

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: 2703203 Manitoba Inc. v. Parks, 2005 NSSC 167

Date: 20050622
Docket: SH 188275
Registry: Halifax

Between:

2703203 Manitoba Inc.

Respondent/Plaintiff

v.

David Parks, Ross Parks, Lloyd Smith
and Parrcom Atlantic Concepts Incorporated

Applicant/Defendant

Judge: The Honourable Justice Glen G. McDougall

Heard: March 17, 2005, in Halifax, Nova Scotia

**Final Written
Submissions:** March 24, 2005

Counsel: Ross Parks, for the applicant/defendant
Carrie Ricker, for the respondent/plaintiff

By the Court:

[1] The defendants made application for an order for production. Initially their request consisted of 14 separate items.

[2] After hearing the application the list has been whittled down to just two remaining items as follows:

- (i) research into the development of Coffee News; and
- (ii) a listing of the Canadian cities where Coffee News currently publishes.

[3] The defendants argue that the information requested is relevant and is needed to challenge the credibility of the plaintiff's president and chief spokesperson, Ms. Jean Daum.

[4] The plaintiff contends that, first and foremost, the information sought by the defendants is not relevant to these proceedings and that furthermore, should they wish to test Ms. Daum's credibility, they can explore other means of doing so based on her testimony at trial.

[5] The plaintiff argues, alternatively, that even if the information requested does have some relevance its production could cause potential economic harm to the plaintiff which would outweigh any probative value it might have for the defendants. It further contends that the defendants' only purpose in seeking this information is to gain a competitive market advantage and not to defend their case.

[6] The parties to this application both agreed to have the disputed information made available to the Court for its review. It would then be left to the Court to decide whether or not to order production.

[7] Upon review, I am satisfied that the information requested has no relevance to the proceedings before this Court. Furthermore, if the information was provided, it could result in further economic harm to the plaintiff. In the case of **Scotia Innovators Inc. v. Bartlett Plastic & Precision Marketing Ltd.**, [2004] N.S.J. No. 223 (N.S.S.C.), the Honourable Justice J.E. Scanlan wrote the following at paragraph 14:

The file materials that are requested may be relevant to the issue of damages. The court is concerned that the production of the requested information may well cause irreparable harm to the plaintiff. It is not enough the court rely in this case on the implied undertaking of confidentiality a party is subjected to as regards information disclosed during the discovery process. The file information requested in the present case would give the defendant all the plaintiff's information client lists, pricing, marketing strategies, etc. This is the type of information which is and must be guarded from competitors in the commercial world. There is nothing which this court could do to effectively prevent the defendants from using the information requested so as to gain an unfair competitive advantage as against the plaintiff. Pricing and marketing strategies for example, once disclosed to the defendant cannot be removed from the wealth of knowledge the defendant then is possessed of in terms of its own pricing and marketing strategy. It would be impossible for the

plaintiff or Court to subsequently determine if the Defendant at a later date ever used that information to its advantage even if the Court ordered that they must not.

[8] Justice Scanlan's reasoning is applicable to the matter before me. The defendants' request to have this additional information provided is therefore denied for the reasons stated.

[9] I have already dealt with the other 12 requested items in my oral decision given at the conclusion of the hearing. I will therefore leave it to the parties to prepare an order dealing with all aspects of the application. In the meantime, the information forwarded to me for review by the plaintiff's counsel will be returned to her in a sealed envelope in order to preserve its confidentiality.

J.