

Court of Queen's Bench of Alberta

Citation: Peter Lehmann Wines Ltd v Vintage West Wine Marketing Inc, 2015 ABQB 481

Date: 20150729
Docket: 1503 07515
Registry: Edmonton

Between:

Peter Lehmann Wines Ltd

Applicant

- and -

**Vintage West Wine Marketing Inc, Alberta Gaming & Liquor Commission,
and Connect Logistics Services Inc**

Respondent

**Memorandum of Decision
of the
Honourable Mr. Justice Robert A. Graesser**

I. Introduction

[1] Peter Lehmann Wines Ltd. [PLW] seeks a declaration and orders that would have the effect of implementing a new product distribution agency relationship over the objections of its former distributor in Alberta, Vintage West Wine Marketing Inc. [Vintage]. The relief sought includes an order requiring the Alberta Gaming & Liquor Commission [AGLC] to recognize PLW's new agency relationship with Phillippe Dandurand Wines Ltd. [Dandurand] despite its policy of requiring the former agent to "sign off".

[2] This application came before me in regular morning Chambers.

obliged to exercise some duty: *Toth Equity Ltd v Ottawa (City)*, 2011 ONCA 372 at paras 28-29, 283 OAC 33.

[55] PLW has not established that AGLC owes a public legal duty to PLW.

Injunctive Relief Against the AGLC

[56] The relief which PLW seeks against the AGLC appears to be in the nature of a mandatory permanent injunction.

[57] At common law, as with orders in the nature of mandamus, injunctive relief is not available against the Crown, so long as the Crown is not acting unconstitutionally or *ultra vires* its lawful authority: *Grand Council of Crees (of Quebec) v The Queen* (1981), [1982] 1 FC 599 at 600; *Lameman v Alberta*, 2013 ABCA 148 at paras 40–41, 553 AR 44 [*Lameman*]. This common law bar has been codified in the *Proceedings Against the Crown Act*, RSA 2000, c P-25, s 17(1).

[58] The Alberta Court of Appeal has suggested that permanent injunctions against the Crown might be available in the context of novel claims in rapidly evolving areas of the law (*Lameman* at para 42).

[59] This matter involves sophisticated business entities who are attempting to resolve a commercial dispute. There is nothing to suggest that it is a novel claim.

[60] In *Bruce Ashley*, this Court granted orders in the form of interim and interlocutory injunctions directing the AGLC to treat a new distributor as the plaintiff's sole agent for its products. The orders resulted from chambers applications, and all that resulted were the orders. If reasons were given, they have not been provided to me in any fashion, and I have not attempted to locate them myself by listening to the recordings of the applications.

[61] However, in that case it is clear that the plaintiff had brought a claim against the defendant. The plaintiff first applied for an interim injunction, and then for an interlocutory injunction pending trial.

[62] In the matter before me, there is only a stand-alone application for what is in effect a permanent injunction. Permanent relief can be granted only after a final adjudication, and therefore irreparable harm and balance of convenience have little relevance: *1711811 Ontario Ltd v Buckley Insurance Brokers Ltd*, 2014 ONCA 125 at paras 76-80, 315 OAC 160; *Cambie Surgeries Corp v British Columbia (Medical Services Commission)*, 2010 BCCA 396 at paras 27-28, 323 DLR (4th) 680.

[63] In *Bruce Ashley*, the applicant was not a supplier, but rather an import agent for a supplier. There, the applicant was applying for an injunction pending trial on the merits of a breach of contract claim where there seems to have been no dispute that the respondent sub-agent had not been remitting payment in accordance with a written agreement.

[64] In the application before me, the applicant is a defendant in legal proceedings in British Columbia. It is Vintage that has claims against PLW, not the other way around.

[65] There are few factual similarities between this case and *Bruce Ashley*, and in the absence of a written decision in that case, or oral reasons for decision, it is of limited precedential value. From my understanding of the facts there, it is clearly distinguishable from this case.