robert Siy and/or his estate determined, who made that determination and when was that amount determined.
8. In reference to paragraph 17 of the Response to Civil Claim, provide particulars of how it is that the Robert Siy and/or his estate became aware of the 1997 Transfer.
9. In reference to paragraph 17 of the Response to Civil Claim, provide particulars of how it is that the Robert Siy and/or his estate ought to have become aware of the 1997 Transfer.
10. In reference to paragraph 20 of the Response to Civil Claim, provide particulars of the taxes and other expenses of each defendant who says that they became liable for taxes or other expenses upon the sale of Andrew Siy's shares and/or Robert Siy's shares including the amount of the taxes and other expenses incurred by each.

11. In reference to paragraph 20 of the Response to Civil Claim, provide particulars of which of the defendants bought new property, the address of the property, when the contract for the purchase was entered and when it closed and for how much.
 12. In reference to paragraph 20 of the Response to Civil Claim, provide particulars of which of the defendants paid debts and other financial obligations, when the debt or other financial obligation was incurred, what was it for, when it was paid and for how much for each.
 13. In reference to paragraph 20 of the Response to Civil Claim, provide particulars of each defendant who otherwise changed their position on receipt of the funds and how their position was changed.
 14. In reference to paragraph 27 of the Response to Civil Claim, provide particulars of the consent given by Robert Siy to the 1997 Transfer, including who it was given to, how it was given and when, including the dates and times.
- [15] An issue in this action is who bears the onus of proof regarding various aspects of the 1997 Share Transfer and related transactions. These took place roughly 25 years ago, which presumably may make securing relevant supporting documents, including bank records, problematic for whomever bears the evidentiary burden.
- [16] On February 11, 2022, the defendants served a reply to demand for particulars which provided no additional particulars.
- [17] The defendants take the position that demands 1-9 and 14 do not require particulars because the plaintiff bears the onus of proof on those issues. They argue that the plaintiff is seeking evidence, not particulars. For those items, the defendants gave the following response (some with modest variations):

The particulars of this plea presently within the knowledge of the Defendants are set out in paragraphs 10, 11, 17, 27 and 28 of the Response to Civil Claim. Further particulars are not known to the Defendants at this time. The Defendants are currently in the process of investigating these matters and will provide further and better particulars if and when they become available. In addition, the Defendants say that the particulars are, or ought to be, within the knowledge of the Plaintiff and/or the administrator(s) of the Plaintiff.

- [18] With regard to demands 10-13, the defendants acknowledge they are obliged to provide further particulars, but say there is an issue of timing. For those items, the defendants gave the following response:

The Defendants are currently in the process of compiling this information and will provide further and better particulars when they become available.

- [19] Three of the key individuals involved in the 1997 Transfer, Robert, Albert and Andrew, are deceased. Defendants' counsel suggests that those who remain have limited personal knowledge of the transaction.

[20] This action has been pending since June 12, 2020. Defendants' counsel did not offer any insight into what investigations are still being contemplated or what the compiling of information process involves.

[21] The parties have scheduled examinations for discovery for June 6 - 10, 2022.

Applicable Law - Particulars

[22] Rule 3-7 provides as follows:

Pleading must not contain evidence

(1) A pleading must not contain the evidence by which the facts alleged in it are to be proved.

Pleading conclusions of law

(9) Conclusions of law must not be pleaded unless the material facts supporting them are pleaded.

Substance to be answered

(15) If a party in a pleading denies an allegation of fact in the previous pleading of the opposite party, the party must not do so evasively but must answer the point of substance.

Allegation of malice

(17) It is sufficient to allege malice, fraudulent intention, knowledge or other condition of the mind of a person as a fact, without setting out the circumstances from which it is to be inferred.

...

(18) If the party pleading relies on misrepresentation, fraud, breach of trust, wilful default or undue influence, or if particulars may be necessary, full particulars, with dates and items if applicable, must be stated in the pleading.

