



B E T W E E N:

OLYMPIA INTERIORS LTD.

and

MARY DAVID

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER

MACKAY, J.:

These Reasons outline the basis for my disposition of an application by the defendant concerning discovery of documents in the possession of the plaintiff Mary David, which application was heard in the course of a pre-trial conference on February 28, 1997.

The matter was not then disposed of and it was discussed further at a subsequent conference on June 13, 1997 with counsel for the defendant and Mrs. Mary David, representing herself and the plaintiff company.

On the later occasion, Mrs. David, who had originally opposed the defendant's application, agreed to arrangements to facilitate access by counsel for the defendant to the documents in question. In view of this, which I understand is consent in principle to access by counsel for the Crown, these Reasons simply describe any reasons for disposition of the application where that is appropriate.

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A brief overview of the proceedings thus far would include reference to the production of one or more affidavits of documents by Mrs. David, which she describes as including all documents earlier deemed relevant by another counsel for Her Majesty in criminal proceedings in Ontario Courts in relation to claims then advanced by Her Majesty for outstanding taxes. In addition to those documents Mrs. David has possession of some 50 boxes, containing additional documents relating to the plaintiffs, once seized by Her Majesty in relation to the criminal proceedings, which proceedings were ultimately stayed by the Crown. The 50 boxes were later returned to Mrs. David, and were said then by Crown counsel to be irrelevant for the criminal proceedings. She believes them to be irrelevant also for this action instituted by her.

Counsel for the Crown in these proceedings seeks all documents relevant to issues in this action. The plaintiffs have an obligation to produce those under the Court's Rules. Mrs. David is not a lawyer and counsel for the Crown seeks access to the documents in the 50 boxes to be reassured that all relevant documents in the plaintiff's possession or control, or of which the plaintiffs have knowledge, are included in the plaintiffs' affidavit of documents to which counsel for the defendant is entitled to access.

I am pleased that for purposes of trial preparation, Mrs. David has consented that the documents in issue may be examined by counsel for the Crown. If relevant documents are discovered they should then be included in a supplementary affidavit of documents by the plaintiffs. If counsel and Mrs. David disagree about the relevance of a document discovered in this process, that issue would be resolved by this Court in further pre-trial hearings. In this way it is expected preparations for trial of the plaintiffs' action may be facilitated.

An order now goes directing that the plaintiff Mary David provide access

for counsel for the defendant, Her Majesty the Queen, to some 50 boxes containing documents that are in Mrs. David's possession. The only purpose for access is to permit counsel for the defendant to consider the relevance for purposes of this action, and the related claims in files GST-41-92 and ITA-8447-92, of the documents in issue. That access shall be provided, if it serves the interest of one or other of the parties, in facilities of the Court in Toronto, under secure arrangements permitting Mrs. David to leave the documents, and for counsel for the Crown to have access, in the presence of Mrs. David or her representative if she desires to have attendance during the course of the Crown's inspection of documents.

If relevant documents are discovered they shall then be listed in a further supplementary affidavit of documents of the plaintiffs.

Counsel for the Crown requested costs of the motion, particularly in view of the change in the plaintiffs' position, and ultimately consent by Mrs. David for the defendant's access to the documents. In my view, the request and its resolution, for access by defendant's counsel to consider documents of the plaintiff for relevance is unusual. At this stage the Court is uncertain whether there are any such documents among those in the boxes within the plaintiff's possession. In the circumstances, I believe the costs of this motion should be considered within the matter of costs generally by the judge at trial. The order thus provides that costs of the motion are costs in the cause.

"W. Andrew MacKay"

Judge

Toronto, Ontario
June 26, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: T-1436-92

STYLE OF CAUSE: OLYMPIA INTERIORS LTD.
and
MARY DAVID

- and -

HER MAJESTY THE QUEEN

DATE OF HEARING: JUNE 13, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: MACKAY, J.

DATED: JUNE 26, 1997

APPEARANCES:

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For the Plaintiffs

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For the Defendant

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410