

Federal Court



Cour fédérale

Date: 20210129

Docket: T-1342-16

Citation: 2021 FC 82

Ottawa, Ontario, January 29, 2021

PRESENT: Mr. Justice Norris

BETWEEN:

MANIGEH SABOK SIR

Plaintiff

and

**HER MAJESTY THE QUEEN,
ATTORNEY GENERAL OF CANADA,
JOE LOZINSKI, CHRIS CHASE, DEAN VODDEN,
OFFICER DARKO, OFFICER SIGUENZA,
RYA HOW, ROD ENS**

Defendants

ORDER AND REASONS

I. OVERVIEW

[1] This is an appeal by Manigeh Sabok Sir under Rule 51 of the *Federal Courts Rules*, SOR/98-106, of the Order of Prothonotary Ring, made in her capacity as Case Management

Judge, dismissing Ms. Sabok Sir's action because she failed to pay security for costs and an outstanding costs order by the deadline that had been set in an earlier Order.

[2] For the reasons that follow, this motion is dismissed.

II. BACKGROUND

[3] On August 13, 2014, Ms. Sabok Sir, a visitor to Canada from Germany, was attacked by a dog in Pagan Lake, Saskatchewan. Following this incident, Ms. Sabok Sir had dealings with several Canada Border Services Agency [CBSA] officials and Royal Canadian Mounted Police [RCMP] officers. According to Ms. Sabok Sir, these individuals acted unlawfully in a number of ways. On August 12, 2016, she commenced an action in this Court for damages against two CBSA managers (the defendants Chase and Vodden), three CBSA Enforcement Officers (the defendants Lozinski, Darko and Siguenza), and two RCMP officers (the defendants How and Ens). Ms. Sabok Sir also named Her Majesty the Queen and the Attorney General of Canada as defendants. The defendants filed their Statement of Defence on September 12, 2016. Ms. Sabok Sir filed a Reply on September 22, 2016.

[4] On November 21, 2016, Prothonotary Lafrenière (as he then was) granted the defendants' motion for security for costs on the basis that Ms. Sabok Sir is not ordinarily resident in Canada (see Rule 416(1)(a) of the *Federal Courts Rules*). He ordered Ms. Sabok Sir to pay \$8,900 into court as security for the defendants' costs in the action. He also granted the defendants an extension of time to December 21, 2016, to serve their affidavit of documents. (Prothonotary Lafrenière dealt with other matters in a separate Order of the same date but they are immaterial

to the present matter.) The Order for security for costs prohibited Ms. Sabok Sir from taking any further steps in the action until she paid the security for costs except for an appeal of that Order. Prothonotary Lafrenière also ordered that Ms. Sabok Sir pay the defendants' costs on the motions before him in the fixed amount of \$850. (A separate costs award of \$300 in favour of the defendants was made in the companion Order of November 21, 2016.)

[5] Ms. Sabok Sir, who is self-represented, appealed the Orders of Prothonotary Lafrenière to this Court. The appeal was dismissed by Justice LeBlanc (then a member of this Court) on January 5, 2017. Being satisfied that the appeal should not have been brought, Justice LeBlanc ordered costs against Ms. Sabok Sir of \$1,200 payable forthwith. Ms. Sabok Sir appealed the dismissal of her appeal to the Federal Court of Appeal. That appeal was dismissed on April 29, 2019, with costs against Ms. Sabok Sir fixed at \$1,500: see *Sir v Canada*, 2019 FCA 101. (The Federal Court of Appeal had previously also ordered costs against Ms. Sabok Sir in connection with various procedural motions she had filed.) Ms. Sabok Sir applied for leave to appeal the decision of the Federal Court of Appeal to the Supreme Court of Canada. Her application for leave to appeal was dismissed on October 17, 2019.

