

Federal Court



Cour fédérale

Date: 20171214

Docket: T-1450-15

Citation: 2017 FC 1147

Toronto, Ontario, December 14, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

RADU HOCIUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

ORDER AND REASONS

[1] The Plaintiff has brought a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, appealing “Orders” made by the Case Management Judge. Specifically, he appeals the decisions made at a case management conference held on November 14, 2017, which he characterizes as an order to extend the stay of proceedings, and an order to continue the action as a specially managed one.

[2] Upon review of the record in this action, it is not obvious to me that the Case Management Judge issued any Order that is capable of appeal: See *Brake v Canada (Attorney General)*, 2017 FC 1093. Notwithstanding this concern, I shall deal with the merits of the Plaintiff's appeal.

[3] This action was commenced on August 28, 2015. The Defendant brought a motion to strike the Statement of Claim. That motion was heard by Prothonotary Milczynski and was dismissed by Order dated September 21, 2016. In her Order she directed that the matter continue as a specially managed proceeding and it was referred to the Chief Justice for the appointment of a Case Management Judge. By Order dated November 8, 2016, the Chief Justice ordered that Prothonotary Aalto be assigned to case manage this matter.

[4] The Plaintiff filed a motion on February 20, 2017 to amend his Statement of Claim. The Defendant responded on March 1, 2017, with a motion for summary judgment. Both motions were filed under Rule 369, to be dealt with in writing and both are outstanding. Both parties have filed responding materials to these motions.

[5] It appears from the Court file that these motions did not receive the prompt attention they ought to have received. The reason for the delay is not clear. The Court understands the Plaintiff's frustration with this delay, and I shall issue a Direction that if they have not already been directed to a judge for disposition, that they be placed before a judge for decision forthwith.

[6] The Plaintiff asserts in his memorandum that at the case management conference held on November 14, 2017, he requested that the examinations for discovery be ordered to continue. Those examinations had apparently been held in abeyance pending the disposition of the above-referenced motions. The Case Management Judge refused to do so. That is one of the decisions under appeal.

[7] The Plaintiff also asked the Case Management Judge to order that the matter cease to be dealt with as a specially managed proceeding. Again, the Case Management Judge refused that request and his decision is the second decision under appeal in this motion.

[8] The Court file reflects that a case management conference has been scheduled for December 18, 2017, “to discuss the direction the file will take once the motion for summary judgment has been determined.”

[9] While I understand the Plaintiff’s frustration with the pace of this proceeding, the decision of the Case Management Judge to suspend discoveries pending the outcome of the summary judgment motion is reasonable and usual. The Case Management Judge has the responsibility to issue directions that ensure that the matter is proceeding in a fair, reasonable, and expeditious manner, and that potentially unnecessary steps are avoided. At this point it is not known if the summary judgment motion will succeed. The Plaintiff asserts that it is “largely identical to [the] earlier motion to strike the Statement of Claim” however, the test is different and the outcome of the earlier motion is not determinative of the outcome of this latter motion.

As noted by the Case Management Judge, it may turn out that the continued discovery was wasted, and it was reasonable for him to maintain the hold on next steps in the litigation.

[10] The Federal Court of Appeal has indicated that the Court may only interfere with a discretionary decision of a Prothonotary if the Prothonotary made an error in law or a palpable and overriding error regarding a question of fact or mixed fact and law: *Hospira Healthcare Corp v Kennedy Institution of Rheumatology*, 2016 FCA 215. Both decisions under appeal are discretionary and I am unable to find any error of the sort referenced in the above decision.

[11] While the Case Management Judge's alleged reason for refusing the request to remove this action from case management – "it's complicated" – was not as fulsome as perhaps it ought to have been, I cannot say that the decision itself was unreasonable. It has been accepted in this Court that a case management judge ought not to vary an interlocutory order of another judge unless there has been a material change in circumstances. If the Case Management Judge here were to have acceded to the Plaintiff's request, he would have been doing so contrary to the Orders of Prothonotary Milczynski and the Chief Justice. A material change in circumstances would have been required to support a decision favourable to the Plaintiff. No such change exists here; save for any delay that has been occasioned in dealing with the outstanding motions. In my view, that is insufficient to justify the Case Management Judge ceasing the special management of this action pursuant to Rule 385(3) of the *Federal Courts Rules*.

[12] For these reasons, the appeal is dismissed, with costs in the cause.

ORDER

THIS COURT ORDERS that:

1. If the Plaintiff's motion to amend his Statement of Claim and the Defendant's motion for Summary Judgment have not already been referred to a judge for decision, the Registry is directed to do so forthwith; and
2. This appeal is dismissed, with costs in the cause.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1450-15

STYLE OF CAUSE: RADU HOCIUNG v MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369

ORDER AND REASONS: ZINN J.

DATED: DECEMBER 14, 2017

WRITTEN REPRESENTATIONS BY:

Radu Hociung

FOR THE PLAINTIFF
(SELF-REPRESENTED)

Eric O. Peterson

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada

FOR THE DEFENDANT