

**SUPREME COURT OF CANADA**

|  |  |
| --- | --- |
| **Citation :** Cinar Corporation v. Robinson, 2012 SCC 25, [2012] 2 S.C.R. 55 | **Date** : 20120524  **Docket** : 34466, 34467, 34468 |

Between:

**Cinar Corporation and Les Films Cinar Inc.**

Applicants/Respondents on motion

and

**Claude Robinson and Les Productions Nilem Inc.**

Respondents/Applicants on motion

**And Between:**

**Ronald A. Weinberg and Ronald A. Weinberg,**

**in his capacity as sole liquidator of the succession of the late Micheline Charest**

Applicants/Respondents on motion

and

**Claude Robinson and Les Productions Nilem Inc.**

Respondents/Applicants on motion

**And Between:**

**Christophe Izard, France Animation S.A.,**

**Ravensburger Film + TV GmbH and RTV Family Entertainment AG**

Applicants/Respondents on motion

and

**Claude Robinson and Les Productions Nilem Inc.**

Respondents/Applicants on motion

**Coram** : LeBel, Fish and Karakatsanis JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment** :  (motion for security)  (paras. 1 to 7) | LeBel J. (Fish and Karakatsanis JJ. concurring) |

Cinar Corporation *v.* Robinson, 2012 SCC 25, [2012] 2 S.C.R. 55

Cinar Corporation and Les Films Cinar Inc. *Applicants/Respondents on motion*

*v.*

Claude Robinson and Les Productions Nilem Inc. *Respondents/Applicants on motion*

- and -

Ronald A. Weinberg and Ronald A. Weinberg, in his capacity as sole liquidator of the succession of the late Micheline Charest *Applicants/Respondents on motion*

*v.*

Claude Robinson and Les Productions Nilem Inc. *Respondents/Applicants on motion*

- and -

Christophe Izard, France Animation S.A., Ravensburger Film + TV GmbH and RTV Family Entertainment AG *Applicants/Respondents on motion*

*v.*

Claude Robinson and Les Productions Nilem Inc. *Respondents/Applicants on motion*

Indexed as: Cinar Corporation *v.* Robinson

2012 SCC 25

File Nos.: 34466, 34467, 34468.

2012: May 24.

Present: LeBel, Fish and Karakatsanis JJ.

motion for security

*Courts — Supreme Court of Canada — Security — Whether applicants on application for leave to appeal must provide security for amounts they would have to pay should their appeals to Court be unsuccessful — Supreme Court Act, R.S.C. 1985, c. S-26, ss. 40, 60(1)(b) — Rules of the Supreme Court of Canada, SOR/2002-156, r. 47.*

**Cases Cited**

**Referred to:** *Lanificio Fratelli Bettazzi S.N.C. v. Tissus Ranchar Inc.*, September 6, 1990, No. 21373.

**Statutes and Regulations Cited**

*Code of Civil Procedure*, R.S.Q., c. C-25, s. 522.1.

*Rules of the Supreme Court of Canada*, SOR/2002-156, r. 47.

*Supreme Court Act*, R.S.C. 1985, c. S-26, ss. 40, 60(1)(*b*), 65, 65.1.

**Authors Cited**

Brown, Henry S. *Supreme Court of Canada Practice 2012*, 12th ed. Scarborough, Ont.: Thomson Professional Publishing Canada, 2011.

MOTION for security. Motion denied.

Written submissions by *Gilles M. Daigle*, *Guy Régimbald* and *Normand Tamaro*, for the respondents/applicants on motion*.*

Written submissions by *William Brock* and *Cara Cameron*, for the applicants/respondents on motion Cinar Corporation and Les Films Cinar Inc.

Written submissions by *Raynold Langlois*, *Q.C.*, *Dimitri Maniatis* and *Jean-Patrick Dallaire*, for the applicants/respondents on motion Ronald A. Weinberg and Ronald A. Weinberg, in his capacity as sole liquidator of the succession of the late Micheline Charest.

Written submissions by *Pierre Y. Lefebvre*, *Alain Y. Dussault* and *Sylviu Bursanescu*, for the applicants/respondents on motionChristophe Izard, France Animation S.A., Ravensburger Film + TV GmbH and RTV Family Entertainment AG.

