

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171213

Docket: A-85-17

Citation: 2017 FCA 247

**CORAM: DAWSON J.A.
STRATAS J.A.
RENNIE J.A.**

BETWEEN:

**MUHAMMAD FARID, ABDUR RASHID,
A PARTNERSHIP DOING BUSINESS AS
KAAFTRONICS**

Appellants

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 13, 2017.
Judgment delivered from the Bench at Toronto, Ontario, on December 13, 2017.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171213

Docket: A-85-17

Citation: 2017 FCA 247

**CORAM: DAWSON J.A.
STRATAS J.A.
RENNIE J.A.**

BETWEEN:

**MUHAMMAD FARID, ABDUR RASHID,
A PARTNERSHIP DOING BUSINESS AS
KAAFTRONICS**

Appellants

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 13, 2017).

STRATAS J.A.

[1] The appellants appeal from the judgment dated February 7, 2017 of the Federal Court (*per St-Louis J.*): 2017 FC 143. The Federal Court dismissed the appellants' action with costs.

[2] In the Federal Court the appellants claimed compensatory, exemplary and punitive damages against Canada arising from its conduct during a procurement process. They alleged several causes of action. The Federal Court found that the appellants had not made out any of them.

[3] In order for this Court to set aside the Federal Court's judgment, the appellants must persuade us that the Federal Court erred in law or on an extricable question of principle or that the Federal Court committed palpable and overriding error in its findings of fact or in its factually suffused findings of mixed law and fact: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401. Palpable and overriding error is a highly deferential standard of review: *Benhaim v. St. Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352 at para. 38; *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras. 56-74. For the following reasons, we have not been persuaded.

[4] The appellants' action challenges two solicitations for bids conducted by the Department of Public Works and Government Services.

[5] In the first, the appellants' central submission is that their bid was the only one submitted and, thus, was the lowest bid and so, as a matter of contractual interpretation, Public Works had to accept their bid and enter into a purchase agreement with them. But Public Works did not. It rejected the appellants' bid on the ground it was too high. It exceeded the limit in Public Works' budget, a limit that was not disclosed to the appellants in the bidding process.

[6] The appellants' advanced their central submission in the Federal Court. The Federal Court did not accept it, finding that, as a matter of contractual interpretation, Public Works was not obligated to accept the appellants' bid in these circumstances. In reaching this finding, the Federal Court specifically considered contractual language stating that a "responsive bid will be recommended for award of the contract"—language that the appellants say required Public Works to award the contract to them—and found that other contractual language gave Public Works the clear right to "reject any or all bids received," even a "recommended" bid, to "cancel the bid solicitation at any time," and to "reissue the bid solicitation." The appellants' submitted that this contractual language is ambiguous and should be interpreted in accordance with an entire agreement clause. The Federal Court did not accept this. It saw no ambiguity in the terms and interpreted them in a manner consistent with the entire agreement clause.

[7] In the Federal Court, the appellants advanced other submissions and the Federal Court rejected them all. It did not find any improper, undisclosed criteria relied upon by Public Works in rejecting the appellants' bid. It held on the evidence before it that Public Works' decision not to accept the appellants' bid was done in good faith and for legally acceptable reasons. It also did not accept that there were deficiencies in the way Public Works established its budget, nor did it accept that the bidding process offended the *North American Free Trade Agreement Between the Government of Canada, the Government of Mexico and the Government of the United States*, 17 December 1992, Can. T.S. 1994 No. 2, 32 I.L.M. 289.

[8] On all these points, we are not persuaded that the Federal Court committed any error of law, error in extricable legal principle, or palpable and overriding error.

[9] The appellants also submit that the Federal Court erred in finding that Public Works was under a legal duty to disclose the budget under which it was operating in the tendering process. We disagree. Given the tendering documents and the circumstances of this case, such a duty did not arise as a matter of law: see *Martel Building Ltd. v. The Queen*, 2000 SCC 60, [2000] 2 S.C.R. 860 at para. 67; *Defence Construction (1951) Ltd. v. Zenix Engineering Ltd.*, 2008 FCA 109, 377 N.R. 47; *GDC Gatineau Development Corp. v. Canada (Minister of Public Works and Government Services)*, 2009 FC 1275, 360 F.T.R. 294. We are not persuaded that these authorities can be distinguished on the facts of this case.

[10] After rejecting the appellants' bid, Public Works conducted a second solicitation for bids. The appellants did not respond to it. Nevertheless, in their action they impugned the solicitation, Public Works' later conduct of the bidding process, and the contract that eventuated. The Federal Court found that the appellants did not respond to the second solicitation. In our view, because of that, the appellants had no standing to raise these issues.

[11] Therefore, despite Mr. Farid's thorough and well-organized submissions, we shall dismiss the appellants' appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-85-17

APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE ST-LOUIS DATED FEBRUARY 7, 2017, DOCKET NO. T-2108-11

STYLE OF CAUSE: MUHAMMAD FARID, ABDUR RASHID, A PARTNERSHIP DOING BUSINESS AS KAAFTRONICS v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: DECEMBER 13, 2017

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
STRATAS J.A.
RENNIE J.A.

DELIVERED FROM THE BENCH BY: STRATAS J.A.

APPEARANCES:

Muhammad Farid ON HIS OWN BEHALF

Stewart Phillips FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada