

SUPREME COURT OF YUKON

Citation: *3752 Investments Ltd. et al. v. Argus Properties Ltd. et al.*, 2012 YKSC 99

Date: 20121119
Docket: S.C. No. 10-A0083
Registry: Whitehorse

BETWEEN:

3752 INVESTMENTS LTD. and 629582 B.C. LTD.

Plaintiffs

AND:

**ARGUS PROPERTIES LTD., EDWARD JAMES CALLAHAN
and MIDWEST VENTURES LTD.**

Defendants

AND:

ROBERT ALLAN CALLAHAN and BRUCE THOMAS CALLAHAN

Defendants by counterclaim

Before: Mr. Justice R.S. Veale

Appearances:

David Rush (by telephone)

Counsel for the Plaintiffs
and Defendants by counterclaim
Counsel for the Defendants

Gib van Ert (by telephone)

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): This is an application by 3752 Investments Ltd. for production of documents arising out of a request made at an examination for discovery in April of 2012. Many of the requests have now been met by Argus Properties Ltd. or

Midwest Ventures Ltd. but they were made on November 16, 2012, which is the Friday before this application.

[2] I am satisfied generally that the pleadings with respect to Midwest Ventures Ltd. are satisfactory for the purpose of the application for production, and I am also of the view that there is an ongoing obligation to produce documentation. The specific matters that have been objected to are as follows:

REQUEST NUMBER 1:

[3] There is an objection to request number 1 as it relates to production of full bank statements of Midwest Ventures Ltd. because they are confidential documents, and indeed they are. The documents that Midwest Ventures Ltd. has involved not only this court action but the business that is conducted by Ted Callahan, one of the defendants in the court action. Nevertheless, it is my view that the monies have been deposited into Midwest Ventures Ltd. and that is Mr. Ted Callahan's company. He could have deposited them in a number of places, like Argus Properties Ltd., but he chose to put it in Midwest Ventures Ltd., and, in my view, it is an obligation to produce the documentation that is requested but it can be done simply by producing the single page or pages that are relevant and redacting the balance of the pages. So he does not have to produce 2,000 pages from something, but if there is reference to cheques received from Argus Properties Ltd. or from the property involved, those references should be produced with the remaining matters redacted to protect Mr. Callahan's confidentiality in Midwest Ventures Ltd. That is a general comment, because I think Mr. van Ert raised that as a general issue.

REQUEST NUMBER 3:

[4] Request number 3, which is to produce the income tax returns of Midwest Ventures Ltd. from 2004 to 2011. My view is that is relevant to the extent there is any reference in that information to financial matters arising out of the allegations in this proceeding, but once again, of course, that is subject to producing only the relevant page with the balance redacted. So there is no requirement to produce confidential information.

REQUEST NUMBER 19:

[5] You have not objected to receiving the specific portion of the trial balance that relates to these rents for Chilkoote?

[6] MR. VAN ERT: That is right.

[7] THE COURT: I will make the same order with respect to that request for trial balances. The production is only for rents received from the Chilkoote joint venture. So in other words, any other information in the trial balance that is confidential can be redacted, and only the specific page is required to be produced.

[8] MR. VAN ERT: Your Honour, may I clarify that? I just want to make sure there's no confusion [indiscernible]. If it turns out that there is not anything in the trial balances that identifies a Chilkoote property specifically, then am I right in thinking there is nothing to produce? I think that may be the case, but I do not know for certain.

[9] THE COURT: Yes. I think that is correct. If there is nothing to produce, there is nothing to produce. I mean, that may lead to another application,

obviously, if there's other documentation that would suggest that, but, in any event, at this point if there is nothing there, nothing is produced.

[10] MR. RUSH: That's right. I agree with that.

REQUEST NUMBERS 20 AND 21:

[11] THE COURT: That request I grant as well, but only with respect to the specific reference in the application because I assume there may be some other confidential matters in those applications that do not relate to the Chilkoote joint venture.

REQUEST NUMBER 22

[12] What are you seeking there? I am talking now, Mr. Rush, in terms of the way we have limited this.

[13] MR. RUSH: I am content with any financial records or credit facilities to the extent that they include documents relevant to the Chilkoote funds.

[14] THE COURT: And they can be redacted otherwise.

[15] MR. RUSH: That's right.

[16] THE COURT: Okay. I am prepared to make that order for 22.

[17] MR. VAN ERT: Your Honour, I am not sure if I understand it; I want to be clear.

[18] THE COURT: Yes.

[19] MR. VAN ERT: What is it then that my client is being ordered to provide? May I go back to Mr. Rush's original letter from before because I think it might help you understand what is being requested.

[20] THE COURT: Go ahead.

[21] MR. VAN ERT: So if you are on Request 22, which is page 38 in the top right-hand corner. You have said [as read in]:

Advise whether the line of credit facility maintained by Midwest is a revolving line of credit in the sense that deposits made into Midwest are applied automatically or through transfers against the revolving credit facility."

And then going on:

If the line of credit facility is a revolving line of credit, and the Midwest Ventures' account, which Chilkoote funds are deposited, is used to pay the line of credit facilities, provide all financial records relating to Midwest's line of credit facility."

[22] So if I understand what you have ordered, Your Honour, it is that if it is a revolving line of credit, then we are to provide all documents but in an expurgated form with references to Chilkoote showing only. Is that right?

[23] THE COURT: That is what I am saying. That is fair.

REQUEST NUMBER 23

[24] I think I have indicated I will deny that request for the general security agreement.

REQUEST NUMBER 25

[25] The same order in request number 25. If there is a specific reference to Chilkoote

Rental as part of Midwest Ventures Ltd. pledging or granting security.

[26] I am prepared of course to grant a costs order payable forthwith in the amount of \$2500. These matters often get resolved to a large extent either the weekend before or during the application itself, but nevertheless, the applicant, 3752 Investments Ltd., was required to make the application and I think they should receive their costs accordingly.

[27] MR. RUSH: My Lord, just with timing, given that discovery is starting in two weeks can we have the --

[28] THE COURT: You want a date on that. Is one week sufficient? That would be --

[29] MR. RUSH: May I suggest the end of this week on Friday because then I will have the weekend and next week to review them before the discoveries.

[DISCUSSION RE DATE FOR PRODUCTION]

[30] THE COURT: I will order, with respect to the timing of production, that the defendants make their best efforts to produce the documents ordered on November 23, 2012, but, in any event, no later than November 30, 2012. Is that clear?

[31] MR. VAN ERT: Yes, thank you.

[32] MR. RUSH: My Lord, that gives me precious few days, if that's the date, to review them prior so to the commencement of the discoveries, and so perhaps they could work through the weekend and I could have them maybe, say, the 26th or

27th next week. Otherwise, I'm going to get them at the end of the day Friday and it will just be too late.

[33] THE COURT: I take your point. Change the drop-dead date to November 28th, so that you will have the opportunity to prepare.

VEALE J.