

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190709

Docket: A-415-18

Citation: 2019 FCA 199

Present: LOCKE J.A.

BETWEEN:

**AUDREY WANG aka NINI WANG aka NI YANG;
JUN YANG aka MICHAEL YANG; CANADA
ROYAL IMPORT & EXPORT CO. LTD.**

Appellants

and

**LOUIS VUITTON MALLETIER S.A.; LOUIS
VUITTON CANADA, INC.; CELINE; CHRISTIAN
DIOR COUTURE, S.A.; GIVENCHY S.A.**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 9, 2019.

REASONS FOR ORDER BY:

LOCKE J.A.

Federal Court of Appeal



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DIOR COUTURE, S.A.; GIVENCHY S.A.**

Respondents

REASONS FOR ORDER

LOCKE J.A.

[1] This is the first of three decisions in the present appeal released this day. This decision concerns a motion by the appellants for an Order permitting the appellant Nini Wang to represent the corporate appellant, Canada Royal Import & Export Co. Ltd.

[2] This motion was prompted by a Direction by Stratas J.A. dated May 8, 2019, and is necessary because of Rule 120 of the *Federal Courts Rules*, SOR/98-106, which provides as follows:

120 A corporation, partnership or unincorporated association shall be represented by a solicitor in all proceedings, unless the Court in special circumstances grants leave to it to be represented by an officer, partner or member, as the case may be.

120 Une personne morale, une société de personnes ou une association sans personnalité morale se fait représenter par un avocat dans toute instance, à 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] Though there appears to be no doubt that Ms. Wang is an officer of the corporate appellant, she is not a solicitor. Accordingly, she must satisfy the Court that "special circumstances" exist for granting her motion.

[4] For the reasons provided below, I am not satisfied that such special circumstances exist.

[5] Mainville J.A. provided the following discussion of the requirements for an Order under Rule 120 in *El Mocambo Rocks Inc. v. Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98 at paras 3 and 4:

[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.

[6] In my view, the appellants have failed to demonstrate that the corporate appellant cannot afford a solicitor. Therefore, it is not necessary to discuss the other questions concerning the complexity of the issues in appeal, and whether the appeal can be handled expeditiously.

[7] The only documentary evidence provided by the appellants on the question of impecuniosity is (i) a statement that the balance in a bank account in the name of the corporate appellant was \$23.26 on May 27, 2019, and (ii) a number of letters from service providers (telephone, insurance, utilities) indicating that several of the appellants' accounts are in arrears. The appellants have not provided complete and clear financial information concerning the corporate appellant, nor have they provided financial statements. They have not indicated that there would be any difficulty in providing such information, nor have they suggested any reason that the usual requirement for such information should not be applied. All this, despite the fact that a similar motion by the appellants before the Federal Court was dismissed on July 6, 2018 in part because of the failure to provide adequate financial information.

[8] It may be that the corporate appellant is indeed unable to afford a solicitor, as the appellants allege. But they bear the onus of demonstrating such impecuniosity, and they have failed to do so.

[9] I accept the respondents' submission that a bank account in the corporate appellant's name with a small balance is insufficient to demonstrate that the corporate appellant does not

have money in other bank accounts, or value in its inventory or other assets, or a stream of revenue from its business. This is the reason that complete and clear financial information is normally expected. I also accept the respondents' submission that letters concerning unpaid bills do not indicate that the arrears cannot be paid, but simply that they have not been paid.

[10] It follows from the foregoing that the appellants' motion will be dismissed.

[11] The respondents seek their costs of this motion in the amount of \$1000, payable forthwith. They argue that, in view of the appellants' prior motion to represent the corporate appellant, which was dismissed noting the lack of complete and clear financial information, this motion should not have been brought.

[12] I am not prepared to accept the respondents' argument on costs. Though the present motion does indeed appear to suffer from some of the same deficiencies as in the earlier motion, I have some sympathy for the appellants' challenge in preparing motion materials without the assistance of counsel. The lack of counsel does not change the legal test applicable to the present motion, but it does affect my conclusion as to whether the present motion should have been brought at all.

[13] I will order costs payable to the respondents in the all-inclusive amount of \$500.

[14] I turn now to next steps. There are currently two other motions before the Court:

1. The respondents' motion to strike the notice of appeal on the ground that it was filed out of time; and
2. The appellants' motion for an extension of time to file a motion to determine the content of the appeal book.

Motion records have been filed by both sides regarding both of these motions, and they will be addressed by the Court separately.

"George R. Locke"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-415-18

STYLE OF CAUSE:

AUDREY WANG aka NINI WANG
aka NI YANG; JUN YANG aka
MICHAEL YANG; CANADA
ROYAL IMPORT & EXPORT CO.
LTD. v. LOUIS VUITTON
MALLETTIER S.A.; LOUIS
VUITTON CANADA, INC.;
CELINE; CHRISTIAN DIOR
COUTURE, S.A.; GIVENCHY S.A.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:

LOCKE J.A.

DATED:

JULY 9, 2019

WRITTEN REPRESENTATIONS BY:

Nini Wang

FOR THE APPELLANTS

Karen F. MacDonald
Mathew D. Brechtel

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Norton Rose Fulbright Canada LLP
Vancouver, BC

FOR THE RESPONDENTS