Court of King's Bench of Alberta

Citation: Ranger v Precision Geomatics Inc., 2025 ABKB 45

Date: 20250124
Docket: 1203 14027
Registry: Edmonton

Between:

Mitchell Ranger

Appellant (Plaintiff)

- and -

Precision Geomatics Inc.

Respondent (Defendant)

Reasons for Decision
of the
Honourable Justice M. Kraus

I. Introduction

[1] The Plaintiff appeals the *Rule* 4.31 oral decision of the Applications Judge delivered on March 26, 2024. The Applications Judge granted the Defendant's application under *Rule* 4.31, dismissing the Plaintiff's action for delay. The Applications Judge did not deal with the Defendant's application for summary dismissal under *Rule* 7.3 as the Defendant was successful on the first issue.

[2] At the Appeal, the parties argued both the appeal of the *Rule* 4.31 decision and the application under *Rule* 7.3 before me.

[3] For the reasons that follow, the Appeal of the *Rule* 4.31 decision is granted and the application under *Rule* 7.3 is dismissed.

II. Factual Background

A. The Underlying Claim

[4] The nature of the claim brought by the Plaintiff is for wrongful dismissal and shareholder oppression.

[5] On May 9, 2012, the Plaintiff received two letters from the Defendant: (1) an offer to purchase the Plaintiff's share and settle a deferred shareholder loan ("Share Purchase Offer"); and (2) a notice of termination of employment referencing a release ("Notice of Termination").

[6] The Notice of Termination contemplated the payment of a retiring allowance in the amount of $14,520 ("Retiring Allowance") in exchange for an executed copy of the Notice of Termination and accompanying release.

[7] On May 10, 2012, the Defendant sent the Plaintiff another letter attaching the release referenced in the Notice of Termination that was inadvertently not enclosed (the "Termination Release").

[8] The Plaintiff never signed or returned either the Notice of Termination or the Termination Release to the Defendant. The Defendant never paid the Retiring Allowance to the Plaintiff.

[9] The Plaintiff filed his Statement of Claim on September 20, 2012, but did not serve the Defendant until February 20, 2013.

[10] In the interim, negotiations between the parties ensued over the purchase of the shares held by the Plaintiff. Ultimately, the shares were purchased by two other shareholders on December 13, 2012, pursuant to the terms of a shot gun clause contained in the Unanimous Shareholder Agreement ("USA"). Pursuant to article 10.3(d) of the USA, the Plaintiff was required to deliver a release to the Defendant in conjunction with the sale of the shares. The release was signed by the Plaintiff in favour of the Defendant on December 13, 2012 (the "Release").

[11] The Release was different than the Termination Release previously forwarded to Ranger relating to the termination of employment.

B. Procedural Steps

[12] The procedural steps taken are as follows:

(a) Statement of Claim filed on September 20, 2012.

(b) Statement of Claim served on February 20, 2013.

(c) Noting in Default of Precision on March 15, 2013.

(d) Application to set aside Noting in Default filed on June 14, 2013.

(e) Order to set aside the Noting in Default dated June 28, 2013.

(f) Statement of Defence filed on July 2, 2013.

(g) Questioning for Discovery of both parties occurred on May 6 and 7, 2014.

(h) Mr. Ranger filed and served an application to set a Litigation Plan on May 3, 2017.

(i) Application to set Litigation Plan was adjourned *sine die* on May 5, 2017.

(j) Litigation Plan was filed by consent on August 21, 2017.

(k) Questioning of parties on Responses to Undertaking was scheduled for January 29, 2019. Representative for Precision was questioned and Mr. Ranger's questioning was rescheduled.

(l) Questioning on Undertakings of Mr. Ranger rescheduled to December 5, 2019, and then rescheduled again to January 23, 2020.

(m) Responses to undertakings were provided by Mr. Ranger on September 29, 2020.

(n) Form 37 Certificate of Trial Readiness filed on January 21, 2021.

