

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 39

Suit No 547 of 2016
(Summonses Nos 5087 and 5088 of 2016)

Between

(1) Nikolai Stepaniuk

... Plaintiff

And

(1) Wellstead Corporate Solutions
Pte Ltd

(2) Nazrad Aman d/o Mohamed
Hanifah

(3) Amar Prem Kashmir @ Prem
Kashmir Singh s/o Kusmavi
Singh

(4) Electronic Commerce Trading
Limited

... Defendants

GROUND OF DECISION

[Civil procedure] — [Judgment and orders] — [Admissions of fact]

[Civil procedure] — [Judgment and orders] — [Unless order]

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Stepaniuk, Nikolai
v
Wellstead Corporate Solutions Pte Ltd and others

[2017] SGHC 39

High Court — Suit No 547 of 2016 (Summonses Nos 5087 and 5088 of 2016)
Chua Lee Ming J
16 November 2016

28 February 2017

Chua Lee Ming J:

Introduction

1 These two applications arose from the plaintiff's claim against the first to third defendants for various orders relating to shares in and assets of the fourth defendant, Electronic Commerce Trading Limited ("ECTL"). These assets included certain funds ("the Funds") which had been held in ECTL's bank account ("the Bank Account") with Hang Seng Bank Ltd ("Hang Seng Bank") in Hong Kong. In essence, the plaintiff, Nikolai Stepaniuk, alleged that he was the sole beneficial owner of ECTL, and that the first to third defendants had wrongfully sought to deprive him of his interest in ECTL's assets, including the Funds.

2 The first application, Summons No 5087 of 2016 ("SUM 5087/2016"), was for judgment against the second defendant, Nazrad Aman d/o Mohamed

Hanifah (“Nazrad”), under O 27 r 3 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed) based on admissions of fact made by her in various correspondence and affidavits. The second application, Summons No 5088 of 2016 (“SUM 5088/2016”), was to strike out the defences filed by Nazrad and ECTL based on their failure to adequately comply with an unless order which I made on 30 August 2016 (“the Unless Order”) requiring them to, among other things, confirm the whereabouts of the Funds in compliance with two previous orders of court. After hearing the parties, I made the following orders:

(a) In SUM 5087/2016, I granted a declaration that Nazrad holds the shares in ECTL on trust for the plaintiff and ordered the transfer of those shares to the plaintiff.

(b) In SUM 5088/2016, I struck out the defences filed by Nazrad and ECTL and made several orders against Nazrad including (i) an injunction to restrain her from dealing with ECTL’s assets, (ii) delivery up of the share certificates for the shares in ECTL to the plaintiff, (iii) an account of all of ECTL’s assets (including the Funds), and (iv) damages for losses arising from Nazrad’s breach of trust.

3 The defendants have appealed against my decisions.

Background

4 The plaintiff is a Russian citizen who claimed to be in the information technology business.¹ The first defendant, Wellstead Corporate Solutions Pte Ltd (“Wellstead”), is a company incorporated in Singapore and provides corporate trustee services. At all material times, Nazrad was an employee of Wellstead. The third defendant, Amar Prem Kashmir @ Prem Kashmir Singh

s/o Kusmavi Singh (“Kashmir”), is the sole director and the business development manager of Wellstead.²

5 ECTL is a company which was incorporated in Hong Kong by Wellstead in May 2015. All its shares were registered in Nazrad’s name, who was also appointed as ECTL’s sole director.³

6 By way of a letter of engagement dated 17 July 2015, the plaintiff engaged Wellstead to assist him in setting up his business in Hong Kong.⁴ Pursuant to the letter of engagement, Wellstead provided the plaintiff with ECTL together with the Bank Account.

7 Nazrad executed a Declaration of Trust dated 15 August 2015 in which she declared, among other things, that she held the shares in ECTL as nominee for the plaintiff and that the plaintiff was the ultimate beneficiary of the shares and all related rights.⁵ She also executed a Power of Attorney (“the POA”) in favour of the plaintiff which empowered him, among other things, “to be the only person effecting payments, receive (sic) money and manage any other financial operations for [ECTL]” and “to apply to any Bank ... to open account(s) of any kind and to operate ... any of those account(s)”.⁶ The POA is dated 5 August 2015 but was signed on 15 August 2015. In addition, Wellstead arranged for a token and an online user account to be issued to the plaintiff by Hang Seng Bank so that he could operate the Bank Account online.

