IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20220427
Docket: S2012859
Registry: Vancouver

Between:

Michael Hanrahan

Plaintiff

And:

QMI Manufacturing Inc., Avcom Systems Inc., and Raymond Wood

Defendants

Before: The Honourable Justice G.R.J. Gaul

Oral Reasons for Judgment

(In Chambers)

Counsel for the Plaintiff:	S. Anderson
Counsel for the Defendants:	A. Krekovic
Place and Date of Hearing:	Vancouver, B.C. April 21-22, 2022
Place and Date of Judgment:	Vancouver, B.C. April 27, 2022

[1] **THE COURT:** I can tell you, counsel, I appreciated your submissions on this matter. In preparing these oral reasons, I have spent a fair bit of time on the background information, longer than I had anticipated. Be that as it may, you are getting your answer today.

[2] Also, these are oral reasons for judgment and, consequently, I reserve the right to make editorial revisions to them. That simply means I may make grammatical changes to them, or I may make additional references to the evidence, the authorities, and the submissions that were made. In no manner will the results of my decision be changed.

[3] The plaintiff, Michael Hanrahan, is an electronics technician.

[4] The defendant QMI Manufacturing Inc. ("QMI") is a company that manufactures and markets safety systems designed to detect gas leaks, water leaks, and seismic vibrations in residential and commercial properties.

[5] The defendant Avcom Systems Inc. ("Avcom") is a company that manufactures and operates an earthquake early warning system.

[6] The defendant Raymond Wood is QMI's and Avcom's principal.

[7] In the present action, Mr. Hanrahan alleges he had an employment relationship with the defendants. He further alleges the defendants improperly and unfairly terminated that relationship, thus entitling him to the following relief:

(a) a declaration the defendants terminated his employment without just cause and without reasonable notice, or payment in lieu of reasonable notice;

(b) an order that the defendants jointly and severally pay damages in lieu of reasonable notice;

(c) an order that the defendants jointly and severally pay moral damages for breach of their duty to treat him fairly and reasonably in the course and manner of his dismissal;

(d) an order that the defendants jointly and severally pay special damages; and

(e) an order that the defendants jointly and severally pay punitive damages or, in the alternative, aggravated damages for their fraudulent misrepresentations or, in the alternative, negligent misrepresentations.

[8] There are two applications before the court. They have both been filed on behalf of Mr. Hanrahan. The first, filed 23 September 2021, seeks to have the action he has started against the defendants adjudicated by summary trial (the "Summary Trial Application"). The second application, filed 19 April 2022, seeks an order striking the defendants' response to the Summary Trial Application, as well as the defendant Raymond Wood's affidavit #2 which was filed in support of that response. In the alternative, Mr. Hanrahan seeks an order striking certain paragraphs of the response as well as certain exhibits that are attached to Mr. Wood's affidavit #2 (the "Application to Strike").

[9] The parties have agreed, quite sensibly in my opinion, that the Application to Strike should be decided before proceeding with the hearing of the Summary Trial Application. Consequently, the latter application has been adjourned generally and the parties have only made submissions on the Application to Strike.

Background

[10] Mr. Hanrahan's notice of civil claim was filed on 1 December 2020 and Mr. Wood was personally served with those pleadings on 5 December 2020. Three days later, on 8 December, the defendants' counsel, not counsel before me, confirmed with Mr. Hanrahan's counsel that he was counsel of record for all of the defendants and that as of 7 December 2020 they had all been properly served with the plaintiff's notice of civil claim.

[11] On 12 January 2021, the defendants' response to the notice of civil claim was filed and served on counsel for Mr. Hanrahan.

[12] On 23 September 2021, counsel for Mr. Hanrahan filed the Summary Trial Application. This application was served on the defendants' then counsel the next day, 24 September.

[13] A few days later, on 28 September, the defendants' counsel at the time forwarded the Summary Trial Application material to Mr. Wood. In his covering note, counsel remarked:

> Please see the attached Notice of Application and supporting affidavits that have recently been delivered to our offices. We remain the solicitors of record in this litigation and therefore service of these documents upon us amounts to service upon QMI and the other Defendants. You had advised us that you would be retaining new counsel in this matter and that new counsel would be appointed as solicitors of record but you have not yet advised us who will be taking over this file. Please advise us immediately as to who you will be retaining to act for you.
>
> The application is set to be heard on November 19th, 2021 at the Vancouver courthouse. Please be advised that this is an application of the Plaintiff for judgement by way of summary trial against the Defendants. You must immediately take steps to deal with this application. We will not be acting on your behalf in any regard with respect to this application. We will not be acting on your behalf in any regard with respect to this application.

