

Date: 20090617

Docket: 09-A-23

Citation: 2009 FCA 208

Present: PELLETIER J.A.

BETWEEN:

STACY BITTON

Applicant

and

HSBC BANK CANADA

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 17, 2009.

REASONS FOR ORDER AND ORDER BY:

PELLETIER J.A.

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REASONS FOR ORDER AND ORDER

PELLETIER J.A.

[1] The facts underlying this motion for an extension of time to file a notice of appeal go back to 2005. Following his dismissal by HSBC Bank Canada (the Bank), Mr. Bitton exercised his right to refer the matter of his dismissal to an adjudicator, who rendered his decision in the Bank's favour on May 4, 2005. Mr. Bitton filed an application for judicial review of the adjudicator's decision, and his application was allowed by Justice de Montigny of the Federal Court on the ground that the adjudicator had failed to provide adequate reasons for his decision. On November 9, 2006, Justice de Montigny referred the matter back to the adjudicator for him to show that "the disciplinary measure taken by the employer, namely dismissal, was justifiable".

[2] On September 12, 2007, the adjudicator rendered a second decision that did not please Mr. Bitton any more than the original one. Mr. Bitton intended to challenge the second decision, but believed that he could proceed within the application he had made with regard to the first adjudication decision. Unfortunately, owing to the fact that it concerned a new decision, he had to file a second application for judicial review but, since the 30-day time limit to do so had elapsed, he first had to file a motion for an extension of time.

[3] Still intending to comply with the *Federal Courts Rules* (Rules), Mr. Bitton filed his motion for an extension of time on October 29, 2007. It was not until August 28, 2008, that the Registry of the Federal Court informed him that, by mistake, his motion for an extension of time had not been submitted to a judge. Mr. Bitton having confirmed his intention to continue his proceedings, his motion for an extension of time was submitted to Justice Lemieux, who made his decision on September 24, 2008. Justice Lemieux dismissed the motion for an extension of time on the ground that Mr. Bitton had not satisfied him that [TRANSLATION] “his application for judicial review would have a reasonable chance of succeeding on the merits of the application”. Still according to Justice Lemieux, Mr. Bitton requested in his submissions that the Court reassess the evidence that was before the adjudicator and that it make findings that the adjudicator did not see fit to make, which Justice Lemieux rightly said cannot be done on judicial review. Dissatisfied with that decision, Mr. Bitton in fact requested that it be reconsidered, but his request was dismissed on November 17, 2008.

[4] This last decision notwithstanding, the steps that Mr. Bitton has taken since that time concern the September 24, 2008, decision. On January 28, 2009, Mr. Bitton attempted to file a notice of appeal, but it was dismissed on February 6, 2009, because it was out of time, and for other procedural defects. On February 19, 2009, Mr. Bitton filed a new notice of appeal without having first obtained an extension of time to do so. On March 18, 2009, Justice Nadon issued a direction in which he stated that even if the documents filed by Mr. Bitton were treated as a motion for an extension of time, they did not comply with the Rules because they were not accompanied by evidence, in affidavit form, of the facts relevant to the motion. Furthermore, the filing fee set out at Tariff A of the Rules had not been paid.

[5] On April 13, 2009, Mr. Bitton filed a motion for an extension of time, with an affidavit and the filing fee in support. Once again, there were obvious problems of compliance with the Rules. There was inadequate proof that the motion was served on the other party. Mr. Bitton's "affidavit" was not sworn, nor were the attached exhibits.

[6] It seems to me that the ends of justice are not served by requiring that Mr. Bitton comply more fully with the Rules when, from reading the voluminous documentation already in the record, there can be no doubt that his motion for an extension of time is bound to fail. In his reasons, Justice Lemieux explained the ground for his dismissal of the motion for an extension of time filed by Mr. Bitton very clearly: Mr. Bitton had failed to satisfy him that the application for judicial review had any possibility of success. The same applies to a motion for an extension of time to file a notice of appeal. In addition to explaining the reason for lateness, the applicant must submit one or more

arguments suggesting that that his or her appeal is well founded. Mr. Bitton filed nothing in that respect, which is fatal to his motion for an extension of time.

[7] In light of the fact that the events giving rise to this dispute go back to 2004-2005, it seems to me that the time has come to put an end to this unfortunate story. Therefore, in the special circumstances of this case, and on the basis of Rule 55, which allows me to dispense with compliance with the Rules on my own initiative, I make the following order:

ORDER

- a) The Registry is authorized to accept for filing the motion for an extension of time dated April 13, 2009;
- b) The applicant is exempted from the obligation to file proof of service of his motion on the respondent;
- c) The respondent is exempted from the obligation to file a motion record;
- d) The applicant's motion for an extension of time is dismissed without costs because the applicant has not satisfied me that his appeal of Justice Lemieux's discretionary decision would have any possibility of success.
- e) The Registry will send a copy of this order to both parties.

"J.D. Denis Pelletier"

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: 09-A-23

STYLE OF CAUSE: *STACY BITTON AND HSBC BANK
CANADA*

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER AND ORDER BY: PELLETIER, J.A.

DATED: June 17, 2009

WRITTEN REPRESENTATIONS BY:

Stacy Bitton FOR HIMSELF

A. Fishman FOR THE RESPONDENT

SOLICITORS OF RECORD:

A. Fishman FOR THE RESPONDENT
Montréal, Quebec