

November 23, 2021

N Fabiano for the Defendants, R Bamel for the Plaintiff, No one else appearing

This is a motion by the defendants for an order compelling the Plaintiff to answer all outstanding undertakings, to answer certain questions refused, to compel production from various non-parties and to require the plaintiff to set the action down for trial. The parties resolved a number of issues before the motion such that the only contested issues today are: (1) two disputed refusals; and (2) costs of the motion. The plaintiff does not oppose the motion seeking production from the non-parties and has advised that the undertakings have been answered and that the plaintiff has used best efforts to obtain the accounting file which the defendant seeks. In terms of the trial record, the plaintiff has agreed to set this action down for trial within 90 days of today. Counsel for the defendant advises that the non-parties were provided with the Zoom coordinates for today by courier on November 22, 2021, but none of the them have appeared today. I am satisfied that the relief sought against them is appropriate, although I am not prepared to make an order with respect to the non-party, Somer Auto, as it appears that through inadvertence the motion record was not served on it. As the motion relates to the non-party Somer Auto, it is adjourned to my regular motions list on December 10, 2021 in order to allow the Defendants to serve Somer Auto with the motion record and a notice of return of motion. The Defendants will have to take all necessary steps to have materials filed and available for a return of the motion on December 10, 2021, including confirmation of the motion. In terms of the questions to which the defendants seeks answers (which are set out in paragraph 3(a) and (b) of the defendant's factum), I am satisfied that the questions are proper and seek information that is relevant to the issues in the action, including causation of the medical issues the plaintiff alleges he has suffered as a result of the accident. The plaintiff argues that he has already provided the requested information for the three years prior to the accident and that there is no basis to go back five years. He also argues that it would be disproportionate to do so. I do not agree. One of the productions includes information that the plaintiff reported that he was involved in a motor vehicle accident in 2010 wherein he injured his left knee and lower back. I think this is a sufficient link to the period going back 5 years before the accident, and I view the requested information as relevant and do not see it as disproportionate. With respect to costs, the defendant seeks costs on a partial indemnity basis in the amount of \$5,215. In my view, this is excessive taking into account the principles in Rule 57.01. The motion was required, in any event, as it relates to non-party production and the additional time and argument with respect to the relief sought against the plaintiff does not merit costs in the amount requested. The plaintiff suggests that the defendant should only be awarded costs in the amount of \$250. I do not think that is sufficient. While a number of issues were resolved just prior to the motion, the defendant was successful in terms of the refusals that have been ordered to be answered and the motion prompted resolution of certain other issues. Further, the plaintiff concedes that he failed to properly advise the defendant of his best efforts to obtain the accounting file, which made it appear that the plaintiff was refusing the question. In the result, the plaintiff is ordered to pay the defendant's COSTS of this motion in the amount of \$1,500 (all inclusive). I have been provided with a draft order which I have amended and signed.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(REFUSALS, UNDERTAKINGS & 30.10 MOTION)

ZAREK TAYLOR GROSSMAN HANRAHAN LLP
 Barristers & Solicitors
 20 Adelaide Street East, Suite 1301
 Toronto, Ontario M5C 2T6

Suzanne Clarke
 416-777-2811
 416-777-2050 (fax)
sclarke@ztgh.com
 Law Society No. 643530

Lawyers for the Defendants, Cecilia Kwinecki and David A. Wan