

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20110207

Docket: A-331-10

Citation: 2011 FCA 46

**CORAM: NOËL J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

**TRACTOR SUPPLY CO. OF TEXAS, LP AND
TRACTOR SUPPLY COMPANY**

Appellants

and

TSC STORES L.P.

Respondent

Heard at Toronto, Ontario, on February 7, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on February 7, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 7, 2011)

NOËL J.A.

[1] This is an appeal from an order of Mactavish J. of the Federal Court (the Motions Judge) dismissing a motion to stay two opposition proceedings before the Trade-marks Opposition Board (the Board) until the final disposition of a related action presently pending before the Federal Court.

[2] The Motions Judge denied the stay for a number of reasons. After a lengthy analysis, she concluded that the appellants had failed to satisfy her that it would be in the interest of Justice to stay the proceedings before the Board (Section 50 of the *Federal Courts Act* R.S., 1985, c. F-7). She

came to this conclusion on the basis of the test stated in *White v. E.B.F. Manufacturing Ltd.*, [2001] F.C.J. No. 1073 at para.5. She added that she would have reached the same conclusion applying the three prong test set out in *RJR-MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[3] No error of principle is alleged and we are unable to detect a palpable and overriding error nor has it been established that the Motions Judge reached her decision on the basis of irrelevant factors or that she failed to have regard to relevant factors.

[4] The appeal will be dismissed with costs.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-331-10

**(APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE
MACTAVISH OF THE FEDERAL COURT DATED SEPTEMBER 8, 2010, DOCKET NO.
T-1804-07 INTERLOCUTORY DOC. 92)**

STYLE OF CAUSE: TRACTOR SUPPLY CO. OF TEXAS, LP AND
TRACTOR SUPPLY COMPANY v. TSC STORES
L.P.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 7, 2011

**REASONS FOR JUDGMENT OF
THE COURT BY:** (NOËL, EVANS & SHARLOW JJ.A.)

**DELIVERED FROM THE
BENCH BY:** NOËL J.A.

APPEARANCES:

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