

CANADA / JUDGMENT

Entreprises A.B. Rimouski Inc. v. Canada

2005 FC 115

COURT

Federal Court

DECIDED

28 January 2005

Source: decisions.fct-cf.gc.ca · Research copy typeset by Esheria. Not court-issued or certified.

Entreprises A.B. Rimouski Inc. v. Canada

Court (s) Database

Federal Court Decisions

Date

2005-01-28

Neutral citation

2005 FC 115

File numbers

T-2674-92

Decision Content

Date: 20050128

Docket: T-2674-92

Citation: 2005 FC 115

BETWEEN:

LES ENTREPRISES A.B. RIMOUSKI INC.

and

ALDÈGE BANVILLE

Moving Parties

and

HER MAJESTY THE QUEEN

Respondent

REASONS FOR ORDER

LEMIEUX J.

INTRODUCTION

- [1] By way of a motion filed with the Registry of this Court on December 19, 2003, under subsection 399(2) of the Federal Court Rules, 1998 (the Rules), Les Entreprises A.B. Rimouski Inc. (A.B.R. Inc.) and Aldège Banville (the moving parties) seek to have set aside or varied an order that was made on October 9, 1998, by former Justice Pierre Denault, who dismissed Aldège Banville's action as assignee of A.B.R. Inc., with costs. Mr. Banville argued this motion on his own behalf.
- [2] At the centre of the dispute between the parties is a contract dated September 8, 1989, with Public Works Canada, under which A.B.R. Inc. undertook to demolish the old commercial wharf at Cap-Chat, Quebec, and clean up the site. On May 15, 1990, Public Works Canada put A.B.R. Inc. in default for failing to finish the work in accordance with the plans and specifications. Public Works Canada turned to the surety to complete the contract.
- [3] Public Works Canada withheld the balance owing on the contract at that date, which the moving parties sought to recover by way of an action against Her Majesty the Queen (Canada) brought on October 29, 1992, but amended on August 15, 1995. Mr. Justice Denault dismissed the action on October 11, 1996.
- [4] Following a judgment of the Federal Court of Appeal in 1998, Mr. Justice Denault had to reconsider certain heads of damages raised by Aldège Banville as assignee of A.B.R. Inc. At issue here is the third head of damages.
- [5] On October 9, 1998, Mr. Justice Denault dismissed this head of damages for the following reasons:
- [7] As for head of damages No. 3, namely the balance withheld on the contract, after a thorough examination of the evidence, I consider that in the case at bar the defendant was justified in putting Entreprises A.B. in default to fulfill the contract for the demolition of the wharf at Cap-Chat in accordance with the plans and specifications and to notify the surety company to have the work finished.
- [8] The plans and specifications did in fact adequately describe both the boundaries of the demolition of the wharf, which were established from the original plan of the wharf and the plan of the wharf as it was built, and the boundaries for excavation both for the removal of the wharf itself and for the removal of the debris nearby.

