

Federal Court



Cour fédérale

Date: 20190328

Docket: T-1408-18

Citation: 2019 FC 382

Ottawa, Ontario, March 28, 2019

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**NAVOT BEN ABRAHAM A.K.A.
SEANN JAMES FRIESEN**

Plaintiff

and

**RABBI MEIR KAPLAN,
CHABAD OF VANCOUVER ISLAND,
CHABAD OF DOWNTOWN VANCOUVER
AND MCCONNAN BION O'CONNOR
& PETERSON (COUNSEL),
CHABAD COMMUNITY MEMBERS OF
RABBI MEIR KAPLAN:
MAJOR GENERAL EDWARD FITCH,
ZEON ZETLER, CHARLOTTE A.
SOLOMON, ALL OTHER MEMBERS,
RT. MAJOR GENERAL EDWARD FITCH,
COMMISSIONERS PAST CHAIR BORED MEMBER
ZEON ZETLER OF ABURGINE SPECIALTY FOODS
AND CHARLOTTE A. SOLOMON, MICHAEL MARK,
T. REID FRASER AND MCCONNAN BION
O'CONNOR & PETERSON AND
ATTORNEY GENERAL OF BRITISH COLUMBIA
AND VICTORIA CROWN COUNSEL
AND VICTORIA POLICE DEPARTMENT
BOARD OF DIRECTORS AND SARGENT
DEREK TOLMIE, DETECTIVE HINES,
VICTORIA POLICE**

Defendants

ORDER AND REASONS

[1] On November 21, 2018, I struck Mr. Abraham's Statement of Claim against most of the defendants on the grounds that this Court was without jurisdiction. On November 27, 2018, he appealed my decision. The matter has not yet been set down for hearing before the Federal Court of Appeal.

[2] Nevertheless, on February 13, 2019, Mr. Abraham moved that I reconsider my decision of November 21, 2018. That is the matter currently before this Court.

[3] In order to put this motion in perspective, a brief summary of this file's history is necessary.

[4] In my decision of November 21, 2018, I struck the Statement of Claim against all the defendants with the exception of the Victoria Police Department Board of Directors, Sargent Derik Tolmie, Detective Hines and Victoria Police. Although they alleged in their Statement of Defence that this Court was without jurisdiction, they had not yet moved to have the Statement of Claim as against them struck. They subsequently so moved, and by Order dated December 4, 2018, I also struck the Statement of Claim as against them on the same grounds, that is, that this Court did not have jurisdiction over the subject matter of Mr. Abraham's complaints.

[5] At the present time, that decision is final as Mr. Abraham neither filed an appeal nor moved to have my decision reconsidered. Thus, this Order only applies to those defendants covered by my November 21, 2018 Order.

MOTION TO RECONSIDER

[6] The general rule is that the decision of a trial judge is final, subject to the cases provided under section 27(1) of the *Federal Courts Act* which allow the aggrieved party a right to appeal. Mr. Abraham has exercised that right.

[7] By way of exception, a decision may be reconsidered under *Federal Courts Rule 397(1)* if the Order did not accord with any reasons given for it or a matter that should have been dealt with had been overlooked or accidentally omitted. A motion to reconsider is to be brought within 10 days, or such other time as the Court may allow.

[8] In his motion, Mr. Abraham submits that I should reconsider my Order with respect to this Court's jurisdiction, and with respect to my Order that he pay costs to the pleading defendants.

ANALYSIS

[9] There must be some finality to the Court process. That is why delays are fixed. In some instances, such as under Rule 397(1), the Court has the discretion to extend those delays.

[10] There are a number of factors which the Court takes into account in deciding whether or not to exercise its discretion to extend time. One is to ascertain why the normal delays were not met and another is to determine whether there is any potential merit to the underlying motion (see such cases as *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA), (1999) 244 N.R. 399; *Thompson v Attorney General of Canada et al*, 2018 FCA 212 and *Villeneuve v Beaulieu*, 2010 FC 1226).

[11] Mr. Abraham has offered no excuse whatsoever in waiting more than two months to file this motion. For that reason alone, this motion is dismissed.

[12] Furthermore, in my opinion, there is no merit to his motion. Even if the various allegations in the Statement of Claim (which appear to be frivolous and vexatious) were to be established, and even if the *Charter* were thereby violated, this Court would still not have jurisdiction.

[13] As I stated in my decision of November 21, 2018, it is not enough to raise the *Charter* or other federal statutes. The *Charter* may provide a remedy if the underlying cause is Federal and has been assigned to this Court. Generally, a claim must fall within sections 17 to 25 of the *Federal Courts Act* or be specifically assigned to this Court by another federal statute. That is not the case here.

[14] Mr. Abraham is submitting that I got it wrong on the question of jurisdiction. Even if I were to agree with him, which I do not, I could not rewrite the decision. My task is done, I am

functus officio. If I am wrong on the question of jurisdiction, it is up to the Federal Court of Appeal to make it right; not me.

[15] Finally on the question of costs, Mr. Abraham's alleged impecuniosity was not before me. Costs are normally determined by an Assessment Officer pursuant to *Federal Courts Rules* 400 and following. If a party wishes that directions be given to the Officer under Rule 403, a motion is to be brought within thirty (30) days of the Order. That was not done.

[16] In any event, alleged impecuniosity does not give a party a free ride. Whether costs can be collected in full or in part is not the issue. A party's impecuniosity is rarely a relevant factor in the assessment of costs (*Leuthold v Canadian Broadcasting Corporation*, 2014 FCA 174 at para 12; *Louison v Ochapowace First Nation*, 2015 FC 195 at para 11).

ORDER in T-1408-18

FOR REASONS GIVEN the motion to reconsider is dismissed with cost in favour of the pleading defendants.

“Sean Harrington”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1408-18

STYLE OF CAUSE: NAVOT BEN ABRAHAM A.K.A. SEANN JAMES
FRIESEN v RABBI MEIR KAPLAN AND OTHERS

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO,
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS HARRINGTON J.

DATED: MARCH 28, 2019

WRITTEN REPRESENTATIONS BY:

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