

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Iron Horse Farm Inc., Plaintiff/Defendant to Counterclaim

AND:

Ainsley Erin Vince, also known as Ainsley VINCE carrying on business as Linden Ridge, Linden Ridge Limited, Marcie Vince and Trinity Farms, Defendants

-AND BETWEEN-

Ainsley Erin Vince and Linden Ridge Limited, Plaintiffs by Counterclaim

AND:

Iron Horse Farm Inc., Gregory Aziz and Irene Aziz, Defendants to Counterclaim

-AND BETWEEN-

Iron Horse Farm Inc., Plaintiff

AND:

Torrey Pines Stable Inc. and Eric Lamaze, Defendants

BEFORE: Kurz J.

COUNSEL: Jerome Morse and David Trafford, for the Plaintiff/ Defendant to Counterclaim

Timothy Danson, for the Defendants/ Plaintiffs by Counterclaim

HEARD: August 11, 2023

ENDORSEMENT

Introduction

[1] On July 31, 2023, Eric Lamaze and Torrey Pines Stable Inc. brought a motion before me to deal with answers/refusals at a discovery, leave to cross-examine a third party and to adjourn the trial in these combined actions. I did not proceed with the

motion because I required a factum for the first two subjects of the motion and because of questions regarding the true state of Mr. Lamaze's health; the ostensible reason for the adjournment request.

[2] In this endorsement, I set out the reasons that I dismiss the request for a trial adjournment. I also set out next steps in regard to this motion.

Background

[3] Iron Horse Farm Inc. ("Iron Horse"), is a corporation that runs a horse stable. It brings two separate breach of contract actions related to the world of equestrian riding. The two actions are now joined, to be tried together or one after the other as directed by the trial judge.

[4] In the action against Eric Lamaze and his stable, Torrey Pines Stable Inc., ("Torrey Pines") Iron Horse alleges breach of contract, conversion and unjust enrichment regarding the sale of three horses. Iron Horse claims that the three horses are not of the quality represented to it by Mr. Lamaze. Mr. Lamaze and Torrey Pines deny the allegations.

Rationale for the Motion to Adjourn

[5] Mr. Lamaze's notice of motion dated July 12, 2023 offered the following rationale for his adjournment request:

The defendant, Eric Lamaze, (Torrey Pines) has been battling brain cancer for a number of years, which has now spread to his throat. Provided that his vitals are stable, Mr. Lamaze is scheduled to undergo a further surgery on or about July 11, 2023. Obtaining instructions is currently unattainable, but assuming that all goes reasonably well, taking into account his cognitive impairment, further time will be required to prepare for trial.

[6] In support of the request for adjournment Mr. Lamaze's counsel filed the affidavit of Marjan Delavar, a lawyer with his counsel's firm, dated July 12, 2023. Ms. Delavar offered a brief biography of Mr. Lamaze, an acclaimed champion equestrian. She stated that he was diagnosed with brain cancer in November 2017, but continued

to compete until September 12, 2021. She asserted that he has not ridden since then, but formally retired on March 30, 2022.

[7] Ms. Delavar stated that on or about June 12, 2023 “we” were informed by Mr. Lamaze that his cancer has spread to his throat. Surgery scheduled for June 30, 2023 was postponed until July 11, 2023. She opined, that “[a]s a result of our attempted communications with Mr. Lamaze, it is clear to us that Mr. Lamaze is despondent and cognitively impaired”. She then attached a chronology of Mr. Lamaze’s battle with cancer that “we” prepared in April 2022.

[8] Ms. Delavar’s affidavit included no medical reports or records. But it did include three photos which had been supplied to Mr. Lamaze’s counsel on his behalf. They purport to graphically show Mr. Lamaze’s disfigured face after surgery.

[9] Mr. Morse, counsel for Iron Horse, did not accept the representations in Ms. Delavar’s affidavit regarding Mr. Lamaze’s ill health. He was more than sceptical in light of the fact that Mr. Lamaze made similar claims in early 2019, in the hopes of adjourning his discovery. But he was later found to have been successfully involved in three separate equestrian events in Florida, on March 13, 14 and 16, 2019.

