Federal Court  Cour fédérale

Date: 20240412

Docket: T-609-17

Citation: 2024 FC 579

Edmonton, Alberta, April 12, 2024

PRESENT: Madam Associate Judge Catherine A. Coughlan

BETWEEN:

VERMILLION NETWORKS INC.

Applicant

and

GREEN CIRCLE IDEAS INC.

Respondent

ORDER AND REASONS

I. Overview

[1] The Respondent, Green Circle Ideas Inc., seeks an order pursuant to Rule 167 of the *Federal Courts Rules* [*Rules*], dismissing the underlying Notice of Application [Application] for delay. The Application, filed on April 25, 2017, is brought under Sections 18, 55, 57 and 58 of the *Trademarks Act*, RSC 1985, c T-13 and Rule 300(b) of the *Rules*.

[2] The Respondent asserts that the delays in this proceeding, which are substantial, are all attributable to the Applicant or its counsel or both. Further, the Respondent says that while

prejudice should be presumed after a lengthy delay, it has suffered actual prejudice by the 2018 death of a potential witness.

[3] While acknowledging the delay, the Applicant resists dismissal of its Application asserting that the periods of delay are excusable and that there is no prejudice to the Respondent in allowing the Application to proceed to a determination on its merits. Moreover, the Applicant contends that the Respondent's complacency during the periods of delay is a relevant factor the Court must consider on this motion.

II. Procedural History

[4] In both their written representations and in oral argument, the parties consider the delays by reference to three distinct time periods. For the purposes of this motion, and setting out the procedural history of the Application, I will adopt those periods.

A. *April 25, 2017-February 2017 – initial period – no delay*

[5] The underlying Application seeks expungement of the Respondent's trademark registration no. TMA 822,855 for Green Circle Salons and Design mark. The Recorded Entries for this proceeding, attached as Exhibit "A" to the affidavit of Jenifer Graham, affirmed December 14, 2023, filed in support of this motion, indicate that the Respondent filed a Notice of Appearance on May 3, 2017. On May 8, 2017, a certified copy of the original material was received from the Registrar of Trade Marks and placed on the Court's file.

[6] By correspondence dated May 19, 2017, the Applicant requested the Application be designated as a specially managed proceeding. The Respondent objected, but on June 1, 2017, the

Chief Justice issued an Order pursuant to Rule 383 assigning Associate Judge (then Prothonotary) Aalto as the Case Management Judge. On June 21, 2017, a case management conference was convened and on June 27, 2017, the Applicant filed proof of service of its Rule 306 affidavit.

[7] Thereafter, it is common ground that the parties engaged in unsuccessful settlement discussions until January 2018. In correspondence dated January 12, 2018, the Applicant's then counsel sought a one-month extension to a case management conference scheduled for January 18, 2018, to allow the parties to continue settlement discussions. If discussions continued during that period, they did not bear fruit.

B. ***February 2018-September 2019 – first period of delay (20 months)***

[8] On March 9, 2018, a Notice of Change in Solicitor was filed on behalf of the Applicant appointing Clark and Associates as solicitors of record. Again, it is common ground that nothing of substance transpired during this 20-month period. Indeed, on August 13, 2019, Associate Judge Aalto issued an Order removing Clark and Associates as solicitors of record and directing the Applicant to appoint new solicitors or bring a motion pursuant to Rule 120 to have a corporate representative represent the Applicant.

C. ***October 2019-Janaury 2023 – second period of delay (39 months)***

[9] Despite having been represented by counsel since the commencement of the Application, the Applicant opted to bring a motion under Rule 120. The motion was filed on September 12, 2019. The Respondent opposed the motion. The motion was perfected by September 27, 2019, but no decision was ever released by the Court.

D. ***January 19, 2023-November 20, 2023 – third period of delay (9 months)***

[10] On January 19, 2023, the Chief Justice issued an Order assigning me as Case Management Judge to replace Associate Judge Aalto. It appears that the Order was served on Clark and Associates but not on the corporate Applicant. On May 11, 2023, at my request, the Court Registry contacted the principal of the Applicant, Mr. Wade Ferguson. Mr. Ferguson advised the Registry Officer that he was seeking to retain counsel and would not be pursuing his Rule 120 motion.

