

COURT OF APPEAL FOR ONTARIO

CITATION: Canadian Faces Inc. v. Cosmetic Manufacturers Inc., 2012 ONCA  
787

DATE: 20121119  
DOCKET: C54566

O'Connor A.C.J.O., Simmons and Rouleau JJ.A.

BETWEEN

Canadian Faces Inc., a body corporate

Plaintiff (Defendant to the Counterclaim) (Respondent)

and

Cosmetic Manufacturers Inc., a body corporate

Defendant (Plaintiff by Counterclaim) (Appellant)

James C. Morton, for the appellant

Jane O'Neill, for the respondent

Heard and released orally: November 8, 2012

On appeal from the judgment of Justice B.A. Allen of the Superior Court of  
Justice, dated October 18, 2011.

ENDORSEMENT

[1] In our view, it was open to the trial judge to imply a term into the agreement that the appellant undertook to enter into a contract with QVC UK to provide QVC with the respondent's products to be aired on the Shopping Channel.

[2] We note that there was reference to such an agreement with QVC in the recitals to the agreement and, more importantly, in the operative terms of the agreement. As the trial judge said, the agreement made no practical sense unless such a term was implied. In the circumstances, we do not think that the entire agreement clause precluded the inclusion by implication of this provision into the agreement.

[3] Finally, we note that the trial judge could have reached the same result by simply interpreting the provisions of the agreement in accordance with the reasonable objective intention of the parties.

[4] In the result, the appeal is dismissed.

[5] Costs to the respondent fixed in the amount of \$11,500, inclusive of all applicable taxes.

"D. O'Connor A.C.J.O."  
"Janet Simmons J.A."  
"Paul Rouleau J.A."