Further particulars

(20) Particulars need only be pleaded to the extent that they are known at the date of pleading, but further particulars

(a) may be served after they become known, and

(b) must be served within 10 days after a demand is made in writing.

Order for particulars

(22) The court may order a party to serve further and better particulars of a matter stated in a pleading.

Demand for particulars

(23) Before applying to the court for particulars, a party must demand them in writing from the other party.

[23] The purpose of particulars is summarized in *Cansulex Ltd. v. Perry*, [1982] B.C.J. No. 369 (C.A.) ["Cansulex"] at para. 15:

- (1) to inform the other side of the nature of the case they have to meet as distinguished from the mode in which that case is to be proved;
- (2) to prevent the other side from being taken by surprise at the trial;
- (3) to enable the other side to know what evidence they ought to be prepared with and to prepare for trial
- (4) to limit the generality of the pleadings;
- (5) to limit and decide the issues to be tried, and as to which discovery is required, and
- (6) to tie the hands of the party so that he cannot without leave go into any matters not included.

[24] At para. 11 of *Cansulex*, the distinction between particulars and discovery was described as follows:

[11] Those decisions delineate the difference between what is properly the subject matter of a Demand for Particulars and what is more properly the subject matter of a Demand for Discovery or material that should be obtained on an Examination for Discovery. At the heart of the distinction between the two lies the question whether the material demanded is intended to, and does, delineate the issues between the parties, or whether it requests material relating to the way in which the issues will be proved.

[25] In *Steelhead LNG Limited Partnership v. Arc Resources Ltd.*, 2022 BCCA 128 ["Steelhead"], the court emphasizes that the rules require parties to include in the pleadings such particulars as are necessary and that an order for particulars is discretionary. At paras. 25-26:

25 Because the assessment of necessity is fact driven, an order for particulars is discretionary. As Lowry J. noted in *G.W.L. Properties Ltd.* at para. 4:

An order for the delivery of particulars of facts material to a cause of action, or a defence, in addition to those already pleaded, is primarily one of discretion to be exercised in a judicial manner: *Cominco Ltd. v. Westinghouse Canada Ltd.* (1978), 6 B.C.L.R. 25 at 29 (S.C.). The guide to the exercise of discretion is found in the words of the Rule, i.e., "where particulars may be necessary" and the power in the court to order delivery of particulars is, accordingly, stated in broad terms: *Big Bay Timber Ltd. v. Arkinstall Logging Co.* (1978), 7 B.C.L.R. 69 at 70 (C.A.). What particulars are to be stated must depend upon the facts of each case: *Philipps v. Philipps* (1878), 4 Q.B.D. 127 at 139 quoted in *Anglo-Can. Timber Products Ltd. v. B.C. Elec. Co.*...

[Emphasis added.]

26 I subscribe to the view expressed by Fitzpatrick J. in *British Columbia (Director of Civil Forfeiture) v. PacNet Services Ltd.*, 2018 BCSC 2251 as follows:

[23] The court in *Cansulex* did not set out any hierarchy of the above objectives [those listed at para. 28 of this judgment, cited below]. As such, the exercise in discretion will be informed by the particular circumstances at play and involves balancing these objectives as a whole. For example, some objectives may be more relevant in some cases than others. The overarching consideration in applying the *Cansulex* principles is to ensure the integrity of the justice system is upheld: *Powell v. 349131 B.C. Ltd.*, [1992] B.C.J. No. 1088 (S.C.) at para. 61. This integrity is best protected when litigation is allowed to proceed in a fair manner toward a just resolution between the parties.

[Emphasis added.]

[26] Particulars serve multiple purposes. At the early stages, the focus is on pleading. Later the focus can shift to determining what evidence may be obtained and must be marshalled for discovery and preventing parties from being surprised at trial. Different considerations apply at different stages in the proceedings. See *Steelhead* at paras. 40-42.

