

Federal Court



Cour fédérale

Date: 20241211

Docket: T-245-23

Citation: 2024 FC 2006

Ottawa, Ontario, December 11, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ARMOUR TRANSPORT INC.

Plaintiff

and

**2098763 ALBERTA LTD. dba ARMOUR
TRUCKING OF EDMONTON, MANPREET
DHILLON, and JOBANBIR LEHAL**

Defendants

ORDER AND REASONS

[1] This Order deals with the Defendants' motion for self-representation for the corporate Defendant and the Defendants' response to the Court's call for submissions about why the Statement of Defence should not be removed from the record. For the reasons below, I dismiss the motion and I order the Statement of Defence removed from the Court's file for this matter.

[2] By way of background, the Plaintiff moved for default judgment. The Defendants did not file a responding motion record.

[3] Noting that the Statement of Defence is irregular, in that it was filed in the name of the corporate Defendant which is unrepresented, the Court issued an order under subrule 74(2) of the *Federal Courts Rules*, SOR/98-106, giving the Defendants 15 days to show cause (in compliance with rule 120 for the corporate Defendant) why the Statement of Defence should not be removed from the Court file [Show Cause Order].

[4] In response, the Defendants brought a motion in writing for self-representation by the corporate Defendant under rule 120. Leaving aside the issue that the individual Defendants have not defended the action, I note that the Defendants' motion record contains (i) a notice of motion setting out reasons why they request self-representation for the corporate Defendant, and (ii) the supporting affidavit of Jobanbir Lehal and (iii) written arguments, both of which speak to the Show Cause Order. The Plaintiff filed a responding motion record.

[5] The starting position under rule 120 is that a corporation must be represented by legal counsel. Otherwise, the Court must be satisfied that there are "special circumstances" warranting the exercise of the Court's discretion to grant leave for the corporate party to be represented by an officer: *Wang v Louis Vuitton Malletier SA*, 2019 FCA 199 [*Wang*] at paras 2-4.

[6] The Defendants' notice of motion asserts financial hardship as a result of the "ongoing global recession" resulting in the reduction of the company's revenue and cash flow and, hence,

challenges in meeting its financial obligations. The supporting affidavit does not attest to any of this information. Instead, attached to Mr. Lehal's affidavit are savings account bank statements addressed to Jobanbir Lehal and business account bank statements addressed to 2098763 Alberta Ltd.

[7] I find that the Defendants have failed to provide complete and clear financial information, including financial statements, regarding the corporate Defendant, that would permit the Court to assess the asserted financial hardship in any meaningful way. Taking into account that the Defendants presently are unrepresented, I determine nonetheless that they have not put their best foot forward: *Glycobiosciences Inc v L'Oreal Canada*, 2022 FC 1517 [*Glycobiosciences*] at para 35.

[8] Mr. Lehal's affidavit does not discuss the bank account statements that were attached as exhibits, leaving the Court to guess as to how they support the asserted financial hardship. I agree with the Plaintiff that the savings account bank statements are irrelevant to the issue of the asserted financial hardship of the corporate Defendant.

[9] Further, the business bank account statements alone, without at least some sworn or affirmed contextual evidence (of the sort described in *El Mocambo Rocks Inc v Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98 at para 4), do not demonstrate clearly, in my view, impecuniosity on the part of the corporate Defendant. On their face, the business account bank statements show significantly better cash flow than the evidence that was before Justice Locke in *Wang* (at para 7).

[10] I further find that the state of the Defendants' motion record demonstrates an inability to deal with the legal issues at play, both on this motion and in this action. While an unrepresented moving party generally is not expected to prepare and file materials of the same caliber or quality as the Court might expect from legal counsel, nonetheless, the moving party's motion materials should reflect an effort to understand the requirements of the applicable *Federal Courts Rules* and jurisprudence: *Glycobiosciences* at para 36. In my view, the Defendants' motion materials do not reflect this minimal expectation on unrepresented parties.

[11] Although technically the Defendants' motion record contains a supporting affidavit, the affidavit, as mentioned above, does not set out any facts dealing with the issue of the corporate Defendant's financial hardship which is described only in the notice of motion. In addition, Mr. Lehal's affidavit and the written arguments largely reiterate portions of the Defendants' Statement of Defence. Both Mr. Lehal's affidavit and the Statement of Defence improperly contain legal arguments.

[12] Further, I agree with the Plaintiff that the Defendants conflate registration under the Alberta *Partnership Act*, RSA 2000, c P-3, of the trade name, "Armour Trucking," registration number TN20987723, with registration under the *Trademarks Act*, RSC 1985, c T-13. The latter statute involves a separate federal registration system and attendant rights that flow from registration under the *Trademarks Act*. The Plaintiff's evidence filed on this motion shows that the Defendants do not have a trademark registration for ARMOUR TRUCKING, or any trademark registration for that matter, nor is there any trademark registration having number 20987723.

[13] As another example, I agree with the Plaintiff that Mr. Lehal's affidavit and the Defendants' written arguments regarding an asserted absence of a likelihood of confusion do not demonstrate any appreciation for the applicable legal test for confusion but, more to the point, offer an opinion on the very issue which is for the Court to determine.

[14] Consequently, I find that the Defendants' evidence and arguments on this motion show that Mr. Lehal would act as both witness and advocate if the motion were granted and he were to continue as the corporate Defendant's representative. In my view, this would not further the interests of expeditious resolution of the proceeding, further to rule 3 of the *Federal Courts Rules: Wic Premium Television Ltd v Levin*, 2001 FCT 1042 at paras 13, 14, 18.

[15] In conclusion, I find that the Defendants have not met their burden on this motion of establishing "special circumstances" warranting the exercise of the Court's discretion to grant leave for the corporate Defendant to be represented by an officer. Nor have the Defendants shown cause to the Court's satisfaction why the Statement of Defence should not be removed.

[16] The Defendants' motion thus will be dismissed and the Statement of Defence will be removed from the record pursuant to subrule 74(1) of the *Federal Courts Rules*. The Court will dispose of the Plaintiff's outstanding motion for default judgment separately. Costs will be addressed in the context of the latter motion.

ORDER in T-245-23

THIS COURT ORDERS is that:

1. The Defendants' motion is dismissed.
2. The Statement of Defence is removed from the Court's file, further to subrule 74(1) of the *Federal Courts Rules*, SOR/98-106.

"Janet M. Fuhrer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-245-23

STYLE OF CAUSE: ARMOUR TRANSPORT INC. v 2098763 ALBERTA LTD. dba ARMOUR TRUCKING OF EDMONTON, MANPREET DHILLON, AND JOBANBIR LEHAL

MOTION IN WRITING CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: FUHRER J.

DATED: DECEMBER 11, 2024

APPEARANCES:

Erin Best
Manon Landry

FOR THE PLAINTIFF

Manpreet Dhillon

FOR THE DEFENDANT
(ON THEIR OWN BEHALF)

Jobanbir Lehal

FOR THE DEFENDANT
(ON THEIR OWN BEHALF)

SOLICITORS OF RECORD:

Stewart McKelvey
St John's, Newfoundland

FOR THE PLAINTIFF