8 The plaintiff subsequently commenced business in Hong Kong, through ECTL. According to the plaintiff, based on the internal records maintained by his staff, the Funds comprised the following amounts as at 28 December 2015:⁷

- (a) HK\$14,820.55;
- (b) €784,242.27; and
- (c) US\$225,300.

9 The plaintiff stated that on 28 December 2015, his employee started experiencing difficulties operating the Bank Account online. The next day, the same employee was denied access to the Bank Account completely. The plaintiff himself was also unable to access the Bank Account online.

10 Wellstead was informed about the problem. On 29 December 2015, Wellstead replied claiming that it had contacted Hang Seng Bank but “there is no quick fix” and that the plaintiff’s token (to operate the Bank Account) would be deactivated “for technical and security reasons”. It also stated that it could not say what the problem was and that a new token would be issued as soon as the problem was resolved.⁸

11 Further emails were exchanged between the plaintiff/his employee and Wellstead. On 5 January 2016, Kashmir (on behalf of Wellstead) informed the plaintiff that he would receive clarifications by the next day at the latest.⁹ The plaintiff chased Wellstead for an answer on 6 January 2016.¹⁰ In response, Kashmir sent an email on the same day to the plaintiff, on behalf of Nazrad, declaring the Declaration of Trust void and revoking the POA.¹¹ The email stated that Nazrad would not carry on providing the plaintiff with trust services because she believed that he had falsified her signature on contracts submitted by him for the attention of Hang Seng Bank and had thus committed a criminal offence under Hong Kong law. The email also informed the plaintiff that Nazrad was withholding “the monies held by the trust to pay costs and potential liabilities and related services” and demanded that he pay

compensation for “moral damages and potential liabilities and losses caused by [the plaintiff] abusing this trust, misusing [Nazrad’s] name and falsifying [her] signature”.

12 The plaintiff replied through his solicitors on 20 January 2016 denying that he had falsified Nazrad’s signatures for improper purposes.¹² He accepted that Nazrad’s signature had been imprinted on ECTL’s sales invoices, but asserted that this had been done in the mistaken belief that the POA that was granted to him required him to do so. He also demanded, among other things, that Wellstead, Nazrad and Kashmir immediately restore his access to the Bank Account and transfer the shares in ECTL to him. They did not comply with his demands.

Commencement of suit and proceedings leading to the Unless Order

13 The plaintiff commenced this present suit against the defendants on 26 May 2016. On 30 May 2016, Lai Siu Chiu SJ granted the plaintiff a worldwide *Mareva* injunction and a property injunction against the defendants.¹³ Lai SJ further ordered the defendants to confirm in writing the whereabouts of the Funds which had been held in the Bank Account (“the Disclosure Order”). The defendants requested further arguments and sought to postpone the making of the Disclosure Order until the *inter partes* hearing of the injunction application. In a letter from their then solicitors dated 31 May 2016, the defendants claimed that disclosing the whereabouts of the Funds would somehow place the defendants’ and their associates’ lives in danger and result in interference and disruption to certain investigations which the defendants alleged were being conducted by the Hong Kong and Russian police.¹⁴ Lai SJ varied the Disclosure Order to one requiring the defendants to

confirm the whereabouts of the Funds either in a sworn affidavit or in writing to her by 8 June 2016 (“the Varied Disclosure Order”).¹⁵

14 In purported compliance with the Varied Disclosure Order, Wellstead wrote to Lai SJ on 8 June 2016.¹⁶ The other three defendants did not comply with the Varied Disclosure Order. There is nothing in the letter from Wellstead to Lai SJ that suggests why it would have been dangerous to disclose the information contained within it to the plaintiff. What the letter did disclose was that between 29 December 2015 and 5 January 2016, US\$191,800 was transferred to Wellstead and £579,420 was transferred to another company called Wellstead Primary Solutions allegedly “in accordance with the existing contracts and agreements (the detailed evidence and explanation of which will be provided in the Affidavits that the Defendants will supply by 13th June)”. I noted that

(a) the transfers started on 29 December 2015 which was the same day that Wellstead told the plaintiff that his token would be deactivated for technical and security reasons (see [10] above); and

(b) the transfers were completed on 5 January 2016, a day before Kashmir informed the plaintiff, on behalf of Nazrad, that the Declaration of Trust was void and the POA was revoked (see [11] above).