[11] In correspondence to the Court dated July 7, 2023, Miles Davison LLP advised they had carriage of the file and confirmed that the Applicant would not be pursuing its Rule 120 motion. On July 11, 2023, Miles Davison LLP filed a Notice of Appointment of Solicitor.

[12] The Recorded Entries do not disclose any further activity until September 28, 2023, when I issued a Direction directing the Applicant to provide a status update by October 30, 2023. That Direction indicated that failing receipt of a status update, the proceeding would be placed in status review with a view to dismissal for delay. The parties responded to the Direction in late October and a case management conference was convened for November 20, 2023. At that case management conference, the Court set a schedule for the exchange of motion material leading to the hearing of the within motion to dismiss for delay.

[13] On February 13, 2024, a further Notice of Change of Solicitor was filed on behalf of the Applicant appointing Shift Law Professional Corporation as solicitors of record. Mr. Cooley of Shift Law appeared on this motion.

[14] Both parties filed evidence in support of the motion. The Respondent filed the affidavit of Jenifer Graham, legal assistant to Mr. Reive, counsel for the Respondent and the affidavit of

Shane Price. Mr. Price is the Founder and CEO of the Respondent. The Applicant filed the affidavit of Wade Ferguson, the Director of the Applicant. The affiants were cross-examined on their affidavits.

[15] The evidence led on this motion discloses that following the appointment of Miles Davison LLP in July 2023, the parties exchanged some correspondence but nothing of substance occurred until the Court's Direction in September 28, 2023.

III. Legal Principles

[16] Rule 167 provides as follows:

Dismissal for delay	**Rejet pour cause de retard**
167 The Court may, at any time, on the motion of a party who is not in default of any requirement of these Rules, dismiss a proceeding or impose other sanctions on the ground that there has been undue delay by a plaintiff, applicant or appellant in prosecuting the proceeding.	167 La Cour peut, sur requête d'une partie qui n'est pas en défaut aux termes des présentes règles, rejeter l'instance ou imposer toute autre sanction au motif que la poursuite de l'instance par le demandeur ou l'appelant accuse un retard injustifié.

[17] The parties agree on the legal principles that apply to a motion for dismissal for delay. The classic, conjunctive, tri-partite test set out by the House of Lords in *Allen v Sir Alfred McAlpine & Sons Ltd*, [1968] 1 All ER 543 (CA), endorsed by the Federal Court of Appeal in *Canada v Aqua-Gem Investments Ltd*, 1993 CanLII 2939 (FCA) [*Aqua-Gem*], and confirmed recently in *Sweet Productions Inc v Licensing LP International SÀRL*, 2022 FCA 111 at para 35 [*Sweet Productions*], directs the Court to determine whether:

i. There has been undue delay;

ii. The delay is excusable; and

iii. The defendants (respondents) are likely to be seriously prejudiced by the delay.

[18] Rule 167 reflects the Federal Court's philosophical concern about the systemic cost of prolonged litigation to both the Court and to litigants, and vests control over the pace of the proceedings in the Court rather than the parties. It is noteworthy that motions under Rule 167 are infrequent, largely owing to the extensive use of special management in this Court. Nevertheless, as the present motion demonstrates, the objectives of a case management regime can be frustrated by the failure of a party to advance their proceeding in a timely manner.

[19] In *Sweet Productions* at para 45, the Federal Court of Appeal cautioned that dismissal of the action is not a presumptive remedy upon a finding of undue delay. Rather, Rule 167 grants the Court wide discretion to craft a remedy that is appropriate in the circumstances of each case. It remains, however, that to allow a delayed proceeding to move forward, there must be a fair prospect (usually within the framework of case management) that the plaintiff or applicant is intent on bringing the case to its end and has the means to do so. "The Court cannot simply rely on a mere belief or hope that a plaintiff will change course in the absence of any substantiating evidence": *Sweet Productions* at para 46.

[20] It is noteworthy that the Federal Court of Appeal's decision in *Sweet Productions* was the subject of a leave application to the Supreme Court of Canada [Supreme Court]. On September 21, 2023, the Supreme Court granted leave but, in addition, granted further relief

pursuant to s. 70 of the *Supreme Court Act*, RSC 1986, c S-26. The Judgment is attached hereto as Annex A.

