

NOVA SCOTIA COURT OF APPEAL

Citation: Bellefontaine v. Purdue Frederick Inc., 2010 NSCA 58

Date: 20100707

Docket: CA 320869

Registry: Halifax

Between:

George Bellefontaine, Stephen MacGillivray, L. Annette Stewart,
Kevin Lahey, Gary Melanson, and George Critchley, and Christopher Fecteau

Appellants

v.

Purdue Frederick Inc., Purdue Pharma Inc., Purdue Pharma L.P.,
Purdue Pharma, Purdue Pharma Company, The Purdue Frederick
Company, Inc., Purdue Pharmaceuticals L.P., P.F. Laboratories Inc.,
and PRA International (collectively, “Purdue”) and
Abbott Laboratories, Limited / Laboratoires Abbott, Limitée,
Abbott Laboratories, and Abbott Laboratories, Inc. (collectively “Abbott”)

Respondents

Judge: The Honourable Justice Jill Hamilton

Appeal Heard: June 10, 2010

Subject: **Class actions; Timing of Preliminary Motions; Jurisdiction of the Court over *Ex Juris* Appellants.**

Summary: Some of the respondents made a motion in Supreme Court, prior to the certification motion in a proposed class action, to have the claims of the *ex juris* appellants dismissed for want of jurisdiction on the basis of the common law principle of jurisdiction *simpliciter*, codified in the **Court Jurisdiction and Proceedings Transfer Act**, S.N.S. 2003 (2d Sess.) c.2, as “territorial competence”. The *ex juris* appellants did not plead “real and substantial connection” to Nova Scotia and did not seek to introduce any evidence of such a connection. The judge

heard the matter and dismissed the claims of the *ex juris* appellants.

Issue: Did the judge err in deciding the motion pre-certification and in dismissing the claims of the *ex juris* appellants?

Result: The judge made no error. He recognized the general reluctance against pre-certification motions, but noted that there are times when the overriding principles of economy, efficiency and justice require that an interlocutory matter be heard before certification. He did not err in concluding that the jurisdiction issue before him was such an exception. He found there was no link between the *ex juris* appellants and Nova Scotia, other than a common issue with the resident plaintiffs, and thus no jurisdiction *simpliciter* or territorial competence. The statement of claim provides that the *ex juris* appellants did not reside in Nova Scotia and that the respondents did not ordinarily reside here and were based in Ontario. It makes no allegation and the appellants presented no evidence that any of the *ex juris* appellants were prescribed OxyContin® Tablets in Nova Scotia, purchased or ingested OxyContin® Tablets in Nova Scotia, or suffered any injury or loss in Nova Scotia. It appears the evidence exists only and entirely in other jurisdictions. The relief sought is based in part on *ex juris* legislation. In these circumstances, the judge did not err in concluding there was no "real and substantial connection" between the *ex juris* appellants and Nova Scotia and dismissing their claims. This appeal does not deal with whether so-called "national" class actions are available in Nova Scotia or with whether the *ex juris* appellants can be members of a national class as certified in Nova Scotia, as opposed to named plaintiffs in the action.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 10 pages.