

**COURT FILE NO.:** CV-16-550450

**CITATION:** Seepersaud-Singh v. Singh; 2017 ONSC 6479

**DATE:** 2017/10/30

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** Suzanne Seepersaud-Singh v. Pet Social Incorporated, Michael Singh, Wayne Rawlins and Clifton Rawlins

**BEFORE:** MASTER GRAHAM

**HEARD:** October 26, 2017

**COUNSEL:** S. Carter and M. Baik for the plaintiff (moving party)  
T. Arndt and E. Dubis for the defendants

**REASONS FOR DECISION**

**(Plaintiff's motion to exclude parties from her examination for discovery)**

[1] The plaintiff Suzanne Seepersaud-Singh claims unpaid wages from the defendants for her work for the defendant Pet Social Incorporated ("Pet Social"), a retailer of pet supplies and pet grooming services. She alleges that the defendant Michael Singh ("Singh"), who was her common law spouse, received benefit as an employee and/or shareholder of Pet Social; Michael Singh's evidence on the motion is that he was the manager of Pet Social. The plaintiff also alleges, and Michael Singh acknowledges, that the defendants Wayne Rawlins and Clifton Rawlins are Michael Singh's brothers and are the sole directors and officers of Pet Social.

[2] The plaintiff also pleads:

- that she managed Pet Social from October, 2011 when the business opened until November 11, 2015 when she separated from Singh;
- that she was assured by Singh that she was the owner of Pet Social and that it was her business;
- that she was not paid for her services at Pet Social;
- that on November 11, 2015, "in response to the culmination of years of her being physically and mentally abused, the Plaintiff escaped from her home with her children and left Toronto for fear of her safety from Michael".

[3] The plaintiff now seeks an order excluding the defendants from her examination for discovery on the basis that she will be intimidated by their presence to the point of fearing for her safety. The defendants oppose the motion on the basis that there is insufficient evidence in support of the plaintiff's claim of intimidation to justify depriving them of their right to be present at all stages of the action.

[4] For the reasons set out below, the defendants Michael Singh and Wayne Rawlins shall be excluded from the plaintiff's examination for discovery. I decline to order that Clifton Rawlins be excluded.

### The law

[5] The law on the issue of when the court may make an order excluding a party or parties from an opposing party's examination for discovery was summarized by Chapnik J. in *K.F. (Litigation guardian of) v. White*, [2001] O.J. No. 922 (S.C.J.) at paragraphs 38 and 39:

**38** There is an inherent right for parties to an action to be present during the cross-examination or examination for discovery, of other parties to an action: *Baywood Paper Products Ltd. v. Paymaster Cheque-Writers (Canada) Ltd.* (1986), 57 O.R. (2d) 229 (Dis. Ct.); *ICC International Computer Training & Leasing Ltd. v. ICC Internationale Computer and Consulting et. al.* (1988), 66 O.R. (2d) 187 (H.C.). The court has the discretion to exclude parties from attending the cross-examinations or examinations for discovery of parties: See *G.K. v. D.K.*, [1994] O.J. No. 1680 (Gen. Div. Master); *J.C. v. Ansell*, [1994] O.J. No. 1741 (Gen. Div.). The plaintiff bears the onus of showing cause for such an exclusion: See *G.K.*, supra; *Changoo v. Changoo*, [1999] O.J. No. 865 (Gen. Div.); *Redekop v. Redekop* (1998), 41 O.R. (3d) 301 (Gen. Div.). Cause depends on the circumstances of a case. Courts have defined cause as a realistic and substantial cause, circumstances that would cause prejudice to the party to be examined, or circumstances that make exclusion necessary to secure the ends of justice: See *Baywood* supra, *A.K.*, supra, *Redekop*, supra.