- [9] The evidence further indicated that 1) in its bid, Entreprises A.B. underestimated the quantity of material to be excavated; 2) it did not have the necessary equipment to dig to the desired depth - at the beginning of the work it was using only a John Deere 892 D-LC excavator; and 3) the company did not remedy the shortcomings identified during the performance of the contract, despite being duly notified to do so.
- [10] Moreover, the dive reports, underwater photographs and video filmed after Entreprises A.B. left the job site, as well as the large amount of debris removed from the sea floor by the firm Verreault Navigation, which was hired by the surety to complete the contract, amply demonstrate that Entreprises A.B. did not perform all of the work specified in the contract. Under the circumstances, the defendant was justified in withholding the balance under the contract, namely \$218,122.25, and turning to the surety to have the work completed.
- [6] On April 18, 2000, the Federal Court of Appeal dismissed the moving party's appeal against Mr. Justice Denault's order of October 9, 1998, without costs. Mr. Justice Marc Noël wrote the reasons of the Court in docket A-647-98, [2000] F.C.J. No. 500.
- [7] Paragraph 5 of Mr. Justice Marc Noël's reasons reads:
- ¶ 5 In a lengthy argument, Mr. Banville also disagrees with the findings of fact made by the Trial Judge. In essence, he maintains that the contract between A.B. Rimouski and the Crown was unreasonable and impossible to perform in accordance with the plans and specifications prepared by the respondent and that, under the circumstances, the appellant cannot be blamed for failing to carry out the work as specified in the contract. [my emphasis]
- [8] Mr. Justice Noël quoted, word for word, paragraphs 7, 8, 9, and 10 of Mr. Justice Denault's reasons, as did I, above. At paragraph 7 of his reasons, Mr. Justice Noël concluded:
- ¶ 7 Mr. Banville takes issue with the Trial Judge's understanding of the facts as well as the conclusions he drew from them. It is settled law that findings of fact made by a Trial Judge cannot be overturned in the absence of palpable and overriding error. Although Mr. Banville has established that he had a different view of the evidence presented at trial, he was unable to establish that the Trial Judge made palpable errors in interpreting the evidence.
- [9] The moving parties applied to the Supreme Court of Canada for leave to appeal from the decision of the Federal Court of Appeal. That application was dismissed on March 29, 2001.
- [10] Furthermore, on July 11, 2002, the Supreme Court of Canada dismissed the moving parties' application for reconsideration of its prior refusal of their application for leave to appeal.
- [11] Rule 399 reads as follows:
399. (1) On motion, the Court may set aside or vary an order that was made
- (a) ex parte; or

- (b) in the absence of a party who failed to appear by accident or mistake or by reason of insufficient notice of the proceeding,

if the party against whom the order is made discloses a prima facie case why the order should not have been made.

399. (1) La Cour peut, sur requête, annuler ou modifier l'une des ordonnances suivantes, si la partie contre laquelle elle a été rendue présente une preuve prima facie démontrant pourquoi elle n'aurait pas dû être rendue :

- a) toute ordonnance rendue sur requête ex parte;
- b) toute ordonnance rendue en l'absence d'une partie qui n'a pas comparu par suite d'un événement fortuit ou d'une erreur ou à cause d'un avis insuffisant de l'instance.

Setting aside or variance

399(2)

(2) On motion, the Court may set aside or vary an order

- (a) by reason of a matter that arose or was discovered subsequent to the making of the order; or
- (b) where the order was obtained by fraud.

Annulation

399(2)

- (2) La Cour peut, sur requête, annuler ou modifier une ordonnance dans l'un ou l'autre des cas suivants :
- a) des faits nouveaux sont survenus ou ont été découverts après que l'ordonnance a été rendue;
- b) l'ordonnance a été obtenue par fraude.

Effect of order

399(3)

- (3) Unless the Court orders otherwise, the setting aside or variance of an order under subsection (1) or (2) does not affect the validity or character of anything done or not done before the order was set aside or varied.

[my emphasis]

Effet de l'ordonnance

399(3)

- (3) Sauf ordonnance contraire de la Cour, l'annulation ou la modification d'une ordonnance en vertu des paragraphes (1) ou (2) ne porte pas atteinte à la validité ou à la nature des actes ou omissions antérieurs à cette annulation ou modification. [je souligne]

[12] The moving parties' motion to set aside or vary is based on the following grounds:

[TRANSLATION]

- A matter arose or was discovered subsequent to the making of the order of October 9, 1998;
- The order of October 9, 1998, was obtained fraudulently on the basis of false and incomplete documents;
- Without restricting the generality of the foregoing and subject to the written representations of the moving party, the order of October 9, 1998, was made on the basis that the plans and specifications adequately described the boundaries of the work, which were established from the original plan of the wharf and the plan of the wharf as it was built, and the boundaries for excavation both for the removal of the wharf and for the removal of the debris nearby;
- Similarly, at paragraph 9 of the order, the Honourable Mr. Justice Denault mentioned that in its bid, Entreprises A.B. underestimated the quantity of material to be excavated;
- Last, on the basis of, among other things, the dive reports and the large amount of debris removed from the sea floor by the firm Verreault Navigation, which was hired by the surety, the Honourable Justice found that Entreprises A.B. had not performed all of the work;
- However, many documents, including the plans of the wharf, discovered after the order of October 9, 1998, show that the work plans were inaccurate;
- Similarly, the plans and tide tables discovered after the order of October 1998 show not only the inaccuracy of the bid plan but also the incorrectness of the dive reports, including reports 1, 2, 5, 6, 7 and both report 4's;
- In addition, wharf construction plan number 353, on which Mr. Onil Lévesque's testimony and the Honourable Mr. Justice Denault's findings were based, is a falsified and incomplete document; the complete document shows without any shadow of doubt that the work plan is inaccurate, i.e., plan number 3532, discovered by the moving party after the order of October 1998;
- Furthermore, the moving party discovered after the order of October 1998 that the minutes of September 17, 1990, involving the client and the surety, referred to excavation work at the bottom of the cribs under the load floor whereas the contract provided for excavation to the load floor level; [my emphasis]

