

August 27, 2019

VIA COURIER

Arlen K. Sternberg and Ryan Lax  
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Dear Sirs:

**Re:     *Motion for Leave to Appeal - Parker v. Blackberry***  
***Divisional Court File No. 333/19***  
***Our File No. 38829-1***

Enclosed please find the Reply Factum of the Responding Party, which is served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,  
Nelligan O'Brien Payne LLP



Andrew Montague-Reinholdt

Enclosure(s) : Reply Factum of the Responding Party

Copy to       : David Parker (via email)

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**

BETWEEN:

DAVID PARKER

Plaintiff

and

BLACKBERRY LIMITED

Defendant

Proceeding Under the *Class Proceedings Act, 1992*

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**REPLY FACTUM OF THE RESPONDING PARTY**  
(motion for leave to appeal)

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Lawyers for the Defendant / Moving Party, BlackBerry Limited

1. The Responding Party, David Parker, (“Parker”) responds to paragraphs 2-3 and 12 of the Moving Party’s, BlackBerry Limited (“BlackBerry”), Reply Factum, dated August 22, 2019, specifically, to BlackBerry’s description of the Ford-BlackBerry Agreement.<sup>1</sup>

### **Paragraphs 2-3**

2. In its initial Factum, BlackBerry made no reference to the terms of the Ford-BlackBerry Agreement, despite its obvious relevance to argument in the Certification Motion and the Certification Decision. It then characterized Parker’s description of the Agreement as “misleading” because the Agreement does not explicitly state that BlackBerry was “contractually prohibit[ed] from assuring the Class Employees that they would continue to be employed at BlackBerry”. BlackBerry effectively waited in the weeds to, in Reply, provide its position with respect to what it could and could not do pursuant to the Ford-BlackBerry Agreement.
3. As such, Parker has two points in response to BlackBerry’s description of the terms of the Ford-BlackBerry Agreement:
  - i. During the Certification Motion, BlackBerry produced no witness who was a Party to the Ford-BlackBerry agreement, involved in negotiating the Ford-BlackBerry Agreement, or who could speak in any way to the intention or understanding of the Parties to that Agreement. As such, it cannot attempt in its

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<sup>1</sup> Ford-BlackBerry Agreement: **Motion Record of the Defendant for Leave to Appeal, Tab 35-B.**

Reply Factum to introduce evidence about what the Parties may have intended the Agreement to mean.

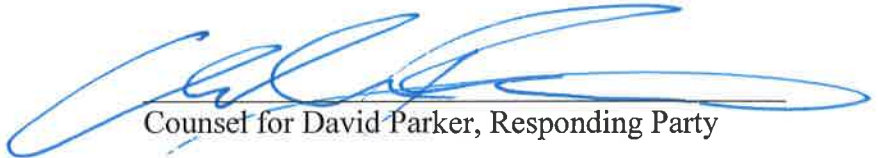
- ii. BlackBerry's position is inconsistent with the plain language of the Ford-BlackBerry Agreement (that it would not "*dissuade*" employees from accepting the Ford offers) and the undisputed evidence that BlackBerry told no employee explicitly what role they would have with BlackBerry until after they rejected the Ford offer (only that BlackBerry would try and find them a role, and if one was not found the employee would be out of a job). These points are more thoroughly canvassed at paragraphs 10-15, 20-22, 29 and 34 of Parker's Factum.

#### **Paragraph 12**

4. Parker denies BlackBerry's bald and unsupported allegation that he was misleading or inaccurate with respect to factual statements in his Factum. BlackBerry improperly provided no specific examples of this (as Parker did at paragraph 34 of his Factum) beyond its note at footnote 12.
5. The only statement BlackBerry pointed to, in footnote 12, as either inaccurate or misleading was the John Chen email at paragraph 25 of Parker's Factum. Parker did not explicitly reference Mr. Chen's statement that BlackBerry would "*evaluate internal opportunities to redeploy [employees] as much as possible [emphasis added]*" and that the email encouraged employees to speak with their manager or Human Resources Business Partner.

6. Parker's characterization of this email was not in any way misleading or inaccurate, and the allegation is particularly unfair considering BlackBerry did not produce Mr. Chen as a witness to explain what he meant by this email. Nonetheless, on its face, this statement was in no way a guarantee of job security but, particularly in the context of the rest of that email, was another vague common communication that BlackBerry said it would try, as much as possible, to evaluate internal opportunities without providing any guarantee of continued employment.
7. Blackberry's allegation should be given no weight by the Court in its review of this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of August, 2019.



Counsel for David Parker, Responding Party

DAVID PARKER

- and -

BLACKBERRY LIMITED

Plaintiff

Defendant

Divisional Court File No. 333/19  
(Superior Court File No. 17-17-71659)

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

Proceeding commenced at TORONTO

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**REPLY FACTUM OF THE  
RESPONDING PARTY, DAVID PARKER**  
(motion for leave to appeal)

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Lawyers for the Responding Party, David Parker