

CANADA / JUDGMENT

# C.B. Constantini Ltd. v. Slozka

2008 BCSC 872

## COURT

Supreme Court of British Columbia

## DECIDED

3 July 2008

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2008 BCSC 872 C.B. Constantini Ltd. v. Slozka IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: C.B. Constantini Ltd. v. Slozka, 2008 BCSC 872 Date: 20080703 Docket: S062914 Registry:

Vancouver Between: C.B. Constantini Ltd. Plaintiff And Ryan Slozka and Rycom Trading Ltd.

Defendants Before: The Honourable Mr. Justice Grauer Reasons for Judgment Counsel for the

Plaintiff: R.B. Fraser S. Griffin Appearing for the Defendants: R. Slozka Date and Place of Hearing:

July 2, 2008 Vancouver, B.C.

- [1] These applications come before me as a consequence of previous orders pronounced in this matter by the Honourable Madam Justice Ross (26 May 2006), the Honourable Mr. Justice Goepel (21 September 2006) and the Honourable Mr. Justice Williamson (24 November 2006).
- [2] In this action, the plaintiff seeks damages and injunctive relief as the result of alleged breaches of contractual and fiduciary duties on the part of the defendant Ryan Slozka in relation to confidential information which Mr. Slozka allegedly obtained while he was an employee of the plaintiff, and used to the detriment of the plaintiff after leaving the plaintiff's employ.
- [3] On May 26, 2006, Ross J. granted an interim injunction to the plaintiff. Among other things, her order restrained the defendants from doing business with certain clients for a period of six months, and from soliciting business from those clients for a period of 12 months.
- [4] The plaintiff thereafter came into possession of information which led it to believe that Mr. Slozka had breached that order. On September 21, 2006, Goepel J. pronounced an order which included the following term: The Defendants produce for the inspection and copying by the Counsel for the Plaintiffs, by a date to be agreed by counsel, all documents concerning communications between the Defendants and the Defendants' solicitors to August 8, 2006, with respect to the order of Madam Justice Ross, including, without limiting the generality of the foregoing, the possible result of the application for the Order, the making of the Order, the terms of the Order, what was required to comply with the Order, what conduct would be contempt of the Order and the seriousness of any contempt of the Order.

- [5] By order of Williamson J. pronounced November 24, 2006, documents obtained from the hard drive of the defendants' computer by a computer expert were to be examined by independent counsel for the purpose of identifying and producing all relevant documents. With respect to documents which appeared to be subject to the term of Goepel J.'s order quoted above, the defendants were to be allowed the opportunity to assert solicitor-client privilege beyond what had been found to have been waived by Mr. Justice Goepel.
- [6] The independent counsel selected for this task was Mr. David Church. Among the documents which Mr. Church felt were covered by Mr. Justice Goepel's order, and therefore producible, but which the defendants maintained were not, were communications between Mr. Slozka and his solicitors relating to an application for leave to appeal from Ross J.'s order. Mr. Church took the position that such documents were "communications with respect to the Order of Madam Justice Ross", and therefore had to be produced in the absence of the agreement by the plaintiff with the defendants' position, or an Order of the Court that the scope of Mr. Justice Goepel's order was not intended to cover such documents.
- [7] Mr. Church supplied an affidavit to court to which were attached the documents which he felt were producible, but which the defendants maintained were covered by solicitor-client privilege that had not been waived (the "disputed documents").
- [8] Before me, the plaintiff took the position that I should review such documents, and determine the extent to which they are producible in accordance with the quoted portion of the order of Mr. Justice Goepel. Plaintiff's counsel made it clear that they were not seeking communications between Mr. Slozka and his solicitors concerning aspects of the application for leave to appeal which were purely procedural, or otherwise completely irrelevant to the contempt issue and Mr. Slozka's state of knowledge in relation thereto.
- [9] The defendants, represented by Mr. Slozka, requested instead an order providing directions concerning the proper interpretation of the quoted paragraph of Goepel J.'s order, contending that the matter could then be referred back to Mr. Church to make a decision on the producibility of the documents in question. Mr. Slozka relied on portions of the transcript of the proceedings before Goepel J. to support his position that Mr. Justice Goepel never intended his order to cover communications relating to matters such as the issue of an appeal from Ross J.'s order.
- [10] The position taken by Mr. Church was quite correct. It is not open either to Mr. Church or indeed to me to go behind the terms of a court order to attempt to discern whether the order as pronounced and approved by counsel properly expressed what the judge intended. We must presume that it did. In this case, there can be little doubt that communications relating to the question of applying for leave to appeal from Ross J.'s order constitute "communications with respect to the Order of Madam Justice Ross".
- [11] At the same time, it must be noted that solicitor-client privilege is one of the most sacrosanct principles of our system of justice, and a litigant is not to be deprived of its benefit lightly. In this regard, the circumstances before me are different from those by which Mr. Church was

