

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240903

Docket: A-262-22

A-2-23

Citation: 2024 FCA 138

**CORAM: BOIVIN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

**MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA dba SMOOTHSTREAMS.TV
ARM HOSTING INC., STAR HOSTING LIMITED (HONG KONG)
ROMA WORKS LIMITED (HONG KONG)
ROMA WORKS SA (PANAMA)**

Appellants

and

**BELL MEDIA INC., ROGERS MEDIA INC., COLUMBIA PICTURES
INDUSTRIES INC., DISNEY ENTERPRISES, INC., PARAMOUNT
PICTURES CORPORATION, UNIVERSAL CITY STUDIOS LLC,
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC.**

Respondents

Heard at Ottawa, on September 3, 2024.

Judgment delivered from the Bench at Ottawa, Ontario, on September 3, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

GOYETTE J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240903

**Docket: A-262-22
A-2-23**

Citation: 2024 FCA 138

**CORAM: BOIVIN J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

**MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV
ANTONIO MACCIACCHERA dba SMOOTHSTREAMS.TV
ARM HOSTING INC., STAR HOSTING LIMITED (HONG KONG)
ROMA WORKS LIMITED (HONG KONG)
ROMA WORKS SA (PANAMA)**

Appellants

and

**BELL MEDIA INC., ROGERS MEDIA INC., COLUMBIA PICTURES
INDUSTRIES INC., DISNEY ENTERPRISES, INC., PARAMOUNT
PICTURES CORPORATION, UNIVERSAL CITY STUDIOS LLC,
UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP
WARNER BROS. ENTERTAINMENT INC.**

Respondents

**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on September 3, 2024).**

GOYETTE J.A.

[1] On a motion to review the execution of an Anton Piller Order [Order], the Federal Court determined that the Order was lawfully executed against the appellants: 2022 FC 1602. The appellants appeal this decision. They also appeal the costs order issued by the Federal Court in the context of the review proceeding: *Bell Media Inc. et al. v. Macciachera (Smoothstreams.tv) et al.* (28 December 2022), T-1257-22 (FC) [Costs Decision].

[2] The appellants do not challenge the lawfulness of the Order. Rather, they argue that the execution of the Order was unlawful because of (a) its duration, (b) the asking of improper questions to the appellants, and (c) the failure to properly explain and abide by health and safety precautions. The Federal Court found that the terms of the Order and the evidence before it do not support these arguments. The appellants acknowledge that these findings are reviewable on a palpable and overriding error standard: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8, 26–37. We see no such error.

[3] In this Court, the appellants further argue that the Federal Court committed an error of law reviewable on correctness. They identify this error as the Federal Court’s failure to take into account the *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 [Charter]) and the Charter values in reviewing the terms of the Order and the manner in which it was executed. In this regard, the appellants say that the execution of the Order violated the rights protected by sections 7, 8, and 9

of the Charter, that is, the right to life, liberty and security, the right to be secure against unreasonable search or seizure, and the right not to be arbitrarily detained or imprisoned.

[4] This Charter argument fails for two reasons.

[5] First, the appellants cannot ground their appeal upon a Charter right. This is because the Charter does not apply between private parties, and Charter rights do not exist in the absence of state action: *Hill v. Church of Scientology of Toronto*, [1995] 2 SCR 1130 at para. 95 [*Hill*]; *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at p. 599; *Tremblay v. Daigle*, [1989] 2 SCR 530 at p. 571. The execution of an Anton Piller order does not involve state action; the order “is not placed in the hands of a public authority for execution”: *Celanese Canada Inc. v. Murray Demolition Corp.*, 2006 SCC 36 at para. 1 [*Celanese*]. Rather, as in this case, an Anton Piller order “authorizes a private party to insist on entrance to the premises of its opponent to conduct a surprise search, the purpose of which is to seize and preserve evidence to further its claim in a private dispute”: *Celanese* at para. 1 (emphasis added); see also *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.*, 2000 CanLII 22697 (ON SC) at para. 34; *Viacom Ha! Holding Co. v. Jane Doe*, [2000] F.C.J. No. 498 at paras. 80–81.

[6] Second, in the absence of an explanation as to how the execution of the Order was inconsistent with Charter values, this argument cannot be entertained: *Hill* at para. 95; *Singh Brar v. Canada (Public Safety and Emergency Preparedness)*, 2024 FCA 114 at para. 66.

[7] We respect to the Costs Decision, Rule 400(1) of the *Federal Court Rules* (SOR/98-106) gives the Federal Court “full discretionary power over the amount and allocation of costs.” In the absence of a question of law, the standard of review on appeal of a discretionary decision on costs is that of palpable and overriding error: *Nova Chemicals Corporation v. Dow Chemical Company*, 2017 FCA 25 at para. 6. Again, we find no such error in the Costs Decision.

[8] Given the foregoing, the appeals will be dismissed with costs.

“Nathalie Goyette”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-262-22

A-2-23

STYLE OF CAUSE:

MARSHALL MACCIACCHERA
dba SMOOTHSTREAMS.TV,
ANTONIO MACCIACCHERA dba
SMOOTHSTREAMS.TV, ARM
HOSTING INC., STAR HOSTING
LIMITED (HONG KONG), ROMA
WORKS LIMITED (HONG
KONG) and ROMA WORKS SA
(PANAMA) v. BELL MEDIA
INC., ROGERS MEDIA INC.,
COLUMBIA PICTURES
INDUSTRIES INC., DISNEY
ENTERPRISES, INC.,
PARAMOUNT PICTURES
CORPORATION, UNIVERSAL
CITY STUDIOS LLC,
UNIVERSAL CITY STUDIOS
PRODUCTIONS LLLP
and WARNER BROS.
ENTERTAINMENT INC.

PLACE OF HEARING:

OTTAWA, ONTARIO

DATE OF HEARING:

SEPTEMBER 3, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:**

DELIVERED FROM THE BENCH BY:

GOYETTE J.A.

APPEARANCES:

Antonio Macciacchera
Marshall Macciacchera

FOR THE APPELLANTS
SELF-REPRESENTED

Guillaume Lavoie Ste-Marie

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Smart & Biggar LLP
Montréal, Québec

FOR THE RESPONDENTS