

FILE/DIRECTION/ORDER

KOEHNEN J.

Court File No: CV-17-577020

WISEAU STUDIO, LLC and TOMMY WISEAU d.b.a. WISEAU-FILMS

Plaintiff(s)

V.

RICHARD HARPER, FERNANDO FORERO MCGRATH, MARTIC RACICOT D.B.A.
ROCKHAVEN PICTURES, ROOM FULL OF SPOONS INC., PARKTOWN STUDIOS INC.,
RICHARD STEWART TOWNS

Defendant(s)

CASE MANAGEMENT: YES ☒ NO ☐

COUNSEL:

Tommy Wiseau on his own behalf and on behalf of Wiseau Studio LLC

Matthew Diskin on behalf of the defendants
Meredith Bacal

☐ ☒ DIRECTION FOR REGISTRAR☐ REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT☐ NO ONE APPEARED ADJOURNED TO BE SPOKEN TO COURT

[1] This direction arises out of a case management conference call held on Tuesday, December 10, 2019. The purpose of the call was to discuss trial management issues for the trial scheduled to commence January 6, 2020.

Preliminary Issues

(a) New Counsel for Plaintiffs

[2] Mr. Wiseau raised the issue of new counsel. He would like to retain Mr. Matthew Frontini. Mr. Frontini did not appear at the case conference today.

[3] The defendants object. Mr. Frontini was a lawyer with Gilbert's LLP until earlier this year. Defendants counsel, Mr. Diskin and Ms. Bacal were also with Gilbert's LLP until earlier this year. I advised Mr. Wiseau that, in principle, the fact that both Mr. Frontini and defence counsel were at Gilbert's LLP at the same time and while defence counsel was defending this action, would, prima facie, conflict him out of acting for the plaintiffs: MacDonald Estate v. Martin, [1990] 3 S.C.R. 1235.

[4] I advised Mr. Wiseau that, while I was not precluding any argument on the issue if Mr. Frontini if he wanted to formally get on the record, the Supreme Court of Canada jurisprudence on the point was fairly clear. As a result, Mr. Wiseau would probably be better served by focusing his time and energy on finding new counsel rather than fighting about whether Mr. Frontini could act. Any time spent debating the issue of Mr. Frontini's ability to act would not result in a delay of the trial scheduled to begin on January 6, 2020.

(b) Motion to Set Aside Order Dissolving the Interim Injunction and Cost Awards

[5] Early this morning I received a notice of motion from Mr. Wiseau seeking to bring a motion returnable at the trial scheduling conference for an order to set aside my dissolution of the interim injunction in this matter and the cost order awarded against the plaintiffs on account of the interim injunction.

[6] I declined to hear the motion. I set aside the interim injunction approximately two years ago. Mr. Wiseau is well out of time to raise issues about that order. Moreover, Mr. Wiseau sought leave to appeal that order to the Divisional Court. Leave was denied.

(c) Motion to Adjourn Trial

[7] The plaintiffs ask me to adjourn the trial scheduled to begin on January 6, at 2020 in order to permit them to pursue with the Crown Attorney, allegations of perjury against the defendants. Mr. Wiseau submits that the civil trial should not proceed until the allegations of perjury he wishes to raise against the defendants have been resolved.

[8] I declined to grant the adjournment. If Mr. Wiseau wishes to pursue allegations of perjury, he is free to do so as he sees fit. Those allegations should not, however, adjourn the civil trial.

[9] I have issued numerous endorsements in the past indicating that the trial would not be adjourned. Mr. Wiseau advanced no reason for failing to pursue allegations of perjury against the

defendants in the past nor has he provided any explanation for why the civil trial should not proceed.

(d) Objection to Form of Trial

[10] This trial was ordered to proceed as a hybrid trial with examinations in chief being replaced by affidavits and with witnesses proceeding immediately to cross-examination. Three of Mr. Wiseau's former counsel either agreed to or participated in the steps necessary to implement that order. None of his counsel raised objections to that way of proceeding.

[11] The hybrid trial was a compromise arrived at after the defendants sought to bring an anti-SLAPP motion earlier this year. Instead of bringing the motion, I suggested that we could work out a timetable that would address matters on the merits quickly by, among other things, adopting a hybrid trial procedure. Mr. Wiseau's counsel sought instructions, agreed with that procedure and agreed to a timetable for it.

[12] Today, for the first time, Mr. Wiseau objected to that way of proceeding. He submits that all witnesses should testify in chief *viva voce*. He took this position even though he had filed affidavits from all of his witnesses.

[13] I overruled Mr. Wiseau's objection. The trial will proceed by way of affidavits in lieu of cross-examination as had been ordered and agreed.

Trial Management

[14] Mr. Wiseau was advised that his experts had not signed or filed any acknowledgement of experts' duty forms under the rules. He undertook to file those forms.

Plaintiffs' Preliminary Motion

[15] Mr. Wiseau advised he would bring a primary motion at trial to prevent the defendants from making use of Mr. Greg Sistero's book about Mr. Wiseau and to prevent the defendants from making use of the movie *The Disaster Artist* at trial. Mr. Wiseau initially sought 20 minutes to argue the motion, he then increased that to two days. After I indicated I would not allocate two days to argue the motion he requested one day. I have allocated one hour of time to the plaintiffs to argue the motion. The defendants shall have 15 minutes in response.

