

Date of Release: August 23, 1995

No. C937014
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTERN DISPLAY SERVICE LIMITED) ***REASONS FOR JUDGMENT***

PLAINTIFF)

OF

AND:

ASIA-PACIFIC FOUNDATION OF CANADA) ***MASTER POWERS***

and THE GLOBE FOUNDATION OF CANADA) ***(IN CHAMBERS)***

DEFENDANTS)

David I. McBride

Counsel for the plaintiff

Angela E. Thiele

Counsel for the defendants

Heard at Vancouver:

August 16, 1995

1 This decision follows the defendants' motion to adjourn a trial presently scheduled for February 12 to 23, 1996. The defendants wish to adjourn that trial to any date after March 29, 1996.

2 The plaintiff alleges that the defendants breached a contract with the plaintiff whereby the plaintiff was to provide

services to the defendants with regard to a trade show called Globe '94. The agreement is said to be partly oral and partly in writing. It is said that the agreement was breached on or about October 12th of 1993, when the defendants are alleged to have wrongfully terminated the contract. The plaintiff seeks damages and a return of certain software and plans alleged to be in the possession of the defendants.

3 The defendants deny that any such agreement had been reached saying that they were only at the stage of attempting to negotiate an agreement. The defendants say that there was no agreement to terminate and that negotiations simply ceased on or about October of 1993. The defendants also say that any materials in their possession which were the property of the plaintiffs have been returned to the plaintiffs. In addition, the defendants say if there was such an agreement, the plaintiffs failed to honour the agreement justifying termination.

4 The trial was originally scheduled for five days commencing May 15th of 1995. Some of the plaintiff's witnesses attended from Ontario for that trial. Unfortunately, due to the number of cases scheduled for trial, a judge was not available and the matter had to be adjourned. Neither party wished that matter to be adjourned at that time. Counsel then had discussions with the trial coordinator and the present trial date was arranged almost immediately. Unfortunately, defendants' counsel had not confirmed the availability of witnesses for the new trial date.

5 The defendants' counsel was advised very shortly after the rescheduling that the defendants' two main witnesses would be unavailable for the scheduled trial date. The defendants immediately attempted to arrange a rescheduling of the trial date by consent.

6 The plaintiff, however, was not in a position to give consent. The plaintiff is presently operating under a proposal in bankruptcy and the creditors of the plaintiff are anxious that the plaintiff pursue this claim so that the plaintiff can make arrangements to pay its creditors. The plaintiff has, from the commencement of these proceedings December 22nd of 1993, pursued the action vigorously. This included an application for summary judgment under R. 18A.

7 To resolve the issue, however, it will be necessary that there be a trial and that witnesses be called so the court may assess the credibility of the witnesses to determine whether or not an agreement had ever been reached.

8 The problem with the present trial date is that the defendants' two primary witnesses, a Dr. John D. Wiebe and Patricia Maisonneuve, are both key people in the defendants' operations. The defendants are responsible for organizing and holding Globe '96 conference and trade show on the business of the environment. This is an international exhibition highlighting Canada's environmental

technology companies. The affidavit of Dr. Wiebe indicates that this is a \$5 million undertaking and that it is expected that it will attract 10,000 visitors to Vancouver. The show is to be held between March 26 to 29, 1996, but unfortunately the organization and planning must occur in the months prior to that. The evidence of Dr. Wiebe and Ms. Maisonneuve is that during the months of January, February and March of 1996, they expect that they will be working as much as 90 to 100 hours per week in trying to coordinate and organize Globe '96. Their evidence is that it would be an extreme hardship on the defendants and on these witnesses if they had to attend the trial presently scheduled for February 1996. This is so even though their evidence might each only occupy approximately two days of the scheduled trial time.

9 The plaintiff is concerned that any delay may be looked upon unfavourably by its creditors and be prejudicial to its financial position. I would point out that I am satisfied that, on the evidence before me, the plaintiff is doing everything it can to pursue this litigation.

10 The defendants' concerns are that there will be special demands on its witnesses and they are simply unable to reschedule their time or have someone else do the work which they must perform. This is despite the fact that they would have significant pre-advance warning of the date of the trial. However, I am satisfied from reading the material that the two primary witnesses

for the defendant play special roles in the organization of Globe '96 and that their services are essential.

11 The defendants acknowledge that the trial had been rescheduled in error and assert that they took immediate steps to try and remedy that error.

12 The circumstances of this particular case are unique. This is more than simply inconvenience to witnesses. The trade show which these witnesses are key personnel in organizing is a major multi-national event involving millions of dollars. I am satisfied it does require the hands-on attention of these key witnesses. The trial is presently scheduled for just one month before this trade show and that is a particularly difficult time for these witnesses.

13 It is with reluctance that I grant the request for the adjournment.

14 The adjournment, however, will be on terms. The parties should make immediate attempts to obtain a new trial date from the trial coordinator. I have no authority to give any directions to the trial coordinator, but I would simply point out that this adjournment has been strenuously opposed by the plaintiff, and hopefully any prejudice to the plaintiff can be minimized by rescheduling of an early date.

15 The defendants are to make themselves available for the new trial date to occur after March 29, 1996. (I am assuming that a date in 1995 is unavailable.) The new trial date is to be peremptory on the defendants, and the defendants are to pay the costs of this application and any costs thrown away.

16 I am not sure whether my comments will assist the plaintiff in dealing with its creditors, but I would like to point out that, from my review of the file material, it is obvious that the plaintiff has been pursuing their action against the defendants vigorously, and have not been party to or condoned any delay in the proceedings.

 Dated at Vancouver, British Columbia, this 22nd day of August, 1995.

"Robert E. Powers"

Robert E. Powers
Master