Federal Court  Cour fédérale

Date: 20210908

Docket: T-351-19

Citation: 2021 FC 928

Ottawa, Ontario, September 8, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Plaintiff

and

KENNETH WILLIAM BILLS

Defendant

JUDGMENT AND REASONS

[1] The Plaintiff brings this motion for summary judgment in writing pursuant to Rules 214 and 369 of the *Federal Courts Rules*, SOR/98-106. The Plaintiff seeks to recover the amount of $239,845.27, plus interest and costs, against the Defendant, Kenneth William Bills, claiming that the Defendant is in default of his repayment obligations for funds received from the Advance Payment Program under the *Agricultural Marketing Programs Act*, SC 1997, c 20 [*AMPA*].

[2] The Plaintiff submits that this matter should be determined by summary judgment.

[3] The Defendant opposes the motion for summary judgment and raises several arguments, including that: the *AMPA* does not apply; the Settlement Agreement he entered into with the Canadian Canola Growers Association (CCGA) is a separate contract governed by provincial legislation, including a two year limitation period; the Plaintiff's claim is statute barred; and, if any debt is owed, the interest owed and owing should be reduced because the Plaintiff did not pursue their claim within in a timely manner.

[4] For the reasons that follow, summary judgment in favour of the Plaintiff is granted. The legal arguments raised by the Defendant have been recently determined by this Court and confirmed by the Federal Court of Appeal. The amount of the debt owed is set out in the uncontradicted evidence of the Plaintiff's affiants. The Defendant has not adduced any evidence. There is no genuine issue for trial.

I. The Background

[5] The relevant background is set out in the parties' submissions and the key aspects are set out below.

[6] The *AMPA* is the federal statute that establishes and governs the Advance Payment Program to support agricultural producers. Pursuant to the program, organizations involved in marketing the agricultural product (in this case, the CCGA) may make advance payments to producers before their crop or harvest produces revenue. When a producer defaults on their

repayment obligations as set out in their agreement with the organization, the organization may request that the Minister of Agriculture and Agri-Food [the Minister] repay the amount owing to the organization. Once the Minister makes the payment to the organization, the Minister is subrogated to the organization's (here the CCGA's) rights against the producer.

[7] The Minister's role as guarantor was recently described by the Federal Court of Appeal in *Moodie v Canada*, 2021 FCA 121 at para 5 [*Moodie FCA*]:

> [5] Section 23 of the *AMPA* effectively makes the Minister of Agriculture and Agri-Food (the Minister) a guarantor of the producer. If the producer defaults on its repayment obligations, the creditor administrator organization may request payment from the Minister. Provided certain conditions are met, the Minister is obligated by statute to pay any outstanding sums on behalf of the defaulting producer. The program facilitates access to credit for agricultural producers by transferring a substantial portion of the lending risk to the Minister.

[8] In October 2011, the Defendant applied to the CCGA for an advance payment for the 2011-2012 crop year and by doing so entered into a Repayment Agreement with the CCGA. The Defendant received $139,655 less an administrative and withholding fee on October 28, 2011. The Defendant defaulted and the CCGA requested repayment plus interest and costs.

[9] In January 2013, the Defendant and CCGA entered into a Settlement Agreement. The Defendant defaulted on the terms of the Settlement Agreement. On January 28, 2013, the Defendant signed an Acknowledgment of Debt regarding the amount owing at that time on the Advance Payment (which was $145,647.93).

[10] In May 2014, the Minister honoured their guarantee and paid the amount owing to the CCGA. Agriculture and Agri-Food Canada (AAFC) wrote to the Defendant several times (November 2014, November 2015, April 2016, May 2016 and October 2016) advising him of the amount owing.

[11] The Plaintiff commenced their action on February 21, 2019.

II. The Plaintiff's Submissions

[12] The Plaintiff submits that summary judgment is warranted; the debt is owed; the provisions of the *AMPA* govern; and the action was brought within six years of the date the Minister paid out on the guarantee (which was May 14, 2014).

[13] The Plaintiff notes that this Court has clearly found that the *AMPA* governs—not the Settlement Agreement or Repayment Agreement. The claim is based on the *AMPA*.

[14] The Plaintiff submits that there is no authority or justification to reduce the amount of interest owing.

