

**SUPREME COURT OF CANADA**

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| **Citation:** Momentous.ca Corp. *v.* Canadian American Association of Professional Baseball Ltd., 2012 SCC 9, [2012] 1 S.C.R. 359 | **Date:** 20120315  **Docket:** 33999 |

**Between:**

**Momentous.ca Corporation,**

**Rapidz Sports and Entertainment Inc.,**

**Rapidz Baseball Club Inc. and Zip.ca Inc.**

Appellants

and

**Canadian American Association of Professional Baseball Ltd.,**

**Inside the Park LLC, Greg Lockard, Dan Moushon, Bruce Murdoch,**

**City of Ottawa and Miles Wolff**

Respondents

**Coram:** McLachlin C.J. and LeBel, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

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| **Reasons for Judgment:**  (paras. 1 to 12) | The Court |

Momentous.ca Corp. *v.* Canadian American Association of Professional Baseball Ltd., 2012 SCC 9, [2012] 1 S.C.R. 359

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*

**Indexed as: Momentous.ca Corp. *v.* Canadian American Association of Professional Baseball Ltd.**

**2012 SCC 9**

File No.: 33999.

2012:  February 10; 2012:  March 15.

Present: McLachlin C.J. and LeBel, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

on appeal from the court of appeal for ontario

*Private international law — Jurisdiction of Ontario courts — Choice of forum clauses — Motion to dismiss action brought after statement of defence filed on ground that Ontario courts had no jurisdiction in light of forum selection clauses — Whether dismissal of action could be sought notwithstanding delivery of statement of defence — Rules of Civil Procedure, R.R.O. 1990, Reg. 194, r. 21.01(3)(a).*

*Held*: The appeal should be dismissed.

Unless there is “strong cause” to displace the forum that the parties have agreed should resolve their dispute, order and fairness are better achieved when parties are held to their bargains. Here, the motion judge did not err in the exercise of her discretion to dismiss the action under Rule 21.01(3)(a) of the Ontario *Rules of Civil Procedure*, based upon the foreign forum selection clause. Although the motion must be brought promptly, nothing in Rule 21.01(3)(a) requires it to be brought before delivery of a statement of defence.

**Cases Cited**

**Referred to:** *Z.I. Pompey Industrie v. ECU‑Line N.V.*, 2003 SCC 27, [2003] 1 S.C.R. 450.

**Statutes and Regulations Cited**

*Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 17.06, 21.01.

APPEAL from a judgment of the Ontario Court of Appeal (Laskin, Gillese and Juriansz JJ.A.), 2010 ONCA 722, 103 O.R. (3d) 467, 325 D.L.R. (4th) 685, 270 O.A.C. 36, [2010] O.J. No. 4595 (QL), 2010 CarswellOnt 8322, affirming a decision of Ratushny J., 2009 CanLII 65823, [2009] O.J. No. 5016 (QL), 2009 CarswellOnt 7353, with additional reasons, 2010 ONSC 97 (CanLII), [2010] O.J. No. 9 (QL), 2010 CarswellOnt 4. Appeal dismissed.

*Susan M. Brown*, *K. Scott McLean* and *James M. Wishart*, for the appellants.

*Pasquale Santini* and *Samantha A. Iturregui*, for the respondents the Canadian American Association of Professional Baseball Ltd. et al.

*Benoit Duchesne* and *Lauren J. Wihak*, for the respondent the City of Ottawa.

*Eric M. Appotive* and *Allison A. Russell*, for the respondent Miles Wolff.

The following is the judgment delivered by

1. The Court — Shortly after filing a statement of defence, the respondents Canadian American Association of Professional Baseball Ltd., Inside the Park LLC, Greg Lockard, Dan Moushon and Bruce Murdoch (the “Can-Am respondents”) moved under Rule 21.01(3)(a) of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to dismiss the claim on the ground that Ontario courts had no jurisdiction because the appellants had signed agreements providing that disputes would be arbitrated or litigated in North Carolina. The motion judge dismissed the action against all the respondents on the basis of these arbitration and forum selection clauses (2009 CanLII 65823 (Ont. S.C.J.)). The Court of Appeal for Ontario upheld the decision (2010 ONCA 722, 103 O.R. (3d) 467).
2. The parties to this appeal did not contest the finding of the Court of Appeal that certain respondents had attorned to the jurisdiction, although the motion judge had found that there had been no attornment. As a result, we do not comment on that issue. Nor did the appellants suggest that the dispute falls outside the ambit of the choice of forum or arbitration clauses to which they had agreed.
3. At issue in this appeal is whether the Can-Am respondents could move under Rule 21.01(3)(a) to seek dismissal of the action based on the arbitration and forum selection clauses in the agreements, notwithstanding the delivery of a statement of defence. The appellants submit that a party that delivers a statement of defence on the merits is precluded from relying upon a forum selection clause, even where the statement of defence explicitly seeks to enforce the clause. We disagree.
4. The Ontario *Rules of Civil Procedure* provide two rules under which a party may challenge whether an Ontario court can or should hear an action.
5. Rule 17.06 permits a party who has been served with an originating process outside Ontario to move for an order setting aside the service or staying the proceeding on the grounds that service is not authorized by the *Rules* or that Ontario is not a convenient forum for the hearing of the proceeding. This rule requires that the motion be brought before the party delivers a defence, notice of intent to defend or notice of appearance.
6. The Can-Am respondents did not proceed under Rule 17.06. They did not argue that there was no real and substantial connection to Ontario or that there was a more convenient forum.
7. Rule 21.01(3)(a) permits a defendant to seek a stay or dismissal of the action on the basis that the court has “no jurisdiction over the subject matter of the action”. Thus, when another forum ― an arbitration panel, a tribunal or another court ― has the exclusive jurisdiction to deal with the claim, the Ontario Superior Court of Justice will not take jurisdiction, based upon agreement or statute.
8. We agree with Laskin J.A. that the Can-Am respondents 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 must be brought promptly, we agree with Laskin J.A. that there is nothing in Rule 21.01(3)(a) that requires it to be brought before delivery of a statement of defence. Within the framework provided by the Ontario *Rules of Civil Procedure*, a statement of defence that specifically pleads a foreign forum selection clause does not amount to consent that Ontario assume jurisdiction so as to preclude consideration on the merits of whether to enforce the clause.
9. In *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, [2003] 1 S.C.R. 450, this Court confirmed that, in the absence of specific legislation, the proper test in determining whether to enforce a forum selection clause is discretionary in nature. It provides that unless there is a “strong cause” as to why a domestic court should exercise jurisdiction, order and fairness are better achieved when parties are held to their bargains.
10. The appellants did not argue that there was any reason, apart from the delivery of a statement of defence, for the court to determine that there was “strong cause” for Ontario to displace the forum that the parties have agreed should resolve their disputes. We agree with the Court of Appeal that the motion judge did not err in the exercise of her discretion to dismiss the action under Rule 21.01(3)(a).
11. With respect to the second issue, whether the claims against the respondents the City of Ottawa and Mr. Wolff could be dismissed, we agree with the reasons of Laskin J.A.
12. Accordingly, we would dismiss the appeal, with costs.

*Appeal dismissed with costs.*

Solicitors for the appellants:  Fraser Milner Casgrain, Ottawa.

Solicitors for the respondents the Canadian American Association of Professional Baseball Ltd. et al.:  Kelly Santini, Ottawa.

Solicitors for the respondent the City of Ottawa:  Heenan Blaikie, Ottawa.

Solicitors for the respondent Miles Wolff:  Hamilton, Appotive, Ottawa.