

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190320

Docket: A-395-17

Citation: 2019 FCA 50

**CORAM: PELLETIER J.A.
WEBB J.A.
RENNIE J.A.**

BETWEEN:

GLENN DE CARIES

Appellant

and

**STATE FARM/CERTAS HOME FINANCIAL AND
AUTO INSURANCE COMPANY AND DR. DAVID HOLT,
DR. RAYMOND ZATZMAN**

Respondents

Heard at Ottawa, Ontario, on March 14, 2019.

Judgment delivered at Ottawa, Ontario, on March 20, 2019.

REASONS FOR JUDGMENT BY:

RENNIE J.A.

CONCURRED IN BY:

PELLETIER J.A.
WEBB J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

RENNIE J.A.

[1] This is an appeal of an order of the Federal Court (*per* LeBlanc J.) dated November 10, 2017 (T-803-17) dismissing the appellant's request for an extension of time within which to file a notice of appeal for an order of Prothonotary Aalto rendered July 31, 2017. In that order, the Prothonotary struck the appellant's statement of claim without leave to amend on the basis that the Federal Court lacked jurisdiction to hear it.

[2] Upon review, I am in agreement with the reasons given by the Federal Court.

[3] The judge applied the correct test applicable to extensions of time (*Canada (Attorney General) v. Hennelly*, 167 F.T.R. 158 at para 3, 244 N.R. 399; *Canada (Attorney General) v. Larkman*, 2012 FCA 204, 433 N.R. 184), and I see no palpable and overriding error in his consideration of the relevant factors, including the absence of a reasonable explanation for the delay and the potential merit of the appeal (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[4] I would therefore dismiss the appeal with costs.

[5] In closing, I wish to make one observation for the benefit of Mr. De Caries. The decision of the Prothonotary, as confirmed by the Federal Court, has nothing to do with the merits of his allegations of professional negligence against the defendants. Those decisions simply say that Mr. De Caries has brought his claim in the wrong court.

“Donald J. Rennie”

J.A.

“I agree
J.D. Denis Pelletier J.A.”

“I agree
Wyman W. Webb J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED
NOVEMBER 10, 2017, DOCKET NUMBER T-803-17**

DOCKET: A-395-17

STYLE OF CAUSE: GLENN DE CARIES v. STATE
FARM/CERTAS HOME
FINANCIAL AND AUTO
INSURANCE COMPANY AND
DR. DAVID HOLT,
DR. RAYMOND ZATZMAN

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 14, 2019

REASONS FOR JUDGMENT BY: RENNIE J.A.

CONCURRED IN BY: PELLETIER J.A.
WEBB J.A.

DATED: MARCH 20, 2019

APPEARANCES:

Glenn De Caries
(on his own behalf)

FOR THE APPELLANT

Nadia Marotta

FOR THE RESPONDENTS
DR. DAVID HOLT AND
DR. RAYMOND ZATZMAN

Paula J. Thomas

FOR THE RESPONDENTS STATE
FARM/CERTAS HOME
FINANCIAL AND AUTO
INSURANCE COMPANY

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS STATE
FARM/CERTAS HOME
FINANCIAL AND AUTO
INSURANCE COMPANY