**39** Such orders are often requested in matrimonial cases. Some of these cases have referred to the emotional, stressful and hostile atmosphere that often exists in such situations: See *Lautenschlager v. Lautenschlager*, [1997] O.J. No. 2381 (Gen. Div.); *Piper v. Piper* (1988), 65 O.R. (2d) 196 (Gen. Div. Master). While there is some disagreement as to whether the right of a party to be present in cross-examinations for examinations for discovery ought to be limited in such situations, *all courts agree that demonstrated intimidation by one party towards the other is a justifiable reason to exclude*: See *Lautenschlager*; *Piper*; *Redekop*, supra. [emphasis added]

### The issue

[6] Plaintiff's counsel accepts that the defendants have an inherent right to be present at the plaintiff's examination and the defendants' counsel accepts that the court may order the exclusion of parties if there is sufficient evidence that the moving party will be intimidated by their presence. Both counsel agree that the issue on this motion is therefore as follows: "Is there sufficient evidence that the plaintiff will be intimidated by the defendants' presence at her examination for discovery that the defendants ought to be excluded from her examination?"

**Evidence and submissions of the parties**

[7] The plaintiff's evidence in paragraphs 5, 7, 8 and 18 of her affidavit is as follows:

"5. . . . Throughout my marriage to Singh, I was subjected to numerous assaults, both physically, sexually and emotionally. On July 22, 2016, Singh was charged with assault, overcome resistance, choking, assault cause bodily harm, sexual assault, and assault with a weapon. These assaults occurred during the period of 1999-2015. . . .

7. While Singh's counsel will be present at the examinations for discovery, due to the severity of charges against Singh, I am intimidated being in his presence, and in fact fear for my safety. I am also not comfortable around his family members, specifically Wayne Rawlins, and fear retribution from them. This is exacerbated by the fact that Wayne Rawlins lived in the same residence as Singh and me when we were in a romantic relationship and had constructive or actual knowledge of the physical and mental abuse endured by me that was occurring in the house which Wayne Rawlins was living in at that time.

8. Currently I am attending a domestic abuse treatment centre to assist in my coping with the abuse I suffered at the hands of my ex-husband. I am seeing numerous therapists, and have been making some progress in my recovery. My children are also enrolled in therapy due to the abuse. . . .

18. The defendants' attendance at my examination for discovery will cause great intimidation, and I fear I will not be in a position to properly or adequately answer the questions posed by opposing counsel."

[8] The plaintiff's evidence includes Michael Singh's Recognizance of Bail, with respect to which the defendant Clifton Rawlins is the surety, which confirms 12 criminal charges against him, including three charges of "Assault with weapon" in relation to events alleged to have occurred in December, 2014 and in August and September, 2015. The plaintiff acknowledges that these charges are not yet disposed of and accordingly, the defendant has not been convicted of any criminal offence committed against her. The original Recognizance prohibited Michael Singh from the following:

- contacting or communicating in any way with the plaintiff and their three children, and

- being within 500 metres of any place where he knows the plaintiff or the three children to live, work, or frequent, or where he knows them to be, except for required court appearances and except pursuant to a family court order made after the date of the Recognizance and in the presence of or through legal counsel.

[9] Michael Singh's responding affidavit includes a Bail Variation document which reiterates the prohibition against him contacting or communicating with the plaintiff and the three children "*except* pursuant to a family court order allowing for only supervised access/contact." [emphasis added] Counsel for the defendants submits that the plaintiff's failure to include this amended document in evidence indicates that she has not been candid with the court. I disagree. The additional term in the Bail Variation simply allows for Singh to contact or communicate with the plaintiff and his children if a family court makes an order granting him supervised access or contact, which is similar to the original exception applicable to the second term set out in paragraph [8] above. This is a minor variation which does not remove the general prohibition in the original Recognizance and the fact that it is not contained in the plaintiff's affidavit does not impugn her credibility.

[10] The plaintiff also relies on a note dated May 25, 2017 from the domestic abuse treatment centre referred to in paragraph 8 of her affidavit. The note is signed by Deanna McGuire who is described as a Crisis/Intake Counsellor and "MA Counselling Psychology (Candidate)" and by Lynette Pole-Langdon, MEd. who is described as Manager of Counselling.

