Federal Court | Cour fédérale

Date: 20130618

Docket: T-530-12

Citation: 2013 FC 670

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 18, 2013

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

AURÈLE MORIN

Plaintiff
(Respondent)

and

HER MAJESTY THE QUEEN

Defendant
(Moving Party)

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Court has before it a motion for summary judgment brought by the defendant, Her Majesty the Queen, under rule 213 of the *Federal Courts Rules*, SOR/98-106 [FCR] with respect to an action for damages by the plaintiff, Mr. Aurèle Morin, claiming $1,300,000 for: (i) loss of enjoyment and physical and moral damages that he suffered because the application by his wife, Ms. Yu Han, for a temporary resident visa dated November 15, 2006, was rejected; and (ii) loss of

enjoyment and physical and moral damages that he suffered because his wife's application for permanent residence dated April 30, 2007, was rejected.

[2] This motion is based essentially on the lack of a genuine issue for trial. The defendant submits that the plaintiff has not alleged any fault by her employees of a sort that would give rise to liability and that therefore his action in damages is clearly wrong in law. In her written motion, the defendant also argued that the action is out of time, an argument that was abandoned at the hearing.

[3] The defendant has convinced the Court of the merits of her arguments and, accordingly, for the reasons stated herein, her motion will be granted.

II. Facts and proceedings

[4] The following facts are not in dispute.

[5] The plaintiff is an 82-year old Canadian citizen and resides in Montréal. A teacher by profession, he is now retired and lives alone.

[6] In December 2003, the plaintiff decided to take the necessary steps to have his neighbour's sister, Yu Han, a 41-year old Chinese woman, come to Canada as a live-in caregiver, to keep him company and assist him with his household and domestic tasks.

[7] By letter dated October 12, 2004, the plaintiff requested [TRANSLATION] "the good services of Immigration to show understanding and cooperation" with respect to his plan.

[8] At the suggestion of Citizenship and Immigration Canada [CIC], the plaintiff entered into a Live-in Caregiver Contract of Employment with Ms. Han, in which she agreed to take care of the plaintiff, prepare his meals and handle the household and domestic tasks, at a salary of $8.00 an hour for 40 hours of work per week. The plaintiff agreed to provide Ms. Han with accommodation and furnishings, food and [TRANSLATION] “everything she needs”.

[9] On August 8, 2005, the plaintiff’s offer of employment was accepted by Human Resources and Skills Development Canada and by Quebec’s Minister of Immigration and Cultural Communities [MICCQ]. However, on April 6, 2006, the MICCQ rejected Ms. Han’s application for an acceptance certificate as a live-in caregiver because she did not have a working knowledge of French or English as required by paragraphs 112(d) and 113(1)(g) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

[10] Following this refusal, Ms. Han filed an application for a temporary resident visa for a six-month period together with a letter of invitation signed by the plaintiff dated May 17, 2006, stating that the plaintiff was a friend whom she wanted to get to know. A visa officer rejected the application on August 3, 2006, because he was not satisfied that Ms. Han would leave Canada by the end of the period authorized for her stay in accordance with paragraph 179(b) of the Regulations.

[11] The plaintiff says that he then decided to [TRANSLATION] “change Yu Han’s foreign national status to family status” in order to permit her to enter and reside in Canada. The plaintiff went to

China from October 27 to November 21, 2006. He married Ms. Han on November 6, 2006, and the couple travelled to Beijing on November 15, 2006, to file an application for a temporary visa for Ms. Han with the Canadian Embassy so that she could accompany her husband to Canada. This application was rejected the same day on the ground that Ms. Han had not demonstrated her intention to leave Canada by the end of the period authorized for her stay.

[12] In the plaintiff's view, that was the first fault by the defendant's officers that gave rise to her liability with respect to the plaintiff and for which he claims $650,000.

[13] Ms. Han did not seek judicial review of that decision, and she and the plaintiff preferred to take other steps to achieve their goals. They filed an application for permanent residence in the family class. On April 30, 2007, after interviewing the plaintiff and his wife, a visa officer rejected her application for permanent residence on the ground that the marriage was not genuine and was entered into primarily for the purpose of acquiring status in Canada for Ms. Han under subsection 4(1) of the Regulations, as it read at that time.

[14] That was the second fault committed by the defendant's agents against the plaintiff and for which he claims $650,000.

