

**ONTARIO SUPERIOR COURT OF JUSTICE
CIVIL ENDORSEMENT FORM**
(Rule 59.02(2)(c)(i))

BEFORE:	Justice/Associate Justice Associate Justice Karen E. Jolley	Court File Number: CV-21-00673776-0000
Title of Proceeding:		
GUY SNIR -v- MARK COHEN; CARLY NICOLE COHEN; GARY COHEN; 2860067 ONTARIO INC.; THOMAS		Applicant(s)/ Plaintiff(s) Respondent(s)/ Defendant(s)

Case Management:	Yes If so, by whom:	No
-------------------------	----------------------------	-----------

Participants and Non-Participants: (Rule 59.02(2)(vii))

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff Guy Snir	Rocco Giordano Scocco Emily Sicova	rocco@scoccoLaw.ca, emily@scocolaw.ca	647-243-5111 647-243-5111	Y Y
2) Defendant Carly Nicole Cohen	Hailey Abramsky Andrea Reid (Articling Student)	habramsky@foglers.com Not Provided	416-864-9890 Not Provided	Y Y

Date Heard: (Rule 59.02(2)(c)(iii)) May 12, 2026

Nature of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))				
☒ Motion	☐ Appeal	☐ Case Conference	☐ Pre-Trial Conference	☐ Application

Format of Hearing (mark with an "X"): (Rule 59.02(2)(c)(iv))				
☐ In Writing	☐ Telephone	☒ Videoconference	☐ In Person	
If in person, indicate courthouse address:				

Relief Requested: (Rule 59.02(2)(c)(v))
--

Compel answers to refused questions.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Motion dismissed.

Costs: On a	partial	indemnity basis, fixed at	
		\$14,000	are payable
by	to	Within	
The plaintiff	The defendant Carly	30	
		days.	

Brief Reasons, if any: *(Rule 59.02(2)(b))*

The plaintiff brought this motion seeking an order that the defendant Carly Cohen (“Carly”) answer three questions she took under advisement and 21 questions that she refused.

At the commencement of argument, the plaintiff advised that he was seeking answers to only two questions taken under advisement and two refused questions. Carly had answered three refused questions and the plaintiff advised he was not moving on the other sixteen.

The questions for which answers are now sought concern Carly’s bank statements. The plaintiff sought to know how many joint accounts Carly had with her ex-husband, the defendant Mark Cohen (“Mark”) (Q114), production of the bank statements for those joint accounts (Q213), a list of what assets or funds are owed by Mark to Carly (Q54) and production of all of Carly’s bank statements (Q210).

The basis for the questions is the plaintiff’s allegation that Mark and his brother, the defendant Gary Cohen, defrauded the plaintiff and that Carly “was aware of the fraudulent scheme perpetrated against the plaintiff” and “at all times, Mrs. Cohen knowingly, recklessly and/or in the alternative negligently benefitted from the misappropriated funds belonging to the Plaintiff.”

In short, the plaintiff alleges that Carly received some of the ill-gotten gains from Mark and has been unjustly enriched as a result.

On discovery, Carly gave evidence that she did not receive money from Mark. She did not know how much money Mark made. Mark never contributed financially to her or their children and she paid for everything in the household.

The plaintiff seeks production of all of Carly’s bank statements for all of her accounts to have her prove that she did not receive money from Mark.

The request is denied for three reasons. First, it is overly broad. The plaintiff seeks (or, on discovery, sought) all Carly's bank statements. During argument, the plaintiff limited his request to the period January 2021 to August 2021. He argued that this was implicit in his questions, as this was the time period over which the plaintiff advanced funds to Mark. It was not implicit to me or to Carly, who was asked for production of all of her bank statements. It also does not follow that the request would be implicitly limited to the same period during which the plaintiff provided funds to Mark, as Mark could have provided the funds at any time thereafter. If the plaintiff wanted to limit his request to an eight month period, discovery was the time to do so.

Second, Carly has advised that she does not know where the money went that Mark received, or have any idea what he might have done with it. She was asked whether she received any money from Mark and she has testified that he did not. In the words of plaintiff's counsel on that discovery, he now wants Carly to "prove it".

As noted by Morgan, J. in *Elgner v. Freedman Estate*, 2014 ONSC 1989 at paragraph 16, on which both parties rely, Morgan J. wrote: "It has been recognized for several centuries in English law that to impose a burden of proof on the party asserting a negative proposition of this nature may be to impose an insurmountable burden. [...] [para 17] The primary position adopted by the Plaintiff - that to prove one has nothing, one must produce everything - is, with respect, too clever by half. If that argument were to be accepted, every party in every case could be cross-examined on everything they possess or know in the world, since all parties are required to swear an affidavit of documents that confirms that they have produced everything of relevance. Truly testing that they have no other relevant material would, if taken to the logical extreme that the plaintiffs' counsel embrace here, require disclosure of all their non-relevant material.

Lastly, and related to the second matter, discovery is not the place to discover whether you have a claim. When asked for particulars of his allegation that Carly had been aware of Mark's alleged scheme or been unjustly enriched by it, the plaintiff relied on (a) the fact that she was married to Mark at the time of the plaintiff's advances; and (b) the fact that Mark transferred his interest in the home to Carly. This transfer occurred in September 2020, well before the plaintiff provided Mark with any funds.

Carly's discovery evidence was that she did not receive any money from Mark, regardless of their marriage. With respect to the property transfer, she advised in answer to a question taken under advisement: "the property was originally registered in her sole name when it was first purchased on October 1, 2013. Later, Mark's name was added on March 9, 2015 solely for the purpose of obtaining mortgage financing. The property was then re-registered in Carlys's sole name on September 8, 2020 once certain mortgages had been discharged, for *bona fide* reasons and, in any event, prior to the occurrence of the alleged misconduct complained of in this proceeding."

As noted in *CIBC v Deloitte & Touche* 2013 ONSC 917 at paragraph 65:
The case law has developed the following principles about the scope of the questioning on an examination for discovery:

- An examination for discovery is a device of civil procedure designed to assist a party in proving his or her claim or defence. It, however, is not meant to be an instrument for a party to discover whether he or she has a claim or defence, although this sometimes occurs as a by-product of a properly conducted discovery. Overboard or speculative discovery is not permitted....

The motion to compel answers to these refusals is denied.

The plaintiff also sought production of Carly's family law court file. She has provided him with the court file number and location. He can make the request for the file contents and, if they are not provided on the basis of a sealing order, his remedy will be in that proceeding. I make no order in that regard.

Both parties sought their costs on a substantial indemnity basis.

The defendant shall have her costs. The plaintiff was not successful in his request. Further, his failure to narrow his requests to the key refusals before the commencement of argument put Carly to the expense of having to respond to all 21 refusals and two under advisements. While I agree that she did provide the court file number for the family law matter only after service of the motion record, it is not a sure thing that production of that family law information would have been ordered. I will not penalize her for answering those questions in an attempt to resolve a small part of the motion.

The parties' costs are similar, so the defendant's partial indemnity claim for \$14,314.95 is an amount the plaintiff would reasonably have expected to pay in all the circumstances if he did not succeed on the motion.

The plaintiff shall pay to the defendant Carly her partial indemnity costs of the motion which I fix in the all inclusive amount of \$14,000, within thirty days of today's date.

Additional pages attached: ☐ Yes ☐ No



May 12

20

Date of Endorsement (Rule 59.02(2)(c)(ii))

Signature of Judge/Associate Judge (Rule 59.02(2)(c)(i))