

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141022

**Dockets: A-147-11
A-186-11**

Citation: 2014 FCA 238

**CORAM: NOËL C.J.
DAWSON J.A.
STRATAS J.A.**

BETWEEN:

FRANCIS MAZHERO

Appellant

and

**ANDREW FOX, JACQUES ROBERGE AND
NEIL SHARKEY**

Respondents

Dealt with in writing without appearance of parties.

Judgment delivered at Ottawa, Ontario, on October 22, 2014.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

**NOËL C.J.
DAWSON J.A.**

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] Mr. Mazhero has brought five new motions within these consolidated appeals.

[2] As will be seen, this Court has repeatedly expressed its concern that Mr. Mazhero has been pursuing the consolidated appeals for collateral purposes. He has been repeatedly warned that failure to stick to the task at hand – the perfection of his consolidated appeals – would result

in their dismissal: see *Mazhero v. Fox*, 2014 FCA 200, *Mazhero v. Fox*, 2014 FCA 219, *Mazhero v. Fox*, 2014 FCA 226. He has been given every opportunity to advance his appeals to a hearing on the merits.

[3] These five new motions – all abusive and irrelevant to the appeals – and Mr. Mazhero’s persistent and continued defiance of orders of this Court show that he will not deviate from a pattern of abusive litigation behaviour and is ungovernable. For these reasons, I would dismiss the consolidated appeals with costs.

A. Background facts

[4] In the consolidated appeals, Mr. Mazhero sought to quash Judgments of the Federal Court declaring him to be a vexatious litigant. He started his appeals on March 30, 2011 and April 28, 2011.

[5] On September 11, 2014 this Court issued an order allowing the consolidated appeals to continue: *Mazhero v. Fox*, 2014 FCA 200. It did so despite their multi-year, tortured history and Mr. Mazhero’s tendency to flood the Court with motions.

[6] This Court’s reasons in support of its October 1, 2014 Order, described below, describe this history and tendency on the part of Mr. Mazhero. This forms an essential part of the backdrop against which the five new motions must be assessed.

[7] On September 11, 2014, this Court ordered that these consolidated appeals be case managed so that the consolidated appeals could be made ready for hearing as quickly as possible. Although the Federal Court had declared Mr. Mazhero a vexatious litigant, he had the right to appeal that finding to this Court as long as he prosecuted his appeals diligently and showed himself to be governable. This approach guided this Court in its Orders dated October 1, 2014 and October 9, 2014.

C. The October 1, 2014 Order and Reasons: Mazhero v. Fox, 2014 FCA 219

[8] The October 1, 2014 Order dismissed several irrelevant and meritless motions brought by Mr. Mazhero and set a strict timetable for the remaining procedural steps in the consolidated appeals to be completed.

[9] In its reasons, the Court advised Mr. Mazhero about what to include in the appeal books (at paragraph 28). It was explained to him that orders, once rendered by the Court, are final and must be obeyed. The Order made it clear that the Court's ability to revisit orders – set out in Rules 397 and 399 – is very narrow indeed. In the course of this, several motions in which Mr. Mazhero improperly sought to revisit earlier orders were dismissed.

[10] In dismissing those motions, the Court observed (at paragraph 25):

These particular motions cause concern. Is the appellant truly interested in appealing the merits of the Federal Court's judgments declaring him a vexatious litigant? Or, instead, is he interested in using the consolidated appeals as a forum to pursue improper collateral purposes? I address this concern below.

[11] The reasons went on to warn Mr. Mazhero as follows (at paragraphs 34-35):

Lastly, if the orders I am making today are not obeyed, if a party brings multiple motions seeking relief this Court has no jurisdiction to give, if a party persists in moving to set aside every order without any basis, or if a party brings motions that are frivolous and vexatious, I will take decisive action in accordance with this Court's plenary power to redress an abuse of its processes.

For example, if the appellant engages in that sort of conduct, I shall conclude that the consolidated appeals are nothing more than a tool to pursue improper purposes and I shall dismiss the consolidated appeals summarily as an abuse of process. As mentioned above, I do have concerns in this regard, but I hope I am wrong.

[12] Mr. Mazhero was urged to devote his energies to getting his appeal ready for hearing (at paragraph 36):

If the appellant believes his appeals to be well-founded, he must now work in an orderly, diligent and single-minded way to get them ready for hearing soon so that this Court can consider them fairly on their merits.

