

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150916**

**Docket: A-490-14**

**Citation: 2015 FCA 197**

**CORAM: TRUDEL J.A.  
SCOTT J.A.  
BOIVIN J.A.**

**BETWEEN:**

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

**Appellant**

**and**

**THE LOUIS BULL BAND, CHIEF SIMON  
THREEFINGERS, JONATHAN BULL,  
JOSEPH DESCHAMPS, CLYDE ROASTING,  
RUSSELL THREEFINGERS, HARVEY  
ROASTING, ELAINE ROASTING, TELLY  
RAINE and IRVIN BULL, the Chief and  
Councillors of the Louis Bull Band suing in their  
representative capacity on behalf of all the  
members of the Louis Bull Band**

**Respondents**

Heard at Ottawa, Ontario, on September 16, 2015.  
Judgment delivered from the Bench at Ottawa, Ontario, on September 16, 2015.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**BOIVIN J.A.**

Federal Court of Appeal



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**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Ottawa, Ontario, on September 16, 2015).**

**BOIVIN J.A.**

[1] This is an appeal from a decision of a Federal Court Judge (the Judge) dated October 6, 2014 (Docket T-2439-97).

[2] In his Order, the Judge exercised his discretion and partially granted a motion for summary judgment brought by the Crown seeking the dismissal of the Louis Bull Band's (the Band) claims. Relying in large part on the Gainer Report, the Judge decided that some causes of action were excluded by the limitation period while others lacked the proven material facts to grant summary judgment and were best left to the trial judge.

[3] The Crown appeals the portion of the Judge's decision where he found that the underlying material facts did not demonstrate that the Band knew or should have known the issues pertaining to the mineral title, HBC Lands and Lake Land claims. It therefore submits that the Judge erred in law or made palpable and overriding errors of fact in overlooking evidence.

[4] The Crown also contends that the Judge erred in placing the onus on the Crown to demonstrate that no concealment has occurred with regard to disclosure. It further alleges that the Judge erred in law by failing to consider the declaratory relief claims with respect to the Crown holding mineral rights in trust for the benefit of the Band and with respect to the loss of Lake Lands by accretion.

[5] In the absence of an error on an extricable point of law, the Judge's decision is reviewable under the standard of palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235) which is a highly differential standard.

[6] We are all of the view that the Judge reviewed the facts and correctly applied the law and principles related to summary judgments. The evidence, when read in context, supports the Judge's conclusions.

[7] We also do not read from the Judge's reasons that he reversed the onus with respect to the issue of concealment. The Judge was entitled to rely on the Gainer Report to assess the evidence and conclude the way he did. We have not been persuaded that our Court should intervene.

[8] However, there are two (2) grounds raised by the appellant in its Notice of Motion for Summary Judgment which are absent from the Judge's reasons.

[9] The first relates to the claim that seeks a declaration that the mineral rights in the Lake Lands are held in trust for the Band; the second relates to the claim that seeks damages for conversion of the Lake Lands or loss of title by accretion.

[10] Since the motion was only granted in part, the failure by the Judge to address these two (2) claims leaves it unclear as to whether or not he allowed them to proceed to trial. On the basis of the record before us, we are in a position to decide the outcome of the motion on these two unaddressed claims.

[11] First, with respect to the claim seeking a declaration that the mineral rights in the Lake Lands are held in trust for the Band, we remain unconvinced by the Band's terse assertion that

the Crown should consent to the declaration. The summary judgment motion will be granted with respect to this claim.

[12] Second, upon consideration of the record, we are of the view that the context surrounding the claim in connection with the conversion of the Lake Lands or loss of title by accretion is not conclusive. Specifically, the ambiguity of the Gainer Report on this issue makes it such that different inferences are reasonable (Gainer Report, Appeal Book, Vol. V, Tab J-9 at pp.1149-1151). In other words, the record does not allow us to resolve the dispute at issue. The summary judgment motion will accordingly be dismissed with regards to this claim.

[13] For these reasons, the appeal will be granted in part. In light of the divided success, each party will bear its own costs.

“Richard Boivin”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-490-14

**STYLE OF CAUSE:**

HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA v. THE  
LOUIS BULL BAND, CHIEF  
SIMON THREEFINGERS,  
JONATHAN BULL, JOSEPH  
DESCHAMPS, CLYDE  
ROASTING, RUSSELL  
THREEFINGERS, HARVEY  
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all the members of the Louis Bull  
Band

**PLACE OF HEARING:**

Ottawa, Ontario

**DATE OF HEARING:**

SEPTEMBER 16, 2015

**REASONS FOR JUDGMENT OF THE COURT BY:**

TRUDEL J.A.  
SCOTT J.A.  
BOIVIN J.A.

**DELIVERED FROM THE BENCH BY:**

BOIVIN J.A.

**APPEARANCES:**

John S. Tyhurst  
Lynn Marchildon

FOR THE APPELLANT

Sylvie M. Molgat  
James Thorlakson

FOR THE RESPONDENTS  
The Louis Bull Band et al.

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of Canada

DUBUC, OSLAND LLP  
Ottawa, Ontario

FOR THE APPELLANT

FOR THE RESPONDENTS  
The Louis Bull Band et al.