[13] Among the documentary evidence used by Aldège Banville at the hearing of his motion are the following documents that the moving parties claim to have discovered after the order of Mr. Justice Denault:

[TRANSLATION]

- plan number 3532 (R-2);
- wharf plan 1939 (R-3 grouped documents);
- wharf plan 1947, 1949 (R-3 grouped documents);
- survey 1941, Department of Mines and Resources (R-3 grouped documents);
- surveys 1941-1986, 1920, 1986, Canadian Hydrographic Service grouped documents (R-3 grouped documents);
- minutes of September 17, 1990 (R-4);
- acceptance of work (R-5);
- report of May 19, 1989, obtained from the Access to Information Commission (R-6);
- tide table (R-7);

[14] In addition, on March 11, 2003, Aldège Banville filed an originating motion in the Superior Court of Quebec, District of Rimouski, naming the Attorney General of Canada as respondent. In that motion, the moving parties claimed to have suffered damages attributable to perjured evidence, false dive reports and the fabrication of evidence by Public Works Canada before Mr. Justice Denault.

[15] On September 30, 2003, in the Superior Court, Canada filed an amended motion for dismissal on the ground that there was no legal basis for the proceedings. In October 2003, the Superior Court of Quebec stayed the proceedings in light of the moving parties' intention to file this motion to vary the order of Mr. Justice Denault, which motion was actually filed on November 17, 2003.

Rules of Interpretation of Rule 399(2)

[16] In my view, in the respondent's motion record in the case at bar, the respondent did a good job of summarizing the tests from the case law that have to be met in order to trigger the application of subsection 399(2), i.e., a matter arose or was discovered subsequent to the making of the order. Whether or not there was any fraud is a separate issue. The principles are the following:

- 1) the motion must be brought within a reasonable time after the alleged matter or fraud became known;

- 2) the moving party must establish that the alleged matter or fraud is new, i.e., that it was established or discovered after the order was made;
- 3) the party arguing the matter or fraud must show that the alleged matter or fraud could not have been discovered sooner with reasonably due diligence;
- 4) it must be established that the alleged matter or fraud is of a nature that would have affected the original decision.

[17] These principles were set out in the leading decision on this point, the decision of the Federal Court of Appeal in *Saywack v. Canada* (Minister of Employment and Immigration), [1986] 3 F.C. 189, in which Mr. Justice Stone interpreted former Rule 1733, in relation to which the learned Justice wrote:

¶ 14 The Rule must be seen as exceptional. It purports to permit relief in an action or proceeding subsequent to its disposition by solemn pronouncement of the Court even though that relief would be at variance or even wholly contrary to that pronouncement. Yet, if it covers an application the Court may grant relief. Obviously, a case would have to be a clear one before the Court will be induced to act under the Rule. Otherwise, the finality of judgments would be imperilled and that would be bad.