[15] In her decision, the officer considered the plaintiff's numerous attempts to obtain an entry visa into Canada for Ms. Han; the plaintiff's stated intentions that Ms. Han become his housekeeper not his wife; the fact that Ms. Han demonstrated limited knowledge about the plaintiff's life in Canada; the age difference between the spouses and the absence of a celebration of their marriage in

accordance with Chinese tradition. All this appears to have convinced the officer that the relationship was not genuine within the meaning of subsection 4(1) of the Regulations.

[16] The plaintiff appealed this decision to the Immigration Appeal Division [IAD]. This appeal *de novo* was dismissed on December 10, 2007, essentially on the same grounds raised by the visa officer. Before the IAD, the plaintiff argued that he had been shocked by the fact that his numerous applications to obtain a visa for Ms. Han had been rejected and that he had decided to marry her to make it easier for her to obtain an entry visa to Canada.

[17] The IAD noted at the outset that the plaintiff "did not understand the relevance of various sections of the (Immigration and Refugee Protection) Act and its objectives" and that his marriage, based on his own testimony, was an [TRANSLATION] "alternative" to permit Ms. Han to come to Canada and work as a housekeeper at the plaintiff's home. The IAD also noted that in addition to the plaintiff's admission that his marriage had been entered into for immigration purposes, the plaintiff and his wife had not spent a significant period of time together to get to know each other. In fact, they met only a few weeks before the marriage, and the plaintiff admitted that he had decided to marry Ms. Han even before he met her. Accordingly, the IAD found that the purpose of the sponsorship was, first and foremost, to enable Ms. Han to come to Canada and join her sister.

[18] The plaintiff waited four years before seeking judicial review of this IAD decision by this Court. His motion for an extension of time to file an application for leave and judicial review was dismissed on August 24, 2011 (IMM-3085-11).

[19] After the first appeal to the IAD was dismissed, Ms. Han filed a second application for a permanent resident visa in the spouse class. On June 30, 2008, that application was rejected by a different visa officer on the ground that, in his opinion, the marriage between the spouses was entered into primarily for the purpose of acquiring a status for Ms. Han and that the marriage was not genuine.

[20] The plaintiff again appealed that decision to the IAD, which considered the fresh evidence presented by the plaintiff (such as photographs, telephone bills, his insurance policy that Ms. Han was the beneficiary of and proof of a recent trip in China (February 6 to March 7, 2008)) and concluded in a decision dated January 8, 2009, that this evidence added nothing from which the IAD could conclude that the marriage was genuine since its decision of December 10, 2007. Moreover, the IAD noted that all the information presented by the plaintiff confirmed the admitted fact that his marriage had primarily been entered into "for immigration purposes" and that, in admitting this fact, the plaintiff showed he did not understand the statutory provisions that apply to applications to sponsor a spouse.

[21] The plaintiff challenged the dismissal of his second appeal in this Court, but the application for leave and judicial review was dismissed on April 27, 2009, because of the plaintiff's failure to file his record (IMM-352-09).

[22] On March 12, 2012, the plaintiff filed this action for damages. He is representing himself in the action as he is on this motion.

[23] On April 11, 2012, the defendant filed a defence in which she argues that the plaintiff has not alleged any fault on her part that could give rise to the damages he is claiming and that the defendant's employees did not commit any fault; that the plaintiff cannot, through an action for damages, challenge the decisions the legality of which the Court has confirmed; that the harm alleged by the plaintiff is not attributable to the defendant but solely to the choices and decisions made by the plaintiff himself and, finally that the plaintiff's action against the defendant for faults allegedly committed on November 15, 2006, and April 30, 2007, are statute-barred. As stated above, the defendant conceded at the hearing of its motion that, pursuant to section 31 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, a six-year limitation applied to the plaintiff's action since the cause of action arose outside the province, i.e. in China. The Court shares the defendant's opinion and accordingly this ground for dismissal will not be analyzed.

[24] On April 24, 2012, the plaintiff filed a reply to the plaintiff's defence, and the plaintiff's examination after defence took place on June 21 and September 13, 2012, following which the defendant filed this notice of motion for summary judgment on November 14, 2012.

III. **General principles governing motions for summary judgment**

[25] To succeed on her motion for summary judgment (see the relevant provisions of the FCR in the Annex) and to have the plaintiff's statement of claim dismissed, the defendant must establish that, as presented, the case "is so doubtful that it does not deserve consideration by the trier of fact at a future trial". However, before making that finding, the Court "must proceed with care, as the effect of the granting of summary judgment will be to preclude [the plaintiff] from presenting any evidence at trial with respect to the issue in dispute. In other words, the [the plaintiff] will lose its

'day in court'"(see *Source Enterprises Ltd v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 966 at para 20-21).

