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EXPROPRIATION

Related subjects: Crown, Practice

Two motions in context of application for judicial review: one to strike out notice of application, one to amend it — Underlying application seeking to invalidate decision by Minister of Public Works and Government Services (Minister) to have Crown expropriate lands necessary for construction, operation of railway bypassing downtown Lac-Mégantic — Lands in question include lands owned by applicants — Respondent requested that plaintiffs' notice of claim be struck out in its entirety, on grounds that claim has no prospect of success — Noted that Associate Chief Justice Gagné (2023 FC 1582) had already held that applicants' application did not raise serious issue to be tried — Applicants, on the other hand, sought leave from Court to amend their notice of application to add (a) allegations that Minister exhibited bias; (b) allegations of fact already raised in their motion for injunction, which had been dismissed — Respondent opposed applicants' motion to amend — In both motions, determinative issue was lack of any prospect of success of application — *Expropriation Act*, R.S.C., 1985, c. E-21 (Act), authorizing Crown to expropriate any immovable real right that, in opinion of Minister, is required by Crown for public work or other public purpose — In doing so, Act giving Minister broad discretion to assess, decide what is in "public interest", what immovable real rights are required for this purpose — Issues whether applicants should be granted leave to amend their notice of application, whether notice of application should be struck out in whole or in part — Application for judicial review underlying two motions arising in context of horrific tragedy that struck community of Lac-Mégantic on July 6, 2013, when train carrying crude oil derailed, causing major fire, multiple explosions — In May 2018, governments of Canada, Quebec announced plan to build rail bypass rerouting railway away from downtown Lac-Mégantic — On January 24, 2023, Minister of Transport asked Minister to initiate expropriation process to acquire lands necessary for construction of Lac-Mégantic rail bypass that could not be acquired by negotiation — Minister signed notices of intention to expropriate, which were published in appropriate land register — Following report summarizing grounds of objections to proposed expropriations presented at public hearings, including those of applicants, Minister decided to confirm notices of intention to expropriate — Applicants' application for judicial review, filed on July 12, 2023, sought to have Minister's decision, notices of confirmation of intention to expropriate quashed with respect to applicants' lands — Current notice of application alleging that notices of confirmation of intention to expropriate illegal, rendered without authority — Applicants claimed that purpose of amendments is to add references to facts they did not become aware of until after receiving documents provided pursuant to *Federal Courts Rules*, SOR/98-106, rr. 317, 318 — Leave will not be granted to amend pleading if plain and obvious, assuming facts pleaded to be true, that pleading having no reasonable prospect of success, is therefore liable to be struck out — This was determinative issue in present case — Lack of prospect of success relevant to determination of both applicants' motion to amend, respondent's motion to strike — As proposed amendments having no prospect of success, it follows that Court cannot approve amendments, that applicants' motion to amend must be denied — As for grounds given in applicants' notice of application, they have been grouped together — Applicants raised three grounds relating to application of Act, ss. 4, 4.1 — In particular, they claimed that Minister should have applied s. 4.1, not s. 4 — This ground had no prospect of success — s. 4.1 clearly stating that, if railway company requires immovable real right for purposes of its railway, railway company may request Minister of Transport to have Minister of

Public Works and Government Services have right expropriated by Crown — Applicants' notice of application clearly alleged that no railroad company had made such request in this case — S.4.1 therefore plainly having no application — Applicants' argument effectively that where railway track is involved, only s. 4.1 can apply, any use of section 4 excluded, that there was nothing to suggest that the "widest discretionary power" vested in the Minister by section 4 is limited in this way — As for applicants' allegations regarding *Canada Transportation Act*, S.C. 1996, c. 10 (CTA), s. 98, they were completely unfounded, doomed to fail — CTA, s. 98(1) providing that railway company shall not construct railway line without approval of Canadian Transportation Agency (Agency) — In notice of application, applicants stated that Centre du Maine et du Québec Inc. (CMQ), railway company involved in project, had applied for Agency approval, but that Agency had not yet made its decision — Minister dealt with this issue in her decision to confirm intention to expropriate, concluding that she had power to confirm intention to expropriate without waiting for Agency's approval, and Minister exercised her discretion to do so — Applicants' grounds that rail bypass not public work or other public purpose also doomed to fail — Allegation that Minister's decision unreasonable because project solely for benefit of railway company that itself claims to have no need for it manifestly unfounded — Notice of application also raised environmental impacts of project, but applicants' argument simply reiterated their opposition to project, its underlying rationale — On judicial review of decision to confirm expropriation, Court simply not authorized to substitute its own decision for that of Minister or to reassess evidence regarding environmental issues in order to draw its own conclusions on public interest — Although environmental issues important, this did not mean that they constitute in themselves legal grounds of objection to Minister's decision — Allegation that Minister did not have authority, acted in bad faith having no merit — As for proposed amendments (allegation of bias, facts mentioned in motion for injunction), they were doomed to fail, should not be allowed under r. 75 — Notice of application therefore struck out in its entirety without leave to amend — Respondent's motion to strike granted; applicants' motion to amend dismissed.

VACHON ESTATE V. CANADA (ATTORNEY GENERAL) (T-1450-23, 2024 FC 709, McHaffie J., reasons for judgment dated May 8, 2024, 57 p.)