

Federal Court



Cour fédérale

Date: 20160316

Docket: T-181-16

Citation: 2016 FC 325

Ottawa, Ontario, March 16, 2016

PRESENT: The Honourable Mr. Justice Locke

BETWEEN:

ADE OLUMIDE

Plaintiff

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Defendant

ORDER AND REASONS

[1] The defendant moves for an Order requiring the plaintiff to pay costs already ordered payable forthwith as well as security for costs and the costs of the present motion, and prohibiting the plaintiff from taking any further steps in this proceeding, except an appeal of this Order, until such amounts have been paid. The defendant's notice of motion was served on the plaintiff on February 23, 2016, and the defendant's motion record was served on March 10, 2016. The motion was made returnable on March 16, 2016.

I. Plaintiff's Submissions and Availability

[2] The plaintiff did not submit a formal motion record in response to the present motion, but he submitted a request for direction dated February 24, 2016, as well as a supplementary request for direction dated March 7, 2016, a second supplementary request for direction dated March 11, 2016, and a third supplementary request for direction dated March 16, 2016, all in relation to the motion.

[3] One thrust of the plaintiff's requests for direction is that the defendant's motion should not be heard before and separate from his own motion for reconsideration of the Order of Madam Justice Sylvie Roussel dated February 16, 2016, which ordered costs payable forthwith. The plaintiff also opposes any hearing of the present motion before a decision is issued on other costs orders currently on appeal in the Supreme Court of Canada. I am not persuaded by the plaintiff's submissions in this regard. In my view, the just, most expeditious and least expensive determination of this proceeding will be secured by considering the defendant's motion now.

[4] Contrary to the plaintiff's assertion in his first supplementary request for directions, I see no suggestion in Prothonotary Mireille Tabib's Direction dated March 2, 2016, that the defendant may not bring the present motion.

[5] The plaintiff indicated several times that he was not available to attend the hearing of the present motion, but provided no reason for his unavailability, nor requested an alternative date, nor provided any alternative dates of availability.

[6] I am not satisfied that the plaintiff had a good reason for his unavailability. In addition to his failure to explain his unavailability, I note that he did not take the position that he would be unavailable until the defendant's counsel confirmed, on March 4, 2016, that she intended to proceed with the motion despite the plaintiff's concern that the motion is an abuse of process. I also note that the plaintiff stated at that time that he was no longer available, and that "[i]n the next 90 days, I am ONLY available on the date for the oral hearing before Honourable Madam Justice Roussel." (Emphasis in original.) This leaves me with the impression that the plaintiff's unavailability was an attempt to avoid the defendant's motion.

[7] The plaintiff's third supplementary request for direction indicates that there has been no confirmation that the motion will proceed or direction from the Court in that regard. Though the *Federal Courts Rules* do not require any such confirmation or direction, I am advised by the Registry of the Court that several attempts were made to contact the plaintiff before the hearing to inquire whether he would be present. He did not respond.

[8] The plaintiff has acknowledged that he was given notice on February 23, 2016, of the March 16, 2016 date for the hearing of this motion. He has also acknowledged receiving confirmation on March 4, 2016, that the defendant intended to proceed with the motion as planned. In the absence of a satisfactory explanation for his unavailability, I proceeded with the hearing in the plaintiff's absence. I agreed with the defendant's counsel that I would consider the motion on the basis of the record and submissions already provided to the Court. This includes the four requests for direction submitted by the plaintiff. My only oral exchange with the

defendant's counsel on the substance of the motion concerned a clarification as to the amount of security for costs sought.

II. Analysis

[9] Rule 416(1)(f) of the *Federal Courts Rules*, SOR/98-106, provides that the Court may order a plaintiff to give security for a defendant's costs where, on the motion of the defendant, it appears to the Court that the defendant has an order against the plaintiff for costs in the same or another proceeding that remains unpaid in whole or in part. In addition, Rule 416(3) provides that, unless the Court orders otherwise, until the security required by an order under Rule 416(1)(f) has been given, the plaintiff may not take any further steps in the action, other than an appeal from that order.