[6] With all possible appeals having been exhausted, on December 6, 2019, the Case Management Judge conducted a case management conference to fix a timetable for the next steps in the proceeding. The Case Management Judge noted that Ms. Sabok Sir had not paid the security for costs into court yet, nor had she paid the costs that, nearly three years earlier, had been ordered to be paid forthwith by Justice LeBlanc. Since the action could not proceed until Ms. Sabok Sir paid the security for costs, determining when she would do this was the first order

of business. After hearing from the parties, the Case Management Judge ordered Ms. Sabok Sir to pay into court the amount of \$8,900 set by Prothonotary Lafrenière by no later than February 14, 2020. She also ordered Ms. Sabok Sir to pay the outstanding costs award of \$1,200 ordered by Justice LeBlanc by the same date. Ms. Sabok Sir agreed to these deadlines.

[7] In discussing the deadlines that would be set, the Case Management Judge stressed to Ms. Sabok Sir the importance of meeting them because she would be including a term in her Order that, if Ms. Sabok Sir did not make the required payments by the deadlines, the defendants would be permitted to make an informal request to have the action dismissed without further notice to Ms. Sabok Sir. The Case Management Judge therefore cautioned Ms. Sabok Sir that, if she was “running into problems” with meeting the deadlines, “you’re going to have to alert the Court early, but the expectation will be that you’re going to pay it on time, and you have said to me that that’s – that’s the case.” Ms. Sabok Sir replied: “It will be paid.”

[8] As she had indicated she would, in addition to setting deadlines for payment of security for costs and payment of the costs ordered by Justice LeBlanc, the Case Management Judge included the following term in her Order of December 6, 2019:

4. In the event that the Plaintiff fails to comply with the terms of this Order, the Defendants are granted leave to apply informally to dismiss the action without further notice to the Plaintiff.

[9] Ms. Sabok Sir did not make the payments required by the Order of December 6, 2019. Instead, on February 13, 2020 – the second last day she had to make the payments – she attempted to serve and file a motion for an eight-week extension of time. Because Ms. Sabok Sir

had not provided proof of proper service of the motion on the defendants, on February 14, 2020, Prothonotary Ring directed that the motion be conditionally accepted for filing pursuant to Rule 72(2)(b) of the *Federal Courts Rules* on the condition that Ms. Sabok Sir submit the written consent of the defendants to service of the motion by fax no later than February 21, 2020. The defendants provided this consent, which was submitted to the Court on February 19, 2020.

[10] Meanwhile, however, on February 17, 2020, counsel for the defendants wrote to the Court stating their opposition to the filing of the motion for an extension of time and requesting dismissal of the action on the basis that Ms. Sabok Sir had failed to make the required payments by the deadlines set in the Order of December 6, 2019.

[11] On February 21, 2020, in her capacity as Case Management Judge, Prothonotary Ring ordered that the Registry “shall reject the Plaintiff’s motion for an extension of time for filing.” She also ordered that the action be dismissed. The Case Management Judge was satisfied that allowing Ms. Sabok Sir’s motion for an extension of time to be accepted for filing and entertained by the Court would prejudice the defendants’ rights under paragraph 4 of the December 6, 2019, Order (set out above). She was also satisfied that the informal application to dismiss the action should be granted because Ms. Sabok Sir had failed to comply with the terms of the December 6, 2019, Order.

[12] Ms. Sabok Sir now appeals the Order of February 21, 2020.

[13] As of the hearing of this matter on December 14, 2020, Ms. Sabok Sir had still not paid any of the costs awards ordered against her.

III. ISSUES AND STANDARD OF REVIEW

[14] Ms. Sabok Sir raises several grounds of appeal. I would express them in the following way:

- 1) Did the Case Management Judge commit a reviewable error by not considering the motion for an extension of time?
- 2) Did the Case Management Judge commit a reviewable error by dismissing the action without having the jurisdiction to do so?
- 3) Did the Case Management Judge commit a reviewable error by failing to consider the impact on Ms. Sabok Sir of dismissing the action?

