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COURT OF APPEAL FOR ONTARIO

RE: AT PLASTICS INC. (Respondent (Plaintiff) (Defendant by Counterclaim)) – and – MON-T-KO IMPORTING & EXPORTING LIMITED and BARONE MONTI TRADING (Appellants) (Defendants) (Plaintiffs by Counterclaim))

BEFORE: ABELLA, SIMMONS and JURIANSZ JJ.A.

**COUNSEL: Derek A.J. D'Oliveira
for the appellant**

**Brian P. Pilley
for the respondent**

**HEARD AND
ENDORSED: June 29, 2004**

On appeal from the judgment of Justice B.P. Wright of the Superior Court of Justice dated August 11, 2003.

APPEAL BOOK ENDORSEMENT

[1] The trial judge based his decision on business records that were admitted without objection by the defendants. He properly found that the evidence established the existence of a contract, a breach of that contract, and damages.

[2] We consider the trial judge's reasons for granting judgment against Barone Monti Trading a permissible application of Rule 25.07. In their pleadings, the defendants made no distinction between the two corporations, thereby implicitly acknowledging the unity of their positions and liability. We note, moreover, that both defendants are counterclaiming damages arising from the transaction, thereby implicitly acknowledging that both companies were involved in it.

[3] We see no merit in the submission that the trial judge erred in refusing to adjourn the trial against the defendants, in view particularly of the fact that the defendants had

unsuccessfully sought an adjournment two days earlier before the motions judge. We do not accept that he improperly fettered his discretion by considering this decision of the motions judge.

[4] Appeal dismissed with costs fixed in the total amount of \$2,000.