Federal Court Cour fédérale

Date: 20230829

Docket: T-374-21

Citation: 2023 FC 1164

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 29, 2023

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

VIDÉOTRON LTÉE
GROUPE TVA INC.
TVA PRODUCTIONS II INC.

Plaintiffs
Defendants by Counterclaim

and

TECHNOLOGIES KONEK INC.
COOPÉRATIVE DE
CÂBLODISTRIBUTION HILL VALLEY
LIBÉO INC.
LOUIS MICHAUD
JOÉ BUSSIÈRE
JEAN-FRANÇOIS ROUSSEAU

Defendants
Plaintiffs by Counterclaim

ORDER AND REASONS
(RECONSIDERATION OF JUDGMENT)

[1] The plaintiffs instituted proceedings against the defendants for copyright infringement. They accused the defendants of retransmitting television programs, without their consent, in hotel rooms. The trial took place in February 2023.

[2] On May 26, 2023, in a judgment bearing neutral citation 2023 FC 741, I allowed the action in part. Among other remedies, I ordered the defendants to pay the plaintiffs $553,000 in statutory damages under section 38.1 of the *Copyright Act*, RSC 1985, c C-42. This sum includes an amount of $545,000, calculated by multiplying the amount of $500 by the number of TVA Sports programs that the defendants illegally retransmitted.

[3] The plaintiffs now bring a motion to increase the amount awarded to $598,500. The evidence they filed at trial dealt with the number of programs illegally broadcast, but only up to January 31, 2023. They had stated that this calculation would be [TRANSLATION] "subject to amplification at the date of judgment". They are therefore of the view that I omitted to rule on part of their claim, the part dealing with the illegal broadcast of programs between February 1, 2023, and the date of judgment. According to the evidence filed in support of the motion, the defendants illegally broadcast 91 programs during this period.

[4] The plaintiffs base their motion on rule 397(1)(b) of the *Federal Courts Rules*, SOR/98-106, which reads as follows:

397 (1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the	**397 (1)** Dans les 10 jours après qu'une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant

Court, as constituted at the time the order was made, reconsider its terms on the ground that	à la Cour qui a rendu l'ordonnance, telle qu'elle était constituée à ce moment, d'en examiner de nouveau les termes, mais seulement pour l'une ou l'autre des raisons suivantes :
. . .	. . .
(b) a matter that should have been dealt with has been overlooked or accidentally omitted.	**b)** une question qui aurait dû être traitée a été oubliée ou omise involontairement.

[5] The plaintiffs acknowledge that this provision only applies in cases where an error has been made by the Court. It does not allow a decision to be reconsidered on the ground that the parties failed to adduce evidence or raise an argument in a timely manner: *1344746 Ontario Inc v Canada (National Revenue)*, 2008 FCA 314 at paragraph 9; *Khroud v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 1157 at paragraphs 11 and 12; *Campbell River Harbour Authority v Acor (Vessel)*, 2010 FC 844 at paragraphs 16 and 17.

[6] To assess the plaintiffs' allegations, we must bear in mind the respective roles of the parties and the judge in an adversarial system of civil procedure. It is up to the parties, not the judge, to define the issues and the relief sought and to adduce evidence to substantiate their claims. It follows that when a party fails to adduce evidence or state the legal grounds in support of a remedy, it cannot then argue that the lack of such a remedy, or even the judgment's silence in this regard, constitutes an oversight or omission.

[7] In this case, the plaintiffs rely on a single remark, at paragraph 74 of their written submissions, according to which the quantum of damages claimed was [TRANSLATION] "subject to amplification at the date of judgment". I also note that this point is not found in the relief sought, at paragraph 120 of the same document.

[8] The phrase "subject to amplification" is frequently used in pleadings to indicate that the precise scope of the injury sustained by the plaintiff is unknown at the time the action is brought. See for example *Édifices St-Georges inc c Ville de Québec*, 2021 QCCA 198 at paragraph 13. The plaintiff thus reserves the right to adduce more ample evidence at trial and increase the quantum of damages claimed. The "amplification" of the claim therefore takes place during the trial, not after.

[9] Consequently, the Court could not reasonably interpret the isolated use of the phrase [TRANSLATION] "subject to amplification" as the plaintiffs do now, that is, as indicating that the Court should have, immediately after rendering judgement, [TRANSLATION] "ask[ed] the Plaintiffs to provide an up-to-date calculation or otherwise take[n] this aspect under advisement" (paragraph 19 of the submissions).

[10] This is especially so because it is not simply a matter of submitting an "up-to-date calculation", but of adducing additional evidence. Indeed, in his affidavit in support of this motion, Mr. Picard states that the broadcast frequency of the programs at issue was variable. In other words, the number of programs broadcast from February 1, 2023, onwards could not be

deduced by mathematical extrapolation from the evidence adduced at trial. It was therefore necessary to file additional evidence in this regard.

[11] The plaintiffs could not expect the Court to take the initiative to invite them to perfect their evidence before rendering judgment. Proceeding in this manner would be inconsistent with the respective roles of the judge and the parties in a civil proceeding. If the plaintiffs wanted the Court to notify them before rendering judgment, they should have brought an explicit application in this regard, which they did not do. An isolated mention of the fact that the amount claimed is [TRANSLATION] "subject to amplification" is insufficient to express the plaintiffs' exceptional expectation with regard to the Court. Moreover, there is nothing in the evidence adduced at trial to suggest that the plaintiffs intended to file additional evidence. More specifically, during Mr. Picard's testimony, there was no indication that the evidence was incomplete and that additional evidence would be filed after the trial.

[12] Consequently, if there was an omission, it is the plaintiffs, not the Court, who must accept responsibility for that. The conditions for bringing a motion under rule 397(1)(b) have therefore not been met. The motion will therefore be dismissed.

[13] Normally, I would award costs to the defendants. However, since I have dismissed another motion brought by the defendants, I will make no award as to costs.

ORDER in T-374-21

THIS COURT ORDERS as follows:

1. The plaintiffs' motion for reconsideration of judgment is dismissed.

2. There is no award as to costs.

"Sébastien Grammond"
Judge

Certified true translation
Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-374-21
STYLE OF CAUSE:	VIDÉOTRON LTÉE, GROUPE TVA INC., TVA PRODUCTIONS II INC. v TECHNOLOGIES KONEK INC., COOPÉRATIVE DE CÂBLODISTRIBUTION HILL VALLEY, LIBÉO INC., LOUIS MICHAUD, JOÉ BUSSIÈRE, JEAN-FRANÇOIS ROUSSEAU

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO SECTIONS 3, 369 AND 399 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GRAMMOND J
DATED:	AUGUST 29, 2023

APPEARANCES:

Jean-Sébastien Dupont François Guay Étienne Lacroix-Couillard Lambert Beaulac	FOR THE PLAINTIFFS
Joshua Spicer William Audet Abdulkadir Abkey	FOR THE DEFENDANTS

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