

Federal Court



Cour fédérale

Date: 20170327

Docket: T-1813-14

Citation: 2017 FC 310

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, March 27, 2017

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

LÉOPOLD CAMILLE YODJEU NTEMDE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

I. Overview

[1] The plaintiff has filed a motion under rule 359 of the *Federal Courts Rules*, SOR/98-106 [the Rules] to appeal the decision by Prothonotary Morneau on November 2, 2016, in which he ordered the striking out of the plaintiff's examinations for discovery and the majority of the

plaintiff's cross-examinations of the affidavits used for the defendant's motion for summary judgment.

II. Facts

[2] The events that led to this motion are as follows: On August 22, 2014, the plaintiff filed an action for harm he allegedly suffered following Citizenship and Immigration Canada's rejection of his wife's and daughter's permanent residence applications (his wife's application was later approved on June 30, 2014). Chief Justice Crampton assigned Prothonotary Morneau as the Case Management Judge. On February 4, 2016, Prothonotary Morneau adopted the timeline agreed upon by both parties, which stipulated that the pre-trial conference record would be filed before May 31, 2016.

[3] On May 17, 2016, the defendant informed this Court and the plaintiff that it planned to file a motion for summary judgment. On May 24, 2016, the plaintiff filed his requisition for a pre-trial conference, in which he confirmed that [TRANSLATION] "all examinations for discovery that the plaintiff intends to conduct have been completed." On July 5, 2016, the defendant filed and served a motion for summary judgment. On October 7 and 11, 2016, the plaintiff sent four examinations for discovery to the defendant, despite the fact that he had attested under subsection 258(2) of the Rules that they had been completed. On October 12, 2016, the plaintiff sent five cross-examinations on the affidavits used to support the motion for summary judgment. Prothonotary Morneau struck out the examinations for discovery and the majority of the five cross-examinations of the defendant's affiants.

III. Issues and standard of review

[4] The plaintiff argues that Prothonotary Morneau’s decision to strike out his examinations for discovery is unreasonable. He also challenges the fact that Prothonotary Morneau struck out the majority of the five cross-examinations.

[5] As noted by the defendant, the standard of review that applies to the Prothonotary’s findings of fact is that of palpable and overriding error (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*]). For questions of law and questions of mixed law and fact, the correctness standard applies (*Hospira*, above, at paragraph 66).

IV. Analysis

[6] The plaintiff argues that Prothonotary Morneau’s decision is not correct because it amounts to [TRANSLATION] “procedural unfairness” and “natural injustice.” He submits that Prothonotary Morneau erred in applying subsection 258(2) of the Rules. He argues that the defendant had [TRANSLATION] “already expressly and in a premeditated manner contravened that very rule when [it] refused to provide periods of availability for the pre-trial conference.”

Subsection 258(2) of the Rules stipulates that:

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|---|---|
| <p>(2) A requisition for a pre-trial conference shall be in Form 258 and include a certification by the solicitor of record that</p> | <p>(2) La demande de conférence préparatoire est établie selon la formule 258 et comporte une attestation de l’avocat de la partie portant que :</p> |
| <p>(a) <u>all examinations for discovery that the party intends</u></p> | <p>a) <u>tous les interrogatoires préalables qu’entend tenir la</u></p> |

to conduct have been
completed; and

[My emphasis.]

partie sont terminés;

[Je souligne.]

[7] Therefore, when he filed his requisition for a pre-trial conference on May 24, 2016, the plaintiff attested that all his examinations for discovery had been completed. Subsequently, exhibits T, U, and V in the plaintiff's record demonstrate that the reason the defendant did not provide availabilities was that it was first waiting for clarification on whether the plaintiff intended to include his wife and daughter in the case. Lastly, as noted by the defendant, the plaintiff was prepared to go to trial when he filed his requisition for a pre-trial conference on May 24, 2016. Consequently, I do not see how the defendant's subsequent filing of a motion for summary judgment affected the status of the examinations for discovery. It was reasonable for Prothonotary Morneau to rely on subsection 258(2) of the Rules to strike out the plaintiff's examinations for discovery. I see no palpable and overriding error in the facts, nor any error of law on his part.

[8] The plaintiff also challenges the Prothonotary's striking out of the majority of the five cross-examinations on October 12, 2016. Prothonotary Morneau found that the cross-examinations violated rule 99, which stipulates that questions must be concise and separately numbered. After having read the cross-examinations, I find no palpable and overriding error by Prothonotary Morneau. The questions were accompanied by lengthy explanations, and Prothonotary Morneau nevertheless prepared a list of questions that the defendant was required to answer at paragraph 19 of his decision.

V. Conclusion

[9] For the foregoing reasons, I dismiss the plaintiff's motion to appeal with costs, which are set at \$1,500.

ORDER

THE COURT ORDERS that the plaintiff's motion to appeal be dismissed with costs, which are set at \$1,500, payable by the plaintiff to the defendant.

"B. Richard Bell"

Judge

Certified true translation
This 12th day of August 2019

Lionbridge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1813-14

STYLE OF CAUSE: LÉOPOLD CAMILLE YODJEU NTEMDE v HER
MAJESTY THE QUEEN

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: DECEMBER 8, 2016

ORDER AND REASONS: BELL J.

DATED: MARCH 27, 2017

APPEARANCES:

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FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Charles Junior Jean

FOR THE DEFENDANT

SOLICITORS OF RECORD:

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FOR THE DEFENDANT