Federal Court of Appeal | Cour d'appel fédérale

Date: 20250825

Docket: A-247-23

Citation: 2025 FCA 151

CORAM: **LOCKE J.A.**
LEBLANC J.A.
PAMEL J.A.

BETWEEN:

1048547 ONTARIO INC.

Appellant/
Respondent on the Cross-Appeal

and

FROMFROID S.A.

Respondent/
Appellant on the Cross-Appeal

Heard at Montréal, Quebec, on December 12, 2024.

Judgment delivered at Ottawa, Ontario, on August 25, 2025.

REASONS FOR JUDGMENT BY: PAMEL J.A.

CONCURRED IN BY: LOCKE J.A.
LEBLANC J.A.

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REASONS FOR JUDGMENT

PAMEL J.A.

[1] The Appellant, 1048547 Ontario Inc., a family-run business better known under the name Skotidakis (Skotidakis), operates a milk and cheese products business in Ontario. In 2014, Skotidakis began the process of acquiring a system that would allow it to cool its dairy products more quickly. It contacted Geosaf Inc. (Geosaf) who was the commercial agent in Canada for the

Respondent, Fromfroid S.A. (Fromfroid), a French company specializing in the manufacture and installation of air-conditioning and refrigeration equipment for the agri-food industry. Fromfroid was the holder of Canadian Patent No. 2,301,753 (the 753 patent), which covered a rapid cooling ventilation system for food products. Through Geosaf, Fromfroid loaned one of its cooling cells to Skotidakis on a trial basis for a period of about six weeks and thereafter sent an offer for the construction of 24 cells of their ventilation system. Discussions ensued and further proposals by Fromfroid followed on the basis of a reduced price, but Skotidakis did not take up any of the proposals.

[2] The 753 patent expired on July 30, 2018. About three months later, on October 26, 2018, a representative of Geosaf attended Skotidakis' facilities on unrelated business and discovered 24 cooling cells bearing a strong resemblance to those of Fromfroid; photographs of those cooling cells were taken. Skotidakis claimed that the cooling cells were built by Frimasco Inc. (Frimasco), a construction company specializing in coolers, in the three months following the expiry of the 753 patent. Believing that the cooling cells could not have been built in such a short period of time, Fromfroid instituted a patent infringement action against Skotidakis and Frimasco before the Federal Court.

[3] In its decision dated July 6, 2023 (2023 FC 925, *per* Grammond J.), the Federal Court determined that Skotidakis and Frimasco built the cooling cells before the 753 patent expired and thus willfully infringed the patent; the Court ordered them to pay Fromfroid $149,270 plus interest in compensatory damages, representing the Canadian dollar equivalent of the net profit that was to be earned by Fromfroid had its latest proposal to Skotidakis been accepted. The

Federal Court also found the behaviour of Skotidakis and Frimasco, both before and during the proceeding by attempting to mislead the Court as to the true date of manufacturing of the cooling cells, to be highly reprehensible; it ordered Skotidakis to pay an additional $200,000 and Frimasco an additional $50,000 to Fromfroid, plus interest, in punitive damages. Costs were reserved and eventually, by separate judgment, the Federal Court ordered that costs in the amount of $127,000 be paid to Fromfroid (2023 FC 1187, the "Cost Award").

[4] The principal issue at trial was the date Frimasco built the cooling cells for Skotidakis, i.e., whether that was prior to or after the expiry of the 753 patent. Apart from that issue as well as another argument readily dismissed by the trial judge to the effect that the cooling cells built by Frimasco purportedly differed from an essential element of the invention covered by the 753 patent, infringement of the 753 patent was not seriously contested by Skotidakis and Frimasco. In short, Justice Grammond found the evidence of Skotidakis and Frimasco in support of their contention that the cooling cells were built after the expiry of the 753 patent not to be credible. As there was no other direct evidence as to when the cells were actually built, relying upon articles 2846 and 2849 of the *Civil Code of Québec* regarding presumptions of fact, Justice Grammond determined that the circumstantial evidence put before him, including that of Skotidakis and Frimasco, led to "a serious, precise and concordant presumption" that, on the balance of probabilities, Skotidakis and Frimasco built the cooling cells before July 30, 2018, thus infringing the 753 patent.