[18] It might help to quote, from Mr. Justice Ferguson's reasons in *Dumble v. Cobourg and Peterborough R.W. Co.* (1881), 29 Gr. 121 (Ch.), the passage upon which Mr. Justice Stone based his decision:

This petition is one in the nature of a bill of review on the ground of having discovered some new evidence, and the case of *Hoskin v. Terry* ((1862) 15 Moore's P.C.C. 493, 8 Jur. N.S. 975), seems to be a leading if not the leading case on the subject. That case was an appeal to reverse an order made by the Supreme Court of the colony of New South Wales; and Lord Kingsdown, who delivered the judgment of the Court, said: "The rule which we collect from the cases cited in the argument is this, that the party who applies for permission to file a bill of review on the ground of having discovered new evidence, must shew that the matter so discovered has come to the knowledge of himself and of his agents for the first time since the period which he could have made use of it in the suit, and that it could not with reasonable diligence have been discovered sooner; and secondly, that it is of such a character that if it had been brought forward in the suit it might probably have altered the judgment." And after commenting on the evidence in that case, his Lordship repeated the language of Lord Eldon, in *Young v. Keighly* (16 Ves. 348), which was as follows: "The evidence, the discovery of which is supposed to form a ground for this application, is very material, and I am persuaded that by refusing this application I decide against the plaintiff in a case in which he might perhaps with confidence have contended that upon the evidence he was entitled to the whole money: on the other hand it is most incumbent on the Court to take care that the same subject shall not be put in course of repeated litigation, and that with a view to the termination of suits the necessity of using reasonably active diligence in the first instance should be imposed upon parties; the Court, therefore, must not be induced, by any persuasions as to the fact that the plaintiff had originally a demand which he could clearly have sustained, to

break down rules established to prevent general mischief, at the expense even of particular injury." [Stone J.A.'s emphasis]

The Affidavit of Mr. Banville

[19] In support of the motion before the Court, Mr. Banville attached his affidavit of November 17, 2003.

[20] In terms of the scope of the work under contract, he indicated that the specifications provided for:

[TRANSLATION]

- complete demolition and removal from the site of the existing wooden cribs of the old wharf, of a total length of 187 200 mm, located within the demolition and excavation boundaries indicated in the plan;
- removal from each side of the cribs all of the ballast stone, concrete slab, light standard footings, mooring bollards and their footings, concrete pilasters and other debris above the natural and normal bottom of the site of this marine structure as well as any obstacle that might interfere with carrying out the work, whether apparent or not, within the boundaries indicated in the plan;

[21] The crux of this motion is found at paragraphs 4 [sic] to 12 of Mr. Banville's affidavit:

[TRANSLATION]

4.[sic] The work plan on which the Honourable Mr. Justice Denault based his judgment contained inaccuracies and falsehoods, of which the respondent was aware, and which made it impossible to carry out the work;

6. The depths mentioned in the bid plan greatly exceeded the actual depths;
7. The respondent knew that the bid plan was inaccurate and that it was impossible to carry out the work, and through its witness, Onil Lévesque, misled the Court by producing plan number 353 in support of the bid plan; according to the respondent, plan 353 was the wharf plan approved in 1947;
8. However, the plan produced by the respondent, plan number 353, quite simply does not exist, and when I subsequently requested a copy, it was confirmed to me that it did not exist;
9. Through my ongoing research, several years after the hearing and the making of the order, after applying to the Access to Information Commission, I obtained a copy of the original plan, plan number 3532, produced as R-2;
10. As it appears from document R-2, plan 353 produced by the respondent is not only false in terms of the number, it is also incomplete, as a major part of it is missing;

11. When I consulted plan 3532 in its entirety, it appeared to me, by comparing it to the other documents discovered after the hearing and also after Mr. Justice Denault's order, that it was incorrect;
12. The respondent's production of plan 3532 in its entirety would have enabled me and the Honourable Mr. Justice Denault without any shadow of doubt to notice the marked differences in the depths, among other things; [my emphasis]
- [22] At paragraph 13 of his affidavit, Mr. Banville stated that in searching for documents to show the inaccuracy of the evidence and testimony produced by the respondent, he "[TRANSLATION] also obtained a number of documents after the hearing and the making of the order, between 2000 and 2002"
- [23] Mr. Banville listed these documents in a group as R-3, i.e., the documents identified at paragraph [13] of these reasons. At paragraph 14 of his affidavit, Mr. Banville claimed that these documents clearly showed that the bid plan and plan 353 were inaccurate, and at paragraph 15, stated that the R-3 documents "[TRANSLATION] specifically showed that the depth indicated in the bid plan was far greater than the actual depth". By way of example, at paragraph 16, Mr. Banville indicated that in relation to chainage 70 in the bid plan, "[TRANSLATION] the depth indicated was 19 feet, 4 inches, whereas on consultation of all of the R-3 documents, the actual depth is 13 feet, a huge difference". He gave other examples at paragraphs 17 and 18 of his affidavit and concluded at paragraph 19 as follows:

