

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121207

Docket: A-511-12

Citation: 2012 FCA 327

**CORAM: BLAIS C.J.
EVANS J.A.
MAINVILLE J.A.**

BETWEEN:

HD MINING INTERNATIONAL LTD. and HUIYONG HOLDINGS (BC) LTD.

Appellants

and

**CONSTRUCTION AND SPECIALIZED WORKERS UNION, LOCAL 1611;
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 115; THE
MINISTER OF IMMIGRATION AND CITIZENSHIP CANADA; THE MINISTER OF
HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA; and CANADIAN
DEHUA INTERNATIONAL MINES GROUP INC.**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on December 7, 2012.

REASONS FOR ORDER BY:

BLAIS C.J.

CONCURRED IN BY:

EVANS J.A.
MAINVILLE J.A.

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REASONS FOR ORDER

BLAIS C.J.

[1] This is a decision issued in response to two Notices of Motion filed on November 30, 2012 by the respective parties on appeal of a Federal Court proceeding IMM-11316-12 before the Honourable Justice Campbell.

FACTS

[2] On November 22, 2012, Justice Campbell granted standing (the “Standing Order”) to the respondents in this matter, namely the Construction and Specialized Workers Union, Local 1611 and the International Union of Operating Engineers, Local 115 (the “Unions”), to bring an application for leave for judicial review of the decision or decisions of an officer or officers of Human Resources and Skills Development Canada to issue labour market opinions (“LMOs”) under section 203 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[3] On November 23, 2012, the appellants, HD Mining International Ltd. and Huiyong Holdings (BC) Ltd. (the “Companies”) filed a Notice of Appeal with respect to Justice Campbell’s decision to grant standing.

[4] On November 30, the Unions filed a Notice of Motion requesting that this court strike the Companies Notice of Appeal. On the same day, the Companies filed a Notice of Motion in this Court seeking a stay of Justice Campbell’s Standing Order pending the determination of the appeal.

THE RESPONDENTS’ ARGUMENTS

[5] First, the Unions submit that this matter is interlocutory in nature and that appeals of interlocutory judgments in immigration proceedings are barred by paragraphs 72(2)(e) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (“IRPA”). The Unions contend that Justice Campbell’s decision did not dispose of the issues between the parties and that the proceeding is still only at a preliminary stage. In addition, the Unions note that 74(d) of IRPA bars appeal of a

judgment in a judicial review matter absent certification of where a serious question of general importance. No such question has been certified.

[6] Second, the Unions rely on this Court's decisions in *Ziindel v. Canada (Human Rights Commission)*, [2000] 4 F.C. 255, [2000] F.C.J. No. 678, and *CBSA v. C.B. Powell*, 2010 FCA 61, and others, in support of the general rule that only in the most exceptional circumstances will interlocutory judgments be subject to review before the final disposition of a matter.

[7] Thirdly, the Unions have argued that the decision to grant public interest standing is a discretionary decision which should only be disturbed where the exercise of discretion has been exercised on the basis of an error of fact or law or where the discretionary decision raises questions vital to the final issues in the case.

THE APPELLANTS' ARGUMENTS

[8] The Appellants submit that the Standing Order which they appeal is not made pursuant to the *Federal Courts Immigration and Refugee Protection Rules* and the *Immigration and Refugee Protection Act* which, according to the Appellants, do not contemplate questions of standing, but rather is made under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. As such, the Standing Order is not a "matter arising" under IRPA and as a result, the Companies' appeal is not barred by paragraphs 72(2)(e) or 74(d) of IRPA.

[9] In addition, the Appellants contend that paragraph 27(1)(c) of the *Federal Courts Act* allows this Court jurisdiction to hear an appeal of an interlocutory judgment.

[10] Secondly, the Appellants argue that the Federal Court is limited by the terms of section 18.1 of the *Federal Courts Act* and that those terms allow standing only to the parties “directly affected” by the matter before the court.

[11] Finally, the Appellants argue that Justice Campbell was improperly influenced by a media statement of the Minister of Human Resources and Skills Development Canada and that in addition, Justice Campbell conducted the proceedings in a manner giving rise to a reasonable apprehension of bias.

ANALYSIS

[12] I have carefully considered the parties submissions and for the reasons that follow will allow the Respondents’ Motion, quash the Appellants’ Notice of Appeal and dismiss the Appellants’ Motion requesting a stay pending the disposition of the appeal.

[13] As a preliminary matter, I find that the Standing Order is interlocutory in nature in that it in no manner disposes of the live issues in dispute in this case.

[14] The Appellants have submitted that paragraph 27(1)(c) of the *Federal Courts Act* creates a right of appeal to this Court from interlocutory judgments of the Federal Court. However, that right of appeal may be barred by other statutes, including the IRPA. *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2011 FCA 294, at para. 8.

[15] The relevant provisions of IRPA read as follows:

no appeal lies from the decision of the Court with respect to the application or with respect to an interlocutory judgment (paragraph 72(2)(e))

[...]

an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.(paragraph 74(d))

[16] The Appellants submit that the question of standing is not a “matter arising” under IRPA. I disagree. To exclude preliminary procedural questions from the category of matters arising under IRPA would strip section 72 of IRPA of its purpose. Standing is a necessary precondition to any immigration matter brought before the Federal Court. The interests at stake in a particular dispute and the relation of the parties to those interests cannot be divorced from the matter itself. As such, I characterize the issue raised on appeal as a “matter arising” under IRPA.

[17] The decision under appeal is an interlocutory decision and, except in well-defined, narrow circumstances, appeals are not available. Those circumstances include where a judge refuses to exercise jurisdiction to decide a matter (*Canada (Solicitor General) v. Subhaschandran*, 2005 FCA 27) and where there is a reasonable apprehension of bias on the part of the judge (*Re Zundel*, 2004 FCA 394).

[18] The Appellants’ submission that the terms of the *Federal Court Act* limit standing before the Federal Court to direct interest standing is without merit. This Court has granted public interest standing in the past, and in circumstances unrelated to constitutional matters (see e.g. *Public Mobile*

Inc. v. Canada (Attorney General), 2011 FCA 194.) Despite the Appellants' willingness to argue that these decision are wrongly decided, this Court will not entertain a collateral attack.

[19] Finally, after a careful scrutiny of the transcripts of the hearings before Justice Campbell in this matter so far and particularly paragraphs 38 to 42 of the Appellants written submissions on the motion to strike, I find no basis to conclude that Justice Campbell's statements or actions give rise to a reasonable apprehension of bias.

[20] For the reasons articulated above, I find the Appellants' appeal barred pursuant to paragraph 72(2)(e) of IRPA. Therefore, the Motion to Strike should be allowed, the Appeal should be quashed and the Motion for a Stay should be dismissed with costs.

“Pierre Blais”

Chief Justice

“I agree.

John M. Evans J.A.”

“I agree.

Robert M. Maiville J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-511-12

STYLE OF CAUSE:

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Respondents

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: BLAIS C.J.

CONCURRED IN BY: EVANS J.A.
MAINVILLE J.A.

DATED: December 7, 2012

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