(o) Unsuccessful JDR occurred on February 26, 2021.

(p) Application filed on December 12, 2022, requesting the matter be set down for trial. Application granted by Justice Little ordering the matter be heard on the first available dates after March 1, 2024.

(q) Trial was scheduled to be heard from March 4 to March 8, 2024.

(r) Application under *Rule* 4.31 filed on November 25, 2022, and heard by the Applications Judge on March 26, 2024.

III. The Decision Appealed From

[13] The Defendant applied to dismiss the Plaintiff's action under *Rule* 4.31 and alternatively for summary dismissal pursuant to *Rule* 7.3. The Applications Judge granted the Defendant's application under *Rule* 4.31.

[14] The Applications Judge found the delay to be inordinate and inexcusable resulting in a presumption of significant prejudice to the Defendant. Having found that the Plaintiff did not rebut the presumption of significant prejudice and finding no compelling reason not to dismiss the action, the Defendant was successful in its application under *Rule* 4.31.

[15] Given the dismissal of the action under *Rule* 4.31, the Applications Judge did not address the summary dismissal application under *Rule* 7.3.

IV. Standard of Review

[16] The standard of review of an appeal from an Applications Judge's decision is correctness and the review itself takes the form of a *de novo* application: ***Bahcheli v Yorkton Securities Inc***, 2012 ABCA 166 at para 3; ***Forestburg (Village) v Austin Carroll Pool Construction Ltd***, 2024 ABKB 587 at para 20.

[17] The Court may also consider new evidence and new arguments: see ***Charuk v Terravest Industries Limited Partnership***, 2019 ABQB 747 at para 7 and ***Aubin v Condominium Plan No 862 2917***, 2024 ABKB 156 at para 40. The Appellant filed new evidence, namely the Affidavit of Mitchell Ranger sworn May 16, 2024.

V. Issues

[18] The two issues before me are as follows:

(a) Should the Court exercise its discretion to dismiss the action under *Rule* 4.31?

(b) If the action is not dismissed under *Rule* 4.31, should the claim be summarily dismissed under *Rule* 7.3?

VI. Analysis

A. *Rule* 4.31

[19] *Rule* 4.31 reads as follows:

> **4.31(1)** If delay occurs in an action, on application the Court may
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> (a) dismiss all or any part of a claim if the Court determines that the delay has resulted in significant prejudice to a party, or
>
> (b) make a procedural order or any other order provided for by these rules.
>
> **(2)** Where, in determining an application under this rule, the Court finds that the delay in an action is inordinate and inexcusable, that delay is presumed to have resulted in significant prejudice to the party that brought the application.
>
> **(3)** In determining whether to dismiss all or any part of a claim under this rule, or whether the delay is inordinate or inexcusable, the Court must consider whether the party that brought the application participated in or contributed to the delay.

[20] The test under *Rule* 4.31 is centered on inordinate and inexcusable delay. The "action as a whole" must be considered: see ***4075447 Canada Inc v WM Fares & Associates Inc***, 2020 ABCA 150 at para 14, ***Babiuk v Heap***, 2023 ABKB 410 at para 60 [***Babiuk***], ***Oleksyn v Hi Line Farm Equipment Ltd.***, 2024 ABKB 584 at para 82.

[21] The parties heavily relied on ***Humphreys v Trebilcock***, 2017 ABCA 116 [***Humphreys***], where the Court of Appeal set up a six-part test to interpret *Rule* 4.31 in at paras 150-156:

> [150] In order to apply rule 4.31 an adjudicator must answer six distinct questions.
>
> [151] First, has the nonmoving party failed to advance the action to the point on the litigation spectrum that a litigant acting reasonably would have attained within the time frame under review?
>
> [152] Second, is the shortfall or differential of such a magnitude to qualify as inordinate?