[14] Pursuant to Rule 8-1(9) of the *Supreme Court Civil Rules,* the defendants' response to the Summary Trial Application was to have been filed and a copy served on Mr. Hanrahan's counsel no later than 6 October 2021 (the "Response").

[15] The deadline for the filing and service of the Response came and went without the defendants filing and serving anything. Instead, on 18 October 2021, counsel for the defendants served on counsel for Mr. Hanrahan his notice of intention to withdraw as the defendants' counsel of record.

[16] A few days earlier, on or about 13 October 2021, counsel for Mr. Hanrahan was contacted by a second lawyer who indicated he was in the process of being retained by the defendants to act as their counsel. Less than a week later, this lawyer informed counsel for Mr. Hanrahan that he would not be acting for or representing the defendants in this matter.

[17] On 21 October of 2021, QMI and Mr. Wood retained Mr. Krekovic to act for them on a limited retainer. The retainer letter from Mr. Krekovic that is attached as an exhibit to Mr. Wood's affidavit #3 sworn 18 April 2022, explains:

> In acting for you, I am acting on a limited retainer basis. My only task at this junction is to obtain an adjournment of the November 19, 2021 Summary Trial. Through no fault of your own, you have not responded to the Summary Trial application materials within the time allowed by the Supreme Court Rules. I have discussed with you the option of late filing and serving of response application materials in anticipation that our attempt at adjourning the Summary Trial will not be successful. You have rejected this option and have asked that I focus solely on the adjournment.

[18] On 1 November 2021, the defendants' new counsel, their present counsel, Mr. Krekovic, wrote to Mr. Hanrahan's counsel to advise that he had been retained by QMI and Mr. Wood. Shortly thereafter, he confirmed that he was also retained to act for Avcom. In his correspondence to counsel for Mr. Hanrahan, Mr. Krekovic requested that the hearing of the Summary Trial Application be adjourned, explaining:

> I understand that you have scheduled a summary trial for November 19, 2021. I also understand that none of the parties have been examined for discovery. Furthermore, I have the distinct disadvantage of not having had the opportunity to review the list of documents which I assume exist and the documents listed therein. Most concerning to me is that previous counsel for QMI Manufacturing and Raymond Wood has not delivered a Response to your client's Notice of Application. For all of these reasons, I am writing to ask that you please have your client agree to adjourn the summary trial set for November 19, 2021.
>
> Our court is entitled to look at all of the evidence in a case and to resolve conflicts in evidence. Without the requested adjournment, the parties will be unable to present the necessary evidence and obtain a just determination of this action on its merits.
>
> Please note, although I have made inquiries of his office, I do not know whether previous counsel for QMI Manufacturing and Raymond Wood, Peter Goodwin, has filed a Notice of Withdrawal and we have not made arrangements for the transfer of this file.

[19] In his letter of 2 November 2021 to counsel for the defendants declining the request to adjourn the Summary Trial Application, counsel for Mr. Hanrahan remarked:

