Case Name:

Precious Metal Capital Corp. v. Platinum Partners Value Arbitrage Fund

Precious Metal Capital Corp.
v.
Platinum Partners Value Arbitrage Fund, L.P., Mark Nordlicht and Ancash Mining Ltd.

[2012] S.C.C.A. No. 256

[2012] C.S.C.R. no 256

File No.: 34858

Supreme Court of Canada

Record created: June 5, 2012.
Record updated: November 22, 2012.

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Status:

Application for leave to appeal dismissed with costs (without reasons) November 22, 2012.

Catchwords:

Civil procedure -- Summary judgments -- No triable issue -- Action dismissed -- Applicant claimed "agent" breached contractual, fiduciary and confidence duties in acquiring mining property on his own behalf -- Respondents were successors in title to property -- No issue for trial was established as agency relationship asserted by applicant did not exist in law or on facts given documentary evidence -- As applicant could not establish its agency claim, its action against respondents could not succeed -- Prior to appeal hearing, rule of civil procedure for summary judgment amended -- What is the proper interpretation of amended rule and proper application of "full appreciation" test in determining motion for summary judgment under amended rule -- With growing judicial openness to summary judgment across Canada, how can courts ensure that disputes are fairly

adjudicated in interests of justice -- When case has hallmarks of case requiring trial, what is obligation on judge in gathering and reviewing evidence before granting summary judgment -- Under amended or expanded rule, do appellate courts have corresponding expanded duty to provide analysis and written reasons in summary judgment cases that dispose of party's right to full trial -- Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 20.

Case Summary:

The applicant, Precious Metal Capital Corp. ("PMCC"), claims that it retained Mr. Peebles as its agent in connection with the acquisition of a Peruvian mining property ("Pachapaqui") and that it shared confidential information with Mr. Peebles and another, Mr. Smith. PMCC claims that Mr. Peebles later acquired the mine for his own benefit. All agree that PMCC engaged Mr. Peebles for two acquisitions in San Luis and Millotingo. The dispute is whether PMCC also engaged him for the Pachapaqui acquisition. The respondents Platinum Partners Value Arbitration Fund L.P., Mark Nordlicht and Ancash Mining Ltd. (known collectively as the "Ancash defendants" in the lower courts) purchased the mining property from Messrs. Peebles and Smith. The Ancash defendants applied for summary judgment to dismiss PMCC's action against them on the basis that their position was derivative to the issues raised by the statement of claim against Messrs. Peebles and Smith. The motion judge granted summary judgment and the Court of Appeal dismissed PMCC's subsequent appeal. Before the appeal, however, the requirement for granting summary judgment under Rule 20 of Ontario's Rules of Civil Procedure was amended.

Counsel:

Morris Manning, Q.C. (Manning, Morris Professional Corporation LLP), for the motion.

Matthew Milne-Smith (Davies Ward Phillips & Vineberg LLP), contra.

Chronology:

1. Application for leave to appeal:

FILED: June 5, 2012.
SUBMITTED TO THE COURT: October 15, 2012.
DISMISSED WITH COSTS: November 22, 2012 (without reasons).
Before: Fish, Rothstein and Karakatsanis JJ.

Procedural History:

Judgment at first instance: Motion for summary judgement granted.
Ontario Superior Court of Justice, Cumming J., September 2, 2011.
2011 ONSC 2962.

Judgment on appeal: Appeal of summary judgment dismissed. Court of Appeal for Ontario, Rosenberg, Juriansz and Rouleau JJ.A., May 8, 2012.
2012 ONCA 298; [2012] O.J. No. 2013.