[10] On March 11, 2019, Iron Horse moved to compel Mr. Lamaze’s attendance at a discovery. In the face of claims regarding Mr. Lamaze’s ill-health, Master Graham expressed the need for Mr. Lamaze to prove that his medical condition was as dire as his counsel claimed on his behalf. Master Graham wrote the following in his March 11, 2019 endorsement:

It is not disputed that Mr. Lamaze has undergone treatment for a life-threatening medical condition, which could possibly affect his ability to attend to be cross-examined. However, if that is the case, his counsel acknowledges that he must provide medical evidence to that effect.

[11] In the face of Iron Horse’s motion, Mr. Lamaze did attend for his examination on April 5, 2019 without being ordered to do so. On May 3, 2019 Master Graham ordered Mr. Lamaze to pay costs of the motion to Iron Horse, but not at the scale

requested. Neither of Master Graham's endorsements makes reference to the filing of any medical reports that confirm the state of Mr. Lamaze's health.

[12] After receipt of Ms. Delavar's July 12, 2023 affidavit, Mr. Morse requested an electronic copy of the photo of Mr. Lamaze, so that he could check the metadata. Mr. Danson never did so. He originally objected to the request as being unseemly. In fact, he asked me to remove the photos from the record. I refused that request. Mr. Danson later stated that he was unable to provide an electronic copy of the photos as he had received them by Instagram. He asserted that the Instagram transmission effectively scrubbed the photos of their metadata.

[13] In the evening of July 25, 2023, Mr. Lamaze's counsel sent to Mr. Morse an unaddressed "To whom it concerns" medical report dated April 5, 2023. It was purportedly written in Dutch by Dr. Oulad Taib a neurosurgeon at the Chirec Cancer Institute in Brussels, Belgium. This report was forwarded to Mr. Danson by a representative on behalf of Mr. Lamaze, who is also apparently in Brussels.

[14] Suspicion was aroused because the website of the Chirec Cancer Institute describes the doctor as "Dr. Nordenyn Oulad Ben Taib". Further, the Chirac website lists Dr. Ben Taib's spoken languages as French, English and Arabic, not Dutch. There was also concern that the address on the report was incorrect.

[15] The contents of the purported Taib report raised even more suspicions. It stated that Mr. Lamaze had been diagnosed with a severe, inoperable brain tumor which required a form of chemotherapy to shrink it. It spoke of a "great risk of failure" and that eight doctors are looking after Mr. Lamaze. It concluded by stating:

I have been in contact with Mr. Lamaze since January 31. He's never been the same. We feel his reputation is ruined and suffering from mental distress. We can only go almost 3 months without proper nutrition and stress could be too late, he is confused and in pain that his condition has no consideration we will do what we can but he needs access to funds. Thank you so much, we can estimate that his chance today is 50/50.

[16] It seems incongruous that a neurosurgeon would opine regarding the state of Mr. Lamaze's reputation, mental distress, stress, nutrition and his financial status.

Equally questionable is the vague and unexplained “50/50” prognosis offered for what is apparently Mr. Lamaze’s chances of survival.

[17] Mr. Danson also produced another report under the letterhead of the Chirac Cancer Institute. It was undated and contained an illegible signature with no typed signing line (the “unidentified report”). The unidentified report only raised more suspicions. It stated that Mr. Lamaze “is a patient under my direct care as well as my colleagues at the Delta Chirec Cancer Institute, located in Brussels.” It stated that Mr. Lamaze had been diagnosed with a brain tumor called glioblastoma in 2017 and had been under “our care” ever since.

[18] The unidentified report continued, stating that Mr. Lamaze had been scheduled for a “high risk” craniotomy on August 11, 2023. The unknown author offered this pessimistic prognosis:

It is expected that Mr Lamaze will not be able to speak, quite possibly on a permanent basis and will also require a lengthy rehabilitation process that could exceed a year or more due to the severity of the tumor.

[19] The report concluded that Mr. Lamaze had been instructed to reduce all stress in order to retain the capacities necessary for surgery and recovery.

