

Case Name:
**Simon Zaslavski Enterprises Inc. v. Antique Treasure
Traders Inc.**

Between
Simon Zaslavski Enterprises Inc., and
Antique Treasure Traders Inc. et al.

[2004] O.J. No. 3020
Court File No. 03-CV-247620 CM3

**Ontario Superior Court of Justice
Master Brott**

June 28, 2004.
(5 paras.)

Counsel:

Vadim Kats, for the plaintiff (the moving party).

Marek Z. Tuffman, for the defendants (the responding parties).

¶ 1 **MASTER BROTT** (endorsement):— This is a motion for an order to examine the co-defendants separately. This is a claim by the plaintiff for money that the defendants received from the defendants' insurers following a robbery at the defendants' premises. The plaintiffs claim that their jewellery was what was stolen and the insurance monies belong to them.

¶ 2 It is settled law in Ontario that a party has the right to be present at the examination for discovery of a co-party except for cause. What constitutes cause depends on the circumstances of each individual case. The onus rests on the party seeking exclusion to satisfy the court that the interests of justice require exclusion. I adopt the reasoning of Master Kelly in *Shuttleworth v. TGA General Contracting* [2003] O.J. No. 2997 that the possibility for tailoring evidence is not a heavy enough onus - rather there must be strong support for a finding by the court that the discovery process may well be compromised. It is in the court's discretion to find that the discovery process may well be compromised and with the facts as pleaded, I so find.

¶ 3 Here, the pleadings clearly raise issues of credibility. There are contradictory versions of the transactions, the defendants are not adverse in interest and are represented by one counsel, two of the defendants are spouses and one of the defendants is an officer/director of the corporate defendant.

¶ 4 Therefore - order to go permitting the plaintiff to examine for discovery, each of the defendants separately, one following the other and for an order requiring the defendants not to disclose evidence given by one co-defendant to another co-defendant prior to conclusion of the examinations of all the defendants.

¶ 5 Costs are payable forthwith to the plaintiff in the amount of \$1,400.00. A request for an award on a substantial indemnity basis is totally unwarranted in the circumstances.