[15] The Plaintiff submits that the amount of the debt owing is not set out inconsistently in the affidavits. The Plaintiff notes that this evidence is uncontroverted given that the Defendant offered no evidence and did not cross-examine the Plaintiff's affiants. The Plaintiff has provided detailed explanations for the different amounts set out in the affidavits and the Repayment Agreement, including that different *per diem* interest rates are attributable to changes in the

prime lending rate since the Statement of Claim was filed, and different interest rates apply to the advance guarantee agreement between the Minister and the CCGA than to the Repayment Agreement.

III. The Defendant's Submissions

[16] The Defendant submits that there are genuine issues for trial and the motion should therefore be dismissed.

[17] First, the Defendant argues that the Settlement Agreement is a new contract that does not fall within the *AMPA*.

[18] Second, the Defendant argues that the two-year limitation period set out in the Alberta *Limitations Act*, RSA 2000, c L-12, applies to the Settlement Agreement.

[19] Third, the Defendant argues that even if the *AMPA* applies, the Plaintiff's claim was filed beyond the six-year limitation period. The Defendant argues that subsection 23(4) provides that the Minister may not recover amounts owing more than six years from the date on which the Minister became subrogated to the administrator's (in this case, the CCGA's) rights. The Defendant argues that it is the date of default that triggers the Minister's subrogation rights.

[20] Fourth, the Defendant submits that the amount of the debt, if any, is not accurate. The Defendant submits that the amount claimed by the Plaintiff differs between that set out by the Statement of Claim, the Settlement Agreement and the Plaintiff's affiants.

[21] Finally, the Defendant argues that if any debt is owing, which he disputes, the interest on the debt should be reduced due to the Plaintiff's failure to pursue this claim in a timely manner. The Defendant submits that the interest component now makes up almost half of the debt claimed. The Defendant submits that the Plaintiff should not reap a greater amount by having let interest accumulate.

IV. Summary Judgment Is Granted

[22] I am satisfied based on the evidence provided by the Plaintiff, the provisions of the *AMPA* and the jurisprudence (*Lauzon v Canada (Revenue Agency)*, 2021 FC 431 at paras 19–21; *Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 at paras 24–41) that there is no genuine issue for trial. The evidence permits me to make the necessary findings of fact and to apply the law to the facts. The Federal Court of Appeal has recently and clearly resolved many of the issues raised by the Defendant (*Moodie FCA*). The Defendant has not adduced any evidence in support of his submission that there is any genuine issue for trial as required by Rule 214. Summary judgment provides a proportionate and more expeditious process to resolve the Plaintiff's claim.

[23] The Defendant has raised the same or similar arguments advanced by the defendants in *Canada v Kenelane Farms Limited*, 2021 FC 924 [*Kenelane Farms*]. For the same reasons set out in *Kenelane Farms* and the jurisprudence cited therein, the Defendant's arguments cannot succeed.

[24] In the present case, the Defendant argues that the Settlement Agreement he entered into with the CCGA is a separate contract. In *Kenelane Farms*, the defendants argued that the Repayment Agreement with the AAFC was a separate contract.

[25] In *Canada v Klesse*, 2020 FC 45 [*Klesse*], the defendant producer applied to the Canadian Wheat Board and Canadian Livestock Advance Association [CLAA] for advance payments. The defendant entered into a settlement agreement with the CLAA, defaulted and then entered into a second settlement agreement. The defendant raised several arguments, including that the settlement agreement was a separate contract, not within the scope of the *AMPA*. The Court applied the same reasoning as in *Canada v Moodie*, 2020 FC 46, and stated at paras 25–28:

> [25] The starting point for the analysis is the agreements signed by the Defendant, which incorporate or reflect certain of the provisions of the governing statute, the *AMPA*. In one sense, these agreements may be seen as "ordinary commercial transactions" by which farmers obtain advances on crops or livestock, which are to be repaid at the end of the growing season once the crops or livestock are sold to market. In reality, these agreements are more than that – they are the means by which the government has chosen to achieve its program objectives, consistent with the terms of the legislation adopted by Parliament to give effect to this objective, namely the *AMPA*. In this regard, these agreements take on the aspect of a program delivery vehicle, whose terms are set in part by the legislation.
>
> [26] I agree with the Defendant that all of the key terms at issue in this case were fixed by the government. I also agree that it was the choice of the government to implement the program by using third-party organizations it designated as the day-to-day administrators of the Advance Payment Program. I am not persuaded, however, that this has the legal effect of making the Plaintiff and the administrators "one and the same" for the purposes of this claim. The *AMPA* and the agreements signed by the Defendant make clear that the agreements are between the producer (here, the Defendant) and the administrators. The administrators may be acting on behalf of the Minister, but that, in and of itself, does not effect a legal merger. As the Plaintiff notes,

