

Court file: T-1450-15

FEDERAL COURT OF CANADA

BETWEEN:

RADU HOCIUNG

Plaintiff

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Defendant

RESPONDING MOTION RECORD

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**RESPONDING WRITTEN REPRESENTATIONS
(Plaintiff's Appeal of CMC of November 14, 2017)**

STATEMENT OF FACTS

1. The plaintiff appeals two decisions of the case management judge made at a case management conference held on November 14, 2017: (1) directing that this action be held in abeyance pending the disposition of the plaintiff's motion to amend his claim and the defendant's motion for summary judgment, and (2) refusing the plaintiff's request that this action cease to be specially managed.

2. The case management judge heard the plaintiff's submissions at the case management conference on November 14, 2017.
3. At the conclusion of the plaintiff's submissions, the case management judge made his decisions and provided a full explanation, namely, that the pending motions are before a judge and that the disposition of these motions will have a direct impact on the next steps in the action.
4. It is important to note that the case management judge also directed that a further case management conference take place on December 18, 2017 and that he would direct the next steps for ongoing discovery in the action if the motions still remained pending. The plaintiff's notice of motion and written representations fail to make any mention of this next case management conference.

POINTS IN ISSUE

5. Do the decisions of the case management judge constitute the clearest case of a misuse of judicial discretion?

SUBMISSIONS

6. The standard of review on an appeal from a case management judge with respect to procedural issues is extremely high. The Court will

interfere only in the clearest of cases of a misuse of judicial discretion.

7. In *Sawridge Band v. Canada*, 2001 FCA 338, the Federal Court of Appeal (per Rothstein J.A., Linden and Malone JJ.A. concurring) stated:

We would take this opportunity to state the position of this Court on appeals from orders of case management judges. Case management judges must be given latitude to manage cases. This Court will interfere only in the clearest case of a misuse of judicial discretion.¹

8. The Court of Appeal's statement in *Sawridge Band* was followed by Madam Justice Dawson of this Court in *Bates Enterprises Ltd. v. Canada* (2002), 219 F.T.R. 176. Dawson J. applied the standard of review in *Sawridge Band* to an appeal to this Court from a case management judge.²
9. There is no misuse of judicial discretion whatsoever in the decisions of the case management judge under appeal herein. Where a motion is brought to amend a claim to raise new causes of action, as the plaintiff has done, or to seek summary judgment, as the defendant has done, the Court will direct that the next steps in the action be held in abeyance pending the disposition of such motions.

¹ *Sawridge Band v. Canada*, 2001 FCA 338, at paragraph 11

² *Bates Enterprises Ltd. v. Canada* (2002), 219 F.T.R. 176, 2002 FCT 123 (CanLII), at paragraphs 14 to 18

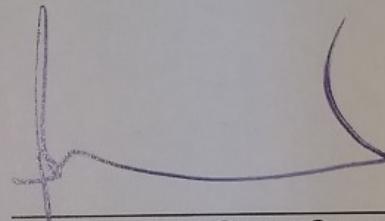
10. Holding an action in abeyance while a motion to amend a claim or seek summary judgment is on reserve is not the same thing as a stay of proceedings. There is no stay of proceedings in this action.

ORDER SOUGHT

11. The defendant asks that the plaintiff's appeal be dismissed, with costs in any event of the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATE: November 24, 2017



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