Federal Court Cour fédérale

Date: 20260413

Docket: T-740-25

Citation: 2026 FC 485

Toronto, Ontario, April 13, 2026

PRESENT: Case Management Judge John C. Cotter

BETWEEN:

SERGIO GRILLONE

Applicant

and

B. RILEY FARBER INC.

Respondent

JUDGMENT AND REASONS

[1] This decision concerns a motion to strike by the respondent, B. Riley Farber Inc. [the Trustee]. Specifically, in its notice of motion, the Trustee seeks "an order striking the notice of application".

[2] As explained below, the Federal Court has no jurisdiction in respect of this application for judicial review and as a result, the notice of application is struck out without leave to amend, and the proceeding dismissed.

[3] It should be noted that in its notice of motion, the Trustee also sought security for costs in the alternative. Through the case management process, the Trustee proposed deferring a hearing on that issue, to be dealt with later, if necessary, in the event that the notice of application is not struck out. The applicant, Sergio Grillone [Mr. Grillone], was agreeable to proceeding in that fashion. As a result, I issued a Direction dated February 5, 2026 [February 5 Direction] providing that the hearing of the motion scheduled for April 9, 2026 would only deal with the "Motion to Strike" (as defined in that Direction), namely the relief sought in paragraph (a) of the notice of motion, and any related relief under paragraphs (c) and (d)). The Direction further provided that the "Security for Costs Issue" (as defined in that Direction) would be dealt with later, if necessary. Finally, the Direction required the Trustee to serve and file revised written representations limited to the Motion to Strike, and for Mr. Grillone to serve and file responding written representations.

[4] In support of the motion, the Trustee relies on an affidavit from a legal assistant in the office of their counsel, namely the affidavit of Jordana Richmon sworn December 18, 2025 [Richmon Affidavit]. That affidavit was served prior to the February 5 Direction and related to both the Motion to Strike and the Security for Costs Issue. There was no cross-examination on that affidavit for the purposes of the Motion to Strike, and Mr. Grillone did not serve and file any responding affidavit evidence on the Motion to Strike.

[5] At the hearing of the motion, counsel for the Trustee confirmed that the only portion of the Richmon Affidavit that was being relied upon for the Motion to Strike was Exhibit "W", and the portion of paragraph 36 that identifies that Exhibit (see also the letter from Trustee's counsel

dated February 12, 2026 and submitted further to the February 5 Direction). Exhibit “W” is a letter from the Office of the Superintendent of Bankruptcy [the Superintendent] to Mr. Grillone dated January 31, 2025 [the Decision]. This is the “decision” referred to in paragraph 1 of the notice of application in respect of which judicial review is sought.

[6] As a general rule, affidavits are not admissible in support of a motion to strike an application for judicial review (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 [*JP Morgan*] at paras 51-52). One of the exceptions to that rule is where a document is incorporated by reference into a notice of application. In that situation, it is permissible to file an affidavit merely appending the document (*JP Morgan* at para 54). As the Decision is incorporated by reference into the notice of application, Exhibit “W” and the portion of paragraph 36 that identifies it are properly in evidence on this motion. None of the other content in that affidavit is considered for the purposes of this motion.

I. Grounds for the motion

[7] Stated generally, the Trustee argues that the notice of application should be struck out on one or both of the following grounds:

a) the Federal Court has no jurisdiction; and

b) Mr. Grillone was required to, and did not obtain, leave under section 215 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [*BIA*] to commence this application.

II. Preliminary comment

[8] The Trustee's revised written representations refer to decisions of Ontario courts regarding, or commenting on, Mr. Grillone's conduct as a litigant, including that he was declared a vexatious litigant for the purposes of section 140 of the *Courts of Justice Act*, RSO 1990, c C.43. At the hearing of the motion, counsel for the Trustee did not place much emphasis on those decisions but did argue that they illustrate the mischief that section 215 of the *BIA* is intended to address. In the context of this case, those decisions and findings are not relevant to determining whether or not the Federal Court has jurisdiction. I have ignored them. They would also be of no assistance in determining whether leave was required under section 215 if I embarked on that analysis.