[5] Skotidakis now appeals both decisions of the Federal Court; it raises a number of issues relating to the Federal Court's weighing of the evidence as regards (i) expert evidence concerning the date of construction of Skotidakis' cooling cells, (ii) the assessment of compensatory damages and (iii) the award of punitive damages. Otherwise, Skotidakis takes no issue with the Federal Court's determination of infringement of the 753 patent nor with the Court's findings regarding the credibility of its witnesses, although it does not necessarily agree with such findings. For its part, Frimasco did not appeal either decision of the Federal Court, nor did it take part in the present appeal. In fact, it would seem that Fromfroid has since received full payment from Frimasco of the compensatory damages award of $149,270 plus interest, prompting Fromfroid to take the position that Skotidakis' appeal in relation to the compensatory damages issue is now moot.

[6] To begin with the mootness issue, I do not agree that this appeal is moot. Even if Fromfroid has received the full amount of compensatory damages due to it, I accept Skotidakis' argument that there would be practical effects for it if the appeal were successful. Given the nature of the relationship between Skotidakis and Frimasco, it seems possible that Skotidakis may have some amount of liability to Frimasco for the amount that the latter has paid to Fromfroid. The result of the compensatory damages aspect of this appeal may not matter to Fromfroid but it likely does to Skotidakis.

[7] The standard of review is not in dispute: questions of fact (including factual inferences) and questions of mixed fact and law, from which a legal error cannot be extricated, are reviewable against the standard of palpable and overriding error, and questions of law are reviewed for correctness: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*]. The issues raised by Skotidakis engage the standard of palpable and overriding error.

[8] Before us, Skotidakis raises what it refers to as burden of proof issues in relation to the documentary evidence. In essence, and as regards the award of punitive damages, Skotidakis argues that the trial judge could not, on the one hand, conclude that the documents submitted by Skotidakis showed no obvious signs of falsification (as he did at paragraph 61 of his judgment), and then proceed to award punitive damages on the grounds that Skotidakis sought to mislead the Court as to the date the cells were made (as he did at paragraph 106 of his judgment). According to Skotidakis, for the trial judge to have found it mislead the Court, he would necessarily have had to find that its documents were falsified, otherwise the balance of probabilities militated against an award of punitive damages.

[9] I cannot agree with Skotidakis' reasoning. I see nothing wrong with a judge acknowledging that a document may not show obvious signs of having been falsified, while at the same time harbouring serious doubts regarding its authenticity. In any event, the trial judge did not rely on a finding that the documents were falsified in his assessment of punitive damages. I accept that at no time did the trial judge come to a definitive conclusion as to the specific false nature of any particular document produced by Skotidakis, however it is not necessary to falsify a document in order to mislead the Court. The trial judge went to great length to explain how the

circumstantial evidence enabled him to establish, on the balance of probabilities, that the cooling cells were built prior to the expiry of the 753 patent, notwithstanding the efforts of Skotidakis "to conceal the infringement by presenting various pieces of evidence intended to mislead the Court as to the date the cells were made" (see paragraph 106).

[10] In arguing against the existence of the factual underpinning for a finding of punitive damages, Skotidakis asserts that the Federal Court's decision is silent on what the company supposedly did to conceal the truth of the date on which the cooling cells were built – silent on identifying what part of its story was knowingly false and asserted to mislead the Court.
I disagree. For example, at paragraph 56, Justice Grammond determined that the aim of one Skotidakis witness in explaining away an inconvenient truth regarding the purchase of fans for the cooling system was "to conceal the existence of a prototype." Justice Grammond also characterizes as a "ploy" the evidence of another Skotidakis witness to "deliberately evade" a relevant question to which the answer may well have been detrimental to its case (see paragraphs 43 and 53 of the decision). At paragraph 71, the trial judge sets out the evidence and negative inferences he drew which strongly suggested that the cooling cells were built prior to the expiry of the 753 patent, and underscores the fact that "a series of implausible events would have to be accepted" for him to find that such construction took place after the expiry of the 753 patent. The trial judge may not have specifically called out any of the Skotidakis witnesses for lying, however it seems clear from the decision that the trial judge considered Skotidakis to be engaging in a deliberate attempt to mislead the Court.