15 Two affidavits were filed on 13 June 2016 – one by Kashmir (on behalf of Wellstead, as its director, and himself) and the other by one John Tan Kee Eng (as Chief Legal Officer of Wellstead). Both affidavits made numerous allegations of money laundering and various criminal activities against the plaintiff. However, one omission stood out starkly: neither affidavit

explained why the Funds were transferred to Wellstead and Wellstead Primary Solutions or who authorised or carried out the transfers.

16 The plaintiff made a further application seeking, among other things, an order that each of the defendants file and serve an affidavit stating whether the Funds remained in the Bank Account and, if not, what had become of them.¹⁷ On 15 July 2016, Andrew Ang SJ granted the application.¹⁸ He also ordered the defendants to comply with the Varied Disclosure Order by 20 July 2016.¹⁹

17 On 20 July 2016, Kashmir filed an affidavit on behalf of Wellstead and himself stating that he was not aware whether the Funds were still in the Bank Account.²⁰ According to Kashmir, Wellstead was fully owned by a UK company, Wellstead Business Consultancy Limited (“Wellstead (UK)”) and he was merely a nominee director of Wellstead and a conduit through which instructions from Wellstead (UK) would be passed on. He explained that he had no actual control over the business activities of Wellstead or information regarding the assets of either Wellstead or ECTL because the companies were controlled by a representative of Wellstead (UK). No affidavits were filed by or on behalf of Nazrad and ECTL.

18 On 5 August 2016, the plaintiff filed Summons No 3828 of 2016 (“SUM 3828/2016”) seeking an order that each of the defendants’ defences in the suit be struck out, and final judgment be entered against them, unless they comply with the orders made by Lai SJ and Ang SJ. I heard SUM 3828/2016 on 30 August 2016. I was not prepared to make any orders against Wellstead and Kashmir since they were neither shareholders nor directors of ECTL and therefore had no authority to obtain information relating to ECTL’s bank accounts. As for Nazrad and ECTL, I was informed by their counsel that

Nazrad had been removed as a director of ECTL. However, I agreed with the plaintiff that as Nazrad was still the sole shareholder of ECTL, she could take the necessary steps to enable herself to obtain the statements of the Bank Account. Therefore, I ordered Nazrad and ECTL to comply with the orders made by Lai SJ and Ang SJ by 20 September 2016 failing which their defences in the suit were to be struck out (*ie*, the Unless Order).

19 Nazrad filed three affidavits on 7 September 2016 and a fourth affidavit on 21 September 2016 in purported compliance of the Unless Order. The plaintiff was not satisfied with Nazrad's affidavits and filed SUM 5087/2016 and SUM 5088/2016 on 19 October 2016.

SUM 5087/2016: Application for judgment against Nazrad on admissions of facts

20 Under O 27 r 3 of the Rules of Court, the court may give such judgment “as it thinks just” where clear admissions of fact are made by a party of the necessary ingredients of the cause of action upon which the other party is seeking immediate judgment (see *Ow Chor Seng v Coutts Bank (Schweiz) AG* [2002] 1 SLR(R) 380 at [17]). In the present case, the plaintiff's application was for judgment to be entered against Nazrad on, among others, the following terms:

- (a) a declaration that the plaintiff is the sole beneficial owner of ECTL and all its shares;
- (b) a declaration that Nazrad holds the ECTL shares registered in her name on trust for the plaintiff; and

(c) an order that Nazrad immediately execute and/or sign the share transfer forms and all other documents necessary to transfer all the ECTL shares registered in her name to the plaintiff.

21 It was common ground that Nazrad had admitted in her affidavits that she held the shares in ECTL on trust for the plaintiff and that he was the sole beneficial owner of those shares. She had also sent a letter dated 26 September 2016 *via* her then solicitors, Gloria James-Civetta & Co (“GJC & Co”), to the plaintiff’s solicitors (“the 26 September Letter”) stating that she was willing to transfer all the shares in ECTL to the plaintiff.²¹ Nazrad’s admission of the plaintiff’s equitable ownership of the shares in ECTL could not have been clearer.