III. The notice of application

[9] In light of the grounds raised by the Trustee, it is useful to set out the relief sought in the notice of application:

> The Applicant, Sergio Grillone, makes an application for judicial review under section 18.1 of the Federal Courts Act, seeking:
>
> **RELIEF SOUGHT:**
>
> 1. An order quashing the decision of the Office of the Superintendent of Bankruptcy (OSB) dated January 31, 2025 (the "**Decision**") refusing to investigate and take action regarding the alleged misconduct of the B. Riley Farber Inc. (the "Trustee") in the Applicant's bankruptcy proceeding: **Estate No. 32-159382/Reference No. 1089387**
>
> 2. A declaration that the OSB acted unreasonably and breached procedural fairness in failing to address the Applicant's complaint and therefore the Decision is unlawful and invalid.

3. A mandamus order directing the OSB to investigate and take appropriate action regarding the Trustee's improper conduct.

4. Costs of this application and any further relief this Honourable Court deems just.

[Emphasis in original]

IV. Test – motion to strike a notice of application

[10] Although there is no specific rule in the *Federal Courts Rules*, SOR/98-106 [*Rules*, and any reference to a "Rule" is to those in the *Rules*] providing for a motion to strike a notice of application, the Federal Court has jurisdiction to do so. As stated in *JP Morgan* at paragraph 49, the jurisdiction "is founded not in the rules but in the Courts' plenary jurisdiction to restrain the misuse or abuse of courts' processes".

[11] The test on a motion to strike a notice of application for judicial review was described as follows by Justice Stratas in *JP Morgan*:

> [47] The Court will strike a notice of application for judicial review only where it is "so clearly improper as to be bereft of any possibility of success" [footnote omitted]: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA), [1995] 1 F.C. 588 (C.A.), at page 600. There must be a "show stopper" or a "knockout punch"—an obvious, fatal flaw striking at the root of this Court's power to entertain the application: *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117, at paragraph 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286, at paragraph 6; *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959.

[12] Similarly, the Supreme Court of Canada in *Iris Technologies Inc v Canada*, 2024 SCC 24 stated that:

> [26] There is no dispute on the proper test to be applied on a motion to strike in this context. A court seized of a motion to strike

> assumes the allegations of fact set forth in the application to be true and an application for judicial review will be struck where it is bereft of any possibility of success (*JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557, at para. 47). It is understood to be a high threshold and will only be granted in the "clearest of cases" (*Ghazi v. Canada (National Revenue)*, 2019 FC 860, 70 Admin L.R. (6th) 216, at para. 10).
>
> (see also para 62)

V. Analysis - jurisdiction

[13] As noted above, the facts set out in the notice of application are assumed to be true on this motion.

[14] The test to determine if the Federal Court has jurisdiction is well established. In *Berenguer v Sata Internacional - Azores Airlines, S.A.*, 2023 FCA 176, the Federal Court of Appeal stated:

> [29] The scope of the Federal Court's jurisdiction has been considered by the Supreme Court in several decisions. The most relevant in this appeal are *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.* (1976), [1977] 2 S.C.R. 1054, 9 N.R. 191 [*Quebec North Shore*]; *McNamara Construction (Western) Ltd. v. The Queen*, [1977] 2 S.C.R. 654; *Rhine v. The Queen*, [1980] 2 S.C.R. 442 [*Rhine*]; *ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752 at p. 766, 28 D.L.R. (4th) 641 [*ITO*]; and, most recently, *Windsor*.
>
> [30] I would also note two decisions of this Court which provide a good summary of the relevant law: *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage),* 2006 FCA 190 [*Peter G. White*] and *744185 Ontario Incorporated v. Canada*, 2020 FCA 1 [*Air Muskoka*].
>
> [31] As a result of this jurisprudence, the following principles are well established:
>
> > (a) Jurisdiction is subject to a three part test commonly known as the ITO test: (1) Does a statute grant jurisdiction to the

> Court? (2) Is there an existing body of federal law that nourishes the grant of jurisdiction and is essential to the disposition of the case? (3) Is the case based on a valid law of Canada (*ITO*).
>
> (b) For purposes of applying step 1 of the ITO test to s. 23 of the Federal Courts Act, the action must be created or recognized under federal law (*Windsor*).
>
> (c) For purposes of applying step 2 of the ITO test to a breach of contract claim, the test may be satisfied if there is a sufficiently detailed federal regulatory scheme that applies to the contract (*Rhine*).
>
> [32] The *Windsor* decision adds a further principle but it is not controversial in this case. The majority in *Windsor* cautioned that the ITO test is to be applied to the "essential nature of the claim" regardless of how the claim is framed in the pleading. In this case, it is clear that the claim as framed in the pleading is the same as the claim's essential nature. The claim is for breach of contract.

