Federal Court  Cour fédérale

Date: 20190920

Docket: T-321-19

Citation: 2019 FC 1194

Ottawa, Ontario, September 20, 2019

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

SATINDER PAUL SINGH DHILLON AND EMMET TISDALE PIERCE IN HIS CAPACITY AS CHIEF AGENT

Plaintiffs

and

MAXIME BERNIER, CHRISTIAN ROY IN HIS CAPACITY AS CHIEF AGENT AND THE PEOPLE'S PARTY OF CANADA

Defendants

ORDER AND REASONS

[1] A Rule 385(2) Order is an extraordinary measure. It is a blunt tool and resort is had to it only when the Court has been frustrated in its attempts to case manage a proceeding. This is exactly what has happened in this case.

I. Background

[1] The Plaintiffs, Satinder Dhillon and Emmet Pierce, commenced the underlying action against the Defendants by way of Statement of Claim on February 18, 2019. The Plaintiffs assert a trademark in the words "The People's Party of Canada" and seek a declaration that it has been infringed by the Defendants pursuant to section 7 of the *Trademarks Act*, RSC 1985, c T-13 and the common law doctrine of passing off. The Plaintiffs also claim the Defendants infringed their copyright in the name "The People's Party of Canada" pursuant to subsections 27(1) and 27(2) of the *Copyright Act*, RSC 1985, c C-42.

[2] The Defendants filed their Statement of Defence on March 20, 2019.

[3] On April 2, 2019, this proceeding was ordered specially managed, and Madam Justice Martine St-Louis was assigned as Case Management Judge.

[4] On April 11, 2019, the Plaintiffs notified the Court of their intention to move for an interlocutory injunction and requested that a special sitting be fixed for the hearing of the motion on an urgent basis. As Justice St-Louis was not available at the time, I was assigned to deal with the Plaintiffs' request.

[5] After some back and forth between counsel for the parties and the Court, a tight timetable was imposed on the parties for service and filing of their respective motion records. The hearing of the Plaintiffs' motion for injunctive relief took place on April 25, 2019.

[6] On May 3, 2019, the Plaintiffs' motion was dismissed, with costs: *Dhillon v. Bernier*, 2019 FC 573. No appeal was taken from this decision.

[7] On June 6, 2019, I was assigned as Case Management Judge in place of Justice St-Louis.

[8] The following day, Dean P. Davison and Davison Law Group were removed as solicitors of record for the Plaintiffs at counsel's request pursuant to Rule 125 of the *Federal Courts Rules*, SOR/98-106 [*Rules*].

[9] On June 10, 2019, the Plaintiffs, who were then acting on their own behalf, were directed to consult counsel for the Defendants and then submit a proposed timetable for the exchange of affidavits of documents and for completion of examinations for discovery no later than June 21, 2019. The Plaintiffs failed to do so. There was no request for an extension of time to comply with the Court's Direction or other communication from the Plaintiffs. Just complete silence.

[10] After the deadline fixed in the Court's Direction of June 10, 2019 had expired, counsel for the Defendants submitted a letter dated June 26, 2019, seeking directions of the Court regarding the next steps in the proceeding. Counsel indicated in her letter that she had e-mailed Mr. Dhillon on June 18, 2019 reminding him of the deadline fixed in the Court's Direction of June 10, 2019 and noting that she had not heard from him on that matter. She further reported that on June 21, 2019, she responded to an e-mail received from Mr. Dhillon late that night. Mr. Dhillon had written that the Plaintiffs were in the process of retaining new counsel and that it was premature to set down dates for the examinations for discovery. Defendants' counsel warned

Mr. Dhillon that the scheduling order was due that day and he would therefore need to ask for an extension of time from the Court.

[11] Given that the Plaintiffs did not heed the counsel's advice, and in the absence of any communication from them, on June 26, 2019, the Plaintiffs were ordered, pursuant to Rule 385(2), to show cause by written representations, to be served and filed no later than July 10, 2019, as to why their action should not be dismissed for failure to comply with the Court's Direction dated June 10, 2019 and for delay. Most perplexingly, the Plaintiffs ignored the show cause Order.

[12] By letter dated August 2, 2019, counsel for the Defendants advised the Court that she had not heard from the Plaintiffs regarding the present action since mid-June. She therefore requested that the action be dismissed for failure to comply with the Court's Direction of June 10, 2019 and for delay and the show cause Order.

[13] By letter dated August 5, 2019, Mr. Pierce wrote that the Plaintiffs were confused as to why opposing counsel sent the letter dated August 2, 2019 as she was "aware of the case manager coming on and the date of the next hearing (August 8th, 2019)." He stated the Plaintiffs were in discussion with several lawyers and would report the status of their discussions to the case manager on that date. Mr. Pierce added that they "meant no disrespect to the Court by missing the July 10, 2019 deadline" as it was "[their] understanding […] the case management judge will direct what needs to happen next."

[14] On August 9, 2019, a Direction was issued to the parties, which concludes as follows:

> There is no confusion in the Court's Order dated June 26, 2019, nor is there any indication that the Plaintiffs were somehow misled by the Registry or the Defendants. The Plaintiffs' pleas of ignorance simply do not excuse their inaction. It should go without saying that Orders of the Court are meant to be obeyed. The Plaintiffs are directed to serve and file their written representations in response to the Show Cause Order no later than August 13, 2019, failing which the action shall be dismissed for delay.

