COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No: 500-09-031170-244
(500-11-057781-201)

DATE: May 6, 2025

CORAM: THE HONOURABLE MARTIN VAUCLAIR, J.A.
JUDITH HARVIE, J.A.
CHRISTIAN IMMER, J.A.

SAID SIAM
APPELLANT – Defendant/Cross-Plaintiff
v.

QNB CAPITAL L.L.C.
HAMAD GHANIM S A AL-KUWARI
KHALID GHANIM S H AL-KUWARI
SULTAN GHANIM S AL-HODAIFI AL-KUWARI
RESPONDENTS – Plaintiffs in continuance of suit/Cross-Defendants
and
PROMOTRANS INC.
IMPLEADED PARTY – Impleaded Party

JUDGMENT

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[1] The appellant, Said Siam, appeals from a judgment of the Superior Court, District of Montreal (the Honourable David R. Collier), rendered on July 2, 2024, which granted the respondents' motion to strike his cross-application[1] because it was not directed

[1] The motion is entitled "Demande des demandeurs en reprise d'instance en rejet de la demande reconventionnelle du défendeur / demandeur reconventionnel pour cause d'irrecevabilité, pour cause d'abus, pour absence de connexité et en exception déclinatoire", dated February 26, 2024.

against the parties to the principal application and did not arise from the same source, declared it to be an abuse of procedure, and therefore struck several paragraphs of the cross-application and of the defence and ordered him to pay $30,953.80 in damages to the respondents.[2]

[2] The appellant argues that his cross-application arises from the same source as the principal application or from a related source within the meaning of art. 172 *C.C.P.*, that it does not constitute an abuse of procedure, and that it should not have been struck. As a subsidiary argument, if it is held that his cross-application was rightfully struck, he argues that no paragraphs should be struck from his defence, because they are all essential. Finally, he considers that he did not commit any abuse of procedure and that he should not be ordered to pay damages.

[3] For the reasons set out below, the Court concludes that the trial judge committed no reviewable error in striking the cross-application. It also finds that the trial judge committed no reviewable error in declaring the cross-application to be an abuse of procedure, in striking paragraphs of the defence and in ordering the appellant to pay damages to respondents. The Court, however, is of the view that it was an error to strike paragraph 57 and the first part of paragraph 58 of the defence.

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[4] The background is as follows. The impleaded party, Promotrans inc. ("PI"), was incorporated under the Quebec *Business Corporations Act* ("QBCA").[3] Sultan Ghanim S. Al-Hofaidi Al-Kuwari ("Mr. Al-Hodaifi") held 51% of its shares. The appellant, one of four other minority shareholders, was PI's sole director. Mr. Al Hodaifi claimed that the appellant made all the decisions relating to PI.

[5] PI purchased a vacant lot in Montréal with a view of developing it, but the project did not materialize, and the property was sold in 2017. Mr. Al-Hodaifi claimed that he and the other shareholders were informed by the appellant that the property had been sold for $20,000,000, of which they received their share in proportion to their respective shareholdings. However, Mr. Al-Hodaifi alleged that he later learned that the purchaser had in fact paid a purchase price totalling $28,260,000 in capital and interest. This was concealed from him, and he considered that the appellant had embezzled $8,260,000.

[6] Mr. Al-Hodaifi therefore brought an application to bring a derivative action in the name of PI, asking the Court to condemn the appellant to reimburse $8,260,000 to PI. The Superior Court granted him leave to do so using its powers under s. 446 of the *QBCA*[4]

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2 *QNB Capital c. Siam*, 2024 QCCS 2799 [the judgment in first instance].
3 CQLR, c. S-31.1.
4 *Al Kuwari c. Siam*, 2020 QCCS 3672, para. 23.

while pointedly criticizing the appellant for his lack of transparency and for multiplying proceedings.[5]

[7] Mr. Al-Hodaifi passed away. As a result, three of his heirs and a corporation administering his estate, the respondents, were authorized by judgment of the Superior Court to continue the suit. Once again, the judge seized of that matter was critical of the appellant, observing that his "comportement procédural […] frôle dangereusement l'abus de procédure au sens des articles 51 et suivants *CPC*".[6]

[8] The appellant then filed his defence and cross-application, which was the subject of the judgment in first instance. In essence, the appellant alleged that he was entitled to set off, against the sum of $8,260,000, payments owed to him by PI and numerous other entities. By way of his cross-application, detailed in Exhibit D-3, he claimed a total of $15,824,838 and US$44,418,837 under heads A to F. Claim A for an amount of $4,521,600 represented the plaintiff's 16% share of the total sum of $28,260,000 received by PI. Claim B represented compensation allegedly owed to appellant by PI which flowed from two sources: (i) salary for the period of May 11, 2012 to March 27, 2019 in the amount of US$2,812,013 and (ii) "compensation for the 10% Fees levied on the project's sale value net of realized and deferred costs" totalling $11,303,238. Claims C to F referred to sums allegedly owed by Promotrans Qatar and TRELCO International Co., or resulting from the "demise of Trelco International Co.".

