

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120606

Docket: A-122-11

Citation: 2012 FCA 169

**CORAM: NOËL J.A.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

**TOWN OF ST. BRIEUX, R.M. OF LAKE LENORE NO. 399,
VILLAGE OF LAKE LENORE, ST. BRIEUX REALTY INC.,
LAKEVIEW PROPERTY OWNERS ASSOCIATION LTD.,
LAKE LENORE WILDLIFE FEDERATION, and
ST. BRIEUX REGIONAL PARK**

Appellants

and

SASKATCHEWAN WATERSHED AUTHORITY

Respondent

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Winnipeg, Manitoba, on June 6, 2012.

Judgment delivered from the Bench at Winnipeg, Manitoba, on June 6, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

Federal Court
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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Winnipeg, Manitoba, on June 6, 2012)

STRATAS J.A.

[1] This is an appeal from the Order of the Federal Court (*per* Justice O’Keefe): 2011 FC 240. The Federal Court dismissed an appeal from the Order dated August 20, 2010 of Prothonotary Lafrenière. The Prothonotary dismissed the appellants’ motion to intervene in a judicial review brought by the Saskatchewan Watershed Authority.

[2] In their written submissions in this Court, the appellants advanced essentially the same submissions on the merits of their motion to intervene that they advanced, unsuccessfully, before the Prothonotary and the Federal Court judge.

[3] This Court, sitting in appeal from an appeal of a first-instance decision-maker, is not free to redetermine the merits of the motion. Instead, to succeed in this Court, the appellants must demonstrate that the Federal Court erred in a fundamental way in refusing to interfere with the Prothonotary’s decision: *Merck & Co. v. Apotex*, 2003 FCA 488; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The appellants have not demonstrated any such error.

[4] In their oral submissions in this Court, the appellants emphasized that they had a strong interest in this matter and a perspective on the issues that was different from those of the parties already before the court.

[5] It is evident from the reasons of the Prothonotary and the Federal Court judge that they did appreciate the nature of the appellants' interest in this matter but found on the facts that they had no contribution to make that would be sufficiently useful and different from those of the parties already before the court. These are factually-based assessments that can only be disturbed upon satisfaction of the test set out in paragraph 3, above. In our view, the appellants have not satisfied that test. In this regard, the case at bar bears resemblance to cases such as *CUPE v. Canadian Airlines International Ltd.*, [2000] F.C.J. No. 220 (C.A.), *Li v. Canada* (2004), 327 N.R. 253 (F.C.A.) and *Ferroequus Railway v. Canadian National Railway*, 2003 FCA 408,

[6] For the foregoing reasons, we shall dismiss the appeal with costs.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-122-11

APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE O'KEEFE DATED MARCH 1, 2011, DOCKET NO. T-905-10

STYLE OF CAUSE: Town Of St. Brieux, R.M. Of Lake Lenore No. 399, Village Of Lake Lenore, St. Brieux Realty Inc., Lakeview Property Owners Association Ltd., Lake Lenore Wildlife Federation, v. Saskatchewan Watershed Authority St. Brieux Regional Park and Attorney General of Canada

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: June 6, 2012

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Dawson, Stratas JJ.A.

DELIVERED FROM THE BENCH BY: Stratas J.A.

APPEARANCES:

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FOR THE APPELLANTS

FOR THE RESPONDENT,
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FOR THE RESPONDENT,
Attorney General of Canada