[21] The Applicant argues that notwithstanding the Supreme Court's reversal of the Federal Court of Appeal's decision, that Court's reasoning is still correct and there is no presumption of dismissal upon a finding of undue or inordinate delay. In my view, that approach is correct.

[22] Under s.70, the Supreme Court must grant the reversal upon the respondent's consent. The provision is rarely used and there is little judicial or academic commentary on its usage or effect. However, as noted by Sancho McCann in his article: *Consenting to reverse under s. 70 of the Supreme Court Act 2023-09-23, edited: 2023-10-03*, online: <https://sanchom.github.io/consent-reversal.html>, appeals are taken from the judgment of the Court not from its reasons. In a s.70 reversal, McCann argues that where the Supreme Court has not considered the reasoning of the lower court, the application of principles of *stare decisis* operate to maintain the binding precedent of the lower court's decision. He buttresses his view by noting there are instances where a reviewing court disagrees with a lower court's reasoning yet leaves its judgment in place on other grounds. In other words, the "reasons may be wrong but the order right": *Canadian Express Ltd v Blair*, 1991 CanLII 7172 (ON SC).

[23] In my view, McCann's reasoning is sound and the Federal Court of Appeal's decision remains binding precedent.

[24] Accordingly, against these general principles and the purpose of Rule 167, I will address whether the Applicant's Application should be dismissed for delay or whether another remedy is more appropriate.

A. ***Has there been undue delay?***

[25] Rule 167 is silent on the length of delay required to trigger a determination of undue delay. Instead, the Court has discretion to assess the individual circumstances of each proceeding and the conduct of the parties to those proceedings to determine whether the delay is undue. What is inordinate delay in one proceeding may not be in another.

[26] Inordinate or undue delay is measured from the commencement of a proceeding and not from the last step taken: *Behnke v Canada (Department of External Affairs)*, 2000 CarswellNat 1543 at para 25. In the present matter, the delay is just short of seven (7) years.

[27] The Applicant acknowledges there has been delay. In my view, it could hardly be argued otherwise given the fact that the only substantive steps taken, that is, the service of the Rule 306 affidavit and the settlement discussions, all occurred in the first year following the filing of the Application. Thereafter, little of substance was accomplished to move the proceeding forward. At this point, I regard the Application as in its infancy.

[28] In these circumstances, I am satisfied that there has been undue delay.

B. ***Is the delay excusable?***

[29] The Applicant argues that the delays are explainable and are excusable. As set in the procedural history section above, the Applicant urges the Court to consider the delays as three distinct periods.

(1) February 2019-September 2019 – 20 months

[30] In this period, the Applicant asserts that the delay did not begin until May 14, 2018, when Respondent's counsel wrote to the Court advising that they intended to bring motions to strike portions of the Application and to seek security for costs. While those motions were never filed, I am satisfied that the delay began earlier, in February 2018, following the letter to the Court from the Applicant seeking to adjourn a case management conference scheduled for January 18, 2018.

[31] During this 20-month period, the Applicant argues it suffered a breakdown in its relationship with its second counsel, Clarke and Associates. In his affidavit, Mr. Ferguson deposes that as a result of the breakdown, the Applicant was unable to properly prepare and file court documents and a fees dispute arose between the Applicant and its counsel. During the currency of the fees dispute, Mr. Ferguson alleges that he was unable to retain other counsel because Clark and Associates refused to release their file and other potential new counsel would not accept a retainer without the full file.

[32] Although the Applicant acknowledges that for the purposes of bringing this motion, the Respondent is not in default of any provisions of the *Rules*, it asserts that the Respondent's conduct during this period is a relevant factor in considering whether the delay was inordinate or inexcusable. Pointing to the May 14, 2018 correspondence, the Applicant says that the Respondent failed to make good on their threats to bring motions, failed to serve Rule 307 evidence, and failed to cross-examine Mr. Ferguson on his Rule 306 affidavit. Citing *Canada v Stoney Band*, 2005 FCA 15 at para 57, the Applicant argues that "conduct by a defendant that deceives or misleads a plaintiff or induces or otherwise causes a plaintiff not to proceed promptly with an action will

always be relevant on a status review and will be raised by the plaintiff as its explanation for the delay" [emphasis in original].

