Date: 20070914

Docket: T-898-05

Citation: 2007 FC 918

BETWEEN:

HYUNDAI AUTO CANADA, a division of
HYUNDAI MOTOR AMERICA

Plaintiff

and

CROSS CANADA AUTO BODY SUPPLY (WEST) LIMITED,
CROSS CANADA AUTO BODY SUPPLY (WINDSOR) LIMITED and
AT PAC WEST AUTO PARTS ENTERPRISE LTD.

Defendants

REASONS FOR ORDER

(Delivered from the Bench in Toronto, Ontario,
on September 13, 2007)

HUGESSEN J.

[1] This is an appeal by the defendants from an order of the Prothonotary which, in the first place, granted leave to plaintiff to amend its pleadings so as to add other defendants and, in the second place, denied a motion by defendants to cite plaintiff for contempt of Court.

[2] The argument of defendants' counsel is based on three propositions of law.

[3] The first is that when Justice Phelan in both his reasons and his order adverted to the common law implied undertaking, he was, in some way, adding to the obligations that would normally be laid upon plaintiff under that undertaking. I disagree. It is quite clear, in my view, that all Justice Phelan was doing in that order was recalling to the parties that there is a common law undertaking of confidentiality which attaches to information and documents disclosed in the discovery process. In fact he specifically denied to the defendants the confidentiality order which they had requested in respect of the same information.

[4] The second proposition is that the use which was made by plaintiff of information and documents obtained in the discovery process was improper even under the common law implied undertaking because that use was not directly related to the action as then framed. It is argued that plaintiff should not, without first obtaining leave of the Court, have made use of information obtained on discovery from the defendants for the purpose of amending its pleadings so as to add other defendants.

[5] Again, I disagree. It is not an improper or collateral use of information obtained on discovery in order to seek leave to amend the very action in which that discovery was conducted. There was a specific case to that effect in the Alberta Court of Appeal whose reasoning I unhesitatingly accept (see *Balm v. 35120161 Canada Ltd.* (2003), 14 Alta. L.R. (4th) 221 at paras. 75-76 and 80-83 (C.A.)).

[6] The third proposition is that there was, in any event, a breach by plaintiff when it made use of and referred to the information and documents in its motion to amend which was filed in the public record of this Court.

[7] If there was any such breach, and I do not say that there was, it was purely trivial and technical and the error, if any, was, in any event, entirely remedied once the Prothonotary had concluded as she did, upon hearing the motion, that the amendment should be allowed. Once that had happened, there could be no breach of the implied undertaking because the amendment was found to be proper and the information covered by the undertaking had only been used for a purpose directly related to the litigation in which it was obtained.

[8] Accordingly I shall dismiss the defendants' appeal with costs.

"James K. Hugessen"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-898-05
STYLE OF CAUSE:	HYUNDAI AUTO CANADA a division of HYUNDAI MOTOR AMERICA v. CROSS CANADA AUTO BODY SUPPLY (WEST) LIMITED et al
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 13, 2007
REASONS FOR ORDER:	HUGESSEN J.
DATED:	SEPTEMBER 14, 2007

APPEARANCES:

JEFFREY BROWN	FOR THE PLAINTIFF
TIMOTHY M. LOWMAN	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

THEALL GROUP LLP BARRISTERS & SOLICITORS TORONTO, ONTARIO	FOR THE PLAINTIFF
SIM, LOWMAN, ASHTON & McKAY LLP TORONTO, ONTARIO	FOR THE DEFENDANTS