

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

MOTION RECORD

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AND TO:

Eric Peterson, Counsel to the Defendant
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The Exchange Tower
130 King St. West
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TAB 1

**FORM 359 - Rule 359
NOTICE OF MOTION**

T-1450-15

FEDERAL COURT OF CANADA

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and

Minister of Public Safety and Emergency Preparedness

Defendant

NOTICE OF MOTION

TAKE NOTICE THAT the plaintiff will make a motion to the Court in writing under Rule 51 of the Federal Courts Rules.

THE MOTION IS FOR:

1. Appeal Case Manager Judge's order to extend stay of proceedings;
2. Appeal Case Management Judge's order to continue proceedings as specially managed;
3. His costs of this motion; and
4. Such other relief as this Honourable Court deems just.

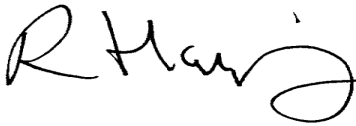
THE GROUNDS FOR THE MOTION ARE:

1. A Case Management Conference was held on November 14, 2017, in Toronto, by teleconference, Mr Prothonotary Kevin Aalto, the Case Management Judge in this case, presiding.
2. At the CMC, Mr. Aalto decided to continue the suspension of the proceedings, pending outcome of a Summary Judgement motion by the defendant, however without giving a reasonable explanation.
3. At the CMC, Mr. Aalto denied the plaintiff's request to order that special management cease, without an intelligible reason.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The record of the proceeding.
2. The pleadings herein.

DATE: November 23, 2017



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TAB 2

FEDERAL COURT OF CANADA

BETWEEN:

Radu Hociung

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

WRITTEN REPRESENTATIONS

OVERVIEW

1. This action was brought on August 28, 2015, to challenge seizure of several United States Treasury gold and silver coins by the CBSA.
2. The proceedings are presently suspended, as the defendant refuses to respond to written discovery questions, and instead has filed two motions seeking to dismiss the case, and thus avoid discovery.
3. One of the defendant's motion was to strike the Statement of Claim, which was filed before Case Management was started, and was unsuccessful.
4. The second motion was for Summary Judgement, and is largely identical to his earlier motion to strike the Statement of Claim, but was brought after Case Management was started.
5. The Case Management Judge decided to postpone discovery until after the defendant's Summary Judgement motion is decided, effectively suspending the proceeding at the March 2nd, 2017 CMC.
6. Even though it has been more than a year since Mr. Aalto was assigned as Case Management Judge,

he never requested the defendant to file a proposed timetable, nor created a timetable of any kind.

7. Following partial answers received from the defendant on January 31st, the plaintiff brought a motion to amend the Statement of Claim on February 20th, 2017.
8. The answers obtained so far were so incriminating, that a claim of facilitating money laundering by the CBSA is needed to be amended to the Statement of Claim. There is reason to believe that the unanswered questions will lead to other similarly serious claims being amended to the Statement of Claim.
9. While per Rule 385(1)(d), Mr. Aalto was to decide the motion to Amend, he has not done so, and instead has held back both the motion to amend, and the summary motion. As of October 23rd, 2017, they had not been forwarded to the Court, but instead were “lost” in the Case Management offices since March.
10. After more than twenty calls by the plaintiff to the registry, he managed to persuade a registry officer to “find” the motions, forward them to the Court, and set up a new CMC to assess status.
11. The new CMC was set for November 14th, 2017, but was not entered on Prothonotary Aalto's calendar, and it took another call to case management officer Shaun Nelson, before he scrambled the Prothonotary to hold a case management teleconference a few minutes later.
12. At the CMC the plaintiff requested that discovery be ordered to continue, which was denied by the Case Management Judge, with the explanation that the summary motion is still pending.
13. Also at the CMC the plaintiff requested that the case cease to be managed, which was also denied, with an explanation that it's “complicated”.
14. The Case Management process is a mess, with motions being lost, teleconferences unscheduled, no timetable set to govern the proceeding, the proceeding being suspended for no good reason, and generally arbitrary and ad-hoc reactionary decisions taken at every opportunity.
15. What should be a straightforward proceeding, has been managed into an unjust mess.

