Federal Court  Cour fédérale

Date: 20230206

Docket: T-326-20

Citation: 2023 FC 168

Ottawa, Ontario, February 6, 2023

PRESENT: The Honourable Madam Justice Rochester

BETWEEN:

GÉRALD McNICHOLS TÉTREAULT

Plaintiff

and

CITY OF BOISBRIAND, LE QUARTIER FORESTIA INC. AND INVESTISSEMENTS KANATA INC.

Defendants

JUDGMENT AND REASONS

[1] The Plaintiff, Gérald McNichols Tétreault, is self-represented. He brings the present motion in writing pursuant to Rules 51 and 369 of the Federal Courts Rules, SOR/98-106 [Rules] to appeal an Order of the Case Management Judge, Associate Judge Alexandra Steele, who granted each of the Defendants' motions to strike the Statement of Claim and dismissed the Plaintiff's motion to amend his Statement of Claim [Order].

[2] The relief the Plaintiff seeks may be summarized as follows: (i) an extension of the delay in which to serve and file his appeal; (ii) a suspension of the proceedings until such time as a decision is rendered; (iii) permission for his memorandum of appeal to exceed 30 pages; (iv) grant his motion to file the amended Statement of Claim, with certain modifications; (v) reverse the Order to strike his Statement of Claim and his replies to the defences, with certain modifications; (vi) a declaration that the Order in fact recognized his copyright in certain literary and artistic works; (vii) a consideration of the reasonable apprehension of bias that arises from the contents of the Order; and (viii) costs.

[3] For the reasons that follow, the present motion is dismissed. When applying the standard of review as set out in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], I find that there is no basis upon which this Court may intervene. Associate Judge Steele did not err in her application of the law, nor did she err with respect to her findings of fact.

I. Background

[4] The Plaintiff is an urban planner and member of the Order of Urbanists of Quebec. He alleges that from 2009 to 2012, he was engaged by the Defendant Investissements Kanata Inc. [Kanata] and conceived a concept for a project based on the integration of agriculture into a mixed-use development project to be located in Boisbriand [Kanata Project]. The land in question is protected as agricultural land by the Commission de Protection du Territoire Agricole [CPTAQ]. The project never moved beyond the proposal stage. The Plaintiff alleges that in 2012, Kanata refused to renew his mandate and cancelled the Feasibility Study proposal.

[5] Kanata alleges that at the beginning in the early 2000s, discussions took place for a development project on land owned by Kanata and several others, located in Boisbriand. Kanata confirms that they had engaged the Plaintiff in 2009 to provide a concept for a development. The first version of the project was known as “Projet Versailles” or “Jardins du Roi”. Kanata alleges that in 2012 the Plaintiff rebaptized the project “Écopolis” and proposed a feasibility study. Given the costs, Kanata decided to not move forward with a development project and terminated the Plaintiff’s mandate.

[6] In 2017, Kanata entered into a conditional purchase agreement with the majority shareholder of the Defendant Le Quartier Forestia Inc. [Forestia] for lots Kanata owned in Boisbriand. The Defendant Forestia was incorporated on June 22, 2017.

[7] The Plaintiff alleges that in June 2019 he realized that a project entitled Forestia Le Quartier [Forestia Project] was to be located in the same area as the former Kanata Project site. He alleges that the Forestia Project is based on the concept of integrating an agricultural component with a housing development, which he pleads was the main feature of the Kanata Project. The Plaintiff alleges that Forestia misappropriated his work, and this alleged unlawful act was supported by the City of Boisbriand [City] and permitted by Kanata.

[8] On December 20, 2019, the Plaintiff registered a work entitled “Écopolis du Boisbriand” with the Canadian Intellectual Property Office in the literary and artistic category (registration number 1165056) [Work].The Plaintiff claims that the Work is comprised of 14 documents prepared between 2009 and 2012, which include reports, agreements, letters, and an oral

presentation. The Plaintiff highlights that, when searched, the most common of the 94 key words he selected in the 14 documents are “agr” (as variations on agriculture, agricultural, agrarian, etc.) and “project”.

[9] The Plaintiff alleges the Forestia Project advertises the agricultural component, but in practice the agricultural and natural heritage component is not reflected in its preliminary development. The Plaintiff alleges that Forestia not only infringes his copyright but also damages the reputation of his idea itself (by not implementing it properly) and therefore harms the Plaintiff. The Plaintiff further alleges that his work on the Kanata Project greatly increased the real estate value of the land that had been the site of the Kanata Project. The Plaintiff alleges that Kanata unjustly blocked the Kanata Project thereby depriving him of income he would have earned if the project had moved forward and thus harming his reputation.

