

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140626

Docket: A-536-12

Citation: 2014 FCA 172

**CORAM: GAUTHIER J.A.
NEAR J.A.
SCOTT J.A.**

BETWEEN:

ST. JOHN'S PORT AUTHORITY

Appellant

and

ADVENTURE TOURS INC.

Respondent

Heard at St. John's, Newfoundland and Labrador, on June 26, 2014.
Judgment delivered from the Bench at St. John's, Newfoundland and Labrador, on June 26, 2014.

REASONS FOR JUDGMENT BY:

THE COURT

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REASONS FOR JUDGMENT BY THE COURT

(Delivered from the Bench at St. John's, Newfoundland and Labrador, on June 26, 2014).

[1] This is an appeal from an order of Chief Justice Crampton of the Federal Court (the Judge) dated November 28, 2012 dismissing the St. John's Port Authority's (SJPA) appeal from the order of Prothonotary Morneau dated May 16, 2012 (2012 FC 592).

[2] In his order, the Prothonotary dismissed SJPA's motion to strike out in its entirety Adventure Tours Inc's (ATI) Statement of Claim pursuant to Rules 221(1)(a) and (f) of the *Federal Courts Rules*, SOR/98-106.

[3] SJPA's motion was based upon two grounds. First, the Statement of Claim does not disclose a reasonable cause of action because the claim is time barred (Rule 221(1)(a)). Secondly, in the special circumstances of this case, the filing of the Statement of Claim constitutes an abuse of process (Rule 221(1)(f)). This latter ground is not before us as the decision of the Judge in this respect was not appealed.

[4] The Judge concluded that the Prothonotary did not err in determining that it was not plain and obvious that the claim was time barred. We agree generally for the reasons outlined by the Prothonotary that the motion to strike on that basis should be dismissed.

[5] As noted by the Prothonotary, at this stage it would be inappropriate to strike out the Statement of Claim which has been filed with leave of this Court in its judgment in file A-307-09 (2011 FCA 198). SJPA acknowledged before us that this Court never dismissed ATI's action as a result of that appeal. In this context, whether or not the Fresh Statement of Claim is a continuation of the action commenced in February 2008 and thus benefits from the interruption of the limitation period is in our view not plain and obvious.

[6] The appeal will be dismissed with costs.

“Johanne Gauthier”

J.A.

“D.G. Near”

J.A.

“A.F. Scott”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-536-12

STYLE OF CAUSE: ST. JOHN'S PORT AUTHORITY v.
ADVENTURE TOURS INC.

PLACE OF HEARING: St. John's, Newfoundland and
Labrador

DATE OF HEARING: JUNE 26, 2014

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
NEAR J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: THE COURT

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Douglas W. Lutz FOR THE RESPONDENT

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