

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN**

**NWT FINANCIAL SERVICES LTD., and BARRY TALBOT**

**Plaintiffs**

**- and -**

**COROL SUNDBERG**

**Defendant**

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Transcript of the Reasons for Decision delivered by The Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 30th day of November, 2018.

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**APPEARANCES:**

Ms. M. Leduc: Counsel for the Plaintiffs

Mr. D. McNiven: Counsel for the Defendant

1 THE COURT: There are two applications  
2 before the Court. The first is a Notice of  
3 Motion filed by the Plaintiffs seeking that the  
4 Defendant provide answers to the requested  
5 undertakings pursuant to Rule 261. And Rule 261  
6 of the Rules of the Supreme Court of the  
7 Northwest Territories states that:

8 Where a party undertakes at an  
9 examination for discovery to obtain  
10 information needed to answer a  
11 question, the answer shall be  
12 provided in a timely manner.

13 The second application is a Notice of Motion  
14 filed by the Defendant seeking that the Plaintiff  
15 be compelled to answer certain questions from the  
16 examination for discovery and directing that the  
17 Plaintiff provide further or better responses to  
18 certain undertakings.

19 Dealing first with the application of the  
20 Plaintiffs, the Plaintiff says that the  
21 Defendant, Corol Sundberg, was examined for  
22 discovery on October 24th, 2017, and  
23 13 undertakings were requested.

24 Counsel for the Plaintiffs wrote counsel for  
25 the Defendant on January 15th, 2018; February  
26 21st, 2018; May 11, 2018; June 18, 2018; June 28,  
27 2018; and October 2nd, 2018, requesting that the  
28 Defendant provide answers to the undertakings.  
29 In the last letter, the counsel advised that an

1 application would be brought if the answers to  
2 the undertakings remained outstanding on  
3 October 5th. According to the Affidavit of  
4 Mr. Talbot, as of October 10th, the answers to  
5 the undertakings were still outstanding.

6 The Defendant filed an affidavit in  
7 response, which states that she provided a  
8 detailed list of answers on a flash drive, which  
9 was provided to the Plaintiffs on October 3rd,  
10 2018.

11 At the date of the hearing, the Plaintiff  
12 advised that the answers to undertakings were  
13 responded to on October 10th and were incomplete  
14 with Undertaking 11 and 13 being missing.  
15 Undertaking 11 was to provide handwritten notes  
16 of telephone calls with clients who had switched  
17 to CAM Financial. The Affidavit of the Defendant  
18 addresses this issue and states that she forgot  
19 to include this answer, the answer being that she  
20 had searched and did not have any such notes.

21 Undertaking 13 was to produce all income tax  
22 returns with attachments and slips for the period  
23 2006 to current. At the hearing, counsel for the  
24 Defendant advised that Ms. Sundberg would produce  
25 the tax information as soon as possible, but that  
26 she did not -- he was not sure that she had  
27 records going back to 2006. And I am advised

1 that that has occurred. So I am not certain if  
2 an order is necessary; but, if it is, there will  
3 be an order that the Defendant produce any  
4 outstanding answers to undertakings within  
5 60 days.

6 Turning now to the Defendant's application,  
7 the Defendant's application seeks that Mr. Talbot  
8 produce a business valuation for the business,  
9 NWT Financial Services; Mr. Talbot's tax return  
10 information from 2010 to 2016; and the Manulife  
11 financial contract.

12 With respect to the business valuation, the  
13 Defendant has produced correspondence from  
14 Mr. Talbot's lawyer showing that the lawyer had  
15 written to Mr. Talbot's ex-wife on two occasions  
16 to request a copy of the valuation, she  
17 apparently, having a copy and Mr. Talbot not  
18 having a copy. The Defendant argues that  
19 Mr. Talbot should make further efforts to obtain  
20 the business valuation.

21 With respect to the tax returns, the  
22 Defendant says that Mr. Talbot was asked at his  
23 discovery for the tax return information and this  
24 was refused.

25 And, as for the Manulife financial contract,  
26 this had been requested during the examination  
27 for discovery but had not been produced. There

1 is also a reference in the Notice of Motion to  
2 producing diary notes.

3 At the hearing, counsel advised that the  
4 Manulife contract had been produced and the diary  
5 notes issue had been dealt with.

