

Federal Court of Appeal



Cour d'appel fédérale

Date: 20181005

Docket: A-184-18

Citation: 2018 FCA 180

Present: WOODS J.A.

BETWEEN:

SAFE GAMING SYSTEM INC.

Appellant

and

**ATLANTIC LOTTERY CORPORATION,
NOVA SCOTIA GAMING CORPORATION, and
TECH LINK INTERNATIONAL ENTERTAINMENT LIMITED**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 5, 2018.

REASONS FOR ORDER BY:

WOODS J.A.

Federal Court of Appeal



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REASONS FOR ORDER

WOODS J.A.

[1] The respondents, Atlantic Lottery Corporation and Nova Scotia Gaming Corporation, bring a motion in writing for security of costs pursuant to section 416 of the *Federal Courts Rules*. They seek security in respect of costs in this appeal and costs awarded in the Court below.

[2] The Court has reviewed and considered:

- (a) Respondents' motion record filed on August 8, 2018;
- (b) Appellant's responding motion record filed on August 20, 2018;
- (c) Respondents' reply motion record filed on August 24, 2018;
- (d) Respondents' supplementary motion record dated September 7, 2018;
- (e) Appellant's supplementary motion record dated September 19, 2018; and
- (f) Respondents' supplementary reply motion record dated September 24, 2018.

The documents above which have not yet been filed may be filed by the Registry.

[3] By way of background, on May 25, 2018 the Federal Court dismissed a claim instituted by the appellant for patent infringement and awarded costs to the respondents (2018 FC 542). By supplementary judgment dated August 30, 2018 (2018 FC 871), the costs were fixed in the amount of \$1,175,000 "to be payable forthwith."

[4] On June 22, 2018, the appellant instituted an appeal from the judgment to this Court.

[5] In this motion, the respondents seek an order which, among other things:

- (a) requires that the appellant pay into court the sum of \$575,000 within 30 days from the date of the order, as security for costs of the action in Court File No. T-1043-

12. This is the amount of costs in excess of the amount already held as security by the Federal Court.

- (b) requires that the appellant pay into court the sum of \$13,500 within 30 days from the date of the order, as security for the respondents' costs of the appeal, failing which the appeal shall be dismissed; and
- (c) stays this appeal until the appellant has paid the amounts above and has provided notice to respondents of same.

[6] Sections 416 and 417 of the Rules deal with orders for security for costs. The requirements of section 416 are satisfied because it appears to the Court that the appellant is ordinarily resident outside of Canada. Further, there are no grounds to refuse the order pursuant to section 417 because impecuniosity has not been demonstrated.

[7] The appellant agrees to pay \$13,500 as security for costs with respect to the appeal. However, the appellant submits that it should not be required to pay the Federal Court costs as security.

[8] The appellant submits that payment for security for Federal Court costs is premature because the costs award was recently made and it will endeavour to satisfy the order as soon as reasonably practicable.

[9] I do not agree that security is premature on this basis. It has been over a month since the Federal Court fixed costs payable forthwith. The motion is not premature on this ground.

[10] The appellant also submits that the motion is premature because the respondents have instituted an appeal of the costs award. In that appeal, the respondents seek to have the costs award increased. Since in this motion the respondents only seek security with respect to the costs that have already been awarded, the motion is not premature on this ground.

[11] The appellant also submits that the respondents are inappropriately using section 416 of the Rules as an alternative to enforcement under Part 12 of the Rules. I note that there is precedent in this Court for the type of order being sought (*MediaTube Corp. v. Bell Canada*, unreported decision of Stratas J.A. dated July 7, 2017 on File No. A-35-17). Further, it is appropriate to use section 416 in these particular circumstances. The appellant is a Wyoming corporation that does not carry on any business and appears not to have assets of material value.

[12] Finally, the appellant suggests that it lacks the resources to pay security at least in the time frame requested in this motion. I would comment that the appellant had the resources to prosecute lengthy and complex litigation and the Federal Court ordered that the costs be paid forthwith. In these circumstances, greater evidence is needed to demonstrate of lack of resources.

[13] The motion is granted on the terms set out in the Order.

"J. Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-184-18

STYLE OF CAUSE:

SAFE GAMING SYSTEM INC. v.
ATLANTIC LOTTERY
CORPORATION, NOVA SCOTIA
GAMING CORPORATION, and
TECH LINK INTERNATIONAL
ENTERTAINMENT LIMITED

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

WOODS J.A.

DATED:

OCTOBER 5, 2018

WRITTEN REPRESENTATIONS BY:

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Nisha Anand
Colin Carruthers
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CORPORATION AND NOVA
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