[TRANSLATION]

19. In light of the R-2 and R-3 documents, the contradictions in Mr. Onil Lévesque's testimony are only more apparent;
- [24] At paragraphs 20 to 24 of his affidavit, Mr. Banville detected, in his opinion, another deception discovered through his research with the Access to Information Commission in 2000, i.e., the minutes dated September 17, 1990, which he produced as R-4 and compared to the specifications. He then dealt with document R-5 and drew the following conclusion:

[TRANSLATION]

22. The contract carried out by A.B. was performed in full, and the respondent itself, through its agent, who was also its chief witness, confirmed this, as evidenced by the full acceptance produced as R-5;
23. Unfortunately, document R-5 could not be produced at the hearing and prior to the making of the order because it had gone missing;
24. However, at the hearing, Mr. Onil Lévesque steadfastly denied its existence, and furthermore, the respondent refused to give me a copy even though I asked for one before the hearing;

- [25] In 2000, Mr. Banville obtained another document through access to information, a May 19, 1989, dive report (R-6), which, according to him, reveals another disturbing fact, in that it differs from the one filed at the hearing as D-8: point zero is not located in the same place, and document D-8 indicates that there is a slab, whereas R-6 makes no mention of it.
- [26] Furthermore, Mr. Banville stated that the plans he obtained and produced as R-3 "[TRANSLATION] radically contradict document D-8 and bring out the inaccuracy of the testimony of Mr. Deschamplain [sic]".
- [27] Mr. Banville's affidavit raised another problem, stemming, in his opinion, from a comparison of the documents produced as R-2 and R-3 - the 1944 construction plan for the old wharf, the survey plans and numerous dive reports filed by the respondent at the hearing before Mr. Justice Denault - a comparison that "[TRANSLATION] also shows the inaccuracy of the reports produced by the respondent".
- [28] For example, at paragraph 29 of his affidavit, Mr. Banville said report 1, dated November 15, 1989, referred to 1.5 metres of debris, and "[TRANSLATION] ironically, report 2, dated November 28, 1989, refers to 3.5 metres of debris".
- [29] According to Mr. Banville, "[TRANSLATION] only by finding, reading and checking the depths in the 1920, 1941 and 1986 survey plans could it be seen that the reports were inaccurate".
- [30] In Mr. Banville's opinion, at paragraph 31 of his affidavit, the R-2 and R-3 documents "[TRANSLATION] establish without any shadow of doubt the inaccuracy of report 3 of March 21, 1990, which indicates that there are 6.4 metres of debris, whereas according to the R-3 documents, there were 3 metres of water".
- [31] Mr. Banville challenged report 4 of April 12, 1990, and the report of May 3, 1990, which have to do with the photos produced, debris and depth; in his opinion, "[TRANSLATION] the documents discovered made for some quite dramatic findings". For example, he said that Canada had shown "[TRANSLATION] in its evidence that at chainage 219 (the deepest), there were 8.3 metres, whereas the R-3 maps clearly show a depth of 5.5 to 6 metres". In addition to that, according to Mr. Banville, there were "[TRANSLATION] all of the contradictions among the respondent's witnesses, including: - in report 5, photos taken 5 days after the report was drawn up! - in report 4 of April 12, 1990, photos taken 16 after the report was drawn up!".
- [32] Mr. Banville ended his affidavit with paragraphs 36 and 37:
- [TRANSLATION]
36. Furthermore, report 7, which was produced in evidence at the hearing, referred to several metres of debris, and that is completely impossible, as evidenced by the tide table I obtained in 2002 from the naval college and produced as R-7;

37. The survey plans obtained from the moving party also show that it was impossible for Verreault Navigation to have removed debris in a number of places, mainly, but not only, because of rock;

The Affidavit of Onil Lévesque

[33] Canada responded to the moving parties' motion record with the affidavit of Onil Lévesque, Engineer, Public Works and Government Services Canada, who stated that the allegations of fraud and deception against the respondent were completely false and that the facts in Canada's respondent's record were true.

