

Federal Court



Cour fédérale

Date: 20210416

Docket: T-816-19

Citation: 2021 FC 327

Ottawa, Ontario, April 16, 2021

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

HESAMEDDIN ABBASPOUR TAZEHKAND

Applicant

and

BANK OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Mr. Hesameddin Abbaspour Tazehkand [Mr. Tazehkand], has filed a motion in writing [Motion for Reconsideration] pursuant to Rules 369 and 397 of the *Federal Courts Rules*, SOR/98-106 [FCR], requesting that I reconsider my Order of February 26, 2021 [Order] permitting the Respondent, Bank of Canada [Bank], to file a requisition for a Writ of Seizure and Sale [Motion for Writ of Seizure and Sale] of property belonging to Mr. Tazehkand

in payment of the award of costs rendered in favour of the Bank by a decision of this Court on December 30, 2020.

[2] The Motion for Reconsideration includes a request that the Court extend time for its filing and service.

[3] Following the filing of the Bank's motion record in response to the Motion for Reconsideration and Mr. Tazehkand's reply thereto, Mr. Tazehkand served and filed a second motion requesting leave to file a reply affidavit [Leave Motion].

[4] For the reasons that follow, I am granting in part the Motion for Reconsideration, and dismissing outright the Leave Motion.

II. FACTS AND ANALYSIS

[5] On December 30, 2020, Justice Brown of this Court dismissed Mr. Tazehkand's application for judicial review [Judgment] of a decision of the Canadian Human Rights Commission which dismissed Mr. Tazehkand's complaint that the Bank refused to interview him due to discrimination based on race, national or ethnic origin. The Judgment included an all-inclusive award of costs in favour of the Bank of \$2,500 [Cost Award].

[6] On January 7, 2021, the Bank, through its solicitors, sent a letter by email to Mr. Tazehkand requesting payment of the Cost Award by January 29, 2021. Not having heard back from Mr. Tazehkand, the Bank again sent an email to Mr. Tazehkand on January 18, 2021

requesting that he confirm receipt of its earlier email of January 7, 2021 and to advise when the Bank may expect payment of the Cost Award.

[7] On January 19, 2021, Mr. Tazehkand confirmed receipt of the emails sent on behalf of the Bank, and advised that “[a]ccording to the registry I have 30 days with Jan. 8 being the first day rather than Dec. 31. I will advise you by the end of that time period (end of business hours on Mon. Feb 8) regarding this matter”.

[8] Not having received a satisfactory answer, on February 1, 2021, the Bank sent an email to Mr. Tazehkand attaching a draft motion for enforcement of the Cost Award, and advising that they intend to file the motion if they do not receive from Mr. Tazehkand payment of the Cost Award by February 3, 2021.

[9] Not having heard further, on February 5, 2021, the Bank, served and filed with this Court the Motion for Writ of Seizure and Sale. Mr. Tazehkand confirmed receipt on February 8, 2021.

[10] The matter came before me for consideration. Having noted Mr. Tazehkand’s email of January 19, 2021, I requested the Registry communicate with the Bank’s solicitors to enquire whether Mr. Tazehkand had followed up with them past February 8, 2021. On February 26, 2021, the Bank’s solicitors responded that apart from Mr. Tazehkand confirming receipt of the notice of motion on February 8, 2021, they “have received no substantive response to [their] request for the payment of the Costs Order ...”.

[11] On February 26, 2021, I issued the Order.

[12] That very afternoon, the Registry received a document entitled Applicant's Representation by which Mr. Tazehkand made reference to the Order of "earlier today", and requested that I reconsider my Order on the basis that he had filed a notice of appeal of the Judgment on February 8, 2021 and that he did not consider it necessary to respond in writing to the Motion for Writ of Seizure and Sale as he had "mistakenly assumed there would be a hearing", and that he was "planning to ask the Court to dismiss the motion in that hearing on the basis of the ongoing appeal".

