

Citation: **Northcott et al v. Abbott**  
2004 BCSC 1240

Date: 20040910  
Docket: S016191  
Registry: Vancouver

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Oral Reasons for Judgment  
The Honourable Mr. Justice Scarth  
September 10, 2004

BETWEEN:

**GREGORY NORTHCOTT, RICHARD HERBERT  
and KOALA PARK LIMITED**

PLAINTIFFS

AND:

**ERNEST ABBOTT**

DEFENDANT

Counsel for the Plaintiffs: P.G. Kent-Snowsell

For the Defendant: No Appearance

[1] **THE COURT:** (Orally) In their amended writ of summons, the plaintiffs, Gregory Northcott, Richard Herbert and Koala Park Limited, claim against the defendant, Ernest Abbott, of Osceola, Indiana, United States of America, amongst other things, general damages, special damages, punitive damages and aggravated damages, for loss and damage occasioned to the plaintiffs as a result, amongst other things, of the defendant's tortious conversion of e-mail accounts and message

board technology purchased by the plaintiffs from Netpond.com Internet Inc., a British Columbia incorporated company, to the defendant's own use in or about the months of June and July 2001.

[2] This action was commenced on November 2, 2001. The writ of summons was amended on December 7, 2001, pursuant to Rule 24(1)(a). Judgment in default of appearance by the defendant was entered on January 24, 2002 with damages to be assessed. The assessment of such damages took place before me on September 7, 2004. Mr. Northcott and Mr. Herbert testified before the Court.

[3] At the hearing counsel for the plaintiffs, Mr. Kent-Snowsell, told the Court the plaintiffs do not seek aggravated damages. Mr. Kent-Snowsell also applied to the Court for an order substituting Netpark Investments Limited, in the place of the plaintiff, Koala Park Limited, in order to conform with the evidence. That order will go.

[4] The evidence establishes that Mr. Northcott and Mr. Herbert are equal owners of Netpark Investments Limited. Netpark is a company based in the United Kingdom. The primary asset of Netpark was a website, [www.Netpond.com](http://www.Netpond.com). According to Mr. Northcott, Netpond was the number one adult website in the world, "The biggest and the best," to use his words.

[5] The defendant, Mr. Abbott, was employed by Netpark to run the website known as the "Newbie Message Board." His trade name was "Voltar." As a result of his position, he held great sway with those who communicated on the website. He was, according to Mr. Northcott, "the lifeblood of the business".

[6] In essence, in late June and early July, 2001, contrary to his oral undertaking of confidentiality with Mr. Northcott, Mr. Abbott announced on the Netpond Message Board that Netpond was changing hands and that he and two other webmasters were resigning from Netpond. Mr. Abbott created "Voltar's Newbie Webmaster Resource," and within days lured Netpond's sponsors and customers to his website.

[7] The evidence establishes that during the period July 2001 to and including January 2003 a reasonable estimate of Netpond's average potential billing each month was \$150,000 (USD) for a total over that 19-month period of \$2,850,000 (USD). Netpond's actual billings in that period amounted in total to \$869,250 (USD). I accept that 80 percent of the loss was attributable to Mr. Abbott's actions, and thus the actual loss attributable to him amounted to \$1,584,600 (USD). I award that amount as general damages.

[8] The plaintiffs seek punitive damages of \$90,000 per month for 19 months, as well, on the basis Mr. Abbott did not desist

from decimating Netpond's Newbie Board by taking most of its webmasters and advertisers or sponsors, even after Mr. Northcott threatened suit. Mr. Abbott's actions were planned and deliberate, it is argued. Moreover, such conduct must be deterred, it is said. Mr. Kent-Snowsell refers to the factors set out in ¶ 112 and following in *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595. The defendant must not be able to treat the award of punitive damages merely as the cost of a licence to do what he did.

[9] The award by the jury of \$1 million in punitive damages in *Whiten* concerned conduct on the part of an insurer which was much more egregious than the conduct in issue here. So, too, in comparing the conduct under consideration in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which an award of \$800,000 in punitive damages was upheld.

[10] In my judgment, the appropriate award of punitive damages in this case is \$100,000 (Cdn.).

[11] Anything else I need deal with, Mr. Kent-Snowsell.

[12] MR. KENT-SNOWSELL: Costs to the plaintiff.

[13] THE COURT: Costs go --

[14] MR. KENT-SNOWSELL: Yes.

[15] THE COURT: -- Scale 3. The judgment will, of course, have to reflect Canadian dollars for the award.

[16] MR. KENT-SNOWSELL: I think we have -- there's a **Foreign Exchange Act** that I could apply to do the calculations.

[17] THE COURT: Yes, you can do the calculations, which will satisfy the people downstairs.

[18] MR. KENT-SNOWSELL: Very good.

[19] THE COURT: All right.

"W.B. Scarth, J."  
The Honourable Mr. Justice W.B. Scarth