

Federal Court



Cour fédérale

Date: 20210831

Docket: T-1807-18

Citation: 2021 FC 906

[ENGLISH TRANSLATION REVISED BY THE AUTHOR]

Ottawa, Ontario, August 31, 2021

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Plaintiff

and

**FERME MICHEL TOUCHETTE S.E.N.C.,
MICHEL TOUCHETTE AND LINDA BRIN**

Defendants

and

LES PRODUCTEURS DE PORCS DU QUÉBEC

Third Party

JUDGMENT AND REASONS

I. Facts

[1] On or about September 10, 2008, the administrator, Fédération des producteurs de porcs du Québec (the administrator), and the producer, Ferme Michel Touchette s.e.n.c. (the producer), made an agreement for a \$175,000.00 advance under the Advance Payments Program (APP) for the production period from April 1, 2008, to September 30, 2009. On or about December 17, 2008, during the same production period, the producer and the administrator entered into a second agreement for an additional advance of \$50,000.00. These amounts, including interest, are secured by a joint and several guarantee signed by Linda Brin and Michel Touchette on August 4, 2008, and December 8, 2008.

[2] Neither the plaintiff nor the administrator has received any voluntary payments from the defendants toward the principal since the first advance was issued, on or about December 18, 2008.

[3] The defendants obtained two stays of the requirement to repay the total advance, one on May 11, 2009, and the second on January 20, 2011. The producer reiterated its commitment to pay the amount owing and payable, and Michel Touchette and Linda Brin reiterated their individual and joint commitment to repay the amount owing.

[4] On or about November 14, 2012, the Minister of Agriculture and Agri-Food Canada (the Minister) made a payment of \$225,376.56, representing the total advance (including interest) for the 2008–09 production period, to the National Bank of Canada, thereby becoming subrogated to

the rights of the National Bank of Canada against all the defendants, under the *Agricultural Marketing Programs Act*, SC 1997, c 20 [the AMPA], and under the terms and conditions of the applications for an advance.

[5] Taking into account the amounts to which the Minister is entitled as a subrogated creditor and for which the defendants are liable, the total debt amounted to \$316,029.96, including interest, as of April 9, 2021.

II. Issues

A. *Do the facts demonstrate that summary judgment should be granted in favour of the plaintiff jointly and severally against the defendants?*

B. *Is the claim for recovery barred because it was filed after the six-year limitation period had elapsed?*

III. Analysis

A. *General rules for summary judgments*

[6] Section 213 of the *Federal Courts Rules*, SOR/98-106 [Rules], provides for summary judgment to be granted to a plaintiff only after the defendant has filed a defence. In this case, a defence was filed on November 21, 2018.

[7] The purpose of summary judgment is to dispose of claims or defences that have no reasonable prospect of success. Subsection 215(1) of the Rules states that summary judgment

will be granted if the Court is satisfied that there is no genuine issue for trial with respect to a statement of defence.

[8] Section 214 states that a response to a motion for summary judgment may not rely on what might be adduced as evidence at a later stage in the proceedings. This Court stated as follows in *Moroccanoil Israel Ltd v Lipton*, 2013 FC 667 at para 10:

It . . . must set out specific facts and adduce evidence showing that there is a genuine issue for trial. The defendant has the burden to show that there is a genuine issue for trial. The defendant cannot rely on bald statements or lack of knowledge and/or denials in its pleadings to raise a genuine issue for trial.

[9] If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a statement or defence, it may nevertheless determine that issue by way of summary trial, in accordance with paragraph 215(3)(a) of the Rules.

(1) Summary judgment preconditions established

[10] The AMPA is a federal statute which supports agricultural production in Canada by making loans available to agricultural producers. The AMPA provides a mechanism whereby administrators involved in agricultural sales provide advances to producers to enable them to carry out activities such as purchasing production equipment and producing the products themselves. Agricultural producers are required to eventually repay the loans, with interest, to the administrator. The Minister guarantees the repayment of a loan to the administrator should the producer default.

[11] Producers obtain advances by entering into a repayment agreement with an administrator; agreements must include various conditions required by the AMPA. Under section 23 of the AMPA, if a producer defaults on the repayment of an advance, the administrator may request that the Minister pay the amounts owing. If a request is made and the provisions of subsection 23(1) are met, the Minister must pay the administrator the amounts provided for in that subsection, which reads as follows:

23 (1) If the producer is in default under the repayment agreement and the Minister receives a request for payment from the administrator or lender to whom the guarantee is made, the Minister must, in accordance with the advance guarantee agreement and subject to any regulations made under paragraph 40(1)(g) or (g.1), pay to the lender or the administrator, as the case may be, an amount equal to the amounts referred to in paragraphs 22(a) and (c) and the interest, other than the interest paid by the Minister under subsection 9(1), at the rate specified in the advance guarantee agreement on the outstanding amount of the advance, calculated from the date of the advance.

[12] If the Minister makes this payment, he is subrogated to the administrator against the producer and the persons who are jointly and severally liable. Sections 23(2) and 23(3) of the AMPA read as follows:

23 (2) The Minister is, to the extent of any payment under subsection (1) or (1.1), subrogated to the administrator's rights against the producer in default and against persons who are liable under paragraphs 10(1)(c) and (d) and may maintain an action, in the name of the administrator or in the name of the Crown, against that producer and those persons.

Recovery of interest and costs

(3) The producer is liable to the Minister for interest on the subrogated amount, calculated in accordance with the repayment agreement, and the costs incurred by the Minister to recover that amount, including legal costs.