> On 13 October 2021, we were notified by Paul Roxburgh that his firm was in the process of being retained to represent all of the Defendants in this matter and seeking to be provided with particulars of service.
>
> We responded to Mr. Roxburgh on behalf of our clients on 14 October 2021… Subsequently on 18 October 2021, we were notified by Mr. Roxburgh's office that he was not taking over representation of the defendants.
>
> …on 18 October, Mr. Goodwin served his notice of intention to withdraw as legal counsel representing the defendants. Your clients have had 13 calendar days since 18 October 2021 to seek and retain legal counsel to represent them in the summary trial. Your clients' change of counsel and lack of diligence to retain alternate legal counsel in a timely manner is not a reasonable basis to seek an adjournment in our view. As a result, your client's request for an adjournment of the summary trial on this basis is denied.
>
> As you acknowledged in your 1 November 2021 letter, your firm has not made arrangements for transfer of their file from Mr. Goodwin. However, we note that on 14 October 2021, Mr. Goodwin offered to provide a copy of your clients' file upon request to Mr. Roxburgh, provided that all outstanding accounts for legal services be paid up-to-date. It appears that the reason that your clients' file has not been transferred is because of an outstanding solicitor's lien by their former lawyer for unpaid legal fees, disbursements, and taxes.
>
> In our view, you clients' failure to obtain disclosure of their file from their previous counsel due to non-payment of their outstanding account is also not a reasonable basis for the Plaintiff to agree to an adjournment of the summary trial…
>
> …
>
> Your clients were served with the Plaintiff's notice of application for a summary trial and supporting affidavit on 24 September 2021. Your clients' response … was due on Thursday, 7 October 2021. To date, your clients have failed to file a timely response and supporting affidavit.
>
> Your clients have utterly failed to provide any explanation or reason for their failure to file a timely response to the application and a supporting affidavit in the 37 calendar days since they were served. Accordingly, your clients' unexplained failure to file a response and supporting affidavit does not justify their request for an adjournment of the summary trial.

[20] The response from counsel for Mr. Hanrahan could not have been clearer.

[21] On 3 November 2021, counsel for the defendants filed his notice of appointment or change of lawyer, confirming he was counsel of record for QMI and Mr. Wood. A similar notice was filed a few days later, on 10 November 2021, confirming Mr. Krekovic was also counsel of record for Avcom. Two days later, on

5 November, counsel for the defendants obtained short leave to bring an application to adjourn the Summary Trial Application (the "Adjournment Application). The hearing of that Adjournment Application was set for 16 November 2021, some three days prior to the scheduled hearing of the Summary Trial Application.

[22] On 9 November 2021, the defendants' Adjournment Application was served on counsel for Mr. Hanrahan. The orders sought consisted of the following:

(a) The Summary Trial Application set for hearing on 19 November 2021 be adjourned;

(b) Mr. Hanrahan make himself available for cross-examination on his affidavit not later than January 17, 2022;

(c) the defendants make best efforts to obtain am expedited transcript of the examination for discovery of Mr. Hanrahan;

(d) The Response to the Summary Trial Application be filed and delivered to counsel for Mr. Hanrahan no later than 15 business days after receipt of the transcript of Mr. Hanrahan's examination for discovery; and

(e) The Summary Trial Application be reset for a one-day hearing no later than 4 April 2022.

[23] The parties were able to agree to an adjournment of the Summary Trial Application, thus eliminating the need to have a hearing of the Adjournment Application. In his email dated 12 November 2021 to defendants' counsel, counsel for Mr. Hanrahan explained that the plaintiff would agree to adjourn the Summary Trial Application only on the following terms:

(a) the adjournment was pre-emptory against the defendants; and

(b) the defendants must file their Response and supporting affidavits, followed by examinations on those affidavits and then the summary trial.

[24] By email dated 14 November 2021, counsel for the defendants agreed to the terms proposed by Mr. Hanrahan's counsel. Counsel for the defendants confirmed:

> … I will adjourn Tuesday's application generally on the understanding that we will reschedule the Summary Trial currently set for November 19, 2021 to a date convenient to all parties in late March or early April 2022. Your agreement to adjourn the said Summary Trial is conditional on the rescheduled trial being peremptory (no further applications or adjournments to be granted).
>
> Accordingly, your client would not object to the late filing of the Defendants' Response and supporting affidavits and agrees that examinations on affidavits are to take place as necessary before the Summary Trial.

[25] Counsel for Mr. Hanrahan replied the same day with the following:

> The preemptory term is to prevent the Defendants from applying to adjourn the rescheduled summary trial.
>
> The other term is that your clients will file their Response and supporting Affidavit within the near future so both parties can schedule examinations on affidavits at a reasonable time before the summary trial.
>
> We will send a Notice to Admit with respect to John Lenos stating that he was acting at all times on behalf of the other 3 defendants and your client will make such an admission.

[26] On 18 November 2021, counsel for the defendants filed a Requisition seeking to adjourn by consent the Summary Trial Application and resetting it for a two-day hearing in either late April or early May 2022.

