

SUPERIOR COURT OF JUSTICE

Case Name: Solomonov v. Livingart Kitchens Inc. et al.
Court File No. : CV-08-00362377-0000

Counsel:

Name	Party	Fax
V. Kats	Plaintiff (moving party)	416-221-9343
M. Rotundo	Defendants (responding parties)	416-868-0900

**REASONS FOR DECISION
(Motion heard: February 19, 2009)**

On February 19, 2009, I heard the plaintiff's motion for an order fixing dates on which the defendants were to attend for discovery and for an order compelling the affidavit of documents of the defendants. Upon hearing submissions of counsel for the parties, I endorsed the record as follows:

"Order to go:

1. The def. Oksana Rudenko shall be examined on Mar. 23/09 at 10:00 a.m.;
2. The def. Vladlien Gladilin shall be examined on Mar. 23/09 at 2:00 p.m.;
3. The def. Inna Ruvinskaya shall attend for examination on May 13/09;
4. The pl. shall be examined on Mar. 24/09 at 12:00 Noon and May 14/09 at 10:00;
5. Production of further documents relating to the financial condition of the company shall be completed by Mar. 13/09 and evidence of best efforts shall be provided.

Addendum:

This motion should not have been necessary and the defence counsel is correct in that statement. The pl. has been put to the expense and effort to obtain dates for discovery and production and met with resistance unreasonably so in my view. Costs shall be to the pl. fixed in the amount of \$1,250 (all in) payable in 30 days..."

These are my reasons:

1. In November, 2008, the plaintiff and the defendant, then represented by different counsel, agreed that the examinations for discovery be held on January 27 and 28, 2009. On or about January 15, 2009, the defendants engaged new counsel, which counsel advised that the discoveries had to

- be rescheduled. The defendants' retainer of new counsel rendered the discovery dates previously agreed upon incapable of being met.
2. There is no reason why the plaintiff's efforts in proceeding with discoveries should be thwarted.
 3. Defence counsel advised, by letter date January 15, 2009, that he was not available to attend discoveries on January 27, 2009. He did not propose new dates at that time. By letter dated January 15, 2009, the plaintiff suggested alternative dates of February 2, 3, 4, 10, 12, 13, 17 and 18, 2009. None of these dates were acceptable to defence counsel and, in fact, by letter dated January 26, 2009 from defence counsel's office, defence counsel advised that "Mr. Rotundo's first availability this year would be during the weeks of May 11 and 18, 2009." This statement was misleading as it became clear over the course of submissions that Mr. Rotundo did have dates available before May 11, 2009. Mr. Rotundo explained that he did not have full dates, but nowhere in the record was there any evidence that the plaintiff desired or indeed insisted that the discoveries proceed on full days.
 4. Additionally, it appears that one of the defendants was out of the country on the date originally scheduled for discoveries. This was not communicated to plaintiff's counsel until January 26, 2009, one day before the date agreed upon for the completion of discoveries.
 5. The defendants, save one, delivered their affidavit of documents in draft form on January 30, 2009 and in sworn form shortly before the return of the motion. The affidavit of documents so delivered was clearly deficient and listed only 7 documents, aside from the pleadings and other communications in the litigation. The primary issue in this action relates to misrepresentations of the value of the defendant corporation. The defendants' affidavit of documents does not list one single financial record or document save a two page "statement of account". Defence counsel admittedly conceded that other documents must exist, were being pursued and would be produced in the ordinary course. No details of the efforts made by the defendants, if any, were disclosed in the record and no explanation was given as to the delay in making such inquiries or as to the status of the defendants' efforts to make production. The record is clear as to the nature of documents sought by plaintiff's counsel as early as November 2008. It appears that the defendants have ignored the plaintiff's requests.
 6. The plaintiff is aged 72 and there is some evidence of an issue concerning the status of his health, admittedly vague, as appears from the affidavit filed in support of the motion. One of the defendants is of similar age. It is alleged that the monies advanced by the plaintiff, upwards of \$500,000, comprised the vast majority of the plaintiff's wealth. Plaintiff's counsel advised the court that the plaintiff was suffering from cancer and had recently undergone surgery, to the knowledge of the defendants. I have no reason to doubt that advice. It is my view, given the evidence in the record as to the plaintiff's medical condition, the ages of some of the

parties and the amount at stake, that some higher than normal level of dispatch must be observed in the prosecution of the action. This is particularly so given what I view as delay tactics on the part of the defendants.

7. It became clear over the course of the hearing that the parties would have a fair amount of difficulty in agreeing on dates – despite the protestations to the contrary by defence counsel. Accordingly, it was my view – balancing the interests of the parties and the need for timely administration of justice in the circumstances of this case - that a partial timetable be imposed.

Master Sproat
February 26th, 2009