[33] Here, the Applicant says it should not be faulted for relying on the Respondent's representations regarding its threatened motions. It argues that the threat of those motions caused delay because the outcome of the motions would determine the immediate next steps in the Application. Moreover, having stated its intention to bring the motions, the Respondent never communicated its intention not to proceed. Thus, the Applicant asserts, the Respondent bears some responsibility for the delays in this period.

[34] The Respondent flatly rejects any responsibility for the delay. Rather, it argues that the delays in this period all lie at the feet of the Applicant and it has provided no legitimate excuse for its delay. With respect to the May 14, 2018 letter to the Court, the Respondent argues that the letter plainly indicates that the Applicant had not responded to earlier correspondence sent on January 9, 2018, and therefore the Applicant was already in default by the time the May 14, 2018 letter was received.

[35] Further, the Respondent argues that the May 14, 2018 letter provides no basis upon which it can be attributed with delay. Rather, it says that the Applicant's delays stem from its decision to prioritize other proceedings it has in this Court, giving those proceedings a higher priority and simply allowing this application to lay dormant. It bolsters its position by pointing to the fact that the Applicant had counsel in its other proceedings but did not appoint new counsel in this proceeding.

[36] Further, the Respondent argues that it had no obligation whatsoever to move the Application forward. Pointing to decisions of this Court, the Respondent argues that the plaintiff/applicant has the onus to move proceedings forward and the defendant/respondent "can with propriety wait until [they] can successfully apply to the court to dismiss the [plaintiff's/applicant's action/application] for want of prosecution": *Aqua-Gem* at para 103.

[37] In response to the Applicant's assertion that it could not retain other counsel without the Clark and Associates' file, the Respondent says this argument has no merit because Mr. Ferguson had copies of his Rule 306 affidavit and the Application — nothing further was required.

[38] I am satisfied that the delay during this period is attributable to the Applicant and/or its counsel. I am not convinced that the Applicant was unable to retain new counsel or otherwise move the Application forward. Further, I find no merit in the suggestion that the Respondent bears some responsibility for the delay based on the threatened motions. In my view, it is entirely unhelpful for the Applicant to suggest that blame somehow lies at the feet of the Respondent. In any proceeding, the applicant bears the obligation to move the litigation forward. I know of no situation where the onus would shift to the respondent. The mere threat of interlocutory motions is not sufficient to justify a delay of 20 months.

[39] That said, I do not agree with the Respondent's blanket assertion that a respondent would never have any responsibility to move a proceeding forward. In the context of a case managed proceeding, such as this one, there can and will be mutual obligations that are imposed by the Court. In this instance, however, no obligations were imposed by the Court on the Respondent and thus the delays during this period are entirely attributable to the Applicant and/or its counsel.

[40] In the result, the Applicant has failed to demonstrate that the delay during this period was excusable.

(2) October 2019-January 2023 – 39 months

[41] This period of delay is by far the longest. As noted earlier, the Applicant brought a motion pursuant to Rule 120 to have Mr. Ira Feldman, an officer of the Applicant, represent the Applicant. The motion was perfected in late September 2019, but no decision was ever made by the then case management judge.

[42] The Applicant argues that this delay is excusable because it was entitled to bring a Rule 120 motion rather than appoint new counsel and the motion was properly before the Court. While loathe to blame the Court, the Applicant says it is not responsible for this period of delay. Further, Mr. Ferguson gave evidence to the effect that in July 2021, he called the Court Registry to enquire about the status of the motion and was advised that due to the COVID-19 pandemic, the Court was experiencing a number of delays and there was nothing Mr. Ferguson could do until the decision was released. Accordingly, the Applicant took no further steps during this period.

[43] While it is indeed unfortunate that the Court failed to address the motion, there are a number of factors that the Court must consider in assessing whether the Applicant bears some responsibility for the delay or portions of the delay during this lengthy period.

[44] First, it is noteworthy that on July 19, 2019, just 8 weeks before the Applicant filed the Rule 120 motion, Associate Judge Aalto dismissed the identical motion in Court File No. T-533-19. Vermillion Networks Inc., the Applicant in this matter, is also the Applicant in T-533-19. In his Order, Associate Judge Aalto dismissed the motion on a number of bases, but

largely because the Applicant had failed to demonstrate special circumstances of why it was unable to retain counsel. In other words, the Applicant was unable to show impecuniosity. No appeal was taken. Nevertheless, a few weeks later, the Applicant filed virtually the same motion in this proceeding and relied on the same financial statements and evidence of impecuniosity that Associate Judge Aalto found to be "singularly lacking."

