

Date: 20091102

Docket: 09-A-28

Citation: 2009 FCA 317

Present: PELLETIER J.A.

BETWEEN:

PACIFIC SHOWER DOORS (1995) LTD.

Applicant

and

**CANADIAN INTERNATIONAL TRADE TRIBUNAL
ATTORNEY GENERAL OF CANADA
ALMAG ALUMINUM INC.
APEL EXTRUSIONS LIMITED
CAN ART ALUMINUM EXTRUSION INC.
EXTRUDEX ALUMINUM
METRA ALUMINUM INC.
SIGNATURE ALUMINUM CANADA INC.
SPECTRA ALUMINUM PRODUCTS INC.
SPECTRA ANODIZING LIMITED**

Respondents

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on November 2, 2009.

REASONS FOR ORDER BY:

PELLETIER J.A.

Date: 20091102

Docket: 09-A-28

Citation: 2009 FCA 317

Present: PELLETIER J.A.

BETWEEN:

PACIFIC SHOWER DOORS (1995) LTD.

Applicant

and

**CANADIAN INTERNATIONAL TRADE TRIBUNAL
ATTORNEY GENERAL OF CANADA
ALMAG ALUMINUM INC.
APEL EXTRUSIONS LIMITED
CAN ART ALUMINUM EXTRUSION INC.
EXTRUDEX ALUMINUM
METRA ALUMINUM INC.
SIGNATURE ALUMINUM CANADA INC.
SPECTRA ALUMINUM PRODUCTS INC.
SPECTRA ANODIZING LIMITED**

Respondents

REASONS FOR ORDER

PELLETIER J.A.

[1] The applicant Pacific Shower Doors (1995) Ltd. (PSD) brings this motion for an extension of time to file an application for judicial review of a decision of the Canadian International Trade Tribunal (CITT) in which the CITT denied PSD an exemption from its finding that the dumping and subsidizing in Canada of custom-shaped aluminum extrusions originating in or exported from China

have caused injury to the domestic industry (Inquiry No. NQ-2008-03). The CITT's findings were released on March 17, 2009 while its reasons were issued on April 1, 2009. PSD's application for an extension of time was filed on August 27, 2009, well outside the 30 day period provided for filing applications for judicial review.

[2] PSD is in the business of supplying custom shower doors. The CITT disposed of its application for an exemption as follows:

370. The Tribunal denies the request for product exclusion filed by Pacific Shower Doors (1995) Ltd. (Pacific Shower), which concerns aluminum extrusions that are used in the assembly of shower enclosures. Pacific Shower submitted that domestic producers are not able to perfectly match the custom fit and finishes required by its customers. It also submitted that the domestic producers are not willing to provide Pacific Shower with the small quantities of products that it needs and that they are also not able to meet its packaging requirements. The Tribunal is of the view that no evidence was provided to support Pacific Shower's claim that the domestic producers are unable to meet its requirements in terms of fit, finish and packaging. While Pacific Shower did provide evidence that one producer, which was not a party in support of injury findings in this case, could not supply one particular product, the Tribunal does not consider this as sufficient to demonstrate that domestic producers are unable to produce identical or substitutable products. The Tribunal recognizes that some domestic producers may have minimum order requirements. However, it finds that such conditions are not unusual and do not constitute, in and of themselves, a sufficient basis to grant an exclusion.

[3] At paragraph 16 of his affidavit filed in support of his motion, Mr. Frederick Wilkins explains his response to the CITT's decision:

16) I concluded that an application for judicial review was not the most appropriate action. I believed that the CITT would hold an interim review if I were able to prove that the claims made by the complainants as noted in paragraph 12 were false and that the CITT would then most likely grant the exclusion as required by SIMA [the *Special Import Measures Act* R.S.C. 1985 c. S-15]

[4] Paragraph 12, to which Mr. Wilkins refers, reads as follows:

- 12) The Complainants opposed PSD's application for exclusion. They claimed to currently produce the Subject Goods. They further claimed to make substitutable goods. They further claimed to have full and current capacity to produce identical goods.

