

CITATION: Highlight Motor Freight Inc. v. Highway 50
and 7 Equities Inc et al., 2026 ONSC 5364
COURT FILE NO.: CV-24-00004402
DATE: 2026 09 22

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: HIGHLIGHT MOTOR FREIGHT INC., **plaintiff**

AND:

HIGHWAY 50 & 7 EQUITIES INC.
PANGREEN LIMITED PARTNERSHIP
9404635 CANADA INC.
GREYCAN 7 PROPERTIES LIMITED
PARTNERSHIP
GREYCAN 7 PROPERTIES GP. INC., **defendants**

BEFORE: Associate Justice NITCHKE

COUNSEL: GALESSIERE, LINDA, for the **plaintiff**
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LONSDALE, CHRISTINE & KANJI, ADAM, for the **defendants**
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HEARD: May 15, 2026, by video conference

ENDORSEMENT

[1] There are two motions brought in this proceeding. The Plaintiff brings a motion to compel a specific individual to attend an examination for Discovery as representative on behalf of the Defendant. The Defendant brings a motion to compel a representative of the Plaintiff corporation to attend an examination for discovery.

[2] For the reasons that follow, both motions are granted.

Background:

- [3] The underlying dispute in the action is a breach of a lease agreement between the Plaintiff (“Tenant”) and Defendant (“Landlord”). The Defendants Highway 50 & 7 Equities Inc., Pangreen Limited Partnership, 9404635 Canada Inc., GreyCan 7 Properties Limited Partnership, and GreyCan 7 Properties GP, Inc. are collectively the owners of the property. All Defendants are represented by the same counsel and for the purposes of this motion, are collectively to be considered as the Defendant/Landlord.
- [4] The dispute between the parties relates to the construction of a building (the “building”) that was to be leased by the Plaintiff and located at Highway 50 and 7 in Brampton, ON. In its Statement of Claim, the Plaintiff alleges that the Landlord failed to complete the construction of the building in accordance with the terms of the lease, and that such failure amounted to a fundamental breach of contract entitling the Plaintiff to terminate the lease and sue for damages.
- [5] The Defendant counterclaimed against the Plaintiff for damages for breach of contract by abandoning the premises, damaging the premises and failing to pay rent.

Motion #1) The Plaintiff’s motion to examine Alex LaCivita on behalf of the Defendant Landlord

- [6] The Plaintiff terminated the lease on June 30, 2024, and commenced this proceeding by issuance of a Statement of Claim demanding, among other things, the return of its \$1.6M deposit. According to the Plaintiff, determining what transpired during the construction of the building is central to the issues in dispute.
- [7] The Plaintiff understood that the lands upon which the building was being constructed were being developed by a company known as Panattoni Development Company (“Panattoni”). After the lease was executed, an individual

named Alex LaCivita introduced himself to the president of Highlight Motor Freight Inc. as the person responsible for the construction of the building. The Plaintiff alleges that thereafter, all negotiations, discussions and correspondence regarding the construction of the building was either with and/or included Mr. LaCivita and that Mr. LaCivita held himself out as the Construction Manager of Panattoni.

- [8] The Plaintiff argues that public records indicate that Panattoni was the owner of the Project, and that Panattoni itself had made representations that it was the owner/developer. It points to documents contained in the Defendant's Affidavit of Documents referring to the project as a "Panattoni project."
- [9] Further, the Plaintiff notes that the lease itself was signed by Wade Dobbin, who is one of three founding partners of Panattoni. Moreover, Carl Panattoni, another founder of Panattoni, is or was listed as an officer/director of one of the Defendant landlord entities (Greycan 7 Properties GP, Inc.).
- [10] The Plaintiff seeks to examine Mr. LaCivita specifically, on behalf of the Defendant, as it believes he is the person with the best and most knowledge of the matters in dispute, having been involved in all aspects of the construction issues with first-hand knowledge of the core issues in dispute.
- [11] The Defendant opposes on the basis that Mr. LaCivita does not fall within the class of persons available to be examined on behalf of a corporation under the *Rules*. He is neither an officer, director, nor employee of any of the Defendant entities. The Defendant states that if the Plaintiff wants to examine Mr. LaCivita, the proper procedure is to bring a motion to examine a non-party under Rule 31.10.
- [12] The Defendant submits that the ownership of the Property was readily ascertainable from both the lease and the parcel register. The lease specifically identified the Landlord entities as being the parties to this action, and the parcel register likewise disclosed ownership of the Property. In the Defendant's submission, there could have been no misunderstanding as to the proper parties to the lease, which did not include Panattoni.

