

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150302

**Dockets: A-88-14
A-89-14**

Citation: 2015 FCA 59

**CORAM: GAUTHIER J.A.
RYER J.A.
WEBB J.A.**

Docket: A-88-14

BETWEEN:

GARY SAUVÉ

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

MONECO SOBECO

Party-to-Action

Docket: A-89-14

AND BETWEEN:

GARY SAUVÉ

Appellant

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Respondent

and

MONECO SOBECO

Party-to-Action

Heard at Ottawa, Ontario, on February 25, 2015.

Judgment delivered at Ottawa, Ontario, on March 2, 2015.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

RYER J.A.
WEBB J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Mr. Sauvé appeals the January 31, 2014 decision of Chief Justice Crampton of the Federal Court (the judge) in T-1101-13 (A-88-14) and in T-1325-13 (A-89-14) (2014 FC 119) ordering Mr. Sauvé to pay security for costs in the amount \$5,000 and \$12,000, respectively. These appeals have been consolidated.

[2] Pursuant to Rule 416(1)(f) of the *Federal Courts Rules*, SOR/98-106 [the Rules], the Court may order a plaintiff to post security for the defendant's costs where the defendant has an order against the plaintiff for costs that remains unpaid in whole or in part in the same or another proceeding. Mr. Sauvé does not dispute that this condition has been met. At the relevant time, Mr. Sauvé owed the RCMP \$41,886.58 in costs in respect of various other proceedings dating back to 2009.

[3] Even where the conditions of Rule 416(1)(a) to (g) are met, pursuant to Rule 417 of the Rules, the court may nonetheless refuse to order the plaintiff to post security for costs where the plaintiff: (1) demonstrates impecuniosity; and (2) the court is of the opinion that the underlying action or application has merit. The judge declined to exercise his discretion under Rule 417, having concluded that the plaintiff had failed to satisfy either condition.

[4] An order granting security for costs is a discretionary decision with which this Court will not interfere unless the judge acted on a wrong principle or failed to give appropriate weight to relevant considerations.

[5] Mr. Sauvé alleges that the judge erred by finding that he had failed to demonstrate impecuniosity. I disagree. The judge considered his affidavit evidence and tax return for the year 2012 (or a portion thereof which included, among other things, an unexplained reference to rental income). He noted that although Mr. Sauvé's financial circumstances seemed strained, his evidence failed to satisfy the robust particularity required to prove impecuniosity for the purpose of Rule 417, as dictated by *Chaudhury v. Canada (Attorney General)*, 2009 FCA 237 at paragraph 10, and *Sauvé v. Canada* 2012 FCA 287 (*Sauvé #1*) at paragraph 10. There were also unexplained facts before the judge that point to Mr. Sauvé's being able to secure loans despite his continuous assertions that he is impecunious (see for example, *Sauvé #1* at paragraph 12, the judge's reasons at paragraph 56 and Mr. Sauvé's affidavit in T-1325-13, at paragraph 20).

[6] As explained in *Sauvé #1* at paragraph 7, fair access to justice only requires that security for costs be denied when it would preclude an impecunious plaintiff from advancing an

otherwise meritorious claim. This is why Mr. Sauvé had to establish that the judge erred when he concluded that he had not demonstrated that the two proceedings at issue here had merit. He has failed to do so.

[7] Mr. Sauvé also alleges that the amounts the judge ordered him to pay as security for costs were excessive. Here again, I cannot agree. The judge did not grant the amounts sought by the respondent. Rather, he calculated the amounts required by reference to the mid-point of the range provided in Column III of Tariff B. This was quite appropriate, and well within his discretion.

[8] Mr. Sauvé also challenges the February 12, 2014 decision of the judge denying his informal request for reconsideration which Mainville J.A. allowed him to include in the appeal book, together with all the relevant material relating thereto (Order of Mainville J.A, dated March 28, 2014). Mr. Sauvé was requesting that the January 31, 2014 order be modified so as to enable him to pay his outstanding costs awards in installments of \$30.00 per month. The judge noted that the case on which Mr. Sauvé's proposed payment plan was based did not assist him.

[9] Before us, Mr. Sauvé essentially repeats the arguments he made before the judge. He has not established that the judge made any reviewable error. Motions for reconsideration cannot be used to reverse what has already been ordered unless the order does not accord with the reasons given for it, or a matter which the judge should have dealt with has been overlooked or accidentally omitted. Mr. Sauvé did not propose a payment plan at any time before the January 31, 2014 decision was issued.

[10] In light of the foregoing, I propose that these appeals be dismissed with costs fixed at one lump sum in the amount of \$200.00 (all inclusive) for both appeals.

“Johanne Gauthier”

J.A.

“I agree

C. Micheal Ryer, J.A.”

“I agree

Wyman W. Webb, J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-88-14

STYLE OF CAUSE: GARY SAUVÉ v. ATTORNEY
GENERAL OF CANADA AND
MONECO SOBECO

AND DOCKET: A-89-14

STYLE OF CAUSE: GARY SAUVÉ v. HER MAJESTY
THE QUEEN IN RIGHT OF
CANADA AND MONECO
SOBECO

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: FEBRUARY 25, 2015

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: RYER J.A.
WEBB J.A.

DATED: MARCH 2, 2015

APPEARANCES:

Gary Sauvé SELF-REPRESENTED

Ms. Agnieszka Zagorska FOR THE RESPONDENT
ATTORNEY GENERAL OF
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Ms. Agnieszka Zagorska FOR THE RESPONDENT
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RIGHT OF CANADA

SOLICITORS OF RECORD:

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FOR THE APPELLANT

FOR THE RESPONDENT
ATTORNEY GENERAL OF
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FOR THE RESPONDENT
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RIGHT OF CANADA