

Federal Court



Cour fédérale

Date: 20210713

Docket: T-816-19

Citation: 2021 FC 738

St. John's, Newfoundland and Labrador, July 13, 2021

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

HESAMEDDIN ABBASPOUR TAZEHKAND

Applicant

and

BANK OF CANADA

Respondent

ORDER AND REASONS

[1] By a Notice of Motion dated March 30, 2021, submitted for consideration without personal appearance pursuant to Rule 369 of the *Federal Courts Rules*, S.O.R./98-106 (the “Rules”), the Bank of Canada (the “Respondent”) seeks an Order that Mr. Tazehkand (the “Applicant”) post security for costs, pursuant to Rule 416.

[2] The Applicant commenced the within proceeding on May 21, 2019, seeking judicial review of a decision of the Canadian Human Rights Commission, dismissing his complaint filed

under the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6. In his complaint, the Applicant had alleged discrimination by the Respondent in refusing to employ him.

[3] By a Judgment issued on December 30, 2020, the Applicant's application for judicial review was dismissed, with costs to the Respondent in the amount of \$2,500.00.

[4] The Applicant appealed the decision of the Federal Court to the Federal Court of Appeal, in cause number A-50-21.

[5] On February 26, 2021, the Respondent obtained an Order for the following relief, to facilitate collection action to recover the costs award:

1. The Bank of Canada is permitted, as per Rule 433 of the Rules to file a requisition for a Writ of Seizure and Sale to be issued.
2. Subsequent to the issuance of the aforementioned Writ of Seizure and Sale, the Sheriff of the city of Ottawa [Sheriff] shall seize and sell the real property or immovables and the personal property or movables within the Sheriff's jurisdiction of Hasemeddin Abbaspour Tazehkand and to realize from the seizure the amounts of:
 - a. \$2,500.00 plus post-judgement (sic) interest at the rate of 2 per cent per annum to be calculated from December 20, 2020 to the date of receipt of payment, compounded annually;
 - b. the cost of such Seizure and Sale, and
 - c. the costs awarded to the Bank of Canada on the present motion.
3. Costs in the amount of \$500 payable to the Bank of Canada on the present motion.

[6] On March 11, 2021, the Applicant sought reconsideration of the Order made on February 26, 2021. He also filed a Notice of Appeal in respect of that Order in the Federal Court of Appeal, in cause number A-118-21.

[7] The Respondent filed the affidavit of Mr. Noah Houlton, sworn on April 6, 2021, in support of its motion. Mr. Houlton deposed that requests for payment of the outstanding costs Order were made by electronic mail on January 7, 2021 and February 1, 2021. Mr. Houlton also deposed that as of the date of his affidavit, the Respondent had been unable to collect the outstanding costs.

[8] The Applicant also filed an affidavit, sworn on June 21, 2021. He deposed, among other things, that he is unemployed and in receipt of Employment Insurance benefits since October 2020. It appears that he currently receives \$448 per week.

[9] In his affidavit, the Applicant referred to e-mails that he had sent to counsel for the Respondent about payment of the outstanding costs.

[10] The Respondent seeks an Order for security for costs in this Court upon the basis that the Applicant has not paid the costs awarded against him in the Judgment of December 30, 2020, and the Order of February 26, 2021.

[11] The Respondent relies upon Rule 416(1)(f) in seeking an Order for security for costs. That Rule provides as follows:

Where security available

416 (1) Where, on the motion of a defendant, it appears to the Court that

...

(f) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,

...

the Court may order the plaintiff to give security for the defendant's costs.

Cautionnement

416 (1) Lorsque, par suite d'une requête du défendeur, il paraît évident à la Cour que l'une des situations visées aux alinéas a) à h) existe, elle peut ordonner au demandeur de fournir le cautionnement pour les dépens qui pourraient être adjugés au défendeur :

...

f) le défendeur a obtenu une ordonnance contre le demandeur pour les dépens afférents à la même instance ou à une autre instance et ces dépens demeurent impayés en totalité ou en partie;

...

[12] According to the decision in *Lavigne v. Canada Post Corporation* (2009), 350 F.T.R. 46 (F.C.), an opposing party is *prima facie* entitled to security for costs when there are unpaid costs in its favour.

[13] However, pursuant to Rule 417, the Court may refuse to order security for costs even when Rule 416(1)(f) is in play if the party against whom such an order is sought can show impecuniosity and that party can show that the case has merit.

