

SUPREME COURT OF IOWA

Comes v. Microsoft Corp.

775 N.W.2d 302 (Iowa 2009) · No. No. 07-2063 · Decided November 20, 2009

SUMMARY

The Supreme Court of Iowa affirmed a district court order allowing Canadian plaintiffs to intervene in litigation against Microsoft and obtain access to discovery materials subject to the existing protective order. The court held that requests to modify protective orders should be evaluated by balancing the interests at stake, including reliance on confidentiality, legitimate business interests, judicial economy, and potential circumvention of discovery restrictions. It concluded that sharing the discovery with similarly situated Canadian litigants would avoid substantial duplication without compromising Microsoft's confidential information.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Justice Hecht
JURISDICTION	Iowa
DECIDED	November 20, 2009
DOCKET	No. 07-2063
DISPOSITION	affirmed
PROCEDURAL POSTURE	Microsoft appealed from a district court order modifying a stipulated protective order to allow Canadian plaintiffs who had intervened in the Iowa action to access Iowa discovery materials under the order's confidentiality restrictions and to allow the Iowa plaintiffs to retain discovery materials until related litigation was resolved.
STANDARD OF REVIEW	Abuse of discretion; the district court has wide discretion to enter protective orders under Iowa Rule of Civil Procedure 1.504 and to make discovery-related decisions.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Microsoft Corporation v. Joe Comes, Riley Paint, Inc., Skeffington's Formal Wear of Iowa, Inc., Patricia Anne Larsen

TOPICS

discovery dispute

civil procedure

commercial litigation

class actions

PRACTICE AREAS

civil procedure

commercial litigation

antitrust litigation

QUESTIONS PRESENTED

1. What standard governs a request by intervenors involved in similar litigation in another jurisdiction to modify a protective order and obtain access to discovery?
2. Did the district court abuse its discretion by modifying the protective order to allow the Canadian plaintiffs access to the Iowa discovery under the order's confidentiality restrictions?
3. Did the district court properly allow the Iowa plaintiffs to retain discovery materials until the related Arizona, Mississippi, and Canadian litigation was resolved?

HOLDINGS

1. A court deciding whether to modify a protective order must balance the interests at stake, considering the reasons for the original protective order, whether the parties' legitimate interests can remain protected, the opposing party's reasonable reliance, the interests of the party seeking modification, judicial economy and public disclosure where appropriate, and whether the request seeks to circumvent discovery or evidentiary restrictions in another jurisdiction. The court should fairly consider all circumstances and apply no presumption for or against modification.
2. The Canadian plaintiffs were entitled to access all documents and data produced in the Iowa litigation on the same terms as the Iowa plaintiffs because the modification preserved Microsoft's confidentiality interests, avoided extraordinary duplication of time and expense, and did not establish circumvention of Canadian discovery restrictions.
3. The district court properly modified the protective order to allow the Iowa plaintiffs to retain discovery materials until the related litigation in Arizona, Mississippi, and Canada was terminated.

KEY QUOTATIONS

"After considering the various approaches other courts have taken to address requests to modify protective orders, we conclude the soundest approach is to balance the interests at stake, taking into account the reasons for the issuance of the protective order in the first place and whether the legitimate interests of the parties can still be protected with the suggested modification." (310)

"Because each situation in which a party or third party seeks modification will be different, we will not try to list all the considerations the district court may take into account when making its decision, but the court should fully and fairly consider all the circumstances supporting the modification, as well as the circumstances mitigating against it, and not employ any presumption for or against modification." (310)

"Thus, we conclude the Canadian plaintiffs are entitled to access to all of the documents and data produced in the Iowa litigation on the same terms as the Iowa plaintiffs." (313)

FACTUAL BACKGROUND

The Iowa plaintiffs and Microsoft conducted extensive coordinated discovery in an antitrust class action, producing approximately twenty-four million pages of documents and data under a protective order. After the Iowa litigation settled, similar antitrust actions remained pending in Mississippi, Arizona, British Columbia, Ontario, and Quebec. Canadian plaintiffs intervened in the Iowa action seeking access to the Iowa discovery, while Microsoft sought to retain the discovery until related litigation concluded.

PROCEDURAL HISTORY

Iowa plaintiffs filed a class-action antitrust suit against Microsoft in February 2000. The parties entered a stipulated protective order governing confidential and highly confidential discovery. After the Iowa case settled and related antitrust litigation remained pending in Arizona, Mississippi, and Canada, the district court granted motions by Microsoft, the Iowa plaintiffs, and Canadian intervenors to modify the protective order. Microsoft appealed the modifications concerning retention and sharing of discovery, and the Supreme Court of Iowa affirmed.

DISPOSITION

affirmed

CASES CITED

- Farnum v. G.D. Searle & Co., 339 N.W.2d 384 (Iowa 1983)
- Mediacom Iowa, L.L.C. v. Inc. City of Spencer, 682 N.W.2d 62 (Iowa 2004)
- State ex rel. Miller v. National Dietary Research, Inc., 454 N.W.2d 820 (Iowa 1990)
- Tratchel v. Essex Group, Inc., 452 N.W.2d 171 (Iowa 1990)
- Martindell v. International Telephone & Telegraph Corp., 594 F.2d 291 (2d Cir. 1979)
- S.E.C. v. TheStreet.com, 273 F.3d 222 (2d Cir. 2001)
- Wilk v. American Medical Ass'n, 635 F.2d 1295 (7th Cir. 1980)
- Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994)
- Public Citizen v. Liggett Group, Inc., 858 F.2d 775 (1st Cir. 1988)
- Wolhar v. General Motors Corp., 712 A.2d 464 (Del. Super. Ct. 1997)
- Krahling v. Executive Life Insurance Co., 959 P.2d 562 (N.M. Ct. App. 1998)
- Garcia v. Peeples, 734 S.W.2d 343 (Tex. 1987)
- Jochims v. Isuzu Motors, Ltd., 148 F.R.D. 624 (S.D. Iowa 1993)
- United States v. Procter & Gamble Co., 356 U.S. 677 (1958)
- Pro-Sys Consultants Ltd. v. Microsoft Corp., 2007 BCSC 1663, [2008] 3 W.W.R. 761, 76 B.C.L.R. (4th) 171
- Vitapharm Canada Ltd. v. F. Hoffman-LaRoche, Ltd., 11 C.P.R. (4th) 230, 6 C.P.C. (5th) 245, [2001] O.J. No. 237 (Ont. S.C.J.)
- In re Linerboard Antitrust Litigation, 333 F. Supp. 2d 333 (E.D. Pa. 2004)

