Federal Court of Appeal  Cour d'appel fédérale

Date: 20130530

Docket: A-150-13

Citation: 2013 FCA 143

Present: **STRATAS J.A.**

BETWEEN:

ANTHONY COOTE

Appellant

and

LAWYERS' PROFESSIONAL INDEMNITY COMPANY

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on May 30, 2013.

REASONS FOR ORDER BY: STRATAS J.A.

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REASONS FOR ORDER

STRATAS J.A.

[1] Currently before the Federal Court is an application (file T-312-13) to declare the appellant a vexatious litigant under section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The application is to be heard on June 10, 2013.

[2] Before this Court are two appeals from interlocutory orders of the Federal Court made within the vexatious litigant application:

a. An appeal (A-104-13) from an interlocutory order made by the Federal Court on March 18, 2013 (*per* Manson J.);

b. An appeal (A-150-13) from an interlocutory order made by the Federal Court on April 11, 2013 (*per* Boivin J.).

[3] Recently, the Registry, acting under Rule 72, referred the notice of appeal in A-150-13 to me for direction as to whether it should be filed. I directed that it be filed. The Registry also alerted me to the existence of the appeal in A-104-13.

[4] In the course of preparing my direction, I reviewed the two appeal files, A-150-13 and A-104-13. From that review, I decided to invite submissions from the parties on two matters: whether the two appeals should be consolidated and whether the appeals should be stayed pending the Federal Court's determination of the vexatious litigant application.

[5] I have received and considered those submissions. In my view, the two appeals should be consolidated. Further, in my view, the consolidated appeals should be stayed pending the Federal Court's determination of the vexatious litigant application.

A. Consolidation

[6] In my invitation to the parties to provide submissions, I shared certain observations with them. I observed that this Court has the jurisdiction to consolidate separate appeals on its own

motion: *Montana Band v. Canada* (1989), 182 F.T.R. 161 (C.A.). I also observed that, subject to submissions received from the parties, the two appeals are quite related, raised quite similar issues, and related to procedural matters leading up to the vexatious litigant application.

[7] In their submissions, the parties did not take serious issue with these observations. Given the factual and legal similarity of the two appeals, the lack of prejudice to anyone, and the obvious advantages of efficiency and minimization of costs, consolidation is appropriate. Accordingly, under Rule 105, I shall order that the two appeals be consolidated.

B. Staying the consolidated appeals

[8] This Court has jurisdiction to stay the consolidated appeals. That jurisdiction is founded upon section 50 of the *Federal Courts Act*, *supra*, and this Court's plenary jurisdiction to manage and regulate its own proceedings: *Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 5; *Association des Compagnies de Téléphone du Québec Inc. v. Canada (Attorney General)*, 2012 FCA 20. As explained in *RBC Life Insurance Company*, this Court's plenary jurisdiction is indistinguishable from the inherent power of provincial superior courts to manage and regulate their own proceedings.

[9] The appellant submitted that this Court could stay the consolidated appeals only upon satisfaction of the three-fold test in *RJR-MacDonald Inc v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[10] I disagree. In these circumstances the Court need only determine whether a stay is in the interests of justice: *Mylan Pharmaceuticals ULC v. AstraZeneca Canada, Inc.*, 2011 FCA 312 at paragraphs 3-14; *Federal Courts Act*, *supra*, paragraph 50(1)(*b*).

[11] As explained in *Mylan*, there is a difference between this Court issuing a stay to enjoin another body from exercising its jurisdiction and this Court issuing a stay to refrain from exercising its own jurisdiction in a pending appeal. The *RJR-MacDonald* test, a test suitable for injunctive relief, applies to the former. With respect to the latter,

> …we are exercising a jurisdiction that is not unlike scheduling or adjourning a matter. Broad discretionary considerations come to bear in decisions such as these. There is a public interest consideration – the need for proceedings to move fairly and with due dispatch – but this is qualitatively different from the public interest considerations that apply when we forbid another body from doing what Parliament says it can do. As a result, the demanding tests prescribed in *RJR-MacDonald* do not apply here.

(*Mylan*, *supra* at paragraph 5.)

