

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240227

Docket: A-259-22

Citation: 2024 FCA 36

**CORAM: STRATAS J.A.
MONAGHAN J.A.
BIRINGER J.A.**

BETWEEN:

IRIS TECHNOLOGIES INC.

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on February 27, 2024.
Judgment delivered from the Bench at Toronto, Ontario, on February 27, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

MONAGHAN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 27, 2024).

MONAGHAN J.A.

[1] The implied undertaking rule precludes a party to a civil proceeding from using information another party was compelled to produce for any purpose other than that proceeding. The undertaking applies automatically and until the information is used in open court or is otherwise made public: *Juman v. Doucette*, 2008 SCC 8; *Fibrogen, Inc. v. Akebia Therapeutics, Inc.*, 2022 FCA 135. However, the Court may relieve against the undertaking if the applicant

demonstrates that the interests of justice served by doing so outweigh the values the implied undertaking is intended to protect: *Juman* at paras. 32-34.

[2] The appellant, Iris Technologies Inc., commenced an appeal in the Tax Court of Canada. The Tax Court appointed a case management judge before whom the appellant brought a motion seeking confirmation that the implied undertaking did not apply to seven documents the respondent provided. If it did apply, the appellant sought relief from it.

[3] The Tax Court judge dismissed the motion for reasons delivered orally on November 18, 2022. The appellant appeals that decision asserting that the judge erred in concluding that the implied undertaking applied. If he did not so err, says the appellant, he erred in failing to grant the appellant relief.

[4] As it did before the Tax Court judge, the appellant argues here that the respondent was not compelled to produce the documents. The Tax Court judge disagreed, finding the respondent provided them “pursuant to the Appellant’s Notice to Attend served under the rules” which “placed an obligation on the Respondent to produce the seven documents” such that they were produced “in the course of the Discovery process”. The Tax Court judge found no exception applied. The record fully supports these conclusions. See also *Fibrogen* at paras. 53-59.

[5] We see no merit to the appellant’s submission that the Tax Court judge’s findings – regarding the appellant’s purpose in requesting the documents – were made without evidence. There is ample evidence in the record to support those findings.

[6] Finally, the appellant submits the Tax Court judge erred in law in not granting it relief from the implied undertaking. The error, says the appellant, is not a failure to balance the required interests, but a failure to follow jurisprudence the appellant describes as “dispositive” of the interest that prevails in this case.

[7] We cannot agree with the appellant’s characterization of that jurisprudence which, as the Tax Court judge observed, was not binding on the Tax Court. Moreover, a court must always balance the relevant interests in context with reference to the particular facts: *Juman* at para. 32; *Association of Professional Engineers and Geoscientists of the Province of British Columbia v. Engineer X*, 2023 BCCA 211 at paras. 27-28. Accordingly, the result of the balancing exercise in another case is not determinative.

[8] We add that the appellant has not established a present need for the information covered by the implied undertaking in another proceeding that is actively being prosecuted.

[9] We agree with the parties that the appellate standard of review applies to this appeal: *Housen v. Nikolaisen*, 2002 SCC 33. Having regard to that standard, and having carefully reviewed the record and considered the appellant’s submissions, we see no error warranting our intervention. Accordingly, we will dismiss the appeal with costs in the all-inclusive agreed amount of \$3,000.

"K.A. Siobhan Monaghan"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-259-22

STYLE OF CAUSE: IRIS TECHNOLOGIES INC. v.
HIS MAJESTY THE KING

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 27, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
MONAGHAN J.A.
BIRINGER J.A.

DELIVERED FROM THE BENCH BY: MONAGHAN J.A.

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