

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240110

Docket: A-160-23

Citation: 2024 FCA 6

**CORAM: STRATAS J.A.
LASKIN J.A.
GOYETTE J.A.**

BETWEEN:

R. MAXINE COLLINS

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on January 10, 2024.
Judgment delivered from the Bench at Ottawa, Ontario, on January 10, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

GOYETTE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 10, 2024).

GOYETTE J.A.

[1] The appellant appeals from an order of the Federal Court (*per* Fuhrer J) dismissing her motions: 2023 FC 863.

[2] The relevant facts are as follows.

[3] On February 8, 2022, the appellant filed a statement of claim with the Federal Court, alleging that employees of Canada Post were interfering with her mail, in violation of sections 48 and 49 of the *Canada Post Corporation Act*, R.S.C. 1985 c. C-10. The appellant's action came within the regime for simplified actions provided for in Rules 292 to 299.42 of the *Federal Courts Rules*, SOR/98-106 (Rules).

[4] The respondent did not file a statement of defence. Instead, on March 11, 2022, the respondent filed a motion to strike the appellant's statement of claim pursuant to Rule 221.

[5] On April 21, 2023, Associate Judge Molgat (Associate Judge) dismissed the respondent's motion to strike because (1) the motion was brought out of time, and (2) the respondent had failed to file material necessary for the hearing of the motion.

[6] The appellant appealed the Associate Judge's decision to a judge of the Federal Court through a Rule 51 motion. Previously, the appellant had filed a Rule 210 motion seeking default judgment against the respondent for having failed to file a statement of defence. The Federal Court dismissed both these motions.

[7] The Federal Court exercised its discretion conferred under Rule 210 to dismiss the appellant's motion for default judgment for two reasons. First, the appellant had failed to provide any supporting evidence as required by Rule 210(3). The Federal Court found that the appellant's affidavit of service did not qualify as supporting evidence, that is, evidence supporting her statement of claim: *Trimble Solutions Corporation v. Quantum Dynamics Inc.*,

2021 FC 63 at para. 35; *Monsanto Canada Inc. v. Verdegem*, 2013 FC 50 at para. 2. Second, the respondent had shown interest in the matter.

[8] As mentioned, a decision on a Rule 210 motion is discretionary. Accordingly, this Court's intervention is justified only if the Federal Court made an error of law, an error on an extricable question of law, or a palpable and overriding error on a factually suffused question of fact or mixed fact and law: *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 66-69; *Canada v. Preston*, 2023 FCA 178 at para. 12. We have carefully reviewed the appellant's arguments as well as the record, and we have found no such errors. Thus, we disagree with the appellant that the Rules prevented the respondent from filing a motion to strike her statement of claim. As for the conflict between the Federal Court's reasons and the order, paragraph 11 makes it clear that the dismissal of the motion for default judgment is without prejudice to the appellant's right to bring a further motion for default judgment with proper supporting affidavit evidence. In our view, the Federal Court's order should be read as implementing paragraph 11.

[9] We now turn to the appellant's Rule 51 motion appealing the Associate Judge's decision to dismiss the respondent's motion to strike. The Federal Court noted that it could only intervene if the Associate Judge had made an error of law or a palpable and overriding error on a question of fact or mixed fact and law. The Federal Court rejected the appellant's argument that the Associate Judge had made such an error by rendering her order following Rule 298(2)(b) instead of Rule 221. According to the Federal Court, the wording of the Associate Judge's order made it clear that it was addressing the respondent's motion brought pursuant to Rule 221. The Federal

Court also determined that the Associate Judge's consideration of Rule 298 was appropriate as this Rule provides limitations with respect to motions to strike on simplified actions such as the appellant's.

[10] Before this Court, the appellant raises numerous allegations concerning the proper interpretation of Rules 221 and 298 and the interaction between these two Rules. After careful consideration of these allegations, we find that they do not support the conclusion that the Federal Court made a reversible error: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235 at paras. 6-37.

[11] As acknowledged in *Sa'd v. Yew*, 2023 FC 1286, there is a difference between motions to strike pleadings that rely on the ground in Rule 221(1)(a) and those that rely on the grounds in Rule 221(1)(b) to (f). However, this difference has no impact on the outcome of this case. The fact that Rules 221(1)(a) and 298(2) required the respondent to bring his motion to strike the appellant's statement of claim on the basis that it disclosed no reasonable cause of action within the time set in Rule 204, while Rules 221(1)(b) to (f) and Rule 298(1) required him to bring his motion to strike based on other grounds at a pre-trial conference does not change the conclusion that the respondent's motion to strike was out of time and not accompanied by the necessary material. Either way, no error warrants this Court's intervention.

[12] Before disposing of this appeal, we wish to note that the Appellant has not followed the proper procedural channels to raise a systemic discrimination claim. Therefore, this Court cannot rule on this claim.

[13] For the foregoing reasons, we will dismiss the appeal with costs.

"Nathalie Goyette"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-160-23

STYLE OF CAUSE: R. MAXINE COLLINS v. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JANUARY 10, 2024

**REASONS FOR JUDGMENT OF THE COURT
BY:** STRATAS J.A.
LASKIN J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: GOYETTE J.A.

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