

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220623

Docket: A-251-20

Citation: 2022 FCA 121

**CORAM: RENNIE J.A.
GLEASON J.A.
ROUSSEL J.A.**

BETWEEN:

NOVA-BIORUBBER GREEN TECHNOLOGIES INC.

Appellant

and

**SUSTAINABLE DEVELOPMENT TECHNOLOGY
CANADA**

Respondent

Heard by online video conference hosted by the registry on June 20, 2022.

Judgment delivered at Ottawa, Ontario, on June 23, 2022.

REASONS FOR JUDGMENT BY:

ROUSSEL J.A.

CONCURRED IN BY:

**RENNIE J.A.
GLEASON J.A.**

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] This is an appeal from an order of a Federal Court judge (St-Louis J.), dated July 22, 2020, dismissing the appellant's appeal of an order made by Madam Prothonotary Ring (prothonotary) on March 2, 2020, whereby she dismissed the appellant's action on status review.

The appellant had commenced an action against the respondent in February 2019, claiming \$1.4 million following the respondent's rejection of the appellant's proposal for funding.

[2] After confirming the test on status review and outlining in detail the history of the matter before her, the prothonotary found that the appellant's justification for failing to comply with orders of the Court on three (3) separate occasions and to move the action forward in a timely manner was wholly unsatisfactory. She also noted that the appellant had failed to provide the Court with a concrete action plan as to the steps it intended to take to move the proceeding forward. Having no confidence that the appellant would comply with any deadline fixed by the Court, she concluded that the only appropriate remedy was the dismissal of the action.

[3] On appeal, the Federal Court judge considered the appellant's submissions, the prothonotary's factual findings and the relevant case law on status review. She found no error in the prothonotary's exercise of discretion and, consequently, refused to intervene.

[4] Before this Court, the appellant seeks to overturn the decision of the Federal Court on various grounds, most of which relate to the rejection of the appellant's project proposal and to the dismissal of the appellant's three (3) motions under Rule 120 of the *Federal Courts Rules*, SOR/98-106, which are not at issue in this appeal. The appellant had sought to have Dr. Anvar Buranov, its sole director and owner, represent it in the action against the respondent. Given the limited task facing the appellant in this appeal, Dr. Buranov was granted leave to represent the appellant for the purposes of this appeal only.

[5] The sole issue to be determined in this appeal is whether the Federal Court judge erred in law or made a palpable and overriding error in regard to the facts in refusing to interfere with the prothonotary's decision to dismiss the appellant's action on status review (*Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 84 (*Hospira*)). The same standard applies when the Federal Court judge is reviewing the discretionary decision of the prothonotary (*Hospira* at paras. 64-65, 79).

[6] After considering the appellant's submissions, I am of the view that the appeal must fail. The appellant did not identify any reviewable error in the prothonotary's decision in respect of her factual findings or application of the relevant law, or in the Federal Court judge's decision not to intervene.

[7] Following receipt of the Notice of Status Review, the appellant was required to provide justification for its failure to move the matter forward, and needed to address the measures taken to do so (*Netupsky v. Canada (Customs and Revenue Agency)*, 2004 FCA 239 at para. 11). While the appellant explained the delay in moving the action forward, it did not identify what steps it would take to move the proceeding along. Instead, it asked for an extension of time to take any further steps in the litigation. Given the appellant's history of non-compliance and its failure to address how it intended to move the case forward, and having found the justification for the delay unsatisfactory, it was open to the prothonotary, in the exercise of her discretion on status review, to dismiss the appellant's action.

[8] Moreover, the appellant failed to identify before the Federal Court any error with the prothonotary's decision, expressing instead a general disagreement with the decision and restating the same justifications for its delays and non-compliance. The Federal Court judge did not err in concluding that it would not intervene.

[9] In its written submissions, the appellant also alleges that the Federal Court is in a conflict of interest with the respondent as the latter is a federally created organization. The appellant's allegations are serious, unsubstantiated, without merit and ought not have been made.

[10] As I am of the view that the appeal must fail, it is not necessary for me to address the respondent's argument pertaining to the new issues raised by the appellant in its amended Notice of Appeal and in its submissions.

[11] I would dismiss this appeal with costs.

"Sylvie E. Roussel"

J.A.

"I agree
Donald J. Rennie J.A."

"I agree
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE ST-LOUIS DATED
JULY 22, 2020, DOCKET NO. T-374-19**

DOCKET: A-251-20

STYLE OF CAUSE: NOVA-BIORUBBER GREEN
TECHNOLOGIES INC. v.
SUSTAINABLE DEVELOPMENT
TECHNOLOGY CANADA

PLACE OF HEARING: BY ONLINE VIDEO
CONFERENCE

DATE OF HEARING: JUNE 20, 2022

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: RENNIE J.A.
GLEASON J.A.

DATED: JUNE 23, 2022

APPEARANCES:

Dr. Anvar Buranov FOR THE APPELLANT
(on his own behalf)

Sandy Hay FOR THE RESPONDENT

SOLICITORS OF RECORD:

Osler, Hoskin & Harcourt LLP FOR THE RESPONDENT
Toronto, Ontario