22 A copy of an affidavit signed by Nazrad to respond to SUM 5087/2016 and SUM 5088/2016 (“Nazrad’s intended affidavit”) was exhibited to her lawyer’s affidavit filed on 15 November 2016.²² Nazrad was supposed to be in Singapore to affirm this affidavit in December 2015 but it appears she has not done so to date. Be that as it may, in Nazrad’s intended affidavit, she objected to the plaintiff’s application on the ground that the plaintiff was not coming to court with clean hands and it was therefore unjust for judgment to be entered in his favour.²³ She alleged that the plaintiff was involved in illegal activities and operated fictitious shell companies (ostensibly including ECTL) for the purposes of money laundering and trade misinvoicing schemes.²⁴ As noted above (at [11]), she also asserted that he had fraudulently falsified her signature on contracts and invoices.²⁵ In addition, she submitted that an order for her to transfer the ECTL shares to the plaintiff was unnecessary as she was already prepared to do so.

23 I was not persuaded by Nazrad's submissions. It is well established that in the case of property rights, such as the interests of a beneficiary under a trust, a defendant cannot rely on illegality to defeat a plaintiff's claim based on his legal or equitable title as long as the plaintiff's title can be asserted without reliance on the illegality (see *Chee Jok Heng Stephanie v Chang Yue Shoon* [2010] 3 SLR 1131 at [41] and [42] applying *Tinsley v Milligan* [1994] 1 AC 340). In the present case, the plaintiff's claim was based on his equitable title to the shares in ECTL which he obtained under the Declaration of Trust and was not in any way dependent on any alleged illegality. It was not disputed that the Declaration of Trust itself was genuine. Nazrad also did not explain how the allegation that her signature had been falsified on ECTL's contracts and invoices had any bearing on the plaintiff's undisputed equitable interest in ECTL's shares. I concluded that there was no reason for me to deny the plaintiff's application under O 27 r 3 of the Rules of Court given the clear admissions of fact by Nazrad. The argument that she should be allowed to retain the ECTL shares in breach of trust because of the plaintiff's alleged illegal acts was a *non sequitur*. I should add for completeness that the Nazrad did not produce credible evidence to substantiate her allegations of illegality.

24 I also rejected Nazrad's argument that it was unnecessary to make an order requiring her to transfer the ECTL shares to the plaintiff because she was already prepared to do so. Her offer to transfer the shares to the plaintiff was made in the 26 September Letter but it was subject to the plaintiff waiving her compliance with the Unless Order. This was a condition which the plaintiff was not willing to accept.

25 Accordingly, I granted the plaintiff's application against Nazrad under O 27 r 3 of the Rules of Court.

SUM 5088/2016: Application for judgment against Nazrad and ECTL for failure to comply with the Unless Order

26 For the plaintiff to prevail on SUM 5088/2016, I had to be satisfied that (a) Nazrad and ECTL had failed to comply with the Unless Order, and (b) their failure to do so was intentional and contumelious (*Syed Mohamed Abdul Muthaliff and another v Arjan Bhisham Chotrani* [1999] 1 SLR(R) 361 at [12]).

27 It was undisputed that there were no affidavits filed on behalf of ECTL to comply with the Unless Order. As for Nazrad, the affidavits that she filed contained some bank statements of the Bank Account. These bank statements showed that the most of the Funds had been transferred out of the Bank Account between 29 December 2015 and 5 January 2016. Nazrad conceded that the information was incomplete and that further documents could be requested from Hang Seng Bank.²⁶

28 In particular:

(a) The second pages of the bank statements for December 2015 and April 2016 were not exhibited.²⁷ No explanation was given for these omissions.

(b) Crucially, there was no evidence of who transferred the Funds out of the Bank Account. As for whom the Funds were transferred to, Nazrad stated her *belief* that the Funds had been remitted to Wellstead and subsequently to Wellstead (UK).²⁸ “Wellstead (UK)” appeared to refer to Wellstead Business Consultancy Limited.²⁹ However, Nazrad produced two telegraphic transfer slips which showed that Wellstead transferred US\$128,000 and US\$62,400 to *Wellstead Primary*

Solutions Ltd on 31 December 2015 and 5 January 2016 respectively.³⁰ Nazrad did not explain how these telegraphic slips were linked to the Funds in the Bank Account. Interestingly, if the monies reflected in the telegraphic transfer slips did in fact come from the Bank Account, then Wellstead might not have given full and frank disclosure when it informed Lai SJ in June 2016 that a total of US\$191,800 and £579,420 were transferred from the Bank Account to Wellstead and Wellstead Primary Solutions respectively (see [14] above). It appeared from the telegraphic transfer slips that almost all of the US\$191,800 was transferred to Wellstead Primary Solutions very soon after being transferred to Wellstead.

