Federal Court  Cour fédérale

**Date: 20170113**

**Docket: T-1116-16**

**Citation: 2017 FC 48**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Montréal, Quebec, January 13, 2017**

**PRESENT: The Honourable Mr. Justice Gascon**

**BETWEEN:**

**BENOIT BOSSÉ**
**AND**
**LES IMMEUBLES ROBO LTÉE**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

## JUDGMENT AND REASONS

[1] Upon motion filed under rule 51 of the *Federal Courts Rules*, SOR/98-106 [the Rules], the plaintiffs, Benoît Bossé and Les Immeubles Robo Ltée [hereinafter collectively referred to as Mr. Bossé], are appealing from two orders issued on October 5, 2016, and November 16, 2016, by Prothonotary Morneau.

[2] On the basis of paragraphs 221(1)(a) and (c) of the Rules, the October 5 order struck out the statement of claim that Mr. Bossé filed with the Court in July 2016 on the grounds that it disclosed no reasonable cause of action and was scandalous, frivolous or vexatious. In his order, Prothonotary Morneau struck out the statement of claim in whole without leave to amend and dismissed Mr. Bossé's action with costs. The order of November 16, 2016, dismissed Mr. Bossé's application for reconsideration of the October 5 order on the grounds that it was plain and obvious that the letter Mr. Bossé filed in that regard was an indirect appeal of the October 5 order.

[3] Both in her written submissions and at the hearing before this Court, counsel for the defendant Her Majesty the Queen [the Crown] argued that only the order of November 16, 2016, could be subject to a motion to appeal under rule 51, as the 10-day time limit for appealing the October 5 order had elapsed, and Mr. Bossé had not filed a motion seeking an extension of time.

[4] Like the Prothonotary, I am aware that Mr. Bossé is not represented by counsel and that he does not have the benefit of experience or of receiving advice regarding the legal process. However, although the Court generally extends some flexibility and openness to parties not represented by counsel, that fact alone does not exempt a party from the obligation to comply with the Rules and thus discharge the burden set out in rule 51 within the prescribed time limits (*Cotirta v Missinnipi Airways*, 2012 FC 1262, at paragraph 13, confirmed in 2013 FCA 280). This could therefore be sufficient to dismiss Mr. Bossé's appeal of the October 5 order, and counsel for the Crown is correct on this point.

[5] However, given the interests of justice and to respond to all proceedings Mr. Bossé has initiated before this Court, I will nonetheless, in my decision, address both Mr. Bossé's appeal of the October 5 order by Prothonotary Morneau and his appeal of the November 16 order.

[6] The Federal Court of Appeal recently ruled in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], that the standard of review that applies to the discretionary decisions of prothonotaries is now that set forth by the Supreme Court of Canada in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*] (*Hospira* at paragraphs 28, 79). That decision by the Federal Court of Appeal follows on the heels of the decision in *Imperial Manufacturing Group Inc. v Decor Grates Incorporated*, 2015 FCA 100, in which the Court had also applied the *Housen* standard for decisions of that nature rendered by trial judges. Under the *Housen* standard, "discretionary orders of prothonotaries should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts" (*Hospira*, at paragraph 64). Thus, the standard of correctness applies to questions of law, while the standard of palpable and overriding error applies to questions of fact or of mixed fact and law.

[7] Prothonotary decisions regarding either a request for reconsideration or a motion to strike are discretionary decisions that raise questions of mixed fact and law. Therefore, I cannot set aside the October 5 and November 16 orders unless Mr. Bossé convinces me that Prothonotary Morneau committed a palpable and overriding error. After reading the record and considering the written and oral submissions of both parties, I find that this is clearly not the case

for either the November 16 order or the October 5 order. Consequently, Mr. Bossé's motion must fail.

[8] Upon reviewing the November 16 order dismissing Mr. Bossé's request for reconsideration, I note that Mr. Bossé's letter dated October 11, 2016, asking Prothonotary Morneau to reconsider his October 5 decision, did not include any criteria to justify reconsideration. However, rule 397 is clear: a Court order can be reconsidered only if the order does not accord with any reasons given for it or if a matter that should have been dealt with has been overlooked or accidentally omitted. In his order, the Prothonotary states that Mr. Bossé's letter [TRANSLATION] "is plainly and obviously an indirect appeal of the October 5 order." There is no doubt, as counsel for the Crown noted, that a request for reconsideration of an order is not a new opportunity to reargue the merits of the appeal (*Georgoulas v Canada (Attorney General)*, 2016 FCA 245, at paragraph 8).

