

CITATION: Parker, David and Blackberry Limited, 2018 ONSC 3630
COURT FILE NO.: 17-71659(Ottawa)
DATE: 2018/06/12

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: David Parker, Plaintiff

AND

Blackberry Limited, Defendant

Proceeding Under the Class Proceedings Act, 1992

BEFORE: The Honourable Justice M.Z. Charbonneau

COUNSEL: J. Payne, A. Reinholdt and K. Dion - Counsel for the Plaintiff
A. Sternberg and R. Lax - Counsel for Defendant

HEARD: April 30 and May 1, 2018

ENDORSEMENT

[1] The plaintiff brings a motion seeking an order that the defendant provide answers the defendant refused to answer during the cross-examination of various affiants who have sworn an affidavit in support of the defendant's position on the pending class action certification motion.

[2] The parties agree on the legal principles that apply on this motion. They are set out in paragraphs 33 to 37 of the plaintiff's factum. I agree that those principles apply and they will guide my decision in relation to each refusal.

[3] The parties have provided a refusal chart outlining their respective position, the question posed and the answer given during cross-examination on various areas of contention. I will follow the chart in providing my decision and the brief reasons for that decision.

FORD-BLACKBERRY AGREEMENT

[4] The theory of the plaintiff's case is that the defendant proceeded to force the class members to resign in order to avoid paying them their severance entitlements.

[5] The predominant common issue that the plaintiff seeks to have certified is: "Does Blackberry's conduct amount to a termination of the Class Employees employment?" This focus on conduct must be kept in mind when determining relevancy. Although the employer's motive is not normally relevant at the certification stage information about strategy or steps taken in reaching the alleged motive may be informative on the issue of commonality when alleged misconduct towards all members is alleged. In some cases, when I have found that the questions have a semblance of reliance to certification, I have decided it would be unfair to force the plaintiff to argue the certification motion without that information. However, the information sought must meet the proportional test and not be excessively onerous on the defendant.

[6] I disagree with the very narrow position taken by the defendant relating to the Ford-Blackberry agreement, the internal communication strategy of Blackberry and some communication between Blackberry and Ford.

[7] For these reasons I rule as follows on the following questions.

The Agreement

Questions 3, 11, 13, 14, 15, 19, 80, 81: I have found to be not relevant and too onerous or not necessary.

Question 12, and 7: I find are relevant and necessary to provide a full record on the certification motion.

Coordination between Ford & Blackberry

Questions 28 and 30: I find not relevant.

Questions 35, 36 and 59: I find relevant. They provide a fuller record to determine communality and are relevant to the issue of damages.

Communication Strategy

Questions 22, 26, 48 and 65: I find not relevant.

Questions 53 and 60: I find excessive and unnecessary.

Questions 23, 25 and 78: I find relevant.

Quality and Reliability of Reliability

Questions 7, 18, 47, 50, 66 and 76: I find not relevant and not necessary.

Questions 31, 33, 37, and 46: I find relevant.

Communications within H.R. Team

Questions 74 and 75: I find not relevant and/or unnecessary.

Question 72: I find relevant. The document is referred to in the affidavit and is necessary to provide a full record.

Privilege

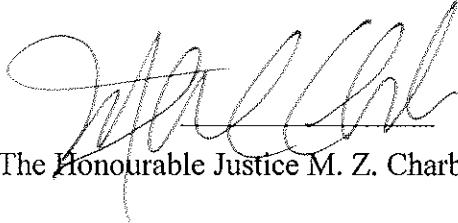
Questions 1, 20, 39, 41, 43, 51, 52: are not relevant, unnecessary and/or too onerous.

Question 2: has been answered.

Question 8: is relevant and not privileged as it simply calls for date of the first discussions.

[8] Success is divided and therefore costs will be in the cause.

[9] An order will be issued accordingly.


The Honourable Justice M. Z. Charbonneau

CITATION: Parker, David and Blackberry Limited, 2018 ONSC 3630
COURT FILE NO.: 17-71659

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: David Parker, Plaintiff

AND

Blackberry Limited, Defendant

*Proceeding Under the Class
Proceedings Act, 1992*

BEFORE: The Honourable Justice M.Z.
Charbonneau

COUNSEL: J. Payne, A. Reinholds and K. Dion,
Counsel for the Plaintiff
A. Sternberg and R. Lax - Counsel for
the Defendant

ENDORSEMENT

Released: June 12, 2018

Charbonneau, J.