

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240215**

**Dockets: A-262-22  
A-2-23**

**Citation: 2024 FCA 30**

**Present: LOCKE J.A.**

**BETWEEN:**

**MARSHALL MACCIACCHERA dba SMOOTHSTREAMS.TV, ANTONIO  
MACCIACCHERA dba SMOOTHSTREAMS.TV, ARM HOSTING INC., STAR  
HOSTING LIMITED (HONG KONG), ROMA WORKS LIMITED (HONG KONG)  
and ROMA WORKS SA (PANAMA)**

**Appellants**

**and**

**BELL MEDIA INC., ROGERS MEDIA INC., COLUMBIA PICTURES INDUSTRIES  
INC., DISNEY ENTERPRISES, INC., PARAMOUNT PICTURES CORPORATION,  
UNIVERSAL CITY STUDIOS LLC, UNIVERSAL CITY STUDIOS PRODUCTIONS  
LLLP and WARNER BROS. ENTERTAINMENT INC.**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on February 15, 2024.

**REASONS FOR ORDER BY:**

**LOCKE J.A.**

Federal Court of Appeal



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INDUSTRIES INC., DISNEY ENTERPRISES, INC., PARAMOUNT PICTURES  
CORPORATION, UNIVERSAL CITY STUDIOS LLC, UNIVERSAL CITY  
STUDIOS PRODUCTIONS LLLP and WARNER BROS. ENTERTAINMENT INC.**

**Respondents**

**REASONS FOR ORDER**

**LOCKE J.A.**

[1] The individual appellants, Marshall and Antonio Macciachera, seek leave under Rule 120 of the *Federal Courts Rules*, S.O.R./98-106, to represent the corporate appellants in this appeal of which they are officers.

[2] Though the notice of motion indicates that it is a motion in writing, Messrs. Macciachera have requested in a separate letter that a hearing be scheduled to hear oral submissions. Per Rule 369.2, motions before this Court are generally decided on the basis of written submissions. A request that a motion be heard orally should include reasons. Messrs. Macciachera's request for an oral hearing does not include reasons. Further, I see no need for an oral hearing. Accordingly, I will decide this motion on the basis of the written submissions.

[3] Rule 120 provides that “[a] corporation ... shall be represented by a solicitor in all proceedings, unless the Court in special circumstances grants leave to it to be represented by an officer...”. Messrs. Macciachera recognize that they bear the onus of showing “special circumstances”. They also recognize that this onus generally requires that they demonstrate that (i) they cannot afford a lawyer, (ii) they will not be required to be both advocate and witness; (iii) the issues are not so complex as to be beyond their capabilities; and (iv) the appeal can proceed in an expeditious manner: *Glycobiosciences Inc. v. L'Oreal Canada*, 2022 FC 1517 at para. 25 (*Glycobiosciences*); *UBS Group AG v Yones*, 2022 FC 487 at paras. 7-10.

[4] The *Glycobiosciences* decision cited by Messrs. Macciachera goes on at paragraph 27 to state as follows:

The onus on the moving party to establish special circumstances is a high one. The moving party must provide clear and unambiguous evidence establishing special circumstances, and these circumstances must be unusual, uncommon and exceptional, and the result of external forces as distinct from the voluntary acts of the plaintiff (*Alpha Marathon Technologies Inc v Dual Spiral Systems Inc*, 2005 FC 1582 at para 4 (“Alpha”)).

[5] Having carefully reviewed the submissions of Messrs. Macciachera, I have concluded that their motion should be denied because they have failed to demonstrate that they cannot afford a lawyer, and hence they have not convinced me that special circumstances exist.

[6] As stated in *Alpha* at paragraph 5, “[t]he ability of [the moving party] to pay for legal representation is without a doubt the most important factor for the Court to consider.”

[7] As stated in *El Mocambo Rocks Inc. v. Society of Composers, Authors and Music Publishers of Canada (SOCAN)*, 2012 FCA 98 at para. 4, “[t]he demonstration that a corporation cannot afford a solicitor should usually be made by submitting complete and clear financial information concerning the corporation, preferably by means of financial statements.”

[8] Messrs. Macciachera address the requirement that they cannot afford a lawyer at paragraph 11 of their written representations. Though they argue that they are committed to pursuing this appeal, and that many steps leading to a hearing have been completed, they do not allege that they cannot afford a lawyer. They provide no financial information whatsoever.

[9] I recognize that the respondents do not oppose Messrs. Macciachera’s motion. However, though that may be a relevant factor in addressing a motion under Rule 120, it is not determinative. In this case, it does not outweigh the absence of evidence that Messrs. Macciachera cannot afford a lawyer.

[10] The dismissal of Messrs. Macciachera's motion has implications for the progress of the present appeal. Without representation, the corporate appellants cannot act. Accordingly, I will order, just as Justice Donald J. Rennie did in his Order dated December 8, 2023, that they appoint new solicitors of record in accordance with Rule 124 within 30 days.

[11] I note also that a requisition for hearing was filed on January 8, 2024. Though that document indicates that it is on behalf of all of the appellants, it cannot have been on behalf of the corporate appellants because they were not duly represented. Accordingly, I will order, just as Justice Rennie did in his Order dated December 8, 2023, that a fresh requisition for hearing under Rule 347 be filed within 30 days following retainer of new counsel.

"George R. Locke"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKETS:** A-262-22  
A-2-23

**STYLE OF CAUSE:** MARSHALL MACCIACCHERA dba  
SMOOTHSTREAMS.TC, ANTONIO  
MACCIACCHERA dba  
SMOOTHSTREAMS.TV, ARM HOSTING INC.,  
STAR HOSTING LIMITED (HONG KONG),  
ROMA WORKS LIMITED (HONG KONG) and  
ROMA WORKS SA (PANAMA) v. BELL  
MEDIA INC., ROGERS MEDIA INC.,  
COLUMBIA PICTURES INDUSTRIES INC.,  
DISNEY ENTERPRISES, INC., PARAMOUNT  
PICTURES CORPORATION, UNIVERSAL  
CITY STUDIOS LLC, UNIVERSAL STUDIOS  
PRODUCTIONS LLLP and WARNER BROS.  
ENTERTAINMENT INC.

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** LOCKE J.A.

**DATED:** FEBRUARY 15, 2024

**WRITTEN REPRESENTATIONS BY:**

Antonio Macciachera FOR THE APPELLANTS  
Marshall Macciachera

**SOLICITORS OF RECORD:**

Smart & Biggar LLP FOR THE RESPONDENTS  
Montréal, Quebec