[15] The Plaintiffs tendered written representations on August 12, 2019. The Plaintiffs were advised that the submissions would not be entertained by the Court because the style of cause was incorrect, they were not signed by the Plaintiffs and proper proof of service had not been provided.

[16] On or about August 13 or 14, 2019, the Plaintiffs retained Rahma Saidi and Saidi Law Corporation as solicitor of record. Two weeks later, Ms. Saidi filed written representations in response to the show cause Order.

[17] In summary, the Plaintiffs submit they were unfamiliar with the *Rules* and "the application of the Court Orders," they made an honest attempt to satisfy the show cause Order and they were unaware of their ability to request an extension of time. The Plaintiffs further submit the action should be allowed to continue as the Defendants have not been prejudiced by the delay, and the Plaintiffs have "made all attempts to minimize any delay that their actions have cause by promptly retaining counsel and resubmitting their written representations." The representations are silent as to the steps taken or intended to be taken by the Plaintiffs to move the proceeding forward.

II. Analysis

[18] Rule 385(2) provides that a case management judge may, at any time, order that a status review be held in accordance with Part 9 of the *Rules*, in other words according to the procedure set out in Rules 382 and 382.1. On status review, a party in default is required to respond to two questions: (i) is there a justification for the failure to move the matter forward; and (ii) what measures does the party propose to take to move the matter forward (see *Netupsky v R*, 2004 FCA 239 at para 11 citing *Baroud v R*, [1998] FCJ No 1729 [*Baroud*] and *Manson v Canada (Minister of National Revenue)*, 2002 FCA 357. Failure to properly address these two factors may result in the dismissal of the party's proceeding.

[19] On September 9, 2019, a case management conference was held with counsel for the parties in this proceeding and two related matters (Court Dockets: T-314-19 and T-490-19). Ms. Saidi was provided an opportunity during the conference to make submissions regarding the second part of the *Baroud* test which had not been addressed in the Plaintiffs' written representations.

[20] Counsel was asked specifically what steps the Plaintiffs intended to take in the event the proceeding was allowed to continue. Ms. Saidi responded that she did not have any instructions from her clients. Despite coaxing, cajoling, and prodding by the Court, Ms. Saidi refused to identify any step the Plaintiffs would be prepared to take in the proceeding, let alone a clear deadline for completion of any step. She simply maintained her position that the Plaintiffs had not provided her any instructions in that regard.

[21] I recognize that Ms. Saidi's hands were tied given the failure of the Plaintiffs to provide proper instructions for the purpose of a case management conference. It remains that the Plaintiffs are accountable to the Court and should have been prepared to answer questions, through counsel, as to how they proposed to move the case forward. That is the foremost function of such conferences.

[22] The Plaintiffs have repeatedly failed to comply with orders and directions of the Court and have offered nothing but laconic explanations for not complying with them. The opposing parties and the Court have been careful in ensuring that the three related proceedings involving Mr. Dhillon and Mr. Pierce before the Court were treated separately. The Plaintiffs inability to distinguish what was required for this action rather than their two related applications is no excuse to ignore the Court's clear directions and unambiguous orders.

[23] Proceedings should only be dismissed on status review in exceptional circumstances, and where no other remedy would suffice. In *Roots v HMCS Annapolis (Ship)*, 2015 FC 1339, the Court concluded: "[g]iven the draconian effect of dismissing a claim for delay, the focus should be on the overall interests of justice in the case. The overarching concern should be whether the party in default recognizes its responsibility to move the action along and is taking the steps to do so."

[24] In the present case, the Plaintiffs have failed to recognize their responsibilities. They have repeatedly thumbed their noses at their obligations under the *Rules* and this Court's authority.

[25] In light of the Plaintiffs' disregard for the case management process, I am left with few options. I could allow the proceeding to continue and impose deadlines on the Plaintiffs for completion of examinations for discovery. However, I have no confidence that the Plaintiffs are willing or even able to embark on or complete discoveries in a timely manner. The only other option is dismissal of the action.

[26] In my view, this is an appropriate remedy in this case, as there are no reasonable alternative remedies available.

ORDER IN T-321-19

THIS COURT ORDERS that:

The action is dismissed, with costs

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-321-19
STYLE OF CAUSE:	SATINDER PAUL SINGH DHILLON AND EMMET TISDALE PIERCE IN HIS CAPACITY AS CHIEF AGENT v MAXIME BERNIER, CHRISTIAN ROY IN HIS CAPACITY AS CHIEF AGENT AND THE PEOPLE'S PARTY OF CANADA

CASE MANAGEMENT CONFERENCE HELD ON SEPTEMBER 9, 2019

ORDER AND REASONS:	LAFRENIÈRE J.
DATED:	SEPTEMBER 20, 2019

APPEARANCES:

Rahma Saidi	FOR THE PLAINTIFFS
Camille Aubin Catherine Thall Dubé Barry Gamache	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Saidi Law Corporation Barrister and Solicitor Surray, British Columbia	FOR THE PLAINTIFFS
ROBIC, S.E.N.C.R.L. Montréal, Québec	FOR THE DEFENDANTS