Date: 20080317

Docket: T-146-08

Citation: 2008 FC 357

Toronto, Ontario, March 17, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

FAROUK SYSTEMS INC.

Plaintiff

and

RICA INTERNATIONAL INC. and MUNESH M. MAVADIA

Defendants

REASONS FOR ORDER AND ORDER

[1] The plaintiff has moved, in writing, for two orders. First, the plaintiff asks that the Court permit, pursuant to Rule 120 of the *Federal Courts Rules*, the corporate defendant to be represented, not by a solicitor, but by "it's officer" and co-defendant, Mr. Mavadia. Second, the plaintiff seeks judgment on consent against both defendants. Terms of the requested judgment include:

- A declaration that, as between the parties, Canadian registered trade-mark TMA 683,586 has been infringed by the defendants by virtue of the sale and distribution of

merchandise. The merchandise, is described in the statement of claim to be ceramic hairstyling irons.

- A declaration that, as between the parties, Canadian registered copyright 1,050,953 has been infringed by the sale of merchandise which contained a reproduction of the copyright.
- A permanent injunction restraining the defendants from selling or dealing in merchandise, other then the plaintiff's merchandise that bears the registered trade-mark or copyright.
- Damages in the amount of $24,000.00.

[2] The motion is supported by a consent judgment signed by Mr. Mavadia personally and on behalf of the corporate defendant. It is also supported by an affidavit sworn to by Mr. Mavadia that appears to have been prepared by the plaintiff's counsel.

[3] Mr. Mavadia's affidavit is brief. In it he swears:

1. I am an officer and director of Rica International Inc. (the, "Company").
2. The Company can not afford to retain a lawyer to deal with this matter.
3. Given my intimate relationship with the Company, I believe that the resolution which I executed on behalf of the Company is in the best interest of both myself and the Company.
4. I believe that the issues relating to the resolution of this action are not so complex to cloud my ability to make an informed choice to settle this action.
5. I am not seeking to personally represent the Company should this matter proceed to a trial. I am merely seeking to represent the Company in order to settle this action, avoid a trial, and bring closure, legally, financially and emotionally, to this situation.

> 6. I understand that by executing the Consent to a Judgment, dated February _____, 2008, the Company acknowledged, amongst other things, that:
>
> a. The Canadian registered trade-mark, TMA683,586 (the, "Subject Trade-mark") and the Canadian registered copyright 1,050,953 (the, "Subject Copyright") (collectively, the "Subject Intellectual Properties") have been infringed by the Company by virtue of the sale and distribution of merchandise bearing one or more of the Subject Intellectual Properties without the consent, license or permission of the Plaintiff;
>
> b. the Company is permanently restrained from offering for sale, displaying, advertising, selling, manufacturing, distribution, or otherwise dealing in merchandise not being that of the Plaintiff, bearing one or more of the Subject Intellectual Properties; and
>
> c. the Company is jointly and severally liable, with me personally, to pay the Plaintiffs damages and cost arising from the infringement by the Defendants of the Subject Intellectual Properties, in the amount of $24,000.00.
>
> 7. My understanding, as set forth above, is based upon my review of the Judgment and Order and discussions with the Plaintiff's counsel.
> 8. I make this statement in support of a request to obtain leave to personally represent the Company for the purpose of effecting a settlement of this action, and for no other or improper use. [emphasis removed]

[4] Turning first to the order sought under Rule 120, the jurisprudence of the Court establishes that such orders are not easily obtained and require proof of special circumstances. Clear evidence must be provided to the court. See: *Canada (Minister of Labour)* v. *George Smith Trucking Ltd.* 2004 FC 1103. Relevant considerations include impecuniosity, the complexity of the issues (*Gunnar Industries Ltd.* v. *R.*, [2002] 4 C.T.C. 190) and whether the proposed representative would also be a witness (*S.A.R. Group Relocation Inc.* v. *Canada (Attorney General)* (2002), 289 N.R. 163.

[5] In no case that I have found has permission been sought for a non-lawyer to represent a corporation simply in order to settle the action, where no appearance is to be entered and no one goes on the record for the corporate defendant.

[6] Applying the established principles of law to this motion, I first note that I see no need for this relief. Mr. Mavadia may, with proper authority, sign a settlement agreement on behalf of the corporation in the same way he could execute any other contract. Indeed, he signed the consent to judgment in his capacity as an officer of the corporation.

[7] Second, the evidence is of impecuniosity must be viewed in the context of the defendants' agreement to pay damages in the amount of $24,000.00.

[8] Third, the legal issues do not appear to be simple. For example, the registered trade-mark the plaintiff sues upon is alleged in the statement of claim to be in connection with wares described as "magazines in the field of hair care, beauty and fashion". It is not obvious that the trade-mark applies to ceramic hairstyling irons. Reference in the statement of claim to pending trade-mark applications, or to a U.S. registered trade-mark is of no relevance. By way of further example, there is no description of "several copyrights", presumably unregistered, that the plaintiff relies upon. The claimant does not particularize how any copyright, registered or otherwise, was infringed.

[9] A purpose of Rule 120 is to see the corporations are properly advised in the conduct of litigation. Here, where such an order is unnecessary, there is only a flat assertion of impecuniosity, and the legal issues are not simple, the order should be refused.

[10] For these reasons, the request for an order under rule 120 is dismissed.

[11] The motion under Rule 120 was brought in conjunction with the motion for judgment on consent. Given the circumstances set out above, I consider it to be in the interests of justice and fairness to dismiss the motion for judgment.

ORDER

THIS COURT ORDERS that the motion is dismissed.

"Eleanor R. Dawson"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-146-08
STYLE OF CAUSE:	*FAROUK SYSTEMS INC.* v. *RICA INTERNATIONAL INC. and MUNESH M. MAVADIA*
CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369	
REASONS FOR ORDER AND ORDER:	DAWSON J.
DATED:	MARCH 17, 2008

WRITTEN REPRESENTATIONS BY:

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SOLICITORS OF RECORD:

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