

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20101202

Docket: A-452-09

Citation: 2010 FCA 329

**CORAM: DAWSON J.A.
LAYDEN-STEVENSON J.A.
MAINVILLE J.A.**

BETWEEN:

DAN YANG LIU

Appellant

and

**MATRIKON INC., NIZAR SOMJI,
GRAHAM GOODWIN, RICK MIDDLETON,
JAMES WELSH, GREG ADAMS,
UNIVERSITY OF NEWCASTLE**

Respondents

Heard at Edmonton, Alberta, on December 1, 2010.

Judgment delivered at Edmonton, Alberta, on December 2, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

CONCURRED IN BY:

DAWSON J.A.
MAINVILLE J.A.

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CANADA

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REASONS FOR JUDGMENT OF THE COURT

LAYDEN-STEVENSON J.A.

[1] Following a status review, by order dated November 25, 2009, Prothonotary Lafrenière dismissed the appellant's action for delay. Justice deMontigny of the Federal Court (the judge) dismissed an appeal of that order. In doing so, the judge examined the matter *de novo*. He concluded that the appellant "failed to provide any concrete plan to move the proceeding forward in the near future, let alone establish his ability to do so." The appellant now appeals the judge's order to this Court.

[2] I am not persuaded that the judge erred in dismissing the action. The jurisprudence of this Court holds that a party in receipt of a notice of status review is required to address two questions: (1) is there a justification for the failure to move the case forward, and (2) what measures does the party propose to take to move the case forward: *Netupsky v. Canada*, 2004 FCA 239; 323 N.R. 349 at para. 11 citing *Baroud v. Canada (Minister of Citizenship & Immigration)* (1988), 160 F.T.R. 91 (T.D.) and *Manson Estate v. Canada (Minister of National Revenue)*, [2003] 1 C.T.C. 13 (F.C.A.) leave to appeal dismissed, [2002] S.C.C.A. No. 542. Since the appellant had failed to put forth any plan to move the action forward, the judge made no error in dismissing the action. Professed lack of familiarity with the requirements of the law does not operate to excuse the appellant's failure to address the second question noted above.

[3] The appellant's suggestion that his section 15 Charter rights have been violated by reason of the judge's order must fail. The Charter rights of a plaintiff who caused delay are not breached by an order dismissing his action for delay: *Pal v. Canada*, [1998] 4 C.T.C. 99, 136 F.T.R. 273 (T.D.) aff'd [2000] 2 C.T.C. 15 (F.C.A.).

[4] I would dismiss the appeal with one set of costs in favour of the five respondents represented at the hearing.

“Carolyn Layden-Stevenson”

J.A.

“I agree

Eleanor R. Dawson J.A.”

“I agree

Robert M. Mainville J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-452-09

(APPEAL FROM AN ORDER FROM THE HONOURABLE MR. JUSTICE DE MONTIGNY, DATED NOVEMBER 25, 2009)

STYLE OF CAUSE: DAN YANG LIU v. MATRIKON INC., NIZAR SOMJI, GRAHAM GOODWIN, RICK MIDDLETON, JAMES WELSH, GREG ADAMS, UNIVERSITY OF NEWCASTLE

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: December 1, 2010

REASONS FOR JUDGMENT BY: LAYDEN-STEVENSON J.A.

CONCURRED IN BY: DAWSON J.A.
MAINVILLE J.A.

DATED: December 2, 2010

APPEARANCES:

Dan Yan Liu

APPELLANT (ON HIS OWN BEHALF)

Bryan A. Kwan

FOR THE RESPONDENTS,
Graham Goodwin, Rick Middleton,
James Welsh, Greg Adams, and the
University of Newcastle

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS,
Graham Goodwin, Rick Middleton,
James Welsh, Greg Adams, and the
University of Newcastle