[27] On November 29, 2021, Mr. Hanrahan's counsel served a notice to admit on the defendants' counsel. A response to that notice to admit was returned on 7 December 2021. Two days later, on 9 December, counsel for Mr. Hanrahan sent an email to counsel for the defendants acknowledging receipt of the response to the notice to admit. In doing so he inquired:

> Please advise as to when we can reasonably expect to receive service of your clients' Response to our client's summary trial application and supporting affidavit.

[28] Having received no response to his enquiry and having still not received the defendants' filed Response, counsel for Mr. Hanrahan on 4 January 2022 sent the following email to defendants' counsel:

> I am writing to request that your clients fulfill their obligation to file their Response to our client's summary trial application and to provide us with a copy of their filed supporting affidavit. In this regard, we would like to proceed this month with scheduling examinations on affidavits and re-scheduling the summary trial next month. Your clients have had the benefit of an extraordinary long time to prepare their response and supporting affidavit. We want to move this matter forward in a timely manner.

[29] In his reply dated 12 January 2022, counsel for the defendants confirmed:

> We will have our clients' Summary Trial materials prepared no later than February 7, 2022. I hope this is acceptable to your client. This should give us enough time to conduct examinations before April when I have a number of openings in my schedule.
>
> I look forward to your response.

[30] Counsel for Mr. Hanrahan responded the same day confirming that the contents of defendants' counsel's email were acceptable.

[31] 7 February 2022 came and went with no Response or supporting affidavits from the defendants. Towards the end of the day, counsel for Mr. Hanrahan wrote to counsel for the defendants:

> On 24 September 2021, our client served his filed summary trial application and supporting affidavit on your clients' former solicitor. Your clients were required to prepare and file their response and supporting affidavit on or before 7 October 2021, but they failed to do so. The summary trial was scheduled to be heard on 19 November 2021 in B.C. Supreme Court.
>
> Since you were only recently retained at that time, our client agreed to adjourn the summary trial … on terms and conditions adverse to your clients, to provide your clients with an opportunity to prepare and file their response and supporting affidavit.
>
> We write further to our emails to your clients dated 4 January 2022 and 11 January 2022 requesting that your clients fulfill their obligation to file their long overdue response and supporting affidavit ... In your 12 January 2022 reply you represented that your clients would prepare their response and supporting affidavits to the Plaintiff's summary trial application no later than February 7, 2022 ...
>
> It is now 4:00 p.m. on Monday, 7 February 2022 and we are not in receipt of your clients' response and supporting affidavit, notwithstanding that your clients' materials are now 122 days overdue.

[32] On 10 February 2022, counsel for Mr. Hanrahan attempted to file a notice of application seeking an order compelling the defendants to file their Response and

supporting affidavit. The next day, on 11 February 2022, counsel for Mr. Hanrahan received a notice from the court registry indicating that the notice of application filed the day prior had been rejected because the Chief Justice had directed that notices of application that do not comply with Rules 8-1(8) and (9) are to be rejected.

[33] On 3 March 2022, counsel for Mr. Hanrahan rescheduled the hearing of the Summary Trial Application for 21 and 22 April 2022. The Requisition setting the hearing dates was served on counsel for the defendants on 14 March of 2022.

[34] On 29 March 2022, counsel for Mr. Hanrahan sent defendants' counsel the following email:

> I'm following up on our telephone conference last week during which you advised that you anticipated receiving instructions by Friday, 25 March 2022 from your client with respect to our clients' summary trial application. In this regard, please advise if you have received instructions and if your client proposes to file a response and supporting affidavits. We look forward to your timely response.

[35] On 5 April 2022, the defendants' Response and Mr. Wood's affidavit #2 sworn in support of the defendants' position on the Summary Trial Application were filed and served on counsel for Mr. Hanrahan. The materials that were served on counsel for Mr. Hanrahan included a note from defendants' counsel that said:

> …I'm sorry this has all come to you so late, but I have to play the card I was dealt.

The Present Application

[36] In his Application to Strike, Mr. Hanrahan seeks the following orders:

(a) an order striking the defendants' response filed 5 April 2022 as well as Mr. Wood's affidavit #2 filed in support of the response for "gross" non-compliance with Rule 8-1(9) of the *Supreme Court Civil Rules*;

(b) an order in the alternative striking certain paragraphs of the response and certain exhibits from Mr. Wood's affidavit #2 for non-compliance with the *Supreme Court Civil Rules*; and

(c) costs.

