

Federal Court



Cour fédérale

Date: 20250325

Docket: T-116-19

Citation: 2025 FC 552

Ottawa, Ontario, March 25, 2025

PRESENT: Madam Justice Gagné

BETWEEN:

**UNILIN BEHEER B.V.
FLOORING INDUSTRIES LIMITED, SARL**

Plaintiffs

and

**6035558 CANADA INC. aka MISSISSAUGA FLOORING SOLUTIONS INC.
2364651 ONTARIO INC. aka EPICO FOREST PRODUCTS INC.
2184372 ONTARIO INC. dba HARDWOOD GIANT
MANMOHAM GREWAL
RAJVIR GREWAL
RAVNIT KAULDHAR**

Defendants

ORDER AND REASONS

I. Overview

[1] This is a Motion to appeal a decision rendered by Associate Judge Martha Milczynski [the AJ], in her capacity of Case Management Judge of the underlying patent infringement action.

[2] The AJ granted the Plaintiffs leave to file their Second Amended Statement of Claim [Amended Claim] naming Manmoham Grewal, Rajvir Grewal and Ravnit Kauldhar, the directors of the Corporate Defendants, as defendants in this action.

[3] Before the AJ, the Defendants opposed the amendments arguing mainly that they were either statute barred under section 55.01 the *Patent Act*, RSC 1985, c P-4, or under section 4 of Ontario's *Limitations Act, 2002*, SO 2002, c 24, and that, more generally, it was not in the interest of justice to allow this proposed amendment brought 4 years after the commencement of the action.

[4] The Defendants changed counsel between the time the Plaintiffs' Motion for Leave to Amend was argued before the AJ, and the filing of its current Motion to Appeal. They now argue that the AJ erred in:

1. Finding that the Amended Claim disclosed a reasonable cause of action against the individual Defendants;
2. Finding that the issue as to whether the claim against the individual Defendants was statute barred by limitation periods was a triable issue better left to the trial judge;
3. Providing inadequate and inconsistent reasons;
4. Finding that the Defendants had only argued limitation periods.

(issues 3 and 4 were argued together and will be addressed together in these reasons)

II. Decision under Appeal

[5] The AJ begins by setting the nature of the claim for infringement against the corporate Defendants and she notes that it is alleged that they acted and continue to act together, as one single business — they in fact filed a joint Statement of Defence denying the infringement and asserting that the Plaintiffs' patents are invalid.

[6] As to the individual Defendants, the AJ notes that the Plaintiffs sought to add them as named defendants after having examined the corporate Defendants' representative for discovery. As sole directors and officers of the corporate Defendants, the Plaintiffs allege that the individual Defendants operate as a single common enterprise, and that they are personally liable for the infringement of the asserted patents. The AJ summarizes the new allegations as follows:

The allegations as set out in the proposed amendments assert that the Messrs, Grewal and Ms. Kauldhar established a complex corporate scheme to sell unlicensed products to avoid the Plaintiffs' licensing fees and enrich themselves. The Plaintiffs allege that the proposed individual defendants began their own infringing activities prior to the incorporation of two of the three corporate Defendants and engaged in acts that clearly fall outside the ordinary behaviour of directors, officers or employees conducting business, thereby engaging their personal liability. Essentially the allegations assert that the three individuals personally planned and orchestrated the infringing activities prior to and subsequently without regard for the corporate entities, using them as mere shields or vehicles to conceal their infringing activities and protect themselves from personal liability.

[7] The AJ then turns her mind to the Defendants' position. She notes that although the test for individual directors and officers to attract personal liability is a high one (citing the decision in *Mentmore Manufacturing Co Ltd. v National Merchandising Manufacturing Co Inc.* (1978) 40

CPR (2d) 164 FCA), this argument was not raised by the Defendants. Their focus was rather on limitation periods and the fact that it was not in the interest of justice to grant leave to amend the claim 4 years after the commencement of the action.

[8] The AJ acknowledges that the Defendants addressed the issue of the alleged corporate scheme but solely to support their argument that this “scheme” was created over 10 years before the action was commenced and that the Plaintiffs knew of the role the individual Defendants played within the corporate structure.

