

Date: 20070725

Docket: T-1440-05

Citation: 2007 FC 773

BETWEEN:

KONINKLIJKE PHILIPS ELECTRONICS N.V.

Plaintiff (Defendant by Counterclaim)

and

**MAPLE TECHNOLOGIES LTD., CANADIAN VERSATILE DISC
MANUFACTURING INC., DIGITAL DISC CORPORATION; DISC PLAZA
ENTERTAINMENT LTD.; M.S. MEDIA MOVIES & MORE LTD. (a.k.a. MEDIA
MOVIES & MORE, a.k.a. MMM); AMMAR JEET SINGH, MANJEET SINGH (a.k.a.
MANJIT SINGH), and SURINDER KAUR personally, and carrying on business as
CASCADIA ENTERTAINMENT, CASCADIA LABS, DOUBLE D, DOUBLE D
DISTRIBUTION, DVD LIQUIDATORS, EAGLE MEDIA WHOLESALE,
LowPriceDVD MANNY'S DVDs, and REALLY CHEAP DVD.COM; and DOE CO.**

Defendants (Plaintiffs by Counterclaim)

REASONS FOR ORDER

HARRINGTON J.

[1] In this action, and two related actions, the Plaintiff, Philips, alleges that the Defendants have manufactured compact discs (CDs) and digital versatile discs (DVDs) in violation of certain of its patent rights. One of the conclusions of the action is that the offending material be delivered up to it for destruction.

[2] The Defendant, Maple Technologies Ltd., is now in bankruptcy. That bankruptcy had the initial effect of staying the Federal Court actions as against it. However, the Bankruptcy Court, the Supreme Court of British Columbia, then gave leave to Philips to continue the actions.

[3] In the meantime, the Business Development Bank of Canada, as a secured creditor of Maple, has retained agents to sell its property. Philips has now brought on a motion to enjoin that sale.

[4] However, by the time the motion was heard yesterday, it no longer sought injunctive relief. Rather, it sought leave to add Business Development Bank of Canada and its declared agents Abakhan & Associates Inc. and Maynards Industries Ltd., as parties defendant, an order that the prospective purchasers be put on notice of these proceedings and orders with respect to the inspection of the property to be sold and the preservation of relevant documents. To some extent, the relief sought overlaps with relief already granted by the Supreme Court of British Columbia sitting in bankruptcy. As the motion was brought on an urgent basis, there was insufficient time to determine, with precision, what has already been covered by previous court order.

[5] Immediately following the hearing, I granted Philips leave to add the Business Development Bank of Canada as a Defendant, pursuant to Rule 104. At this stage the Court must presume that the Plaintiff will be able to prove its allegations. On that basis, the Bank is organizing the sale of property which may have been or could be used in infringement of Plaintiff's patent or other intellectual property rights.

[6] I adjourned the motion to add Abakhan and Maynards as Defendants *sine die*. Their presence as Defendants is not necessary over the short term, as the Bank, through counsel, readily declared that they were acting as its agents. Philips, of course, is entitled to take a separate action against them, if it so chooses and as its counsel points out, a declaration by the Bank that they are its agents would not shield them from personal liability. However, there is no need to clutter up this record over the short term.

[7] Abakhan, in fact, is wearing two hats. It is Maple Technologies' trustee in bankruptcy and also is acting as agent for the Bank for the purposes of selling the property. In its capacity as trustee in bankruptcy, it gave notice of assignment, transmission or devolution of interest or liability pursuant to Federal Courts Rule 117 and so to that extent is already in the record, even though the style of cause has not been changed.

[8] As to Maynards and Abakhan as the Bank's agents, if, as and when the proposed sale of the property proceeds, Philips may re-present its motion. The balance of the order permits inspection of property to be sold, preservation of documents and sampling by the Plaintiff of representative copies of the CDs and DVDs. As the order specifically requires the Bank and its declared agents, Abakhan & Associates Inc. and Maynards Industries Ltd., to co-operate, Philips has suffered no immediate prejudice from the fact that the latter have not been named as parties defendant.

[9] The trustee in bankruptcy has recently taken the position that it takes no position as to the merits of Philips' action. It may well be that in time it would want to hire a company to warehouse documents which are currently in the premises of the bankrupt. It submitted that, to the extent

documents are preserved long-term at the request of Plaintiff, the cost related thereto should be borne by the Plaintiff pending the resolution of the litigation. However, that matter was not specifically before me and I make no comment save that nothing herein serves to prevent the trustee from moving the Court as it sees fit.

“Sean Harrington”

Judge

Ottawa, Ontario
25 July 2007

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1440-05

STYLE OF CAUSE: Koninklijke Philips Electronics N.V.
and
Maple Technologies Ltd. and others

**HEARD BY WAY OF VIDEO
CONFERENCE BETWEEN:** OTTAWA, ON and VANCOUVER, BC

DATE OF HEARING: 24 JULY 2007

REASONS FOR ORDER: HARRINGTON J.

DATED: 25 JULY 2007

APPEARANCES:

Mr. Colin B. Ingram	FOR THE PLAINTIFF
Mr. Kevin K. Graham	
Mr. Ron Argue	FOR Business Development Bank of Canada
Mr. Jonathan L. Williams	FOR Abakhan & Associates
Mr. Manjeet Singh	Self-represented

SOLICITORS OF RECORD:

Smart & Biggar	FOR THE PLAINTIFF
Ottawa, ON	
Norton Stewart Business Lawyers	Business Development Bank of Canada
Vancouver, British Columbia	
Owen Bird	FOR THE PROPOSED DEFENDANT
Vancouver, British Columbia	Abakhan & Associates