Federal Court  Cour fédérale

Date: 20180731

Docket: T-1964-17

Citation: 2018 FC 807

Ottawa, Ontario, July 31, 2018

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

WAEL MAGED BADAWY

Plaintiff

and

1038482 ALBERTA LTD. ALSO KNOWN AS INTELLIVIEW TECHNOLOGIES INC. AND FIDELITER INC. AND BILL HEWS AND MISSING LINK BUSINESS OPERATIONS ADVISORS LTD. AND GORDON EDWARDS AND CHRISTOPHER BEADLE AND SHANE ROGERS AND FLIR SYSTEMS INC. AND FLIR SYSTEMS, LTD. AND SPARTAN CONTROLS LTD. AND CANADA150IN150 AND SCHNEIDER ELECTRIC SE AND SCHNEIDER ELECTRIC CANADA INC. AND WEST AT PELCO BY SCHNEIDER ELECTRIC AND ENBRIDGE PIPELINE INC.

Defendant

JUDGMENT AND REASONS

UPON hearing the motions in Calgary, Alberta, on March 8, 2018;

AND UPON reviewing the material filed by the parties;

AND UPON noting that Wael Maged Badawy (who is the Plaintiff in the underlying action, and who is referred to as the Plaintiff in this motion for simplicity) is a self-represented litigant who was allowed an inordinate amount of time and an abundant opportunity to speak to all matters he wished to argue before the Court;

AND UPON reviewing the relief sought by the Plaintiff in these motions, namely that this Court orders:

(a) the adjournment of the motions;

(b) an injunction;

(c) a hearing to disqualify Borden Ladner Gervais LLP (BLG) counsels Frank Tosco, Laura Poppel, and Evans Nuttal for breach of the conflict of interest "Bright Line Rule";

(d) the dismissal of the Defendants' motions to strike his amended Statement of Claim;

(e) a declaration that all the Defendants' motions are moot;

(f) that all the motions are put before a case management judge;

(g) that cross-examinations be done in Calgary;

(h) the disqualification of Laura Easton; and

(i) the disqualification of McCarthy Tetrault LLP counsels Steven Tanner and Kaitlin Soye;

AND UPON reviewing the motion material filed by the Defendants for an Order striking out the Plaintiff's amended Statement of Claim without leave to amend, and the dismissal of all his motions;

AND UPON determining, for the reasons below, that I will order the Plaintiff's amended Statement of Claim to be struck in its entirety without leave to amend;

I. Preliminary matters

[1] The Plaintiff had issues and concerns regarding service. At the hearing, the Court directed that all service requirements were met.

II. Adjournment sought by the Plaintiff

[2] In the afternoon of March 7, 2018, the Court received correspondence from the Plaintiff asking to adjourn the hearing taking place the next day (the same request was made in a motion submitted a few days earlier, on March 5, 2018). On March 8, 2018 (the day of the hearing) he provided another letter stating that there were service issues and that he had no time to travel to a cross-examination in Toronto as he also had a hearing in the Alberta Court of Appeal. He explained that he wanted an adjournment so that a case management judge could be assigned to the file before proceeding.

[3] After hearing the Plaintiff's submissions, the Defendants' oppositions, and reviewing Justice Heneghan's Order dated February 9, 2018, I refused to adjourn the hearing. The Plaintiff's reasons for requesting an adjournment were insufficient. He had filed copious materials, he was prepared to argue at length, and granting an adjournment would mean numerous Defendants' counsel would have to return on another day. When Justice Heneghan granted the adjournment one month earlier, the Plaintiff was well aware that the hearing was

specifically set down for this date. The matter proceeded on March 8, 2018 as Justice Heneghan ordered, and later that day a Case Management Prothonotary was appointed. But my opinion would not have changed even if a case manager had been appointed at the time of the hearing, as a case managed matter can still proceed as set down on the motions list.

[4] After the hearing, the Plaintiff filed a further letter, dated March 14, 2018, requesting that I set aside my order. I will not set aside the hearing.

III. Motion to strike

[5] The Defendants' original motion to strike the Plaintiff's Statement of Claim was set to be heard on February 8, 2018. On that day, Justice Heneghan adjourned the hearing to March 8, 2018. This gave the Plaintiff time to amend his Statement of Claim if he wished, and on February 20, 2018 he filed an amended Statement of Claim.

[6] On March 1, 2018, the Defendant Enbridge refiled materials regarding the motion to strike. All the other Defendants relied on those submissions in addition to their original materials.

IV. The grounds to strike a pleading

[7] The Defendants moved to strike the amended Statement of Claim under grounds set out in rule 221 of the *Federal Courts Rules*, SOR/98-106 [the FCR] (attached as an appendix). The Defendants' grounds are that the pleading should be struck for reasons including it discloses no

reasonable cause of action, is scandalous, frivolous or vexatious, or is otherwise an abuse of process of the Court.

V. No reasonable cause of action

[8] The Court may dismiss an action under rule 221(1)(a) of the FCR if the Statement of Claim discloses no reasonable cause of action. When applying this rule, the Court assumes the facts as pleaded are true, and determines if it is "plain and obvious" that the claim has no reasonable prospect of success (*Canada (Attorney General) v Inuit Tapirisat of Canada*, [1980] 2 SCR 735 at 740). The Statement of Claim must plead sufficient material facts (FCR, rule 174; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 16 [*Mancuso*]).

[9] According to rule 221(2), no evidence shall be heard on this motion, but allegations based on assumptions or speculations are not taken as true (*Operation Dismantle v The Queen*, [1985] 1 SCR 441 at 455).

[10] The Defendants argued that the amended Statement of Claim has no reasonable cause of action because there are no material facts or particulars about how any of the Defendants encroached on the intellectual property that the Plaintiff pled he owns. For example, in regards to the trademark infringement allegation, the Defendants submit that none of the facts link the Defendants to any of the acts in section 20(1) of the *Trade-marks Act*, RSC, 1985, c T-13. Without material facts, the Defendants argue this amended claim must be struck.

[11] At the hearing, the Plaintiff defended his amended Statement of Claim by saying that each paragraph is very specific. He said in addition to his pleading, there is information in his affidavit and more than 60,000 pages of material in another court that he could bring to this Court. The Plaintiff also said his pleading now includes a statement that he is the sole owner of trademarks and inventions that are not yet patented. The Plaintiff was unsure if this Court has jurisdiction of the US Patents he listed in section 4, but cited section 20(1) of the *Federal Courts Act*, RSC 1985, c F-7, to say this Court has exclusive original jurisdiction over those circumstances listed in that section. He also claims he owns moral rights. During the hearing he said the Defendants can go to their own websites and see where they infringed as it is obvious.

[12] I agree with the Defendants that the amended Statement of Claim contains no reasonable cause of action. Although the amended Statement of Claim is lengthy, the facts are insufficiently tied to the Defendants and the allegations are without material facts. There are sweeping conclusions with no allegations of fact to support these conclusions. For example, the following paragraph in the amended Statement of Claim is devoid of material facts:

> 13. The defendants collectively or separately are using the copyrighted material, trademarks, trade names and patents listed in section**s 1-4** of this statement of claims, with knowledge that they are infringing the commercial**, moral** and other rights of the Plaintiff.
>
> [Emphasis in original]

[13] Below is an example of a vexatious paragraph likewise devoid of material facts linked to a cause of action:

> 27. Bill Hews is married to an Italian descent wife and he has a summer home in Italy and He is very involved in the Calgary Italian community. He has special social relationships with Frank

> Tosto and Laura Pupple, two lawyers from the Italian community of Calgary.

[14] In addition to the above paragraphs, the rest of the content is bald allegations, speculation, and argument. At best, there are stated conclusions of wrongdoing against which a Statement of Defence could not be drafted in response. The Defendants do not, as the Plaintiff argued, have to go to their own websites to figure out what they infringed—the pleadings have to stand on their own. This pleading cannot stand alone and any attempt at answering in defence is futile.

[15] It is plain and obvious that this claim has no reasonable chance of success.

[16] Especially as the Plaintiff has already amended to no avail, I am also satisfied that any defects in the pleading cannot be remedied by an amendment (*Collins v R*, 2011 FCA 140 at para 26).

[17] I find that there is no reasonable cause of action and will strike this amended Statement of Claim, without leave to amend.

VI. Vexatious rule 221(1)(c)

[18] My ruling above is sufficient to grant this motion, but I agree with the Defendants that this is a claim that can also be struck as it is a vexatious pleading as described under rule 221(1)(c) of the FCR.

[19] The Defendants argue that the entire litigation is so deficient that they are unable to answer in defence. They submit that, although the Plaintiff amended his Statement of Claim and inserted the Defendants' names, the pleading is still broad, vague, and does not plead material facts for them to answer.

[20] The Plaintiff disagrees and states that his amended Statement of Claim does say what the Defendants have done to infringe and should not be struck.

[21] I have reviewed the Plaintiff's Memorandum of Fact and Law (dated March 5, 2018), and while it has argument, it is argument that does not address the substantive issues before the Court. The Plaintiff's only written argument regarding the actual motion to strike is at paragraph 20 where he says: "The motion to strike a pleading shall be MOOT after the pleading are amended via Court Order as they are abuse of the process and the time of the court". His earlier memorandum (dated February 6, 2018) is also devoid of legal argument related to the substantive issues, and instead focuses on perceived irregularities, the injunction, and other relief sought by the Plaintiff.

[22] The law regarding striking a pleading under this section is that if a pleading is so deficient in factual material that it is impossible for a defendant to answer, it is a scandalous, frivolous or vexatious pleading (*Kisikawpimootewin v Canada*, 2004 FC 1426 at para 8).

[23] Many of the same conclusions as reached in the reasonable cause of action (rule 221(1)(c)) portion of this decision also apply to this section. The Defendants cannot—and should not be forced to— answer scandalous, frivolous, or vexatious allegations such as those reproduced at paragraph 11, above.

[24] I find that this is a vexatious pleading.

VII. Abuse of conduct (rule 221(1)(f))

[25] For the same reasons as noted above, though it is unnecessary, I have considered rule 221(1)(f) of the FCR.

[26] An abuse of process arises from allegations without an evidentiary foundation (*Astrazeneca Canada Inc v Novopharm Ltd*, 2010 FCA 112 at para 5; *Apotex Inc v Allergan*, 2011 FCA 134 at para 4). In *Mancuso*, Justice Rennie said that "a defendant has the right to have the abusive claim struck before being subjected to an intrusive and costly discovery process" (at para 43). I agree with Justice Rennie. The Defendants in this case should not have to endure further litigation costs. Though striking a claim is not done lightly, this is a necessary circumstance.

[27] The entire amended Statement of Claim is vexatious and an abuse of the Court processes as evidenced by this hearing where the Plaintiff brought several confusing and baseless motions. First, the Plaintiff has provided no account of any specific conduct taken by the Defendants or their employees that could be considered a foundation for the bald allegations in the amended Statement of Claim. As there is no evidentiary foundation in the amended Statement of Claim, it is an abuse of process and can be struck.

[28] Second, the evidence before the Court is that the Plaintiff is known to commence a never-ending stream of motions and letters for direction (or as occurred in this case, letters giving the Court directions). These never-ending matters are also an abuse of process.

[29] The Court is sensitive to self-represented litigants, but this self-represented litigant is well-educated, holds a doctorate degree, and has extensive experience with a number of Canadian court systems. The Plaintiff's opinion of himself in his Memorandum of Fact and Law is that he is familiar with the rules:

> 23. The Plaintiff understands from the Rules of the Federal Court and by being in Case management in at least three Courts, that only Case Management Judge or the Chief Judge have Jurisdiction on any motion or application after such an order with exception of an urgency. Opposing Counsel did not speak to the urgency to make an application in the Chamber or to request a consent for a motion before the Chamber.

[30] While he cannot be categorized as a sophisticated litigant, the Plaintiff is more than a frequent litigant across many courts. For example, within the materials is a list depicting the recorded entries on another matter the Plaintiff brought before this Court, available on the Federal Court's website in court file number T-1289-14. The list contains 31 pages of entries

regarding this somewhat similar matter. Also in the materials is a 17 page printout of the procedural record from the matter in the Alberta Court of Queen's Bench. The Plaintiff's matters in this Court are shockingly long, and have been heard by prothonotaries as well as judges. Any party subject to the Plaintiff's legal pursuits must retain counsel and defend against these matters at a great cost. There is a delicate balance between accommodating self-represented litigants and an abuse of process. This litigant and this action has tipped the scale to an abuse of process as contemplated by rule 221(1)(f) of the FCR.

VIII. Counsel and firms removed and injunctive relief sought by Plaintiff

[31] The Plaintiff moved to have BLG disqualified for conflict of interest reasons (in particular, for breach of the Bright Line Rule). Specifically, the Plaintiff sought to disqualify Frank Tosco, Laura Poppel, and Evans Nuttal, and have them removed as counsel.

[32] Counsel from BLG who is the subject of the Plaintiff's motion voluntarily did not present argument at the hearing as requested by the Court. Counsel from another firm presented their argument on the Motion to Strike.

[33] At the hearing, the Plaintiff explained that he has filed a similar motion before the Alberta courts in June, and in correspondence from the Plaintiff dated March 7, 2018, he said that "On Yesterday, Tuesday, March 6, 2018; we had an appearance within the same matters before the Honourable Justice P.W.L. Martin J.A. of the Alberta Court of Appeal in Calgary." That decision is now under reserve.

[34] As I have dismissed the Plaintiff's amended Statement of Claim, his motion for removal is moot, and therefore, it is unnecessary for me to consider it. In addition, the Plaintiff has not convinced me that any counsel need to be removed.

[35] The Plaintiff also sought an injunction. The need for an injunction is moot because the amended Statement of Claim is struck without leave to amend. But in any event, the Plaintiff would not have convinced me to grant an injunction as he does not meet the legal test for an injunction.

[36] It follows that any of the other relief sought by the Plaintiff is dismissed as being moot.

IX. Costs

[37] The Defendants' motions are granted and costs are awarded to the successful party.

[38] The Defendants sought costs as follows: McCarthy Tetrault LLP submitted a bill of costs totalling $1,896.14, and requested a lump sum of $2,000.00; Norton Rose Fulbright Canada LLP requested a lump sum amount of $2,000.00; BLG sought solicitor client costs; Smart & Biggar/Fetherstonhaugh filed a bill of costs (totalling $3,299.02 if column V is used, and $2,039.02 if column III is used, including fees and disbursements) and requested $2,000.00 if the middle of column III is used, or $3,300.00 if the top of column V is used with disbursements and fees.

[39] The deterrence factor in the exercise of my discretion is measured by the fact the Plaintiff is self-represented. Keeping in mind the cost to the Defendants related to this ceaseless litigation that the Plaintiff has chosen to proceed with, I am awarding lump sum costs of $4,500.00 to be divided equally as set out below:

1) BLG for IntelliView Technologies Inc., 1038482 Alberta Ltd., Fideliter Inc., Bill Hews, Missing Link Business Operations Advisors Ltd., Gordon Edwards, Christopher Beadle, and Shane Rogers;
2) Dentons Canada LLP for Spartan Controls Ltd;
3) Brownlee LLP for Canada 150IN150 and Eva Mah Borsato;
4) Norton Rose Fulbright Canada LLP for Flir Systems Inc. and Flir Systems, Ltd.;
5) McCarthy Tetrault LLP for Enbridge Pipelines Inc.; and
6) Smart & Biggar/Fetherstonhaugh for Schneider Electric SE, Schneider Electric Canada Inc., and West at Pelco by Schneider Electric.

JUDGMENT in T-1964-17

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's motions are dismissed;
2. The amended Statement of Claim dated February 15, 2018, and filed with the Court on February 20, 2018, is struck without leave to amend or to refile;
3. Costs are ordered to be paid by the Plaintiff forthwith in the lump sum amount of $4,500.00. The Plaintiff is to pay the lump sum by paying $750.00 each to: BLG; Brownlee LLP; Dentons Canada LLP; Norton Rose Fulbright Canada LLP; McCarthy Tetrault LLP; and Smart & Biggar/Fetherstonhaugh.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1964-17
STYLE OF CAUSE:	WAEL MAGED BADAWY V INTELLIVIEW TECHNOLOGIES INC. ET AL
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	MARCH 8, 2018
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	JULY 31, 2018

APPEARANCES:

Mr. Wael Badawy	FOR THE PLAINTIFF, ON HIS OWN BEHALF
Mr. Timothy Ellam	FOR THE DEFENDANT, ENBRIDGE PIPELINE INC.
Mr. Steven Garland Ms. Laura Easton	FOR THE DEFENDANTS, SCHNEIDER ELECTRIC SE, SCHNEIDER ELECTRIC CANADA INC. AND PELCO, INC.
Mr. Evan Nuttall	FOR THE DEFENDANTS, INTELLIVIEW TECHNOLOGIES INC., FIDELITER INC., BILL HEWS, MISSING LINK BUSINESS
Ms. Elizabeth Fashler	FOR THE DEFENDANTS, FLIR SYSTEMPS INC. AND FLIR SYSTEMS LTD.

SOLICITORS OF RECORD:

McCarthy Tétrault LLP Toronto, Ontario	FOR THE DEFENDANT, ENBRIDGE PIPELINE INC.
Smart & Biggar Calgary, Alberta	FOR THE DEFENDANTS, SCHNEIDER ELECTRIC SE, SCHNEIDER ELECTRIC CANADA INC. AND PELCO, INC.

Borden Ladner Gervais Calgary, Alberta	FOR THE DEFENDANTS, INTELLIVIEW TECHNOLOGIES INC., FIDELITER INC., BILL HEWS, MISSING LINK BUSINESS OPERATIONS ADVISORS LTD., GORDON EDWARDS, CHRISTOPHER BEADLE, SHANE ROGERS, SPARTAN CONTROLS LTD., AND 150IN150
Dentons Canada LLP Edmonton, Alberta	FOR THE DEFENDANT, SPARTAN CONTROLS LTD.
Bradley Nattrass Brownlee LLP Edmonton, Alberta	FOR THE DEFENDANT, CANADA 150IN150 AND EVA MAH BORSATO
Norton Rose Fulbright Canada LLP Calgary, Alberta	FOR THE DEFENDANTS, FLIR SYSTEMPS INC. AND FLIR SYSTEMS LTD.

APPENDIX

Federal Courts Rules (SOR/98-106)

Striking Out Pleadings	**Radiation d'actes de procédure**
Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	e) qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	f) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.
Evidence	**Preuve**
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).