

Commercial Litigation Insights: Difficult, but not Impossible: Court Orders Non-Party Production from a Lawyer in *Sheeraz v Seathi et al.*

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By and Max Skrow

Rule 30.10 is a very powerful evidence-gathering tool. It empowers the Court to order a non-party to produce documents in their possession, power, or control that are relevant to ongoing litigation. However, with great power comes great responsibility. Courts are reluctant to drag non-parties into the litigation arena, and so relief under Rule 30.10 is not easily granted. This is especially so when the non-party from whom productions are sought is a lawyer and where the documents sought to be produced are potentially privileged.

But that is not to say that non-party production cannot be obtained from a lawyer. If that were the case, this article would be far shorter than it is!

The recent decision of Justice Osborne in [Sheeraz v Seathi et al. 2024 ONSC 1687](#) [**Sheeraz**], demonstrates that the Court will order a non-party lawyer to produce documents relevant to ongoing litigation in appropriate cases, even where those documents are said to be protected by solicitor-client privilege.

The dispute between the plaintiff, Kamran Sheeraz, and the Defendant, Shoaib Seathi, concerns the dissolution of Lending Matrix Inc. ("**LMI**"), a mortgage brokerage business which they owned and operated together. Sheeraz and Seathi operated LMI out of commercial office space, part of which they sublet to a lawyer, Ms. Hina Rizvi. In addition to renting office space from LMI, Rizvi also derived much of her business from LMI referrals.

The relationship between Sheeraz and Seathi broke down in 2018, culminating in Seathi locking Sheeraz out of LMI's office. This prevented Sheeraz from accessing LMI's records or overseeing its operations. Sheeraz alleges that Seathi then began to divert monies which should have been paid to LMI (and eventually shared with Sheeraz) to himself. Specifically, Sheeraz alleges that Seathi continued to close mortgage transactions through LMI and that he redirected the commissions from those transactions to himself with the assistance of Rizvi, and that Seathi collected rent directly from Ms. Rizvi rather than LMI collecting that rent and sharing it with Sheeraz.

Sheeraz endeavored to obtain evidence in support of these allegations during examination for discovery, but such efforts were in vain. Seathi testified that his LMI laptop had been corrupted and its files deleted. He also testified that he cancelled LMI's account with Google without archiving the accounts or their contents. Sheeraz looked to Rizvi to produce documents to help him prove his case, but his letters to her went unanswered.

Sheeraz then brought a motion under Rule 30.10 seeking an order compelling Rizvi to produce, among other things, all documents pertaining to the payment of rent and office expenses to LMI, copies of all cheques issued to LMI or to Seathi, and copies of all letters

of directions in respect of real estate transactions for which Rizvi provided legal services to clients referred to her by LMI, or in which LMI brokered or co-brokered the mortgage in respect of the transaction.

Rizvi opposed Sheeraz's Rule 30.10 motion on multiple bases. For the purposes of this article, the following arguments advanced by Rizvi are of interest:

1. the transaction documents sought by Sheeraz contain confidential solicitor-client communications and are protected by privilege;
2. the interests of her clients would be affected by the production order, and so Sheeraz is required by Rule 37.07(1) to notify them of his motion;[\[1\]](#) and
3. Sheeraz can obtain the same information from other sources, such as LMI's former accountant.

Justice Osborne dismissed each of these arguments, and in doing so, provided analysis which may be of interest in future motions under Rule 30.10:

1. With respect to Rizvi's privilege argument, Justice Osborne concluded that the transaction documents are not protected by privilege because even though Sheeraz no longer has them in his possession, they were at one time provided to LMI as part of the real estate transaction, and so any privilege had been waived. Further, Sheeraz proposed that all client-identifying information be redacted from the transaction documents which, in Justice Osborne's view, completely addressed any privilege concerns.
2. In light of this conclusion with respect to privilege, Sheeraz was not required to give each of Rizvi's clients notice of this motion. Justice Osborne also noted that it would be a massive and costly undertaking for Sheeraz to serve each of Rizvi's clients, and may be impossible given that Sheeraz does not know who these clients are or where they reside.
3. Sheeraz is not required to exhaust all other potential sources of this transaction information before seeking production from Rizvi. While others, such as LMI's accountant, may have this information, their records may not be complete and accurate. For this reason, Justice Osborne was satisfied that Rizvi was the only party from whom such productions could be obtained on an accurate and efficient basis.

In ordering Rizvi to produce the documents sought by Sheeraz, Justice Osborne also relied on the fact that Rizvi – unlike many respondents in motions for non-party production – was not a “stranger” to the litigation. She was directly involved and implicated in the litigation and had even sworn an affidavit in support of Seathi at the outset of the litigation.

In *Sheeraz v Seathi et al*, Justice Osborne shows us that while it is by no means easy to obtain non-party production of potentially-privileged documents from a lawyer, it can be done. Especially where the moving party proposes measures to protect against the disclosure of client-identifying information, and especially where the lawyer is in some way involved in the litigation.

WeirFoulds LLP litigator and article author Max Skrow represented the Plaintiff/Moving Party, Kamran Sheeraz.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] Rule 37.07(1) provides that a notice of motion “shall be served on any party or other person who will be affected by the order sought, unless these rules provide otherwise.”

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