[9] Having been served with this defence and cross-application, the respondents replied with a motion to strike wherein they sought the following conclusions:

> **ACCUEILLIR** le présent (*sic*) demande en rejet;
>
> **RAYER** les paragraphes 57, 58, 59, 64, 65, 66, 67, 68 et 69 de la défense et les paragraphes 70, 71 et 72 de la demande reconventionnelle;
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> **REJETER** la demande reconventionnelle du défendeur;
>
> **DÉCLARER** la demande reconventionnelle abusive;
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> **CONDAMNER** le défendeur à payer aux demandeurs en reprise d'instance les honoraires extrajudiciaires pour la préparation et la présentation de la présente demande en rejet dont le montant sera déterminé lors de la présentation de la demande en rejet ou ultérieurement;

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5 *Id*, para. 45.
6 *Al Kuwari c. Siam*, 2023 QCCS 2994, para. 67.

[10] The trial judge granted most of these conclusions as follows:

> [48] **GRANTS** the application to strike the counterclaim;
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> [49] **DECLARES** the counterclaim to be an abuse of procedure;
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> [50] **STRIKES** paragraphs 57, 58, 59, 64, 65, 66, 67, 68 and 69 of the defence and paragraphs 70, 71 and 72 of the counterclaim;
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> [51] **ORDERS** the defendant to pay to the plaintiffs in continuance of suit, within thirty days of the present judgment, the sum of $30,953.80, including interest at the legal rate and the additional indemnity provided by article 1619 C.C.Q. calculated from the present date;
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> [52] **THE WHOLE** with the costs of justice.

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[11] As mentioned, the judge committed no reviewable error in striking the cross-application from the record. He correctly noted that the cross-application was directed, personally, against Mr. Al-Hodaifi and the plaintiffs in continuance of suit, but not against the Al-Hodaifi estate. They were not, personally, parties to the principal application, but were merely acting in a representative capacity for PI in the derivative action.[7] The judge concluded that the appellant could not assert a personal claim against them in the cross-application. The appellant's written argument does not deal with this conclusion and, therefore, does not raise any error in this regard.

[12] Paragraph 72 of the cross-application read as follows:

> 72. The Defendant acting as Plaintiff in cross-demand asserts the following claim for monies owing to Defendant arising from the interlocking series of business transactions between the Plaintiff, the Defendant, Promotrans Canada, Promotrans Qatar, Trelco International Co., Trelco Marine Services, and the Al Hodaifi Group, constituting the Defendant's remuneration or share in these several related companies, totalling $15,824,838 Cdn and $44,418,837.00 US. These monies represent cumulatively the value of: the Defendant's work and services; the liquidation value of the Defendant's share and interest in these entities; the value of Defendant's capitalization of these entities; the value of Defendant's guarantees allowing these several entities to obtain financing; all of which are detailed in tables herein produced as Defendant's Exhibit D-3. The Plaintiff undertook to satisfy the Defendant's claims which are now exigible from Plaintiffs in Continuance of Suit.

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7 Judgment in first instance, paras. 15-16.

[13] Considering that art. 172 *C.C.P.* does not, *per se*, allow the cross-plaintiff to add new parties,[8] and given the nature of the claims asserted in par. 72, the judge committed no error in striking the cross-application. This conclusion, however, did not appear in the judgment and the first instance judgment's conclusions will be adjusted accordingly.

[14] Although, as the judge himself noted, this was sufficient to strike the cross-application,[9] he also discussed whether the cross-application arose from the same source or was related to the source of the principal application, and whether the claims it contained should be dismissed because they were unfounded in law even if the facts alleged were true (art. 168, para. 2 *C.C.P.*).[10] That, however, was not necessary for the decision and the Court considers the trial judge's analysis in paragraphs 22 to 38 to be *obiter dicta*. As such, these paragraphs will not bind another judge if the appellant chooses to institute an application to claim these sums.