Position of the Plaintiff

[37] Mr. Hanrahan submits that the defendants have shown an egregious pattern of failing to comply with the *Rules.* Specifically, he argues the defendants have failed to comply with the mandatory nature of Rule 8-1(9) when they filed their Response and affidavit in support, that is Mr. Wood's affidavit #2, approximately six months after they were due and only after a multitude of requests that they do so in a timely manner.

[38] Moreover, Mr. Hanrahan contends the defendants' attempt to withdraw admissions previously made runs afoul of Rule 7-7(5), and their failure to list and disclose in their list of documents materials they now propose to rely on constitutes a breach of Rule 7-1(1).

[39] Mr. Hanrahan submits he has been seriously prejudiced by the number and nature of the defendants' breaches of the *Rules* as well as the significant delay their conduct has caused in getting this case adjudicated. He further contends that the only appropriate way to avoid countenancing such litigation conduct is to strike the Response and affidavit #2 of Mr. Wood. In the alternative, Mr. Hanrahan asserts that the portions of those documents that offend the *Rules* by either purporting to improperly withdraw admissions already made or disclosing new documents, ought to be struck.

Position of the Defendants

[40] The defendants contend that they are impecunious and, consequently, have not been able to retain counsel to assist them in responding in a timely and effective way to the Summary Trial Application. This is the principal reason why, they say, they have not complied with the *Rules* and have not filed their materials, especially their Response, in a timely manner.

[41] Additionally, the defendants maintain that aside from the near six-month delay in getting their Response and supporting affidavit filed and served, the breaches of

the *Rules* that Mr. Hanrahan alleges they have committed are either inconsequential or misconstrued and, in any event, they have not prejudiced him in any material way.

[42] Overall, the defendants contend that the principal relief sought by Mr. Hanrahan is the equivalent of striking their response to the notice of civil claim, which is a draconian measure reserved only for exceptional cases. While the defendants acknowledge that there have been deficiencies in the way they have managed their defence, they submit the circumstances of the present case do not make it so exceptional that one party, the defendants, should be deprived of their opportunity to present their evidence and arguments so that the plaintiff's claims can be adjudicated fairly on their merits and after having heard both sides of the story.

Discussion

[43] There are four Rules that are particularly applicable to the parties' present situation.

[44] The first is Rule 1-3 which reads:

> (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.
>
> (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
>
> (a) the amount involved in the proceeding,
>
> (b) the importance of the issues in dispute, and
>
> (c) the complexity of the proceeding.

[45] The second rule of interest in this case is Rule 7-1(1). This rule governs the preparation and delivery of lists of documents. This Rule reads:

> (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
>
> (a) prepare a list of documents in Form 22 that lists
>
> (i) all documents that are or have been in the party's possession or control and that could, if available, be

used by any party of record at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

[46] The third rule that I wish to make reference to is Rule 7-7(5). This rule governs the withdrawal of admissions and it reads as follows:

(5) A party is not entitled to withdraw

(a) an admission made in response to a notice to admit,

(b) a deemed admission under subrule (2), or

(c) an admission made in a pleading, petition or response to petition

except by consent or with leave of the court.

[47] The final rule of particular relevance on this application is Rule 8-1(9). This rule governs when a response to a notice of application must be filed and served on the opposing party. The Rule reads as follows:

A person who is served with documents referred to in subrule (7) of this rule and who wishes to respond to the notice of application (in this subrule called the "responding person") must do the following within 5 business days after service or, in the case of an application under Rule 9-7, within 8 business days after service:

(a) file an application response;

(b) file the original of every affidavit, and of every other document, that

(i) is to be referred to by the responding person at the hearing, and

(ii) has not already been filed in the proceeding;

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and documents, referred to in the application response under subrule (10) (b) (ii), that has not already been served on that person;

(iii) if the application is brought under Rule 9-7, any notice that the application respondent is required to give under Rule 9-7 (9).

[48] As Mr. Hanrahan's Summary Trial Application is brought pursuant to Rule 9-7, the defendants had until 6 October 2021 to file and serve their Response and supporting affidavits.