> [153] Third, if the delay is inordinate has the nonmoving party provided an explanation for the delay? If so, does it justify inordinate delay?
>
> [154] Fourth, if the delay is inordinate and inexcusable, has this delay impaired a sufficiently important interest of the moving party so as to justify overriding the nonmoving party's interest in having its action adjudged by the court? Has the moving party demonstrated significant prejudice?
>
> [155] Fifth, if the moving party relies on the presumption of significant prejudice created by rule 4.31(2), has the nonmoving party rebutted the presumption of significant prejudice?
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> [156] Sixth, if the moving party has met the criteria for granting relief under rule 4.31(1), is there a compelling reason not to dismiss the nonmoving party's action? This question must be posed because of the verb "may" in rule 4.31(1).

[22] After the ***Humphreys*** decision, the Court of Appeal in ***Transamerica Life Canada v Oakwood Associates Advisory Group Ltd.***, 2019 ABCA 276 [***Transamerica***] suggests that the ***Humphreys*** test is helpful but not the only approach to the analysis under *Rule* 4.31. At para 15, the Court indicated the ultimate consideration is "significant prejudice":

> [15] The objective of the exercise must be remembered. It is to determine whether the delay is inordinate, inexcusable, or otherwise, has caused significant prejudice to the defendant. […] Delay is not fatal just because the litigation has not progressed to the point that the "fastest" or even the "average" proceeding of that type would have reached. In order to be struck, the action must generally fall within the slowest examples of that type of proceeding, and it must be so slow that the delay justifies striking out the claim. Further, even very short delays can be grounds for striking the action if significant prejudice has resulted. "Significant prejudice" remains the ultimate consideration.

[23] Similarly to what was indicated in ***Transamerica***, the Court of Appeal refined the framework for the analysis to *Rule* 4.31 in ***Morrison v Galvanic Applied Sciences Inc.***, 2019 ABCA 207 [***Morrison***]. The ***Morrison*** analysis states:

> 13 A characterization of delay as "inordinate" triggers the next query. Has the nonmoving party accounted for the delay and does the explanation justify the pedestrian pace at which the action has been prosecuted?
>
> 14 If the adjudicator concludes that the delay is both inordinate and inexcusable, the rebuttable presumption recorded in rule 4.31(2) comes into play: "Where ... the Court finds that the delay in an action is inordinate and inexcusable, that delay is presumed to have resulted in significant prejudice to the party that brought the application."
>
> 15 It is the burden of the nonmoving party to demonstrate on a balance of probabilities that the delay has not caused the moving party significant prejudice.

[24] In my view, it is arguable that the delay in this action is inordinate, and if so, this is a borderline case. However, given the Plaintiff did not seriously dispute that the delay was inordinate and much of the arguments made focused on providing an explanation to justify the

delay, I accept the categorization that the delay is inordinate and move to assess if the Plaintiff has accounted for and provided an explanation to justify the delay.

VII. Is there an Explanation for the Delay to Justify the Inordinate Delay?

[25] Mr. Ranger argues that the delay is justified because personal circumstances prevented Mr. Ranger from moving the matter forward, and Precision contributed to and acquiesced to the delay.

A. Personal Circumstances

[26] Mr. Ranger provided evidence that there were personal circumstances beyond his control that negatively impacted his ability to move the matter forward in a more timely manner, which included lack of employment and financial constraints during the Covid-19 pandemic.

[27] The Litigation Plan provided that Questioning on Undertakings be completed by December 14, 2017. The Questioning on Undertakings was scheduled for both parties on January 29, 2019. Mr. Devlin, the Officer for Precision, was questioned on January 29, 2019.

[28] Mr. Ranger did not attend his Questioning on Undertakings because he was out of town due to a death in his immediate family. He was subsequently laid off from his employment and could not afford to pay his legal expenses. His Questioning was rescheduled for later in 2019.

[29] Mr. Ranger found a 3-week employment contract which delayed his scheduled Questioning from December 5, 2019 to January 23, 2020.