[13] The evidence in the circumstances establishes the following:

- The defendants applied for an agricultural loan on or about September 10, 2008.
- The defendants received a total of \$225,000 under this program.
- The defendants defaulted on the repayment of the advance to the administrator.
- The Minister repaid the guaranteed advance on November 14, 2012, after receiving a request from the administrator.
- The defendants owe the Crown \$316,029.96 as at April 9, 2021.

[14] No evidence to the contrary has been brought to the plaintiff's attention to show that this amount is not owed to the Crown. The defendants have not provided any evidence contradicting the fact that they borrowed the money and failed to repay any of it. The Minister became subrogated to the rights of the lender upon repaying the amount. Interest is being claimed in accordance with the repayment agreement made by the defendants.

[15] The defendants Michel Touchette and Linda Brin agreed to be jointly and severally liable to the administrator and the Minister for any amounts owed by Ferme Michel Touchette s.e.n.c. by signing section 3.2, [TRANSLATION] "Declaration of Guarantee", on both applications for an advance, as well as the stays.

[16] In opposing this motion for summary judgment, the defendants also allege a lack of due diligence by the plaintiff.

[17] Although the onus is on the moving party to establish the absence of a genuine issue for trial, there is an evidentiary burden on the responding party to show, by way of affidavit or other evidence, that there is a genuine issue for trial (*Dawson v Rexcraft Storage and Warehouse Inc*, 1998 CanLII 4831 (ON CA), 164 DLR (4th) 257 at para 17; see also *Collins v Canada*, 2015 FCA 281).

[18] The defendants' claims regarding a lack of diligence on the part of the plaintiff do not raise a genuine issue for trial.

[19] Indeed, there will be no genuine issue requiring a trial if the judge has, before him or her, all the evidence required to fairly and justly adjudicate the dispute (*Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 [*Hryniak*] at para 66). *Prima facie*, this Court has before it all the evidence required to find in favour of the plaintiff.

(2) Action Timely

[20] In this case, the defendants claim that the six-year limitation period began on May 25, 2012, when the administrator notified the defendants that it would be requesting repayment from the Minister.

[21] However, subsection 23(4) of the AMPA is clear:

(4) Subject to the other provisions of this section, no action or proceedings may be taken by the Minister to recover any amounts, interest and costs owing after the six year period that begins on the

day on which the Minister is subrogated to the administrator's rights.

[Emphasis added]

[22] The Minister became subrogated to the rights of the lender on November 14, 2012, upon paying the amounts owed to the administrator. This action was brought on October 12, 2018, which is within the limitation period.

[23] In *Canada v Moodie*, 2020 FC 46 [*Moodie*], an agricultural producer raised a similar argument regarding the beginning of the limitation period. The defendant asserted that the Minister's subrogation to the rights of the administrator starts when the producer defaults to the administrator and the amount becomes due or, at the latest, when the administrator requests that the Minister repay the advance. The Court rejected this argument, concluding as follows at para 27:

I find that the agreement and the *AMPA* are consistent and clear: the Minister's right to bring an action for recovery of the amount due arises only when a number of conditions have been met. First, the producer must be in default (section 22, *AMPA*). Second, the administrator must have made a demand to the Minister for payment of the amount specified by the legislation and Regulations (subsection 23(1), *AMPA*). Third, the Minister must have made a payment to the administrator pursuant to that demand (subsections 23(1) and (1.1), *AMPA*). Only if these conditions have been fulfilled does the Minister become subrogated to the rights of the administrator (subsection 23(2), *AMPA*). Once this occurs, the producer is liable to the Minister for the subrogated amount (subsection 23(3), *AMPA*). This is when the statutory limitation or prescription period begins to run, subject to the other provisions regarding time limitations set out in subsections 23(6) to (9) of the *AMPA*.

[24] Therefore, it is when the Minister pays the administrator that the limitation period begins to run. Note that the Federal Court of Appeal recently confirmed this determination and interpretation regarding the starting point of the six-year limitation period in *Moodie v Canada*, 2021 FCA 121.

[25] In *Moodie*, where the circumstances are virtually identical to the circumstances in this case, the Court granted the motion for summary judgment. I see nothing that would enable me to depart from that decision.

IV. Conclusion

[26] I therefore answer the two questions at issue as follows:

A. *Do the facts show that summary judgment should be granted in favour of the plaintiff jointly and severally against the defendants?*

Yes.

B. *Is the claim for recovery barred because it was filed after the six-year limitation period had elapsed?*

No.

[27] Summary judgment is appropriate in this case. The issues are well defined; the necessary facts have been established; the evidence submitted by the plaintiff has not been contradicted by

the defendants and no issue of credibility arises from the dispute. The question of law regarding the limitation period is able to be determined in the same manner as it would at trial.

JUDGMENT in T-1807-18

THIS COURT ORDERS as follows:

1. Summary judgment is granted in favour of the plaintiff.
2. An amount of \$316,029.96 plus interest is payable by the defendants to the plaintiff.
3. Prejudgment interest on this amount is payable by the defendants to the plaintiff, calculated from April 9, 2021, in accordance with the repayment agreement entered into by the defendant company and guaranteed by the individual defendants.
4. Post-judgment interest is payable by the defendants to the plaintiff at the rate of five per cent per annum from the date of this judgment, in accordance with section 3 of the *Interest Act*, RSC 1985, c I-15.

“B. Richard Bell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1807-18

STYLE OF CAUSE: HER MAJESTY THE QUEEN IN RIGHT OF
CANADA v FERME MICHEL TOUCHETTE
S.E.N.C., MICHEL TOUCHETTE and LINDA BRIN

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO

REASONS AND JUDGMENT: BELL J

DATED: AUGUST 31, 2021

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