

2007 CarswellAlta 1473, 2007 ABQB 398, [2008] A.W.L.D. 2234, [2008] A.W.L.D. 2233

Bowles v. Beamish

Kevin Charles Warren Bowles (Plaintiff) and Belinda Heather Beamish (Defendant)

Alberta Court of Queen's Bench

B.E. Mahoney J.

Heard: June 1, 2007

Judgment: June 6, 2007

Docket: Calgary FL01-01795

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Proceedings: additional reasons at *Bowles v. Beamish* (2007), 2007 ABQB 398, 2007 CarswellAlta 797 (Alta. Q.B.)

Counsel: D. Ellert for Plaintiff

D. **Castle** for Defendant

Subject: Civil Practice and Procedure

Civil practice and procedure --- Discovery — Examination for discovery — Conduct of examination — Objecting and refusing to answer

Plaintiff brought application to compel defendant to answer questions and produce records that resulted from list of written questions plaintiff sent defendant pursuant to order — Application granted — Defendant was ordered to answer questions under oath and produce records requested by plaintiff — Answers in writing and records were to be delivered to plaintiff's legal counsel by deadline — If records were out of control of defendant and could not be produced by deadline, defendant was to provide written proof to plaintiff's legal counsel by deadline that records have been requested of third party in writing.

Civil practice and procedure --- Discovery — Examination for discovery — Production of documents on examination

Plaintiff brought application to compel defendant to answer questions and produce records that resulted from list of written questions plaintiff sent defendant pursuant to order — Application granted — Answers in writing and records were to be delivered to plaintiff's legal counsel by deadline — If records were out of control of defendant and could not be produced by deadline, defendant was to provide written proof to plaintiff's legal counsel by deadline that records have been requested of third party in writing.

APPLICATION by plaintiff to compel defendant to answer questions and produce records.

B.E. Mahoney J.:

1 This is my ruling on the application of the Plaintiff to compel the Defendant to answer questions and produce records that result from a list of written questions the Plaintiff sent the Defendant pursuant to an order I made on 27 April, 2007.

2 Having read the affidavit of the Plaintiff sworn 22 May, 2007, and the affidavit of the Defendant sworn 29 May, 2007.

3 I order that the Defendant answer under oath in writing questions 5, 24, 30, 32 and 34, as numbered in the Plaintiff's 29 May, 2007 affidavit.

4 I order that the Defendant produce the records as requested in the numbered paragraphs in the Plaintiff's 29 May, 2007 affidavit, as follows:

Paragraphs: 4, 6, 7 (or proof that the credit cards were obtained by telephone), 25, 26, 27, 29, 31, 33, 35 and 52 (telephone call record)

5 The answers in writing and the records must be delivered to legal counsel for the Plaintiff no later than 4:00 PM on Friday, 8 June, 2007. If records that are out of the control of the Defendant cannot be produced by the 8th of June then the Defendant will provide written proof to legal counsel for the Plaintiff by 8 June, 2007 that the records have been requested of the third party in writing.

6 If questions ordered to be answered cannot reasonably be answered or documents ordered to be produced cannot reasonably be produced then the Defendant is to specify in writing under oath, why the question cannot be answered or the record produced and provide it to legal counsel for the Plaintiff by 4:00 pm 8 June 2007.

Application granted.

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