

Federal Court



Cour fédérale

Date: 20100629

Docket: T-997-09

Citation: 2010 FC 712

Toronto, Ontario, June 29, 2010

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

R. MAXINE COLLINS

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

[1] The Plaintiff, Ms. Collins, appeals an order of Prothonotary Milczynski dismissing Ms. Collins' motion for access to the contents of the Court's file relating to previous proceedings she had instituted. Ms. Collins maintains that Prothonotary Milczynski erred by overlooking the fact that the file does not contain orders in respect of previous motions she had presented and, further, that she has been denied access to a transcript of the proceedings on those motions, which had been heard by Justice Elizabeth Heneghan in November 2009.

[2] At the time Prothonotary Milczynski dealt with Ms. Collins' motion, a transcript of the proceedings before Justice Heneghan had not yet been prepared. I have reviewed the transcript and, indeed, as Ms. Collins contends, there were two motions before Justice Heneghan the outcome of which was not explicitly reflected in the Court file. However, as is clear from the transcript (see Annex) both motions were dismissed by Justice Heneghan from the bench. Strictly speaking, then, Prothonotary Milczynski was incorrect (through no fault of her own) when she stated that Ms. Collins' motions had been dealt with in the decision Justice Heneghan issued in March 2010 in respect of a motion of the defendant.

[3] As for the transcript, Ms. Collins now has a copy. While she is concerned about the accuracy of it, I have no evidence before me suggesting that it does not reflect the proceedings before Justice Heneghan.

[4] Accordingly, I will grant Ms. Collins' appeal in part and return the matter to Prothonotary Milczynski to make such order as she feels appropriate in the circumstances. Given that the appeal was unopposed, there is no order as to costs.

ORDER

THIS COURT ORDERS that:

1. The appeal is granted in part. The matter is referred back to Prothonotary Milczynski.
2. There is no order as to costs.

“James W. O’Reilly”

Judge

ANNEX

1 consider my arguments.

2 JUSTICE HENEGHAN: Well, all
3 right. Court has considered your arguments, and
4 your motion is dismissed.

5 There is a rule in the Federal
6 Court Rules dealing with striking out pleadings,
7 which is why we are here; the main reason why we
8 are here. That is Rule 221. I am only going to
9 read the opening part of sub-section 221.1, motion
10 to strike.

11 "On motion, the Court may at
12 any time order that a
13 pleading or anything
14 contained therein be struck
15 out with or without leave to
16 amend on the grounds that..."
17 (As read)

18 We'll hear more about that as we
19 go through this morning.

20 Rule 2 of the Federal Court Rules
21 contains a list of definitions. A pleading is
22 defined --

23 "A pleading means a document
24 in a proceeding in which a
25 claim is initiated, defined,

1 defended or answered."

2 (As read)

3 And a notice of motion is none of
4 those things, Ms Collins. A notice of motion is --
5 well, a motion is also defined in Rule 2.

6 "Motion means a request to
7 the Court under or to enforce
8 these rules. A motion in the
9 course of a proceeding..."

10 (As read)

11 Well, we know it's a request, and
12 there can be any number of requests between the
13 time that an action is begun and when it's ended.
14 But a motion is not a pleading. There is no basis
15 under the Rules for me to strike any part of the
16 notice of motion that has been filed by the
17 defendant. So that takes care of that.

18 At the end of the day, when
19 I'm writing whatever I'm writing in connection with
20 the main motion, I will also write an order
21 dismissing your motion.

22 The second motion we have that I
23 am going to deal with is your request for a
24 determination, preliminary determination, for a
25 question of law. I want to hear -- well, I have

1 same day.

2 JUSTICE HENEGHAN: Thank you.

3 Counsel?

4 MS SUGUNASIRI: Your Honour, just
5 to clarify, as when I read Ms Collins' motion for
6 the determination of a question of law, what she's
7 actually asking for is an order of direction for a
8 hearing on a question of law. So the way I
9 understood the motion, the way I'm understanding it
10 today, is that she's not asking for a determination
11 of a question of law today, she's asking that you
12 direct that such a hearing take place I guess on
13 some other date.

14 My submission is indeed that it is
15 premature because depending on what happens with
16 the motion to strike it doesn't make sense to
17 actually determine any issues of law that may
18 actually fall away as a result of a decision that's
19 made in the court today. So that is why I didn't
20 file anything in response. My only response is
21 that it is premature. But I do want to make that
22 distinction that she's asking for directions for
23 you to direct that these issues be determined on a
24 motion as opposed to hearing it today. I think
25 hearing it today doesn't make any sense because we

1 need to wait for your decision on the main motion
2 to strike.

3 JUSTICE HENEGHAN: Thank you.
4 Anything further, Ms Collins?

5 MS COLLINS: No, Your Honour.

6 JUSTICE HENEGHAN: I agree with the
7 position put forward by the counsel for the
8 defendant. She is right on two points, one that
9 you are not asking today for a determination of a
10 question of law, which of course lies within the
11 power of the Court to do pursuant to Rule 220. But
12 until the motion to strike has been adjudicated, I
13 agree with counsel for the Crown that it's too
14 early to be looking at whether direction should be
15 given on a motion for determination of a question
16 of law.

17 Should it get to that, I think I
18 don't know that you need directions. Should the
19 matter proceed, depending on what happens with the
20 motion to strike, it's always open to you to bring
21 a motion for determination of a question of law
22 pursuant to the Rules.

23 Now having said that, I guess it's
24 time to hear from you, counsel?

25 MS SUGUNASIRI: Thank you.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-997-09

STYLE OF CAUSE: R. MAXINE COLLINS v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, ON

DATE OF HEARING: June 28, 2010

REASONS FOR ORDER AND ORDER: O'REILLY J.

DATED: June 29, 2010

APPEARANCES:

R. Maxine Collins FOR THE APPLICANT

No Representation FOR THE RESPONDENT

SOLICITORS OF RECORD:

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