[13] In fairness, Mr. Tazehkand is a self-represented litigant who may not be as familiar with the FCR; clearly, he also mistakenly assumed that an appeal without an order for a stay of the Judgment suspended his obligation to settle the Cost Award.

[14] It also does not appear that Mr. Tazehkand served the notice of appeal upon the Bank upon filing, having realized he had 10 days to do so pursuant to Rule 339(1) FCR. As mentioned, Mr. Tazehkand did not request a stay of the Judgment.

[15] On March 8, 2021, Mr. Tazehkand attempted to file a motion for reconsideration of the Order, however it was rejected by the Registry for reasons of non-compliance with the FCR. At the time, Mr. Tazehkand was within his delays to do so pursuant to Rule 397(1) FCR.

[16] On March 11, 2021, having corrected the non-compliant portions of his motion and although now outside the delays provided for in Rule 397(1) FCR, Mr. Tazehkand filed the present Motion for Reconsideration in which he seeks: (1) an extension of time to file the motion; (2) reconsideration of the Order; and (3) the dismissal of the Bank's Motion for Writ of Seizure and Sale on the grounds that:

- a) The Judgment was dated December 30, 2020 while the Order stated that calculation of interest would begin as of December 20, 2020;
- b) The Motion for Writ of Seizure and Sale was premature as it was filed before the expiry of time permitted for the filing of an appeal of the Judgment, that a notice of appeal was filed, and that pursuant to Rule 339 of the FCR, Mr. Tazehkand had 10 days to serve the notice of appeal;
- c) On January 19, 2021, in response to the query by the Bank's solicitors as to when Mr. Tazehkand expected to settle the Cost Award, he advised that he would do so by the end of the day February 8, 2021;
- d) The notice of appeal of the Judgment was filed on February 8, 2021; and
- e) The province-wide emergency "stay-at-home" order was in effect.

[17] On March 22, 2021, the Bank filed its response record. In addition to setting out the facts, the Bank argues that Mr. Tazehkand's request for an extension of time to file his Motion for Reconsideration should be denied, and alternatively that the motion should be dismissed primarily because the criteria of Rule 397 FCR have not been met.

[18] On March 25, 2021, Mr. Tazehkand filed two additional proceedings: first, he filed his Reply to the Bank's responding material. In addition, Mr. Tazehkand filed the Leave Motion. The Bank filed its Respondent's record to the Leave Motion.

[19] In his Reply, Mr. Tazehkand argues that the time line for the payment of a judgment debt, in this case the Cost Award, is subject to subsection 27(2) of the *Federal Courts Act*, RSC 1985, c F-7 [Act], which provides that appeals are to be brought within 30 days following the issuance of the order being appealed, and Rule 339(1) FCR which provide that the notice of appeal is to be served within 10 days from issuance. Mr. Tazehkand provides no case law in support of his assertion, but argues that it would be unfair to allow for enforcement of a judgment prior to the expiry of the delays to appeal.

[20] As stated earlier, Mr. Tazehkand seems to be under the mistaken belief that the Order, in particular the requirement to settle the Cost Award, is somehow suspended during the period of appeal. That may be the case in certain provinces, but that is not the case before this Court (*Almecon Industries Ltd. v Anchoitek Ltd.*, 2003 FCT 127 at paras 7 to 9).

[21] Mr. Tazehkand also argues that the Bank falsely represented the facts, in particular that he did not respond to the Bank's emails insisting on payment. However, whether Mr. Tazehkand sufficiently addressed the issue of the payment of the Cost Award in his exchanges with the Bank is of no consequence. The fact remains that the Cost Award was enforceable both during the period of appeal, and notwithstanding any appeal, of the Judgement. In any event, such

exchanges seemed, on Mr. Tazehkand's part, to be based on an improper assumption regarding the immediate obligation to pay the Cost Award.