[13] Informed, educated and warned in the clearest possible terms, Mr. Mazhero now had a clear opportunity to prosecute the consolidated appeals in an orderly and efficient way so that the Court could hear them soon on their merits. Mr. Mazhero squandered that opportunity.

D. The October 9, 2014 Order and Reasons: Mazhero v. Fox, 2014 FCA 226

[14] Just two days after the October 1, 2014 Order, Mr. Mazhero brought two new motions. By Order of October 9, 2014, these were dismissed, each on multiple grounds, including abuse of process (at paragraph 20). On one of the motions, the Court observed (at paragraph 16):

Mr. Mazhero brought the *ex parte* contempt motion only for the collateral purpose of harming two of the respondents and a Registry Officer. He did not bring it to protect his rights concerning these consolidated appeals or to assist him in advancing them to a hearing on the merits.

[15] The warnings in paragraphs 11 and 12 above were repeated “one last time” using very direct language (at paragraph 18). In even more direct language, Mr. Mazhero received a last warning: “[i]f Mr. Mazhero brings a motion or makes any submissions at any time for purposes” other than “to protect his rights concerning these consolidated appeals or to assist him in advancing these consolidated appeals to a hearing on the merits,” the consolidated appeals “shall be immediately and summarily dismissed with costs” (at paragraphs 19 and 21). For good measure, these words were reproduced in paragraph 2 of the October 9, 2014 Order.

[16] In short, despite Mr. Mazhero’s defiance of the October 1, 2014 Order, he was permitted one last opportunity to proceed to the merits of his appeals. Now he has squandered that opportunity too.

E. The five new motions

[17] Before the Court are five new motions. These motions violate paragraph 2 of the October 9, 2014 Order (described in paragraph 19, above), ignore all warnings previously given, and constitute an abuse of process. The motions are as follows:

- A motion to set aside this Court’s October 9, 2014 Order that dismissed Mr. Mazhero’s motion to set aside the Court’s July 9, 2014 Order. Among other things, the motion is an attempt to relitigate a matter already rejected for relitigation and other fatal flaws.

- A motion asking that this Court hear certain earlier motions dating back to 2010 and 2011 seeking to quash certain Federal Court and Prothonotary orders. These orders are not the subject of a notice of appeal to this Court. They are now final and unappealable. They are also irrelevant to the issues in the consolidated appeals.
- A motion to set aside a direction the Court made on October 1, 2014. That direction concerns a filing irregularity in one of the motions dismissed on October 1, 2014. It has nothing to do with the issues in the consolidated appeals. Mr. Mazhero further alleges that the direction was obtained by fraud. Nothing before the Court supports that allegation. Finally, directions that concern minor administrative matters – here an explanation about a filing irregularity that caused no harm – cannot be appealed: see, *e.g.*, *Tajdin v. His Highness Prince Karim Aga Khan*, 2012 FCA 238.
- A motion that Justice Sharlow should hear Mr. Mazhero's motion dated August 13, 2014 seeking to reverse this Court's July 9, 2014 Order. This is yet another instance of relitigation: on October 1, 2014, this Court dismissed the August 13, 2014 motion, among other things rejecting Mr. Mazhero's contention that Justice Sharlow must hear the motion.
- A second motion identical to the last, except that it concerns a duplicative motion brought on August 14, 2014. To the extent that the August 14, 2014 motion was

not dealt with in the Court's October 1, 2014 Order, it is entirely duplicative of the August 13, 2014 motion that was dismissed.

F. Proposed disposition

[18] Access to courts is important – hence the repeated guidance, warnings, and opportunities this Court has given to Mr. Mazhero. But there comes a point when enough is enough.

[19] Here, we are past that point. Despite repeated opportunities to show himself to be governable and to progress his appeals to a hearing on the merits, Mr. Mazhero has not wavered: he intends to pursue his own path, one that cannot be tolerated.

[20] For the foregoing reasons and in accordance with paragraph 2 of this Court's October 9, 2014 Order, I would dismiss the consolidated appeals with costs.

"David Stratas"

J.A.

"I agree
Marc Noël C.J."

"I agree
Eleanor R. Dawson J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-147-11 AND A-186-11

STYLE OF CAUSE:

FRANCIS MAZHERO v.
ANDREW FOX, JACQUES
ROBERGE AND NEIL SHARKEY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY:

STRATAS J.A.

CONCURRED IN BY:

NOËL C.J. AND DAWSON J.A.

DATED:

OCTOBER 22, 2014

WRITTEN REPRESENTATIONS BY:

Francis Mazhero

ON HIS OWN BEHALF

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS,
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