[49] In *Tormont Publications Inc. v. Select Publications Ltd.*, 2006 CarswellBC 259, [2006] B.C.W.L.D. 1821, Mr. Justice Stewart of this court provided the following sage observations about the nature of summary trials under Rule 18A, the predecessor to Rule 9-7, and the need for parties to comply with the *Rules*:

> [2] In my respectful view, the context is everything. First, this is, on the face of it a commercial dispute. The 18A application has been outstanding for a very significant period of time. The failure to abide by the *Rules* is obvious and what is involved is not a default by counsel; it is the omission of the client. The client has created the problem.
>
> …
>
> [4] 18A is meant to be a fast, cheap way of moving civil cases through the process, where appropriate, and do it efficiently. Efficiency cuts down on costs, cuts down on adjournments, and all the rest of it…
>
> [5] Also, what is here is a familiar pattern: that one litigant fails to recognize the responsibilities as a litigant, produces material late; the other side scrambles about in an attempt to get a responsive affidavit, and does; and then the side that caused the problem takes the position, well, now there is no problem, they have a responsive affidavit.
>
> [6] What is lost in that submission, with respect, is that this is the bad method. This is not what the court has *mandated*. The court has *mandated* a totally different thing. On the face of it, it is a simple system involving various aspects of the *Rules*. But it has come down to this: once you are inside an 18A, the litigant had best pay attention to what is afoot; and if they do not, they are going to pay a price.

[50] In many respects, these observations of Justice Stewart are apposite to the present case. Problems have arisen in this litigation and they have principally impacted Mr. Hanrahan and his ability to prosecute his claim in a speedy and efficient way. I wish to stress that on the evidence before me the problems I speak of have not been caused by the various counsel who have attempted to assist the defendants. The problems have been caused by the defendants themselves and what can only be described as their cavalier or casual approach to the court-imposed deadlines that they were reminded of on multiple of occasions.

[51] The defendants Mr. Wood and QMI are no strangers to lawsuits. The evidence points to that fact. Consequently, it cannot be said that they did not appreciate the nature of the litigation and the need for them to act in a timely manner in order to ensure they were able to defend themselves against the claims being made by Mr. Hanrahan. The evidence of what the defendants' counsels told them also points quite convincingly to the fact that they knew they had to file their Response to the Summary Trial Application in a timely manner. It would appear that for strategic reasons they chose not to. Moreover, the evidence also supports the conclusion that the defendants were aware of all of this but chose a litigation strategy that consisted of delaying the proceedings instead of addressing the claims and moving to have them adjudicated on their merits. In this regard, I am referring to the correspondence from defendants' counsel to the defendants where he confirms their instructions not to attempt to file a Response, but instead to focus on having the Summary Trial Application adjourned. It was adjourned on terms agreed to by the defendants, but they did not live up to those terms. They continued to delay the filing of their Response and supporting affidavit and examinations on the affidavits were never scheduled or conducted.

[52] In my opinion, Mr. Hanrahan has waited patiently to have his claims against the defendants adjudicated. He accommodated the defendants when they asked for an adjournment of the first hearing of the Summary Trial Application. Through his counsel Mr. Hanrahan provided the defendants with more than ample time and opportunity to file their Response to the Summary Trial Application. Their counsel said he would be filing materials by established deadlines, but they were never met.

[53] Again, I repeat, this is not a criticism of counsel. This is a criticism of the manner in which the defendants' themselves have acted. The delay occasioned by the defence was not because of their counsel, it was because of the defendants' approach to the litigation and their own conduct in not getting their counsel the necessary materials to prepare a Response. In defendants' counsel's words, he had to "play the cards he was given." And I say respectfully, he was right to say so, especially the part about playing cards.

[54] In my opinion, the defendants have been engaged in litigation gamesmanship designed to frustrate Mr. Hanrahan's ability to have his claims adjudicated in a just, speedy, and cost-effective manner. The defendants represented that they wished to adjourn the first hearing of the Summary Trial Application so that they could conduct an examination for discovery of Mr. Hanrahan. The examination for discovery was never scheduled, and it appears to me that this reason for the adjournment of the Summary Trial Application, advanced by the defendants, was more of a ruse designed to obtain the adjournment and simply delay the proceeding.

