

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** MOHAMED v. HOSSEIN et al

**BEFORE:** ASSOCIATE JUSTICE R. FRANK

**COUNSEL:** S. Sud for the moving party/ defendant Rifat Hossein

J. Palmer for the responding party/plaintiff

M. Nguyen for HMK in Right of Ontario, as represented by the Minister of Transportation

**ENDORSEMENT**

[1] This is a motion by the defendant Rifat Hossein for an order to compel the plaintiff to answer undertakings and questions refused or taken under advisement on the plaintiff's examination for discovery. The defendant HMK in Right of Ontario, as represented by the Minister of Transportation takes no position on the motion and counsel for HMK attended to observe only.

[2] The plaintiff has agreed to an order requiring answers to all of the undertakings. Having heard the submissions of the parties, I have ruled on each of the refusals and under advisements and my disposition with respect to each is as follows:

- a) **Personal Income Tax Returns and Corporate Tax Returns from 2007 to 2017 and updated from 2018 to present:** I am ordering production of these documents. Given the prior accident in 2010 and issues with respect to the plaintiff's earning capacity resulting therefrom, the requested documents are relevant. There is no basis to find that production would be disproportionate.
- b) **Plaintiff's passport from 2014 forward:** The plaintiff agrees to production.
- c) **Bank statements from 2007 to present:** The plaintiff shall produce bank statements (personal and corporate) from 2007 to present which may be redacted to remove entries other than entries relating to income or expenses. Personal information such as bank account numbers and addresses may also be redacted. Any redactions shall be particularized.

- d) **All treatment records following the plaintiff's 2010 motor vehicle accident:** The plaintiff shall produce treatment records regarding the physical or psychological state of the plaintiff following the plaintiff's 2010 motor vehicle accident.
- e) **Contact information for all supervisors/employers and business partners of the Plaintiff from 2007 to present:** This refusal is upheld. The question as phrased is overly broad and seeks information that is not relevant.
- f) **Settlement documents from the 2010 motor vehicle accident:** In my view, the cases relied on by the plaintiff in opposing production are distinguishable. Liability remains in issue in this case and the information sought may be relevant to prevent the mischief of double recovery. The plaintiff shall produce minutes of settlement, if any, and any documentation that outlines the amounts paid and the date of payment, as well as the breakdown of the amounts paid by heads of damages.

[3] With respect to costs, the moving defendant seeks costs on a substantial indemnity basis in the amount of \$5,817.20 in view of: the moving party's success on the motion; the plaintiff's delay in responding to the undertakings; and the position the plaintiff took with respect to production of certain information. The plaintiff concedes that the moving defendant was successful on the vast majority of the questions in issue but submits that costs should be fixed on a partial indemnity basis in the amount of \$4,000.

[4] The moving party was successful with respect to all but one of the questions moved on today. The responding party was late in serving the responding materials. Those materials were not uploaded to CaseLines (because of the late service) and therefore not available to the court until the hearing of the motion. The responding factum did not address many of the questions in issue. The plaintiff belatedly conceded one of the questions only after oral argument was made by the defendant. Counsel for the plaintiff sought leave during the motion to rely on two cases that he was aware of long ago and that were not provided to counsel for the moving defendant as part of the motion materials. In the circumstances, I order the plaintiff to pay costs to the moving defendant in the amount of \$4,750 (inclusive of disbursements and taxes) within 30 days.

[5] **ORDER TO GO AS FOLLOWS:**

1. The plaintiff shall answer all of the undertakings listed in Schedule "A" within 30 days of the release of this order.
2. Except for the question seeking "Contact information for all supervisors/employers and business partners of the Plaintiff from 2007 to present", and in accordance with the terms outlined in paragraph 2 of this endorsement, the plaintiff shall answer all of the remaining disputed questions listed in the chart attached as Schedule "A". Answers shall be provided within 30 days of the release of this order.

3. The plaintiff shall pay costs of this motion to the moving defendant Rifat Hossein fixed in the amount of \$4,750 (inclusive of disbursements and taxes) within 30 days of the release of this order.
4. This order is effective immediately, without further formality.

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R. Frank Associate J.

**DATE:** July 9, 2024

**SCHEDULE A**

<b>Outstanding undertakings as of June 12, 2024</b>	
1.	To provide a list of all jobs and companies that the Plaintiff has applied to since the accident <i>(Undertaking #1)</i>
2.	To advise of the name of the companies that called the Plaintiff in for an interview, and to provide copies of the rejection emails/letters <i>(Undertaking #2)</i>
3.	To provide complete business records of Trikona Sound <i>(Undertaking #10)</i>
4.	To provide the Business Tax Returns of Trikona Sound, from three years pre-accident to present <i>(Undertaking #11)</i>
5.	To provide the clinical notes and records from Rouge Valley Hospital from three years pre-accident to date <i>(Undertaking #14)</i>
6.	To advise if any accident benefits matters go into litigation <i>(Undertaking #16)</i>
7.	To provide the clinical notes and records of the Plaintiff's Social Worker, Charlene <i>(Undertaking #19)</i>
8.	To provide the updated clinical notes and records of Audrey Carter <i>(Undertaking #20)</i>
9.	To provide the clinical notes and records of the RSW, Jen <i>(Undertaking #21)</i>

10.	To provide a copy of the MRI that was scheduled at the time of the Plaintiff's examination for discovery (Undertaking #30)
11.	To provide a copy of the journal/video that the Plaintiff makes of his recovery (Undertaking #31)
12.	To provide clinical notes and records of any treating physician for three years pre-accident to date (Undertaking #32)
<b>Deemed Refusals</b>	
1.	To provide a copy of the Plaintiff's passports dating back from three years pre-accident to present
<b>Requested Items that Plaintiff's Counsel agreed to produce on July 7, 2021</b>	
1.	Diagnostic imaging from March 3, 2015 and October 5, 2015
2.	All non-privileged documentary portions of the Plaintiff's Tort file from his 2010 motor vehicle accident, and a complete copy of the Plaintiff's Accident Benefits, including a summary of benefits paid, from the Plaintiff's 2010 motor vehicle accident
3.	Copies of any discovery transcripts of the Plaintiff from the civil action arising from the 2010 motor vehicle accident
4.	The name and complete clinical notes and records of the psychiatrist that the Plaintiff has seen since his 2010 motor vehicle accident
5.	Income Tax Returns and Corporate Tax Returns from 2007 to 2017 and updated from 2018 to present
<b>Requested Items that Plaintiff's Counsel for which has provided no position or refused to produce on July 7, 2021</b>	
1.	Settlement documentation arising from the 2010 motor vehicle accident
2.	Contact information for all supervisors/employers and business partners of the Plaintiff from 2007 to present
<b>Requested Items for which the Plaintiff has provided no position</b>	
1.	All treatment records following the Plaintiff's 2010 motor vehicle accident
2.	Notices of Assessment, T1 Generals, and Financial Statements from 2007 to 2017 and updated from 2018 to present

3.	Bank statements from 2007 to present
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