[30] Again, Mr. Ranger's ability to find work was affected by Covid-19, and he could not secure employment and was unable to pay his legal expenses. He provided his Responses to Undertakings in September 2020, some nearly 9 months after his Questioning and nearly 20 months later than contemplated in the Litigation Plan.

[31] After an unsuccessful JDR on February 26, 2021, the parties waited about 18 months to take the next step. Part of the reason for the delay was that Covid-19 affected Mr. Ranger's ability to earn income to pay the legal expenses for the JDR and other steps.

[32] In ***Huerto v Caniff***, 2014 ABQB 534, a decision dealing with *Rule* 4.33, Shelley J. stated that the impecuniosity of a plaintiff or its inability to retain counsel is not, without more, an adequate excuse. Precision argued that finding that an inability to pay legal fees as justification of a delay under *Rule* 4.31 would cause Precision to be indefinitely at the mercy of Mr. Ranger's ability to pay. Mr. Ranger argued that the analysis of impecuniosity of a plaintiff ought to be considered differently pursuant to *Rules* 4.33 and 4.31. In ***Davenport Homes Ltd. v Cassin***, 2015 ABQB 138, in the context of a *Rule* 4.31 analysis Shelley J. applied the same principle. The difference between the application under *Rules* 4.33 and 4.31 is that the language under *Rule* 4.33 is mandatory while the analysis under *Rule* 4.31 is discretionary.

[33] While I agree that impecuniosity of a plaintiff, without more, is not proper justification for failing to advance an action, in my view, this is a situation where there were more contributing factors behind the impecuniosity that ought to be considered in the analysis. Due to the nature of Mr. Ranger's employment and the uncertainties of availability of work in the face of the Covid-19 pandemic, it was reasonable in the circumstances for Mr. Ranger to prioritize taking on work contracts notwithstanding the ongoing litigation. He made efforts to secure financing, including taking on work contracts as they became available, borrowing money from

his mother to pay his legal expenses, and sold personal assets to continue to advance the litigation.

[34] I find that Mr. Ranger's personal circumstances provide some justification for the delay in moving his claim forward.

B. Defendant contributed or acquiesced to the Delay

[35] Mr. Ranger cites three instances of delay either attributable solely to Precision or jointly to Precision. Also, although Precision is admitted to not have been obstructionist, Mr. Ranger argues that Precision participated in the delay. Under *Rule* 4.31(3), the Court must consider if the moving party participated or contributed to the delay: ***XS Technologies Inc v Veritas DGC Land Ltd.***, 2016 ABCA 165.

[36] First, the Statement of Claim was served on February 20, 2013, and the Statement of Defence was served on July 2, 2013. Precision failed to file a Statement of Defence. This resulted in Precision being noted in default and having to apply to set aside the Noting in Default. A defendant must file and serve its Statement of Defence within 20 days. In this matter, Precision took over 5 months, including the application to set aside the Noting in Default. This delay is solely attributable to Precision.

[37] Second, after Questioning of both parties on May 6 and 7, 2014, neither side responded to the Undertakings for about 35 months (the "Undertaking Delay").

[38] The Undertaking Delay was a period of joint delay with both parties bearing some responsibility for failing to meet their positive obligations. The Defendant participated in the Undertaking Delay.

[39] Third, while the parties ultimately reached an agreement on the Litigation Plan, it took 4 months to agree upon its terms despite the Plaintiff making reasonable efforts to get the Litigation Plan in place.

[40] Mr. Ranger also took diligent steps to schedule the Questioning of Precision's corporate representative. Despite Mr. Ranger's efforts, it took 8 months to schedule.

[41] The Defendant sat on its own obligations. It delayed the filing and service of its Statement of Defence, delayed in providing Responses to Undertakings and failed to meet the deadlines agreed upon in the Litigation Plan.

