

SUPREME COURT OF NOVA SCOTIA

Citation: Ellph.com Solutions Inc. v. Aliant Inc., 2011 NSSC 316

Date: 20110808

Docket: Hfx No. 259106

Registry: Halifax

Between:

Ellph.com Solutions Inc. and Ellph.com Technologies
Incorporated

Plaintiffs

and

Aliant Inc., Aliant Telecom Inc. and Aliant Telecom Inc./
Telecommunications Aliant Inc.

Defendants

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Judge: The Honourable Justice Gerald R. P. Moir

Heard: June 20, 2011

Subject: Civil procedure, security for costs

Summary: The plaintiffs are closely held, insolvent companies. They claim that the defendants unlawfully terminated a software sublicensing agreement that was to provide revenues to the plaintiffs. The defendants sought an order requiring the plaintiffs to post guarantees from their shareholders securing the contingent liability for costs.

Issues: Whether to grant the order?

Result: The new rules do not alter the broad discretion to do what is just on a motion for security for costs nor the requirement for a circumstantial inquiry on that subject. *Emmanuel v. Sampson Enterprises Ltd.* remains a sound statement of principles. In the circumstances, the order would be unfair. This is a contracts case, and the parties freely contracted for corporate liability only. The termination is a cause of the insolvency, and the order would end the claim. The shareholders must fund the litigation, and they should not be asked to undertake an additional burden, especially in light of the defendants' estimate of party and party costs in the millions of dollars.

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