Federal Court of Appeal | Cour d'appel fédérale

Date: 20220603

Docket: A-259-21

Citation: 2022 FCA 103

[ENGLISH TRANSLATION]

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

BETWEEN:

SOPREMA INC.

Appellant

and

THE ATTORNEY GENERAL OF CANADA
and
3313045 NOVA SCOTIA COMPANY

Respondents

Heard at Montréal, Quebec, on May 3, 2022.

Judgment delivered at Ottawa, Ontario, on June 3, 2022.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
LEBLANC J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

[1] The appellant, Soprema Inc. (Soprema), is appealing from a judgment rendered by Justice St-Louis of the Federal Court (the Federal Court judge) on July 12, 2021 (T-475-21) (Decision). The Federal Court judge granted the motion brought by 3313045 Nova Scotia Company (Nova Scotia) to strike the notice of application for judicial review (Notice of Application) filed by Soprema.

[2] The Federal Court judge indicated that she was satisfied that the Notice of Application filed by Soprema was “fatally flawed” and that Soprema did not have direct or public interest standing (Decision at para. 5).

I. Background

[3] The Federal Court judge provided a good summary of the facts of this case at paragraphs 6 to 17 of her reasons. For the purposes of this appeal, the relevant facts are as follows.

[4] Soprema is a company that, for years, has been manufacturing rigid extruded polystyrene foam insulation panels with a hydrofluorocarbon used as a foaming agent. Nova Scotia, Soprema’s direct competitor, also manufactures these panels.

[5] As part of its international obligations, Canada imposed restrictions on the importation and manufacture of plastic foam and rigid foam products containing hydrofluorocarbons starting on January 1, 2021, through the *Ozone-depleting Substances and Halocarbon Alternatives Regulations*, SOR/2016-137 (the Regulations). However, the Regulations provide for a permit system whereby the Minister of Environment and Climate Change Canada (the Minister) may authorize exceptions to some of these restrictions. These permits include a permit for an “essential purpose” that the Minister may issue under certain conditions.

[6] In 2020, the Minister issued Nova Scotia a permit for an “essential purpose” authorizing the company, for a limited period, to manufacture and import rigid extruded polystyrene foam

insulation panels with hydrofluorocarbons (Regulations, sections 66, 69 and 70). After the permit in question was issued to Nova Scotia under section 69 of the Regulations, Soprema sent a letter of objection in September 2020. The Minister initiated an analysis under section 71 of the Regulations, which provides that the Minister must revoke a permit if "any of the conditions set out in section 69 has not been met or if he or she has reasonable grounds to believe that the permit holder has provided false or misleading information to him or her." In this case, the Minister decided not to revoke the permit for an "essential purpose" that had been issued to Nova Scotia a few months earlier.

[7] Soprema filed a notice of application for judicial review in March 2021. Nova Scotia responded with a motion to strike Soprema's application for judicial review. On July 12, 2021, the Federal Court judge granted the motion to strike. Before this Court, Soprema filed an appeal from the decision of the Federal Court judge.

II. Issues

[8] The issues in this case are as follows:

1. Did the Federal Court judge err in granting the motion to strike?

2. Did the Federal Court judge err in determining that Soprema did not have direct or public interest standing?

III. Standard of review

[9] The standard of review in this case is that of palpable and overriding error for questions of mixed fact and law and of correctness for questions of law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

A. *Did the Federal Court judge err in granting the motion to strike?*

[10] From the outset, the Federal Court judge correctly stated the law by identifying the applicable test and by recognizing the exceptional nature of a motion to strike at the preliminary stage (*Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557; Decision at para. 26).

[11] In this case, it is important to bear in mind that the Minister rendered two decisions under the Regulations. In his first decision, the Minister issued the permit for an "essential purpose" to Nova Scotia under section 69 of the Regulations, and in his second decision, a few months later, the Minister refused to revoke the permit under section 71.

[12] During the hearing before the Federal Court judge, Soprema unequivocally confirmed that the Minister had rendered two decisions and that the one that it was challenging was the refusal to revoke the permit under section 71 (Transcript, Appeal Book at 312 and 316; Decision at para. 22).

[13] It is well established that a pleading must refer to alleged material facts that are complete and sufficiently detailed. This Court reasserted this principle in *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227, 476 N.R. 219:

> [16] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought As the judge noted "pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action." [Emphasis added.]
>
> [17] The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[14] However, in the case at bar, the Federal Court judge took care to mention that the Notice of Application does not give reasons and does not present evidence against the Minister's decision that Soprema is contesting, namely, the decision to revoke the permit (Decision at para. 37; Transcript, Appeal Book at 336).

[15] In fact, one need only to read Soprema's Notice of Application to see that it concerns the issuance of the permit and not the Minister's refusal to revoke it. Indeed, the Federal Court judge pointed out this major flaw on several occasions during the hearing over which she presided.