[20] Mr. Danson also produced a February 23, 2023 letter from a plastic surgeon named Axel de Vooght. Dr. de Vooght’s letterhead describes him as being with the Chirec Hospital but at a different address than the one in the unidentified report. It states that Dr. De Vooght has Mr. Lamaze in treatment. It adds that “[f]urther surgery (multidisciplinary team) is needed very soon to address his medical issue which is an evolutionary condition.”

July 31, 2023 Attendance

[21] After hearing from the parties on July 31, 2023, I adjourned the motion to August 9, 2023. I did so to allow for Mr. Danson to file a factum and counsel to arrive at a new litigation schedule for the portion of the motion dealings with undertakings and refusals as well as third-party cross-examination. I also adjourned the issue of a trial adjournment to the same date. In regard to that issue, I wrote:

Without making any finding about Mr. Lamaze's credibility, I can say that Mr. Morse's concerns are at least reasonable. Mr. Danson points out that he too wishes to obtain a report similar in format to the one sought by Mr. Morse as it will demonstrate the veracity of Mr. Lamaze's claims as to the urgent and grave state of his health.

[22] I further directed Mr. Danson to produce an up to date and signed medical report from one of Mr. Lamaze's surgical oncologists or other treatment doctors setting out Mr. Lamaze's 1) present conditions, 2) symptoms, 3) diagnosis, 4) prognosis and 5) future course of treatment (including any surgery). I required that the report be sent to both Mr. Danson and Mr. Morse.

August 9, 2023 Attendance

[23] On the return of this matter on August 9, 2023, Mr. Danson produced another report, ostensibly from a doctor at the Chirec Cancer Institute, which had been provided to him by a representative of Mr. Lamaze. That report was dated August 2, 2023. Its author was identified as Dr. Benoit Pirotte, a neurosurgeon at Chirac. It purported to be signed by Dr. Pirotte.

[24] The Dr. Pirotte report was in parts virtually identical to the unidentified report. However, the author offered the additional information that Mr. Lamaze was also diagnosed with "Laryngeal throat cancer which has attached itself to the larynx". The report stated that surgery on July 11, 2023 successfully removed parts of the tumor, but additional surgery will be required to remove the remaining tumor and try to repair the damage to Mr. Lamaze's vocal chords, which now leave him unable to speak. While surgery had been scheduled for August 4, 2023, Mr. Lamaze was found not to be sufficiently stable for the procedure.

[25] The final paragraph of the "Dr. Pirotte" report is almost identical to the of the unidentified Chirac doctor cited above. But it adds that:

Mr. Lamaze is at risk of never having the ability to communicate verbally again. Currently Mr. Lamaze is very ill. He is weak, despondent and cognitively impaired.

[26] The final sentence of the report is identical to that of the unnamed doctor, in the unidentified report. It cites Mr. Lamaze's need to reduce stress.

[27] I note that the signature in the "Dr. Pirotte" report does not match that of the unnamed Chirac doctor in the unidentified report. Further, while the signatory's return address in the two reports is virtually identical, the unknown doctor lists it as "Avenue Louise 284/1050 Brussels". "Dr. Pirotte" also lists his address as "Avenue Louise 284/1050" but describes his city as "Bruxelas".

[28] Because of Mr. Morse's continued concerns about the veracity of medical evidence offered on behalf of Mr. Lamaze and whether that evidence represented a fraud on the court, I encouraged counsel to attempt to contact Dr. Pirotte themselves by telephone, at the phone number set out at the Chirec Hospital website. They were unable to do so that day. They were told that he is on holidays despite the ostensibly scheduled surgery that week. In the circumstances, I adjourned the motion for two days, to today.

August 11, 2023 Attendance

[29] Today I was presented with two affidavits of David Trafford, a lawyer with Mr. Morse's firm, dated August 10 and 11, 2023. Mr. Trafford stated that Iron Horse had retained a Belgian investigator to determine the validity of the reports ostensibly authored by Dr. Taib and Dr. Pirotte.