[15] The defendants raise a preliminary objection to the Court entertaining this appeal. They contend that the appeal is prohibited by the November 21, 2016, Order of Prothonotary Lafrenière, which provided that Ms. Sabok Sir was not permitted to take any further steps in the action (other than an appeal of that Order) until the security for costs had been paid into court (see paragraph 3 of that Order; see also Rule 416(3) of the *Federal Courts Rules*). Since security for costs has not been paid, Ms. Sabok Sir is precluded from bringing this appeal.

[16] While I understand the defendants' concern that they have been required to respond to this appeal in the absence of any assurance that they will be able to recover their costs if they

were to prevail, it is far from clear that an appeal of an Order dismissing the action is a “further step” in the action as contemplated in Prothonotary Lafrenière’s Order (or Rule 416(3), for that matter). More to the point, I cannot accept that the 2016 Order was intended to deprive Ms. Sabok Sir of the recourse otherwise available to her under Rule 51 should things turn out as they did, especially since the action was dismissed pursuant to the terms of a subsequent Order of the Court – namely, paragraph 4 of the December 6, 2019, Order. I am therefore prepared to deal with the appeal on its merits. Given that the defendants provided a full response to the appeal on its merits, and given the ultimate result, doing so will not cause any further prejudice to the defendants in any event.

[17] As stated by the Federal Court of Appeal in *Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 28 and 66, the standard of review on an appeal of a discretionary decision of a Prothonotary is correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law for which there are no extricable questions of law: see also *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 19, and 26-37. The issue of jurisdiction raised by Ms. Sabok Sir is a question of law attracting the correctness standard. Otherwise, the decision at issue here was one involving mixed questions of fact and law. Accordingly, in this latter respect, to succeed in her appeal, Ms. Sabok Sir must demonstrate a palpable and overriding error on the part of the Case Management Judge. As the Federal Court of Appeal has confirmed, this is “a high and difficult standard to meet:” see *Rodney Brass v Papequash*, 2019 FCA 245 at para 11. A palpable and overriding error “is one that is obvious and substantial enough to potentially change the result of the case:” see *Hospira Healthcare Corporation v Kennedy Trust for Rheumatology Research*, 2020 FCA 177 at para 7;

see also *Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46, quoted with approval in *Benhaim v St-Germain*, 2016 SCC 48 at para 38.

IV. ANALYSIS

[18] To begin with, Ms. Sabok Sir submits that the Case Management Judge committed a reviewable error by directing the Registry to reject her motion for an extension of time.

[19] I do not agree. Assuming (without deciding) that the Case Management Judge erred in directing the Registry to reject the motion for an extension of time for filing despite previously directing that it be conditionally accepted for filing and despite Ms. Sabok Sir fulfilling the condition specified by the Court, this error could not have affected the result. Even if the motion for an extension of time had been accepted for filing and, as Ms. Sabok Sir contends, the Case Management Judge would then have been required to address it before considering the defendants' request to have the action dismissed (something else I will assume without deciding), there is no reasonable possibility that the outcome would have been different. This is because the motion for an extension of time was wholly without merit.

[20] The only basis Ms. Sabok Sir offered for the request for more time to make the required payments was bald assertions in her affidavit that she had exhausted the funds she had transferred to Canada in 2015 for her visit here and she could not access her assets in Germany from Canada, where it appears she has remained for the last several years. She did not provide any supporting or corroborative evidence. She said nothing about why she had not returned home to Germany so that she could address this alleged difficulty in accessing her assets there.

She said nothing about whether she had attempted to obtain funds from elsewhere apart from noting that, as a visitor to Canada, she was not permitted to work here. She offered nothing to explain what had changed since she had confirmed to the Court on December 6, 2019, that she would meet the February 14, 2020, deadline. Nor did she offer any explanation for why she had not brought the motion earlier. Crucially, the motion materials would have given the Case Management Judge no basis whatsoever for concluding that Ms. Sabok Sir would make the payments within the eight week extension she was requesting. There is, in short, no reasonable possibility that the motion would have succeeded. Consequently, even if the Case Management Judge erred in dealing with this matter as she did, this could not possibly have affected the ultimate result – namely, the dismissal of the action for failure to comply with the terms of the December 6, 2019, Order.

