

Federal Court of Appeal



Cour d'appel fédérale

Date: 20191125

Docket: A-68-19

Citation: 2019 FCA 291

**CORAM: NEAR J.A.
LASKIN J.A.
MACTAVISH J.A.**

BETWEEN:

**PAUL WILLIAMS, carrying on business under
the firm name and style of IT ESSENTIALS**

Appellant

and

CISCO SYSTEMS, INC., a body corporate

Respondent

Heard at Ottawa, Ontario, on November 25, 2019.
Judgment delivered from the Bench at Ottawa, Ontario, on November 25, 2019.

REASONS FOR JUDGMENT OF THE COURT BY:

LASKIN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on November 25, 2019).

LASKIN J.A.

[1] Paul Williams, carrying on business under the firm name and style of IT ESSENTIALS, appeals from an order of a Federal Court judge (2019 FC 116, Southcott J.). In his order, the Federal Court judge dismissed an appeal, brought by way of motion under rule 51 of the *Federal Courts Rules*, SOR/98-106, from an order of Prothonotary Tabib dismissing Mr. Williams'

motion for leave to amend his statement of claim. The prothonotary had earlier granted a motion by the defendant in Mr. Williams' action, the respondent Cisco Systems, Inc., and struck out the statement of claim in its entirety, but had granted leave to Mr. Williams to move to amend.

[2] The statement of claim that was struck out alleged that Cisco had infringed Mr. Williams' rights under several provisions of the *Trademarks Act*, R.S.C. 1985, c. T-13, in relation to the trademarks "IT ESSENTIALS" and "IT ESSENTIALS TRUSTED STRATEGIC IT PARTNER." In striking it out, the prothonotary determined that the statement of claim plainly failed to plead particulars of Cisco's conduct that would amount to actionable breaches of the Act.

[3] In refusing leave to amend, the prothonotary was satisfied that the proposed amended statement of claim also failed to plead sufficient material facts to support a cause of action against Cisco, that it had no reasonable prospect of success, and that it was an abuse of process, put forward to enable Mr. Williams to conduct a fishing expedition.

[4] In dismissing the rule 51 appeal, the Federal Court judge carefully considered all of the ten issues identified by Mr. Williams in his written representations, and the further issues he put forward in oral argument. The judge found no error of law in the test applied by the prothonotary or in any other element of her reasons, and no palpable and overriding error in her disposition of the questions of mixed fact and law raised by the proposed amended pleading.

[5] As this Court stated in *Sikes v. Encana Corporation*, 2017 FCA 37 at para. 12, leave to appeal refused, [2017] 2 S.C.R. x,

In a case such as the present one where each level of decision-maker is in agreement as to the outcome, this Court must look to the Prothonotary's decision to determine whether the Federal Court judge erred in law or made a palpable and overriding error in refusing to intervene.

[6] Having reviewed the prothonotary's decision and the reasons of the Federal Court judge and considered the parties' submissions, we can see no error of law or palpable and overriding error on the part of the Federal Court judge in refusing to intervene. While Mr. Williams relies in particular on the decision of this Court in *Enercorp Sand Solutions Inc. v. Specialized Desanders Inc.*, 2018 FCA 215, that decision does not relieve a party from its obligation to plead sufficient facts that, if established, would make out a cause of action.

[7] The appeal will accordingly be dismissed with costs, including the costs of preparation of the appeal book.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-68-19

**(FROM AN ORDER OF THE HONOURABLE. JUSTICE SOUTHCOTT DATED
JANUARY 28, 2019, DOCKET NO. T-1304-17)**

STYLE OF CAUSE: PAUL WILLIAMS, carrying on
business under the firm name and
style of IT ESSENTIALS v. CISCO
SYSTEMS, INC., a body corporate

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: NOVEMBER 25, 2019

REASONS FOR JUDGMENT OF THE COURT BY: NEAR J.A.
LASKIN J.A.
MACTAVISH J.A.

DELIVERED FROM THE BENCH BY: LASKIN J.A.

APPEARANCES:

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