

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140203

Docket: A-295-13

Citation: 2014 FCA 24

**CORAM: BLAIS C.J.
SHARLOW J.A.
GAUTHIER J.A.**

BETWEEN:

FRIEDA MARTSELOS

Appellant

and

**JUDITH GALE, CONNIE BENWELL AND
JOLINE BEAVER**

Respondents

Heard at Edmonton, Alberta, on February 3, 2014.

Judgment delivered from the bench at Edmonton, Alberta on February 3, 2014.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140203

Docket: A-295-13

Citation: 2014 FCA 24

**CORAM: BLAIS C.J.
SHARLOW J.A.
GAUTHIER J.A.**

BETWEEN:

FRIEDA MARTSELOS

Appellant

and

**JUDITH GALE, CONNIE BENWELL AND
JOLINE BEAVER**

Respondents

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Edmonton, Alberta on February 3, 2014)

[1] This is appeal from a decision of a judge of the Federal Court (“motion judge”) granting an extension of time to file an application for judicial review contesting one or more decisions relating to the ousting of the respondents from the Council of the Salt River First Nation.

[2] In his brief order, the motion judge indicated that he considered the jurisprudence and the test to meet for such a motion to succeed, but did not specifically identify the test or the applicable

jurisprudence. He concluded that “the Applicants have met their burden in that they have adduced evidence that clearly establishes their intention of disputing their ousting”.

[3] The decision under review is a discretionary decision subject to deference. As noted by Sharlow J.A. in *Apotex Inc. v. Canada (Minister of Health)(Apotex)*, 2012 FCA 322 at paragraph 14:

This Court cannot intervene unless the Judge misdirected himself, failed to give sufficient weight to relevant factors, proceeded on a wrong principle of law, or made a decision that is so clearly wrong that it amounts to an injustice (*Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 223, [2011] F.C.J. No. 1003, at paragraph 18).

[4] We agree with the appellant that in cases such as this one where the parties disputed what test should be applied by the motion judge, it would have been preferable for the motion judge to expressly state the test that he applied (a simple reference, for example to a decision of this Court such as *Apotex* mentioned above at paragraphs 12-18, would have sufficed). But, the fact remains that the test applicable to motions for an extension of time is well known and has consistently been applied by this Court and the Federal Court.

[5] Motion judges are presumed to know the basic law that they are regularly called upon to apply. In this case, the reference to the applicants’ “intention” makes it clear that the motion judge was referring to the test set out in *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846, which the appellant relied on in their written representations before him. Thus, the appellant has not persuaded us that the motion judge erred in law.

[6] The appellant argues that the motion judge could not on the record before him conclude that the respondents had a continued intention, and that in any event, he clearly gave too much weight to this factor. Again, it would have been helpful for the motion judge to say a bit more in his order, as it is rare that a continued intention to pursue a remedy will be the deciding factor in the absence of any merit or in the face of a serious prejudice. That being said, having considered the record before the motion judge, we have concluded that on the proper test, the motion judge did reach a satisfactory outcome.

[7] The appeal will be dismissed.

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE SCOTT DATED
SEPTEMBER 3, 2013, DOCKET NO. 13-T-46)**

DOCKET: A-295-13

STYLE OF CAUSE: FRIEDA MARTSELOS v. JUDITH
GALE, CONNIE BENWELL AND
JOLINE BEAVER

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: FEBRUARY 3, 2014

REASONS FOR JUDGMENT OF THE COURT BY:

BLAIS C.J.
SHARLOW J.A.
GAUTHIER J.A.

DELIVERED FROM THE BENCH BY

GAUTHIER J.A.

APPEARANCES:

David C. Rolf and
K. Colleen Verville

FOR THE APPELLANT

No one appeared

FOR THE RESPONDENT
JUDITH GALE

No one appeared

FOR THE RESPONDENT
CONNIE BENWELL

No one appeared

FOR THE RESPONDENT
JOLINE BEAVER

SOLICITORS OF RECORD:

Parlee McLaws LLP
Barristers and Solicitors
Edmonton, Alberta and

Dentons Canada LLP
Barristers and Solicitors
Edmonton, Alberta

FOR THE APPELLANT