[55] Furthermore, I find the defendants' reliance on a claim of impecuniosity to be unconvincing. While the documentary evidence suggests that the corporate defendants QMI and Avcom have had financial difficulties in the past, that evidence is sparse and dated. There are no convincing reasons offered for not having up-to-date evidence relating to the financial status of these corporate defendants. Moreover, there is a noticeable lack of evidence with respect to Mr. Wood's personal financial means. I am not persuaded that the defendants are impecunious or that the state of their finances materially impacted their ability to prepare a Response to the Summary Trial Application.

[56] Aside from their adoption of a litigation strategy that included ignoring deadlines for the filing of documents, the defendants have also attempted to resile from positions they have taken in earlier pleadings. For example, at paragraph 4 of the notice of civil claim, Mr. Hanrahan alleges that at all material times Mr. Wood owned and operated QMI, Avcom, and their predecessors. In their response to civil claim the defendants admitted these facts. However, at paragraph 3 of their Response to the Summary Trial Application, the defendants claim that Mr. Wood is only "the directing officer of QMI and Avcom" and only owns shares in the two companies. In his affidavit #2 filed at the same time as the Response, Mr. Wood specifically denies owning QMI and Avcom and asserts instead that he is a majority shareholder.

[57] I agree with counsel for Mr. Hanrahan, that the defendants have violated Rule 7-7(5) in that portions of their Response and the parts of the affidavit in question do improperly withdraw admissions that the defendants have made or, at the very least, impermissibly recast those admission in a material way without the consent of Mr. Hanrahan or court order.

[58] Another example of a clash between what the defendants have said in their response to the notice of civil claim and what Mr. Wood has said in his affidavit #2 filed in support of the defendants' position on the Summary Trial Application relates to who employed Mr. Hanrahan prior to 2020. At paragraph 40 of the notice of civil claim, Mr. Hanrahan asserts that *"…at the time of his termination … [he] had been employed by the defendant QMI, the defendant Avcom, the defendants' predecessors, and the defendant Mr. Wood for 19 years and seven months*." At paragraph 1 and 30 of the defendants' response to the notice of civil claim, the defendants respond to this claim by alleging that prior to 2020 Mr. Hanrahan had never been employed by any of the defendants or any of their predecessors, other than QMI. However, in his affidavit #2, Mr. Wood attests that "*before 2020 Mr. Hanrahan had never been employed or contracted directly by him. He had always been employed by the corporate defendants*". I note that Mr. Wood uses the plural "defendants".

[59] On a final note, the defendants acknowledge that documents found at Exhibits A, G, H, and L of Mr. Wood's affidavit #2, sworn 5 April 2022, and filed in support of the defendants' response to the Summary Trial Application were not previously listed in their list of documents or disclosed to the plaintiff. However, counsel for the defendants submits that the deficiency was rectified when a supplementary list of documents was served on counsel for Mr. Hanrahan on or about 12 April 2022.

[60] In my opinion, this slipshod approach to complying with the *Rules* is symptomatic of how the defendants have generally treated this litigation. They respond to issues only when their backs are against the wall; they deliver materials

to the opposing side long after they are due and only just before a hearing date, and after doing so they do they claim any deficiencies or non-compliance with the *Rules* have been rectified. The approach the defendants have adopted in this litigation brings to mind Justice Stewart's words of caution in *Tormont* and his conclusion that a careless approach to abiding by the *Rules* is "the bad method". The defendants also attempt to excuse their conduct by suggesting they are or were impecunious and therefore were unable to obtain the assistance of legal counsel. The evidence does not support that position, either with respect to their impecuniosity or with regard to their inability to retain counsel.

[61] The defendants assert that nothing they have done has caused Mr. Hanrahan any material prejudice. In contrast, they argue that if their Response to the Summary Trial Application and Mr. Wood's affidavit #2 are struck, then the defendants will have no opportunity to present their evidence and arguments and Mr. Hanrahan's claim will be adjudicated without hearing the defendants' side of the story.

[62] I do not accept the argument that Mr. Hanrahan has not been prejudiced by the manner in which the defendants have approached this litigation. The background and history of this litigation which I recounted in detail at the outset of these reasons point to a conscious decision and strategy on the part of the defendants to resist or fail to perform the necessary litigation steps that are mandated by the *Rules*. The background and history also point to Mr. Wood being a savvy businessperson who is quite experienced with the court process. The tactics he and the corporate defendants have adopted have thwarted Mr. Hanrahan's ability to obtain the speedy and inexpensive justice that the *Rules* strive to promote and achieve.

