

Federal Court



Cour fédérale

Date: 20150128

Docket: T-2262-12

Citation: 2015 FC 110

Vancouver, British Columbia, January 28, 2015

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

SAMEER MAPARA

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

(Reasons given orally on January 27, 2015)

[1] In a decision dated June 4, 2014, the Prothonotary granted the Defendant's motion for security for costs (the Decision). These reasons dismiss the Plaintiff's appeal from that Decision.

I. Issues

[2] There are three issues:

1. Should four affidavits, which were not before the Prothonotary, be received for use on this appeal?
2. Was the question before the Prothonotary vital to the final issue in the Plaintiff's action?
If this question is answered in the negative, the next issue is as follows.
3. Is the Prothonotary's decision clearly wrong, i.e. based on a wrong principle or on a misapprehension of the facts?

II. Discussion

A. *Issue 1*

[3] The Plaintiff's affidavit sworn on April 23, 2014, was before the Prothonotary and was considered on this appeal. However, the Plaintiff also wished to rely on three affidavits sworn on November 14, 2014. They were his own, one from his father and one sworn by his brother. In addition, there was a second Plaintiff's affidavit sworn on January 8, 2015. As noted above, they were not before the Prothonotary and I declined to receive them because there was no suggestion that the material they contained could not have been before the Prothonotary. It is my view that they were produced to improve the Plaintiff's case for impecuniosity and in an effort to remedy some of the deficiencies in evidence identified by the Prothonotary.

B. *Issue 2*

[4] The question before the Prothonotary was whether the Plaintiff should be required to give security for costs. The Plaintiff's action is for damages arising from a decision made by the

Warden of Ferndale Institution to move him to administrative segregation for 20 days. The case law is clear that security for costs is not vital. In this regard, see *Fraser v James Family Foods Ltd*, 2011 FC 569 at para 16.

C. *Issue 3*

[5] The fact that \$13,228.97 has been awarded in costs in favour of the Crown in other proceedings and remains unpaid is not disputed. In my view, the Prothonotary was not clearly wrong. He considered the appropriate rules, being Rules 416(1) and 417, and canvassed the case law to determine the standard of proof required of the Plaintiff. He correctly decided that a high standard was required and reasonably concluded that it had not been met because: i) there was no evidence about the Plaintiff's wife's assets; ii) there was no evidence that friends and family were unable to provide the Plaintiff with financial assistance; and iii) the Plaintiff had consistently been able to afford the filing and other fees associated with the ten lawsuits he has commenced since 2010.

[6] Having concluded that impecuniosity had not been shown, it followed that Rule 417 did not apply and the Prothonotary was entitled to exercise his discretion in favour of granting the Defendant's motion for security for costs. In view of his conclusion on impecuniosity, the Prothonotary was not required to deal with the merits of the Plaintiff's action. Accordingly, I will not consider that portion of his Decision.

[7] Finally, I note that this is not a case in which the Decision requiring security for costs has barred a plaintiff from access to the court due to poverty. In this case, the Decision made because the Plaintiff failed to demonstrate that he is impecunious.

III. Conclusion

[8] The appeal will be dismissed. Costs will be awarded to the Defendant in any event of the cause and fixed at \$500.

ORDER

THIS COURT ORDERS that:

1. The appeal is dismissed.
2. Costs are awarded to the Defendant in any event of the cause and are fixed at \$500.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2262-12

STYLE OF CAUSE: SAMEER MAPARA v HER MAJESTY THE QUEEN

**MOTION HELD VIA TELECONFERENCE ON JANUARY 27, 2015, IN
VANCOUVER, BRITISH COLUMBIA**

ORDER AND REASONS: SIMPSON J.

DATED: JANUARY 28, 2015

ORAL AND WRITTEN REPRESENTATIONS BY:

Sameer Mapara

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Liliane Bantourakis

FOR THE DEFENDANT

SOLICITORS OF RECORD:

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