

Date: 20061222

Docket: A-381-06

Citation: 2006 FCA 424

Present: MADAM JUSTICE DESJARDINS

BETWEEN:

Aurélien Haché, Lucien Chiasson, Sylvie Chiasson, Armand Fiset, Jeannot Guignard, Héliodore Aucoin, Gildard Haché, Guy Haché, Rhéal Haché, Robert F. Haché, Greg Hinkley, Vincent Jones, Solange Lanteigne, Jean-Pierre LeBouthillier, Rhéal H. Mallet, André Mazerolle, Eddy Mazerolle, Albanie Noël, Alphée Noël, Serge C. Noël, Gilles Noël, Joseph A. Noël, Lévi Noël, Lorenzo Noël, Martin Noël, Mathurin Noël, Nicolas Noël, Onésime Noël, Paul Noël, Raymond Noël, Renald Noël, Robert Ross, Bruno Roussel, Jean-Camille Noël, Valmi Roussel, Donat Vienneau, Fernand Vienneau, Rhéal Vienneau, Mathias Roussel, Serge Blanchard, Robert Boucher, Elide Bulger, Jean-Gilles Chiason, Roméo G. Cormier, Bernard Duguay, Thomas Duguay, Donald Duguay, Edgar Ferron, Wilbert Godin, Aurèle Godin, Valois Goupil, Euclide Guignard, Florent Guignard, Jacques E. Haché, Jean-Pierre Haché, Robert G. Haché, Donald R. Haché, Ulysse Haché, Gaëtan H. Haché, Gabriel Jean, Jean-Victor Larocque, Dassisse Mallet, Delphis Mallet, Albert A. Noël, Gilles A. Noël, Domitien Paulin, Sylvain Paulin, Alma Robichaud, administratrice de la Succession de Jean-Pierre Robichaud, Sylva Haché, Mario Savoie, Les Pêcheries Jimmy L. Ltée, Eric Gionet, administrateur de la fiducie Allain O. Gionet, Les Produits Belle-Baie Ltée., Oliva Roussel, E. Gagnon et Fils Ltée., Bernard Arsenault, Gérard Cassivi, Jacques Collin, Raymond Collin, Robert Collin, Marc Couture, Les Crustacées de Gaspé Ltée., CIE 2973-1288 Québec Inc., CIE 2973-0819 Québec Inc., Bruno Duguay, Charles-Aimé Duguay, Alban Hautcoeur, Fernand Hautcoeur, Jean-Claude Hautcoeur, Robert Huard, Christian Lelièvre, Elphège Lelièvre, Jean-Élie Lelièvre, Jules Lelièvre, Jean-Marc Marcoux, Douglas McInnis, Roger Pinel, Jean Marc Sweeney, Michel Turbide, Réal Turbide, Pêcheries Denise Quinn Syvrais Inc., Steven Roussy, Geneviève Allain, Francis Parisé, Martial LeBlanc, Daniel Desbois, Rolland Anglehart, Jacques Langis, Jean-Pierre Huard, Claude Gionet, Carol Duguay, Denis Duguay, Paul Chevarie, Thérèse Vigneau, administratrice de la Succession de Benoît Poirier, Denis Éloquin, Claude Poirier, Henry-Fred Poirier, Robert Thériault, Raynald Vigneau

Appellants  
Moving Parties in the Motion

**and**

**Her Majesty the Queen in Right of Canada as represented by the Department of Fisheries  
and Oceans and the Department of Human Resources Development Canada,**

**Respondent  
Respondent in the Motion**

Motion in writing decided without appearance of the parties.

Order rendered at Ottawa, Ontario on December 22, 2006.

REASONS FOR ORDER:

DESJARDINS J.A.