> the administrators have legal rights separate and apart from those of the Minister; furthermore, the legislation which created the CWB stated explicitly that the CWB was not an agent of Her Majesty or a Crown corporation (subsection 4(2) of the Canadian Wheat Board Act, RSC 1985, c C-24).
>
> [27] I find that, at all times relevant to the questions in issue in this matter, the Plaintiff and the CLAA, CCGA, and CWB were separate and independent entities; this is confirmed by the applicable legislation and consistent with the agreements signed by the Defendant.
>
> [28] The Plaintiff's right of action in this case derives from the operation of the *AMPA*; this is a claim based on statute, not contract. The relevant terms of the statute, and in particular the Minister's subrogation rights, are reflected in the agreements signed by the Defendant, but that does not have the effect of transforming their essential nature. I do not accept the Defendant's contention that these are to be interpreted as equitable or contractual claims. I will discuss the "clean hands" argument below.

[26] In accordance with *Klesse* (confirmed by the Federal Court of Appeal in *Moodie FCA*), the Settlement Agreement between the Defendant and the CCGA is governed by the *AMPA*.

[27] With respect to the Defendant's argument that the Plaintiff's claim was not commenced within the six-year limitation period provided in the *AMPA*, the limitation period did not begin to run at the date of the default by the Defendant. The Minister's subrogation rights occurred when the Minister paid the amount to the CCGA in May 2014. The Plaintiff's action was commenced within the six-year period, in 2019.

[28] With respect to the Defendant's submission that any interest on any debt owed should be reduced due to the Plaintiff's delay in pursuing this action, I note that AAFC corresponded with

the Defendant on five occasions between November 2014 and October 2016 regarding the amount owing. In addition, counsel for the Plaintiff sent a demand letter in August 2018. The Defendant was aware of the debt owing and of the interest accruing. As the Court found in *Kenelane Farms*, the jurisprudence relied on by the Defendant to support his argument for a reduction in interest does not apply in the context of the *AMPA*.

[29] With respect to the calculation of the amounts owing, the Defendant has not adduced any evidence or cross-examined the Plaintiff's affiants. As a result, the affidavit evidence of the Plaintiff's affiants is undisputed and is relied on.

[30] The Plaintiff has established, via their affidavit evidence, that:

- The Defendant applied for the Advance Payment on October 26, 2011;
- The Defendant received the Advance Payment of $139,655 on October 28, 2011;
- The Minister paid the guarantee to the CCGA on May 14, 2014;
- The Plaintiff commenced this action on February 21, 2019, which falls within the six-year limitation period that commenced on May 14, 2014; and
- The Defendant owes the Crown $239,845.27 as of May 20, 2021, which represents the outstanding amount plus interest pursuant to the agreement.

[31] In conclusion, the Court grants summary judgment in favour of the Plaintiff. In accordance with Rule 400(4) of the *Federal Courts Rules*, the Plaintiff is entitled to its costs and

disbursements fixed in the amount of $2,095.53, the calculation of which is set out in the affidavit of Shelley Warner.

JUDGMENT in file T-351-19

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's Motion for Summary Judgment is granted.

2. The Defendant, Kenneth William Bills, shall pay to the Plaintiff:

   a) the sum of $239,845.27, which reflects the outstanding amount plus interest pursuant to the Repayment Agreement executed by the Defendant;

   b) costs and disbursements fixed at $2,095.53 in lieu of taxation; and,

   c) interest on the sum of $239,845.27, which shall accrue at the per diem rate of interest of $35.81 from May 26, 2021 (the date of filing of this Motion for Summary Judgment) until the date of this judgment, and thereafter at the rate of 5% per annum.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-351-19
STYLE OF CAUSE:	HER MAJESTY THE QUEEN IN RIGHT OF CANADA v KENNETH WILLIAM BILLS

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

REASONS FOR JUDGMENT AND JUDGMENT:	KANE J.
DATED:	SEPTEMBER 8, 2021

WRITTEN REPRESENTATIONS BY:

Cailen Brust	FOR THE PLAINTIFF
Ryan Trainer	FOR THE DEFENDANT

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