[45] Despite what appears to be an abuse of process, the Applicant argues that the second Rule 120 motion was properly before the Court because it attempted to cure the deficiencies identified by Associate Judge Aalto in the T-533-19 decision.

[46] Having reviewed the Recorded Entries for T-533-19, I note that four (4) months after the Order issued, counsel was appointed to represent the Applicant. Moreover, on April 6, 2021, there was a further change in counsel to Miles Davis LLP, who would later become solicitors of record in this proceeding.

[47] Second, on April 6, 2022, in Court File No. T-1484-21, I dismissed a Rule 120 motion in which Mr. Ferguson sought to represent the Applicant, Vermillion Networks Inc., largely on the basis of a failure to prove the Applicant was impecunious. My Order provided that the Applicant had ten (10) days within which to appoint a solicitor of record. No appeal was taken from the Order, but a solicitor was not appointed until August 31, 2022, when Miles Davis LLP was appointed solicitors of record.

[48] Finally, in correspondence dated July 7, 2023, from Miles Davis LLP, Mr. Wolff advised that the Applicant would not be pursuing the Rule 120 motion as Mr. Feldman was no longer

available to act for the Applicant. The letter provided no indication as to when Mr. Feldman became unavailable to act.

[49] Having considered all of these factors, I am unable to conclude, as the Applicant argues, that it was "prudent" for it to have brought a Rule 120 motion following the removal of Clark and Associates and then simply do nothing for a period of 39 months.

[50] At the hearing of this matter, I questioned counsel why the Applicant simply did not appoint counsel following the Clark and Associates' removal. Mr. Cooley advised that the Applicant derives income from various supporters and those supporters are more apt to support some litigation over others. I take from that answer that this particular proceeding did not garner much financial support. Unfortunately, that was the same argument that Mr. Ferguson advanced before me in Court File No. T-1484-21 and which I rejected.

[51] There can be no doubt that the Court's failure to address the motion excuses part of the delay. However, the Applicant's Rule 120 motion can fairly be regarded as either an abuse of process or a strategic delay tactic. The Applicant simply recycled a failed motion by adding some additional evidence from Mr. Feldman. It remains, however, that he proffered the same financial information that was found lacking by Associate Judge Aalto in July 2019 and by me in April 2022. Moreover, in both T-533-19 and T-1484-21, the Applicant eventually appointed counsel despite assertions of impecuniosity. In these circumstances, I am satisfied that the Applicant must bear some responsibility for the delays in this period and it has failed to excuse those delays.

(3) January 19, 2023 – November 2023 – 9 months

[52] As set out in the procedural history, the Applicant was not served with the Order appointing me Case Management Judge and any delays from January until May are excusable on that basis. That said, I am concerned that it took the Applicant from May until July to appoint counsel. More concerning is that thereafter, little of substance was accomplished. During that interval, the parties look to blame each other for failure to respond to correspondence. However, had the Applicant been intent upon pursuing the Application with alacrity, it could have taken the simple expedient of requesting a case management conference; it did not do so. Indeed, I was compelled to issue a Direction on September 28, 2023, reminding the parties of the years of inactivity and demanding that the Applicant provide a status update.

[53] While this period of delay is relatively brief by comparison to the others, given the length of the total delay, it cannot be ignored. In the transcript of the cross-examination of Mr. Ferguson, he admitted that he worked with his counsel, Mr. Wolff, on Court File Nos. T-533-19, T-340-22, T-2128-22 and T-1484-21. At page 43 of the transcript, lines 2-10, he notes the following:

> And in the period between May 11th of 2023 or whatever the date was I indicated for the date the registry officer called me and–and July 7th of 2023, between that period, he and I were deeply challenged to keep up with a large number of filing preparations and filing deadlines in order to make sure not to lose–lose—not to fail to carry forward of those files of which he already had conduct.

