

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170320

Docket: A-203-16

Citation: 2017 FCA 55

**CORAM: GAUTHIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

**VINCENT WESLEY dba MTLFREETV.COM
WATCHNSAVENOW INC.**

Appellants

and

**BELL CANADA
BELL EXPRESSVU LIMITED PARTNERSHIP
BELL MEDIA INC.
GROUPE TVA INC.
VIDÉOTRON S.E.N.C.
ROGERS COMMUNICATIONS CANADA INC.
ROGERS MEDIA INC.**

Respondents

Heard at Montréal, Quebec, on March 20, 2017.
Judgment delivered from the Bench at Montréal, Quebec, on March 20, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170320

Docket: A-203-16

Citation: 2017 FCA 55

**CORAM: GAUTHIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.**

BETWEEN:

**VINCENT WESLEY dba MTLFREETV.COM
WATCHNSAVENOW INC.**

Appellants

and

**BELL CANADA
BELL EXPRESSVU LIMITED
PARTNERSHIP BELL MEDIA INC.
GROUPE TVA INC.
VIDÉOTRON S.E.N.C.
ROGERS COMMUNICATIONS CANADA INC.
ROGERS MEDIA INC.**

Respondents

**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on March 20, 2017).**

GAUTHIER J.A.

[1] This is an appeal from a decision of Justice Danièle Tremblay-Lamer of the Federal Court (2016 FC 612) granting an interlocutory injunction in favour of the respondents to prevent the appellants from among other things, advertising for sale, distributing and selling preloaded setup boxes that are adapted to provide users with unauthorized access to the respondents' programs.

[2] The respondents' proceedings were originally instituted against five defendants. Only the appellant Mr. Vincent Wesley filed an affidavit and written submissions, and attended the hearing before the Federal Court. The appellant Watchnsavenow Inc. is one of the four defendants who did not defend the motion for an interlocutory injunction before the Federal Court.

[3] The Federal Court found that the respondents had established a strong *prima facie* case of copyright infringement and that an injunction at this stage would prevent irreparable harm without unduly inconveniencing the appellants. To reach this conclusion, the Federal Court applied the well-known tripartite test set out by the Supreme Court of Canada in *RJR -- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[4] The appellants do not challenge the Federal Court's finding with respect to the first prong of the test. Their attack focuses on the finding that the respondents had established that they would suffer irreparable harm if the injunction was not granted. In their memorandum, the appellants contend that the Federal Court erred in law and made a number of overriding and palpable errors in reaching this conclusion. At the hearing, they conceded that the questions

before us are all questions of mixed facts of law. They submit that the Federal Court had to misconstrue this criterion, for in their view, there was no clear and non-speculative evidence on which the Federal Court could conclude that the respondents would lose actual or prospective clients as a result of the appellants' activities. They also argue that there was no evidence that they were unlikely to have the financial resources required to compensate the respondents' losses should they succeed on the merits. According to the appellants, the Federal Court also erred i) by failing to appreciate that the losses, if any, would all be easily quantifiable and (ii) in its evaluation of the relevant market.

[5] Having carefully reviewed the evidentiary record, we are satisfied that it was open to the Federal Court to conclude as it did. In our view, in light of the uncontradicted evidence including the advertisement that these pre-loaded set up boxes are a way to access free tv content and avoid cable bills, the Federal Court was entitled to draw the inferences that it did. What the appellants are seeking is that this Court re-weighs the evidence and substitutes its own assessment to that of the Federal Court. It is not our role to do so, given that the appellants have not persuaded us that the Federal Court made an overriding and palpable error in evaluating the voluminous evidence before it.

[6] The appeal will therefore be dismissed with costs in the amount of \$5000 (all inclusive).

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-203-16

APPEAL FROM A JUDGMENT OF TREMBLAY-LAMER J. OF THE FEDERAL COURT DATED JUNE 1, 2016 DOCKET NO. 2016 FC 612

STYLE OF CAUSE: VINCENT WESLEY dba
MTLFREETV.COM
WATCHNSAVENOW INC. v.
BELL CANADA BELL
EXPRESSVU LIMITED
PARTNERSHIP BELL MEDIA
INC. GROUPE TVA INC.
VIDÉOTRON S.E.N.C. ROGERS
COMMUNICATIONS CANADA
INC. ROGERS MEDIA INC.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: MARCH 20, 2017

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
SCOTT J.A.
DE MONTIGNY J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Frederick Pinto
Constatin Kyritsis
Michael Chevalier

FOR THE APPELLANTS

François Guay
Guillaume Lavoie Ste-Marie

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

ROSE, KYRITSIS, PHANEUF AND FREDERICK
PINTO LEGAL INC.
Montréal, Quebec

FOR THE APPELLANTS

SMART & BIGGAR
Montréal, Quebec

FOR THE RESPONDENTS