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Citation: 2004 FCA 412

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CORAM: ROTHSTEIN J.A.

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BETWEEN:

AMICO IMAGING SERVICES INC.

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Appellant

(Defendant)

and

CANADIAN PRIVATE COPYING COLLECTIVE

Respondent

(Plaintiff)

and

COMPUTER DIRECT DEPOT INC.

Respondent

(Defendant)

Heard at Toronto, Ontario, on December 2, 2004.

Judgment delivered from the Bench at Toronto, Ontario, on December 2, 2004.

REASONS FOR JUDGMENT OF THE COURT BY:
MALONE J.A.

Date: 20041202

Docket: A-184-04

Citation: 2004 FCA 412

CORAM: ROTHSTEIN J.A.

NOËL J.A.

MALONE J.A.

BETWEEN:

AMICO IMAGING SERVICES INC.

Appellant

(Defendant)

and

CANADIAN PRIVATE COPYING COLLECTIVE

Respondent

(Plaintiff)

and

COMPUTER DIRECT DEPOT INC.

Respondent

(Defendant)

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario on December 2, 2004)

MALONE J.A.

[1] We are all satisfied that the Motions Judge gave sufficient weight to all relevant considerations when he refused to set aside the Anton Piller order granted by Lemieux J. on April 30, 2003.

[2] In his reasons for order, Blais J. carefully reviewed the evidence and arguments presented by the parties. The appellant now alleges an absence of evidence of serious damage to the respondent, Canadian Private Copying Collective (CPCC), as well as palpable and overriding errors with respect to the likelihood of destruction of evidence by the appellant. In our analysis, the factual conclusions of the Motions Judge are supported by the evidence and no material evidence was ignored. As a consequence, we can find no palpable and overriding errors in any of the Motions Judge's factual determinations.

[3] In reviewing the three conditions to be established in granting an Anton Piller order, the Motions Judge conducted his analysis following the test set out by the English Court of Appeal in *Anton Piller KG v. Manufacturing Processes Ltd.*, [1976] ch. 55 (C.A.). We have not been persuaded that he committed any legal errors in the application of this three prong test to the facts.

[4] Costs before the Motions Judge were awarded to CPCC under Column V "payable forthwith given the circumstances of this case". We can see no

basis upon which to disturb his exercise of discretion.

[5] In light of CPCC's written offer to settle this appeal without costs which was rejected by the appellant, costs on appeal should be awarded to CPCC in the amount of \$10,000.00 inclusive of disbursements payable forthwith.

"B. Malone"

J.A.

FEDERAL COURT OF APPEAL

Names of Counsel and Solicitors of Record

DOCKET: A-184-04

STYLE OF CAUSE: AMICO IMAGING SERVICES INC.

Appellant

(Defendant)

and

CANADIAN PRIVATE COPYING COLLECTIVE

Respondent

(Plaintiff)

and

COMPUTER DIRECT DEPOT INC.

Respondent

(Defendant)

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 2, 2004

REASONS FOR JUDGMENT

OF THE COURT: (ROTHSTEIN J.A., NOËL J.A.,
MALONE J.A.)

DELIVERED FROM THE

BENCH BY: MALONE J.A.

APPEARANCES BY:

Ms. Michelle Wassenaar

Ms. Stephanie Chong

FOR THE APPELLANT

Mr. Daniel S. Drapeau
Copying Collective and

FOR THE RESPONDENT (Canadian Private

Computer Direct Depot Inc.)

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Computer Direct Depot Inc.)

Modified : 2006-11-01


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