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Aurélien Haché, Lucien Chiasson, Sylvie Chiasson, Armand Fiset, Jeannot Guignard, Héliodore Aucoin, Gildard Haché, Guy Haché, Rhéal Haché, Robert F. Haché, Greg Hinkley, Vincent Jones, Solange Lanteigne, Jean-Pierre LeBouthillier, Rhéal H. Mallet, André Mazerolle, Eddy Mazerolle, Albanie Noël, Alphée Noël, Serge C. Noël, Gilles Noël, Joseph A. Noël, Lévi Noël, Lorenzo Noël, Martin Noël, Mathurin Noël, Nicolas Noël, Onésime Noël, Paul Noël, Raymond Noël, Renald Noël, Robert Ross, Bruno Roussel, Jean-Camille Noël, Valmi Roussel, Donat Vienneau, Fernand Vienneau, Rhéal Vienneau, Mathias Roussel, Serge Blanchard, Robert Boucher, Elide Bulger, Jean-Gilles Chiason, Roméo G. Cormier, Bernard Duguay, Thomas Duguay, Donald Duguay, Edgar Ferron, Wilbert Godin, Aurèle Godin, Valois Goupil, Euclide Guignard, Florent Guignard, Jacques E. Haché, Jean-Pierre Haché, Robert G. Haché, Donald R. Haché, Ulysse Haché, Gaëtan H. Haché, Gabriel Jean, Jean-Victor Larocque, Dassisse Mallet, Delphis Mallet, Albert A. Noël, Gilles A. Noël, Domitien Paulin, Sylvain Paulin, Alma Robichaud, administratrice de la Succession de Jean-Pierre Robichaud, Sylva Haché, Mario Savoie, Les Pêcheries Jimmy L. Ltée, Eric Gionet, administrateur de la fiducie Allain O. Gionet, Les Produits Belle-Baie Ltée., Oliva Roussel, E. Gagnon et Fils Ltée., Bernard Arsenault, Gérard Cassivi, Jacques Collin, Raymond Collin, Robert Collin, Marc Couture, Les Crustacées de Gaspé Ltée., CIE 2973-1288 Québec Inc., CIE 2973-0819 Québec Inc., Bruno Duguay, Charles-Aimé Duguay, Alban Hautcoeur, Fernand Hautcoeur, Jean-Claude Hautcoeur, Robert Huard, Christian Lelièvre, Elphège Lelièvre, Jean-Élie Lelièvre, Jules Lelièvre, Jean-Marc Marcoux, Douglas McInnis, Roger Pinel, Jean Marc Sweeney, Michel Turbide, Réal Turbide, Pêcheries Denise Quinn Syvrais Inc., Steven Roussy, Geneviève Allain, Francis Parisé, Martial LeBlanc, Daniel Desbois, Rolland Anglehart, Jacques Langis, Jean-Pierre Huard, Claude Gionet, Carol Duguay, Denis Duguay, Paul Chevarie, Thérèse Vigneau, administratrice de la Succession de Benoît Poirier, Denis Éloquin, Claude Poirier, Henry-Fred Poirier, Robert Thériault, Raynald Vigneau

Appellants  
Moving Parties in the Motion

and

**Her Majesty the Queen in Right of Canada as represented by the Department of Fisheries and Oceans and the Department of Human Resources Development Canada,**

**Respondent  
Respondent in the Motion**

**REASONS FOR ORDER**

**DESJARDINS J.A.**

[1] This is a motion by the appellants (moving parties) to obtain a stay of execution in respect of Mr. Justice de Montigny's order for costs dated August 1, 2006 in docket T-2263-01 as well as a stay of the appeal from that order until such time as there is a ruling in the appeal on the main action. The moving parties are also seeking an extension of the deadline to file the agreement between the parties as to the content of the appeal docket.

[2] The moving parties submit that the Court should issue an order staying the costs order, and stay the appeal therefrom, on the basis that the three stages of the test in *R.J.R. MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 have been met. To permit the enforcement of costs and hear the appeal on costs would result, in their view, in a waste of court resources and prevent the moving parties from being adequately represented in the appeal of the main action.

[3] The respondent maintains that a stay of the order should not be granted because the moving parties have not provided any evidence of irreparable harm. However, the respondent consents to a stay of the appeal on costs.

## ANALYSIS

### *(i) Should the Court stay the order for costs?*

[4] The power of a judge to stay an order for costs in accordance with Rule 398 is discretionary: see, for example, *Trojan Technologies Inc. v. Suntec Environmental Inc.*, 2003 F.C.A. 309 at paragraph 10. The decision of the Supreme Court of Canada in *R.J.R. MacDonald* instructs us that granting a motion for a stay depends on three criteria: (1) the existence of a serious question to be tried; (2) irreparable harm; and (3) the balance of inconvenience.

[5] The moving parties submit that the appeal in the main action raises serious questions, including the violation of the rules of natural justice and procedural fairness. According to the respondent, the grounds for appeal in the main action constitute unfounded conjecture.