[42] While the plaintiff is responsible for moving the action along, when making an application under *Rule* 4.31, the defendant cannot rely on his own delay in responding to the Plaintiff: see ***Riviera Developments Inc. v Midd Financial Corp.*** 2002 ABQB 954 [***Riviera***], at para 23.

[43] Although the Defendant is an unwilling participant in the litigation, the Court in ***Transamerica*** set out a non-exhaustive list of examples when a defendant has a positive obligation to take steps in the litigation, including: (a) filing a statement of defence, (b) responding to undertakings within a reasonable time, and (c) complying with a litigation plan. These are all relevant considerations in this appeal.

[44] The Court in ***Transamerica*** stated at para 30:

> [30] These are just examples. The rules contain many steps that call for a response by the defendant within a fixed or a reasonable time. Some, such as R. 6.37(3),

> contain their own remedy. Sometimes the parties will acquiesce in a leisurely pace of the litigation, but when that happens in the face of positive procedural obligations on the defendant, the defendant cannot subsequently rely on the resulting delay in an application to dismiss.

[45] Ranger argues that Precision acquiesced to the delay, relying on ***Transamerica*** and ***Protection of the Holy Virgin Mary Orthodox Convent v Oustinow Estate*** [***Oustinow Estate***], 2023 ABKB 462 at paras 66, 71 and 91-93. Acquiescing to the delay may be a compelling reason not to dismiss the action: see ***Oustinow Estate*** at para 91.

[46] A culture of complacency does not displace the onus on the plaintiff to move the case forward, but the defendant cannot rely upon the delay arising from an acquiescence to a leisurely pace of litigation: see ***Transamerica*** para 30.

[47] The delay attributable solely or jointly to Precision is approximately 48 months. I find that this period of delay is a partial excuse for the overall delay.

[48] I also note that the Defendant executed a Form 37 certifying this matter was ready for trial which was filed on January 21, 2021. In ***422252 Alberta Ltd. v Messenger***, 2019 ABQB 251 at para 24, the Court indicated that a contextual analysis is required and that a party that agrees to set a trial date may be barred from seeking to dismiss the action for delay: see also ***Trademark Calgary Holdings Inc v Hub Oil Company Ltd.***, 2019 ABQB 42 at para 93. When the Defendant executed the Form 37, it was certifying that the matter was ready to proceed to trial and was waiving its right to complain of the delay up to that point.

[49] On December 12, 2022, Mr. Ranger filed an application to set this matter down for trial resulting in Justice Little's Order on January 11, 2023. As a result of Justice Little's Order, this matter was directed to be scheduled for trial after March 1, 2024, and was scheduled for trial March 4-8, 2024. Setting this matter down for trial took just less than 10 years from the date of service of the Statement of Claim.

[50] Instead of proceeding to trial, the trial dates were vacated because Precision filed its application under *Rule* 4.31 in November 2022. The application was heard and decided by the Applications Judge on March 26, 2024. The delay after the Defendant filed its application and any corresponding prejudice, if any, cannot be attributed to Mr. Ranger.

[51] In all the circumstances, I find that the delay is excusable.

C. Has the Defendant suffered a Significant Prejudice?

[52] Having found that the delay is excusable, the presumption of significant prejudice does not apply. The onus is on the Defendant to prove significant prejudice arising from the delay. Prejudice is the most important factor in the analysis: see ***Oustinow Estate*** at para 72 and ***Transamerica***, at para 42.

[53] The significant prejudice complained of by Precision is of failing memories. In ***Humphreys***, the Court stated:

> [130] There is no doubt that the passage of time may impair a moving party's ability to defend its interests at the trial of an action. "Delay may compromise the fairness of a trial". The unavailability of crucial witnesses – death, impairment or disappearance – may diminish the strength of the moving party's case. The passage of time may also have impaired a prospective witness' ability to access

> stored data. A potential witness' mental health may have declined and place the person in a position where he or she no longer can retrieve material in a memory bank. Or a party may have lost exhibits. This may be attributable to disastrous fires or floods or mistakes made by movers or document managers.

