Claims for Personal Liability, Trademark Infringement and Unlawful Interference with Economic Relations not Struck from Pleading

October 05, 2018

***Great Oak v. S & T Accounting*, 2018 ONSC 5934**

The Ontario Superior Court recently dismissed a motion to strike in an action that has claims including copyright and trademark infringement, and unlawful interference with economic relations. Three issues were decided.

The first issue related to a personal claim against one of the named defendants. The Court found that the individual is a founder of the corporation and is responsible for the marketing and business development. It is claimed that he was significantly and personally responsible for and directly participated in the acts that are complained of by the plaintiff. As such, these are material facts supporting the claim to personal liability.

The second issue related to a novel claim for passing off. The plaintiff's position is that it has goodwill in its style and content of the reports that it prepares. The Court noted the novelty of the claim and concluded that it was not shown the claim has no reasonable prospect of success, and sufficient material facts were pleaded to support it.

The third issue related to a claim for unlawful interference with economic relations. The Court noted that such a claim will commonly be proven by circumstantial evidence as there will seldom be direct evidence of intention. On that basis, a more detailed pleading of the defendant's intent is not required. The Court also held that there were sufficient material facts in identifying the third party as those who use and rely on the plaintiff's reports.

In the end the motion to strike was dismissed with submissions on costs to follow.

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