

Cantore c. Nemaska Lithium Inc.

2020 QCCA 1333

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-029137-205
(500-17-113482-205, 500-11-057716-199)

DATE: October 16, 2020

BEFORE THE HONOURABLE BENOÎT MOORE, J.A.

500-17-113482-205

VICTOR CANTORE

APPLICANT – plaintiff

v.

NEMASKA LITHIUM INC.

NEMASKA LITHIUM WHABOUCHI MINE INC.

NEMASKA LITHIUM SHAWINIGAN TRANSFORMATION INC.

RESPONDENTS – defendants

and

**THE LAND REGISTRAR OF THE LAND REGISTRY OFFICE FOR THE
REGISTRATION DIVISION OF LAC-SAINT-JEAN-OUEST**

IMPLEADED PARTIES – impleaded parties

500-11-057716-199

In the matter of the companies' creditors arrangement act of Nemaska Lithium Inc., Nemaska Lithium Whabouchi Mine Inc. and Nemaska Lithium Shawinigan Transformation Inc.

VICTOR CANTORE

APPLICANT – plaintiff

and

NEMASKA LITHIUM INC.

NEMASKA LITHIUM WHABOUCHI MINE INC.

NEMASKA LITHIUM SHAWINIGAN TRANSFORMATION INC.

RESPONDENTS – debtors

and

PRICEWATERHOUSECOOPERS INC., in its capacity as Monitor on the matter of the CCAA proceedings of Nemaska Lithium Inc. and al.

IMPLEADED PARTIES – monitor

and

**THE LAND REGISTRAR OF THE LAND REGISTRY OFFICE FOR THE
REGISTRATION DIVISION OF LAC-SAINT-JEAN-OUEST
THE REGISTRAR OF THE PUBLIC REGISTER OF REAL AND IMMOVEABLE
MINING RIGHTS**

IMPLEADED PARTIES – impleaded parties

JUDGMENT

[1] The applicant seeks leave to appeal a judgment of the Superior Court, Commercial Division, District of Montreal, dated September 9, 2020 (the Honourable Mr. Justice Louis J. Gouin), which ordered that file 500-17-113482-205, dealing with an application for a declaratory judgment regarding real rights, be struck and transferred into file 500-11-057716-199 of the Commercial Division, dealing with the restructuring of the respondents.

[2] In file 500-17-113482-205, the applicant seeks the recognition of a real right, either through acquisitive prescription or through the compulsory execution of a promise to sell, based on the provisions of the *Civil Code of Québec* (“C.C.Q.”), more specifically articles 2918 and 1712 C.C.Q.

[3] Gouin, J.S.C., who noted that this claim pertains to property of the respondents, then in the process of restructuring under the *Companies’ Creditors Arrangement Act*¹ (“CCAA”), concluded that “[i]l est définitivement plus pratique et efficace, tant au plan administratif qu’au plan de la cohésion et cohérence de toutes les procédures dans ce dossier de restructuration, que le tout soit colligé sous un seul et même dossier de cour”, namely, file 500-11-057716-199 in the Commercial Division. Moreover, he stated that the Court has jurisdiction to make all orders necessary to resolve the dispute.

[4] The applicant appeals this judgment and submits this application for leave to appeal under both the *Code of Civil Procedure* (“C.C.P.”) and sections 13 and 14 CCAA.

¹ R.S.C. (1985), c. C-36.

[5] He argues that, by incorporating the application for a declaratory judgment into the restructuring file, the judge does not have jurisdiction under the CCAA to rule on a civil law case, that he would not, pursuant to the powers conferred on the judge under the CCAA, be able to issue the necessary conclusions to resolve the dispute and that it would be impossible to comply with the requirements of the *Code of Civil Procedure* and implead the land registrar. The applicant also argues that, in so doing, the judge is subjecting the appeal of a future judgment on this matter to the time limits and conditions under the CCAA rather than those under the C.C.P.

[6] For purposes of this application for leave to appeal, the applicant submits that since his real rights claim is based on the C.C.Q., he does not have to show that he satisfies the conditions required by the CCAA. Nonetheless, he submits that he satisfies those conditions, namely, that the issues raised are of significance to the practice, that the appeal is of significance to the proceedings in question, that the appeal is *prima facie* meritorious and that it will not hinder the progress of the proceedings.

[7] For the reasons that follow, leave to appeal should not be granted.

