

CITATION: Global Fuels Inc. v. Econo Petroleum Inc., 2024 ONSC 3815
COURT FILE NO.: CV-19-00631760-0000
DATE: 20240704

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Global Fuels Inc., Appellant/plaintiff

-and-

Econo Petroleum Inc., 1067323 Ontario Ltd. d/b/a Econo Gas, Goldy Singh And Sandeesh Singh, a.k.a. Sandy Singh, Respondents/defendants

BEFORE: Robert Centa J.

COUNSEL: Sidney Young, Matthew J. Diskin, and Ryan Holland, for the appellant/plaintiff

Allison Farley, for the respondents/defendants

HEARD: July 3, 2024

ENDORSEMENT

- [1] Global Fuels Inc. appeals from Associate Justice D. Michael Brown’s order dated July 18, 2022, which dismissed its motion to compel the defendants to provide a further and better affidavit of documents. The associate judge found that Global Fuels Inc. was requesting irrelevant documents. I agree. The associate judge also found that the order requested by Global Fuels Inc. was disproportionately broad and would result in the production of thousands of pages of irrelevant documents. Again, I agree. The appeal is dismissed.
- [2] Global Fuels competes with the two corporate defendants in the business of supplying fuel to gas stations. Almost five years ago, on November 27, 2019, Global Fuels commenced this action alleging that the defendants committed the torts of unlawful interference, inducing breach of contract, and conspiracy by interfering with the business relationship between Global Fuels and the gas stations to which it supplied fuel under contract (the “Global Dealers”). Global Fuels pleads that its contracts with the Global Dealers includes exclusivity terms requiring them to purchase fuel exclusively from Global Fuels and not from the defendants.
- [3] Global Fuel alleges that the defendants sold fuel to Global Dealers knowing that those gas stations had contracts with Global Fuel that contained exclusivity clauses. In the alternative, Global Fuel pleads that the defendants failed to make reasonable inquiries about the potential existence of such exclusivity clauses.

- [4] The defendants delivered a demand for particulars asking Global Fuels to identify the Global Dealers to which it alleged the defendants sold fuel. In response, Global Fuels identified four such Global Dealers:
- a. 727 Kipling Avenue, Toronto;
 - b. 1413 Highway 8, Stoney Creek;
 - c. 128 Woodlawn Road, Guelph; and
 - d. 17 Highway 33 Trenton.
- [5] The defendants delivered statements of defence and affidavits of documents. The defendants identified that it had sold fuel to two of the four Global Dealers identified by Global Fuels after receiving written confirmation from the gas stations stating that they were not subject to any exclusivity agreements. The defendants produced the transaction documents and correspondence with the two Global Dealers to which the defendants sold fuel.
- [6] Global Fuels brought a motion under rule 30.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 for an order compelling the defendants to deliver further and better affidavits of documents and to include the following documents in their affidavits of documents:
- a. the names and addresses listing of all stations to which the defendants or their related entities delivered petroleum to in the last three years;
 - b. the defendants' master price notification listing;
 - c. a list of the defendants' accounts receivable;
 - d. sales listing by customer, which shows the customers, sales dates, and sales volumes;
 - e. all documentation in the defendants' power possession or control relating to any fuel deliveries made by any of the defendants' customers;
 - f. a list of all loads loaded under the defendants' badge but not delivered to a customer of the defendants, as well as the name and address of the hauler;
 - g. a list of all of the defendants' haulers;
 - h. bills of lading for every delivery from every hauler which will reconcile to the sales listing; and,
 - i. a list of the defendants' badges and pickup points.

[7] Associate Justice Brown dismissed Global Fuel's motion. He found that Global Fuels sought documents that were irrelevant because they were not related to Global Dealers with whom Global Fuels had an exclusive arrangement. He also found that the request would require the production of thousands of pages of irrelevant documents:

[8] The Defendants submit that the Plaintiff's document request amounts to a "fishing expedition". The Defendants' evidence is that as far as they are aware, other than the inadvertent sales to two of the four Dealers listed in the Plaintiff's response to the demand for particulars, none of the gas stations supplied by the defendants had Exclusivity Contracts with the Plaintiff. They argue that the Requested Documents are irrelevant and that the request is disproportional. I agree.

