Federal Court Cour fédérale

**Date: 20230120**

**Docket: T-19-21**

**Citation: 2023 FC 97**

**Ottawa, Ontario, January 20, 2023**

**PRESENT: The Honourable Justice Pamel**

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF CANADA**

**Plaintiff**

**and**

**CORY LEONARD SCHLAUT**

**Defendant**

**<u>JUDGMENT AND REASONS</u>**

[1] This is a motion for summary judgment.

[2] The Canadian Canola Growers Association [CCGA], a non-profit corporation registered under the laws of Manitoba, is one of various producer associations that administer cash advances under the Advance Payment Program [APP], a financial loan guarantee program operated by Agriculture and Agri-Food Canada [AAFC] under the *Agricultural Marketing Programs Act*, SC 1997, c 20 [Act]. The CCGA issues cash advances under the APP to cow-calf producers in Saskatchewan and British Columbia.

[3] The defendant, Mr. Cory Leonard Schlaut, is one such producer. On June 6, 2012, Mr. Schlaut applied to the CCGA for an advance payment under the Act for the 2012-2013 production year and received payments from the CCGA totalling $223,825.00, less an administration fee and holdback amounts, in June and December 2012.

[4] Mr. Schlaut was to fully repay the advance payment by April 1, 2014, being the date of default; he did succeed in having various amounts credited to his account in partial reimbursement of the advance payment, but failed to repay the entire outstanding amount by the date of default. Mr. Schlaut therefore became liable towards the CCGA to repay the outstanding amount of the advance payment, plus interest at the CIBC prime rate plus three percent (3%), calculated daily and compounded monthly, in accordance with the Advance Payments Program Application and Repayment Agreement for 2012/13, which he had signed as part of the documentation allowing him to receive the advance payment.

[5] With Mr. Schlaut not having paid the CCGA, on January 27, 2015, the Minister of AAFC [Minister] honoured the guarantee available under subsection 23(1) of the Act for the advance payment and settled the outstanding amount of Mr. Schlaut's advance payment with the CCGA, which, in principal and interest, totalled $221,176.10 at the time. With the repayment of the outstanding amount to the CCGA, the Minister became subrogated to the rights of the producer association in respect of Mr. Schlaut's outstanding debt pursuant to subsection 23(2) of the Act. By January 4, 2021, the total amount outstanding, including interest and administration fees, but less the amounts repaid by Mr. Schlaut, totalled $358,026.27.

[6] Pursuant to subsection 23(4) of the Act, the limitation period for the filing of any action or proceedings by the Minister in recovery of the outstanding debt is six years commencing from the date on which the Minister was subrogated to the rights of the CCGA – in this case, January 27, 2015. On January 6, 2021, just prior to the expiry of the six-year limitation period, the Attorney General of Canada [Attorney General] instituted the underlying action against Mr. Schlaut in the amount of $358,026.27, plus interest from January 4, 2021, at the CIBC prime rate plus three percent (3%), calculated daily and compounded monthly.

[7] In his defence, Mr. Schlaut does not deny receiving the advance payment, but simply states that the documents that he had to sign were complicated and unclear to him – he never agreed to be bound by the laws of Manitoba, he pleads and relies upon the doctrine of *contra proferentem* to state that he never had the benefit of being able to negotiate the terms of the engagement, and he refers vaguely to public policy concerns in Saskatchewan and the doctrine of unconscionability so as to justify the dismissal of the action.

[8] The only clearly articulated aspect of his defence is Mr. Schlaut's pleading of a time-bar; in particular, he relies upon *The Limitation of Actions Act*, CCSM c L150, as applicable in Manitoba at the time [*The Limitation of Actions Act of Manitoba*], and alternatively states that if the six-year limitation provision of the Act applies, the Minister did not commence the present action within such period.

[9] On June 30, 2022, the Attorney General, on behalf of the plaintiff, His Majesty the King in right of Canada, and pursuant to subsection 213(1) and section 369 of the *Federal Courts*

*Rules*, SOR/98-106 [Rules], filed the present motion in writing for summary judgment, seeking judgment against Mr. Schlaut in the amount of $388,230.52 – inclusive of principal and accrued interest as at June 22, 2022 – plus interest and costs. In short, the Attorney General asserts that His Majesty's claim is for a liquidated demand and that there is no genuine issue for trial.

[10] In opposition to the present motion, Mr. Schlaut seems to no longer rely upon *The Limitation of Actions Act of Manitoba*. His principal assertion against the granting of summary judgment is that the material filed by the Attorney General in support of the present motion is insufficient to establish that the repayment of the outstanding amount to the CCGA – necessary to trigger the rights of subrogation in favour of the Crown and the start of the limitation period for the commencement of the underlying recovery action – was made on January 27, 2015. Accordingly, it is not possible to determine from the record whether the underlying action is time-barred. In addition, Mr. Schlaut argues that the documents filed in support of the present motion do not allow for a proper accounting of how the interest was calculated.

