

Calyniuk Restaurants Inc., 101047722 Saskatchewan Ltd., 101154436 Saskatchewan Ltd. and 101130013 Saskatchewan Ltd. (plaintiffs/respondents) v. D.C. Holdings Ltd., David Calyniuk and Adeline Calyniuk (defendants/applicants)
(2010 Q.B.G. No. 771; 2012 SKQB 160)

Indexed As: Calyniuk Restaurants Inc. et al. v. D.C. Holdings Ltd. et al.

Saskatchewan Court of Queen's Bench
Judicial Centre of Saskatoon
Scherman, J.
April 18, 2012.

Summary:

At issue on this application was how a corporation could satisfy the obligation to attend a mediation mandated by s. 42 of the Queen's Bench Act.

The Saskatchewan Court of Queen's Bench dealt with the issue accordingly.

Practice - Topic 5259.4

Trials - General - Mediation - Failure to attend - At a mandatory mediation (Queen's Bench Act, s. 42), the defendants objected to proceeding further because the person representing the four corporate plaintiffs was an officer of only one of the corporations (i.e., not someone who could bind all plaintiffs) - The Dispute Resolution Office issued a certificate of non-compliance against three of the plaintiffs, because it was expected that parties who attended for an organization had authority to enter settlement negotiations - At issue was whether the plaintiffs failed to attend the mediation as required by s. 42 - The Saskatchewan Court of Queen's Bench stated that while it was highly desirable that parties attend statutorily mandated mediation sessions willing to and, for corporations, having delegated authority to negotiate and settle the matter, the legislation did not require them to do so - Therefore, notwithstanding the certificate of non-compliance that issued, the plaintiffs met the requirement of s. 42 to attend the mediation - In the absence of legislation requiring corporations to attend in a particular manner, there was no justification for concluding that there had been non-compliance with the obligation to attend when a designated representative of the corporations (albeit not an officer) had in fact attended - The court opined that any person designated and authorized by corporations to do so, could attend s. 42 mediation sessions as representatives of the corporate parties and that would satisfy the obligation of the corporation to attend - The certificate of non-compliance issued was based upon a mistaken interpretation of s. 42 and should not have been issued.

Statutes Noticed:

Queen's Bench Act, S.S. 1998, c. Q-1.01, sect. 42(1.1), sect. 42(1.5) [para. 16]; sect. 42(5) [para. 17].

Counsel:

E.F. Anthony Merchant, Q.C., for the plaintiffs/respondents;
Nicholas J. Stooshinoff, for the defendants/applicants.

This application was heard before Scherman, J., of the Saskatchewan Court of Queen's Bench, Judicial Centre of Saskatoon, who delivered the following judgment on April 18, 2012.

Order accordingly.

Editor: Elizabeth M.A. Turgeon