[26] It is a well-established principle laid down by the Supreme Court and applied by our Court that, although the onus is on the moving party to establish that there is no genuine issue for trial, the respondent (in this case the plaintiff) must "put its best foot forward" to demonstrate that its claim has "a real chance of success" (see *Hercules Managements Ltd v Ernst & Young*, [1997] 2 SCR 165 at para 15; and *Baron v Canada*, [2000] FCJ No 263 at para 24) on the usual standard of a balance of probabilities (*Teva Canada Ltd v Wyeth LLC*, 2011 FC 1169 at para 35-37).

[27] In *Granville Shipping Co v Pegasus Lines Ltd*, [1996] 2 FC 853 (TD) at para 8, Justice Tremblay-Lamer stated the following:

> I have considered all of the case law pertaining to summary judgment and I summarize the general principles accordingly:
>
> 1. the purpose of the provisions is to allow the Court to summarily dispense with cases which ought not proceed to trial because there is no genuine issue to be tried (*Old Fish Market Restaurants Ltd. v. 1000357 Ontario Inc. et al*);
>
> 2. there is no determinative test (*Feoso Oil Ltd. v. Sarla (The))* but Stone J.A. seems to have adopted the reasons of Henry J. in *Pizza Pizza Ltd. v. Gillespie*. <u>It is not whether a party cannot possibly succeed at trial, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial</u>;
>
> 3. each case should be interpreted in reference to its own contextual framework (*Blyth* and *Feoso*);
>
> 4. provincial practice rules (especially Rule 20 of the Ontario *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194]) can aid in interpretation (*Feoso* and *Collie*);

> 5. this Court may determine questions of fact and law on the motion for summary judgment if this can be done on the material before the Court (this is broader than Rule 20 of the Ontario *Rules of Civil Procedure*) (*Patrick*);
>
> 6. on the whole of the evidence, summary judgment cannot be granted if the necessary facts cannot be found or if it would be unjust to do so (*Pallman* and *Sears*);
>
> 7. in the case of a serious issue with respect to credibility, the case should go to trial because the parties should be cross-examined before the trial judge (*Forde* and *Sears*). The mere existence of apparent conflict in the evidence does not preclude summary judgment; the court should take a "hard look" at the merits and decide if there are issues of credibility to be resolved (*Stokes*).
>
> [Emphasis added; references omitted]

[28] Reference should also be made to the Supreme Court's teachings in *Canada (Attorney General) v Lameman*, 2008 SCC 14 at para 10-11 [*Lameman*]:

> . . . The summary judgment rule serves an important purpose in the civil litigation system. It prevents claims or defences that have no chance of success from proceeding to trial. Trying unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and on the justice system. <u>It is essential to the proper operation of the justice system and beneficial to the parties that claims that have no chance of success be weeded out at an early stage. Conversely, it is essential to justice that claims disclosing real issues that may be successful proceed to trial</u>.
>
> For this reason, the bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial": *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 27. The defendant must prove this; it cannot rely on mere allegations or the pleadings: *1061590 Ontario Ltd. v. Ontario Jockey Club*, (1995), 21 O.R. (3d) 547 (C.A.); *Tucson Properties Ltd. v. Sentry Resources Ltd*, (1982), 22 Alta. L.R. (2d) 44 (Q.B. (Master)), at pp. 46-47. If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal: *Murphy Oil Co. v. Predator Corp.* (2004), 365 A.R. 326, 2004 ABQB 688, at p. 331,

> aff'd, (2006), 55 Alta. L.R. (4th) 1, 2006 ABCA 69. Each side must "put its best foot forward" with respect to the existence or non-existence of material issues to be tried: *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*, (1996), 28 O.R. (3d) 423 (Gen. Div.), at p. 434; *Goudie v. Ottawa (City)*, [2003] 1 S.C.R. 141, 2003 SCC 14, at para. 32. The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts: *Guarantee Co. of North America*, at para. 30.
>
> [Emphasis added.]

IV. Analysis

[29] As stated above, the defendant submits that the plaintiff's statement of claim raises no triable issue and that it is clearly wrong in law because the facts that the respondent attributes to her employees are based on an erroneous understanding of the provisions that apply to his applications to CIC and are not the type of faults that give rise to liability on her part. Therefore, in the defendant's view, it is in the interests of justice and judicial economy to put an end to this litigation without holding a trial (*Lameman*, above, at para 10).