[15] This motion turns on the first question, being whether a statute grants jurisdiction to the Federal Court.

[16] Sections 18 and 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, do not assist Mr. Grillone. In this case, section 17(6) of that *Act* is central to the analysis. It provides that:

(6) If an Act of Parliament confers jurisdiction in respect of a matter on a court constituted or established by or under a law of a province, the Federal Court has no jurisdiction to entertain any proceeding in respect of the same matter unless the Act expressly confers that jurisdiction on that court.	**(6)** Elle n'a pas compétence dans les cas où une loi fédérale donne compétence à un tribunal constitué ou maintenu sous le régime d'une loi provinciale sans prévoir expressément la compétence de la Cour fédérale.

[17] Having regard to section 17(6) of the *Federal Courts Act* in tandem with sections 5, 14.02(5), and 183(1)(a) of the *BIA*, the Federal Court does not have jurisdiction in respect of an application for judicial review of a decision of the Superintendent not to make or cause an inquiry or investigation into the conduct of a trustee (*Re Fantasy Construction Ltd. (Bankrupt)*, 2007 ABQB 502 at paras 40-42, 47-51; *Edell v Canada (Revenue Agency)*, 2008 FC 1306 at paras 27-30, rev'd in part on other grounds but confirming the Superintendent and trustee must be removed as defendants, 2010 FCA 26 at para 7).

[18] It is also clear from the facts alleged in the notice of application that subsections 14.02(4) and (5) of the *BIA* do not apply in this case.

[19] As a result, the Federal Court does not have jurisdiction in respect of Mr. Grillone's application for judicial review. Therefore, Mr. Grillone's notice of application for judicial is struck out.

[20] The Court's inherent power to strike out a notice of application for judicial review includes the power to do so with or without leave to amend (*Vachon Estate v Canada (Attorney General)*, 2024 FC 709 at para 125). As the absence of jurisdiction is not something that can be cured by an amendment to the notice of application, it is struck out without leave to amend.

VI. Section 215 of the *BIA*

[21] In view of the conclusion reached above regarding jurisdiction, it is not necessary to deal with the Trustee's argument based on section 215 of the *BIA*.

VII. Conclusion and costs

[22] For the reasons set out above, as the Federal Court does not have jurisdiction in respect of Mr. Grillone's application for judicial review, the notice of application shall be struck out without leave to amend.

[23] Like the approach taken by Associate Judge Duchesne (as he then was) in *Suss v Canada*, 2024 FC 137 at para 59, this proceeding is dismissed pursuant to Rule 168. This is because it is not possible for Mr. Grillone to continue this application as a result of the notice of application being struck without leave to amend.

[24] Regarding costs, the positions of the parties are:

a) The Trustee's position is that if successful on the motion, costs should be fixed, and that for a motion such as this, costs should be in the range of $2,500 to $5,000, with costs at the upper end of that range being appropriate on the basis that the application should never have been brought.

b) Mr. Grillone's position is costs in the range of $1,000.

[25] Having regard to Rule 400, including the factors articulated in subrule (3), as well as to Tariff B of the Rules, costs of this motion are awarded to the Trustee and are fixed in the amount of $1,600. The factor that is of particular significance in arriving at this conclusion is the result of the motion. To hopefully avoid any issues as to when and how these costs are to be paid, that is addressed below.

JUDGMENT in T-740-25

THIS COURT'S JUDGMENT is that:

1. The notice of application is struck out without leave to amend, and this proceeding is dismissed pursuant to Rule 168.

2. Costs are awarded to the Trustee, fixed in the total amount of $1,600, to be paid by Mr. Grillone to the Trustee. Unless otherwise agreed to in writing by the Trustee and Mr. Grillone, such costs are to be paid by way of certified cheque, bank draft or money order, by no later that May 13, 2026.

"John C. Cotter"
Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-740-25
STYLE OF CAUSE:	SERGIO GRILLONE v. B. RILEY FARBER INC.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	APRIL 9, 2026
JUDGMENT AND REASONS:	COTTER A.J.
DATED:	APRIL 13, 2026

APPEARANCES:

Sergio Grillone	FOR THE APPLICANT (SELF-REPRESENTED)
Jessica Zagar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Cassels Brock & Blackwell LLP Barristers and Solicitors Toronto, Ontario	FOR THE RESPONDENT