

Federal Court



Cour fédérale

Date: 20250410

Docket: T-409-23

Citation: 2025 FC 672

Toronto, Ontario, April 10, 2025

PRESENT: Mr. Associate Judge Michael D. Crinson

BETWEEN:

**ARIA VENT INC. AND
2721111 ONTARIO INC.**

**Plaintiffs/
Defendants by Counterclaim**

and

**2213785 ONTARIO INC. AND
TRM HOLDING INC.**

**Defendants/
Plaintiffs by Counterclaim**

ORDER AND REASONS

[1] The Defendants, 2213785 Ontario Inc. and TRM Holding Inc. (collectively, “TRM”), brought this motion (“TRM’s motion”) to enforce a settlement agreement that TRM argues had been reached between the parties with respect to allegations of copying made by the Plaintiffs (collectively “Aria Vent”) against TRM.

[2] Aria Vent also brought a motion (“Aria Vent’s motion”) for an Order allowing Aria Vent to amend the Amended Statement of Claim to add the copyright allegations to the existing patent infringement claim. This motion to amend was abandoned a little over six weeks after it was filed and on the same day that a responding motion record was due, but before that record was filed.

[3] These reasons and order resolve TRM’s motion and address the issue of costs in respect of each parties’ motion referred to above.

I. TRM’s motion to enforce a settlement agreement

A. *The negotiations toward settlement*

[4] Aria Vent commenced this action in March 2023 alleging infringement of Canadian Patent No. 3,008,655 (the “655 Patent”) by TRM. The action has proceeded as a case managed action with pleadings closed and examinations for discovery conducted. The Statement of Claim was amended in March 2024. A motion to amend that Amended Statement of Claim was brought by Aria Vent to add allegations of copyright infringement by TRM.

[5] Specifically, by letter dated September 5, 2024, Aria Vent alleged that copyright infringement by “...an image found in both the TRM Catalogue and TRM Price List, which is an unauthorized reproduction of our client’s photograph”. This letter was a cease-and-desist letter in which Aria Vent made demands and threatened:

If your client does not comply with these demands, we will seek instructions to amend the Statement of Claim against your clients in Federal Court File No. T-409-23 to add the above allegations of copyright infringement and seek further remedies in relation thereto.

[6] TRM responded to the above letter on September 10, 2024, and made an offer to settle the copyright issues. That offer was not accepted but a counteroffer was made by Aria Vent by letter dated September 26, 2024.

[7] The offer by Aria Vent to settle the copyright issues (the “September 26, 2024 Offer”) incorporated the following elements:

... Nevertheless, our client is willing to amicably resolve this issue with the payment of CAD \$5000 to Fittes, in settlement of any claim relating to your clients’ use of the photographic image referred in our letter of September 5, 2024. Upon payment of the settlement amount, our client agrees that your client is released, fully and finally, of any claims for copyright infringement relating to the use of the photographic image, subject to the reservation of rights below.

Our client reserves all rights to refer and rely on the use of Fittes’ photographic image by your clients to promote the air vent registers that are the subject of the patent litigation in Federal Court File No. T-409-23, including with respect to the allegations of infringement of Canadian Patent No. 3,008,655 and remedies related thereto.

[8] On October 7, 2024, counsel for TRM responded by letter (the “TRM Letter”) accompanied by a “full and final release” (the “TRM Release”). The TRM Letter included the following statement:

While we believe that your client’s offer is exorbitant in the circumstances, we have been instructed to accept the offer as to payment of \$5000 in complete settlement of the inadvertent use of

the photograph. Attached hereto is a full and final release for execution by your clients in relation to this matter.

[9] The TRM Release sent as an enclosure to the TRM Letter mentioned payment of \$5000 by TRM to Fittes [Aria Vent] as consideration. In addition, the document set forth a description of the proposed release as a release:

... by the Releasors in relation to the use of any photography or images of the products manufactured and / or sold by the Releasors, and, without limiting the generality of the foregoing, from any and all matters that could have been pleaded, by the Releasors against the Releasees, relating to any copyright infringement or related claims in the Federal Court of Canada or otherwise, including as part of Court File No. T-409-23, but the foregoing release excludes and does not relate to the patent claims as set out therein in Court File No. T-409-23.