[34] In its respondent's record, Canada indicated to the Court:

[TRANSLATION]

1. That the allegedly "new" plan 3532 is actually a plan that was given to the moving party in 1990 at a job meeting, as evidenced by the minutes of the job meeting held on January 22, 1990, and filed at the hearing as D-1;
2. Furthermore, that same plan 3532 was filed by Her Majesty the Queen at the hearing on the merits under D-3;
3. The documents that the moving parties allege to be "new" would not have been likely to have any effect on Mr. Justice Denault's decision. Her Majesty the Queen contends that numerous underwater photos and a video show a significant amount of debris remaining from the old commercial wharf at Cap-Chat that the moving parties were supposed to remove from the site to a landfill;
4. These photos are found in various reports that were filed as a group as D-4 at the hearing on the merits, and the moving parties received copies of them at the hearing.

Conclusions

[35] In my view, this motion should be dismissed for a number of reasons.

[36] Before giving my reasons, I must say that Mr. Banville's arguments caused a lot of difficulty for the Court and the respondent. The Court repeatedly had to remind Mr. Banville that he was not a witness and that he was not to give his interpretation of the documentation he was presenting if it was not in his affidavit.

[37] Another comment is called for, based on a reading of the transcripts. A number of aspects of Mr. Banville's arguments go beyond the scope of Rule 399, in my view. The rule does not allow Mr. Banville to re-try issues that should have been tried before Mr. Justice Denault.

[38] I agree with counsel for the respondent that the moving parties have not met any of the requirements of Saywack, *supra*.

- [39] First, this motion was not brought within a reasonable time. The alleged matter was discovered between 2000 and 2002 at the latest, but this motion to set aside or vary was not brought until late 2003.
- [40] The moving parties had to act quickly. I cite two decisions of the Federal Court of Appeal: *Rostamian v. Canada* (Minister of Employment and Immigration), [1991] F.C.J. No. 525 and *Moutisheva v. Canada* (Minister of Employment and Immigration), [1993] F.C.J. No. 988. The moving parties provided no explanation for the delay in bringing their motion.
- [41] Clearly, the survey plans (1920, 1941 and 1986), the construction plans for the old wharf (1939, 1947 and 1949), the acceptance of work, the report of May 19, 1989, and the minutes of September 17, 1990, existed well before Mr. Justice Denault presided over the trial. These documents or matters did not arise nor were they discovered after Mr. Justice Denault made his order. Furthermore, in my view, these documents or matters could have been discovered by the moving parties with reasonable diligence, either by doing appropriate research or by sending the Attorney General of Canada a subpoena for the production of documents.
- [42] I have no hesitation in finding that the new documentation produced by the moving parties is solely for the purpose of re-trying the issues that could have been tried by Mr. Justice Denault. This attempt must be thwarted because it violates a fundamental principle of our legal system: the finality of decisions, in all but specific exceptional cases.
- [43] Last, the documentation would not, in my view, have had any effect on the outcome of the litigation on which Mr. Justice Denault ruled. The moving parties have failed to satisfy me that Canada defrauded them and that Public Works Canada was not justified in withholding the balance owing on the contract and in turning to the surety to have the work completed.
- [44] I think it would be useful, in the context of the alleged fraud, to comment on some of the documents that Mr. Banville presented the Court.
- [45] The allegation that the respondent misled the Court at trial by filing construction plan 353 for the old wharf as Exhibit D-3, instead of plan 3532, must be dismissed. Plan 353 is the same as plan 3532. True, a few differences can be seen between the photocopy of plan 353 that Mr. Banville gave me and plan 3532. Those differences are due to the manner in which the photocopy of plan 353 was made.
- [46] Mr. Banville relied heavily on document R-5, entitled "[TRANSLATION] interim certificate of completion". Mr. Banville claimed that this document attested to the fact that the officials at Public Works Canada had concluded that A.B.R. Inc. had complied with all of the provisions of the contract. Mr. Banville also argued that the document could not have been put before Mr. Justice Denault because he had lost it, but that he subsequently found it when putting his documents in order. I have to reject Mr. Banville's argument. Exhibit R-5 filed by Mr. Banville is incomplete. It does not include part D, which lists the shortcomings identified by Public Works Canada in the performance of the work by A.B.R. Inc., shortcomings totalling \$218,122.55, or the amount withheld.

