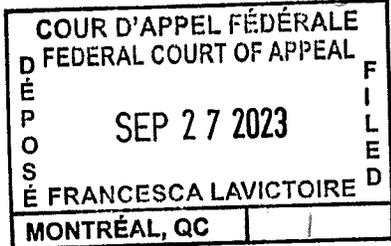


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ID#1



File N° ~~1~~ 247-23

FEDERAL COURT OF APPEAL

BETWEEN:

FROMFROID S.A.

Respondent

-and-

1048547 ONTARIO INC.

Appellant

**APPELLANT 1048547 ONTARIO INC.'S
NOTICE OF APPEAL**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Appellant. The relief claimed by the Appellant appears on the following page.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the Appellant. The Appellant requests that this appeal be heard in Montreal.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a Notice of Appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the Appellant's solicitor, or where the Appellant is self-represented, on the Appellant, **WITHIN 10 DAYS** of being served with this Notice of Appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a Notice of Cross-Appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a Notice of Appearance.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request from the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any other local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

September 27, 2023

L'ORIGINAL A ÉTÉ SIGNÉ PAR
FRANCESCA LAVICTOIRE

Issued by: HAS SIGNED THE ORIGINAL
(Registry Officer)

Address of local office: 30 McGill Street
Montreal, Quebec H2Y 3Z7

**30 McGill St.
Montreal, Quebec H2Y 3Z7
Tel.: (514) 283-4820
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TO: The Chief Administrator
Federal Court of Appeal

AND TO: LAVERY, DE BILLY, S.E.N.C.R.L.

1 Place Ville-Marie, Bureau 4000
Montreal, Quebec H3B 4M4

Mtre Alain Dussault

Mtre James Duffy

Tel.: 514-397-7613

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Solicitor for Respondent Fromfroid S.A.

AND TO: BROUILLETTE LÉGAL INC.

1050, Côte du Beaver Hall, Bureau 1500
Montreal, Quebec H2Z 0A5

Mtre Magali Fournier

Tel. : 514-798-0865

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Solicitor for Defendant Frimasco Inc.

T-127-19

THE APPELLANT 1048547 ONTARIO INC. (the "**Appellant**") **APPEALS** to the Federal Court of Appeal the Judgment of the Honourable Mr. Justice Sebastien Grammond (the "**Trial Judge**") dated July 6, 2023 (the "**Judgment**") and **ASKS THE FOLLOWING**:

- (a) The appeal be allowed, with the costs of this appeal as well as any disbursements reasonably incurred by the Appellant;
- (b) The Judgment be set aside and accordingly, the Judgment on costs of the Honourable Mr. Justice Sebastien Grammond dated August 31, 2023 be dismissed or; subsidiarily
- (c) An order directing that the amount of compensatory damages at paragraph 102 of the Judgment be varied to \$108,097.92;
- (d) An order directing that the amount of punitive damages at paragraph 111 of the Judgment be varied by lowering the quantum to a rational and proportional amount; and
- (e) Such further relief as this Honourable Court may seem just.

THE GROUNDS OF APPEAL are as follows:

1. The Judgment was for a claim of infringement of Canadian Patent 2,301,753 (the "**753 Patent**") rendered by Mr. Justice Sebastien Grammond dated July 6, 2023 (2023 FC 925) which found that the Appellant had infringed the 753 Patent, owned by the Respondent, Fromfroid S.A. (the "**Respondent**").
2. The Appellant's infringement would have resulted from having made and used 24 cooling cells for which the technology was initially created and patented by the Respondent before the 753 Patent expired. The Appellant never sold any of the cooling cells that were made.
3. As a result, the Judgment held that the Respondent was entitled to compensatory and punitive damages.
4. The Appellant states that the Trial Judge erred in law and in fact when he entirely dismissed the proof administered by the Appellant, even though a large measure of evidence emanated from sources which had strictly no interest in the proceedings and/or are undisputable.
5. The Trial Judge also erred in law and in fact when he excluded the Appellant's exhibits on the grounds that "there was no basis for excluding the possibly" that they are forged, altered or refer to a different project.
6. In addition, the Appellant's expert report was entirely dismissed while the Respondent's was analyzed to the finest details. That is, even though the expert for the Respondent based its entire analysis on pictures of the cooling cells, while the expert for the Appellant visited the premises, and even offered an especially detailed assessment of the cooling cells.
7. The Trial Judge ordered the Appellant to pay the Respondent a sum of \$349,270, comprised of \$149,270 in compensatory damages and \$200,000 in punitive damages.
8. As for the quantum of the compensatory damages, the Trial Judge erred in fact when he found that the Respondent's last offer was the one dated February 5, 2015 and not the one dated February 6, 2015 based upon a two-step sale. The amount of compensatory damages is hence patently incorrect.

9. As for the quantum of punitive damages, it is also a subject of the Appellant's appeal. The Appellant believes that the Trial Judge erred in fact and in law in its award to the Respondent.
10. The punitive damages were ordered without proper justification.
11. The Trial Judge found that the Appellant knowingly infringed the Respondent's patent, based upon an assumption that the Appellant was aware of the latter.
12. The Trial Judge also found that the Appellant sought to conceal the infringement by presenting various pieces of evidence intended to mislead the Court, while stating previously that this was but a possibility.
13. This type of reasoning has the affect of awarding punitive damages against a Defendant simply for having defended a position that ultimately was not retained.
14. Appellant's right to contestation should not be interpreted as misleading the Court, even more so, when the Trial Judge has not suggested positive evidence of Appellant's misrepresentation.
15. Furthermore, the punitive damages awarded are not proportional nor rational for the reasons stated above, in addition to the below:
 - (a) The Respondent did not suffer any hardship;
 - (b) The Respondent is not vulnerable; and
 - (c) The Appellant's financials were not established, its sales only being a parcel thereof.
16. The Appellant believes that the Trial Judge erred in finding that \$200,000 in punitive damages to fulfill the purposes of retribution, denunciation, and deterrence, when a lesser amount would have served their purpose.
17. Moreover, it focused on emphasizing the need for deterrence, even when the Appellant has not previously violated any intellectual property rights.
18. Such further and other grounds as counsel may advise and this Honourable Court may permit.
19. The Appellant proposes that the appeal be heard in Montreal, Quebec.

Montreal, September 27, 2023


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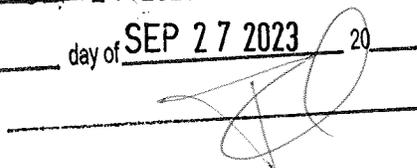
Karim Renno
Kristen Petitclerc
Shu Nan Zhao Gao

Solicitors for Defendant 1048547 Canada Inc.

I ~~HEREBY~~ CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____

day of SEP 27 2023 A.D. 20 _____

Dated this _____ day of SEP 27 2023 20 _____



**FRANCESCA LAVICTOIRE
AGENT DU GREFFE
REGISTRY OFFICER**

Court No. A-247-23
(T-127-19)

FEDERAL COURT OF APPEAL

BETWEEN:

FROMFROID S.A.

Respondent

and

1048547 ONTARIO INC.

Appellant

NOTICE OF APPEAL

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Solicitors for the Appellant