[9] As for the delay to file the Plaintiffs’ Motion for Leave to Amend, the AJ considered the moment the examinations were conducted, the Defendants delivering their answers to undertakings late and only partially, the time taken for the Plaintiffs to bring a motion to compel, Justice Mandy Ayles’ order compelling the Defendants to provide the outstanding undertakings within 30 days, and the fact that, at the time the Motion was heard, these answers remained outstanding.

[10] Finally, the AJ considered the Defendants’ argument that the cause of action against the individual Defendants is the creation of the purported complex corporate scheme, which is different from the cause of action against the corporate Defendants, and that it does not arise out of substantially the same facts as those pleaded in the existent claim, nor does it trigger the same limitation period (2 years instead of 6). On that issue, the AJ states the following:

I am not satisfied with certainty on this pleadings motion that the Plaintiffs could have known the intricacies of the relationships or the degree to which the individual directors /officers conducted business operations allegedly without regard to the corporate

constructs. Whether the cause of action being asserted against them is patent infringement or something else, and whether the Plaintiffs are out of time are triable issues.

[11] Applying the test provided for under Rule 75 of the *Federal Courts Rules*, the AJ finds that sufficient material facts have been pleaded to sustain the claim of patent infringement against the individual Defendants, so she grants the Plaintiffs' motion.

III. Issue and Standard of Review

[12] Discretionary orders of Associate Judges are to be assessed against the standards enunciated by the Supreme Court of Canada in *Housen v Nikolaisen*, 2002 SCC 33. Accordingly, such orders should only be reversed if they are incorrect in law or are based on a palpable and overriding error concerning the facts. As for questions of mixed fact and law, they are also reviewable on the deferential standard of palpable and overriding error absent an extricable error of law: *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 64; *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 33; *Boily v Canada*, 2017 FCA 180 at para 23.

[13] The Court should only interfere in a decision made by a case management judge in the clearest case of misuse of judicial discretion given their familiarity with the issues and general expertise. Moreover, motions to add a responding party to a proceeding are not “complex, unique or beyond the range of motions dealt with by [associate judges] in their case management role” (*Apotex v Canada (Health)*, 2016 FC 766 at paras 76-78).

[14] The question is therefore whether the AJ erred in law or made a palpable and overriding error in granting the Plaintiffs leave to amend their claim.

IV. Analysis

[15] Under Rule 75, the Court may, at any time before the hearing, allow a party to amend a pleading, on such a term as will protect the rights of all the parties. While Rule 75 does not prescribe the criteria for amendment, the test is whether it is more consonant with the interests of justice that the amendment be permitted or denied (*Janssen Inc v Abbvie Corp*, 2014 FCA 242). An amendment should be allowed if it assists in determining the real issues at stake between the parties, provided it would not result in a prejudice to the other party that cannot be compensated by an award of costs.

[16] The Court notes that the Defendants do not argue that the amendments would cause them prejudice.

A. *Sufficiency of Material facts*

[17] Although this argument was not raised by the Defendants, the AJ nevertheless reviewed the Amended Claim and found it asserts sufficient material facts to disclose a cause of action that could not be plainly and obviously struck as futile.

[18] Before the Court, the Defendants argue that the AJ made a palpable and overriding error in so finding. They say they cannot identify that error as the AJ did not point to the specific allegations that support her finding. I disagree.

[19] In my view, the excerpt of the AJ's decision cited at paragraph 6 of these reasons is a fair summary of the new allegations found in paragraphs 36.1 to 36.31 of the Amended Claim. I see no palpable and overriding error in the finding that the pleadings disclose sufficient material facts to support that the behaviour of the individual Defendants could amount to patent infringement, and/or that it is possible that they used the corporate Defendants as a cloak for their personal acts. Even if the chances of success are weak, they are not inexistent. At this stage, the pleadings are to be taken as true and the question as to whether the evidence will support them is to be left to the trial judge.

[20] As stated by this Court in *Krav Maga Enterprises, LLC v Edge Combat Fitness Inc*, 2006 FC 112 at paras 29-30:

At this stage of the proceedings, I believe that the Prothonotary correctly determined that the Plaintiff, "has plead sufficient material facts alleging Mr. Moni Aizik was acting in his personal capacity" (Order, *supra*, at page 5). The Plaintiff has presented information that would require a trial judge to consider whether it would be appropriate in this case to lift the corporate veil. There is at least a genuine issue for trial as to whether Mr. Aizik should be held personally liable for infringement.