[30] The plaintiff's statement of claim refers essentially to the two unfavourable decisions he is challenging: the rejection of Ms. Yu Han's application for a temporary resident visa dated November 15, 2006, and the rejection of her application for permanent residence dated April 30, 2007. In passing, it should be noted that the plaintiff is asking the Court to strike and exclude from the record the exhibits tendered by the defendant concerning the steps the plaintiff took after those two decisions. This request is, however, baseless because the exhibits in question are not relevant to the litigation. Moreover, in view of the principle governing summary judgments to the effect that each side puts its best foot forward and adduces all the evidence that it might bring forward at trial (see *Bearspaw Band of the Stoney Band v. Canada*, 2006 FC 435 at para 36-37), the Court must be

reluctant to exclude evidence whose relevance is not seriously questioned by the party that seeks its exclusion.

Plaintiff's attempt to amend

[31] In his response to the notice of motion for summary judgment dated December 3, 2012, the plaintiff asks the Court to increase the amount of his claim by $700,000 in punitive and exemplary damages for a new total of $2,000,000.

[32] Furthermore, in an undated document entitled [TRANSLATION] *Preliminary information for the Court to clarify the record*, given to the Court at the beginning of the hearing, the plaintiff is now claiming (i) $650,000 for the defendant's refusal dated August 2, 2006, to issue the temporary visa requested by Ms. Han (no such cause of action is identified in the plaintiff's statement of claim); (ii) $650,000 for the defendant's refusal dated November 15, 2006, to issue the temporary visa requested by Ms. Han; (iii) $650,000 for the defendant's refusal dated April 30, 2007, to issue the permanent visa requested by Ms. Han; and (iv) $1,200,000 [TRANSLATION] "against the officer as a lesson and exemplary damages" for a total of $3,150,000. Last, the plaintiff asks the Court to order the defendant to send the permanent resident visa so sought after by Ms. Han to his address.

[33] First, under rules 75(1) and 200 of the FCR, the amendment of a pleading to which the opposing party has pleaded may be done only with that party's consent or with leave of the Court. Since the plaintiff has not obtained either, the Court will not consider these additional grievances and claims.

[34] Moreover, even if the Court had to consider the amendments to the plaintiff's claim after his statement of claim was filed, this would have no impact on the outcome of the motion for summary judgment because the amendments did not improve the plaintiff's position. On the contrary and, as stated below, they only confirm his frivolous and abusive position.

Decision of November 15, 2006

[35] In his statement of claim dated March 12, 2012, the plaintiff does not raise any "fault" by act, omission or negligence, attributable to the immigration officer at the Canadian Embassy in Beijing or to the defendant. He simply disputes the visa officer's decision dated November 15, 2006, refusing to issue a temporary visa to his wife. The plaintiff submits that the officer failed to observe a principle of natural justice or procedural fairness; that he issued a decision in a perverse or capricious manner without regard to the material before him and that he erred in law in making his decision. Assuming that these are legitimate grounds for judicial review under subsection 18.1(4) of the *Federal Courts Act*, RSC 1985, c F-7, these allegations cannot ground an action for damages.

[36] Although the courts have consistently held (*Canada (Attorney General) v TeleZone*, 2010 SCC 62; *Canada (Attorney General) v McArthur*, 2010 SCC 63; *Parrish & Heimbecker Ltd v Canada (Agriculture and Agri-Food)*, 2010 SCC 64; *Nu-Pharm Inc v Canada (Attorney General)*, 2010 SCC 65; *Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada*, 2010 SCC 66; and *Manuge v Canada*, 2010 SCC 67), that failure to seek judicial review of an administrative decision does not preclude an action for damages against the public authority, the fact remains that such an action cannot be based on simple grounds that give rise to judicial review.

[37] At the risk of repeating myself, in this case, the plaintiff has not demonstrated a genuine issue for trial, and there is no evidence of any “fault” on the part of the defendant or one of her officer employees, be it by act, omission or negligence.