[22] As regards the Leave Motion, Mr. Tazehkand has not convinced me that such an exceptional remedy is warranted. Any supposed misstatement of the facts by the Bank seems to relate to the manner in which the Bank described the exchanges with Mr. Tazehkand. As I stated earlier, the issues of how and to what extent Mr. Tazehkand responded to the Bank's request for payment of the Cost Award are of no consequence as regards the merits of Mr. Tazehkand's Motion for Reconsideration. This is not a case of "unusual circumstances where considerations of procedural fairness and the need to make a proper determination require" that a Reply affidavit be filed (*Black & White Merchandising Co. Ltd. v Deltrans International Shipping Corporation*, 2019 FC 379 at para 28; *Amgen Canada Inc. v Apotex Inc.*, 2016 FCA 121).

[23] In short, and apart for highlighting the clerical error in the date from which interest was to run (Rule 397(2) FCR), Mr. Tazehkand has not raised any argument to suggest that the Order does not accord with the reasons given, or that a matter which ought to have been dealt with was overlooked or omitted; a motion for reconsideration is not meant to be an appeal (*Taker v Canada (Attorney General)*, 2012 FCA 83).

III. CONCLUSION

[24] As regards Mr. Tazehkand's request for an extension of time to file his Motion for Reconsideration, given that his first unsuccessful attempt was in time and that he is a self-represented litigant, I will exercise my discretion in allowing that part of his motion. I find that

his motion was also necessary to correct the clerical error in my Order, although Mr. Tazehkand's principal argument calling for the dismissal of the Bank's Motion for Writ of Seizure and Sale has failed to convince me.

[25] As regards Mr. Tazehkand's Leave Motion, it is dismissed.

[26] As regards costs on the two motions before me, the Motion for Reconsideration was useful to the extent it highlighted the need for correction of the clerical error in the Order. However, that issue may have been dealt with in a much simpler way, and most probably with the consent of the Bank. The fact that Mr. Tazehkand raised, mistakenly, the issue of the Motion for Writ of Seizure and Sale being premature and that it should be dismissed caused the Bank's solicitors to spend more time than was needed in responding to that aspect of Mr. Tazehkand's motion – which eventually failed. However, I also note that the more extensive aspect of the Bank's response related to contesting Mr. Tazehkand's request for an extension of time to file his Motion for Reconsideration, an aspect upon which Mr. Tazehkand was eventually successful.

[27] The Bank has requested \$1,500 in costs on the Motion for Reconsideration. Considering the principal aspect of what Mr. Tazehkand was attempting to do was to set aside the Bank's Motion for Writ of Seizure and Sale – which eventually failed – I find that some costs should be awarded to the Bank in recognition of their success on that aspect of the said motion. I will grant costs in favour of the Bank in the amount of \$500.

[28] As to the Leave Motion, the Bank has requested costs in the amount of \$500 and I see no reason why they should not be awarded costs as requested given that the motion was dismissed outright.

JUDGMENT in T-816-19

THIS COURT'S JUDGMENT is that:

1. Motion for reconsideration:
 - a) The applicant's Motion for Reconsideration is granted in part;
 - b) The delay for the service and filing of the applicant's Motion for Reconsideration is extended to the day actually filed with the Registry of this Court;
 - c) The Order dated February 26, 2021 is hereby amended to provide in subparagraph 2(a) of the dispositive order, that post-judgment interest is to be calculated from December 30, 2020 rather than from December 20, 2020. Otherwise, the Order remains undisturbed; and
 - d) Costs in the amount of \$500 are payable by the applicant to the respondent.

2. Motion for Leave to file a Reply Affidavit:
 - a) The motion is dismissed, with costs in the amount of \$500 payable by the applicant to the respondent.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-816-19

STYLE OF CAUSE: HESAMEDDIN ABBASPOUR TAZEHKAND v BANK
OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

JUDGMENT AND REASONS: PAMEL J.

DATED: APRIL 16, 2021

APPEARANCES:

Hesameddin Abbaspour
Tazehkand

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Larissa Volinets Schieven

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Emond Harnden LLP
Barristers and Solicitors
Ottawa, Ontario

FOR THE RESPONDENT