[27] In *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, 2019 BCSC 485 at paras. 23 and 25, the court noted the following:

23 The *Cansulex* considerations must be balanced against the reasonably wide latitude accorded a plaintiff to explore its claim, particularly where some of the necessary substantiating information is in the possession of a defendant. A plaintiff should not be ordered to provide further particulars at an early stage if it would unfairly hamper the ability to conduct this exploration: *Central Power Products v. 238022 B.C. Ltd. et al.*, 2003 BCSC 1088 at para. 20.

25 As for the allegations in para. 51 of the NOCC, these touch upon issues that are uniquely within the knowledge of the Insurers and their servants or agents. These allegations are not frivolous, vexatious, or embarrassing, but merely fall within an admissible realm of aspirational pleadings that may ultimately be difficult or impossible to prove. The plaintiff must nevertheless be accorded the scope to explore such lines of inquiry, and should not be stopped or hampered in doing so by an early tactical demand for particulars.

Analysis - Particulars

Particulars

[28] I will address each of the demands in order.

1. Re para. 10 of the RCC, particulars of the consideration received by Robert for the 1997 Transfer, including what was received, when it was received, including dates and times, and from whom.

- [29] The defendants specifically deny that the 1997 Transfer was executed without consideration. Removing the double negative, they say consideration was given for the transfer. I presume this means consideration flowing to Robert, at least for the shares he owned beneficially.
- [30] At para. 7, the defendants admit that legal title in 1760 common shares of Provident were transferred to Robert on or about June 10, 1991. They do not raise any issue regarding beneficial ownership of those shares.
- [31] At para. 8, they admit that legal title to the additional 540 shares was transferred to Robert on December 17, 1996, but say Andrew remained beneficial owner of those shares at all material times. Presumably, this means the defendants deny any consideration was due to Robert when those particular shares were transferred elsewhere as part of the 1997 Transfer.
- [32] As noted, at para. 10, the defendants specifically deny that the 1997 Transfer was executed without consideration.
- [33] At para. 11, the defendants say Robert and/or his estate received "benefits" (as opposed to "consideration") in connection with the 1997 Transfer, including payment in the amount of \$783,932.00, payment of capital gains tax owing by Robert and/or his estate in the amount of \$94,358.94, and such further and other particulars as may be proven at trial.
- [34] This choice of language results in ambiguity as to whether the defendants are asserting that the "benefits" referenced in para. 11 are part of the consideration for the 1997 Transfer referenced in para. 10. I note that rule 3-7(15) requires that if a party in a pleading denies an allegation of fact in the previous pleading of an opposing party, they must not do so evasively but must answer the point of substance.
- [35] In these circumstances, I agree that given the defendants are asserting that consideration was given for the 1997 Transfer, particulars of that consideration ought to be provided. That should include what consideration was received, when was it received, who provided the consideration and who received it.
2. Re para. 10 and 27 of the RCC, particulars of the knowledge Robert Siy had with respect to the 1997 Transfer and how and when he obtained that knowledge and from whom.
- [36] The defendants say their plea that Robert had knowledge of the 1997 Transfer falls under rule 3-7(17) and say it would not be appropriate to require them to set out the circumstances from which Robert's alleged knowledge of the 1997 Transfer is to be inferred.
- [37] Justice Fitzpatrick considered a similar situation in *British Columbia (Director of Civil Forfeiture) v. Pac Net Services Ltd.*, 2018 BCSC 2251 at paras. 70-71:

70 The Director asserts that, therefore, a plaintiff alleging knowledge or a condition of the mind is not required to plead material facts or particulars in support of that allegation. In *Strauss v. Jarvis*, 2007 BCCA 605, the court dismissed an appeal from an unsuccessful application to strike the plea of malicious prosecution where particulars had not been provided. Justice Mackenzie held that:

16 ... To require the respondent to plead more would place an unfair burden on him having regard to the relative means of knowledge of the respondent and the appellants as to their state of mind. ...

71 I agree that, at this stage, the court is not concerned with whether the elements of fraud have been successfully made out, but only whether the elements of fraud have been successfully pled. One of those elements is knowledge. Rule 3-7(17) plainly allows the Director to allege knowledge without pleading specific facts as to that knowledge in establishing its fraud claim. Accordingly, as has been done, the Director's pleading is sufficiently particularized in terms of the defendants knowledge and no further particulars must be disclosed.

