

SUPREME COURT OF NOVA SCOTIA

Citation: *Wilson Fuel Co. Ltd. v. Power Plus Technology Inc.*, 2015 NSSC 304

Date: 20151023

Docket: Hfx No. 419357

Registry: Halifax

Between:

Wilson Fuel Co. Limited, a body corporate

Plaintiff

v.

Power Plus Technology Inc., a body corporate
and Jason Lutes

Defendants

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Judge: The Honourable Justice Arthur J. LeBlanc

Heard: June 3, 2015, in Halifax, Nova Scotia

Decision: October 23, 2015

Subject: Civil procedure; Disclosure obligations; motion for disclosure; meaning of relevant; meaning of good faith

Summary: The parties each brought motions for disclosure pursuant to Nova Scotia *Civil Procedure Rule* 14.12. The plaintiff, a supplier of petroleum products, entered a ten-year supply agreement with the defendants. The defendants discovered that they were being overcharged and gave notice of termination. The plaintiff brought an action for breach of contract and bad faith conduct. The plaintiff alleged that the defendants had surreptitiously negotiated with a new supplier

before terminating the agreement. The defendants pleaded that they were entitled to terminate the agreement because the plaintiff had intentionally overcharged, amounting to fundamental breach and bad faith conduct. The defendants brought a motion for disclosure of (a) documents providing details of the cost to the plaintiff of various promotions; (b) details of repayments made by the plaintiff to other dealers as a result of overcharging; (c) documents relating to the plaintiff's decision to increase prices; and (d) documents relating to the plaintiff's decision to cease providing an email with the rack rate. The plaintiff sought disclosure of the agreement between the defendants and their new supplier, and communications leading up to that agreement.

Issues: Are any of the requested documents relevant to a fact in issue?

Result: Motions allowed, in part. The plaintiff was required to disclose documents providing details of the cost of promotions, and documents relating to its decision to cease providing a rack rate email. These documents were relevant to damages and the defendants' allegation of bad faith. Bad faith may be pleaded as a defence. Documents relating to repayments made by the plaintiff to its other dealers, and the plaintiff's decision to increase prices, were not relevant and did not need to be disclosed. The defendants were required to disclose any communications with their new supplier leading up to the agreement, but not the agreement itself. The defendants' communications with their new supplier were relevant to the plaintiff's allegation of bad faith.

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