English version of the order delivered by

1. LeBel J. — The respondents, Claude Robinson and Les Productions Nilem Inc., are asking this Court to order the applicants to provide security in the amount of $3,250,000 for the amounts they would have to pay should their appeals to this Court be unsuccessful. According to the respondents, this motion is made under s. 60(1)(*b*) of the *Supreme Court Act*, R.S.C. 1985, c. S‑26, and Rule 47 of the *Rules of the Supreme Court of Canada*, SOR/2002‑156. The motion was filed at the very end of the leave to appeal process, after the Court had given notice that it was about to rule on the parties’ applications for leave to appeal.
2. The respondents obtained a judgment from the Superior Court ([2009] R.J.Q. 2261) ordering the applicants to pay them damages in respect of an infringement of copyright. The Quebec Court of Appeal upheld that judgment in part ([2011] R.J.Q. 1415). After the Court of Appeal’s judgment, the applicants applied to a Court of Appeal judge under art. 522.1 of the Quebec *Code of Civil Procedure*, R.S.Q., c. C‑25 (“*C.C.P.*”), and s. 65.1 of the *Supreme Court Act* to stay the execution of the judgment pending consideration of their applications for leave to appeal and, should leave be granted, pending a decision on the appeals.
3. Fournier J.A. granted the stay applications in part (2011 QCCA 2305 (CanLII)), but imposed certain conditions for the stays, including the deposit of partial security for the payment of the capital, interest and costs that the applicants would have to pay should their appeals to the Supreme Court be unsuccessful. He dismissed the stay application in respect of Mr. Weinberg after concluding that it would be pointless to order Mr. Weinberg to provide security, since he did not appear to have any assets. Fournier J.A. ordered the applicants Cinar Corporation and Les Films Cinar Inc. (“Cinar”) to deposit a bank letter of credit for $750,000. He also ordered the applicants Ravensburger Film + TV GmbH, RTV Family Entertainment AG, France Animation S.A. and Christophe Izard to deposit a letter of credit for $2,500,000 or an equivalent irrevocable undertaking from their insurer as a condition of the stay. Cinar deposited its letter of credit. Counsel for Ravensburger Film + TV GmbH, RTV Family Entertainment AG, France Animation S.A. and Christophe Izard informed counsel for the respondents that their clients would not be providing the letter of credit they had been ordered to deposit. As a result, the Court of Appeal’s judgment remains enforceable against them until this Court rules on the parties’ appeals.
4. We will not grant the requested order for security. Although we do not mean to say that it would be impossible to order security — whether the deposit of a bond or any other form of security — in excess of $500, it appears that this Court has never granted such security as a condition for bringing an appeal under s. 60(1)(*b*) of the *Supreme Court Act*, which has traditionally been applied so as to require the deposit of only a symbolic amount of $500 in respect of the costs of the appeal (*Lanificio Fratelli Bettazzi S.N.C. v. Tissus Ranchar Inc.*, September 6, 1990, No. 21373, *per* Cory J.; see H. S. Brown, *Supreme Court of Canada Practice 2012* (12th ed. 2011), at pp. 134‑36). The type of security the respondents are seeking has usually been granted as a condition for a stay of proceedings or a stay of execution under s. 65 or 65.1 of the *Supreme Court Act* or under a statutory provision such as art. 522.1 *C.C.P.*
5. In the instant case, the conditions for the requested stays were laid down in Fournier J.A.’s decision. That judgment will continue to apply for the duration of the appeals for which leave is being granted in judgments rendered this same day by this Court and filed together with our decision on the respondents’ motion. This motion by the respondents, whose application for leave to appeal is also being granted, amounts for all intents and purposes to an attempt to review the judgment of Fournier J.A.
6. It should be added that it would be difficult to reconcile security such as this with the requirements underlying proper access to the Supreme Court. Section 40 of the *Supreme Court Act* provides that an application for leave to appeal is to be decided on the basis of the importance of the case. Moreover, the procedure for granting leave to appeal is in itself a sufficient deterrent against frivolous or dilatory appeals.
7. For these reasons, the respondents’ motion is dismissed without costs.

*Motion dismissed.*

*Solicitors for the respondents/applicants on motion :* *Gowling Lafleur Henderson, Ottawa; Mannella Gauthier Tamaro, Montréal.*

*Solicitors for the applicants/respondents on motion Cinar Corporation and Les Films Cinar Inc.: Davies Ward Phillips & Vineberg, Montréal.*

*Solicitors for the applicants/respondents on motion Ronald A. Weinberg and Ronald A. Weinberg, in his capacity as sole liquidator of the succession of the late Micheline Charest: Langlois Kronström Desjardins, Montréal.*

*Solicitors for the applicants/respondents on motion Christophe Izard, France Animation S.A., Ravensburger Film + TV GmbH and RTV Family Entertainment AG.: Fasken Martineau DuMoulin, Montréal.*