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Case Name:

① Clean-Mark Canada Inc. v. Home Depot of Canada Inc.

Between

Clean-Mark Canada Inc., (plaintiff/appellant), and
Home Depot of Canada Inc., Heartland Services Ontario
Corp. and Heartland Services Group Limited,
(defendants/respondents)

[2005] O.J. No. 5450

Docket: C43886

Ontario Court of Appeal

Toronto, Ontario

R.R. McMurtry C.J.O., R.J. Sharpe and E.A. Cronk

JJ.A.

Heard: December 12, 2005.

Judgment: December 12, 2005.

(2 paras.)

Civil procedure — Pleadings — Striking out pleadings or allegations — Grounds — Failure to disclose a cause of action or defence — Plaintiff failed to plead material facts or lead evidence in support of alleged intentional interference with contractual relations — Appeal dismissed.

Civil procedure — Appeals — Plaintiff failed to plead material facts or lead evidence in support of alleged intentional interference with contractual relations — Appeal dismissed.

Appeal by the plaintiff from a decision allowing the defendants' motion for summary judgment dismissing the plaintiff's action for intentional interference with contractual relations.

HELD: Appeal dismissed. The appellant failed to plead the material facts or to lead evidence to support the cause of action. Evidence from which it could be inferred that the respondent had knowledge of Home Depot's intention to terminate the appellant's contract was insufficient to support the cause of action.

Appeal From:

On appeal from the judgment of Mr. Justice Herman J.W. Siegel of the Superior Court of Justice dated June 20, 2005.

Counsel:

George A. Bougadis for the appellant

John F. Johnson for the respondents

APPEAL BOOK ENDORSEMENT

The following judgment was delivered by

¶ 1 **THE COURT** (endorsement):— In our view the motions judge granted summary judgment on the proper basis in that the appellant had failed to plead the material facts or to lead evidence to support the cause of action for intentional interference with contractual relations. Evidence from which it could be inferred that the respondent had knowledge of Home Depot's intention to terminate the appellants contract is insufficient to support the cause of action. The motions judge did not err by making findings of credibility. His decision was based on his conclusion that the appellants failed to lead evidence of the facts necessary to support the claim.

¶ 2 The application for leave to appeal the costs of the summary judgment motion, which have not yet been decided, is adjourned to a date to be fixed by the Registrar. This panel will hear this second branch of the appeal if it is pursued. The costs of this appeal will be addressed at that time.

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cp/s/qw/qlbxm