

Case Name:
Vega Automation Systems Ltd. v. Evzelman

Between
Vega Automation Systems Ltd., and
Michael Evzelman

[2004] O.J. No. 2004
Court File No. 04-CV-268105 CM2

Ontario Superior Court of Justice
Paisley J.

May 13, 2004.
(4 paras.)

Civil procedure — Contempt.

Motion brought by the plaintiff, Vega Automation Systems, for contempt. The respondent, Mr. Evzelman, agreed to comply with the ex parte order. However, he took issue with the term authorizing Vega Automation Systems to reformat Mr. Evzelman's storage devices on site or after seizure. Further, Mr. Evzelman questioned the validity of the ex parte order on the basis that not all relevant information was disclosed to the judge, specifically, that he did not work for a direct competitor of Vega Automation Systems.

HELD: Motion dismissed. The term at issue was not part of the Notice of Motion upon which the ex parte order was granted. There was no basis for imposing contempt sanctions on Mr. Evzelman. The Court accepted Mr. Evzelman's offer. The injunction was continued for 10 days.

Counsel:

Ernst Asburov, for the plaintiff.

Vadim Kats, for the respondent.

¶ 1 **PAISLEY J.** (endorsement):— The respondent has expressed willingness to comply with the ex parte order of Himel J., provided that steps are taken to preserve the evidence. The respondent takes issue with the validity of the ex parte order para. 7(e)(iii), authorizing the plaintiff to reformat the defendant's storage devices on site or after seizure. He correctly points out that such a term was not contained in the Notice of Motion upon which the ex parte order was based. He also submits that the plaintiff failed to fully disclose relevant information before Himel J. - that he does not now work for a direct competitor of the plaintiff, and he questions whether the plaintiff used licensed software at material times. There is no basis for imposing contempt sanctions on the defendant on this record. No cross-examination has been sought. The respondent's offer is reasonable. The injunction is continued for 10 days to allow counsel time to effect the examination of the computer in question as proposed by the defendant.

¶ 2 The motion for contempt is dismissed.

¶ 3 Costs in respect of that issue are fixed at \$1,500 payable by the plaintiff to the defendant forthwith. Costs re the continuation of the injunction are fixed at \$1,500 payable in the cause.

¶ 4 Motion adjourned to a date to be set by scheduling unit.

PAISLEY J.

QL UPDATE: 20040525

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