[5] As a result, Mr. Wilkins sought quotations from the Complainants as well as other domestic extruders. He further claims that the responses to his requests for quotations showed that the claims made by or on behalf of the complainants in paragraph 12 could not be substantiated.

[6] Mr. Wilkins then made an application to the CITT for an interim review as provided at section 76.01 of the *Special Import Measures Act*. The CITT dismissed the application for interim review. Mr. Wilkins then filed an application for judicial review of that decision within the time provided for doing so. He now seeks an extension of the time for bringing an application for judicial review of the original decision and to have the two applications heard concurrently.

[7] The test for the granting of an application for an extension of time is well known and has been reiterated in numerous decisions of this Court. By way of example, this court said in *Canada (Minister of Human Resources Development) v. Hogervort*, 2007 FCA 41, [2007] F.C.J. No. 37, at paragraph 32:

- 32 There is no dispute as to what the correct legal test is on a motion for an extension of time to file an application for leave to appeal: see *Marshall v. Canada*, [2002] F.C.J. No. 669, 2002 FCA 172; *Neis v. Baksa*, [2002] F.C.J. No. 832, 2002 FCA 230. What is required is that

- a) there was and is a continuing intention on the part of the party presenting the motion to pursue the appeal;
- b) the subject matter of the appeal discloses an arguable case;
- c) there is a reasonable explanation for the defaulting party's delay; and
- c) there is no prejudice to the other party in allowing the extension.

[8] In this case, it is clear from paragraph 16 of the Mr. Wilkins' affidavit that he did not have a continuing intention to pursue an application for judicial review. He chose to pursue another remedy and when that failed, he launched an application for judicial review of that decision in a timely manner. It was not until that was done that Mr. Wilkins considered whether he ought not to have applied for judicial review of the original decision. His application should fail on this ground alone.

[9] In addition, it is not apparent, despite Mr. Wilkins' arguments to the contrary, that his application for judicial review has any reasonable prospect of success. The basis of the CITT's decision is that Mr. Wilkins' application for an exemption was not supported by any evidence. The fact that Mr. Wilkins set about gathering that evidence after the decision was rendered does not invalidate the CITT's conclusion on the record which was before it. Mr. Wilkins subsequently gathered evidence which may have some incidence on his application for judicial review of the dismissal of his application for an interim review, but it has none on the reasonableness of the original decision.

[10] It is clear from section 76.01 of the *Special Import Measures Act* that, if Mr. Wilkins is successful in his application for judicial review and the matter is remitted to the CITT for a fresh decision, the latter has the jurisdiction to make an appropriate order in his favour. As a result, the dismissal of this application for an extension of time does not leave Mr. Wilkins without a remedy.

[11] I would therefore dismiss the motion for an extension of time to file an application for judicial review of the CITT's decision in Inquiry No. NQ-2008-003.

[12] In his notice of motion, Mr Wilkins also asks for leave to represent PSD, of which he is the sole shareholder and director. Corporate status confers certain advantages but it also comes with certain disadvantages, one of which is that corporations must be represented by counsel. That rule can be waived, usually on grounds of impecuniosity, but no such evidence has been provided here. There is every reason to believe PSD would benefit from professional legal representation. The request for leave to have Mr. Wilkins represent PSD will also be dismissed.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: 09-A-28

STYLE OF CAUSE: PACIFIC SHOWER DOORS (1995)
LTD. and CANADIAN
INTERNATIONAL TRADE
TRIBUNAL and THE ATTORNEY
GENERAL OF CANADA et al.

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: PELLETIER J.A

DATED: NOVEMBER 2, 2009

WRITTEN REPRESENTATIONS BY:

JULES FREDERICK WILKINS, MBA

FOR THE APPLICANT
ON HIS OWN BEHALF

RONALD C. CHENG

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

JULES FREDERICK WILKINS, MBA
BURNABY, B.C.

FOR THE APPLICANT
ON HIS OWN BEHALF

OSLER, HOSKIN & HARCOURT
OTTAWA, ONTARIO

FOR THE RESPONDENTS