



T-2783-94

BETWEEN:

NAP, INC.

Plaintiff,

- and -

REITMANS INC.

Defendant.

REASONS FOR ORDER AND ORDER

GILES, A.S.P.:

By the motion before me, the plaintiff seeks an order that certain exhibits attached to affidavits filed with the Court be sealed.

While in circumstances where a confidentiality order permitting it exists sealed exhibits may be exhibited to open affidavits at the time the affidavits are sworn, it is a clumsy procedure. It is however, inappropriate to separate exhibits from sworn affidavits to which they are exhibited.

In addition, I note, that in the written representation of the plaintiff and in the affidavit of David J. Heller, an agreement is referred to between the parties with respect to the implied undertaking mentioned in *Canada v. Ichi Canada Ltd.* [1992] 1 F.C. 571. I question whether it is open to the parties to agree to apply or agree to waive the implied undertaking. The implied undertaking is an undertaking to the Court, which arises from the compulsory disclosure of a

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party's private information. Counsel would be advised to seek leave of the Court before failing to proceed in accordance with implied undertaking.

There being no representations by Reitmans Inc., and Nap Inc. having represented that the exhibits contained confidential information.

ORDER

It is ordered that the affidavits of David J. Heller, sworn March 8, 1996, and Louise N. Gendron, sworn the 14th day of December, 1995, shall be sealed in separate envelopes marked to indicate the name of the affiant and the date the affidavit was sworn and referring to this order. These envelopes should remain in the Court File and not be produced to anyone but the Court or the parties until further order of this Court.

"Peter A.K. Giles"

A.S.P.

Toronto, Ontario,
April 26, 1996

FEDERAL COURT OF CANADA

Court No. T-2783-94

Between:

NAP, INC.

Plaintiff

- and -

REITMANS INC.

Defendant

REASONS FOR ORDER & ORDER

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: T-2783-94
STYLE OF CAUSE: NAP, INC.
- and -
REITMANS INC.

CONSIDERED AT TORONTO, ONTARIO UNDER THE PROVISION OF
RULE 324.

REASONS FOR ORDER
AND ORDER BY: GILES, A.S.P.

DATED: APRIL 26, 1996

SOLICITORS OF RECORD:

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For the Defendant

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