

Date: 20090323

Docket: T-527-07

Citation: 2009 FC 308

[ENGLISH TRANSLATION]

Montréal, Quebec, March 23, 2009

PRESENT: Richard Morneau, Esq., Prothonotary

BETWEEN:

**THE SPORTS NETWORK INC.
and
LE RÉSEAU DES SPORTS (RDS) INC.**

Plaintiffs

and

**JEAN GAGNÉ
and
9168-9141 QUÉBEC INC.**

Defendants

REASONS FOR ORDER AND ORDER

[1] UPON motion by the plaintiffs to obtain an order authorizing, among other things, the amendment of the statement of claim, ordering the defendants to respond to questions and amending the schedule for the next steps to be taken in this case;

[2] WHEREAS amendment of the statement of claim is the central element in any other remedy the parties are seeking in this motion, and it is therefore appropriate to address this first;

[3] WHEREAS with respect to the principles that apply to the amendment of pleadings, the following passage from *Canderel Ltd. v. Canada*, [1994] 1 FC 3 (C.A.), at page 10, clearly reflects the latitude that the Court must demonstrate in this matter:

. . . while it is impossible to enumerate all the factors that a judge must take into consideration in determining whether it is just, in a given case, to authorize an amendment, the general rule is that an amendment should be allowed at any stage of an action for the purpose of determining the real questions in controversy between the parties, provided, notably, that the allowance would not result in an injustice to the other party not capable of being compensated by an award of costs and that it would serve the interests of justice.

[4] WHEREAS in the case of an amendment, as in an application to strike a proceeding, the amendment should be allowed unless it is plain and obvious that the amendment is bound to fail (see *Raymond Cardinal et al. v. Her Majesty the Queen*, unreported decision of the appeal division of this Court dated January 31, 1994, docket A- 294- 77, Heald, Décary and Linden JJ.A.).

[5] WHEREAS in *Visx v. Nidek* [1998] F.C.J. No. 1766, the Federal Court of Appeal also added the following statements from an 1886 decision to the agenda:

The rule of conduct of the Court in such a case is that, however negligent or careless may have been the first omission, and however late the proposed amendment, the amendment should be allowed, if it can be made without prejudice to the other side. There is no injustice

if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made.

[Emphasis added.].

[6] WHEREAS the Court is satisfied based on the above principles and after having heard the parties that the amendments the plaintiffs are seeking should be allowed;

[7] WHEREAS, consequently, it is logical and reasonable to require that the questions listed in Appendix “2” of the plaintiffs’ motion record be answered;

[8] WHEREAS it is appropriate that the answers to be provided under Appendix “2” may be followed by an examination in person and that the examination take place in Montréal;

[9] WHEREAS it is appropriate that the new defendant, 9197-4907 Québec Inc., be allowed to conduct an examination for discovery of the plaintiffs if it desires;

[10] WHEREAS the above factors must result in the adjournment of the pre-trial conference scheduled for April 2, 2009, and the replacement of the scheduling order from November 18, 2008, with the order that follows;

[11] WHEREAS the Court finds that the costs of this motion must be awarded to the plaintiffs, even though some remedies they were seeking are not granted to them through this order.

ORDER

THE COURT ORDERS THAT:

The plaintiffs' motion is allowed as follows, with costs. All other remedies are refused:

1. The plaintiffs are granted leave to serve and file, on or before March 26, 2009, an amended statement of claim similar to the one attached as Appendix "1" to the motion record dated March 2, 2009. However, this amended statement of claim should not refer to or include the exhibits as in the one currently filed;
2. The defendants' amended statement of defence shall be served and filed on or before April 3, 2009;
3. The plaintiffs' amended reply, if applicable, shall be served and filed on or before April 10, 2009;
4. A new affidavit of documents from the defendants, including defendant 9197-4907 Québec Inc., shall be served to the plaintiffs on or before April 10, 2009;
5. Defendant Jean Gagné shall respond, on or before April 10, 2009, in his personal capacity and as a representative of 9197-4907 Québec Inc., to the questions listed in

Appendix “2” attached to the motion record dated March 2, 2009, in writing in the form of an affidavit or solemn declaration;

6. If the plaintiffs notify the defendants at least five (5) days in advance, the defendants, Jean Gagné and 9197-4907 Québec Inc., shall be subject to an examination in Montréal, on or before April 28, 2009, with regard to any questions that may arise from the responses provided to the questions listed in Appendix “2” of the motion record dated March 2, 2009, as well as to any questions arising from the amendments listed in points 1 to 4 above;
7. In addition, if defendant 9197-4907 Québec Inc. notifies the plaintiffs at least five (5) days in advance, the representatives of the plaintiffs shall be subject to an examination for discovery on or before April 29, 2009, also in Montréal;
8. The parties shall serve and file amended pre-trial memoranda on or before May 15, 2009;
9. The affidavits and statements from the plaintiffs’ expert witnesses shall be served and filed on or before May 15, 2009, and those from the defendants shall be served and filed on or before June 15, 2009;

10. The pre-trial conference that was to be held on April 2, 2009, shall be held instead before this Court on July 7, 2009, at 9:30 a.m., in Montréal, in person.

“Richard Morneau”

Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-527-07

STYLE OF CAUSE: THE SPORTS NETWORK INC. and
LE RÉSEAU DES SPORTS (RDS) INC.
Plaintiffs

v.

JEAN GAGNÉ and
9168-9141 QUÉBEC INC.
Defendants

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 23, 2009

REASONS FOR ORDER: PROTHONOTARY MORNEAU

DATED: March 23, 2009

APPEARANCES:

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Marie-Hélène Savard FOR THE DEFENDANTS

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