

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241001

Docket: A-88-23

Citation: 2024 FCA 157

**CORAM: WEBB J.A.
MONAGHAN J.A.
GOYETTE J.A.**

BETWEEN:

WISEAU STUDIO, LLC

Appellant

and

**RICHARD HARPER, FERNANDO FORERO MCGRATH, MARTIN RACICOT
d.b.a.
ROCKHAVEN PICTURES, ROOM FULL OF SPOONS INC., PARKTOWN
STUDIOS
INC., RICHARD STEWART TOWNS**

Respondents

Heard at Ottawa, Ontario, on October 1, 2024.
Judgment delivered from the Bench at Ottawa, Ontario, on October 1, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

GOYETTE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on October 1, 2024).

GOYETTE J.A.

[1] The appellant appeals the judgment of the Federal Court rendered by Justice Pentney (the Federal Court Judge) (2023 FC 354), which dismissed its appeal of an order of Associate Judge Horne (the Associate Judge) (2022 FC 568). The Associate Judge granted the respondents'

motion to dismiss. He struck out the entirety of the appellant's claim for copyright infringement on the ground of cause of action estoppel.

[2] When reviewing a Federal Court decision on an appeal from an order of an associate judge, this Court will only intervene if the Federal Court judge's refusal to interfere with the associate judge's decision was premised on an error of law or a palpable and overriding error of fact or mixed fact and law: *Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 83-84 [*Hospira*].

[3] The appellant takes issue with the Federal Court Judge's analysis on one element of the test for finding cause of action estoppel, namely, whether the cause of action in the prior action is separate and distinct from the current cause of action. The appellant argues that the Federal Court Judge should have adopted a more flexible approach. The appellant further argues that its action relates to a relatively new provision of the *Copyright Act*, R.S.C. 1985, c. C-42—section 41.1 on the circumvention of technological protection measures—and, as such, deserves adjudication through a fulsome trial.

[4] The Federal Court Judge properly identified the legal test for finding cause of action estoppel—as did the Associate Judge. The Federal Court Judge also applied the appropriate standard of review: did the Associate Judge make a palpable and overriding error in his analysis of whether the two causes of action are separate and distinct, a question of mixed fact and law: *Hospira* at para. 79. In reviewing in accordance with this standard, the Federal Court Judge considered all relevant circumstances of this case and made no error.

[5] Finally, even if we were to accept that section 41.1 is a relatively new provision of the *Copyright Act*, this newness, in itself, would not warrant adjudication in the absence of a justiciable claim.

[6] Accordingly, we will dismiss the appeal with costs fixed in the amount of \$2,500.00.

"Nathalie Goyette"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-88-23

STYLE OF CAUSE: WISEAU STUDIO, LLC v.
RICHARD HARPER,
FERNANDO FORERO
MCGRATH, MARTIN RACICOT
d.b.a., ROCKHAVEN PICTURES,
ROOM FULL OF SPOONS INC.,
PARKTOWN STUDIOS, INC.,
RICHARD STEWART TOWNS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 1, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** WEBB J.A.
MONAGHAN J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: GOYETTE J.A.

APPEARANCES:

Daniel Brinza FOR THE APPELLANT

Meredith Bacal FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Daniel Brinza Law Professional Corporation FOR THE APPELLANT
Oakville, Ontario

Dentons Canada LLP FOR THE RESPONDENTS
Toronto, Ontario