[9] The Defendants' sales of fuel to gas stations that do not have Exclusivity Contracts with the Plaintiff are irrelevant to the Plaintiff's claim. The Plaintiff's demand for the Requested Documents is overbroad in that it is not restricted to gas stations with which it had Exclusivity Contracts. The Plaintiff has records of which Dealers it had Exclusivity Contracts with during the relevant period and could easily have narrowed its document request to include only those documents relating to sales to those identified Dealers. It has chosen not to do so.

[10] For these reasons, and based on the record before me, I find that the inclusion of the Requested Documents in the Defendants' affidavits of documents would result in the needless production of thousands of pages of irrelevant documents. The Plaintiff's motion is dismissed without prejudice to the Plaintiff's ability on examinations for discovery to seek production of documents relating to sales to specific Dealers that it has identified on the record as having Exclusivity Contracts with the Plaintiff during the relevant period.

[8] Global Fuels appeals this decision. Global Fuels submits that the Associate Justice erred in concluding that the documents are relevant. I disagree.

[9] The normal appellate standards of review from *Housen v. Nikolaisen* apply on an appeal from a decision of an associate judge.¹ The standard of review on a question of law is correctness.² The relevance of evidence, including and documents is a question of law.³

¹ 2002 SCC 33, [2002] 2 S.C.R. 235; *Zeitoun v. Economical Insurance Group*, 2009 ONCA 415, 96 O.R. (3d) 639, at para. 1.

² *Housen*, at para. 8.

³ *R. v. Mohan*, 1994 SCC 80, [1994] 2 S.C.R. 9 at para. 22.

The standard of review for determinations of relevance by an associate judge is, therefore, correctness.⁴

- [10] Global Fuels submits that the statement of claim puts at issue all of the defendants' transactions, with any gas station, for three years prior to the claim. Read fairly, the claim does not do that. The statement of claim is focussed on damages arising from the defendants' alleged interference with Global Fuels' relationship with its customers, the Global Dealers with whom Global Fuels asserts an exclusive arrangement. The fact that the plaintiffs allege a conspiracy among the defendants does not change the focus of the action or the relevance of the documents sought by Global Fuels. The defendants' business activities with other gas stations that are not under contract with Global Fuels are plainly irrelevant to pleaded causes of action.
- [11] Global Fuels submits that the documents are "highly relevant." They are not. None of the answers given by the defendants' representatives during cross-examination on affidavits filed on this motion change that reality. I agree completely with Associate Justice Brown: the documents sought by Global Fuels are irrelevant and need not be produced by the defendants. My finding on this ground is sufficient to dispose of this appeal.
- [12] As noted above, Global Fuels responded to the defendants' demand for particulars by naming four Global Dealers to which the defendants allegedly sold fuel. If Global Fuels alleges that any additional gas stations are similarly implicated, it should provide those names to the defendants. The defendants will then be obliged to engage in another document review and production exercise because documents related to those additional gas stations would then become relevant to the action. Similarly, nothing in the reasons of the Associate Justice, or in my reasons are meant to insulate the defendants if they have not searched diligently for and produced relevant documents.
- [13] Global Fuels also submits that Associate Justice Brown erred in his application of the proportionality principle. I disagree. The order sought by Global Fuels is overbroad and disproportionate. Global Fuels could have made its request more targeted and focussed on relevant or documents. It chose not to do so. I would not interfere with Associate Justice's conclusion.
- [14] I do not accept Global Fuels' submission that the Associate Justice erred by not ordering Global Fuels to name its dealers and then ordering the defendants to produce additional documents responsive to those names. Global Fuels could easily have narrowed its request to seek only those documents in the defendants' possession that related to Global Dealers. It could have provided these names to the defendants at any time. It should have provided those names if it alleged misconduct and sought documents relating to those additional gas stations. The Associate Justice did not err in failing to order Global Fuels to take this step.

⁴ *Bee Vectoring Technology Inc. v. Chitiz Pathak LLP*, 2019 ONSC 1714, at para. 74; *Fulop v. Corrigan*, 2020 ONSC 1648 at para. 74; *Leadbeater v. Ontario* (2004), 70 O.R. (3d) 224 (S.C.J.), at para. 29.

- [15] Given my disposition of the appeal, it is unnecessary for me to consider Global Fuels' submission about how to handle the commercially sensitive material it sought.
- [16] I agree entirely with the decision of Associate Justice D. Michael Brown. The appeal is dismissed.

[17] As agreed by the parties, Global Fuels shall pay costs to the defendants fixed in the amount of \$22,000, inclusive of HST and disbursements.

Robert Centa J.

Date: July 4, 2024