

Date: 20100318

Docket: T-2087-09

Citation: 2010 FC 315

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Québec, Quebec, March 18, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

ROBERT GRAVEL

Applicant

and

TELUS COMMUNICATIONS INC.

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion filed by Telus Communications Inc. (the respondent) seeking a stay of proceedings pending proceedings before the Federal Court of Appeal under docket number A-69-10. A brief review of the proceedings in question is useful here.

[2] In an arbitration award dated November 6, 2009, Arbitrator Léonce-E Roy declined jurisdiction to address a complaint of alleged unjust dismissal filed by Robert Gravel (the applicant) on December 21, 2007, under the provisions of sections 240 *et seq.* of the Canada Labour Code.

The arbitrator declined jurisdiction chiefly on the ground that the applicant had been subject to bona fide dismissal by the respondent concerning which Parliament has prohibited arbitrator intervention under paragraph 242 (3.1) (a) of the *Canada Labour Code*.

[3] On December 14, 2009, the applicant submitted to the Federal Court an application for judicial review of this arbitration award, as well as a number of affidavits in support of said application.

[4] On February 2, 2010, the respondent filed a notice of motion seeking an order to strike certain paragraphs from the applicant's affidavit and to quash in their entirety the affidavits from Claude Gravel and Jacques Gagné submitted in support of the application for judicial review.

[5] The Honourable Madam Justice Tremblay-Lamer granted the latter motion in large part in an order and reasons dated February 12, 2010, under citation number 2010 FC 151. The applicant appealed this order before the Federal Court of Appeal by notice dated February 19, 2010.

[6] The respondent is now seeking a stay of the judicial review proceedings for the duration of the appeal proceedings.

[7] The principles to be followed by the Court in exercising its discretion with a view to disposing of this motion have been established in multiple Federal Court decisions, notably *Apotex Inc. v. Hoffman-La Roche Ltd.* (1985), 6 CPR (3d) 117, [1985] FCA No. 1164 (QL); *Laliberté v.*

Canada, 2004 FC 1524; *Polaris Industries Inc. v. Victory Cycle Ltd.*, 2007 FCA 259; and, more recently, *GDC Gatineau Development Corporation v. Canada*, 2009 FC 1295.

[8] The following excerpts from *Apotex Inc. v. Hoffman-La Roche Ltd.*, *supra*, effectively summarize these principles:

5 [TRANSLATION] Proceedings should be stayed or dismissed only in very clear cases, and the Court should exercise its discretion only very rarely. See *Weight Watchers International Inc. v. Weight Watchers of Ontario Ltd.*, [1972] 5 CPR (2d) 122, at page 130.

6 The respondent is responsible for proving that a decision not to stay the proceedings would be abusive or vexatious; it is not enough to show that the assessment of harm points toward a stay of proceedings. Prosecuting the action must cause irreparable harm to the applicant, and the stay of proceedings must not cause injustice to the other parties. See *Dominion Mail Order Products Corp. v. Weider*, [1976] 28 CPR (2d) 27.

7 Proceedings are not automatically stayed upon appeal of a judgment or order. This was also affirmed by Justice Walsh on behalf of the Court in *Cercast Inc. v. Shellcast Foundries Inc. (No. 5)*, 10 CPR (2d) 90, at page 94 (confirmed by (1973) FC 640):

- [TRANSLATION] If proceedings were to be stayed every time any of the numerous interlocutory decisions to which matters such as this give rise are appealed—with some appeals occasionally, with the Court’s authorization, being brought before the Supreme Court—respondents would be able to drag cases on for many years before they are ready for trial and, in so doing, adversely affect the proper administration of justice. This would constitute an abuse of the legal process.

8 The party seeking the stay of proceedings must also show that prosecuting the action will cause irreparable harm. In *Baxter Travenol Laboratories Ltd. v. Cutter Ltd.*, [1981] 54 CPR (2d) 218, Justice Cattanach, in determining whether the matters raised by the appeal of a judgment should be stayed, affirmed as follows at page 219:

- [TRANSLATION] I recognize that, in accordance with broad usage, a stay is granted only in special circumstances and that the applicant is responsible for proving the existence of these circumstances.
- If I understand correctly the basis of the claim of counsel for the respondent, the cost of referral and the resulting inconvenience could prove futile if the Appeal Division set aside the decision of the trial judge.
- In my opinion, such a circumstance does not, in itself, justify the stay sought, and granting a stay would go against authoritative decisions. The courts are not in the habit of staying inquiries pending the outcome of an appeal unless it can be shown that irreparable harm would otherwise result.

9 In *Sperry Corporation v. John Deere Ltd.*, [1982] 65 CPR (23) 92, which is very similar to the present case, Justice Cattanach reviewed the well-established principles governing stays. He added that it was up to the applicant to prove the existence of special circumstances justifying the stay of proceedings. In the absence of other factors, the fact that an appeal would be pointless does not constitute sufficiently special circumstances. An appeal does not become pointless simply because an action continues, because if the appeal is allowed, the confessions obtained through examinations for discovery may not be admissible as evidence at trial.

[9] In the present case, the applicant, who is representing himself and is the party that appealed the order from the Honourable Madam Justice Tremblay-Lamer, acknowledges that the application for judicial review in the matter cannot be heard until the appeal is decided. However, the applicant believes that a stay of proceedings is premature because he has motions that he wishes to file with the Federal Court in this case, notably to add or amend documents and to file new affidavits and amend existing affidavits, which, in his opinion, could offset the quashing of the affidavits being appealed, thereby enabling him to withdraw his appeal. The applicant is consequently seeking an

opportunity to supplement his pleadings without delay in order to move on to a prompt hearing of the case.

[10] In these circumstances, I am of the view that justice is served by providing the applicant an opportunity to submit motions as he intends with a view to moving forward with the case. However, this decision will in no way prevent the respondent from submitting a new motion to stay the proceedings in the event that the applicant's motions fail to have their intended effect.

ORDER

THE COURT ORDERS that the motion be denied, without costs.

“Robert Mainville”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2087-09

STYLE OF CAUSE: Robert Gravel v.
TELUS COMMUNICATIONS INC.

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: March 18, 2010

**REASONS FOR ORDER
AND ORDER:** Mainville J.

DATED: March 18, 2010

APPEARANCES:

Robert Gravel
Québec, Quebec

FOR THE APPLICANT
(representing himself)

Pierre-Étienne Morand

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Heenan Blaikie Aubut
Québec, Quebec

FOR THE APPLICANT

FOR THE RESPONDENT