

Federal Court



Cour fédérale

Date: 20120119

Docket: T-1819-11

Citation: 2012 FC 83

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, January 19, 2012

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

RICHARD TIMM

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

Introduction

This is a motion by the plaintiff under sections 50, 51, 220, 221 and 369 of the *Federal Courts Rules* (SOR/98-102), appealing an order made by Prothonotary Richard Morneau on December 12, 2011, allowing the defendant's motion to strike out and to dismiss the action under

paragraphs 221(1)(c) and (f) of the *Federal Courts Rules*, with costs in accordance with column IV of Tariff B, and without leave to amend. The order further dismissed all of the heads of relief sought by the plaintiff at pages 13 and 14 of his record in reply to the motion to strike out and dismiss the action.

UPON reading the written representations set out in the plaintiff's motion record, filed with this Court on December 21, 2011, and more specifically the arguments asserting that the order made by Prothonotary Morneau on December 12 must be set aside on the grounds that:

(a) the prothonotary erred in fact and in law in that he found that it was entirely justified and reasonable for the solicitors and deponents in file no. T-1110-10, adjudicated by the Court on September 12, 2011, to have alleged or asserted that the plaintiff did not tender or pay the required allowances to the three witnesses summoned, and accordingly those persons committed none of the wrongful acts or offences listed and described by the plaintiff in his statement of claim;

(b) the prothonotary erred in finding that the existence of clause 8 in the memorandum of settlement signed by the parties, allowing the plaintiff to challenge the motion to quash in file no. T-1110-10, did not in any way mitigate the vexatiousness of the plaintiff's action;

(c) the prothonotary erred in concluding that the plaintiff's action was without merit in fact and in law and had no chance of succeeding because it was based on an incorrect interpretation of the concept of perjury and a failure to understand how our judicial system operates;

(d) the prothonotary erred in concluding that the plaintiff's action was based solely on an incorrect understanding of the basic principles of litigation and a mistaken interpretation of the *Federal Courts Rules*;

(e) the prothonotary erred in concluding that the plaintiff's action was purely vexatious and in finding that the action amounted to nothing less than an attack on the judicial system;

(f) the prothonotary erred because he did not have jurisdiction to hear the case since it involved a claim for damages exceeding \$50,000 and not a simplified action;

(g) the prothonotary erred in failing to rule on the heads of relief sought in the plaintiff's reply record;

AND HAVING CONSIDERED the defendant's written representations in her reply record filed with this Court on January 4, 2012, in which the defendant seeks the dismissal of the application for review of the order for the following reasons:

(a) when the plaintiff was examined on November 22, 2011, he admitted that he had not tendered or paid any allowance to the three witnesses whom he had summoned by subpoena, and accordingly the sworn statements by Julie Bergevin, Edith Desnoyer and Diane Pilon could not have constituted perjury; the defendant submits that it was therefore open to the prothonotary to conclude that the plaintiff's action was without merit in fact and in law;

(b) the plaintiff had no chance of success since the plaintiff's entire action was based on an incorrect interpretation of the concept of perjury and a failure to understand how our judicial system operates;

(c) the plaintiff's action is based solely on an incorrect understanding of the basic *principles* of litigation and an incorrect interpretation of the *Federal Courts Rules*;

(d) the plaintiff's action is purely vexatious and amounts to nothing less than an attack on the judicial system and its representatives;

(e) the plaintiff's action is a flagrant abuse of process;

AND HAVING CONSIDERED the order made by Prothonotary Morneau and the tests concerning appeals from a decision of a prothonotary laid down by the Federal Court of Appeal in *Aqua-Gem Investments Ltd*, 1993 2 FC 425, 149 NR 273 and *Merck Co v Apotex Inc*, 2003 FCA 488, 4004 2 FCR at para. 19:

Discretionary orders of prothonotaries ought not to be disturbed on appeal unless (a) the question raised in the motion are vital to the final issue of the case, or (b) the orders are clearly wrong, in the sense that the exercise of the discretion by the prothonotary was based on a wrong principle or upon a misapprehension of the facts.

AND HAVING CONSIDERED and reviewed the transcript of the examination of the plaintiff held on November 22, 2011, and concluded that the prothonotary:

(a) did not err in law or make incorrect findings in his assessment of the evidence in the record, since the plaintiff admitted that he had not paid or tendered the prescribed amounts to the three witnesses whom he had summoned by subpoena, and accordingly the deponents could not have perjured themselves when they so stated under oath;

(b) did not err in his assessment of paragraph 8 of the memorandum of settlement signed by the plaintiff and the Attorney General of Canada or of its impact in file no. T-1819-11;

(c) did not err and disposed of the heads of relief sought in the plaintiff's reply record, since he dismissed them;

(d) concludes that the prothonotary had jurisdiction to dispose of the motion under the *Federal Courts Rules* and could reasonably have concluded that the plaintiff's action was vexatious and futile, even if the amount claimed exceeds \$50,000 (see the decision in *Maheux v Canada*, 2011 FC 901, [2011] FCJ No. 1126 at para. 7; *First Canadians' Constitution Draft Committee the United Korean Government (Canada) v Canada*, 2004 FCA 93, 238 DLR (4th) 306).

ORDER

THE COURT dismisses the plaintiff's appeal with costs.

“André F. J. Scott”

Judge

Certified true translation
Daniela Guglietta, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1819-11

STYLE OF CAUSE: RICHARD TIMM
v
HER MAJESTY THE QUEEN

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369**

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

DATED: January 19, 2012

APPEARANCES:

Richard Timm FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Jacques Savary FOR THE DEFENDANT

SOLICITORS OF RECORD:

Richard Timm FOR THE PLAINTIFF
La Macara, Quebec (ON HIS OWN BEHALF)

Myles J. Kirvan FOR THE DEFENDANT
Deputy Attorney General of Canada
Montréal, Quebec