

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150126

Docket: A-228-14

Citation: 2015 FCA 20

**CORAM: RYER J.A.
WEBB J.A.
BOIVIN J.A.**

BETWEEN:

**COMMITTEE FOR MONETARY AND
ECONOMIC REFORM ("COMER"),
WILLIAM KREHM, AND ANN EMMETT**

**Appellants/
Respondents in the Cross-Appeal**

and

**HER MAJESTY THE QUEEN, THE
MINISTER OF FINANCE, THE MINISTER
OF NATIONAL REVENUE, THE BANK OF
CANADA, THE ATTORNEY GENERAL OF
CANADA**

**Respondents/
Appellants in the Cross-Appeal**

Heard at Toronto, Ontario, on Monday, January 26, 2015.

Judgment delivered at Toronto, Ontario, on January 26, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



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Respondents/
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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 26, 2015).

RYER J.A.

[1] The appeal and the cross-appeal relate to a decision of Russell, J. of the Federal Court (2014 FC 380) on a Motion made under Rule 51 of the *Federal Courts Rules* R. 51(1), SOR/98-106, appealing an Order of Prothonotary Aalto (2013 FC 855) which struck out the Amended

Statement of Claim of Committee for Monetary and Economic Reform (“COMER”), William Krehm and Ann Emmett, the Appellants in the appeal, without leave to amend.

[2] The Judge determined that he was required to consider the issues *de novo*, affording no deference to the Prothonotary’s findings. He then found, in paragraph 64 of his reasons that:

The role of the Court is to decide whether the Plaintiff’s allegations have any factual and legal base to them, or more precisely in a motion to strike under Rule 221, whether the claims made in the Plaintiffs’ claim have any reasonable prospect of success, or whether it is plain and obvious on the facts pleaded, that the claim cannot succeed.

[3] After conducting his *de novo* reconsideration of the issues on the basis of this understanding of the test in Rule 221, the Judge concluded that the Amended Statement of Claim should be struck in its entirety. However, he granted leave to amend.

[4] This Court may only interfere with the decision of the Judge if it was arrived at on a wrong basis or was plainly wrong: see *Z.I. Pompey Industrie v. ECU-Line N.V.*, at para 18 [2003] 1 S.C.R. 450, 2003 SCC 27. This standard of review requires us to afford deference to the Judge’s decision.

[5] Notwithstanding the able arguments of counsel, we have not been persuaded that the Judge made any error that would warrant our intervention in either the appeal or the cross-appeal. Accordingly, the appeal and the cross-appeal will be dismissed without costs. The Appellants are granted 60 days from the date hereafter to make amendments to the Amended Statement of Claim.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-228-14

APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE RUSSELL OF THE FEDERAL COURT, DATED APRIL 24, 2014, IN DOCKET NO. T-2010-11.

STYLE OF CAUSE: COMMITTEE FOR MONETARY AND ECONOMIC REFORM ("COMER"), WILLIAM KREHM, AND ANN EMMETT v. HER MAJESTY THE QUEEN, THE MINISTER OF FINANCE, THE MINISTER OF NATIONAL REVENUE, THE BANK OF CANADA, THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: JANUARY 26, 2015

REASONS FOR JUDGMENT OF THE COURT BY: RYER J.A.
WEBB J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Rocco Galati FOR THE APPELLANTS/RESPONDENTS IN THE CROSS-APPEAL

Peter Hajecek FOR THE RESPONDENTS/APPELLANTS IN THE CROSS-APPEAL

SOLICITORS OF RECORD:

Rocco Galati Law Firm
Professional Corporation
Toronto, Ontario

William F. Pentney
Deputy Attorney General of Canada

FOR THE
APPELLANTS/RESPONDENTS
IN THE CROSS-APPEAL

FOR THE
RESPONDENTS/APPELLANTS
IN THE CROSS-APPEAL