[10] And continues to clarify the terms of the release in part as follows:

...the terms of this settlement are fully understood...for the purpose of making full and final compromise in settlement of all claims and proceedings against the Releasees, now or hereafter brought, for damages, loss or injury resulting from the matters set forth above and from the Action.

[11] Exchanges regarding the settlement and the wording of releases continued until December 2024 when the exchanges devolved into allegations of a lack of good faith against opposing parties and a debate began as to whether there was a binding settlement agreement.

[12] On December 3, 2024, counsel for the Aria Vent sent an email in which they “hereby withdraw/retract any and all offers previously extended related to this issue”.

[13] On December 9, 2024, counsel for TRM attempted to pay the settlement funds to counsel for Aria Vent but was unsuccessful as the funds were inadvertently sent to Aria Vent's former counsel of record (Senior counsel for Aria Vent had moved from one law firm to another and sent a Notice of Change of Solicitor on November 14, 2024).

[14] The debate about the existence of a binding settlement agreement is subject matter of this motion.

B. *Was A Binding Settlement Reached?*

[15] The parties did not dispute whether this Court has jurisdiction to decide the motion. I agree and conclude that this Court has jurisdiction to decide the motion in light of the considerations laid out by the Federal Court of Appeal in *Apotex Inc. v Allergan Inc.*, 2016 FCA 155 at para. 13 and section 20 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[16] The Federal Court of Appeal has explained that the conditions necessary to create a binding settlement agreement are an offer and an acceptance of the essential terms of that offer.

The acceptance must unequivocally match the essential terms of the offer:

[17] After canvassing some of the jurisprudence concerning the formation of settlement agreements, the Federal Court set out the requirements as follows (at para. 41):

- for there to be a binding contract, there must be an offer and acceptance wherein the terms of the offer are matched by the terms of the acceptance;
- the acceptance must be unequivocal;

- there can be an offer and acceptance so as to create a binding contract even where the parties contemplate the execution of a more formal document;
- negotiations as to the more formal document do not necessarily mean that an offer or acceptance has been repudiated.

[18] As shall be seen from the discussion below, the first proposition needs to be qualified. A settlement agreement arises once there is a matching offer and acceptance on all essential terms; continuing disagreement over unessential terms is immaterial. This notion of essential terms, in fact, is quite central to the law concerning settlement agreements. Indeed, it is quite central to the outcome of this case.

Apotex Inc. v Allergan Inc., supra at paras. 17-18

[17] It is also clear that a binding settlement agreement can leave unessential terms to be resolved subsequently provided the essential terms have been resolved. It is not the subjective intent of each party that determines what are essential terms and what are unessential terms. Rather, the essential terms of an agreement are assessed through the eyes of the objective bystander.

The issue to be determined by the Judge was whether an objective bystander would have considered that the parties intended to bind themselves on sufficiently certain essential terms at the time the agreement was reached

Maoz Betsler-Zilevitch v. Nexen Inc. et al, 2018 FC 735 at para. 4

[18] The parties in this proceeding both represented that the offer to settle at issue was the September 26, 2024 Offer. The issue to be addressed is what an objective bystander would have considered to be the essential terms of a settlement. The September 26, 2024 Offer is an offer incorporating three essential terms:

- A. Payment of CAD \$5000 from TRM to Fittes [Aria Vent] (“... *the payment of CAD \$5000 to Fittes...*”);
- B. A release of any copyright claims relating to the photograph at issue (“... *in settlement of any claim relating to your clients’ use of the photographic image ... our client agrees that your client is released, fully and finally, of any claims for copyright infringement relating to the use of the photographic image ...*”); and
- C. Aria Vent retains the right to rely upon the alleged use by TRM of the image at issue in T-409-23 in support of patent infringement and patent remedies claims in the action (“...*reserves all rights to refer and rely on the use of Fittes’ photographic image by your clients to promote the air vent registers that are the subject of the patent litigation in Federal Court File No. T-409-23, including with respect to the allegations of infringement of Canadian Patent No. 3,008,655 and remedies related thereto.*”).

