Federal Court  Cour fédérale

Date: 20100526

Docket: T-461-10

Citation: 2010 FC 577

Vancouver, British Columbia, May 26, 2010

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

DEAN SHAW

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

[1] The Plaintiff, a self represented litigant, by motion in writing filed on May 10, 2010, appeals the decision of Prothonotary Lafrenière dated April 29, 2010, dismissing a motion by the Plaintiff seeking "complete publication ban henceforth regards to Court File T-461-10".

[2] In dismissing the motion, the Prothonotary applied the principles applicable to a party seeking a confidentiality order which require that the interest to be protected must be clearly identified and weighed against the public interest in open judicial proceedings (*Abbot Laboratories v. Canada (The Minister of Health)*, 2005 FC 1368). The Prothonotary found that "…the Plaintiff

has made no attempt to define the type of information he seeks to have designated as confidential, or to tailor his request to cover only the information that must strictly be kept confidential."
The Prothonotary also found "…, the Plaintiff's bare assertion that there is a threat of harm against him is not rationally connected to any actual prejudice that would flow from public access to the information." The Prothonotary concluded that "In the absence of any evidence of the type of information that should be treated as confidential, or details of the risk or harm that the Plaintiff would be exposed to in the event of public disclosure, the motion must be dismissed."

[3] As the Federal Court of Appeal observed in *Merck & Co., Inc. v. Apotex Inc.*, [2004] 2 F.C.R. 259, 30 C.P.R. (4th) 40 at paras. 18-19, discretionary orders of prothonotaries ought not to be disturbed on appeal unless the questions raised in the motion are vital to the final issue of the case, or the orders are clearly wrong, in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of the facts. In such cases, a reviewing Court should apply a *de novo* standard of review.

[4] In adopting the above approach, I will first consider whether the questions raised in the motion are vital to the final issue of the case. The issue raised in the motion concerns a request for a publication ban. An order disposing of the request for a publication ban is not vital to the final issue of the case which involves a claim for damages, special damages for the release of privileged information and other claims of negligence set out in the statement of claim.

[5] I now turn to consider whether the Prothonotary's order is clearly wrong in the sense that his exercise of discretion was based upon a wrong principle or a misapprehension of the facts.

[6] In his affidavit filed with the motion record the Plaintiff appears to have reformulated his request for a publication ban as follows:

> I request that a Federal Judge ORDER a publication ban on Human Resources Case # 04-0024 / (Exhibit A) and a ban on all information derived from Federal Privacy Commissions [*sic*] investigation's [*sic*] file # 7100-01754 (Exhibit B) and the third party's [*sic*] involved thus letters or documents to and from federal official's [*sic*] or documentation proving criminal enterprise in relation to this negligent and reckless breach of privacy. All information released to the public derived from the whole of the Plaintiff is a threat to my liberty and security of the person and persons. Plaintiff suffered enough duress and strife from this reckless negligence!

[7] In his brief written submissions the Plaintiff argues as follows:

> The Federal Privacy Commission will not be releasing any information requested by the plaintiff unless it's ordered by the Judge. If the Defendant agrees with the allegations of Plaintiff then there will be no need of the Federal Privacy's documented investigations. The Federal Privacy Commission investigation and fact finding will be substantiating and providing jurisprudence for Plaintiff's proof of allegations. There is a criminal and dangerous element to the whole of the issue which requires a total publication ban and if, perhaps the Judge see's [*sic*] fit that certain information may be subjected to third party disclosure after judgement [*sic*]. It is privy information and, that "the root of the problem originated from such", so it's unbecoming to have a third party view the information regardless. This should be automatic judgment and not for Plaintiff's rehashing for appeal of original Motion. When a person declares duress derived from the actions of other party, then, that should sanction the court and not deny that threat until proven otherwise. Plaintiff has personally dealt with threat of personal safety and was threatened afterwards from the particular enterprise derived from the

> Defendants documentation of dangerous criminal enterprise and is still under threat! Request leave to apply with updated materials if the Court can host closed meeting!

[8] The Plaintiff's affidavit appears to provide some information identifying generally what is sought to be included in the publication ban, namely all information derived from "Federal Privacy Commissions." He also seeks to have included in the ban "All information released to the public derived from the whole of the Plaintiff is a threat to my liberty and security of the person and persons." Even if I were to accept that the Plaintiff's affidavit provided sufficient particulars about the nature of the information sought to be protected, or the prejudice that would flow from releasing the information in the publication ban, and I do not, the information was not before the Prothonotary when he made his decision. The general rule is that appeals from orders of prothonotaries are to be decided on the basis of the material that was before the prothonotary (*James River Corp. of Virginia v. Hallmark Cards, Inc*. [1997] F.C.J. No. 152, 126 F.T.R. 1 (F.C.T.D.)).

[9] New evidence may be admissible in circumstances where: it could not have been made available earlier; it will serve the interests of justice; it will assist the court; and it will not seriously prejudice the other side. There is no evidence on the record to support that any of these factors have been met in this instance. Nor is there any argument by the Applicant to this effect.

[10] It follows that the new information contained in the Applicant's affidavit cannot be considered on this appeal.

[11] Regarding the Plaintiff's written submissions, they are difficult to understand. I would have to speculate about the arguments intended by the Plaintiff. What is clear, however, is that the submissions fail to indicate that the Prothonotary based his decision on a wrong principle or a misapprehension of the facts. Indeed, I find that the Plaintiff has failed to raise in his submissions any basis upon which the Court's intervention would be warranted.

[12] I am satisfied that the Prothonotary identified the applicable principles of law in the circumstances and did not err in applying these principles to the facts that were before him. I find that the Prothonotary's order is not clearly wrong in the sense that his exercise of discretion was based upon a wrong principle or a misapprehension of the facts. It follows that the appeal will be dismissed.

ORDER

THIS COURT ORDERS that the appeal is dismissed.

"Edmond P. Blanchard"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-461-10
STYLE OF CAUSE:	DEAN SHAW v. HER MAJESTY THE QUEEN

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA, PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	BLANCHARD J.
DATED:	May 26, 2010

WRITTEN REPRESENTATIONS BY:

Dean Shaw	FOR THE PLAINTIFF (self-represented)
Jack Wright	FOR THE DEFENDANT

SOLICITORS OF RECORD:

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