[16] **Opening Statements:** The plaintiffs shall have one hour for an opening statement. The defendants shall have one hour.

Time for Witness Cross-examination and Re-examination

[17] Given that Mr. Wiseau was not represented by counsel today, I have allocated times to him for re-examination. With one exception, the time allocated to the plaintiffs for re-examination mirrors the time allocated to the defendants for cross examination. The trial judge will have discretion to shorten that time. The time allocated to the plaintiffs' witnesses is as follows:

Mr. Wiseau: one day in cross-examination, two hours in re-examination.

Charles Sosa-Sims: 30 minutes to cross-examine on qualifications; 30 minutes to cross-examine on the merits. The plaintiff shall have 30 minutes to re-examine on qualifications and 30 minutes to re-examine on the merits.

Shari Grewal: 90 minutes to cross-examine; 90 minutes to re-examine.

Jeanne Spicuzza: 30 minutes to cross-examine on qualifications, 15 minutes to cross-examine on the merits. The plaintiff shall have 30 minutes to re-examine on qualifications and 15 minutes to re-examine on the merits.

Synthian Sharp: 30 minutes in cross-examination on qualifications; one hour in cross-examination on the merits. The plaintiff shall have 30 minutes to re-examine on qualifications and 60 minutes to re-examine on the merits.

Lee DeMarbrie: the defendants will not cross-examine.

Ernesto Aquino: 20 minutes for cross-examination; 20 minutes for re-examination.

Ian Barry: one hour for cross-examination; one hour for re-examination

[18] The time for cross examination and re-examination of the defendants' witnesses are set as follows:

Richard Harper: one day for cross-examination; one hour for re-examination.

Richard Towns: two hours for cross-examination; 20 minutes for re-examination.

Mark Racicot: two hours for cross-examination; 20 minutes for re-examination.

Fernando Forero: two hours for cross-examination; 20 minutes for re-examination.

Mr. Bania: Two hours for cross-examination on qualifications; 10 minutes for re-examination on qualifications.

The plaintiffs seek two hours for argument on qualifications; defendants seek 30 minutes in response.

The plaintiffs will have two hours to cross-examine on the merits; the defendants shall have 30 minutes to re-examine.

[19] The plaintiffs will have two hours for read ins of discovery transcripts. I have suggested that it would be more efficient for Mr. Wiseau to give the trial judge the page numbers in question numbers for the trial judge to read.

[20] **Closing Argument:** The defendants have suggested written closings. The plaintiffs seek oral closing argument. It will be left to the discretion of the trial judge to determine how closing

argument should be delivered. If delivered orally, the plaintiff shall have half a day for closing argument and the defendants shall have half a day.

Issues concerning the Document Book

[21] Mr. Wiseau asserts that the defendants have tampered with certain documents contained in the plaintiffs' book of documents. He was unable to point me to any specific documents that he alleges were tampered with. If Mr. Wiseau believes documents have been tampered with, he should send to defence counsel what he believes is an untampered version and bring the untampered original to trial. The trial judge can address the issue in the absence of agreement before trial.

[22] I note that the plaintiffs' book of documents was prepared by the defendants' counsel as a courtesy to ensure that documentation was ready for trial in a timely manner.

Service on the Plaintiffs

[23] The defendants raised a concern about serving documents on the plaintiffs. The mailing address they have for the plaintiffs is 5566 West Pico Boulevard, Los Angeles California. There have been difficulties serving materials at that address. The plaintiffs have given the defendants a post office box to which to send materials. This does not work for the defendants because courier companies are unable to deliver to a post office box.

[24] Mr. Wiseau refused to confirm or deny whether the 5566 West Pico Blvd. address remained a valid address for him. When pressed, he said during the case conference that he would have to check if that is a valid address.

[25] Mr. Wiseau reiterated that materials could be delivered to the plaintiffs at the following address:

PO Box 46 189, Los Angeles California
940046 USA

[26] When I asked Mr. Wiseau for a street address to enable the plaintiffs to courier materials to him, he refused to do so and said it was "laughable" to ask for a street address.


[27] I confirmed with Mr. Wiseau that he could be served with any and all materials by email at the following email address: theroom@theroomovie.com

[28] Going forward I order that valid service can be effected on the plaintiffs by sending an email to that address.

[29] The email address in paragraph 27 shall be valid for all purposes related to this proceeding including enforcement of any orders arising out of this proceeding. In light of his refusal to provide a street address, I made it clear to Mr. Wiseau that if there were any change to that email address it was his obligation to advise defendants' counsel of a new address for service and that, until Mr. Wiseau had done so, the address noted in paragraph 27 would be a valid address for service, even

if that address were shut down or were otherwise unable to receive emails from the defendants or their counsel.

DATE: December 10, 2019

A handwritten signature in blue ink, appearing to be 'Koch', written over a horizontal line. The signature is stylized with a large loop and a vertical stroke.

Koch J.