

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180406

Docket: A-114-18

Citation: 2018 FCA 70

Present: LASKIN J.A.

BETWEEN:

6260268 CANADA INC. and 6488897 CANADA INC.

Appellants

and

**CONSTRUCTION GMR INC. and
HER MAJESTY THE QUEEN**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, on April 6, 2018.

REASONS FOR ORDER BY:

LASKIN J.A.

Federal Court of Appeal



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REASONS FOR ORDER

LASKIN J.A.

[1] The appellants, who brought a notice of appeal to the Registry of this Court for filing yesterday, April 5, 2018, have brought what they describe as an “Emergency Motion in Appeal of a Final Decision of the Tax Court of Canada Refusing a Request for a Postponement.” They ask that this motion be heard by one of the judges of this Court, and that the hearing take place today. The relief that they claim in their motion is that this Court “overturn” a decision of the Tax Court refusing their request for an adjournment of a trial that is scheduled to begin on

Monday, April 9, 2018, and “return the matter to the Tax Court of Canada for rescheduling of the trial.”

[2] The request for an adjournment of the proceeding in the Tax Court was made by way of a letter dated March 29, 2018, sent to the Hearing Coordinator of the Tax Court in Montreal. In the letter, the appellants’ counsel stated among other things that the appellants’ representative in the matter had become aware of the trial date only on March 16, 2018, and that he had also learned for the first time on that date that the lawyer who had been the appellants’ counsel in the matter had left the law firm that had been acting for the appellants, and that another lawyer at the firm had, without any input from the appellants, been assigned to take the trial. Counsel also advised that he had subsequently been retained to assume carriage of the matter, and that he was not available on April 9, 2018 or for the majority of the month of April.

[3] Counsel for the respondent Construction GMR Inc. wrote to the Hearing Coordinator opposing any adjournment, noting among other things that the trial date had been fixed in a telephone conference with Lamarre A.C.J. of the Tax Court in April 2017. Counsel for the respondent Her Majesty the Queen also wrote opposing the adjournment.

[4] On April 4, 2018, the Hearing Coordinator sent counsel for the parties a letter advising that the request for the adjournment had been refused, and that the parties should be ready to begin the hearing on April 9 as scheduled. It does not appear that any formal order refusing the adjournment was issued.

[5] Counsel for the appellants wrote to Lamarre A.C.J. yesterday asking that the refusal of the adjournment be reconsidered. The letter was accompanied by a sworn declaration of the appellants' representative attesting to the facts that formed the basis for the renewed adjournment request. At the time of disposing of this motion this Court had not been made aware of any response by the Tax Court to the request for reconsideration.

[6] In the meantime the appellants also brought the matter before this Court as set out above. The appellants ask that “[u]nder the urgent circumstances, [...] the normal formalities associated with an appeal be put aside and that this matter be heard by one of the Honourable Justices of the Federal Court of Appeal [today].” Counsel for the respondents have sent letters to the Court addressing the merits of the adjournment request and opposing the granting of any relief.

[7] What the appellants seek in their motion is, in substance, (1) an order under rule 55 of the *Federal Courts Rules*, SOR/98-106, dispensing with compliance with rules 341 and 343 to 348, which govern the conduct of appeals in this Court (including the settling of the contents and filing of the appeal book, the filing by each party in turn of a memorandum of fact and law, the filing of a book of authorities, and the filing of a requisition for hearing) and (2) an order under rule 8 expediting the hearing of the appeal. They also seek to have the Court disregard subsection 16(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, which requires that, except as otherwise provided by statute, every appeal to this Court be heard by not fewer than three judges.

[8] The Court has no authority to dispense with compliance with the three-judge requirement, a requirement established by Parliament. Nor is it appropriate in my view to

dispense with the rules and expedite the hearing as the appellants propose. The rules governing the conduct of an appeal are there to ensure that appeals are heard in a fair and orderly manner. While the Court will be flexible in appropriate circumstances, to proceed headlong into a hearing as the appellants propose would not be orderly and would not be fair to the parties or the Court.

[9] The appellants' motion is therefore dismissed with costs. The dismissal is without prejudice to any further entitlement that the appellants may have to challenge the refusal of an adjournment by appeal to this Court. For clarity, because Construction GMR Inc. is adverse in interest to the appellants in this appeal, the style of cause in this Court will be amended to show Construction GMR Inc. as a respondent, consistent with rule 338(1)(a). I have described it in that manner in these reasons.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-114-18

STYLE OF CAUSE: 6260268 CANADA INC. and
6488897 CANADA INC. v.
CONSTRUCTION GMR INC. and.
HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: LASKIN J.A.

DATED: APRIL 6, 2018

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