

A-361-97

CORAM: DÉCARY J.A.
LÉTOURNEAU J.A.
ROBERTSON J.A.

BETWEEN:

WILLIAM SCOTT SIM

Appellant

AND:

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa (Ontario) on Tuesday, October 21, 1997

Judgment delivered at Ottawa, on October 21, 1997

REASONS FOR JUDGMENT BY:

DÉCARY J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
ROBERTSON J.A.**

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REASONS FOR JUDGMENT

DÉCARY J.A.

On January 16, 1997, the appellant filed an Amended Statement of Claim against the respondent for "**MANAGERIAL NEGLIGENCE** in Administrative Neglect of duty, years 1988-1992 and 1992-1994" (Tab 1). On February 14, 1997, the respondent filed a Motion to strike out the Statement of Claim pursuant to Rule 419 of the Federal Court Rules ("the Rules"). The grounds of the motion were the following:

THE GROUNDS OF THE MOTION ARE that:

(a) the Statement of Claim is:

(i) frivolous and vexatious;

(ii) likely to prejudice, embarrass or delay the fair trial of the action;

(iii) otherwise an abuse of the process of the Court;

(iv) does not comply with the *Federal Court Rules* governing pleadings;

(v) does not sufficiently reveal the facts on which the Plaintiff has based his

cause of action to make it possible for the Defendant to know the case which has to be met or to answer the claim, and for the Court to regulate the proceedings in the action;

(vi) is fundamentally defective, inadequate and unintelligible.

(b) the Defendant is unable to effectively plead to the Plaintiff's Statement of Claim in its present form;

(c) the Defendant has reasonable grounds for challenging the propriety of the Plaintiff's Statement of Claim;

(d) a similar action was struck out in Federal Court No. T-664-95;

(e) *Federal Court Rules C.R.C. 1978*, c. 663, in particular Rules 407 to 410, 412, 415, 419(1), (a), (b), (c), (d), (f), 420.

[Tab 13]

On March 18, 1997, the Motions Judge struck out the appellant's Statement of Claim "as it discloses no reasonable cause of action, it is vexatious and constitutes an abuse of process of the court for the same reasons given by Prothonotary Hargrave in his decision dated 31 May 1995" (Tab 18).

On March 27, 1997, the appellant filed a Notice of motion for reconsideration of judgment pursuant to Rule 337(5).

On May 8, 1997, the Motions Judge dismissed the reconsideration motion in the following terms:

Considering that the Applicant has not raised any valid ground for reconsideration of my judgment dated March 18, 1997, the motion is dismissed.

[Tab 5]

On May 9, 1997, the appellant filed an appeal with respect to the reconsideration decision. No appeal was ever filed with respect to the original decision to strike out the Statement of Claim made on March 18, 1997.

The within appeal, therefore, relates solely to the reconsideration decision dated May 8, 1997. The jurisprudence of the Court is to the effect that unless the initial decision has also been appealed, that decision cannot be challenged collaterally through

an appeal of the reconsideration decision¹. The only decision which is before us is therefore the reconsideration decision, and the appellant has failed to demonstrate that the Motions Judge erred in a reviewable way in exercising her discretion under Rule 337(5).

The appellant at the hearing sought leave to amend his Notice of Appeal in order to direct his attack also on the initial decision dated March 18, 1997. We deny his motion, the effect of which would have been to substantially alter the issues raised in the appeal and to do so in a most untimely manner.

The appeal should be dismissed.

"Robert Décary"
J.A.

"I agree
Gilles Létourneau J.A."

"I agree:
J.T. Robertson J.A."

FEDERAL COURT OF APPEAL

A-361-97

¹See: *Lamoureux v. Canadian Air Line Pilots Association et al* (28 October 1993), A-1049-91 (F.C.A.) [unreported], *Ager v. U.T.U Local 701* (6 March 1991), A-185-89 (F.C.A.) [unreported] and *Sarty v. Canada (Labour Relations Board)* (6 April 1987), A-91-86 (F.C.A.) [unreported].

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