(c) The bank statements that Nazrad provided covered only the period from December 2015 to April 2016 and did not include the statements for the months of May, June, July and August 2016 (*ie*, the months following the worldwide *Mareva* injunction granted by Lai SJ).³¹

29 In my view, Nazrad had failed to adequately comply with the Unless Order which required her to, among other things, state what had become of any Funds which no longer remained in the Bank Account. The next question was whether the failure to do so was intentional and contumelious.

30 Nazrad insisted that she had done all she could to comply with the Unless Order and that the gaps in the information she had provided were due to circumstances beyond her control. Her case was as follows:

(a) From the start, she had merely been a nominee director and was a nominee shareholder of ECTL. ECTL was under the control of Wellstead (UK) and its company secretary, one Katrina Zevele

(“Katrina”). Nazrad claimed she never had control over the Bank Account.³²

(b) In addition, sometime after May 2016, Wellstead (UK) removed and replaced Nazrad as a director of ECTL without her knowledge and consent. She believed that this was done to prevent her from complying with the plaintiff’s claims or any orders in any legal proceedings.³³ Nazrad claimed that she was unable to reinstate herself as a director of ECTL despite remaining its sole shareholder because the company secretary of ECTL reported to, and took instructions solely from, Katrina. Nazrad claimed that it would have been futile if she had given any instructions to the corporate secretary.³⁴

(c) Finally, although Nazrad could gain access to the Bank Account by personally visiting Hang Seng Bank in Hong Kong, she was unable to do so as she was impecunious.³⁵ Her lack of financial means was also the reason why she was unable to bring in Katrina as a co-defendant or openly confront her; Katrina was the party funding the defence of the suit and Nazrad continued to require litigation funding from her.³⁶

31 I rejected Nazrad’s explanations. First, the fact that she was a nominee director and shareholder was no excuse. She had agreed to take on these roles and there was no reason why she could not exercise the powers of a director and shareholder.

32 Second, the Disclosure Order was made on 30 May 2016 and the Varied Disclosure Order was made on 1 June 2016. I heard SUM 5088/2016 on 16 November 2016. Nazrad had more than five months to comply with the order, during which time she and ECTL were given multiple extensions of

time. In Nazrad's intended affidavit, she referred to a meeting with, among others, her solicitor and Katrina on 9 September 2016 during which the possibility of her re-appointment as a director of ECTL was discussed.³⁷ As it turned out, Nazrad was not re-appointed as a director of ECTL. However, apart from that meeting, there was no evidence that Nazrad had taken any real steps to adequately comply with the court's orders. In fact, it is not even clear whether Nazrad had requested the meeting on 9 September 2016 or whether she had asked to be re-appointed. Further, although she ceased to be a director at some point in time (it was not clear from the evidence when exactly this happened), she was still *the sole shareholder of ECTL throughout this period*. As the plaintiff pointed out, Nazrad merely asserted that she *believed* that any efforts by her to instruct ECTL's company secretary to comply with the Unless Order or reinstate her as a director will be stymied. She had not *in fact* given (or even tried to give) any such instructions to ECTL's company secretary. In any case, even if it was true that ECTL's company secretary would not cooperate with Nazrad, she was still empowered as ECTL's sole shareholder to replace the company secretary and then reinstate herself as a director. She simply chose to do nothing. Nazrad's nonchalant attitude towards compliance with an order of court cannot be condoned.

33 Third, it was curious that Nazrad was able to provide some but not all of the relevant bank and documentary statements relating to the Funds. She also stated that these were all the documents that she was able to retrieve from Wellstead.³⁸ Nazrad did not explain how she was able to get documents from Wellstead but not from ECTL when she was the sole director (at least until she was removed) and sole shareholder of the latter.

