

NOVA SCOTIA COURT OF APPEAL

Citation: *Maritime Travel Inc. v. Go Travel Direct.Com Inc.*, 2007 NSCA 11

Date: 20070130

Docket: CA 269788

Registry: Halifax

Between:

Go Travel Direct.Com Inc.

Appellant

v.

Maritime Travel Inc.

Respondent

Judge(s): Saunders, Hamilton & Fichaud, JJ.A.

Appeal Heard: January 23, 2007, in Halifax, Nova Scotia

Held: Appeal allowed in part, but dismissed in all other respects, as per reasons for judgment of Saunders, J.A.; Hamilton & Fichaud, JJ.A.

Counsel: Peter Bryson, Q.C, for the appellant
David P. S. Farrar, Q.C., & John Shanks, for the respondent

Reasons for judgment:

[1] Allegations of deliberate or reckless false or misleading public advertising, contravention of the **Competition Act**, R.S. 1985, c. C-34, and commission of the common law tort of deceit, coupled with claims for injunctive relief, an accounting for profits, and general and punitive damages, have joined the parties in litigation since 2003, eventually prompting an application by the appellant (the defendant Go Travel) for summary judgment pursuant to **Civil Procedure Rule 13.01** which was heard by Justice Heather Robertson in Supreme Court Chambers, on August 3, 2006.

[2] The judge dismissed the application and it is from that decision that the appellant now brings this interlocutory appeal.

[3] The standard of review we apply in matters such as this is well known. We will not intervene unless wrong principles of law were applied or a patent injustice would result. **United Gulf Developments Ltd. v. Iskandar**, 2004 NSCA 35; **Eikelenboom v. Holstein Assn. of Canada**, 2004 NSCA 103.

[4] At the hearing, counsel for the respondent conceded that the claim for damages based on the tort of deceit could not be made out, and that in his view such a concession would also relinquish any entitlement to a claim for punitive damages. Accordingly we would allow the appeal in part and enter summary judgment in favour of the appellant pursuant to **CPR 13.01**, but limited to clause number 15 and clause number 17(d) in the respondent's amended statement of claim dated March 16, 2005. For clarity, those clauses provide:

15. Maritime Travel further says that Go Travel Direct has committed the common law tort of deception (sic).

17. (d) Punitive damages;

[5] After examining the record and considering counsels' submissions we are unanimously of the view that in all other respects the appeal ought to be dismissed. We see neither error in principle nor patent injustice in the Chambers judge's conclusion that whether the impugned representations and advertisements were deliberately or recklessly false or misleading, and whether as a consequence the

respondent is entitled to damages that may be quantified, are arguable issues within the meaning of **CPR 13** that ought to be decided after a trial.

[6] As success is divided, we order each side to bear their own costs.

Saunders, J. A.

Concurred in:

Hamilton, J.A.

Fichaud, J.A.