

Momentous.ca Corporation, Rapidz Sports and Entertainment Inc., Rapidz Baseball Club Inc. and Zip.ca Inc. (appellants) v. Canadian American Association of Professional Baseball Ltd., Inside the Park LLC, Greg Lockard, Dan Moushon, Bruce Murdoch, City of Ottawa and Miles Wolff (respondents)
(33999; 2012 SCC 9; 2012 CSC 9)

Indexed As: Momentous.ca Corp. et al. v. Canadian American Association of Professional Baseball Ltd. et al.

Supreme Court of Canada
McLachlin, C.J.C., LeBel, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ.
March 15, 2012.

Summary:

Rapidz Baseball fielded a team in the Can-Am League during the 2008 season. It played its home games in a stadium owned by the City of Ottawa. However, because of losses it had incurred during the season, Rapidz Baseball gave the League notice that it would be unable to operate beyond 2008. It applied under the League's bylaws to withdraw voluntarily because of financial hardship. The League's Board of Directors rejected Rapidz Baseball's application. Instead, they terminated its membership and drew down a \$200,000 letter of credit Rapidz Baseball had been required to post under the bylaws. Rapidz Baseball and its related companies (the plaintiffs) sued the League and its principals (the Can-Am defendants), and the City of Ottawa, both in contract and tort. The Can-Am defendants moved under rule 21.01(3)(a) of the Rules of Civil Procedure to stay or dismiss the action on the ground that the Ontario Court had no jurisdiction over the subject matter of the action.

The Ontario Superior Court granted the motion and dismissed the plaintiffs' action. The plaintiffs appealed.

The Ontario Court of Appeal, in a decision reported at 270 O.A.C. 36, dismissed the appeal. The plaintiffs appealed.

The Supreme Court of Canada dismissed the appeal.

Conflict of Laws - Topic 7286

Contracts - Jurisdiction - Choice of forum by parties - The plaintiffs sued the defendants in contract and in tort - The defendants moved under rule 21.01(3)(a) of the Rules of Civil Procedure (Ont.) to stay or dismiss the action on the ground that the Ontario Court had no jurisdiction over the subject matter of the action - They relied on choice of forum and arbitration clauses in the agreements that provided that all disputes would be resolved in the state of North Carolina and would be subject to arbitration - At issue in this appeal was whether the defendants could move under rule 21.01(3)(a) to seek dismissal of the action based on the arbitration and forum selection clauses, notwithstanding the delivery of a statement of defence - The plaintiffs submitted that a party that delivered a statement of defence on the merits was precluded from relying upon a forum selection clause - The Supreme Court of Canada dismissed the appeal - Rule 21.01(3)(a) permitted a defendant

to seek a stay or dismissal of the action on the basis that the court had "no jurisdiction over the subject matter of the action" - Thus, when another forum, an arbitration panel, a tribunal or another court had the exclusive jurisdiction to deal with the claim, the Ontario Superior Court of Justice would not take jurisdiction, based upon agreement or statute - The defendants were entitled to bring a motion under rule 21.01(3)(a) to ask the court to dismiss the action because the parties had agreed to arbitrate and litigate disputes in another forum - Although the motion had to be brought promptly, there was nothing in rule 21.01(3)(a) that required it to be brought before delivery of a statement of defence.

Conflict of Laws - Topic 7608

Torts - Jurisdiction - Choice of forum by parties - [See **Conflict of Laws - Topic 7286**].

Cases Noticed:

Pompey (Z.I.) Industrie et al. v. Ecu-Line N.V. et al., [2003] 1 S.C.R. 450; 303 N.R. 201; 2003 SCC 27, reld to. [para. 9].

Statutes Noticed:

Rules of Civil Procedure (Ont.), R.R.O. 1990, Reg. 194, rule 21.01(3)(a) [para. 1 et seq.].

Counsel:

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Solicitors of Record:

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Kelly Santini, Ottawa, Ontario, for the respondents, the Canadian American Association of Professional Baseball Ltd. et al.;
Heenan Blaikie, Ottawa, Ontario, for the respondent, the City of Ottawa;
Hamilton, Appotive, Ottawa, Ontario, for the respondent, Miles Wolff.

This appeal was heard on February 10, 2012, by McLachlin, C.J.C., LeBel, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ., of the Supreme Court of Canada. The following judgment of the Supreme Court was delivered in both official languages on March 15, 2012.

Appeal dismissed.

Editor: Anick Ouellette-Levesque

Conflict of Laws - Topic 7608

Torts - Jurisdiction - Choice of forum by parties - The plaintiffs sued the defendants in

contract and in tort - The defendants moved under rule 21.01(3)(a) of the Rules of Civil Procedure (Ont.) to stay or dismiss the action on the ground that the Ontario Court had no jurisdiction over the subject matter of the action - They relied on choice of forum and arbitration clauses in the agreements that provided that all disputes would be resolved in the state of North Carolina and would be subject to arbitration - At issue in this appeal was whether the defendants could move under rule 21.01(3)(a) to seek dismissal of the action based on the arbitration and forum selection clauses, notwithstanding the delivery of a statement of defence - The plaintiffs submitted that a party that delivered a statement of defence on the merits was precluded from relying upon a forum selection clause - The Supreme Court of Canada dismissed the appeal - Rule 21.01(3)(a) permitted a defendant to seek a stay or dismissal of the action on the basis that the court had "no jurisdiction over the subject matter of the action" - Thus, when another forum, an arbitration panel, a tribunal or another court had the exclusive jurisdiction to deal with the claim, the Ontario Superior Court of Justice would not take jurisdiction, based upon agreement or statute - The defendants were entitled to bring a motion under rule 21.01(3)(a) to ask the court to dismiss the action because the parties had agreed to arbitrate and litigate disputes in another forum - Although the motion had to be brought promptly, there was nothing in rule 21.01(3)(a) that required it to be brought before delivery of a statement of defence.