[54] Precision did not provide any particulars or provide evidence to demonstrate that a significant prejudice occurred. A bare assertion that memories are presumed to deteriorate over a significant passage of time is not evidence of significant prejudice. The entire Questioning process had already been completed, including exchanging Affidavits of Records, Questioning for Discovery, providing Reponses to Undertakings, and Questioning on Undertakings. Further, much of the claim revolves around contractual interpretation, all records of which have already been produced and will be available to the parties and Court at trial.

[55] The fact that a Form 37 Certificate was filed on January 21, 2021, and that the matter was set down for a trial in March 2024 by Order of Justice Little granted on January 11, 2023, indicates that the parties were ready to proceed to trial. Accordingly, I find that the Defendant has not suffered any significant prejudice up to January 21, 2021, and has not demonstrated any prejudice subsequently. Had this application not been brought, the parties would have already had their trial.

[56] In my view, this was a borderline case with respect to *Rule* 4.31. *Rule* 4.31 is permissive and requires an exercise of judicial discretion whereas *Rule* 4.33 is mandatory. The analysis pursuant to *Rule* 4.31 involves looking at the "whole action": see ***Babiuk*** at para 60. Only the most extraordinary borderline cases are dismissed: ***Jordan v de Wet***, 2024 ABKB 462. The default position in such circumstances is to let the action proceed so that that the Plaintiff can have their day in Court: ***Song v Her Majesty in Right of Alberta***, 2021 ABCA 361 at para 63.

[57] Borderline cases favour allowing a matter to proceed to trial and having the matter decided on the merits. In my view, having regard to the action as a whole, including the lack of a finding of significant prejudice, this borderline case should not be dismissed under *Rule* 4.31.

VIII. *Rule* 7.3 – Summary Judgment

[58] The Defendant applies for summary dismissal of the Mr. Ranger's claim under *Rule* 7.3.

[59] The test for summary judgment is well known and set out in ***Weir-Jones Technical Services Incorporated v Purolator Courrier Ltd.***, 2019 ABCA 49 at para 47:

> The proper approach to summary dispositions, based on the ***Hryniak v Mauldin*** test, should follow the core principles relating to summary dispositions, the standard of proof, the record, and fairness. The test must be predictable, consistent, and fair to both parties. The procedure and the outcome must be just, appropriate, and reasonable. The key considerations are:
>
> a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
>
> b) Has the moving party met the burden on it to show that there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities

> or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
>
> c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
>
> d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.
>
> To repeat, the analysis does not have to proceed sequentially, or in any particular order. The presiding judge may determine, during any stage of the analysis, that summary adjudication is inappropriate or potentially unfair because the record is unsuitable, the issues are not amenable to summary disposition, a summary disposition may not lead to a "just result", or there is a genuine issue requiring a trial.

[60] In ***Hannam v Medicine Hat School District no. 76***, 2020 ABCA 343, the Court of Appeal at paras 12 and 13, made it clear that the material facts need to be proven on a balance of probabilities and that a summary trial cannot be granted if the application presents a genuine issue requiring a trial.

[61] Precision takes the position that the Release is clear and unambiguous, and that Mr. Ranger in executing the Release has released his wrongful dismissal claim and oppression claim. Therefore, Precision argues that a fair and just determination of the scope of the Release is possible with a plain reading of it. Precision argued that no surrounding circumstances need to be considered, there is no triable issue, the Release should be enforced, and that Mr. Ranger's claim be dismissed.

[62] Precision points to the wording of the Release itself which provides that for the consideration of $1.00 paid by Precision to Mr. Ranger, Mr. Ranger releases any claims which he may have against the Corporation. The body of the Release contains wording which is broad and general in scope which Precision argues are broad enough to include the wrongful dismissal claim and the oppression claim.