[63] In my opinion, Mr. Hanrahan has, for reasons that have not been satisfactorily explained or justified, had to unreasonably wait to have his claims against the defendants adjudicated. I am satisfied that the defendants' tactics have unfairly delayed the adjudication of those claims, and in my view that in itself constitutes material prejudice.

[64] Counsel for the defendants argues that granting the principal relief sought by Mr. Hanrahan would be a draconian measure. He says the defendants have not been able to mount a proper defence to Mr. Hanrahan's claims because of their impecuniosity and their inability to retain counsel, and they only retained him as their counsel at the last minute. With respect, I do not find this argument to be persuasive in light of the history of this case. The defendants have been able to retain counsel in the past. The evidence shows that. The evidence also shows that after retaining counsel, the defendants chose a litigation strategy that was designed to delay the matter, not address it. That is they chose to pursue an adjournment of the Summary Trial Application as opposed to filing a Response. As I have previously noted in these reasons, I do not accept the defendants are as impecunious as they claim or that they were unable to retain counsel until very recently.

Conclusion

[65] In my opinion, Mr. Hanrahan is entitled to have his day in court. He and his counsel have done all they can to get this action before the court in an efficient and inexpensive way. The defendants have done nothing but hinder the progress of this litigation. The court should not and will not countenance the type of litigation gamesmanship the defendants have exhibited in this case. While an order of the type sought by Mr. Hanrahan is one that needs to be carefully considered, I am satisfied that the circumstances of this case quite properly justify granting the relief sought.

[66] I say this having considered the legal principles articulated in the jurisprudence that counsel have drawn to my attention, including the cases that counsel for the defendants has relied on that indicate that remedies that disentitle a party from advancing a defence are draconian and ought only to be granted in exceptional circumstances. In my view, what is before me is such a case.

[67] This is not a situation that the defendants ought to be given one last chance. They have been given many chances. Their counsel have told them what they must do, but they have not heeded that advice. There have been repeated attempts by

counsel for Mr. Hanrahan to get the defendants to file their Response to the Summary Trial Application. But they have not done so.

[68] While the effect on the defendants of having the relief sought by Mr. Hanrahan granted will likely be detrimental, the reason or cause of that lies squarely at their own feet. In other words, by approaching this litigation in the manner that they have, the defendants are the sole authors of their own misfortune.

[69] In my view, the defendants have failed to meet their obligations as litigants and in doing so they have committed multiple breaches of the *Rules.* The most egregious of them is failing to file their Response to the Summary Trial Application and supporting affidavit until only shortly before the hearing of the application, with some of the contents of the supporting affidavit conflicting with admissions made or positions taken previously in their response to the notice of civil claim.

[70] For all of the foregoing reasons, the relief sought at paragraph 1 of the plaintiff's notice of application filed 19 April 2022 is granted.

[71] Counsel have asked that I remain seized of this matter. I am prepared to do so, but I will also hear further submissions on that topic.

[72] THE COURT: Those are my reasons.

[Submission by counsel re Justice Gaul being seized]

[73] THE COURT: All right. Well, then, that is what I will do. I will seize myself of the Summary Trial Application. I am doing so for two reasons. First, I am now familiar with the case. That means no other judge will need to get up to speed on it. Second, I already have the materials. I have the Summary Trial Application binder, and I will retain it. I have already made some annotations to it, so I will retain all of the materials.

[74] So, I will be seized of the Summary Trial Application. Counsel will need to find a hearing date, in consultation with Supreme Court Scheduling here in Vancouver. I am sure a date can be worked out.

[75] I will add one final caveat. If it turns out that my schedule prevents the timely hearing of the Summary Trial Application, then I may very well unseize myself of this matter. It could be that before doing so I would ask for a judicial management conference, a 9:15 telephone conference with counsel, to address the issue of whether I should unseize myself. I do not want my schedule holding up this matter. But having said that, I think it makes sense that I stay with it for now.

[76] THE COURT: Now, on the issue of costs, Mr. Anderson, costs at Scale B of this application.

[77] CNSL S. ANDERSON: Thank you, My Lord.

[78] THE COURT: Okay. The plaintiff, Mr. Hanrahan, is entitled to ordinary costs at Scale B for this application.

"G.R.J. Gaul, J."