I do not believe that this was a mere fishing expedition on the part of the Plaintiff; rather, the Plaintiff provided the Court with sufficient evidence of activities undertaken by Mr. Aizik. I agree with Justice Pelletier's comments that, "the principle underlying Le Dain's comment is that the courts will not allow a corporation to be used as an instrument of fraud" (*Halford v. Seed Hawk Inc.*, 2004 FCA 189 (CanLII), [2004] F.C.J. No. 189; 2004 FC 88 (QL) at para. 330). This determination should be left to the trial judge,

and the individual Defendant should remain a party in this action in case it is held that he has improperly hidden behind a corporate veil.

[21] In this case, the Plaintiffs allege sufficient facts that, if proven at trial, could lead to a finding by the trial judge that the individual Defendants are liable for patent infringement. The AJ committed no reviewable error in that regard.

B. *Limitation periods*

[22] The Defendants also modified its angle of attack on the issue of limitation.

[23] Before the AJ, the Defendants argued that Ontario's *Limitations Act* was applicable, because the individual Defendants had not allegedly infringed the asserted patents themselves, but they had rather allegedly set up a corporate scheme by which the corporate Defendants would infringe the Plaintiff's patents. This cause of action is arising in the province of Ontario, as such, section 39 of the *Federal Courts Act* applies and provides for the provincial limitation period to apply. The applicable limitation would therefore be 2 years from the creation of the alleged corporate scheme and the claim would be statute barred.

[24] Before the Court, the Defendants argue that the AJ made a palpable and overriding error in finding that the claim against the individual Defendants was not statute barred, even if the cause of action was that of infringement and the limitation period was 6 years, pursuant to the federal *Patent Act*. I disagree.

[25] First, the AJ did not find that the claim against the individual Defendants was not statute barred, but rather that the issue was a triable one. I see no error in that finding considering the position taken by the Defendants before the AJ.

[26] Second, had the AJ found that the 6-year limitation period applied and the claim against the individual Defendants was not statute barred, I would see no palpable and overriding error in that finding either. The Motion for Leave to Amend was filed in March 2023 and the act of infringement allegedly committed since March 2017, at a time where all three asserted patents were still valid.

[27] However, and since the AJ did not rule on the limitation period argument, I too will leave it to the trial judge.

C. *Adequacy and consistency of reasons*

[28] At the hearing, I informed the parties that I would be highly reluctant to grant an appeal of an Associate Judge decision on the basis that the reasons are succinct or perceived to not have addressed all issues raised by the party.

[29] In their capacity of Case Management Judge, Associate Judges have a very high volume of cases, and they deal with an increased volume of interlocutory motions brought by the parties. If the parties, and the Court, wish for the files to be brought to trial or to a hearing on their merits in a reasonable delay, Associate Judges need to be able to issue short reasons without delay. On a similar volume, one cannot expect both quick and detailed reasons.

[30] That said, I do not see any deficiency in the AJ's reasons. Sitting on appeal of her decision, I had no difficulty understanding how she got to her conclusions. As stated above, she dealt with the Defendants' arguments, and she even dealt with those the Defendants did not make before her.

V. Conclusion

[31] Despite the Defendants' new counsel's capable submissions, I am not convinced that the AJ made any error that would warrant the Court's intervention. The Defendants' motion is therefore dismissed and costs in the amount of \$1,000 are granted in favour of the Plaintiffs.

ORDER in T-116-19

THIS COURT ORDERS that:

1. The Defendants' Motion to Appeal Associate Judge Martha Milczynski's decision dated June 19, 2024, is dismissed;
2. Costs in the amount of \$1,000 are granted in favour of the Plaintiffs.

"Jocelyne Gagné"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-116-19

STYLE OF CAUSE: UNILIN BEHEER B.V. ET AL v 6035558 CANADA
INC. aka MISSISSAUGA FLOORING SOLUTIONS
INC. ET AL

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 17, 2025

ORDER AND REASONS: GAGNÉ J.

DATED: MARCH 25, 2025

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