

Date: 20090511

**Dockets: A-538-08
A-539-08**

Citation: 2009 FCA 151

**CORAM: NOËL J.A.
NADON J.A.
PELLETIER J.A.**

Docket: 538-08

BETWEEN:

STENNER FINANCIAL SERVICES LTD.

Appellant

and

CIBC WORLD MARKETS INC.

Respondent

Docket: 539-08

BETWEEN:

STENNER FINANCIAL SERVICES LTD.

Appellant

and

THANE STENNER

Respondent

Heard at Vancouver, British Columbia, on May 11, 2009.

Judgment delivered from the Bench at Vancouver, British Columbia, on May 11, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on May, 11 2009)

NADON J.A.

[1] These Reasons dispose of the appeals in Court files A-538-08 and A-539-08 and will be filed as Reasons for Judgment in each of these files.

[2] We are all agreed that the appeals must fail.

[3] In our view, the Prothonotary made no reviewable error in ordering the removal of Tabs 15 and 16 from the Respondent's Motion Record, i.e the Appellant's Motion Record in the proceedings in the Federal Court, and in determining that if the appellant wanted answers to the questions posed by way of the written examination questions served on June 27, 2008, it had to bring a motion to compel answers to the questions posed within the deadline set out in his Order.

[4] Rule 97 of the *Federal Courts Rules* which, by reason of Rule 100 applies to written examinations, clearly provides that upon failure of a person to answer proper questions, the Court may, *inter alia*, order that person to answer any questions that were not answered.

[5] Contrary to the appellant's submissions, it is our opinion that the Prothonotary was correct in his view that the issue before him was a procedural issue which ought to be resolved prior to the hearing of the application on its merits.

[6] In any event, the Prothonotary was correct in holding that the documents found at Tabs 15 and 16 were not relevant to the determination of the merits of the application.

[7] We also see no basis upon which we could disturb the Prothonotary's award of costs.

[8] It therefore follows that Hugessen J. did not err in refusing to interfere with the Prothonotary's Order.

[9] For these reasons, the appeals will be dismissed with costs.

“Marc Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-538-08

STYLE OF CAUSE: STENNER FINANCIAL SERVICES
v. CIBC WORLD MARKETS

PLACE OF HEARING: Vancouver, British Columbia

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REASONS FOR JUDGMENT OF THE COURT BY: NOËL, NADON, PELLETIER JJ.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

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Bradley J. Freedman and Stephen T.C. Warnett FOR THE RESPONDENT
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SOLICITORS OF RECORD:

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