

Federal Court



Cour fédérale

Date: 20010119

Docket: T-1868-97

MONTRÉAL, QUEBEC, JANUARY 19, 2001

PRESENT: RICHARD MORNEAU, PROTHONOTARY

BETWEEN:

MARTIN BEAUDRY

and

JEAN-MARCEL RAYMOND

Plaintiffs

AND

JEAN-JACQUES GOLDMAN,

SONY MUSIC ENTERTAINMENT (CANADA) INC.,

CÉLINE DION,

RENÉ ANGÉLIL

and

BEN KAYE

Joint and several defendants

AND

SOCIETY FOR REPRODUCTION RIGHTS OF AUTHORS, COMPOSERS AND

**PUBLISHERS IN CANADA,
SOCIETY OF COMPOSERS, AUTHORS AND MUSIC PUBLISHERS OF
CANADA,
LA SOCIÉTÉ DES AUTEURS, COMPOSITEURS ET ÉDITEURS DE MUSIQUE**

and

**LA SOCIÉTÉ POUR L'ADMINISTRATION DU DROIT DE REPRODUCTION
MÉCANIQUE DES AUTEURS, COMPOSITEURS ÉDITEURS (SACEM/SDRM)**

Mis-en-cause

REASONS FOR ORDER AND ORDER

RICHARD MORNEAU, PROTHONOTARY:

[1] This is a motion by the defendants Jean-Jacques Goldman, Céline Dion, René Angéllil and Ben Kaye (the defendants) to resolve nearly 225 objections made by the plaintiffs at the latter's examination for discovery.

Background

[2] The plaintiffs are suing the defendants in this case for infringing their rights. The plaintiffs claim that a significant portion of the work "*Tes lèvres mauves*" created by the plaintiff Martin Beaudry was replicated in the work "*Prière païenne*", which has been reproduced and marketed on various media. They submit that Beaudry's work had been broadcast on various radio stations and on a television station before the creation and marketing of the work "*Prière païenne*".

[3] In their pleadings submitted with respect to the action brought against them, the defendants allege as follows.

[4] As to the defendant Jean-Jacques Goldman, he claims to be the author and composer of the work “*Prière païenne*”, and claims that he had no knowledge of the work “*Tes lèvres mauves*” until the co-defendant Sony Music Entertainment (Canada) Inc. (hereafter “Sony”) informed him of the receipt of a demand, on or about May 23, 1996.

[5] Goldman submits that he had no knowledge of the broadcasts of Beaudry’s work (*Tes lèvres mauves*) and that he did not hear Beaudry’s work on the said broadcasts. He asserts that there are no “significant” similarities between Beaudry’s work (*Tes lèvres mauves*) and the work “*Prière païenne*”, that the latter therefore does not replicate a significant portion of the former, and that the two works are very different from each other. Finally, he asserts that he will hold the plaintiffs responsible for the hardship and inconvenience that he claims to have suffered as a result of this litigation. He submits that the plaintiffs [Translation] “...took advantage of the fact that the defendants are public figures to put pressure on them using the threat of the media hype they were going to create to extract money from them . . .”

[6] In addition, Goldman argues that he is a talented and very successful singer-songwriter, that he is influenced by gospel music, that he created the work “*Prière païenne*” based on another work that he reportedly created in 1984, and, finally, that the damages claimed by the plaintiffs are excessive and that they have not attempted to minimize them.

[7] For their part, the defendants Céline Dion, René Angélil and Ben Kaye assert that they first became aware of Beaudry’s work when Sony informed them of a demand from the plaintiffs, in May 1996. They submit that they had no knowledge of the various broadcasts of Beaudry’s work because of their schedules.

[8] Dion, Angélil and Kaye submit that Goldman represented himself as the author and composer of the work “*Prière païenne*”, that there are no [Translation] “major” similarities between Beaudry’s work (*Tes lèvres mauves*) and “*Prière païenne*”, and that the latter therefore does not replicate a significant portion of Beaudry’s work, thereby disclaiming any responsibility.

[9] The defendants Dion and Angélil assert their professional relationship, their achievements and the successes of defendant Dion, as well as their respective reputations, and submit that it would be [Translation] “incongruous to think that Céline Dion and René Angélil would undermine or tarnish the distinguished, young career of this international recording star by being associated with or involved in any form of plagiarism of ‘*Tes lèvres mauves*’ . . .”

[10] In addition, Dion, Angélil and Kaye assert that the damages claimed by the plaintiffs are exaggerated and that they have not attempted to minimize them.

[11] Finally, the said defendants submit that the plaintiff’s claims have caused them hardship and inconvenience, and they intend to hold the plaintiffs accountable.

The Law on Questions on Discovery

[12] As stated by Mr. Justice MacKay in *Sydney Steel Corp. v. Omisalj (The)*, [1992] 2 F.C. 193, at page 197:

. . . [T]he standard for propriety of a question asked in discovery (...) is whether the information solicited by a question may be relevant to the matters which at the discovery stage are in issue on the basis of pleadings filed by the parties.

