

# 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:

Aaron Rosenberg for the plaintiffs

Tommy Wiseau attending in person in addition to Mr. Rosenberg

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 Monday, June 3, 2019.

[2] At that case conference I set the weeks of January 6, 2020 and January 13, 2020 as the trial dates over the objection of the plaintiffs. The plaintiffs preferred dates in March 2020, preferably late March.

[3] The defendants have been trying to set a trial date for quite some time. A timetable had been worked out with Mr. Wiseau's previous counsel that would have seen the action go to trial by the end of 2019.

[4] That timetable was worked out as a concession by the defendants in exchange for which they would refrain from bringing a motion under s. 137.1 of the Courts of Justice Act (CJA).

[5] Section 137.1 is also known as the anti-SLAPP provision. It provides a mechanism whereby a defendant can move to dismiss a claim where the litigation is one that can be characterized as a Strategic Lawsuit Against Public Participation ("SLAPP"). The provision gives defendants a summary manner of dismissing a claim where the litigation arises out of a defendant's expression on a matter of public interest. That motion could have been brought in fairly short order and would have been resolved by now had it proceeded. Had it been successful it could have resulted in the dismissal of the lawsuit by now.

[6] In lieu of an anti-SLAPP motion both parties agreed to a compressed case timetable that saw the action go to trial by the end of 2019. That timetable fell apart after Mr. Wiseau's former lawyers remove themselves from the record. The plaintiffs are now on their third set of lawyers.

[7] The plaintiffs commenced the action approximately two years ago as an urgent interlocutory injunction. That injunction was initially granted after an *ex parte* hearing and was later set aside by me after a hearing with notice. The action has not advanced since then.

[8] The mere presence of the action imposes a restraint on the freedom of speech and the commercial rights of the defendants. The defendants are the weaker of the two sides. The presence of a lawsuit imposes inhibitions on the ability of the defendants to distribute a documentary they have created. While the presence of the lawsuit is not quite as effective as an injunction would have been, it accomplishes very much the same ends for the plaintiffs. As a result, the plaintiffs have little interest in advancing the litigation and have not done so since it was commenced.

[9] The plaintiffs have created roadblocks to scheduling matters on almost every attendance before me. I underscore that these roadblocks were not established by the plaintiffs' current counsel.

[10] The plaintiffs current, lawyers were only appointed after I refused to grant the plaintiffs lengthy delays in the initial trial timetable to permit them to seek new counsel. I initially refused to revise the timetable because the plaintiffs had several months' notice of their former lawyers' intention to remove themselves from the record and did nothing to seek new counsel during that time. After the plaintiffs appointed new counsel I amended the litigation timetable to accommodate new counsel.

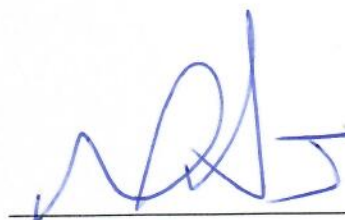


[11] On May 23 I gave counsel trial dates ranging between the weeks of January 6, 2020 and the weeks of March 23, 2020. The parties could not agree on trial dates. During a conference call of June 3, 2019 the plaintiffs advised that they preferred the last two dates in March 2020 but could make themselves available for an earlier date in March. I asked the plaintiffs and their counsel why they were not available during the weeks of January 6 and January 13. Mr. Rosenberg advised that his colleague would be doing the trial. He had no details of his colleague's commitments during the weeks of January 6 and January 13 even though the call was scheduled to set a trial date.

[12] Mr. Wiseau spoke on his own behalf. He indicated that he had a commitment in Dallas Texas on January 10 and was involved in production matters on January 13, 14, 19 and 20. I was given no details about the nature of Mr. Wiseau's involvement in those production matters. I have had concerns about the reliability of information about scheduling from Mr. Wiseau as a result of previous attendances.

[13] If Mr. Wiseau has commitments on January 10, 13, 14, 19 and 20 he will be able to keep those commitments if he chooses. His attendance throughout the trial is not as necessary as it usually might be. All evidence in chief at the trial will be presented through affidavits and expert reports. As a result, there is little if any need for Mr. Wiseau to attend at trial to hear the examinations in chief of other witnesses and to instruct counsel based on those examinations in chief. Mr. Wiseau will know what all witnesses are saying in chief long before trial and will have ample time to instruct counsel. We can also work out a trial timetable whereby Mr. Wiseau can be cross-examined dates other than those on which he says he is otherwise engaged. Given that Mr. Wiseau is a plaintiff, I would expect he would be one of the first witnesses in any event and would probably be cross-examined on January 6 or 7. That should give him ample time to keep whatever it commitments Mr. Wiseau says he has later on.

DATE: June 4, 2019

A handwritten signature in blue ink, appearing to be 'Koehnen J.', written over a horizontal line.

Koehnen J.