Case Name:

Quadrangle Group LLC v. Canada (Attorney General)

RE: Quadrangle Group LLC, QCP CW S.A.R.L. and Data & Audio-Visual Enterprises Investments Inc., Plaintiffs/Respondents, and Attorney General of Canada, Defendant/Moving Party

[2015] O.J. No. 6157

2015 ONSC 7346

Court File No.: 140/15

Ontario Superior Court of Justice
Toronto, Ontario

A.M. Molloy J.

Heard: By written submissions.
Judgment: November 25, 2015.

(11 paras.)

Counsel:

J. Sanderson Graham, Jacqueline Dais-Visca, and Joseph Cheng, for the Moving Party.

Jonathan C. Lisus, Matthew R. Law and Larissa Moscu, for the Respondents.

ENDORSEMENT

A.M. MOLLOY J.:--

Introduction

1 The Attorney General of Canada seeks leave to appeal from the order of Newbould J. dated

March 6, 2015.[1] In that order, the motion judge dismissed the Attorney General's motion to strike out or stay the Plaintiffs' Amended Statement of Claim. The Attorney General had argued that the action was derivative in nature and could not be commenced without leave under the *Ontario Business Corporations Act.* Further, the Attorney General sought to have certain portions of the Statement of Claim struck out as failing to disclose a cause of action in: (a) unlawful interference with economic relations; (b) unjust enrichment; and (c) contract. Although other issues were before the motion judge, it is only on these four issues that leave to appeal is sought (i.e. the derivative claim issue and the three cause of action issues).

2 The plaintiffs allege that they suffered significant financial harm as a result of representations and inducements made to them by Industry Canada which led them to create and invest in a company ("Mobilicity") with a view to acquiring spectrum for use in Canada's wireless industry. They further allege that subsequent government actions, contrary to the earlier representations, destroyed the ability of Mobilicity to compete, and the plaintiffs' investment was lost. They claim damages of $1.2 billion, under various causes of action.

Test for Leave to Appeal

3 The test for granting leave to appeal under Rule 62.02(4) is well-settled. It is recognized that leave should not be easily granted and the test to be met is a very strict one. There are two possible branches upon which leave may be granted. Both branches involve a two-part test and, in each case, both aspects of the two-part test must be met before leave may be granted.

4 In this case, the moving party relies on Rule 62.02(4)(b) and the test under Rule 62.02(4)(a) need not be addressed.

5 Under Rule 62.02(4)(b), the moving party must establish that there is reason to doubt the correctness of the order in question and that the proposed appeal involves matters of such importance that leave to appeal should be granted. It is not necessary that the judge granting leave be satisfied that the decision in question was actually wrong -- that aspect of the test is satisfied if the judge granting leave finds that the correctness of the order is open to "very serious debate": *Nazari v. OTIP/RAEO Insurance Co.*, [2003] O.J. No. 3442 (S.C.J. per Then J.); *Ash v. Lloyd's Corp*. (1992), 8 O.R.(3d) 282 (Gen. Div. per Farley J.). In addition, the moving party must demonstrate matters of importance that go beyond the interests of the immediate parties and involve questions of general or public importance relevant to the development of the law and administration of justice: *Rankin v. McLeod, Young, Weir Ltd*. (1986), 57 O.R. (2d) 569 (H.C.J. per Catzman J.); *Greslik v. Ontario Legal Aid Plan* (1988), 65 O.R. (2d) 110 (Div. Ct.).

Analysis

6 This was a motion under Rule 21. The test for dismissing an action at this stage is a stringent one, and was correctly identified by the motion judge. He held, citing well-established Supreme Court of Canada authority, that unless it is "plain and obvious' that there is "no chance of success", a

claim ought to be allowed to proceed, even where the claim is a novel one. On such a motion, the facts as pleaded are to be regarded as true, unless manifestly incapable of being proven, which is not the case here.

7 In its factum on this motion, in support of its argument that issues of public importance are raised by this appeal, the Attorney General submitted (at para 70) that the plaintiffs have pleaded "a novel claim" alleging "the existence of a separate duty of care owed by a Crown agency in respect of conduct directed towards, and damages suffered by, a corporation which they created." The Attorney General further stated, "This sort of claim appears not to have been considered by the Canadian courts."

8 I agree with that characterization of this case. Novel issues of considerable importance are indeed raised. However, I also agree entirely with the findings of the motion judge that these claims should not be dismissed at this stage as being without any chance of success. They arguably fall within legal principles already established in long-standing legal precedent. It is certainly not plain and obvious that they will fail.

9 Moreover, to the extent novel and important claims are advanced, it is better that they be determined on a full evidentiary record, rather than on a summary motion based solely on pleadings.

10 Accordingly, I do not find any reason to doubt the correctness of the motion judge's decision. The test for leave to appeal is not met.

Order

11 Leave to appeal is denied. The responding parties are entitled to their costs, fixed at $6000 inclusive of interest and costs, payable in 30 days.

A.M. MOLLOY J.

1 The Attorney General filed its motion material in a timely way, as did the Respondents. Due to an administrative error, the motion was not scheduled to be heard. This error was not discovered until all counsel wrote to the Court on November 23, 2015 inquiring as to the status of the matter.

---- End of Request ----
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