

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120323**

**Docket: A-66-12**

**Citation: 2012 FCA 98**

**Present: MAINVILLE J.A.**

**BETWEEN:**

**EL MOCAMBO ROCKS INC.**

**Appellant**

**and**

**SOCIETY OF COMPOSERS, AUTHORS AND  
MUSIC PUBLISHERS OF CANADA (SOCAN)**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on March 23, 2012.

**REASONS FOR ORDER BY:**

**MAINVILLE J.A.**

Federal Court  
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**REASONS FOR ORDER**

**MAINVILLE J.A.**

[1] The appellant is appealing the order of Hughes J. of the Federal Court dated January 24, 2012 by which a default judgment was granted against it in the amount of \$16,990.00 with costs.

[2] The appellant submits a motion pursuant to Rule 120 of the *Federal Courts Rules*, SOR/98-106 for leave to be represented in this appeal by its president and owner Mr. Abbas Jahangiri, rather than by a solicitor. Rule 120 reads as follows:

**120.** A corporation, partnership or unincorporated association shall be represented by a solicitor in all proceedings, unless the Court in special

**120.** Une personne morale, une société de personnes ou une association sans personnalité morale se fait représenter par un avocat dans toute instance, à

circumstances grants leave to it to be represented by an officer, partner or member, as the case may be.

moins que la Cour, à cause de circonstances particulières, ne l'autorise à se faire représenter par un de ses dirigeants, associés ou membres, selon le cas.

[3] In order to demonstrate special circumstances under Rule 120 in the context of an appeal to this Court – and though other factors may apply depending of the nature of the appeal – a corporation must at least demonstrate that (a) it cannot afford a solicitor; (b) that the issues in appeal are not of such a complexity as to be beyond the reasonable capabilities of the proposed representative; and (c) that the appeal can be handled expeditiously by the proposed representative.

[4] The demonstration that a corporation cannot afford a solicitor should usually be made by submitting complete and clear financial information concerning the corporation, preferably by means of financial statements. Financial statements are particularly useful for this purpose where, as in this case, a corporation is actively carrying on a business enterprise.

[5] In considering the capabilities of the proposed representative to pursue the appeal for a corporation, and whether that representative can handle expeditiously the appeal, the conduct of the corporation and of its representative in the court below may also be taken into account.

[6] In this case, the appellant corporation has failed to provide financial statements in support of its motion. The only documentary evidence submitted are a bank statement for an account with the CIBC showing an overdraft of \$5,607, a property tax notice dated November 3, 2011 relating to a building which is not owned by the appellant corporation, and an Ontario Ministry of Revenue retail

sales tax and interest summary dating from over one year ago and concerning the period of November 2006 to June 2010. In the absence of clear updated financial statements or of other clear and updated financial information concerning its continuing operations, I am unable to conclude that the appellant corporation does not have the financial capacity to retain a solicitor to pursue its appeal.

[7] In addition, though the appellant corporation asserts that Mr. Jahangiri has represented it “in several other provincial cases”, no evidence of this has been submitted through an affidavit or otherwise.

[8] The record before me also shows that (a) SOCAN’s statement of claim was filed with the Federal Court on May 6, 2011; (b) on June 20, 2011, the Registry informed a representative of the appellant corporation that it must be represented by counsel or submit a motion requesting leave to be represented by an officer; (c) no such motion was subsequently submitted prior to judgment; (d) a notice of status review was issued by the Federal Court on November 16, 2011; (e) no remedial measures were taken by the corporation to constructively respond to this status review; (f) a resulting judgment was rendered by Hughes J. against the corporation on January 24, 2012 upon an *ex parte* motion. Taking into account the lack of diligence of the appellant corporation and of its proposed representative in the Federal Court, I cannot conclude that the proposed representative has the capabilities to diligently pursue this appeal.

[9] In light of all of the above, the motion shall be dismissed and the appellant shall have 20 days from the order in order to appoint a solicitor to represent it in this appeal.

"Robert M. Mainville"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-66-12

**STYLE OF CAUSE:**

El Mocambo Rocks Inc. v. Society of  
Composers, Authors and Music  
Publishers of Canada (SOCAN)

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:**

MAINVILLE J.A.

**DATED:**

March 23, 2012

**WRITTEN REPRESENTATIONS BY:**

Abbas Jahangiri

FOR THE APPELLANT  
(SELF-REPRESENTED)

Daniela Bassan

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Stewart McKelvey  
Halifax, Nova Scotia

FOR THE RESPONDENT