**Date: 20090519**

**Docket: IMM-3211-08**

**Citation: 2009 FC 509**

**Ottawa, Ontario, May 19, 2009**

**PRESENT: The Honourable Mr. Justice Lemieux**

**BETWEEN:**

**TIMOTHY E. LEAHY, Esq.**
**and**
**FOREFRONT MIGRATION LTD.**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## REASONS FOR JUDGMENT AND JUDGMENT

[1] Pursuant to Rules 51 and 369 of the *Federal Courts Rules* (the *Rules*), the Applicants appeal Prothonotary Aalto's February 12, 2009 order, striking their application for leave and judicial review (the proceeding) without leave to amend and dismissing their request for the consolidation of this proceeding with other proceedings in this Court.

[2] Prothonotary Aalto based his decision on three grounds. First, he was of the view the Applicants had no standing to initiate the proceeding as they were not, pursuant to subsection 18.1(1) of the *Federal Courts Act* (the *Act*), directly affected by the matter in respect of which relief is sought; second, another proceeding seeking the same relief had been filed in this Court; and third, this proceeding was frivolous and vexatious and an abuse of process.

The Standard of Review

[3] The Federal Court of Appeal in *Merck & Co. v. Apotex Inc*., 2003 FCA 488, building on the Court's decision in *Canada v. Aqua-Gem Investments Ltd. (C.A.)*, [1993] 2 F.C. 425, held that on an appeal from a Prothonotary's decision the reviewing court should first determine whether the questions raised in the appeal are vital to the final issue of the case. If so, the reviewing Court must determine the matter *de novo*. If the vitality test is not met, then a Prothonotary's discretionary order is not to be set aside on appeal unless clearly wrong.

[4] In this case, the Prothonotary's order is vital to the final issue of the case as the Applicants' application for leave and judicial review has been struck with no possibility of amendment.

Facts

[5] Mr. Leahy acts in the capacity of General Counsel and Director of the second Applicant, Forefront Migration Ltd. (Forefront), specializing in immigration matters.

[6] On July 21, 2008, the Applicants, in their own names, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act* (*IRPA*), sought leave of the Court to commence an

application for judicial review of "the decision, dated June 16, 2008, Operations Manager Susan Burrows made on file B0527 22014 (MWA) at the Canadian Consulate General … Hong Kong … barring the reunification in Canada of a twelve-year old with his father."

[7] Yet this very same decision is the subject matter of a different application for leave and judicial review in Court file IMM-3214-08 between Tse-King Fu and Ko-Cheung Fu as Applicants. This application was signed by Ko-Cheung Fu as Applicant c/o Forefront. That leave application was prepared by Mr. Leahy or Forefront. It invoked the same grounds as IMM-3211-08, the taking into account of irrelevant considerations.

[8] Ko-Cheung Fu, a permanent resident in Canada, applied with the assistance of Mr. Leahy and Forefront to the Canadian Consulate General in Hong Kong, for his son's permanent resident visa invoking humanitarian and compassionate considerations. This application was refused by Susan Burrows on June 16, 2008. In that application for permanent residence, he was represented by Mr. Leahy and Forefront Migration Ltd.

Analysis and Conclusions

[9] Subsection 72(1) of the *IRPA* provides, by filing an application for leave, for judicial review in this Court from any decision made under *IRPA*.

[10] The *Federal Courts Immigration and Refugee Protection Rules* speak to procedural rules dealing with application for leave and the prescribed form.

[11] If leave is granted, the matter proceeds on judicial review under the *Federal Courts Act*. Section 18.1(1) of that *Act* provides an application for judicial review may be made "by anyone directly affected by the matter in respect of which relief is sought".

[12] Section 221.(1) of the *Federal Courts Rules* says the Court may strike a pleading that is "scandalous, frivolous or vexatious". In *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (C.A.), the Federal Court of Appeal held the Federal Court had inherent jurisdiction to dismiss an application for judicial review "that was so clearly improper as to be bereft of any possibility of success".

[13] In the case at hand, the Court is seized with two leave and judicial review applications seeking on the basis of the same ground, as the principal remedy, the quashing of Susan Burrows' June 16, 2008 decision refusing Mr. Ko-Cheung Fu's sponsored application for his son's permanent residence.

[14] This proceeding is in the name of Mr. Leahy and Forefront as Applicants (IMM-3211-08) and the other (IMM-3214-08) is filed by Mr. Leahy naming as Applicants the parties directly affected by the decision and by the relief sought by the father and his son.

[15] It is plain and obvious IMM-3211-08 is improperly brought and has no possibility of success.

[16] Prothonotary Aalto relied on the jurisprudence, cited by counsel for the Minister, to find the Applicants in this proceeding, Mr. Leahy and Forefront, had no direct interest and their application

should be struck. He also found the proceeding was vexatious in that it was the subject of the proceeding commenced in IMM-3214-08. Finally, he held that this proceeding was vexatious.

[17] I am familiar with the jurisprudence cited by counsel for the Minister, in respect of each of the independent three grounds upon which Prothonotary Aalto relied on to strike the proceeding was invoked. That jurisprudence amply supports his and my decision.

[18] Mr. Leahy, in his submissions to the Court in support of the appeal, did not substantively deal with this relevant case law. This appeal has no merit and is cluttered with submissions which miss the mark. A cost award in favour of the Minister is justified in the circumstances.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES** this appeal is dismissed with costs.

"François Lemieux"

_____

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

| | |
|---|---|
| **DOCKET:** | IMM-3211-08 |
| **STYLE OF CAUSE:** | TIMOTHY E. LEAHY, Esq. et al v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **DEALT IN WRITING:** | Ottawa, Ontario |
| **REASONS FOR JUDGMENT AND JUDGMENT:** | Lemieux J. |
| **DATED:** | May 19, 2009 |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Timothy E. Leahy, Esq.<br>General Counsel & Director<br>Forefront Migration Ltd.<br>Toronto, Ontario | FOR THE APPLICANTS |
| John H. Sims, Q.C.<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |