

Federal Court



Cour fédérale

Date: 20170316

Docket: T-1350-16

Citation: 2017 FC 284

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Québec, Quebec, March 16, 2017

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

DOMINIC DELISLE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

[1] The plaintiff, Dominic Delisle, is appealing the decision of Prothonotary Morneau that was rendered on January 10. The decision pertains to the admissibility of documents served by the plaintiff and the plaintiff's obligation to respond to questions posed in a written examination under rules 99 *et seq.* of the *Federal Courts Rules* (SOR/98-16) and to submit documents. The motion was not challenged, as is permitted under rule 369. Mr. Morneau granted that motion.

[2] An order of a prothonotary may be appealed under rule 51 if an error of law was committed; the applicable standard will then be that of correctness. As for other questions, questions of fact or of mixed fact and law, the standard is to allow the Court to intervene if there is a palpable and overriding error, the same standard that applies to any appeal in civil matters (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215).

[3] No allegations of that nature were made in the case at hand. Rather, the plaintiff seems to express a willingness to acquiesce to the Prothonotary's order. Such an appeal cannot succeed. No errors are alleged on the Prothonotary's part. The appeal of Prothonotary Morneau's decision is therefore dismissed, with costs.

[4] Moreover, the defendant also sought, on a collateral basis, to have the action brought against it dismissed. The defendant seems to rely on the Prothonotary's order, which had reserved the right for the defendant to address the Court [TRANSLATION] "by motion in writing in the event that this order is not respected in whole or in part" to have these proceedings dismissed. A cross-application to an appeal of the Prothonotary's decision is not the motion in writing to the Court that is available to the defendant under the Prothonotary's order. Instead, it is an independent proceeding that allows the opposite party to take note of the arguments and of the evidence, if necessary, as well as to respond to them in writing. No such action could be taken in this case. I do not consider the cross-application to an appeal to be appropriate. The mixing of proceedings is to be avoided.

[5] I note that the Court invited the parties to discuss a means of making progress in this case. The Court was advised that the brief discussions were inconclusive.

JUDGMENT

CONSEQUENTLY, THE COURT CONCLUDES that

1. The plaintiff's motion to appeal Prothonotary Morneau's decision dated January 10, 2017, is dismissed;
2. Costs are set at \$250.00, in favour of the defendant, in any event of the cause.

“Yvan Roy”

Judge

Certified true translation
This 29th day of July, 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1350-16

STYLE OF CAUSE: DOMINIC DELISLE v HER MAJESTY THE QUEEN

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: MARCH 16, 2017

ORDER AND REASONS: ROY J.

DATED: MARCH 16, 2017

APPEARANCES:

Marc Delisle FOR THE PLAINTIFF

Véronique Forest FOR THE DEFENDANT

SOLICITORS OF RECORD:

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