- [13] One of the witnesses the Defendant has proposed to give evidence is a Property Manager for the property. She is not directly employed by the Defendant landlord, but is employed through a property management company called CAP Ontario Inc. She handled all issues relating to the administration of the lease between the parties in this action.

The Law

- [14] Rule 31.03 of the *Rules* reads as follows:

On Behalf of Corporation

(2) Where a corporation may be examined for discovery,

(a) the examining party may examine any officer, director or employee on behalf of the corporation, but the court on motion of the corporation before the examination may order the examining party to examine another officer, director or employee [...]

- [15] A strict view of Rule 31.03 suggests that an individual who does not have the legal status of an officer, director or employee could not be compelled to testify on behalf of a corporation (see *Dr. Robinson v. London Health Sciences Centre*, 2013 ONSC 6340 at para. 52).
- [16] There is no dispute that the Defendant has no employees. It does, however, have directors and officers. The Plaintiff submits that none of the Landlord's directors or officers were involved in the matters giving rise to this dispute, which primarily concerns the construction of the building. According to the Plaintiff, Mr. LaCivita is the only individual with direct knowledge of the alleged delays and deficiencies in the construction project and the only person capable of providing evidence on those issues.
- [17] The Defendant argues that Mr. LaCivita does not have the ability to bind the corporate Defendant, and that it would be prejudiced if it was forced to accept the evidence of a non-employee as binding on it. It submits that it need only present a

corporate representative who possess sufficient knowledge of the facts and issues in dispute or be an appropriate person to obtain such knowledge. The Defendant emphasizes that a representative witness is under an obligation to inform themselves, and that the *Rules* contemplate that the witness may provide undertakings to obtain information or evidence that falls outside their direct knowledge.

Is Mr. LaCivita an “officer, director or employee” under an expanded definition?

[18] The Plaintiff submits that the meaning of “officer” should be interpreted broadly for the purposes of Rule 31.03. In support of that position, it relies on *Bell v. Klein* (No. 3), 1954 CanLII 242 (B.C.C.A.), where the Court held that a company auditor, elected by the shareholders, was the equivalent to a statutory officer who could be questioned by shareholders at the annual meeting. In that sense, the Court held that this individual could be examined for discovery as a company officer “in a wider sense” than one holding only an executive, administrative or advisory office in the company.

[19] In *Bell*, the Court referred to the case of *Elliott v. Holmwood & Holmwood, Ltd.*, 1915 CanLII 358 (BC SC) where the Court stated that a definition of “officer” had been given a liberal construction, which may extend to employees who are servants, and not just higher governing officers. The Court developed the “best informed” test and held that:

“[t]he object of the rules is to discover the truth relating to the matters in question in the action, and the examination ought to be of such “officer” of a defendant company as is best informed as to such matters.”

[20] The Plaintiff submits that Panattoni was so intrinsically tied to the Defendant entities that Mr. LaCivita ought to be considered an “officer” under an expanded definition. Moreover, it contends that he is a person “best informed” as to the matters in question.

- [21] One Ontario case that has adopted the approach from British Columbia is a decision of Master Clark (as Associate Judges were then known) in *Mr. Pallett Inc. v. Sadler & Van Santen Insurance Services Inc.*, 1998 CarswellOnt 5318, [1998] O.J. No. 4928. In that case, Master Clark allowed a third-party fire inspector to be produced for an examination for discovery when the defendant insurance company had only agreed to produce a claims examiner. Master Clark noted that the jurisprudence in British Columbia had widened the approach of who may be examined on behalf of a corporation. He held that the fire inspector could be considered an employee for the purposes of discovery, as this person had direct involvement in all matters related to the fire. Master Clark noted that the claims examiner could do no better than give undertakings at discovery. He stated, at para. 13, that “[i]t would be a foolish waste of time” to require the Plaintiff to examine the claims handler.
- [22] The Defendant relies on a case of *Motorola Inc. v. Or*, 2010 ONSC 1787 as distinguishing *Mr. Pallett*. In *Motorola*, Master Sproat noted that *Mr. Pallett* and other cases granting such relief had “peculiar facts” and “peculiar” circumstances, suggesting that such orders are rarely granted.
- [23] In a decision of Master Glustein (as he then was) of *Robinson v. London Health Sciences Centre*, 2013 ONSC 6340, the Master refused to make an Order requiring a physician with privileges at the defendant hospital be produced for discovery. Master Glustein accepted that while a court could expand the term “officer, director, or employee” under Rule 31.03(2)(a) to include an independent contractor, it was not an appropriate case to do so. At paras. 9 and 94 of his reasons, Master Glustein noted that it was in “limited circumstances” that an independent contractor could be included as an officer, director or employee under the expanded definition, involving consideration of factors such as:
- a. the extent to which the issues in the action arise from (a) external matters in which the proposed non-corporate representative is the critical witness such that corporate representatives cannot provide evidence on the issues

or (b) "internal" corporate decisions involving corporate representatives who can provide or obtain evidence on the issues;

- b. whether the proposed representative acted as an independent contractor or employee at the material time;
- c. whether there is a statutory duty on the proposed representative to provide the information sought on examination for discovery.