[14] The Applicant pleads impecuniosity, saying that his only income is Employment Insurance benefits.

[15] A general claim of impecuniosity is not sufficient to establish such a claim. In that regard, I refer to the decision in *Sauve v. Canada* (2012), 441 N.R. 195, where the Federal Court of Appeal said the following:

[9] ... A bald statement from a litigant that he does not have the means to provide security for costs is clearly insufficient to trigger the application of section 417 of the Rules: *B-Filer Inc. v. Bank of Nova Scotia*, 2007 FCA 409; 317 N.R. 292 at paras. 9 to 11; *Chaudhry v. Canada (Attorney General)*, 2009 FCA 237; 393 N.R. 67 at para. 10.

[10] Material evidence must be submitted in order to sustain a claim of impecuniosity, including complete and clear financial information presented in a comprehensible format. Tax returns, bank statements, lists of assets, and (where possible) financial statements should be submitted. Evidence of the impracticability of borrowing from a third party to satisfy the security order should also be provided. The possibility of accessing family and community resources should be considered. No material issue should be left unanswered.

[16] I am not satisfied that the Applicant has demonstrated impecuniosity. The only evidence about his financial situation is a statement of Employment Insurance benefits.

[17] The Applicant's income is not large, but there is an income.

[18] Rule 417 is conjunctive and invites the Court to consider the merits of a case, in order to protect the right to litigation for an impecunious party; see *Sauve, supra*.

[19] The Applicant commenced an application for judicial review. The application was heard on November 23, 2020. A Judgment was issued on December 30, 2020, dismissing his application. A notice of appeal was filed on February 8, 2021.

[20] The merits of the Applicant's claim have already been assessed.

[21] I am not satisfied that the Applicant has shown that he is entitled to the benefit of Rule 417, either on the grounds of impecuniosity or merit in the present cause, for which judgment has been rendered.

[22] I am satisfied on the basis of the evidence submitted by the Respondent that two costs awards have been made in favour of the Respondent and that the costs have not been paid.

[23] However, in light of the fact that the Applicant has filed an appeal in the Federal Court of Appeal in respect of the Judgment issued on December 30, 2020, and an appeal in respect of the Order issued on February 26, 2021, I question the utility of granting an Order for security for costs in this proceeding.

[24] The "case" is effectively ended in the Federal Court, apart from steps that the Respondent may pursue in attempting collection of the outstanding costs award.

[25] In *Worldspan Marine Inc. v. Harry Sargeant III et al.*, 2019 FCA 207, the Federal Court of Appeal commented on the purpose of security for costs relative to future, not past, litigation, as follows:

[29] Sargeant, in the letter from his counsel dated July 2, 2019, requested that security for the outstanding costs awards should be provided if the stay is granted. However, security for costs is for costs for future litigation, not security for outstanding cost awards.
...

[26] An Order for security for costs involves the discretion of the Court, as is clear from the opening and closing words of Rule 416(1) as follows:

Where security available

416 (1) Where, on the motion of a defendant, it appears to the Court that

...

the Court may order the plaintiff to give security for the defendant's costs.

Cautionnement

416 (1) Lorsque, par suite d'une requête du défendeur, il paraît évident à la Cour que l'une des situations visées aux alinéas a) à h) existe, elle peut ordonner au demandeur de fournir le cautionnement pour les dépens qui pourraient être adjugés au défendeur :

...

[27] Considering the evidence of the parties, their arguments and the relevant jurisprudence, I am not persuaded that the requested Order should be granted, and the motion is dismissed. In the exercise of my discretion over costs, pursuant to Rule 400 of the Rules, I make no order as to costs.

ORDER IN T-816-19

THIS COURT ORDERS that the motion is dismissed. In the exercise of my discretion, there is no Order as to costs.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-816-19

STYLE OF CAUSE: HESAMEDDIN ABBASPOUR TAZEHKAND v.
BANK OF CANADA

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: HENEGHAN J.

DATED: JULY 13, 2021

WRITTEN REPRESENTATIONS BY:

Hesameddin Abbaspour
Tazehkand

Lynn Harnden

FOR THE APPLICANT
(ON HIS OWN BEHALF)

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Emond Harnden LLP
Barristers and Solicitors
Ottawa, Ontario

FOR THE RESPONDENT