confronted in one important respect: before me, counsel for the plaintiff agreed to limit the effect of Goepel J.'s order to the extent I noted above. As Mr. Slozka was content with that limitation, I had the benefit of an agreement of the parties which Mr. Church lacked. I commend plaintiff's counsel for the fairness of their position.

- [12] It was also my view that there had been an enough delay in relation to the production of these documents and that the parties would be best served by my reviewing the disputed documents and determining the extent of their producibility. I have now done so, and I make the following directions. It should be noted that many of the documents are duplicates of others, and I have coupled these together. Doc. # Direction 503 This document is to be produced showing its title, and the name of each client discussed in the memorandum. The details concerning each client should be redacted as they concern the underlying issues in the action rather than the effect of the Order of Ross J. 504 To be produced. 505 Already produced; redaction acceptable. 508-509 These documents, like other pairings, are identical in content. This is a very lengthy e-mail. Not all of it should be produced. For convenience, I have numbered the paragraphs on the copy of document #508 attached to Mr. Church's affidavit. The following paragraphs, as well as the Header and the Outlook Header Information, are to be produced (the other paragraphs should be redacted): 12, 30, 31, 34-37, 40-44 and 70-74. 511-512 This e-mail simply forwards an attachment. Like Mr. Church, I cannot tell if it is producible without the attachment. 513-514 To be produced together with any attachment. 515 Not producible. 516-517 To be produced. 518-519 To be produced without redaction. 520-521 To be produced. 522-523 Not producible 524-525 Produce heading, greeting, first paragraph and penultimate paragraph plus header information. The balance should be redacted. 526-527 Not producible. 528-529 Not producible. 530 Not producible. 531-532 Already produced. 533-534 Produce only the heading and the primary message on the first page from Mr. Slozka to Mr. Zolnay. The balance of the e-mail string should be redacted. 538-539 Produce the heading and the first paragraph of the primary message from Mr. Zolnay to Mr. Slozka, together with the original message from Mr. Slozka to Mr. Zolnay as contained in document #533. The balance of the e-mail string should be redacted. 540-541 Not producible. 542-543 Not producible. 544-545 Already produced; redaction acceptable. 549 Already produced; redaction acceptable. 550 Already produced. 552-553 Already produced; redaction acceptable. 554-555 Already produced; redaction acceptable. 556 Not producible. 557 Not producible.
- [13] Accordingly, the defendants are ordered to produce to the plaintiff copies of the appropriate portions of the disputed documents in accordance with the above directions, within 21 days of the date of these reasons. I direct the Registrar of the Supreme Court to provide to Mr. Slozka by fax a copy of document #508 annotated with my paragraph numbers (pages 112-125 of Mr. Church's affidavit, Exhibit "I"), which I have flagged in the file. Exhibits "D", "G" and "I" to Mr. Church's affidavit should then be re-sealed.
- [14] Costs are in the cause. "GRAUER J."

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Prepared on 29 October 2026 · Esheria