[6] In *R.J.R. MacDonald*, the Supreme Court of Canada set out the guidelines for ascertaining the existence of a serious question to be tried. The Court teaches us, in paragraph 50, that the threshold is low for this preliminary requirement and that once the judge hearing the case determines that the application is neither frivolous nor vexatious, the analysis should advance to the second and third stages.

[7] Given the nature of the question raised and the fact that the threshold is low for this requirement, I find that the first stage of the test is met.

[8] The moving parties submit that enforcing costs could exhaust their resources, which would infringe their right to proper representation for the appeal on the main action. The respondent replies that the moving parties have adduced no evidence indicating that enforcement of costs will exhaust their resources. In any case, says the respondent, it is the moving parties who have, by their actions, squandered resources.

[9] "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other: *R.J.R. MacDonald, supra*, at paragraph 59. Harm is not irreparable if it can be cured on appeal, which is usually the case for monetary harm.

[10] The moving parties describe the harm they are likely to suffer as being more than mere monetary harm. They contend that their right to present their case on appeal would be infringed.

[11] The moving parties must demonstrate, on the balance of probabilities, that the harm they would suffer is irreparable: *Halford v. Seed Hawk Inc.*, 2006 FCA 167 at paragraph 12. Mere assertions do not suffice. Irreparable harm cannot be inferred. It must be established by clear and compelling evidence: *A. Lassonde Inc. v. Island Oasis Canada Inc.*, [2001] 2 F.C. 568 at paragraph 20.

[12] In the case at bar, the moving parties have not demonstrated that the viability of their business was in jeopardy or that they did not have the necessary resources to ensure adequate representation on appeal in the main action.

[13] The moving parties have the burden of proving each of the three stages of the test. Since they have not succeeded on the second stage, there is no reason to consider the third. As explained by this Court in *Friends of the West Country Association v. Canada (Minister of Fisheries and Oceans)*, [1998] F.C.J. no. 1690 at paragraphs 4-6:

It is clear from R.J.R. MacDonald that the appellants have the onus of proof of each element of the test laid down in that case.

Although the appellants led evidence to prove each element of the test, I am of the opinion that this evidence falls short of showing to the requisite degree that the appellants will suffer irreparable harm as explained in *R.J.R. MacDonald* (...). Since the onus on the appellants extends to each element of the test, a failure to prove any one of them is fatal to the success of the motion. [my emphasis]

[14] As Sharlow J.A. explains in *Apotex Inc. v. Wellcome Foundation Ltd.*, 2004 FCA 161 at paragraph 10, insufficient evidence of irreparable harm is a sufficient ground for denying a motion.

***(ii) Should the Court stay the appeal of the order for costs?***

[15] The three-stage test in *R.J.R. MacDonald* applies equally to a stay of proceedings. Although I have concluded, as indicated above, that the moving parties have not met their evidentiary burden with respect to irreparable harm, I am of the opinion that the Court should stay the appeal on costs

until the appeal on the main action has been decided. The respondent consents to the moving parties' application for a stay of proceedings.

***(iii) Should the Court extend the time periods provided in Rule 343 of the Federal Court Rules?***

[16] Rule 8(1) of the *Federal Court Rules*, S.O.R./98-106, grants the Court discretion to extend a period. In *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. no. 846 at paragraph 3, the Federal Court of Appeal set out the four criteria that an applicant needs to demonstrate to obtain a time extension:

- (1) a continuing intention to pursue his or her application;
- (2) that the application has some merit;
- (3) that no prejudice to the respondent arises from the delay; and
- (4) that a reasonable explanation for the delay exists.

[17] In the case at bar, I believe it is appropriate to grant an extension of time, as these four criteria seem to me to have been met. I am of the opinion that the motion before me, on the whole, constitutes a reasonable explanation for the delay.

[18] With costs to the respondent.

“Alice Desjardins”

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J.A.



**FEDERAL COURT OF APPEAL**

**SOLICITORS OF RECORD**

**DOCKET:** A-381-06

**STYLE OF CAUSE:** *Aurélien Haché et al. v. Her Majesty the Queen in Right of Canada as represented by the Department of Fisheries and Oceans et al.*

**MOTION IN WRITING DECIDED WITHOUT APPEARANCE OF THE PARTIES.**

**REASONS FOR ORDER:** DESJARDINS J.A.

**DATE OF REASONS:** December 22, 2006

**WRITTEN OBSERVATIONS:**

Brigitte Sivret

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MOVING PARTIES IN THE  
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