[12] Whether this Court will issue a stay to refrain from exercising its own jurisdiction over a pending appeal – *i.e.*, to suspend or delay it – depends on the factual circumstances presented to the Court, guided by certain principles. These principles include securing "the just, most expeditious and least expensive determination of every proceeding on its merits": *Federal Courts Rules*, SOR/98-106, Rule 3.

[13] Additional principles guide this Court in the exercise of its plenary jurisdiction to manage and regulate proceedings. As long as no party is unfairly prejudiced and it is in the interests of justice – vital considerations always to be kept front of mind – this Court should exercise its

discretion against the wasteful use of judicial resources. The public purse and the taxpayers who fund it deserve respect. As well, cases are interconnected: one case sits alongside hundreds of other needy cases. Devoting resources to one case for no good reason deprives the others for no good reason.

[14] Applying these principles, I find that staying the consolidated appeals pending the Federal Court's determination of the vexatious litigant application does not prejudice the appellant in any way and is in the interests of justice:

a. To the extent the appellant succeeds in defending the vexatious litigant application in the Federal Court, the consolidated appeals, related as they are to the vexatious litigation application, might seen as moot (subject to the receipt of submissions on the point) and, therefore, unnecessary to prosecute.

b. To the extent the appellant fails, the vexatious litigant application is granted, and the appellant is declared a vexatious litigant, he can appeal to this Court. That appeal can then be consolidated with the consolidated appeals, or heard alongside of them. If he prevails in the consolidated appeals in this Court, this Court can consider whether the designation of the appellant as a vexatious litigant can still survive. And, of course, on appeal of that designation to this Court, the appellant can raise any other admissible grounds of appeal.

c. I am not satisfied that it would be unfair or would work a prejudice to the appellant to allow the vexatious litigant application to proceed in the Federal Court as scheduled. Indeed, had a motion been brought in this Court to stay the vexatious litigant application in the Federal Court pending this Court's determination of the consolidated appeals, the *RJR-Macdonald* test would have to be satisfied (see paragraph 11, above). There is nothing before me to suggest any sort of harm or inconvenience to the appellant, let alone the sort of harm or inconvenience necessary for the granting of such a stay.

[15] In his material, the appellant signals that at the hearing of the vexatious litigant application in the Federal Court he will submit that the consolidated appeals in this Court must be heard and determined first. If the appellant advances that submission, the Federal Court should consider it based on the material before it, unencumbered by any of the observations I have made in these reasons. It may be that the Federal Court will be aware of considerations not present in the material before me.

[16] Therefore, I shall issue an order staying the consolidated appeals.

[17] Further, upon the filing of a notice of appeal in this Court from the judgment of the Federal Court in the vexatious litigant application or the expiry of the time for doing so, whichever is earlier, I direct the Registry to return the consolidated appeals files to me so that I may invite the parties to make submissions as to the status of the consolidated appeals. I also direct that, in any event, four

months from now, the Registry should return the consolidated appeals files to me for examination and, if necessary, further direction.

C. Other matters

[18] The appellant has brought a motion to determine the contents of the appeal book and for related relief in the consolidated appeals. Since the consolidated appeals will be stayed, the motion need not be determined at this time.

[19] The appellant is also an appellant in this Court in the consolidated appeals in files A-409-12, A-410-12 and A-411-12. In those consolidated appeals, due to the past conduct of the appellants, I found it necessary to order that the Registry not accept for filing any motions brought by the appellants for reconsideration or variation of orders made by this Court unless the notice of motion states grounds that are expressly listed in Rules 397 and 399. Given the past conduct, I will make the same order here. This is nothing more than an insistence that the appellant comply strictly with the Rules. This helps to prevent motions for reconsideration or variation that have no merit and that undercut the principles set out in paragraphs 12 and 13, above.

[20] I direct the Registry to place a copy of these reasons in both this file and file A-104-13.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-150-13
STYLE OF CAUSE:	Anthony Coote v. Lawyers' Professional Indemnity Company

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	Stratas J.A.
DATED:	May 30, 2013

WRITTEN REPRESENTATIONS BY:

Anthony Coote	ON HIS OWN BEHALF
Raj Anand Faren H. Bogach	FOR THE RESPONDENT

SOLICITORS OF RECORD:

WeirFoulds LLP Toronto, Ontario	FOR THE RESPONDENT