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[15] The appellant also contests the judge's finding that the cross-application and part of the defence constituted an abuse of procedure. This Court must show deference when reviewing a trial judge's finding of abuse of procedure.[11] The trial judge, after reviewing the relevant facts, the parties' representations and the context,[12] concluded as follows:

> [46] A reasonable person would conclude that the defendant is attempting to drown Promotrans' suit in a sea of foreign litigation. A reasonable person would also conclude that Siam's claims totalling over $76 million are intended to intimidate the plaintiffs and defeat the ends of justice.

[16] There is no ground for this Court to intervene regarding this finding.

[17] Having declared the cross-application to be an abuse of procedure, the trial judge could rely on article 53 *C.C.P.* to "dismiss the judicial application or reject a pleading, strike out a conclusion or require that it be amended". He could also strike specific paragraphs of the cross-application.[13]

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8 See *9228-6996 Québec inc. c. Banque Royale du Canada*, 2017 QCCA 1549, para. 4, which the trial judge cites. See also *HMI-Promec, s.e.n.c. c. 2954-4095 Québec inc. (Construction Kay-Bek Inn)*, 2007 QCCA 1818, para. 31; *Desautels c. Ratelle*, 2006 QCCA 633, para. 2; *Latamar Construction Inc. c. Panfab D.B. Inc.*, [1990] R.D.J. 531, 1990 CanLII 2792 (C.A.), para. 8.

9 Judgment in first instance, para. 17.

10 Judgment in first instance, paras. 22-38.

11 *Cosoltec inc. c. Structure Laferté inc.*, 2010 QCCA 1600, para. 29, cited in *Bayview Financial c. 9218-4167 Québec inc.*, 2017 QCCA 522, para. 49, itself cited in *Droit de la famille — 211075*, 2021 QCCA 985, para. 13 and *Biron c. 150 Marchand Holdings inc.*, 2020 QCCA 1537, para. 109.

12 Judgment in first instance, paras. 39- 45.

13 *Cosoltec inc. c. Structure Laferté inc*., 2010 QCCA 1600, para. 56; *Vidéotron ltée c. Télévision communautaire et indépendante de Montréal (TVCI-MTL)*, 2023 QCCA 70, para. 21.

[18] It is true, as the appellant pleads, that the trial judge did not dismiss the defence *per se*. Yet, he made no reviewable error in striking paragraphs 59 and 64 to 69 of the defence. These paragraphs were intimately linked to the cross-application and were an integral part of the abuse of procedure.

[19] However, with respect, the trial judge should not have struck paragraph 57 and the first part of paragraph 58 of the defence. These paragraphs related to the compensation allegedly owed to the appellant by PI and were relevant, if proven, to his theory of the case that he was entitled to set off amounts against the sales price prior to its distribution to the shareholders.

[20] As he was entitled to do under art. 54 *C.C.P.* upon ruling that the cross-application and aspects of the defence were abusive, the trial judge ordered the appellant to pay damages to the respondents. The amount of these damages was equivalent to the fees and disbursements incurred by them since the date of the written defence.

[21] The appellant argues that the Court should reduce this amount because the respondents' counsel would have still had to analyze the written defence, rendering the award excessive and inconsistent. Be that as it may, the R-1 and R-2 legal bills which the trial judge examined to render his decision were not filed and the Court has no factual substratum allowing it to intervene.

[22] Given the partial success of the appeal, each party will bear its own legal costs.

FOR THESE REASONS, THE COURT:

[23] **ALLOWS** the appeal in part, for the sole purpose of replacing conclusions [48] and [50] of the judgment in first instance and adding conclusion [48.1], as follows:

> [48] **GRANTS** in part the Demande des demandeurs en reprise d'instance en rejet de la demande reconventionnelle du défendeur / demandeur reconventionnel pour cause d'irrecevabilité, pour cause d'abus, pour absence de connexité et en exception déclinatoire dated February 26, 2024;
>
> [48.1] **STRIKES** the cross-application;
>
> [50] **STRIKES** the last part of paragraph 58 beginning with the words "for which", and paragraphs 59, 64, 65, 66, 67, 68 and 69 of the defence;

[24] **LEGAL COSTS** to be borne by each party.

MARTIN VAUCLAIR, J.A.

JUDITH HARVIE, J.A.

CHRISTIAN IMMER, J.A.

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Date of hearing: April 11, 2025