[54] From this response, I must agree with the Respondent that the Applicant was simply prioritizing other litigation that it had on-going in the Court over this proceeding. In my view, that prioritization makes the delay in this period inexcusable. This is particularly so given the overall length of the delay.

(4) Is the Respondent likely to be seriously prejudiced by the delay?

[55] The Respondent argues that the Court should find it has suffered serious prejudice by the delay. Its arguments are two-fold. First, it urges this Court to adopt the Ontario Court of Appeal's approach of presuming prejudice once undue and inexcusable delay is demonstrated: *Ticchiarelli v Ticchiarelli*, 2017 ONCA 1 (CanLII) at paras 29 and 32; *Langenecker v Sauvé*, 2011 ONCA 803 at para 23.

[56] Second, it argues that it has suffered actual delay by the sudden death of a potential witness.

[57] The Applicant argues that the Federal Court has not explicitly stated that there is a presumption of prejudice and thus serious prejudice cannot be inferred; it must be proven through evidence: *Ruggles v Fording Coal Limited*, 1998 CanLII 8262 (FC) at para 8 [*Ruggles*]. Here, the Applicant says the Respondent has failed to adduce evidence that it will likely suffer serious prejudice if the proceeding is allowed to continue.

[58] That argument aside, before me, the Applicant conceded that *Universal Graphics Ltd, v Canada*, 1997 CanLII 16683 (FC) at paras 10 and 11 [*Universal Graphics*], stands for the proposition that the Court can infer prejudice where there is a finding of inordinate or undue delay.

[59] In my view, the Respondent is not required to lead evidence of actual prejudice suffered. As the Court in *Sweet Productions* concluded at para 35, the test is whether the defendant is <u>likely</u> to be seriously prejudiced by the delay. Here, given an inordinate and largely unexplained delay of seven (7) years, I am prepared to infer serious prejudice. There is no need for me to resort to "the fiction of discovering prejudice": *Universal Graphics* at para 10.

(5) Are other sanctions appropriate?

[60] That, however, does not end the matter. As dismissal is not the presumptive remedy on delay, I must determine whether there is a less drastic measure that should be considered in lieu of dismissal. Generally, the imposition of case management would be the fall back position. Unfortunately, that route has not proven successful in this case.

[61] The Applicant argues that dismissal is not the appropriate sanction. Such a sanction, it says, would deprive the Applicant of its day in Court. Relying on this Court in *Ruggles*, citing *Hagwilget Indian Band v Canada (Minister of Indian Affairs and Northern Development)* et al. (1996), 115 FTR 268 (TD) at para 4, the Applicant asserts that dismissal is a stern measure that should not be undertaken lightly. Moreover, the Applicant says that it has met the criteria established in *Sweet Productions* necessary to allow a proceeding to move forward. That criteria is set out at paragraph 46 as follows:

> […]
>
> For a case to be allowed to move forward, there must be a fair prospect (usually within the framework of case management) that the plaintiff is intent on bringing the case to its end and has the means to do so. The Court cannot simply rely on a mere belief or hope that a plaintiff will change course in the absence of any substantiating evidence.

[62] Here, the Applicant submits that Mr. Ferguson's affidavit establishes the Applicant's intention to pursue the Application to a determination on its merits; the Applicant has proposed a schedule for next steps; and the matter is already case managed.

[63] Unsurprisingly, the Respondent argues that no sanction short of dismissal will address the inordinate delay. It argues that for long periods the Applicant has shown little intention of pursing

this Application. The Respondent hastens to point out that applications under the *Trademarks Act*, RSC 1985, c T-13 are intended to be pursued summarily.

[64] During the hearing of this matter, I asked counsel for the Applicant what other sanctions the Court might consider. Counsel was unable to offer any suggestions apart from the imposition of a schedule by the Court and perhaps a costs award. As to the latter, that is not a sanction but merely the outcome of the motion.

[65] In all of the circumstances of this proceeding, I cannot conclude that there is a fair prospect the Applicant is intent on bringing this Application to an end. For me to conclude otherwise is to rely on mere statements of hope or belief. Given the lengthy delay and the finding of prejudice, the only appropriate sanction is dismissal.

ORDER in T-609-17

THIS COURT ORDERS that:

1. The Application is dismissed.

2. The Respondent shall have its costs of the motion and the Application.

3. If the parties are unable to agree on costs, they may make submissions of no more than five (5) pages, not later than April 19, 2024.