[11] Moreover, Mr. Schlaut objects to the claim being determined by way of summary judgment as many factual matters are purportedly in dispute; he asserts that the Minister has miscalculated the total sum owing under the APP, including the amount of interest. In fact, Mr. Schlaut asserts that he cannot agree to the current outstanding debt amount given that he has not received a current calculation of interest and an explanation of how the outstanding amount has been calculated over the past many years; he therefore claims to be unable, because of the lack of detail provided by the Attorney General, to calculate the interest on his own. Finally, Mr. Schlaut objects to the present motion being decided in writing pursuant to section 369 of the

Rules as the matter is too important to his livelihood to be solely decided in writing; he therefore asks that the matter be decided in person by way of an oral hearing.

[12] The lack of clarity in the documentation seems to have caught the attention of the Attorney General, who sought permission to replace one of the exhibits filed in support of the present motion with a more legible copy; the Court so ordered on September 7, 2022, without any opposition from Mr. Schlaut. Moreover, although he had the right to do so, Mr. Schlaut elected not to cross-examine the Crown’s affiants on their affidavits regarding the calculation of interest; nor did he adduce evidence showing a different interest calculation.

[13] For my part, I am satisfied from the record that the interest payable on the amount advanced is clearly set out in the documents that were signed by Mr. Schlaut when he first applied for the advance payment. From there, the calculation of interest is simply the result of a mathematical equation, and I have not been shown by Mr. Schlaut in what way the Minister’s calculation is wrong. Here, the affidavit of Mark De Luca on behalf of the Minister makes it clear that the interest payable on the amount advanced is set out in section 6.0 of the terms and conditions portion of the advance application that was signed by Mr. Schlaut. Interest accumulates at the CIBC prime rate plus three percent (3%), calculated daily and compounded monthly, on the outstanding amount from the date that the advance was cashed until the date that the advance, interest and all collection costs are repaid in full. The interest that accrued prior to the date of default (i.e., April 1, 2014) was $22,989.80. Consequently, and according to the affidavit executed by Shelley Warner on behalf of the Minister, the interest that accrued from the date of default to June 22, 2022, was $151,750.49, with a per diem rate of $65.95 thereafter; that

is the per diem interest amount sought by the Minister from June 22, 2022, to the date of judgment.

[14] In any event, any purported uncertainty on the part of Mr. Schlaut in relation to the manner in which the total outstanding debt in favour of the Minister has been calculated could have easily been resolved at an earlier stage, in particular through the cross-examination of the Minister's affiants; simply claiming that the interest component has been "miscalculated" without any evidence showing the way in which it was miscalculated does not make it so. Mr. Schlaut cannot simply assert that there is a genuine issue for trial; he must put his best foot forward to establish why (*Canmar Foods Ltd v TA Foods Ltd*, 2021 FCA 7 at paras 27, 37).

[15] I am also satisfied from the affidavit of Mark De Luca that the date on which the Minister made payment to the CCGA on its guarantee of the advance payment of Mr. Schlaut was in fact January 27, 2015; Mr. Schlaut has not provided any evidence to the contrary, nor has he raised enough doubt as to the sufficiency or credibility of the documentary record filed by the Minister to warrant a finding that there remains a genuine issue for trial on the question of a time-bar. I find that subsection 23(4) of the Act clearly applies to the underlying claim, an issue that Mr. Schlaut does not seriously contest in his opposition to the present motion for summary judgment.

[16] As to whether the matter should be dealt with in writing under section 369 of the Rules or whether or not it should proceed by way of summary judgment, I cannot agree with Mr. Schlaut. Firstly, section 369 of the Rules imposes no express limit on the Court's discretion to dispose of

a motion in writing and accordingly, the Court has broad discretion to hear motions in writing (*Jones v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 279 at para 12). In this case, the matter is not complex, nor is credibility an issue. In addition, I cannot see that oral submissions are necessary, as the issues raised in this case could meaningfully be determined without an oral hearing (*Al Omani v Canada*, 2016 FC 317 at para 8). I am very sympathetic to Mr. Schlaut's situation, and no doubt the underlying claim will have a financial impact on his livelihood. However, having the matter proceed to trial seems to me to create unjustified delay and be an expenditure of resources which is simply unnecessary in this case.

[17] Under the circumstances, the statement of defence filed in answer to the statement of claim herein raises no genuine issue for trial, and I see no reason not to grant the present motion for summary judgment. The Attorney General seeks costs fixed at $2,473.73 in lieu of taxation, which I find reasonable.

**JUDGMENT IN T-19-21**

**THIS COURT'S JUDGMENT is that:**

1. This motion is to be decided on the basis of the written representations of the parties pursuant to subsection 369(4) of the Rules.

2. The plaintiff's motion for summary judgment on its statement of claim is granted and the underlying action of the plaintiff maintained.

3. Mr. Schlaut shall pay the plaintiff the outstanding amount of $388,230.52, with interest thereon accruing at the per diem rate of $65.95 from June 22, 2022, until the date of the present judgment, and thereafter at the rate of five percent (5%) per annum pursuant to the *Interest Act*, RSC 1985, c I-15, section 3.

4. Mr. Schlaut shall pay the plaintiff costs in the sum of $2,473.73 with interest accruing at the rate of five percent (5%) per annum from the date of the present judgment.

"Peter. G. Pamel"

Judge