[24] At para. 95, Master Glustein noted that the test is not whether the proposed non-corporate representative was a "better representative" with more knowledge than the proposed corporate representative, but that the test was whether the representative had sufficient knowledge of the events at issue. After reviewing the relevant factors to consider, he concluded that it was not appropriate to make the order sought. He concluded that the case engaged significant internal matters that could properly be addressed by the defendant hospital's proposed witness.

[25] In *Joseph Silaschi General Contracting (Kitchener) Ltd. (c.o.b. Reliable Construction) v. Kitchener (City)*, Scott L.J.S.C. distinguished *Holmwood* and held that it could not stand for the proposition that the word "employee" should be given such a liberal construction so as to include an independent contractor, even though the latter may have the ability to give the necessary information.

[26] However, Scott L.J.S.C. distinguished between the facts before the Court and one with a "conduit pipe theory," in the case of *Cdn. Indemnity Co. v. A.G.B.C.* (1974), 49 D.L.R. (3d) 610. There, the BC court allowed a servant of an agent association of corporations that were controlling members of the sued corporation to be considered the servant of that corporation for the purpose of discovery.

[27] Similarly, in this case, the Defendant landlord corporations had no employees of their own, while the development and construction of the project were carried out through Panattoni personnel. In addition, certain Panattoni officers occupied executive roles within one or more of the Defendant entities. The evidence discloses a significant degree of overlap between Panattoni and the Landlord

corporations, and that the project itself was handled externally as opposed to internally.

- [28] Against that backdrop, I am satisfied that the present case is one of those rare instances in which the relief sought ought to be granted. I emphasize, however, that this conclusion is driven by the unique factual matrix before the Court. Nothing in these reasons should be understood as lowering the threshold for similar requests, which will continue to be granted only in exceptional circumstances.
- [29] My conclusion is further strengthened by the Defendant's selective reliance on Rule 31.03(2). While it objects to the examination of Mr. LaCivita because he is not an officer, director, or employee of the Landlord entities, it does not raise the same objection with respect to Ms. Ribeiro, notwithstanding that she is similarly situated. In my view, this diminishes the force of the Defendant's jurisdictional objection and supports the conclusion that it is appropriate in the circumstances to order the examination of a person who is not directly employed by the Landlord entities. Reaching this conclusion advances the truth-seeking function of the discovery process and may assist in narrowing the issues between the parties.

Motion #2) The Defendant's motion to compel the Plaintiff to attend an Examination for Discovery

- [30] Discoveries of the Plaintiff were previously scheduled twice, neither of which proceeded. The first date was cancelled because the Plaintiff needed more time to review productions. The second date was cancelled by the Plaintiff because the Plaintiff refused to produce a representative until Mr. LaCivita was produced. The Defendant thus takes the position that it was improper for the Plaintiff to cancel the Discoveries for that reason and are now compelled to ask the Court for an Order.
- [31] Given my reasoning above, there should not be any further impediments to conducting a discovery of both parties. However, in light of the historical trouble procedurally, I am prepared to grant the Defendant's request on its motion.

[32] In accordance with the Defendant's Notice of Motion, the Plaintiff shall be required to produce Mr. Kirk Kalinitchenko as representative of the Plaintiff, for an Examination for Discovery within 30 days, or by such extension that the parties agree to in writing.

Costs

[33] Both parties were successful in their motions; however, it was the Plaintiff's motion that took precedence and who is largely the more successful party.

[34] The Plaintiff seeks its costs of \$45,000.00 on a partial indemnity basis for both motions; and states that the Defendant's motion was unnecessary.

[35] The Defendant seeks its costs of \$41,000.00 on a partial indemnity basis, for both motions. They agree that the Plaintiff's motion was more complicated, and more time was spent preparing for it.

[36] In oral submissions, each party submitted that it would be reasonable to assess costs to the successful party of the Plaintiff's motion to be \$23,000.00 + HST, and costs to the successful party of the Defendant's motion to be \$16,000.00+HST for.

[37] I am prepared to fix costs to the Plaintiff in the amount of \$23,000.00 + HST, and to the Defendant in the amount of \$16,000.00 + HST, not in set-off unless agreed to by the parties. Costs are payable within 30 days.

Associate Justice Nitchke

Released: September 22, 2026