6 With respect to the business valuation, it  
7 appears that this valuation was commissioned  
8 during Mr. Talbot's divorce as it was an asset  
9 that had to be determined as part of the divorce  
10 settlement. It may have been commissioned by  
11 Mr. Talbot's ex-spouse, and he apparently does  
12 not have or did not retain a copy of the  
13 valuation. It is not clear, from the record,  
14 whether other individuals, like the creator of  
15 the valuation or Mr. Talbot's divorce lawyer,  
16 might have a copy of it. There is also a  
17 reference in the materials to an undertaking that  
18 Mr. Talbot may have entered into during his  
19 divorce with respect to the business valuation.

20 The circumstances surrounding the creation  
21 and the retention of the business valuation are  
22 murky and unclear, and I have very little  
23 information about it. Clearly, Mr. Talbot can  
24 only produce what is in his possession or what he  
25 is legally able to obtain.

26 It appears that Mr. Talbot's counsel wrote  
27 to Mr. Talbot's ex-spouse on two occasions

1 requesting a copy of the valuation, and she did  
2 not respond.

3 The last letter that has been provided is  
4 dated February 21st, 2018, written by  
5 Mr. Talbot's counsel to the ex-spouse. It is not  
6 clear what other efforts may have been made by  
7 counsel or Mr. Talbot himself to obtain the  
8 business valuation.

9 In the circumstances, I am going to order  
10 that the Plaintiffs provide the Defendant with an  
11 explanation of the efforts made to obtain the  
12 business valuation, the explanation to include  
13 efforts by counsel for Mr. Talbot, and Mr. Talbot  
14 personally to obtain the business valuation.

15 With respect to the tax returns, this was  
16 addressed at examination for discovery. Counsel  
17 for the Defendant sought income tax returns from  
18 2010 to 2016. Counsel for Mr. Talbot refused to  
19 produce them claiming that they were not  
20 relevant. So this is not a situation where  
21 Mr. Talbot has failed to comply with an  
22 undertaking arising from examination for  
23 discovery.

24 Compelling a party to provide documents that  
25 they have objected to providing is governed by  
26 Rule 226 of the Rules of Court, and a Court may  
27 order that a party make production of documents

1 where the party has neglected or refused to make  
2 discovery or production of the document. The  
3 objection made by the Plaintiffs to the  
4 production of these documents is that the income  
5 tax returns are not relevant.

6 As stated in the *FDA Engineering Ltd. and*  
7 *Aboriginal Engineering Ltd.* case, 2014 NWTSC 27,  
8 at paragraphs 23, 24:

9 There are, of course, limits to the  
10 scope of questions that can be asked  
11 in an examination for discovery.  
12 When a question is objected to,  
13 inevitably, the Court, in deciding on  
14 the validity of the objection, must  
15 consider the issue from the point of  
16 view of relevance, in the context of  
17 the pleadings. If the information  
18 sought is clearly irrelevant to the  
19 action, there is no reason to compel  
20 a party to produce it. At the same  
21 time, the Court's task is not, at  
22 that stage, to decide ultimate  
23 relevancy or the weight that the  
24 evidence will carry in the  
25 determination of the issues.

26 This Court has recognized the broad  
27 scope to the issue of relevance in  
the context of discovery processes.

28 In that decision, the Court cited with approval  
29 the proposition that great latitude should be  
30 allowed in the examination for discovery process  
31 so that the fullest inquiry can be made into all  
32 matters which can possibly affect the issues  
33 between the parties.

34 The issue of relevance is to be considered

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broadly at this stage and in the context of the pleadings. I have reviewed the pleadings in this matter as well as the affidavits that have been filed on the applications.

The Statement of Claim of the Plaintiffs claims that the actions of the Defendant have resulted in ongoing damages to revenues and losses of commissions, and the Plaintiffs are seeking damages for loss of business opportunity.

The ultimate relevance of the income tax returns that are sought is not an issue that is for me to decide, but there is a possibility that the income tax returns could be relevant in determining those issues referred to in the Statement of Claim. As such, I am ordering that the Plaintiffs produce the income tax returns for the years 2010 to 2016 inclusive, and that will be within 60 days.

With respect to costs, as each party was successful on their application, success was divided; therefore, I am not going to make an order for costs.

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**CERTIFICATE OF TRANSCRIPT**

I, the undersigned, hereby certify that the foregoing transcribed pages are a complete and accurate transcript of the digitally recorded proceedings taken herein to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 27th day of June, 2019.

Certified Pursuant to Rule 723  
of the Rules of Court



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Janet Belma, CSR(A), B.Ed.  
Court Reporter