

FEDERAL COURT OF APPEAL		FILED
COUR D'APPEL FÉDÉRALE		
March 24, 2023		
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TORONTO, ON	- 1 -	

Federal Court of Appeal File No. A-88-23

Federal Court File No.: T-1057-21

FEDERAL COURT OF APPEAL

B E T W E E N:

WISEAU STUDIO, LLC

Appellant

-and-

**RICHARD HARPER, FERNANDO FORERO MCGRATH, MARTIN RACICOT
d.b.a. ROCKHAVEN PICTURES, ROOM FULL OF SPOONS INC., PARKTOWN
STUDIOS INC., RICHARD STEWART TOWNS**

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, **WITHIN 10 DAYS** after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 24, 2023

Issued by: _____

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APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the Judgment of Justice Pentney, issued on March 16, 2023, which dismissed the Plaintiff's appeal of an earlier Order of Associate Judge Horne which struck the Plaintiff's Claim in its entirety.

THE APPELLANT ASKS:

1. That the Judgment of Justice Pentney, issued on March 16, 2023 (which dismissed the Plaintiff's appeal of an earlier Order of Associate Judge Horne which struck the Plaintiff's Claim in its entirety) be set aside; and
2. That the Federal Court of Appeal declare that the Plaintiff's within action must proceed to a full adjudication and trial before a Judge of the Federal Court; and
3. Costs of this Appeal, inclusive of taxes and disbursements; and
4. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. On July 6, 2021, the Plaintiff commenced the within action in the Federal Court of Canada against the Defendants for, inter alia, circumvention of technological protection measures contrary to section 41.1 of the *Copyright Act*, R.S.C. 1985, c C-42, with respect to the Defendants' documentary film *Room Full of Spoons* (the "Documentary").
2. On February 11, 2022, the Defendants made a motion (the "Motion to Dismiss") seeking to permanently stay or dismiss the Plaintiff's claim, on the basis of cause of action

estoppel, alleging that the Plaintiff's claim advances issues that were already raised and addressed at the trial of a previous claim of the Plaintiff in the Ontario Superior Court File No. CV-17-577020 (the "2017 Ontario Action") on which the Plaintiff lost on all claims and counterclaims, and for which all appeal avenues were exhausted.

3. The Defendants' Motion to Dismiss was heard before Prothonotary Trent Horne (acting as Case Management Judge and Motion Judge) on March 7, 2022. In his Order dated April 20, 2022, Prothonotary Horne struck the Plaintiff's claim in its entirety.

4. The Plaintiff appealed the Order of Associate Judge Horne by way of an appeal motion heard on February 21, 2023 before Judge Pentney of the Federal Court.

5. In his Judgment dated March 16, 2023, Justice Pentney dismissed the Plaintiff's appeal with costs.

6. Justice Pentney made errors in the application of the cause of action estoppel test as stated in the Supreme Court's decision in *Grandview v Doering* [1976] 2 SCR 621.

7. Justice Pentney also erred in his interpretation of S.41 of the Copyright Act as it applied to the facts of the case.

8. Justice Pentney's reasons for the Judgment are inadequate and insufficient.

The Court's Jurisdiction is:

9. *Federal Courts Act*, R.S.C. 1985, c F-7, specifically section 27(1);

10. Section 41.1 of the *Copyright Act*, R.S.C. 1985, c C-42.

11. Such further grounds as counsel may advise and this Honourable Court may permit.

12. THE APPELLANT REQUESTS that this appeal be heard at Toronto, Ontario.

March 24, 2023



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Counsel for Appellant

Federal Court of Appeal File No. _____

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(Filed this 24th day of March 2023)

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