

CANADA / JUDGMENT

# Pearlman v. Atlantic Trading Company Ltd.

2009 BCCA 475

## COURT

British Columbia Court of Appeal

## DECIDED

18 February 2009

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2009 BCCA 475 Pearlman v. Atlantic Trading Company Ltd. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Pearlman v. Atlantic Trading Company Ltd., 2009 BCCA 475 Date: 20090218 Docket: CA036501 Between: David Pearlman Appellant (Plaintiff) And Atlantic Trading Company Ltd. and Rebecca Lee Spence Respondents (Defendants) Before: The Honourable Madam Justice Newbury (In Chambers) Application to vary order from: British Columbia Court of Appeal, February 2, 2009 (Pearlman v. Atlantic Trading Company Ltd., 2008 BCCA 477, Vancouver Reg. CA036501) Oral Reasons for Judgment Counsel for the Appellant: Appellant appearing In Person Counsel for the Respondent: V.G. Critchley Place and Date of Hearing: Vancouver, British Columbia February 18, 2009 Place and Date of Judgment: Vancouver, British Columbia February 18, 2009

- [1] NEWBURY J.A.: I am going to grant the application to dismiss this appeal as abandoned. I think that the fact Mr. Pearlman's application to vary Mr. Justice Chiasson's order has sat for at least two months without his following up on it, means that he really did not intend to pursue it. He has not paid the security for costs to date as required.
- [2] Mr. Justice Chiasson obviously considered all of the arguments that I have heard today regarding the proceedings and claims Mr. Pearlman has made, or intends to make, in future, outstanding in the Supreme Court and in this court. Nevertheless, Chiasson J.A. felt that security should be ordered.
- [3] As Madam Justice Southin said, one should not go behind such an order in a backhanded way of overruling it, by varying it or ignoring it. The fact is that Mr. Pearlman has not obeyed this order, and that the appeal in any event has "no reasonable prospect of success" as stated by Mr. Justice Chiasson.
- [4] In the result, this appeal is dismissed as abandoned because of the failure to post security for costs as ordered by this court. (discussion with counsel)
- [5] NEWBURY J.A.: The application to dismiss the appeal as abandoned is granted. (discussion with counsel)

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[6] NEWBURY J.A.: The respondents will be entitled to their costs of the application. "The Honourable Madam Justice Newbury"

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Prepared on 27 October 2026 · Esheria