[38] In *Farzam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1659, similar to the plaintiff’s action, a plaintiff was suing the Crown for damages he said he had suffered following his marriage breakdown, allegedly caused by the negligence of immigration officers in processing the plaintiff’s Minister’s Permit and his wife’s permanent resident visa. Justice Martineau wrote the following at paragraph 82:

> Crown liability is vicarious, not direct. In order for the Crown to be liable, a plaintiff must show that a Crown servant or servants, acting within the scope of employment, breached a duty that was owed to the plaintiff. The plaintiff must also establish that the breach caused the plaintiff injury of a sort that would attract personal liability against a private person. The relevant portion of section 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended by S.C. 1990, c. 8, s. 21 (the CLPA) provides as follows: ‘the Crown is liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable (a) in respect of a tort committed by a servant of the Crown. The liability arising under subsection 3 of the CLPA is qualified by section 10: ‘No proceedings lie against the Crown by virtue of the paragraph 3(a) in respect of any act or omission of a servant of the Crown unless the act or omission would apart from the provision of this Act have given rise to a cause of action in tort against that servant or that servant’s personal representative.’

[39] At paragraphs 93 and following of his decision, Justice Martineau found, applying the test set out by the Supreme Court in *Cooper v Hobart*, [2001] 3 SCR 537 at para 30 [*Cooper*], that the Crown and its public servants did not owe a duty of care to the plaintiff simply because of the implementation of the Canadian immigration policy established and recognized by statute. The

Court went farther by concluding that, even if the plaintiff had established a *prima facie* duty of care, at the second stage of analyzing the *Cooper* test, compelling residual policy considerations justify the Court to deny the liability of the persons responsible for the administrative implementation of immigration policies.

[40] In this case, it is precisely the operational implementation of the Act and its regulations that the plaintiff is challenging. In his written representations, as on his cross-examination, he emphasized the fact that after the marriage, Ms. Han was authorized to come to Canada with her husband and that the immigration officer could not reject her application for a temporary resident visa on the ground that she would not leave Canada by the end of the period authorized for her stay. Before the Court, the plaintiff even candidly acknowledged that he had chosen to request a temporary visa because, not knowing Ms. Han, he wanted to maintain the option of returning her to China if their personalities were not compatible or if he was not benefitting from their arrangement.

[41] It is clear that the marriage of Ms. Han and the plaintiff does not change the conditions for issuing a temporary resident visa. Even if the plaintiff succeeded in proving damages and in demonstrating a causal connection with the visa officer's refusal to issue this visa, the alleged facts cannot constitute a fault attributed to the defendant or her officer, who merely applied the law (paragraph 20(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] and paragraph 179(b) of the Regulations). In order to be granted a temporary resident visa, Ms. Han had to demonstrate that she intended to return to China by the end of the authorized period, which she did not even attempt to do.

Decision of April 30, 2007

[42] The same reasoning applies to the rejection of Ms. Han's application for a permanent resident visa. The plaintiff cannot rely on grounds for judicial review, as he did in his statement of claim, to justify an action for damages even though all his administrative applications had been unsuccessful including his applications for judicial review before this Court. On his cross-examination, the plaintiff stated that he faulted the visa officer for considering the history of his wife's immigration applications, both at their interview and in his decision. The plaintiff claims that he was shocked by the questions the officer asked him regarding the genuineness of his marriage with Ms. Han. Moreover, he alleges that the interview with the spouses should have taken place in Canada, not China, which would have happened had Ms. Han's application for temporary residence been approved in November 2006.

[43] As stated above, none of the facts the plaintiff relies on constitutes a fault attributable to the visa officer who rejected the application for temporary residence; on the contrary, that decision is well founded in fact and in law. It is clear that all applications for permanent residence in the family class must be determined in accordance with subsection 12(1) of the Act and section 4 of the Regulations. These provisions require that spouses or common law partners have acted in good faith by proving that their relationship is genuine and that it was not entered into primarily for the purpose of acquiring a status or privilege under the Act.

[44] Before the officer, the plaintiff admitted that, in the beginning, he did not intend to marry Ms. Han but wanted to hire her as a live-in caregiver so that she could take care of him and his house. He never contradicted himself on this point, either before the officer or before the IAD. In

this Court, the plaintiff even argued that because Ms. Han was refused an entry visa, he was forced to marry her to achieve his goals. In other words, if all his previous applications had not been rejected, he would not have had to marry Ms. Han unless, obviously, their employer-employee relationship had evolved in that direction. After all, the plaintiff tells us, they would have been alone in his house.

[45] It is clear from all these allegations that the plaintiff's action is based on an erroneous perception of the requirements and statutory procedures that apply to the steps he took to bring Ms. Han to Canada. The Court is perfectly aware that the plaintiff simply wanted to continue living in his own home without being a burden on his only son. However, the plaintiff's action does not have the slightest chance of success because he has not established any fault attributable to an employee of the moving party of a sort that would give rise to liability on her part.