[38] Justice Fitzpatrick's reasoning appears to apply to this demand. The plaintiff is essentially asking how the defendants intend to prove that Robert had knowledge, as opposed to seeking a missing element of their defence be pled. This item is denied.

3. Re para. 10 of the RCC, particulars of the approval given by Robert to the 1997 Transfer including who it was given to, how it was given and when, including the dates and times.

[39] In my view, this demand falls into the same exception as #2 above and I deny it for the same reason.

4. Re para. 10 of the RCC, particulars of how Robert made his intention known with respect to the 1997 Transfer to transfer beneficial ownership of shares to the Defendants (the "Intention"), who was made aware of his Intention, when he/she or they became aware of his Intention inclusive of the date and time he/she or they were made aware, how he, she or they became aware of his Intention and what was communicated to her/him or them.

[40] In my view, this demand falls within the same exception as #2 above and I deny it for the same reason.

5. Re para. 11 (a) of the RCC, particulars of the payment in the amount of \$783,932.00 to Robert and/ or his estate, how was it paid, by who, to whom and on what date and time.

[41] The defendants allege that Robert and/or his estate received benefits including the above-noted payment. They argue that they do not bear the onus of proving there was consideration paid. I do not agree. They received the Shares as a result of a transfer initiated by Albert using a power of attorney. They allege that consideration was paid and/or benefits received from that transfer. As noted under #1 above, there is also ambiguity as to whether the defendants are asserting that the "benefits" referenced in para. 11 are part of the consideration for the 1997 Transfer referenced in para. 10.

- [42] In my view, it is appropriate for the defendants to provide particulars of the "benefits" Robert and/or his estate received in connection with the 1997 Transfer. This should include when the \$789,932 was received, when was it received, who paid it and who received it. If the consideration received and benefits received are one and the same, they should say so.
6. Re para. 11 (b) of the RCC, particulars of who paid the Capital Gains Tax, what was the method of payment, when was it paid including the date and time, whether it was paid on behalf of Robert or his estate and whether an acknowledgement of payment was received and if an acknowledgement of payment was received by who, when and how was it received.
- [43] In my view, this falls under the same category as #5 above, and it is necessary for the defendants to provide particulars of the capital gains tax that was allegedly owing by Robert / his estate and paid on his behalf. This should include when did the \$94,358.94 become due and owing by Robert / his estate, when was it paid and who paid it.
7. Re para. 11 (b) of the RCC, how was the amount of the Capital Gains Tax owing by Robert and/or his estate determined, who made that determination and when was that amount determined.
- [44] This demand appears to be seeking evidence rather than particulars. It also overlaps #6 to a significant extent. This demand is denied.
8. Re para. 17 of the RCC, particulars of how it is that the Robert and/or his estate became aware of the 1997 Transfer.
- [45] This demand falls into the same exception as #2 above and I deny it for the same reason. It also appears to be seeking evidence rather than particulars.
9. Re para. 17 of the RCC, particulars of how it is that the Robert and/or his estate ought to have become aware of the 1997 Transfer.
- [46] This demand falls into the same exception as #2 above and I deny it for the same reason. It also appears to be seeking evidence rather than particulars.
10. Re para. 20 of the RCC, particulars of the taxes and other expenses of each defendant who says that they became liable for taxes or other expenses upon the sale of Andrew's shares and/or Robert's shares including the amount of the taxes and other expenses incurred by each.
- [47] The defendants allege that they became liable for taxes and other expenses upon the sale of the Andrew Shares and/or the Robert Shares and otherwise changed their position upon receipt of the funds identified in para. 19, through the purchase of new property and payment of debts and other financial obligations. This is specifically in reference to a share repurchase transaction between Provident and its shareholders which completed on or about February 13, 2020. See para. 36-40 of the notice of civil claim. These allegations appear to be raised as part of an equitable defence to the plaintiff's claims.

