

# In the Court of Appeal of Alberta

**Citation:** Great North Equipment Inc v Penney, 2024 ABCA 378

**Date:** 20241121  
**Docket:** 2401-0238AC  
**Registry:** Calgary

**Between:**

**Great North Equipment Inc. and 1185641 BC Ltd.**

Applicants

- and -

**Bradley Penney, Neil MacDonald, Dustin Monilaws,  
Paloma Pressure Control LLC, Paloma PC Holdings LLC,  
Paloma Pressure Control Canada Ltd.**

Respondents

- and -

**Indeed Oil Field Supply LLC and  
Indeed Alberta Corp.**

Not Parties to the Appeal/Application

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**Reasons for Decision of  
The Honourable Justice Joshua Hawkes**

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Application for a Stay Pending Appeal

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**Reasons for Decision of  
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[1] Although this matter has a somewhat complex procedural history, the issue to be decided on this application turns on a narrow point. This is an application for a stay of an order pending appeal. For the following reasons, the application is dismissed.

[2] This dispute began when three employees of Great North Equipment Inc. (the applicant), Bradley Penney, Neil MacDonald, and Dustin Monilaws (the Departed Employees), gave notice and resigned in June 2023. Great North filed a statement of claim on its own behalf, and on behalf of a numbered company that indirectly owns all of its issued and outstanding shares. The statement of claim, as subsequently amended, alleged that the Departed Employees breached a variety of fiduciary and contractual obligations and used confidential information to start a new venture with the active assistance of a direct competitor, Paloma Pressure Control LLC, Paloma PC Holdings LLC, and its new Canadian entity, Paloma Pressure Control Canada Ltd. (collectively Paloma).

[3] On August 1, 2023, the parties entered a consent injunction order (the Injunction), imposing three obligations, some of which were clarified in subsequent orders, on the Departed Employees. First, they were required to surrender computers and other electronic equipment for inspection under the supervision of an independent solicitor. Second, they were prohibited from using or disclosing confidential information or any records derived there from, erasing, altering, or destroying that information, or engaging in any business that attempted to design products or systems that were developed while they were employees of the applicant. This obligation was to remain in force until further order of the court. Finally, the Departed Employees were prohibited from soliciting any employees of the applicant or any customers or clients for any purpose competitive with the applicant's business until June 20, 2024, or until further order of the court, whichever was earlier.

[4] On April 17, 2024, the applicant applied to extend the Injunction's non-solicitation period on the Departed Employees and impose the non-solicitation and confidentiality obligations on Paloma. Prior to the hearing of that application, the non-solicitation clause of the Injunction was extended three times so that procedural steps and questioning of some witnesses could be completed.

[5] That application was ultimately heard by Justice Lema, with reasons filed on September 6, 2024. He dismissed the application to extend the Injunction's non-solicitation period and to add Paloma. As a result, the non-solicitation period ended.

[6] The applicant has appealed Justice Lema's order. The appeal is scheduled to be heard on January 13, 2025. In the interim, the applicant brings this application for a stay of the effects of

Justice Lema's order pending the appeal, pursuant to rr 14.37 and 14.48 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[7] Single members of this Court, when sitting pursuant to the rules identified above, do not have the ability to grant a stay where the order appealed from granted no affirmative relief. To allow this stay application would be to effectively grant the remedy sought in the full appeal in advance of the appeal. The authorities preclude a stay in such circumstances: *Noscenco v Bagayeva*, 2015 ABCA 266 at para 7; *Denis v Sauvageau*, 2022 ABCA 166 at para 15; *Dr Vu v College of Physicians & Surgeons of Alberta*, 2023 ABCA 377 at paras 14-15, and the authorities cited therein.

[8] I note that the dated authorities cited by the applicant are either obiter comments on this point that clearly contemplated a different evidentiary record (*Baier v Alberta*, 2006 ABCA 187 at para 14; *Banff Transportation & Tours Inc v Buchan*, 2002 ABCA 218 at para 6), or arise in very different circumstances, where the hearing of the full appeal would not occur soon: *General Scrap Iron & Metals Ltd v Woloshin* 1995 ABCA 226 at paras 6-12.

[9] In these circumstances, I conclude that I cannot grant the relief sought. I do so purely on the basis that the order under appeal lacks any affirmative or executory provision. I make no comment on the strength of the appeal, the likelihood of irreparable harm, or the balance of convenience or inconvenience in this case.

[10] The application is dismissed.

Application heard on November 14, 2024

Reasons filed at Calgary, Alberta  
this 21st day of November, 2024

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Hawkes J.A.

**Appearances:**

K. Noonan  
M.C.C.L. Lemmens  
D. Price  
C. Penn

for the Applicants

D. McAllister  
M. Andresen

for the Respondent Bradley Penney

M. Dransfeld  
T. Green

for the Respondents Neil MacDonald and Dustin Monilaws

G.N. Stapon, KC (no appearance)

K. Cameron

for the Respondents Paloma Pressure Control LLC, Paloma PC Holdings LLC and  
Paloma Pressure Control Canada Ltd.