[9] I therefore find no palpable and overriding error in Prothonotary Morneau's conclusions. I am instead of the view that, in his November 16 order, the Prothonotary did not commit any error by dismissing Mr. Bossé's request for reconsideration.

[10] In his notice of motion of November 23, 2016, Mr. Bossé also did not mention any grounds or identify any errors, much less a palpable and overriding error, in the Prothonotary's November 16 order. Once again, I must note, as did Prothonotary Morneau before me, that, in his motion, Mr. Bossé clearly sought to reargue the merits of the statement that he filed with the Court. In fact, even the conclusions of his notice of motion are not related to the Prothonotary's

decision, but instead ask the Court to rule on his constitutional rights, the recusal of judges, the immunity of agents lacking executive authority and questions of criminal procedure and limitations. The conclusions appearing in Mr. Bossé's written submissions are similar in nature: among other things, they seek a stay of current proceedings before another court in Canada, a ruling on other judgments or decisions made against Mr. Bossé, and the award of jurisdiction to another federal agency to conduct a criminal investigation. Mr. Bossé's oral submissions before this Court are in the same vein: he asks that the Court order that his disputes be referred to the appropriate authorities, that other proceedings be stayed, that judges be removed or that a warrant of committal be executed.

[11] Clearly, Mr. Bossé's appeal does not raise any palpable and overriding error in the November 16 order dismissing his request for reconsideration. The documents Mr. Bossé filed in support of his appeal and the remedies sought in his motion essentially reiterate most of what was said in the statement of claim and reflect an indirect attempt to appeal the Prothonotary's October 5 order striking out his statement of claim.

[12] Turning to the October 5 order striking out Mr. Bossé's statement of claim, the Prothonotary concluded, after examining the statement, that it did not present any causes of action that respect the rules of presentation and the text of rule 174 and that, even if such a cause of action were identified, it was [TRANSLATION] "clear that it would not be within the Federal Court's jurisdiction even if the plaintiffs tried, inter alia, to denounce the actions of federally appointed judges."

[13] Once again, nowhere in his notice of motion dated November 23, 2016, or in his written or oral submissions does Mr. Bossé cite or identify an error, much less a palpable and overriding error, in the October 5 order striking out his statement of claim. As I stated above, even the conclusions in his notice of motion and the arguments in his written and oral submissions are not related to the Prothonotary's decision, but instead ask the Court to rule on various issues that are found in or arise from his statement of claim. As with the November 16 order, Mr. Bossé's appeal raises no palpable and overriding error in the October 5 order and instead reflects an indirect attempt to appeal the Prothonotary's order striking out his statement of claim.

[14] Mr. Bossé's motion and the documents and arguments he submitted in support of it instead confirm that his statement raises no reasonable cause of action, contains no facts in support of a cause of action against the Crown and seeks remedies that are not within the Federal Court's jurisdiction.

[15] The issue before me in Mr. Bossé's motion to appeal the October 5 and November 16 orders by Prothonotary Morneau is to determine whether the Prothonotary committed a palpable and overriding error in his decisions. Mr. Bossé alleges no such error in his submissions, and I am of the view that he has not demonstrated any.

[16] For these reasons, I must dismiss Mr. Bossé's motion to appeal. With respect to costs, given that Mr. Bossé is not represented by counsel and that his motion was not successful, I am awarding costs against him in the amount of $200.

## JUDGMENT

**THE COURT:**

1. **DISMISSES** the appeal by the plaintiffs/applicants;

2. **AWARDS** costs of $200 to the defendant/respondent.

"Denis Gascon"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1116-16 |
| **STYLE OF CAUSE:** | BENOIT BOSSÉ AND LES IMMEUBLES ROBO LTÉE v HER MAJESTY THE QUEEN |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JANUARY 10, 2017 |
| **JUDGMENT AND REASONS:** | GASCON J. |
| **DATED:** | JANUARY 13, 2017 |

**APPEARANCES:**

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|---|---|
| Benoît Bossé | ON HIS OWN BEHALF |
| Catherine M.G. McIntyre | FOR THE DEFENDANT |

**SOLICITORS OF RECORD:**

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|---|---|
| William F. Pentney<br>Deputy Attorney General of Canada | FOR THE DEFENDANT |

Certified true translation
This 6th day of August 2019

Lionbridge