34 Finally, the arguments based on Nazrad's impecuniosity were also suspect. In the 26 September Letter to the plaintiff's solicitors, the position she

took was that, because she was not a director of ECTL, it was “not possible for her to obtain any bank statements *or to provide them on time, as there is a long application process by the bank in order to extract the same*”.³⁹ She did not make any reference to her lack of financial means or the purported requirement for her to physically travel to Hong Kong to obtain access to the Bank Account. In fact, no evidence was tendered to prove that there was such a requirement.

35 I concluded that Nazrad had intentionally refused to comply with the Unless Order. Given the obstinate nature of her breach, which persisted over the course of almost half a year during which time Nazrad did not take any steps to even instruct ECTL to comply with the court’s orders, I found that her conduct was contumelious. In my view, it was just that her defences be stuck out and final judgment be entered for the plaintiff. My findings applied *a fortiori* to ECTL on behalf of which no affidavits had been filed at all.

Conclusion

36 For the above reasons, I granted both SUM 5077/2016 and SUM 5088/2016. I also ordered:

- (a) Nazrad to pay the plaintiff costs for SUM 5077/2016 fixed at \$3,000 plus disbursements to be fixed by me if not agreed; and
- (b) Nazrad and ECTL to pay the plaintiff costs for SUM 5078/2016 fixed at \$5,000 plus disbursements to be fixed by me if not agreed.

Chua Lee Ming
Judge

Chacko Samuel and Charmaine Chan-Richard (Legis Point LLC) for
the plaintiff;
Genesis Shen (Gloria James-Civetta & Co) for the defendants.

- 1 Plaintiff's 5th affidavit filed on 19 October 2016, para 5.
- 2 Plaintiff's 5th affidavit, paras 6–8.
- 3 Plaintiff's 5th affidavit, paras 9.
- 4 Plaintiff's 5th affidavit, exhibit NS-14.
- 5 Plaintiff's 5th affidavit, p 44.
- 6 Plaintiff's 5th affidavit, pp 45–47.
- 7 Plaintiff's 5th affidavit, para 39.
- 8 Plaintiff's 1st affidavit, para 41 and exhibit NS-9.
- 9 Plaintiff's 1st affidavit, exhibit NS-12.
- 10 Plaintiff's 1st affidavit, exhibit NS-13.
- 11 Plaintiff's 5th affidavit, exhibit NS-24.
- 12 Plaintiff's 1st affidavit, exhibit NS-15 at para (h).
- 13 Plaintiff's 5th affidavit, exhibit NS-25.
- 14 Plaintiff's 2nd affidavit, exhibit NS-3.
- 15 Plaintiff's 5th affidavit, exhibit NS-26.
- 16 Nazrad's 3rd affidavit, exhibit NA-3, pp 29–30.
- 17 Summons No 3199 of 2016.
- 18 Plaintiff's 5th affidavit, exhibit NS-28.
- 19 Plaintiff's 5th affidavit, exhibit NS-27.
- 20 Kashmir's 2nd affidavit filed on 20 July 2016.
- 21 Plaintiff's 5th affidavit, exhibit NS-29.
- 22 Shen Luda Genesis's affidavit filed on 15 November 2016, exhibit GS-4.
- 23 Nazrad's intended affidavit, para 6.
- 24 Nazrad's intended affidavit, paras 88–91.
- 25 Nazrad's intended affidavit, paras 92–94.
- 26 Nazrad's 4th affidavit, para 15.
- 27 Nazrad's 4th affidavit, pp 13 and 25.
- 28 Nazrad's 4th affidavit, para 15.
- 29 Nazrad's 2nd affidavit, para 9.
- 30 Nazrad's 4th affidavit, pp 15 and 16.
- 31 Nazrad's 4th affidavit, pp 13–26.
- 32 Nazrad's intended reply affidavit, paras 33 and 38.
- 33 Nazrad's 4th affidavit, para 13.
- 34 Nazrad's intended reply affidavit, para 34.
- 35 Nazrad's intended reply affidavit, para 34.
- 36 Nazrad's intended reply affidavit, paras 82 and 83.

- ³⁷ Nazrad's intended affidavit, para 39.
- ³⁸ Nazrad's 4th affidavit, para 10.
- ³⁹ Plaintiff's 5th affidavit, p 146 at para 3.