[19] The TRM Letter states “... we have been instructed to accept the offer as to payment of \$5000...” such that there is no dispute between the parties as to the financial element of the settlement offer. The parties also agreed that there was also a release of any copyright claims relating to the photograph at issue.

[20] The TRM Letter did not constitute an unequivocal acceptance of all the essential terms as it did not constitute an acceptance of Aria Vent’s essential term of retaining the right to rely upon the alleged use by TRM of the image at issue in support of patent infringement and patent

remedies claims in the Court File No. T-409-23 action. Specifically, the TRM Release did not indicate an acceptance of this third essential term as evidenced by:

- A. The phrase in the Letter that payment of the funds was for “complete settlement of the inadvertent use of the photograph”;
- B. The language in the TRM Release apparently limiting Aria Vent’s right to rely upon the alleged use by TRM of the image at issue in T-409-23 indicating that the release is comprehensive “without limiting the generality of the foregoing ...relating to any copyright infringement or related claims in the Federal Court of Canada or otherwise, including as part of Court File No. T-409-23, but the foregoing release excludes and does not relate to the patent claims as set out therein in Court File No. T-409-23”; and
- C. the Draft Release is for “the purpose of making full and final compromise in settlement of all claims and proceedings against the Releasees, now or hereafter brought, for damages, loss or injury resulting from the matters set forth above and from the Action” where the only action referred to in the document is Court File No. T-409-23.

[21] While TRM argues their intention was to accept the terms of the September 26, 2024 Offer, when viewed objectively, the TRM Letter with the TRM Release are not an unequivocal acceptance of all of the essential terms of that offer.

[22] Communications in pursuit of settlement continued but at no point prior to the clear revocation by Aria Vent of all offers to settlement on December 3, 2024 was there an offer and unequivocal acceptance of the terms of such offer. On the evidence put before the Court on this motion, I conclude no binding settlement agreement was reached.

[23] Costs

[24] The parties essentially agree on the quantum of costs if they are the successful party on this motion. Aria Vent argues entitlement to \$7300 if successful on the motion and TRM argues for \$7500 in costs regardless which party is successful. Aria Vent takes the position that if TRM is successful then TRM should not be entitled to the elevated costs of \$7300 but rather costs should be \$3000 as calculated according to mid column III as the motion should not have been brought if Aria Vent is successful.

[25] While it is not necessary to decide on this motion, a party should be hesitant to argue a different level of costs on the basis of a motion they say should not have been brought in the absence of evidence to support such an argument. There was nothing I was directed to in the record to suggest TRM's motion was improperly brought. Further, a review of the record supports an argument that TRM's motion was brought in response to Aria Vent's threatened and subsequently abandoned motion to amend to incorporate the allegations that were at the heart of the TRM's motion.

[26] In light of submissions from the parties and considering Aria Vent was successful on TRM's motion, TRM shall pay to Aria Vent costs in the amount of \$7300 in any event of the cause.

[27] As to costs of Aria Vent's abandoned motion, Aria Vent argues that since the motion was never heard and nothing filed by TRM in response, no costs should be awarded for costs thrown away. This position does not consider or account for the fact that a responding motion record was required to be prepared, even if not filed. Accordingly, I agree with the submissions of TRM on costs for the abandoned motion calculated according to the mid point of column III. TRM shall be entitled to its costs thrown away for the Plaintiffs' abandoned motion to amend in the amount of \$1400 in any event of the cause.

ORDER

THIS COURT ORDERS that:

1. The Defendants motion is dismissed.
2. Costs for the Defendants' motion shall be payable in the amount of \$7300 by the Defendants to the Plaintiffs in any event of the cause.
3. Costs thrown away for the Plaintiffs' withdrawn motion to amend shall be payable in the amount of \$1400 by the Plaintiffs to the Defendants in any event of the cause.

"Michael D. Crinson"

Associate Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-409-23

STYLE OF CAUSE: ARIA VENT INC. AND 2721111 ONTARIO INC. v
2213785 ONTARIO INC. AND TRM HOLDING INC.

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 31, 2025

ORDER AND REASONS: CRINSON A.J.

DATED: APRIL 10, 2025

APPEARANCES:

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