- [47] At trial, a number of dive reports were filed in evidence as D-4. Public Works Canada had hired the firm of Plongex Inc. from Matane to conduct inspections of the removal of debris from the old wharf at Cap-Chat in order to verify what had been done by A.B.R. Inc. In carrying out the inspection of this debris removal, Plongex divers conducted visual observations with photos attached to each report. Mr. Banville claimed these reports were false. According to him, the survey plans showed that these reports of debris remaining after A.B.R. Inc. had finished its work were inaccurate.
- [48] I reject that argument. It is obvious that Mr. Banville wants a re-trial. Those reports were before Mr. Justice Denault. Mr. Viateur de Champlain gave evidence and was cross-examined on them. Based on that evidence, weighed with other evidence in the record, Mr. Justice Denault came to the conclusion that A.B.R. Inc. had not removed the debris as required under the contract. Moreover, Plongex Inc. used a different method for measuring depth: a depth gauge.
- [49] Mr. Banville pointed to a discrepancy in the report of May 19, 1989. The report was filed in evidence at trial as D-8. Mr. Banville produced this report before me as Exhibit R-6. The purpose of this report by Plongex was to carry out an inspection of the old wharf in order to identify the nature and location of the debris. The report was used by Public Works Canada to prepare the bid plan. Exhibit R-6 was obtained by Mr. Banville as a result of his access to information application. Mr. Banville maintained that the appendices to Exhibits D-8 and R-6 were different, and this is true. However, I am satisfied that the appendix to report R-6 obtained under the Access to Information Act was not photocopied properly and was put together from an outside source, i.e., from certain exhibits found in the Federal Court of Appeal. This seems obvious to me from the fact that the drawings in the appendix come from various plans and drawings (photo location plans and debris boundaries) and are inconsistent with one another within the same appendix.
- [50] Besides, Mr. Banville failed to show how report R-6 falsified the bid plan on the basis of which A.B.R. Inc. responded to the call for tenders put out by Public Works Canada.
- [51] The moving parties produced before me Exhibit R-4, the minutes of a meeting held on September 17, 1990, between Public Works Canada, the surety, and Verreault Navigation, which took over for A.B.R. Inc. This document was not put before Mr. Justice Denault, but it could have been. I do not accept Mr. Banville's argument that the absence of the word "[TRANSLATION] level" at page 3 of this report contradicts the contract specifications.
- [52] Mr. Banville claimed that Verreault Navigation removed debris beyond the excavation boundaries spelled out in the contract. The evidence he marshalled on this point was indirect and not very convincing. Once again, this evidence could have been put before Mr. Justice Denault, who was satisfied that A.B.R. Inc. had not removed all of the debris contemplated by the contract. The alleged fraud was not substantiated before me.

[53] For all of these reasons, the moving parties' motion to have the order of Mr. Justice Denault set aside is dismissed, with costs.

"François Lemieux"

Judge

Ottawa, Ontario

January 28, 2005

Certified true translation

Peter Douglas

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-2674-92

STYLE OF CAUSE: LES ENTREPRISES A B RIMOUSKI INC AND

ALDÈGE BANVILLE

v.

HER MAJESTY THE QUEEN

PLACE OF HEARING: RIMOUSKI, QUEBEC

DATE OF HEARING: JULY 22, 2004

NOVEMBER 4, 2004

REASONS FOR ORDER: Mr. Justice Lemieux

DATED: January 28, 2005

APPEARANCES:

ALDÈGE BANVILLE FOR THE MOVING PARTIES

DANIEL BEAULIEU FOR THE RESPONDENT

SOLICITORS OF RECORD:

DANIEL BEAULIEU FOR THE RESPONDENT

41, RUE DE L'ÉVÊCHÉ OUEST

P.O. BOX 860

RIMOUSKI, QUEBEC G5L 7C9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/48778/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/entreprises-a-b-rimouski-inc-v-canada-2005>

Prepared on 27 October 2026 · Esheria