- [48] Specifics of what taxes or other expenses each defendant became liable for do appear to be relevant to a defence they have raised. They should be aware of or able to ascertain what those taxes or expenses were and particularize them by type date and amount. I agree these particulars should be provided.
11. Re para. 20 of the RCC, particulars of which of the defendants bought new property, the address of the property, when the contract for the purchase was entered and when it closed and for how much.
- [49] For the same reason as set out in #10 above, any of the defendants who purchased new property after the share repurchase transaction completed should provide particulars of new properties they purchased, including municipal address and/or legal descriptions, dates purchased and amounts paid.
12. Re para. 20 of the RCC, particulars of which of the defendants paid debts and other financial obligations, when the debt or other financial obligation was incurred, what was it for, when it was paid and for how much for each.
- [50] For the same reason as set out in #10 above, any of the defendants who paid debts and other financial obligations after the share repurchase transaction completed should provide particulars of the debts and financial obligations they paid, by items, dates and amounts paid.
13. Re para. 20 of the RCC, particulars of each defendant who otherwise changed their position on receipt of the funds and how their position was changed.
- [51] For the same reason as set out in #10 above, any of the defendants who otherwise changed their position after the share repurchase transaction completed should provide particulars of how they changed their position and the date on which they did so.
14. Re para. 27 of the RCC, particulars of the consent given by Robert to the 1997 Transfer, including who it was given to, how it was given and when, including the dates and times.
- [52] This demand falls into the same exception as #2 above and I deny it for the same reason. It also appears to be seeking evidence rather than particulars.

Timing for Particulars Ordered

- [53] Counsel suggested that the defendants had no direct involvement in the 1997 Transfer and the persons principally involved have passed away. They say investigations are needed to secure information required to provide particulars. They do not provide any details about what these investigations involve or the timing of same. I note this action has been pending since June 2020. The defendants have had almost two years to investigate. Presumably they have or can take steps to obtain access to records belonging to Albert and Andrew's estates. The other likely source of information is Robert's estate, which can be explored through discovery of Brian as administrator.

- [54] It is notable that the defendants have identified some very specific amounts as "benefits" they allege Robert and/or his estate received, including the payment of \$783,932.00 and having an alleged capital gains tax liability of \$94,358.94 paid. This suggests the defendants do have access to specific information about the transaction.
- [55] The defendants also presumably have personal knowledge of the particulars sought in relation to para. 20 of the response to civil claim.
- [56] In these circumstances, I consider it to be appropriate that the defendants provide the foregoing particulars I have ordered above, to the extent they are currently known to the defendants within, 14 days from release of these reasons. If the defendants become aware of additional particulars following their examination for discovery of the plaintiff or from other investigations, these should be provided when they become known, and in any event by no later than September 30, 2022.

Interrogatories

- [57] In the event the plaintiff's application for particulars is denied, he seeks leave to deliver interrogatories to each of the defendants relating to the same matters raised in the demand.
- [58] The applicant relies on rule 7-3 (1), which is as follows:

Party may serve interrogatories by consent or with leave

- (1) A party of record to an action may serve interrogatories in Form 24 on any other party of record, or on a director, officer, partner, agent, employee or external auditor of a party of record, if
- (a) the party of record to be examined consents, or
- (b) the court grants leave.
- [59] Principles relating to interrogatories are summarized in *Araya v. Nevsun Resources Ltd.*, 2018 BCSC 808 at paras. 16-27.
- [60] The plaintiff did not provide any draft interrogatories. In my view, this is fatal to this aspect of the application. I would be reluctant to order interrogatories addressing the topics for which particulars have not been ordered, as it does not appear they would help narrow and focus issues in this dispute or assist in preparation for discovery. The parties have scheduled examinations for discovery for June 6-10, 2022 and that appears to be an appropriate venue for exploring these issues.
- [61] This application is dismissed.

Costs

- [62] There has been mixed success on this application. Costs of this application are in the cause.

"Master Bilawich"

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