[46] The plaintiff submits that he acted listening only to his common sense rather than complying with the Act. He was wrong, and the defendant cannot be held liable for the choices the plaintiff and Ms. Han made. All the decisions issued by the defendant's officers are reasoned and well founded, and the plaintiff did not challenge their legality, every time he had the opportunity to do so.

[47] For all these reasons, I have no doubt that the success of the underlying application is so doubtful that it does not deserve consideration by the trier of fact at a future trial. Therefore, the defendant's motion for summary judgment is granted, and the plaintiff's action against the defendant is dismissed with costs.

JUDGMENT

THE COURT ORDERS AND ADJUDGES AS FOLLOWS:

1. The defendant's motion for summary judgment is granted;

2. The plaintiff's action against the defendant dated March 12, 2012, is dismissed; and

3. Costs are awarded to the defendant.

"Jocelyne Gagné"

Judge

Certified true translation
Mary Jo Egan, LLB

Annex

Sections 213 to 216 of the *Federal Courts Rules*, SOR/98-106:

213. (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.	213. (1) Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heures, date et lieu de l'instruction soient fixés.
(2) If a party brings a motion for summary judgment or summary trial, the party may not bring a further motion for either summary judgment or summary trial except with leave of the Court.	(2) Si une partie présente l'une de ces requêtes en jugement sommaire ou en procès sommaire, elle ne peut présenter de nouveau l'une ou l'autre de ces requêtes à moins d'obtenir l'autorisation de la Cour.
(3) A motion for summary judgment or summary trial in an action may be brought by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.	(3) La requête en jugement sommaire ou en procès sommaire dans une action est présentée par signification et dépôt d'un avis de requête et d'un dossier de requête au moins vingt jours avant la date de l'audition de la requête indiquée dans l'avis.
(4) A party served with a motion for summary judgment or summary trial shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.	(4) La partie qui reçoit signification de la requête signifie et dépose un dossier de réponse au moins dix jours avant la date de l'audition de la requête indiquée dans l'avis de requête.
214. A response to a motion for	214. La réponse à une requête

summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.	en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.
215. (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.	215. (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.
(2) If the Court is satisfied that the only genuine issue is	(2) Si la Cour est convaincue que la seule véritable question litigieuse est:
(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or	a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;
(b) a question of law, the Court may determine the question and grant summary judgment accordingly.	b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.
(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may	(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut:
(a) nevertheless determine that issue by way of summary trial	a) néanmoins trancher cette question par voie de procès

and make any order necessary for the conduct of the summary trial; or

somaire et rendre toute ordonnance nécesIADre pour le déroulement de ce procès;

(b) dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

216. (1) The motion record for a summary trial shall contain all of the evidence on which a party seeks to rely, including

216. (1) Le dossier de requête en procès sommaire contient la totalité des éléments de preuve sur lesquels une partie compte se fonder, notamment:

(a) affidavits;

a) les affidavits;

(b) admissions under rule 256;

b) les aveux visés à la règle 256;

(c) affidavits or statements of an expert witness prepared in accordance with subsection 258(5); and

c) les affidavits et les déclarations des témoins experts établis conformément at paragraphe 258(5);

(d) any part of the evidence that would be admissible under rules 288 and 289.

d) les éléments de preuve admissibles en vertu des règles 288 et 289.

(2) No further affidavits or statements may be served, except

(2) Des affidavits ou déclarations supplémentaires ne peuvent être signifiés que si, selon le cas:

(a) in the case of the moving party, if their content is limited to evidence that would be admissible at trial as rebuttal evidence and they are served and filed at least 5 days before the day set out in the notice of motion for the hearing of the summary trial; or

a) s'agissant du requérant, ces affidavits ou déclarations seraient admissibles en contre-preuve à l'instruction et leurs signification et dépôt sont faits au moins cinq jours avant la date de l'audition de la requête indiquée dans l'avis de requête;

(b) with leave of the Court.

b) la Cour l'autorise.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-530-12
STYLE OF CAUSE:	AURÈLE MORIN v HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	May 6, 2013
REASONS FOR JUDGMENT:	GAGNÉ J.
DATED:	June 18, 2013

APPEARANCES:

Aurèle Morin	FOR THE PLAINTIFF (RESPONDENT) (SELF-REPRESENTED)
Émilie Tremblay	FOR THE DEFENDANT (MOVING PARTY)

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