

CANADA / JUDGMENT

Yen v. Ghahramani

2024 BCSC 1407

COURT

Supreme Court of British Columbia

DECIDED

5 July 2024

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2024 BCSC 1407 Yen v. Ghahramani

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yen v. Ghahramani,

2024 BCSC 1407

Date: 20240705

Docket: S220213

Registry: Vancouver

Between:

Vincent Yen and 0756383 BC Ltd.

Plaintiffs

And:

Frederick Ghahramani, 0751846 B.C. Ltd.,

airG Employee Share Ownership Plan Ltd., and airG Inc.

Defendants

And:

Vincent Yen, Canfleet Logistics Ltd., Studypug Inc., Studypug Holding Inc.,

Studypug USA Inc., Studypug Holding (HK) Limited, Studypug (HK) Limited, Manitoulin Global Forwarding Inc., airG Services Inc.,

and Tai Management Ltd.

Defendants by Counterclaim

Before: The Honourable Justice Basran

Oral Ruling Re Further and Better Answers to Interrogatories

In Chambers

Counsel for Vincent Yen, 0756383 BC Ltd., Studypug Holding (HK) Limited, Studypug Holding Inc., Studypug Inc., Studypug USA Inc., airG Services Inc. and Tai Management Ltd.:

B.J. Cabott

P. Burnham

Counsel for Frederick Ghahramani and 0751846 BC Ltd.:

J.D. Shields

Counsel for ariG Inc.:

G.R. Cameron

K.F. Milinazzo

No other appearances

Place and Dates of Hearing:

Vancouver, B.C.

June 26-27, 2024

Place and Date of Judgment:

Vancouver, B.C.

July 5, 2024

- [1] THE COURT: For the second time, Mr. Ghahramani, on his own behalf and for the benefit of the other defendants (collectively, the "defendants"), seeks further and better answers to interrogatories from Mr. Yen, who is the plaintiff in this matter along with a numbered company he controls, 0756383 BC Ltd. ("Yen Co").
- [2] On December 15, 2023, Justice N. Smith heard the defendants' application in respect of the initial response it received from Mr. Yen to the interrogatories that he agreed to answer. In his ruling, N. Smith J. concluded that the responses provided by Mr. Yen were essentially generic. He also found that Mr. Yen and the companies he controls should have the records required to identify the transactions in issue, when they occurred, to whom payment was made and for what purpose, either specifically or in categories based on a description of how the claimed expenses related to Mr. Yen's duties. Justice N. Smith observed that Mr. Yen's response did not disclose any real efforts to answer the questions contained in the interrogatories. He therefore ordered that Mr. Yen provide further and better answers.

- [3] Mr. Yen responded by filing an affidavit dated January 23, 2024. The defendants assert that the answers provided in this affidavit continue to be deficient. They seek a further order that Mr. Yen provide further and better answers to the interrogatories. Specifically, they seek specific answers in respect of each line item set out in the interrogatories to the extent that this detailed information has not already been provided.
- [4] For the reasons that follow, the application is granted, and Mr. Yen is ordered to provide further and better answers to the interrogatories. In particular, he is required to review information in his possession, including his own emails and credit card statements and receipts, in order to answer with specificity the questions in respect of the line items contained in the interrogatories.

Factual Findings

- [5] The underlying dispute between these parties involves allegations by Mr. Yen and Yen Co. that the defendants are liable for oppression and breach of contract. Mr. Yen and Mr. Ghahramani and their related companies are the major shareholders of airG Inc. ("airG"), a mobile software company.
- [6] On March 17, 2023, Mr. Yen acknowledged that Mr. Ghahramani's questions about expense transactions were suitable for answer by way of interrogatories, and on April 3, 2023, he consented to the service of the interrogatories.
- [7] On April 28, 2023, Mr. Yen provided answers to the interrogatories that N. Smith J. found to be deficient.
- [8] After N. Smith J.'s December 15, 2023 order requiring Mr. Yen provide further and better answers to the interrogatories, Mr. Yen filed an affidavit dated January 23, 2024, purportedly providing these answers. The defendants assert that the answers contained in the January 2024 affidavit are still deficient. In particular, they note that Mr. Yen relies on not having access to the source documents required to answer the interrogatories.
- [9] The expenses in question, approximately 600 line items in the interrogatories, were claimed by Mr. Yen through his company airG Services Inc. ("ASI") from airG. Mr. Yen used several credit cards issued to him to incur most of the expenses that are the subject of the interrogatories.
- [10] On occasion, Mr. Yen's credit cards were used by other employees to facilitate purchases, presumably for the business purposes of ASI or airG. Nevertheless, these credit cards are presumptively his responsibility, and he would have received the monthly statements for each of them.
- [11] On February 2, 2024, airG listed its general ledger, thereby providing further information for Mr. Yen to review in providing further and better answers to the interrogatories.

Relevant Legal Principles

[12] Rules 7-3(1) and (7) of the Supreme Court Civil Rules provide:

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.

