

To: The Honorable Justice Slatter
The Honorable Justice Rowbotham
The Honorable Justice Bielby

Cc: The Honorable Chief Justice Fraser
Court of Appeal of Alberta

Cc: All respondents

December 6, 2010

Dear Sir and Madams

Re: Appeal No. 0903-0241-AC (Liu v. Matrikon Inc.)

Attached please find my Affidavit filed Dec 19, 2008, which was relied on in my application heard by the Honorable Clackson J.(see page P2 of the Appeal Digest) but I carelessly failed to include it in the appeal books. I am very sorry for this mistake.

1. The Fraser Panel's 2008 Order Gave Me the Right to Amend My Claim

This affidavit contains my written submission dated November 12, 2008 to the Honorable Fraser Panel and the Fraser Panel's Order filed Dec 5, 2008 based on my submission, which clearly ordered that

"2. The Appellant/Plaintiff is directed to return to the Court of Queen's Bench should he choose to seek a further amendment to his claim".

That was why on Dec 19, 2008 I filed my application with QB to amend my "Amended Amended Statement of Claim" (AASC). After several adjournments all requested by the respondents, on April 28, 2009 Clackson J. heard my application.

As you can see from my submission to the Fraser Panel, I have told every thing about what happened in my action to the Fraser Panel. The Fraser Panel also set up a deadline for the respondents to respond (see the attached court's letter), but none of them provided any response.

Whether or not I have the right to amend my AASC is the **Issue #1** I raised in my submission to the Fraser Panel. This issue is in fact an issue whether or not paragraph 4 of Smith J's summary judgment should be in force, which is exclusively within the jurisdiction of the Fraser Panel to decide. The Fraser Panel has never changed its position on this issue regardless what other judges said or ordered after the Fraser Panel's 2004 order, which was given in its 2004 order and re-confirmed in its 2008 order, i.e., Paragraph 4 of Smith J's summary

judgment should not be in force and therefore I have the right to amend my AASC to bring the deleted theft claim and deleted theft defendants back to my QB action. No other judges in Alberta have the jurisdiction to deprive this right by any means, such as by an order of security for costs etc.

Therefore, this court can do nothing different from what the Fraser Panel has ordered in its 2008 order. We do not need to re-argue this same issue or re-decide this issue, because if I make the same submission as that dated November 12, 2008 to the Fraser Panel, this court cannot give an order that is inconsistent with the Fraser Panel's 2008 order.

2. My Application for Summary Judgment (The theft defendants don't deny the theft)

Within 14 days after the Fraser Panel's order entered Dec 5, 2008, I followed the order and filed a Notice of Motion on Dec 19, 2008 to amend my AASC. However, the respondents adjourned my applications three times. That was why I filed the same notice of motion on the above-mentioned four dates.

Since my application was finally adjourned to special chambers, in addition to my application for amending my AASC, under Rule 159(1)(3) I also added my application for summary judgment against all the three theft defendants Tangirala, Huang, Shah, and Matrikon Inc. since it has been a long-time un-contradicted fact that, after the Fraser Panel overturned Smith J's summary judgment, Tangirala, Huang, and Shah have all given up their defences to my claim that they stole my computer program source code and provided it to Matrikon. (see paragraphs 3-10, and 19 of my Affidavit filed April 9, 2009, paragraphs 2 and 3 of my Affidavit filed April 17, 2009, paragraphs 2 and 3 of my Affidavit filed April 24, my Affidavits filed May 27, 2002, and my Affidavit filed June 6, all in the "Appellant's Extracts of Key Evidence").

I wish to emphasize the facts that

- (1) The three theft defendants Tangirala, Huang, and Shah successfully refused to be added back as defendants in my QB action; and
- (2) They did not file any affidavit or rely on any one of their 2002 affidavits to support their applications for security for costs, even though
 - a. Their 2002 affidavits did successfully mislead Smith J. to summarily dismiss my theft claim against each of them; and
 - b. Their Notice of Motion for security filed by their lawyer Mr. O'Reilly relied on Rule 594 which mandatorily calls for their affidavit to show "good defence" to my theft claim against each of them.

This concludes that they have given up their defences. I repeated this many times in my affidavits filed and in my submissions to the courts. They never denied the above facts and this conclusion.

Paragraph 10 of my Factum summarized facts that show that I have evidence, including direct evidence as the Fraser Panel concluded in its judgment **Liu v. Tangirala, 2004 ABCA 171** shown on page 11 of my Factum, to support my theft claim against the three theft defendants, that the three theft defendants have not challenged the evidence after the Fraser Panel overturned Smith J's summary judgment, and that the three theft defendants have all given up their defences to my theft claim against them.

Even facing my application for summary judgment filed and served on April 9, 2009, the three theft defendants still dare not rely on their 2002 affidavits or file any affidavit to oppose my application, as confirmed in writing by their lawyer Mr. O'Reilly in his email dated April 15, 2009:

"I expressly state that the University Defendants do not intend to rely on the 2002 Affidavits sworn by or on behalf of the University Defendants, for the purpose of the upcoming applications." (Page A37 of "The Appellant's Extracts of Key Evidence")

So my theft claim against them has been un-contradictedly proven.

So Clackson J erred under Rule 159(1) and (3) in dismissing my application for summary judgment against the three theft defendants.

3 Tangirala, Huang, Shah, and the University of Alberta Are Currently Not Defendants to the Current QB Action 0103-23071.

Mr. O'Reilly, Mr. Hillson and I all agreed in writing to accept the obvious fact that Mr. O'Reilly's clients Tangirala, Huang, Shah, and the University of Alberta are currently not added as defendants to the current QB action, which is still defined by the "Amended Amended Statement of Claim", and the lower court has been refusing my application for amending it.

Yours truly,

Danyang Liu

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