FACTS

16. The plaintiff served written discovery questions to the defendant on July 19th, 2016. There were 40 questions asked in total.
17. The defendant failed to answer the questions within 30 days, and on August 30th, 2016, the plaintiff wrote to the Court requesting case management, to assist with the discovery process.
18. Case Management was granted on September 21st, 2016, and the first CMC was held December 22nd, 2016.
19. Upon granting the Case Management request, the motion judge ordered the parties submit proposals for a timetable to govern the remaining steps in the proceeding.
20. The plaintiff promptly submitted a proposed timetable, while the defendant did not.
21. At the December 22nd CMC, the defendant was ordered to answer the discovery questions by January 31st, 2017.
22. The defendant answered the 20 of the 40 questions, but he was unresponsive to the other 20. For some he claimed various objections, while for others he gave answers that did not relate to the question.
23. Follow up questions were served to the defendant on February 2nd and February 7th, which remain unanswered to this day.
24. A follow-up CMC was held on March 2nd, 2017.
25. At the CMC, the plaintiff requested that the defendant be ordered to answer questions served to him on February 2nd, 2017 and February 7th, 2017, which resulted from his initial answer to to discovery questions served January 31st, 2017 at 2:08pm.
26. The Mr. Aalto declined the request, on the basis that the Summary Judgement motion should be decided first.
27. On November 14, 2017 a new CMC was held to update on the status of the proceeding.
28. At the November 14th CMC, the plaintiff requested that discovery continue, and the defendant be ordered to answer the February questions.
29. The request to continue discovery was denied, on the basis that the defendant's motion for summary

judgement has not yet been decided, and that “there is a prospect that summary judgement motion will result in the termination of the entire proceeding”.

30. At the November 14th CMC, the plaintiff also requested that the case cease to be specially managed, on the grounds that it is “difficult to achieve”.

SUBMISSIONS

31. Mr. Aalto's decision to deny the request to continue discovery is effectively an order to stay the proceedings. The proceeding has been previously stayed since March 2nd, 2017, 8 months prior.
32. According to Rule 390, a case management judge may only stay a proceeding for a period not more than six months, but only on the ground that the parties have undertaken alternative dispute resolution, and a motion requesting this stay is required, which is not the case here.
33. This action is straightforward. There is no class action certification, no third parties, no related proceedings exist that may need to be decided first, no expert opinion was requested.
34. Even in the case that some or all of the issues in the action will be decided in the summary motion,
35. Staying such a routine proceeding is not reasonable, and it is not meeting the objectives of case management that the just, most expeditious and least expensive determination take place.
36. Even in the case that some or all of the issues in the case can be decided as part of the summary motion, the claim may still be amended with respect to new causes of actions discovered in examination, and which are related to the originating cause of action.
37. Alternately, the plaintiff may decide to discontinue the action, however in this case the plaintiff advised the case management judge that he does not intend to discontinue until discovery is complete.
38. In order to discover the potential additional causes of action, discovery must be completed.
39. Mr. Aalto's decision to deny the request to continue the proceeding without case management is unintelligible. His reason was that this is “difficult to achieve”, which does not allow
40. According to *Dunsmuir v New Brunswick*, 2008 SCC 9 (CanLII) at paras 46-51 [*Dunsmuir*], a decision will fail to meet the requirements of the reasonableness standard of review where it lacks the "existence

of justification, transparency and intelligibility within the decision-making process".

41. The case management process does not yet have a governing timetable in place, even though it has been more than a year since case management started.
42. The effects of not having a timetable are clear. A year later, discovery is still not progressing. Motions are misplaced. Scheduled CMC are not placed on the judge's calendar.
43. While the case management judge scheduled an attempt at setting a timetable for December 12, 2017, he did not request proposed timetables from the parties.
44. A timetable should be the central governing document in case management. It should be the first and most important blueprint to be agreed to when case management commences, but it is treated as a miscellaneous document that will be assembled upon request.
45. It is very difficult to see how a case manager who doesn't rely on a timetable normally, will come to use an ad-hoc one as the primary tool for managing the case. At best, this document will be filed and forgotten, thus meeting earning the checkmark that a timetable exists.
46. It is unjust that Case Management both suspend the proceeding pending motions, that then hold back the motions that the stay are dependent on. This effectively stays the case indefinitely, or at least enough one of the parties makes enough "noise" to break this stall.
47. Case management has failed in this proceeding, and has brought an unnecessary one year delay in the case, for which there are no meaningful accomplishments. It has increased the costs of the proceeding both to the parties and to the Court alike. Finally, it has suspended a routine action for no good reason, which is unjust.
48. Case management is detrimental in this proceeding, adds no value, and should cease, allowing it to proceed according to the times set in the Federal Court Rules.
49. Given the state of discoveries, the clear path forward is a motion to compel answers, and/or default judgement against the defendant. Case management is not necessary for these motions.

ORDER SOUGHT

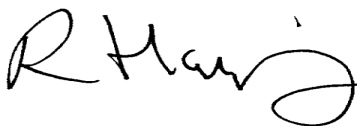
50. The plaintiff requests Judgement:
 - (a) The proceeding continue without case management, according to the times set in the Federal Court

Rules

- (b) The defendant be ordered to answer discovery questions immediately, or expedited, within 5 business days of the order.
- (c) His costs on this motion, which was necessary due to the defendant's delay in answering discovery.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATE: November 23, 2017



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