[8] As stated in article 33, C.C.P., in Quebec, the Superior Court is the court of original general jurisdiction. A judge of that Court, sitting in the Commercial Division under the CCAA, is not a separate court from the Superior Court sitting in the exercise of its ordinary civil jurisdiction.² In short, there is one multidisciplinary Court tasked with applying a number of laws. What is referred to as the Commercial Division is purely an administrative creation for practical purposes and sound management of the rolls: "Ainsi, lorsque la Cour supérieure exerce sa fonction en vertu de la LACC, elle exerce alors le rôle que cette loi lui confie. Cela ne veut pas dire qu'elle est limitée ou encadrée de telle façon qu'elle ne puisse n'appliquer que cette loi dans l'exercice du rôle qui lui est confié."³

[9] Thus, it is not the subject matter of the dispute that could prevent a civil file from being transferred, as in the present case, to the Commercial Division in the course of the restructuring file.⁴ As the Supreme Court explained, such a transfer can take place unless (1) the applicant is a stranger to the CCAA proceedings, or (2) the court cannot award the remedy sought.⁵

² *Arctic Gardens Inc. (Syndic de)*, [1990] R.J.Q. 6 (C.A.); *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659, para. 83; *TVA Publications inc. v. Quebecor World Inc.*, 2009 QCCA 1352, para. 7 (Morissette, J.A.).

³ *Quebecor World Inc. (Arrangement relatif à)*, 2009 QCCS 1992, para. 13.

⁴ *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, para. 43.

⁵ *Ibid.*

[10] In the present matter, both criteria have been met. The applicant is not a stranger to the proceedings. The action seeks to revendicate property that is in the debtor's patrimony. In fact, the trial judge noted discussions in the file that involved the applicant, the applicant having sought to have the stay lifted so he could institute his action, which the judge agreed to do during a case management conference on August 31, 2020.

[11] As for the second criterion, at the risk of repeating myself, the judge sitting in the Commercial Division is a judge of the Superior Court, who, by definition, has all the powers required to make the orders sought under the C.C.Q.

[12] Moreover, the applicant did not succeed in convincing me when he argued that, in the case at bar, the judge effected more than a mere transfer of the file to the Commercial Division, but that he subjected the file involving a claim for real rights to the restructuring file. The decision is a case management decision for administrative and practical purposes.⁶ I would add that the trial judge's exercise of his discretion under the CCAA merits great deference on appeal.⁷

[13] As for the argument with respect to the rules regarding an appeal in the declaratory judgment file, which rules would be those under the CCAA if the file were to be transferred, at this stage this is a hypothetical argument and cannot constitute harm or an issue of law that merits leave to appeal.

[14] Lastly, I would note that what the judge did in the present case is not an unusual procedure in this type of file.⁸

[15] In short, whether one is of the view that leave to appeal is governed by article 31 C.C.P., as the applicant argues, article 32 C.C.P. or sections 13 and 14 CCAA, the conditions have not been met. The judgment does not determine part of the dispute or cause irremediable injury to the applicant, nor is it unreasonable given that it seeks efficiency and expeditiousness.⁹ Moreover, it is not of significance to the practice or to the present proceedings, nor does it have a reasonable chance of success.

[16] At the end of the hearing, following an observation by counsel for the respondents, the applicant suggested that he is entitled to an appeal as of right insofar as the judgment under appeal constitutes a dismissal of his application for a declaratory judgment.

⁶ *TVA Publications inc. v. Quebecor World Inc.*, 2009 QCCA 1352, para. 7 (Morissette, J.A.).

⁷ *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, paras. 53-54.

⁸ See, in particular: *Pierre Roy et Associés inc. c. Lashchuk*, 2018 QCCA 2057 (Hamilton, J.A.); *Bédard (Syndic de)*, [2005] R.J.Q. 1732 (Sup. Ct.).

⁹ *Lavigne c. 6040993 Canada inc.*, 2016 QCCA 1755, para. 581.

[17] It is surprising, to say the least, that this element was raised at the end of the hearing and that the applicant did not state that he considered his application for leave to appeal to be an application *de bene esse*, if such were the case.

[18] Regardless, the fact remains that the judgment under appeal does not dismiss the application for a declaratory judgment on the merits, nor does it rule on that application in any manner. There is obviously no *res judicata*. It was a case management or procedural decision and, in my opinion, leave to appeal was indeed required.

FOR THESE REASONS, THE UNDERSIGNED:

[19] **DISMISSES** the application for leave to appeal, with legal costs.

BENOÎT MOORE, J.A.

Mtre Dimitrios Maniatis
ACCENT LÉGAL
For the applicant

Mtre Alain Tardif
Mtre Gabriel Faure
Mtre Karine Joizil
Mtre Pascale Klees-Themens
McCARTHY TÉTRAULT
For the respondents

Mtre Jean Fontaine
Mtre Nathalie Nouvet
STIKEMAN ELLIOTT
For the Pricewaterhousecoopers Inc.

Date of hearing: October 13, 2020