[13] Despite this broad statement of principle, though, there are some limits on the ambit of an examination for discovery, one of which is that there is no reason to allow far-reaching questions in the nature of a fishing expedition (see *Reading & Bates Construction Co. v. Baker Energy Resources Corp.* (1988), 24 C.P.R. (3d) 66 (F.C. T.D.), at page 72).

[14] “Fishing expeditions” are therefore to be discouraged, particularly when the questions asked are only remotely related to what the defendants describe in this case as [Translation] “fundamental to this litigation,” namely the presence, content and degree of similarity between the parties’ works (see the defendants’ memorandum, top of page 4). The defendants’ access to

the work “*Tes lèvres mauves*” and the originality of this work are also pertinent elements of this litigation.

[15] Unfortunately for the defendants, a very large number of objections that they are bringing for rulings are well founded because the questions underlying these objections do not really deal with these pertinent elements. The defendants took the liberty of asking a host of questions simply because they could link them to wording in the plaintiffs’ statement of claim or in their defence, without this wording necessarily relating to the pertinent elements of the litigation.

[16] With these remarks in mind, the categories of questions pursued by the parties for adjudication on this motion should now be addressed.

Category A: Musical Influences of Plaintiff Martin Beaudry

[17] For the reasons expressed by the plaintiffs in their written submissions under each question (the plaintiffs’ submissions), no questions in this category will have to be answered. The same reasoning applies *mutatis mutandis* for categories B and F.

Category C: Activities of Plaintiff Martin Beaudry

[18] Under this category, only questions 20, 23, 25 and 30 will have to be answered, with the remaining questions being rejected on the basis of the plaintiffs’ submissions.

Category D: Activities of Plaintiff Jean-Marcel Raymond

[19] Question 66 will have to be answered.

[20] Question 67 will also have to be answered considering that the witness himself broached the subject on examination and his professional profile allows him to address the more technical aspects of this question (see *Foseco Trading A.G. v. Canadian Ferro Hot Metal Specialties, Ltd.* (1991), 36 C.P.R. (3d) 35, page 52.

[21] Based on the plaintiffs' submissions, the other questions will not have to be answered.

Category E: Broadcasting of Martin Beaudry's Works

[22] Question 70—restricted to the work "*Tes lèvres mauves*"—will have to be answered. Based on the plaintiffs' submissions, the other questions will not have to be answered.

Category G: Circumstances Surrounding Martin Beaudry's Creation of "*Tes lèvres mauves*"

[23] Regarding Question 87, it will have to be answered within the following framework, as discussed in Court: the opening of each envelope and the reproduction of its content will have to be done under the supervision of a bailiff and in the presence of counsel for the parties and under conditions to prevent any prejudice to the plaintiffs and, specifically, the prejudice identified in paragraph 59.2 of the plaintiffs' submissions. The parties must agree on the other details of this transaction.

[24] Questions 89, 91 and 92 will have to be answered.

[25] Based on the plaintiffs' submissions, the other questions will not have to be answered.

Category H: Broadcasting of the Work "*Tes lèvres mauves*"

[26] Questions 99, 100, 101, 110, 111, 112 and 113 will have to be answered.

[27] Based on the plaintiffs' submissions, the other questions will not have to be answered.

Category I: Circumstances in which the Work "*Tes lèvres mauves*" was Broadcast

[28] Questions 136, 137 and 145 will have to be answered.

[29] Based on the plaintiffs' submissions, the other questions will not have to be answered.

Category J: Circumstances Surrounding Hearing the Work “*Prière païenne*”

[30] Questions 155, 156, 161, 162, 163, 169, 170 and 175 will have to be answered.

[31] Based on the plaintiffs’ submissions, the other questions will not have to be answered.

Category K: Justification for the Alleged Similarity between the Work “*Tes lèvres mauves*” and the Work “*Prière païenne*”

[32] Questions 186 and 189 to 191 will have to be answered.

[33] Based on the plaintiffs’ submissions, the other questions will not have to be answered.

Category L: Steps Taken by Plaintiffs to Seek Remedy

[34] Questions 232 to 234 will have to be answered.

[35] Based on the plaintiffs’ submissions, the other questions will not have to be answered.

[36] In view of the very large number of objections upheld and the work done by the plaintiffs to properly put the questions in context, costs on this motion are awarded to the plaintiffs.

[37] Counsel for the parties shall, within twenty (20) days of the date of this order, submit to the Court—jointly unless impossible—a timetable of the measures to be taken next in the case, including continuation of the examinations of the plaintiffs further to this order. Any timetable proposed by the parties shall be limited to the essential measures to be undertaken and shall be expeditious.

Richard Morneau

Prothonotary

FEDERAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE No.: T-1868-97

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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: December 20, 2000

REASONS FOR ORDER BY: RICHARD MORNEAU, PROTHONOTARY

DATE OF REASONS FOR ORDER: January 19, 2001

APPEARANCES:

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