[11] Skotidakis argues that even if its witnesses were deliberately lying, such conduct did not rise to the level of "highly reprehensible misconduct" required to award punitive damages as set out in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (CanLII), [2002] 1 SCR 595 (*Whiten*). I remain unconvinced. Justice Grammond clearly referred to the factors set out in *Whiten* at paragraph 107 of his decision in determining that the misconduct of Skotidakis was highly reprehensible and also found that the aggravating circumstances warranting punitive damages were essentially Skotidakis' concealment of the infringement from the Court by presenting various pieces of evidence intended to mislead. There is little doubt that attempts to mislead the Court may form the basis for punitive damages (*Chanel S. de R.L. v. Lam Chan Kee Company Ltd*., 2016 FC 987 at para. 76; affirmed in *Lam v. Chanel S. de R.L*., 2017 FCA 38 at para. 11). It must be kept in mind that this is not a case of a debate over the construction of claims in which reasonable people may differ. I should also mention that the trial judge specifically refrained from awarding elevated costs on account of having already awarded punitive damages (see the Cost Award at para. 6).

[12] I have not been convinced by Skotidakis that the trial judge made any reviewable error in his evaluation of, or inferences drawn from, the evidence as presented to him or in the assessment of punitive damages. For the most part, Skotidakis is asking the Court to reweigh the evidence; this is not the role of the Court. It may be that the amount of $200,000 is on the higher end of the scale for punitive damages for cases such as this one, however under the circumstances, I am not inclined to interfere with the trial judge's assessment as I have not been convinced by Skotidakis that such an amount was beyond the point of being "rationally required to punish the defendant's misconduct" (*Whiten* at paras. 107-108). It seems to me that Justice

Grammond looked at the entirety of the evidence and called out what he clearly saw as a ruse on the part of Skotidakis to deliberately conceal the date upon which it had built the infringing refrigeration system, without necessarily having to determine that any one piece of evidence was falsified. Such factual conclusions based upon the inferences made by the trial judge are certainly within his bailiwick and not something with which this Court should easily interfere (*Housen* at para 24).

[13] On the issue of compensatory damages, the trial judge found that Fromfroid lowered its price twice, and that it was the price of the latest offer that was used in the calculation of compensatory damages (at paragraph 100). Skotidakis argues that there was a third iteration of Fromfroid's proposal for the sale of the 24 cooling cells, *to wit*, a two-step sales process whereby Fromfroid would sell to Skotidakis via Geosaf, resulting in a lower profit margin for Fromfroid than was used by the trial judge in the determination of compensatory damages of $149,270. However, Justice Grammond determined that this third iteration, discussed between Fromfroid and Geosaf, was never actually proposed to Skotidakis, and thus the expected profit margin for Fromfroid in accordance therewith was of no moment (at paragraph 101). Having reviewed the trial transcript and the exhibits in question, I am not convinced of any overriding and palpable error on the part of the trial judge on this issue.

[14] Finally, as regards the Federal Court's discounting of Skotidakis' expert evidence concerning the date of construction of its cooling cells, this was a factually suffused conclusion that was open to it. I am not convinced that it was tainted by any palpable and overriding error.

[15] I would therefore dismiss the present appeal, with costs. Given the manner in which I propose to dispose of the principal appeal, Fromfroid's cross-appeal, seeking to have the trial judge reconsider its motion to reopen the evidentiary phase of the trial to allow for further evidence in the event the principal appeal was allowed, no longer has any purpose. I therefore propose to dismiss the cross-appeal on a without costs basis.

"Peter G. Pamel"
J.A.

"I agree.
George R. Locke J.A."

"I agree.
René LeBlanc J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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