

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220301

Docket: A-211-20

Citation: 2022 FCA 38

**CORAM: BOIVIN J.A.
DE MONTIGNY J.A.
LEBLANC J.A.**

BETWEEN:

**PRAIRIE TUBULARS (2015) INC and
2045662 ALBERTA INC**

Applicants

and

PRESIDENT OF CBSA

Respondent

Heard by online video conference hosted by the Registry on February 28, 2022.

Judgment delivered at Ottawa, Ontario, on March 1, 2022.

REASONS FOR JUDGMENT BY:

BOIVIN J.A.

CONCURRED IN BY:

**DE MONTIGNY J.A.
LEBLANC J.A.**

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REASONS FOR JUDGMENT OF THE COURT

BOIVIN J.A.

[1] Before the Canadian International Trade Tribunal (CITT), the applicants made four requests pursuant to subrule 23.1(1) of the *Canadian International Trade Tribunal Rules*, SOR/91-499 (Rules). In its decisions, the CITT rejected the four requests.

[2] Before our Court, the applicants challenge the CITT's decisions with respect to two of their four requests: (i) the request with respect to a stay of proceedings and, (ii) the request for an exemption from providing evidence.

[3] The standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] ACS no 65 (*Vavilov*)). Notwithstanding the applicants' arguments to the contrary, we are all of the view that the CITT made no reviewable errors. It based its decision on an internally coherent and rational chain of analysis, and it is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at paras. 85, 101, 102; *Langevin v. Air Canada*, 2020 FCA 48). The decision is therefore reasonable and there is no basis for this Court's intervention.

[4] More particularly, the CITT noted that extraordinary circumstances are required for civil proceedings to be stayed because of concurrent criminal proceedings. As observed by the Saskatchewan Court of Queen's Bench in *Bank of Nova Scotia v. Diamond-T Cattle Co.*, [1993] 2 WWR 722, 106 Sask R 142:

[8] However, in the case of only an investigation it will invariably be more difficult for a party to demonstrate a valid basis upon which to justify the granting of a stay. The most obvious problem is that there is no certainty that criminal charges will ever be brought and absent same it usually will be impossible to find potential for injustice. At the same time it would be unfair to postpone indefinitely a determination of the civil dispute. Equally, absent criminal charges, there will be difficulty in showing an interrelationship between the pending civil proceedings and the potential criminal proceedings.

[5] Here, the criminal proceedings are at the investigation stage and, as observed by the CITT, no charges have been laid against the applicants. And even if charges were to be laid, we do not know how related they would be to the proceedings before the CITT.

[6] The applicants argue that the CITT erred by failing to explicitly consider the test for granting a stay under *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, [1994] ACS no 17 in its reasons. We disagree.

[7] *Vavilov* teaches us that reasons for decisions in the administrative context need only allow the reviewing court to understand why the decision-maker made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes (*Vavilov* at para. 91; *Beddows v. Canada (Attorney General)*, 2020 FCA 166).

[8] Based on the speculative nature of the applicants' arguments, it was open to the CITT to find that there was no interrelation between the civil proceedings and the criminal proceedings at this stage. Further, there is no convincing evidence that the proceedings before the CITT will prevent the applicants from obtaining a fair trial, if they ever face criminal charges; furthermore, the applicants are provided with protection against having evidence before the CITT used in criminal proceedings (*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, *Canada Evidence Act*, RSC 1985, c C-5). Also, the applicants have been provided access to seized evidence (applicants record page 81, para. 28). In the circumstance, the CITT's decision to deny the applicants' request for a stay of proceedings is thus reasonable.

[9] The CITT's decision to refuse to exempt the applicants from filing evidence also flows from the applicants' speculative arguments with respect to the interrelation of the civil and the criminal proceedings. The applicants make reference to a number of decision from the income tax context and submit that the predominant purpose of the CITT proceedings is to further a criminal investigation (Applicants' factum at para. 58, referencing *R. v. Jarvis*, 2002 SCC 73, [2002] 3 SCR 757; *Kligman v. M.N.R.*, 2004 FCA 152, [2004] 4 FCR 477; and *Stanfield v. Canada*, 2005 FCA 107, 333 NR 241). However, these cases do not apply.

[10] First, the applicants have considerable latitude with respect to the evidence they choose to put before the CITT in support of their position. Second, nothing precludes the applicants from taking the position before the CITT that they cannot be compelled to file evidence in support of their brief and that the onus is on the CBSA to demonstrate that it did not err in its redetermination, an issue that was considered by the CITT, as indicated at the outset of these reasons, but found to be premature. In the specific circumstances of this case, the respondent agrees that the applicants could choose to submit no evidence and to rely only on their submissions, with all the risks associated with such a course of action. If these issues were to arise, it would be for the CITT, not the Court, at this stage, to decide the matter (*Herbert v. Canada (Attorney General)*, 2022 FCA 11; *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, 185 ACWS (3d) 914).

[11] Accordingly, the application for judicial review will be dismissed with costs.

"Richard Boivin"

J.A.

"I agree.

Yves de Montigny J.A."

"I agree.

René LeBlanc J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-211-20

STYLE OF CAUSE: PRAIRIE TUBULARS (2015) INC
AND 2045662 ALBERTA INC v.
PRESIDENT OF CBSA

PLACE OF HEARING: BY ONLINE
VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 28, 2022

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY DE MONTIGNY J.A.
LEBLANC J.A.

DATED: MARCH 1, 2022

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