[16] For example, (i) according to paragraph 1 of the application, the application concerns [TRANSLATION] "the Minister's decision to issue a permit . . . for foam insulation panels . . . under sections 66, 69 and 70 of the Regulations"; (ii) the grounds for the application only deal

with the decision to issue the permit; (iii) the detailed arguments in support of the grounds primarily involve the issuance of the permit; and (iv) most of the conclusions sought are related to the decision to issue the permit. In fact, the only argument in the Notice of Application that concerns section 71 of the Regulations, and thus the Minister's refusal to revoke the permit, contends that this decision should be reversed for [TRANSLATION] "these same reasons". The Federal Court judge further noted that the application made under Rule 317 of the *Federal Courts Rules*, SOR/98-106 (Material in the Possession of a Tribunal) relates only to the decision to issue the permit (Decision at paras. 11, 13, 16, 41 and 46; Memorandum of Fact and Law of the Attorney General of Canada at para. 32).

[17] Soprema alleges that the Federal Court judge erred in raising these shortcomings because she [TRANSLATION] "weighed" the evidence or required that it be established at the preliminary stage of the proceedings, contrary to the role conferred on her in the context of an application at the preliminary stage. I disagree. The Federal Court judge instead found that the evidence adduced would not enable Soprema to demonstrate that the Minister's decision to refuse to revoke the permit was unreasonable (Rule 301(f)), which does not constitute an error.

[18] Faced with the uncertainty and ambiguity maintained by Soprema in terms of, on the one hand, the impugned decision and, on the other hand, its Notice of Application, the Federal Court judge admitted to being [TRANSLATION] "quite surprised". In my opinion, the Federal Court judge raised legitimate concerns as to whether the Notice of Application was sufficient in order to allow Soprema to respond to and remedy these concerns, but Soprema did not follow up on this (Transcript, Appeal Book at 305, 306, 315–319, 326, 333, 336). Soprema's argument that

the Federal Court judge erred in raising these concerns because her [TRANSLATION] "judgment went beyond what was asked of her" is without merit.

[19] Soprema also claims that by granting the motion to strike, the Federal Court judge should have therefore, in the same breath, allowed Soprema to make amendments even though it did not request to make them. More specifically, Soprema argues that the Federal Court judge erred in assuming that Soprema would never request an amendment to its Notice of Application.

[20] Rule 221 of the *Federal Courts Rules* reads as follows:

Striking Out Pleadings	Radiation d'actes de procédure
Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	**221 (1)** À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	**a)** qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	**b)** qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	**c)** qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	**d)** qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	**e)** qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	**f)** qu'il constitue autrement un abus de procédure.

and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[21] Soprema also briefly submits, as a subsidiary argument, that if this Court determines that the Federal Court judge did not err in finding that the Notice of Application was indeed flawed, she must nevertheless allow Soprema to make amendments [TRANSLATION] "for the purpose of correcting the flaws therein" (Memorandum of Fact and Law of Soprema at para. 135).

[22] First of all, I find it incongruous that Soprema suggested a posteriori that the Federal Court judge erred because she allegedly failed to authorize a request for amendments that, in fact, had not been submitted to her. It is indeed clear from the reasons of the Federal Court judge that she did not allow Soprema to make amendments in order to remedy the omissions in its Notice of Application because Soprema failed to indicate its intention to amend the Notice:

> [42] Soprema submits that referring to factual allegations is sufficient to meet rule 301 and that simply requesting an amendment, legally, is sufficient to then be able to make this argument. Even if this were true, in this case, at no time did Soprema submit a request to amend its Notice in regard to the above-noted omissions. [Emphasis added.]

[23] Soprema is not challenging this finding of the Federal Court judge.

[24] As noted above, it is clear from the transcript that the Federal Court judge raised specific and legitimate concerns about the sufficiency of the Notice of Application at the hearing. In her discussions with the Federal Court judge, counsel for Soprema instead perpetuated the lack of clarity regarding Soprema's intentions. This uncertainty did not dissipate before this Court. For example, Soprema has still not specified the content of the amendments that it would like to make

to its Notice of Application if this Court were to allow its motion; how, at this stage of the proceedings, these amendments would enable it to remedy the shortcomings in the Notice of Application; and how they would comply with Rule 302, which sets out that "an application for judicial review shall be limited to a single order in respect of which relief is sought."

[25] I am therefore of the view that, in the circumstances of this case, the Federal Court judge did not commit a reviewable error in granting the motion to strike as she did in the exercise of her discretion (*David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588, 176 N.R. 48). It is therefore not necessary to address the issue of (direct or public interest) standing.

[26] For all these reasons, I would dismiss the appeal with costs.

"Richard Boivin"
J.A.

"I agree.
Yves de Montigny J.A."

"I agree.
René LeBlanc J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	DE MONTIGNY J.A. LEBLANC J.A.
DATED:	JUNE 3, 2022

APPEARANCES:

Christine Duchaine Sylviane René	FOR THE APPELLANT SOPREMA INC.
Michelle Kellam Thomas Swerdfager	FOR THE RESPONDENTS THE ATTORNEY GENERAL OF CANADA
Guillaume Pelegrin Gaëlle Obadia	3313045 NOVA SCOTIA COMPANY

SOLICITORS OF RECORD:

Sodavex Inc. Montréal, Quebec	FOR THE APPELLANT SOPREMA INC.
A. François Daigle Deputy Attorney General of Canada	FOR THE RESPONDENTS THE ATTORNEY GENERAL OF CANADA
Fasken Martineau DuMoulin Montréal, Quebec	3313045 NOVA SCOTIA COMPANY