"Catherine A. Coughlan"
Associate Judge

ANNEX A

Supreme Court of Canada

Cour suprême du Canada

No. 40354

September 21, 2023

BETWEEN:

Licensing IP International S.À.R.L., 9279-2738 Quebec Inc., 9219-1568 Quebec Inc., Société de Gestion FDCO Inc., Feras Antoon and David Tassillo

Applicants / Appellants

- and -

Sweet Productions Inc. and Enchanted Rise Group Limited

Respondents

JUDGMENT

The application for leave to appeal from the judgment of the Federal Court of Appeal, Number A-100-21, 2022 FCA 111, dated June 10, 2022, is granted.

The appellants apply for an order, pursuant to s. 70 of the *Supreme Court Act*, reversing the judgment of the Federal Court of Appeal dated June 10, 2022, and restoring the judgment of the Federal Court, Number T-1440-19, 2021 FC 216, dated March 10, 2021.

Le 21 septembre 2023

ENTRE :

Licensing IP International S.À.R.L., 9279-2738 Quebec inc., 9219-1568 Quebec Inc., Société de Gestion FDCO Inc., Feras Antoon et David Tassillo

Demandeurs / Appelants

- et -

Sweet Productions Inc. et Enchanted Rise Group Limited

Intimées

JUGEMENT

La demande d'autorisation d'appel de l'arrêt de la Cour d'appel fédérale, numéro A-100-21, 2022 CAF 111, daté du 10 juin 2022, est accueillie.

Les appelants sollicitent, conformément à l'art. 70 de la *Loi sur la Cour suprême*, une ordonnance cassant l'arrêt de la Cour d'appel fédérale datée du 10 juin 2022, et rétablissant une décision de la Cour fédérale, numéro T-1440-19, 2021 CF 216, datée du 10 mars 2021.

The appellants bring the motion under s. 70 of the *Supreme Court Act* on the basis that the parties have settled their dispute and have made a reversal on consent order a condition of their settlement.

Upon reading the materials filed by the parties, and noting the consent of the respondents to a reversal of the judgment pursuant to s. 70 of the *Supreme Court Act*;

IT IS HEREBY ORDERED THAT:

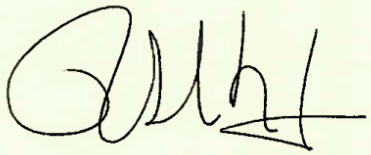
The motion to reverse the judgment of the Federal Court of Appeal is granted. The judgment of the Federal Court of Appeal bearing court file number A-100-21, 2022 FCA 111, and dated June 10, 2022, is set aside, and the judgment of the Federal Court, bearing court file number T-1440-19, 2021 FC 216, dated March 10, 2021, is restored.

Les appelants présentent la requête en vertu de l'art. 70 de la *Loi sur la Cour suprême* au motif que les parties ont réglé leur litige et ont fait d'une ordonnance de cassation sur consentement une condition de leur règlement.

Après examen des documents déposés par les parties, et prenant acte du consentement des intimées à la cassation du jugement conformément à l'art. 70 de la *Loi sur la Cour suprême*;

IL EST PAR LES PRÉSENTES ORDONNÉ CE QUI SUIT :

La requête en cassation de l'arrêt de la Cour d'appel fédérale est accueillie. L'arrêt de la Cour d'appel fédérale portant le numéro de dossier A-100-21, 2022 CAF 111, et daté du 10 juin 2022, est annulé, et la décision de la Cour fédérale portant le numéro T-1440-19, 2021 CF 216, datée du 10 mars 2021, est rétablie.



C.J.C.
J.C.C.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-609-17
STYLE OF CAUSE:	VERMILLION NETWORKS INC. v GREEN CIRCLE IDEAS INC.
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 27, 2024
ORDER AND REASONS:	COUGHLAN A.J.
DATED:	APRIL 12, 2024

APPEARANCES:

Stephen Cooley	FOR THE APPLICANT
David Reive Raenaud Tiwari	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shift Law Professional Corporation Toronto, Ontario	FOR THE APPLICANT
Sprigings IP Toronto, Ontario	FOR THE RESPONDENT