[11] I accept the defendants' submission that much of this note simply repeats information provided by the plaintiff to the counsellors and I do not rely on those passages in themselves as evidence of abuse of the plaintiff by Michael Singh. However, I accept the statement in the note that the plaintiff has attended the centre's Legal and Transitional Support Program since November 13, 2015 and "has also been involved with the counselling program since December 12, 2016 to the present due to reported abuse concerns from her estranged partner".

[12] The two counsellors also state in their note that ". . . any interactions with Michael and his family that violate her [i.e. the plaintiff's] safety plan (e.g., interactions with Michael outside of police presence) are strongly discouraged". Further, they "have concerns that Suzanne's progress in therapy would regress due to identified fear and ongoing feelings of vigilance associated with Michael and his family".

[13] The defendants submit that the opinion of the counsellors should be given little or no weight on the basis that neither individual is an independent assessor with sufficient credentials. I accept that the two counsellors have not been properly qualified as experts capable of providing opinion evidence on this motion and accordingly, I do not rely on the opinions stated in their note. As indicated above, I do accept their evidence as fact witnesses that the plaintiff attended for counselling as stated.

[14] The defendants' evidence is contained in the affidavit of Michael Singh. Much of his evidence relates to the merits of the action and is not relevant to the issue on this motion. The defendants rely on this evidence solely in support of the defendants' submission that the plaintiff's credibility is a significant issue in the action and

therefore requires the presence of the defendants at the plaintiff's examination for discovery to instruct counsel.

[15] Singh states that he believes that this lawsuit and the criminal charges laid by the plaintiff are collateral attacks to gain a strategic advantage in the family court proceeding. This is not evidence but rather a statement of opinion that I have disregarded.

[16] Singh deposes that he has not been convicted of any criminal charges and that the original Recognizance of Bail has been varied. Both of these items have been addressed above. Singh also responds to a passage in the plaintiff's affidavit that she is granted police protection to and from court appearances where Singh or his family will be in attendance, stating that "Suzanne does not have police escorts to or from the court in other court proceedings with me". In the face of this contradictory evidence and the absence of any independent confirmation of a police escort for the plaintiff, I can reach no conclusion as to whether or not the plaintiff does, in fact, attend other court proceedings with a police escort.

[17] Singh deposes that in 2017, there have been six court attendances in the family court proceedings. He was not present on each attendance but on occasion, he and his lawyer met with the plaintiff and her family lawyer at court and had discussions in the hallways and with the presiding judge. Singh deposes that "all of those meetings have gone without issue" and further that "there is always a police presence in family court". He does not say that the plaintiff ever testified in family court.

#### **Analysis and decision**

[18] As stated above, the issue on the motion is whether there is sufficient evidence that the plaintiff will be intimidated by the defendants' presence at her examination for discovery that the defendants ought to be excluded from that examination. The plaintiff's evidence is that throughout her marriage to Singh, she "was subjected to numerous assaults, both physically, sexually and emotionally"; as a consequence, she has attended and is continuing to attend for counselling at a domestic abuse treatment centre, as confirmed by her counsellors.

[19] An attendance in court in the presence of counsel and a judge, and with a police presence, is not the same as being examined for discovery. At the family court attendances, the plaintiff would not have been required to say very much, other than to instruct her counsel, which she could have done privately, and the presence in the courtroom of persons in authority, being the presiding judge and police, would mitigate any sense of intimidation. At an examination for discovery, the three defendants would be sitting across a table from the plaintiff while their counsel examines and cross-examines her, possibly for up to seven hours (being the maximum allowable time under the Rules for the examination of a party). These are potentially much more intimidating circumstances than the family court appearances that Singh describes, particularly given the history between the parties.

