

CITATION: Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation, 2008 ONCA
533
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COURT OF APPEAL FOR ONTARIO

ROSENBERG, FELDMAN and MACPHERSON JJ.A.

BETWEEN:

PLATINEX INC.

Plaintiff (Respondent in Appeal)

and

KITCHENUHMAYKOOSIB INNINUWUG FIRST NATION, DONNY MORRIS,
JACK MCKAY, CECILIA BEGG, SAMUEL MCKAY, JOHN CUTFEET, EVELYN
QUEQUISH, DARRYL SAINNAWAP, ENUS MCKAY, ENO CHAPMAN, RANDY
NANOKESSIC, JANE DOE, JOHN DOE and PERSONS UNKNOWN

Defendants

and

KITCHENUHMAYKOOSIB INNINUWUG FIRST NATION, DONNY MORRIS,
JACK MCKAY, CECILIA BEGG, SAMUEL MCKAY, DARRYL SAINNAWAP,
BRUCE SAKAKEEP, JOHN CUTFEET, ENUS MCKAY and EVELYN QUEQUISH

Respondents on Contempt Motion (Appellants)

and

THE MINISTER OF NORTHERN DEVELOPMENT AND MINES

Intervener (Respondent in Appeal)

Christopher Reid and Sarah Dover for the appellants Kitchenuhmaykoosib Inninuwug First Nation, Donny Morris, Jack McKay, Cecilia Begg, Samuel McKay, Darryl Sainnawap and Bruce Sakakeep

Neil J. Smitheman and Tracy A. Pratt for the respondent Platinex Inc.

Malliha Wilson, E. Ria Tzimas and Tamara Barclay for the respondent the Minister of Northern Development and Mines

Julian N. Falconer and Kimberly R. Murray for the intervener Nishnawbe Aski Nation

Mary Eberts for the intervener Native Women's Association of Canada

Heard: May 28, 2008

On appeal from the sentences imposed by Justice George P. Smith of the Superior Court of Justice on March 17, 2008.

MACPHERSON J.A.:

[1] The appellants, the Kitchenuhmaykoosib Inninuwug First Nation, five of their elected leaders and one community member appeal from the sentences of six months incarceration imposed on them by Smith J. for their admitted contempt of a court order made by him on October 25, 2007.

[2] The six personal appellants were placed in jail on March 17, 2008 and remained there until they were released on consent on May 23, 2008 by order of Lang J.A. of this court.

[3] At the commencement of the appeal hearing, counsel for the respondent, Platinex Inc., informed the court that it would not be opposing the appeal because "the appellants have spent enough time in jail, the matter will ultimately be settled only through negotiation, and no good purpose would be served by keeping the appellants in jail any longer."

[4] The court heard brief submissions from the other parties which did not contradict the respondent's position.

[5] The court delivered a short endorsement saying that it accepted the respondent's position. Accordingly, the appeal was allowed, with reasons to follow.

[6] There is no good reason to expand on the endorsement. The principles that would have been applied to this appeal are set out in the reasons in the companion appeal in *Frontenac Ventures Corp. v. Ardoch Algonquin First Nation*. There is no point in applying these principles to this appeal at this juncture. Indeed, it would be unwise to do so because the court heard no argument about the circumstances giving rise to the contempt findings made against the appellants.

[7] The only additional observation I would make in these reasons is that counsel for both the appellants and Platinex stated on the record that they were very appreciative of the efforts made by Smith J. to resolve this case.

[8] The appellants are entitled to their costs of the appeal. They may file costs submissions of not more than five pages within 30 days of the release of these reasons. The respondents should file their responses within 14 days thereafter. The interveners should neither pay nor receive costs.

RELEASED: July 7, 2008 ("M.R.")

"J.C. MacPherson J.A."

"I agree M. Rosenberg J.A."

"I agree K. Feldman J.A."