[30] In his August 10, 2023 affidavit, Mr. Trafford exhibits an email and the signed report of a Belgian licenced private detective, Johan Coppens. It states that on August 10, 2023, Mr. Coppens, met with Dr. Oulad Ben Taib at the Chirec "Delta Hospital" in Brussels. Dr. Ben Taib confirmed to the investigator that the signature on his purported report is not his and that he does not speak the Dutch language.

[31] According to his report, the investigator then attended at the legal department at the Chirec Delta Hospital later that day. The investigator spoke to an employee at the legal department, who "confirmed" that the "documents of ***Dr. Oulad Taib*** and ***Dr. Benoit Pirotte*** are forged" [emphasis in original].

[32] The August 11, 2023 Trafford affidavit exhibited a letter from Aline De Walsche, in house legal counsel of the Chirec Hospital Group. The letter was addressed to the private detective, Mr. Coppens. The letter dated August 10, 2023, states that Dr. Ben Taib told Mr. De Walsche that his purported report “was a fraudulent document”.

[33] Ms. De Walsche added that she contacted Dr. Pirotte as well. Regarding his purported report, Dr. Pirotte stated, in French, with Ms. De Walsche’s translation, “It’s a fake. I never wrote this letter and moreover I have no memory of this patient. The signature is different from mine. I have never written on behalf of the Chirec Cancer Institute. Finally, when I write in English, I sign ‘Benoît JM PIROTTE MD PhD’”. The purported August 2, 2023 report is signed by “Dr. Benoit Pirotte”.

[34] Ms. De Walsche referred to the two alleged reports as “fraudulent acts”.

Analysis

[35] In light of the information set out above, I find that there are no grounds to adjourn the trial in these actions. I cannot find any of the evidence that Mr. Lamaze relies upon in requesting a trial adjournment to be either credible or reliable.

[36] I dismiss the portion of Mr. Lamaze’s motion in which he seeks an adjournment of the trial.

[37] Mr. Danson stated that in light of the revelations contained in the two recent Trafford affidavits, he would be moving to remove himself from the record. Any such motion shall be made to my attention. It may be made in writing. The motion shall comply with Rule 15.04(1) - (1.3), with the affidavit under seal and only the notice of motion served on Mr. Morse.

[38] Ricchetti J. has now appointed me case manager of these two actions. I will retain that role until and unless this matter goes to trial.

[39] I was going to conduct a settlement conference in the *Iron Horse v. Vince et al.* action in September, but I am not sure whether Mr. Danson will be removing himself

from the record in that matter. If he confirms that he will be willing to do so, I will schedule an attendance.

[40] Mr. Morse sought further relief, including a costs award of \$25,112.41, payable within 15 days, failing which Mr. Lamaze's pleadings will be struck. He also sought other deadlines for Mr. Lamaze to appoint new counsel if Mr. Danson is removed from the record. I agree with Mr. Danson that he has no instructions regarding that other relief and thus I will not deal with it.

[41] But because Mr. Morse and his client are entitled to know whether this matter will return to trial, and because both Mr. Morse and Mr. Danson have a busy trial schedule in September 2023, I adjourn the balance of this motion (including the scheduling of the undertakings/refusals motion) before me to August 31, 2023 at 10:00 a.m.

[42] However in order to ensure procedural fairness for Mr. Lamaze, I require Iron Horse to serve and file another notice of motion, returnable August 31, 2023, setting out the exact relief requested against Mr. Lamaze. In light of the further relief that is being sought, which is based on an argument that Mr. Lamaze has perpetrated a fraud on the court, I require that motion be accompanied by affidavit evidence that complies with Rule 39.04.

[43] Provided that the motion materials are served while Mr. Danson is on the record, they may be served on him.

[44] I have scheduled the motion on a date that I am scheduled to be on holiday in order to accommodate counsel. For that reason and to ensure that it will proceed on the date scheduled, Mr. Morse or Mr. Trafford will file a confirmation form at least two days prior to the scheduled date for the motion.

[45] Costs are reserved to that return date.

"Marvin Kurz J."

Electronic signature of Justice Marvin Kurz

Date: August 14, 2023