[20] The most significant feature of this motion is that the defendant Michael Singh does not contradict the plaintiff's evidence that he assaulted her or that she has sought counselling in respect of the abuse. Based on the pleadings summarized above, at her examination for discovery the plaintiff will be asked questions about not only her employment at Pet Social, but also her relationship with Singh and the physical and mental abuse that she alleges. If Singh is present at the examination, she will have to answer these questions with her assailant staring at her from a few feet away. I accept the plaintiff's evidence that these circumstances would "cause great intimidation" as a result of which she "will not be in a position to properly or adequately answer the questions posed by opposing counsel" (see paragraph 18 of her affidavit).

[21] I therefore conclude that the plaintiff's uncontradicted evidence that Michael Singh assaulted her during their marriage plausibly supports her contention that she would be intimidated by his presence at her examination for discovery to the point that her ability to answer questions would be compromised, and justifies excluding Michael Singh from the plaintiff's examination.

[22] The defendants submit that even if the plaintiff's evidence supports the exclusion of Michael Singh from her examination, it does not support the exclusion of the defendants Wayne Rawlins and Clifton Rawlins.

[23] In paragraph 7 of her affidavit, quoted above, the plaintiff deposes that she also fears retribution from Singh's family members, specifically Wayne Rawlins. Her uncontradicted evidence with respect to Wayne Rawlins is that he lived in the same residence as herself and Singh and was therefore aware of the physical and mental abuse that she endured. Although Wayne Rawlins was not the perpetrator of the assaults against the plaintiff, his presence in the plaintiff's home during the period when the assaults occurred, combined with the fact that he is Singh's brother, creates an association between him and the assaults that would be sufficiently intimidating to the plaintiff to warrant excluding him from her examination.

[24] The plaintiff's only statement in her affidavit with respect to Clifton Rawlins is a general one that there are "personal factors" with respect to all three individual defendants that would cause her to fear for her safety and would cause intimidation. In the absence of any specific evidence explaining why the plaintiff would be intimidated by Clifton Rawlins' attendance at her examination, there is insufficient reason to exclude him from attending.

[25] For these reasons, I order that the defendants Michael Singh and Wayne Rawlins be excluded from attending at the plaintiff's examination for discovery and that the motion to exclude Clifton Rawlins is dismissed.

[26] As I have ordered that Michael Singh and Wayne Rawlins be excluded from the plaintiff's examination and that Clifton Rawlins not be excluded, her examination may be conducted in one of three ways:

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1. The defendants' counsel may simply attend to conduct the examination for discovery of the plaintiff without any of the defendants present, or
2. The defendants' counsel may attend at the examination with Clifton Rawlins and arrangements may be made for Michael Singh and Wayne Rawlins to observe the examination remotely by video, or
3. The examination may be conducted by videoconference with the defendants' counsel and all three defendants at a remote location.

[27] If videoconferencing is used as described in items 2 and 3, the remote location from which Michael Singh and Wayne Rawlins observe the examination shall not be in the same building as where the plaintiff attends to be examined and those two defendants shall not be visible to the plaintiff on the video screen in her examination room.

[28] If the defendants elect to proceed with the examination in such a way as requires video conferencing services, they shall pay for any additional cost of the video services and may claim that cost as costs of the action if they are successful in defending the action.

#### Costs

[29] At the conclusion of the hearing, counsel exchanged costs outlines and provided copies to the court and I informed counsel that they could make written costs submissions following receipt of the court's decision set out in these Reasons. If the parties cannot agree on the costs of the motion, they may make written submissions, not exceeding three pages each, the plaintiff within 30 days and the defendants within 20 days thereafter. In attempting to resolve the costs issue, the defendants should be mindful of the fact that their proposed partial indemnity costs of \$9,000.25 are considerably more than the plaintiff's figure of \$3,747.47 so it will be difficult for them to argue that the plaintiff's figure is unreasonable.



Master Graham

**DATE:** October 30, 2017