[]

Insufficient answer to interrogatory

- (7) If a person to whom interrogatories have been directed answers any of them insufficiently, the court may require the person to make a further answer either by affidavit or on oral examination.
- [13] Interrogatories are a pre-trial tool designed to narrow and focus the issues in a lawsuit, reduce the length and expense of trial, and eliminate the element of surprise at trial: *Araya v. Nevsun Resources Ltd.*, 2018 BCSC 808 at para. 16.
- [14] Interrogatories are appropriate in advance of examinations for discovery when the responses will enable the party delivering the interrogatories to obtain admissions of fact in order to establish its case, and leaving the matters to discovery would require lengthy examinations and possibly adjournment: *Dominion Bridge Company Limited v Royal City Iron Works Ltd.* (1978), 5 B.C.L.R. 323, 1978 CanLII 225 (SC) at para. 5.
- [15] Written responses under oath are productive. Whereas the process of putting individual expenses to a witness one after the other during oral examination is not an efficient use of court time: *Greater Vancouver Water District v. Bilfinger Berger AG*, 2014 BCSC 2154.
- [16] Interrogatories are appropriate for questions of fact that the answering party can verify from personal knowledge or reasonable inquiry: *Martin v. British Columbia*, 1986 3 B.C.L.R. (2d) 60 (S.C.) at para. 30 and *Plumrose Inc. v. A&A Foots Ltd.*, 1994 CanLII 753 (BC SC).
- [17] A party seeking answers to interrogatories is not entitled to an order requiring that the answering party carry out an accounting or bookkeeping exercise: *Pacific Western Coastal Constructors Ltd. v. Fairfield Project Limited Partnership*, 2008 BCSC 1451 at para. 26.

Positions of the Parties

- [18] Mr. Yen asserts that he complied with N. Smith J.'s order and provided sufficient answers to the interrogatories. He maintains that the motivation for this application is that the defendants disagree with his answers.

[19] The defendants maintain that Mr. Yen has access to a wealth of information, including airG's ledger, but he has nevertheless refused to provide detailed and substantive answers to the interrogatories.

Has Mr. Yen Made Reasonable Inquiries to Answer the Interrogatories?

[20] I am not satisfied that Mr. Yen made reasonable inquiries to answer the interrogatories. He controls ASI and its records. He has complete access to all of ASI's financial records, as well as the credit card statements for the cards issued in his name and used by him.

[21] I am not satisfied that Mr. Yen has made a meaningful effort to answer the interrogatories in detail. Instead, he relies on sweeping generalizations and equivocal denials. For example, in answer to several questions, Mr. Yen states that he is "unable to determinatively confirm (the expense), [but] I do not deny it. However, that does not mean that I purchased the items". He goes on to suggest that this is because others used his cards, presumably with his approval. This is an entirely unresponsive non-answer.

[22] In another answer, Mr. Yen inexplicably states that "the vast majority of ASI's financial records are exclusively in the possession of airG". During the hearing of the application, counsel for Mr. Yen was unable to explain why Mr. Yen did not have access to the documents of a company that he entirely controls.

[23] Mr. Yen defaults to general and vague answers and blames the passage of time for his inability or apparent unwillingness to answer the questions. For example, in answer to a question about whether airG's accounting department required that he review transaction details and provide receipts for 273 specific amounts claimed, Mr. Yen responded as follows:

Generally, I was asked from time to time by employees in ASI's or airG's accounting department to review certain transaction details and provide a receipt or description. Given the passage of time and due to not having access to the relevant source documents, I am unable to recall or determine if I was asked about any of the items. []

Again, Mr. Yen wholly controls ASI, and he had the monthly credit card statements. His answer to this question demonstrates his lack of effort, care, and detail in failing to respond to specific questions.

[24] Mr. Yen makes no reference in his answers to the interrogatories to any efforts undertaken by him to review ASI's records, the airG ledger, or the credit card statements for cards that are in his name. In my view, he has not made a sincere effort to answer most of the line items set out in the interrogatories.

[25] I reject the arguments that the defendants are putting Mr. Yen to an accounting or bookkeeping exercise by seeking answers to the interrogatories. He alone has access to most of the information required to answer these questions. The allegation that he misappropriated funds from airG by claiming expenses he was not entitled to is clearly set out in the counterclaim filed by the defendants.

Conclusion

- [26] Mr. Yen is directed to provide further and better answers to the interrogatories served on him by airG on March 29, 2023 by August 2, 2024. I note that this is on its face, a reiteration of the order made by N. Smith J. on December 15, 2023. My order takes into account the affidavit of Mr. Yen dated January 23, 2024, and I have concluded that Mr. Yen still has not made reasonable inquiries to answer the questions in the interrogatories.
- [27] At this time, I decline to order special costs against Mr. Yen because I am unable to conclude that, at this point, his litigation conduct is reprehensible and worthy of rebuke. However, any further unwillingness to comply with the requirement that he make reasonable inquiries, including referring to information within his access and/or control, in answering the interrogatories may alter my view on this issue.
- [28] The trial of this matter is currently scheduled for 54 days commencing September 3, 2024. I expect the parties to make efficient use of trial time. This includes adducing evidence efficiently by way of admissions, discovery read-ins, and interrogatory answers. Any time wasted by virtue of any party's failure to take the necessary steps to ensure an efficient trial may attract costs consequences.
- [29] Are there any submissions on costs?
- [SUBMISSIONS ON COSTS]
- [30] THE COURT: Costs will be in the cause.

"Basran J."

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