[21] Second, Ms. Sabok Sir submits that Prothonotary Ring did not have jurisdiction to dismiss her action because the jurisdiction of prothonotaries is limited to actions in which damages do not exceed \$50,000 and Ms. Sabok Sir was seeking damages in a greater amount than this: see Rule 50(2) of the *Federal Courts Rules*.

[22] There is no merit to this argument. Prothonotary Ring was not conducting a trial of the action. She was exercising the powers of a Case Management Judge. Rule 385(1)(a) of the *Federal Courts Rules*, which gives Case Management Judges the power to “give any directions or make any orders that are necessary for the just, most expeditious and least expensive determination of the proceedings on the merits,” manifestly gave her the power to make the Orders of December 6, 2019, and February 21, 2020.

[23] Finally, Ms. Sabok Sir submits that the Case Management Judge committed a reviewable error by failing to consider the impact on her of dismissing the action.

[24] I do not agree. Paragraph 4 of the December 6, 2019, Order was clear. Failing to comply with the terms of that Order was a sufficient condition for the action to be dismissed if the defendants so requested. The Case Management Judge was not required to consider the impact of dismissing the action on Ms. Sabok Sir. Indeed, doing so would defeat the very purpose of paragraph 4, which was to provide the defendants with an expeditious and effective remedy in the event that Ms. Sabok Sir failed to meet the deadlines that had been imposed – deadlines which, to repeat, Ms. Sabok Sir herself had agreed to meet on December 6, 2019. Contrary to Ms. Sabok Sir's submission, Rule 60 of the *Federal Courts Rules* has no application here.

[25] Taking a step back, Ms. Sabok Sir had known since December 6, 2019, that if she did not meet the February 14, 2020, deadline, the defendants could request that the action be dismissed without further notice to her. Despite this, she let the clock run down and then, at almost the last possible minute, tried to ask for more time. The defendants' right to request that the action be dismissed crystallized at the end of the day on Friday February 14, 2020, when Ms. Sabok Sir failed to meet the deadlines set in the December 6, 2019, Order. The defendants made their informal request for dismissal promptly, writing to the Court on Monday February 17, 2020. Given the history of this matter, it was entirely foreseeable that they would do so. Indeed, on February 13, 2020 (presumably before Ms. Sabok Sir attempted to serve and file her motion), counsel for the defendants had informed Ms. Sabok Sir unequivocally that she did not consent to an extension of time to make the payments. It was Ms. Sabok Sir herself who engineered the

collision between the defendants' request to have the action dismissed and her motion for an extension of time. While the way in which the Case Management Judge ultimately dealt with the two requests may have left Ms. Sabok Sir feeling aggrieved, it was not unfair and certainly did not amount to a palpable and overriding error.

V. CONCLUSION

[26] For these reasons, the motion to appeal the Order of the Case Management Judge dated February 21, 2020, is dismissed.

[27] The defendants sought costs in the lump sum amount of \$750. Considering the protracted history of this motion, this amount strikes me as entirely reasonable. The defendants also requested that these costs be payable forthwith. In all the circumstances, this is also warranted.

ORDER IN T-1342-16

THIS COURT ORDERS that

1. The motion to appeal the Order of the Case Management Judge dated February 21, 2020, is dismissed.
2. Costs are awarded to the defendants in the fixed amount of \$750 inclusive of taxes and disbursements, payable forthwith.

“John Norris”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1342-16

STYLE OF CAUSE: MANIGEH SABOK SIR v HER MAJESTY THE
QUEEN ET AL

**MOTION HELD BY VIDEOCONFERENCE ON DECEMBER 14, 2020 FROM
OTTAWA, ONTARIO (COURT) AND WINNIPEG, MANITOBA (PARTIES)**

ORDER AND REASONS: NORRIS J.

DATED: JANUARY 29, 2021

APPEARANCES:

Manigeh Sabok Sir

ON HER OWN BEHALF

Jennifer Lee

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Attorney General of Canada
Winnipeg, Manitoba

FOR THE DEFENDANTS