

SUPREME COURT OF NOVA SCOTIA

Citation: *AtlanticSpark Professional Services Inc. v. Hryshyna*, 2016 NSSC 114

Date: 20160428

Docket: Halifax No. 445582

Registry: Halifax

Between:

AtlanticSpark Professional Services Inc.

Applicant

v.

Yauheniya Hryshyna

Respondent

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Judge: The Honourable Justice Arthur W.D. Pickup

Heard: March 15, 2016, in Halifax, Nova Scotia

Written Decision: April 28, 2016

Subject: Civil procedure; choice of procedure; converting application to action

Summary: The applicant commenced an application against the respondent, its former office manager, in which it sought damages for, *inter alia*, alleged breach of contract, conversion and detinue, fraudulent misrepresentation, and deceit. The applicant alleged that the respondent had disclosed proprietary commercial information to her husband. The respondent moved for an order converting the application to an action.

Issues: Should the application be converted to an action?

Result: The burden was on the respondent, as the moving party, to establish that the application should be converted to an action. She argued that the application process lacked the procedural safeguards of a trial for addressing credibility. She was not

prepared to waive her right to a jury trial. In opposing the motion, the applicant argued that conversion would lead to higher costs and delay. The court was not convinced that there would be an erosion of the applicant's substantive rights so as to trigger the presumption in favour of an application, although the respondent's maintenance of her right to a jury trial did trigger the presumption in favour of an action. The court was satisfied that the parties had identified their important fact witnesses. While factual complexity alone did not make an application impracticable, the number of issues and remedies involved led the court to find that the matter would not be ready for hearing within a matter of months rather than years, and the duration of the eventual hearing could not be predicted accurately. Combined with the significant questions of credibility, the multiplicity of claims and the factual disputes pointed to an action as the preferable procedure.

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