[63] The Release expressly excludes Deferred Loans as defined in the USA or any indebtedness of the Corporation for unpaid salary, expenses, pension or other employee benefits or any claims which may arise out of the Share Sale. There is no express exception in the Release for a claim for wrongful dismissal or oppression.

[64] Mr. Ranger advances the position that the Release is intended for the Share Sale only (with the noted exceptions) and does not include issues arising from the termination of employment in the wrongful dismissal and oppression claim. Mr. Ranger argues that it is clear from the surrounding circumstances that the Release does not apply to the claim for oppression or wrongful dismissal.

[65] Mr. Ranger filed his Statement of Claim for wrongful dismissal and oppression prior to executing the Release, however the Statement of Claim was only served after the Release was executed. Subsequently, the parties engaged in negotiations relating to the alleged wrongful dismissal and oppression.

[66] Counsel for Mr. Ranger referred me to ***Lanz v PTI Group Inc.*** [***Lanz***], 1998 ABQB 500. In that case, the plaintiff in ***Lanz*** signed a Release for a share sale as part of the share sale. Master Funduk found that there was a triable issue about the scope of the release and whether or not the release related to the plaintiff's ongoing wrongful dismissal action against the defendant. Accordingly, Master Funduk dismissed the summary judgment application.

[67] For the purpose of this application, in my view, the surrounding circumstances can be considered. In ***Sattva Capital v Creston Molly***, [2014] 2 SCR 658 at para 658:

> [...]Contractual interpretation involves issues of mixed fact and law as it is an exercise in which the principles of contractual interpretation are applied to the words of the written contract, considered in light of the factual matrix.

[68] During the negotiations, Precision drafted a different proposed release (the "Termination Release") with respect to a proposed settlement of the wrongful dismissal and oppression claim. At the time of the negotiations, Precision did not take the position that the Release applied to the wrongful dismissal and oppression claim.

[69] While Precision argues that the Release captures Mr. Ranger's claims, Courts in Alberta have held that a release operates to cover what the parties had in contemplation at the time. Even wide general words of release may be limited by that factor: see ***Athabasca Realty Co. v Foster***, (1982), 18 Alta. L.R. (2d) 385 (Alta. C.A.) at para 34 citing ***London & South Western Railway v Blackmore*** (1870), L.R. 4 H.L. 610 (U.K. H.L.); see also ***Toscana Ventures Inc. v Sundance Plumbing, Gas & Heating Ltd.***, 2013 ABQB 289 at para 20.

[70] In my view, Mr. Ranger has raised on a balance of probabilities that there is a genuine issue to be tried. It is not clear that the Release was intended to apply to the wrongful dismissal and oppression action. For the purpose of the *Rule* 7.3 application, Mr. Ranger points to uncertainties in the facts, such as different releases being circulated relating to either the Share Purchase or the Termination Notice. He also relies upon caselaw in ***Sattva Capital***, ***Lanz***, and ***Toscana***, citing ***Athabasca.*** I am persuaded and find that there is a triable issue with respect to the scope of the Release.

[71] It would not be fair and just on the record in this application before me to make a final determination about the scope of the Release. There is a genuine issue requiring a trial. Accordingly, the Defendant's application under *Rule* 7.3 is dismissed.

IX. Conclusion

[72] For the above reasons, in all the circumstances, the Appeal of the Applications Judge's *Rule* 4.31 decision is allowed, and the Defendant's application under *Rule* 7.3 is dismissed.

[73] If either party requires further directions to set this matter down for trial, they may schedule a further appearance in Civil Appearance Court.

[74] The Plaintiff is the successful party in this appeal. If the parties cannot agree to costs, they may contact me within 60 days to arrange to speak to costs.

Heard on the 21st day of November, 2024.
Dated at the City of Edmonton, Alberta this 24th day of January, 2025.

M. Kraus
J.C.K.B.A.

Appearances:

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