[10] The defendant identifies 22 such costs orders in this and a number of other proceedings totaling \$16,027.70. The plaintiff does not dispute the existence of these costs orders, but has taken steps to have some of them set aside. Nevertheless, I conclude that the requirements of Rule 416(1)(f) are satisfied such that security for costs may be ordered. Also, the amount of security for costs sought is limited and would be reasonable even if one or more of the existing costs orders were set aside.

[11] Rule 417 provides that the Court may refuse to order that security for costs be given under paragraph 416(1)(f) if the plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit. The wording of Rule 417 clearly indicates that, in order for it to apply, the plaintiff bears the onus of establishing both his impecuniosity and that his case has

merit. I am not persuaded on either count. This is largely because the plaintiff has not addressed Rule 417 directly and has not provided any evidence in response to the present motion.

[12] With regard to impecuniosity, I note that the plaintiff's first supplementary request for direction includes a copy of a motion record before the Supreme Court of Canada in which the plaintiff states that:

...costs enforcement would prevent applicant [the plaintiff] from being able to participate in the application for leave to appeal, by leading to foreclosure, homelessness, bankruptcy and increased reckless cruel and unusual ongoing foreseeable destruction of applicant's 15 year political career below.

[13] Apart from the fact that I have seen no evidence to support any prejudice to the plaintiff if the order requested in the present motion is granted, there is not even any explanation surrounding the references to foreclosure, homelessness and bankruptcy to give these assertions any credibility.

[14] Much of the plaintiff's first, second and third requests for direction appears to be directed to the merits of his claim, but his submissions in this regard are rambling and lacking background information. In my view, they are insufficient to establish that the plaintiff's case has merit, even acknowledging the relatively low threshold for establishing merit, per *Sauvé v Canada (Attorney General)*, 2014 FC 119 at para 41.

[15] The defendant's submissions persuade me that the plaintiff has a history of not paying costs and of bringing numerous motions in his various proceedings against the defendant, and

that the plaintiff should therefore not be permitted to take any further steps in this action until the requested security for costs have been paid into Court.

[16] I am also persuaded that the plaintiff should likewise not be permitted to take any further steps in this action until the costs ordered payable forthwith in Justice Roussel's February 16, 2016 Order have been paid. The defendant notes that these costs are subject to a motion for reconsideration, and could therefore be varied. Of course, if that were to happen, the plaintiff could seek a further order reducing the amount of security for costs that should be held by the Court.

[17] I will grant the Order as sought (with the amount of security for costs modified as discussed during the hearing) except that the costs of the present motion shall be reduced to \$1,200 to reflect the fact that the hearing was very short (due to the plaintiff's absence).

ORDER

THIS COURT ORDERS that:

1. The plaintiff shall pay the following no later than April 30, 2016:
 - (a) Security for the defendant's costs in the first stage of this proceeding in the amount of \$4,575 into the Court;
 - (b) Costs of \$1,382.50 previously awarded to the defendant in this proceeding by Order dated February 16, 2016; and
 - (c) Costs of this motion of \$1,200 to the defendant;
2. The plaintiff is prohibited from taking any further steps in the proceeding, except an appeal of this Order, until the amounts in paragraphs 1(a) through (c) are paid.
3. The time in which the defendant must respond to the claim is extended to 30 days after the above amounts are paid.
4. The defendant may move for the plaintiff to provide further security for costs for further steps of the proceedings.

"George R. Locke"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-181-16

STYLE OF CAUSE: ADE OLUMIDE v HER MAJESTY THE QUEEN IN
RIGHT OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: MARCH 16, 2016

ORDER AND REASONS: LOCKE J.

DATED: MARCH 16, 2016

APPEARANCES:

Ms. Joanna Hill

FOR THE DEFENDANT

SOLICITORS OF RECORD:

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Ottawa, Ontario

FOR THE DEFENDANT