

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191107

Docket: A-190-18

Citation: 2019 FCA 281

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
GLEASON J.A.**

BETWEEN:

**NADA ELROUMI
AND
9147-1425 QUÉBEC INC.**

Appellants

and

**SHENZHEN TOP CHINA IMP & EXP CO., LTD CHINA
FOSHAN HAOJIA CRAFTS CO., LTD
HAOJIA INDUSTRY CO LIMITED
CHINA PACIFIC PROPERTY INSURANCE CO., LTD
JET-SEA INTERNATIONAL SHIPPING INC.
ENTREPOT CANCHI
CMA CGM**

Respondents

Heard at Montréal, Quebec, on November 7, 2019.
Judgment delivered from the Bench at Montréal, Quebec, on November 7, 2019.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on November 7, 2019).**

GLEASON J.A.

[1] The Appellants appeal from the orders of the Federal Court in *Elroumi v. Shenzhen Top China Imp & Exp Co., Ltd China*, 2018 FC 633 (*per* Gagné, J.) in which the Federal Court granted the motions of Entrepot Canchi and CMA CGM to strike out the Appellants' claim against Entrepot Canchi and Entrepot Canchi's third-party claim against CMA CGM. The Appellants also seek an order from this Court adding CMA CGM as a defendant in their action before the Federal Court even though they did not make a motion for joinder before the Federal Court.

[2] For the Federal Court to possess jurisdiction over the claim against Entrepot Canchi, the claim must meet the test set out in *ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752, 1986 CanLII 91 (S.C.C.) [*ITO*]. This tripartite test requires that (1) the subject-matter of the claim concern a matter in respect of which there is a statutory grant of jurisdiction by the federal Parliament; (2) there be an existing body of federal law which is essential to the disposition of the claim and which nourishes the statutory grant of jurisdiction; and (3) the law on which the claim is based be a "law of Canada" within the meaning of section 101 of the *Constitution Act, 1867*.

[3] The Federal Court found that the foregoing criteria were not met in the claim against Entrepot Canchi and therefore struck out the claim against it and, consequently, also struck out the third-party claim against CMA CGM.

[4] We see no error in these conclusions.

[5] The only statutory basis advanced for the claim against Entrepot Canchi is s. 22(2)(f) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, which provides the Federal Court jurisdiction over Canadian maritime law claims “arising out of an agreement relating to the carriage of goods on a ship under a through bill of lading, or in respect of which a through bill of lading is intended to be issued, for loss or damage to goods occurring at any time or place during transit”.

[6] However, for a claim to fall within the jurisdiction of the Federal Court under paragraph 22(2)(f) of the *Federal Courts Act*, it must relate to Canadian maritime law as defined in *ITO* to meet the second and third branches of the *ITO* test. A claim against a local road transporter or an operator of a warehouse distant from an ocean port is not a claim under Canadian maritime law.

[7] Thus, as in *Matsuura Machiner Corp. v. Hapag Lloyd AG*, [1997] F.C.J. No. 360, 1997 CanLII 4905 (F.C.A.) and *Marley Co. v. Cast North America (1983) Inc.*, [1995] F.C.J. No. 489 (F.C.T.D.) (Q.L.), Entrepot Canchi’s operations are not integrally connected to a maritime contract over which the Federal Court has jurisdiction. Rather, as the Federal Court found, it acted as a land carrier subject to provincial law. It is accordingly plain and obvious that the Federal Court lacked jurisdiction over the claim against Entrepot Canchi.

[8] Because the claim against Entrepot Canchi is outside the Federal Court’s jurisdiction, it necessarily follows that the third-party claim must also be struck out as it depends for its existence on the claim against Entrepot Canchi.

[9] As for the appellants' request to add CMA CGM as a defendant and amend their Statement of Claim, this matter must be brought before the Federal Court in the context of the ongoing proceeding. It is not an issue for this Court to decide without the matter having been ruled on by the Federal Court at first instance.

[10] This appeal will accordingly be dismissed, with costs.

"Mary J. L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-190-18

STYLE OF CAUSE: NADA ELROUMI AND 9147-1425
QUÉBEC INC. v. SHENZHEN TOP
CHINA IMP & EXP CO., LTD
CHINA, FOSHAN HAOJIA
CRAFTS CO., LTD, HAOJIA
INDUSTRY CO LIMITED, CHINA
PACIFIC PROPERTY
INSURANCE CO., LTD., JET-SEA
INTERNATIONAL SHIPPING
INC., ENTREPOT CANCHI, CMA
CGM

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: NOVEMBER 7, 2019

REASONS FOR JUDGMENT OF THE COURT BY: BOIVIN J.A.
DE MONTIGNY J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY: GLEASON J.A.

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