Federal Court of Appeal

Cour d'appel fédérale

Date: 20230602

Docket: A-148-21

Citation: 2023 FCA 123

CORAM: **STRATAS J.A.**
WEBB J.A.
RENNIE J.A.

BETWEEN:

HEILTSUK HORIZON MARITIME SERVICES LTD. and HORIZON MARITIME SERVICES LTD.

Applicants

and

ATLANTIC TOWING LIMITED and ATTORNEY GENERAL OF CANADA

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 2, 2023.

REASONS FOR ORDER BY: RENNIE J.A.

CONCURRED IN BY: STRATAS J.A.
WEBB J.A.

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REASONS FOR ORDER

RENNIE J.A.

[1] There are three motions before the Court. The first is a motion by Heiltsuk Horizon Maritime Services Ltd. and Horizon Maritime Services Ltd. (Heiltsuk) under Rule 397(1)(b) of the *Federal Courts Rules*, S.O.R./98-106, seeking reconsideration of the Court's judgment issued on May 2, 2023. In that judgment, the Court granted Heiltsuk's application to set aside the

decision of the Canadian International Trade Tribunal (the Tribunal), and declared the complaint filed by Heiltsuk before the Tribunal to be valid.

[2] The second motion, by the Attorney General of Canada (AGC), seeks to quash Heiltsuk's reconsideration motion; if the Court dismisses his motion to quash, however, the AGC seeks an extension of time to respond to Heiltsuk's motion and asks that the Court fix a time and place for an oral hearing of the reconsideration motion. The third motion, by Atlantic Towing Limited (ATL), also requests that the Court quash Heiltsuk's reconsideration motion.

[3] I will address the motions to quash first.

[4] As a general rule, a responding party should address the substance of the issues raised by the motion (*Sandpiper Distributing Inc. v. Ringas*, 2020 FC 366, 2020 CarswellNat 1638 (WL Can) at para. 48). Dressing up a response to a motion in the guise of a motion to quash serves no one's interest—it simply imposes unnecessary costs and delay on all parties, and unduly burdens the Court's administrative and judicial resources. It is a type of practice that is inconsistent with the modern approach to litigation and the priority courts give to addressing the substance of the issue. Both the Supreme Court and this Court have spoken many times of the need of all participants in the judicial system to enhance accessibility and efficiency (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 28; *Sport Maska Inc. v. Bauer Hockey Ltd.*, 2019 FCA 204, 165 C.P.R. (4th) 381 at para. 32; *Sweet Productions Inc. v. Licensing LP International S.À.R.L.*, 2022 FCA 111, 2022 CarswellNat 2036 (WL Can) at para. 43).

[5] That said, motions to quash can and do play a useful role in the litigation process where they genuinely raise a threshold issue—a knockout punch—that disposes of the motion on the preliminary issue alone (*Viiv Healthcare Company v. Gilead Sciences Canada, Inc.*, 2021 FCA 122, 460 D.L.R. (4th) 272 at para. 20).

[6] That is not the case here.

[7] The motions to quash before the Court are substantive responses to the reconsideration motion. The AGC and ATL's written representations on their motions cite the principles and jurisprudence relevant to motions for reconsideration; further, while the AGC and ATL describe their requested relief as an order directing that Heiltsuk's motion "be quashed", the parties' written submissions could equally have described their requested relief as an order directing that the motion "be dismissed". Although couched, at times, in the language of a motion to quash, the AGC and ATL's motions are in essence responses to the Rule 397 motion and will be treated as such. Leave to file further oral and written submissions will accordingly not be granted, as they would do nothing to further the adjudication process and lead only to duplication, additional cost, and delay.

[8] The motion for reconsideration should also be denied.

[9] The parties made extensive submissions before the Tribunal on the question of what remedy should be granted if the complaint were found to be valid, based on the considerations listed under subsection 30.15(3) of the *Canadian International Trade Tribunal Act*, R.S.C. 1985,

c. 47 (4th Supp.) (the Act). In light of its finding that the complaint was not valid, the Tribunal did not address remedy; the issue of remedy therefore remains live before it. While the Tribunal did not expressly reserve jurisdiction to address remedy, it was unnecessary to do so, as the proceedings were effectively bifurcated by the intervening—and successful—application to set aside the Tribunal's initial determination of whether the complaint was valid. As Heiltsuk points out, bifurcation of proceedings before the Tribunal is a matter of routine practice; the Tribunal first determines the validity of the complaint and, if satisfied that the complaint is valid, next considers remedy.

[10] The sole issue before this Court on Heiltsuk's original application was the legality of the Tribunal's determination, which held that Heiltsuk's complaint was unfounded. Heiltsuk advanced no argument regarding the remedy that the Tribunal ought to have granted had it found Heiltsuk's complaint to be valid, nor did Heiltsuk seek any relief beyond an order setting aside the Tribunal's determination, and either a declaration that the complaint was valid or an order remitting the matter to the Tribunal for redetermination. The reason for this is self-evident: the Tribunal, having found Heiltsuk's complaint to be unfounded, did not opine on the question of Heiltsuk's entitlement to relief. Therefore the Court rejects the submissions in the AGC and ATL's motions to quash Heiltsuk's motion for reconsideration, that in deciding the sole question that had been before this Court, the Court precluded the Tribunal from any further consideration of remedy. The Court set aside the Tribunal's decision and declared the complaint valid. The Court's judgment speaks for itself.

[11] In its disposition of the application, the Court did not, consistent with the relevant criteria in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 at paragraph 142, return the question of the validity of the complaint to the Tribunal. There was no reason to do so. Returning the matter to the Tribunal would not have changed the result (*Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2021] 1 F.C.R. 374 at paras. 99-102; *Canada (Commissioner of Competition) v. Rogers Communications Inc.*, 2023 FCA 16, 477 D.L.R. (4th) 553 at para. 11). This does not, however, lead to the conclusion that the Tribunal has no continuing mandate to consider remedy.

[12] The assertion by ATL in its written representations that "the issue of remedy was fully addressed" in this Court's reasons on Heiltsuk's original application has no foundation in fact (ATL's written representations at para. 6); nor, ironically, can it be reconciled with the AGC's argument that the only issue before the Court was the validity of the complaint. Again, the question of what remedy, if any, was appropriate in the event that the complaint was declared valid was not argued before this Court as part of Heiltsuk's application. Because of this, neither the parties nor the Tribunal may take the Court's silence on the issue as any indication of Heiltsuk's entitlement, or lack thereof, to further relief. ATL's argument is expressly rejected.

[13] There is no reason in law or in the procedural history of the matter to conclude that, because the preliminary question of the complaint's validity was not returned to the Tribunal for reconsideration, the Tribunal has no jurisdiction to fulfill the second half of its mandate and consider what remedy is appropriate in the circumstances. Indeed, it is an absurd proposition to

suggest that a party is deprived of its opportunity to seek compensation under subsection 30.15(2) of the Act only because the Tribunal's determination on that issue was not adjudicated. If that is the import of the AGC's argument at paragraph 40 of its written representations, it is also expressly rejected.

[14] I would dismiss the motions to quash and the motion for reconsideration without costs.

"Donald J. Rennie"
J.A.

"I agree.
Stratas J.A."

"I agree.
Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-148-21
STYLE OF CAUSE:	HEILTSUK HORIZON MARITIME SERVICES LTD. et al. v. ATLANTIC TOWING LIMITED et al.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	RENNIE J.A.
CONCURRED IN BY:	STRATAS J.A. WEBB J.A.
DATED:	JUNE 2, 2023

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