[10] On March 2, 2020, the Plaintiff filed a Statement of Claim naming Kanata, Forestia and the City as Defendants. The Plaintiff claims $24,000,000 for misappropriation of intellectual property and breach of copyright; $500,000 in punitive damages from each Defendant to deter them from further infringement and “sanction [their] reckless, high handed and unlawful conduct”; and legal fees estimated at $500,000. In the Plaintiff’s replies to the three defences, he revised his claim such that it comprised claims for: (i) breach of contract; (ii) loss of commercial opportunity; (iii) unauthorized disclosure of copyrighted sensitive commercial information; (iv) punitive damages for deception, failure to act in good faith, lies, breach of confidence, and false allegations; (v) costs of litigation; (vi) moral damages, deep wound from the failure of the Kanata Project, humiliation, loss of reputation, feelings of betrayal, lack of respect, suffering,

and the deception and discouragement caused to members of the Plaintiff's team. The revised quantum of the Plaintiff's claim is $15,836,724.

[11] Kanata alleges that it is not affiliated nor involved with the concept, design, promotion or realization of the Forestia Project, nor has it communicated any of the documentation relating to the Kanata Project.

[12] Forestia alleges that it had no knowledge of the Plaintiff or the concept for the Kanata Project as described in the Plaintiff's claim and accompanying documents. Forestia alleges that it, along with experts it engaged, conceived the Forestia Project and was unaware of the previous work performed on the Kanata Project. Forestia pleads that its project is different from the Kanata Project, and that in any event the Plaintiff does not have a monopoly on or own the copyright to ideas for urban development. Forestia alleges that its project has not been approved by the CPTAQ and thus any action is premature.

[13] The City alleges that its only involvement in the Forestia Project is having analyzed the project and having supported it before the CPTAQ for the purposes of having the project site rezoned and excluded from the agricultural zone. The City alleges it has never used the material from the Kanata Project, nor provided it to Forestia. The City pleads that the Plaintiff cannot seriously claim to have created the concept of urban agriculture.

[14] The Defendants plead that the Plaintiff has not alleged a single copyright violation, namely that the Defendants reproduced the Work, if it even exists, or a part thereof.

[15] Following the close of pleadings, on October 23, 2020, the Defendants each filed motions to strike the Statement of Claim and sought declarations that the proceedings constitute an abuse of process.

[16] On January 28, 2021, Associate Judge Steele was assigned to the matter as Case Management Judge.

[17] On February 15, 2021, the Plaintiff sought to serve an Amended Statement of Claim on the Defendants, to which they objected.

[18] Following a case management conference held on April 16, 2021, Associate Judge Steele directed that the Defendants' motions to strike and the Plaintiff's motion to amend his Statement of Claim (as amended on March 15, 2021) be heard together on May 27, 2021.

[19] On March 3, 2022, Associate Judge Steele rendered the Order, which:

- Dismissed the Plaintiff's motion to amend the Statement of Claim with costs in favour of the Defendants;
- Granted the Defendants' motions to strike;
- Struck the Statement of Claim filed March 2, 2020, without leave to amend;
- Struck the Plaintiff's replies filed June 17, 2020, without leave to amend; and
- Provided for submissions on the issue of costs.

[20] On May 4, 2022, the Plaintiff filed a notice of motion to appeal the Order.

[21] I note that the Plaintiff is self-represented in the context of the present motion, as well as the motions that were the subject of the Order. With respect to the Statement of Claim and the Amended Statement of Claim, the Plaintiff was represented by Charles O'Brien of Lorax Litigation.

II. Standard of Review

[22] Decisions made on motions to strike are discretionary in nature (*Feeney v Canada*, 2022 FCA 190 [*Feeney*]). The applicable standard of review for an appeal under Rule 51 of a discretionary order of an Associate Judge is set out in *Hospira* at paragraphs 64, 66 and 79. Such orders are to be reviewed on the civil appellate standard (*Housen v Nikolaisen*, 2002 SCC 33) and "should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts" (*Hospira* at para 64). Questions of mixed fact and law are subject to the palpable and overriding error standard while questions of law, and mixed questions where there is an extricable question of law, are subject to the standard of correctness (*Worldspan Marine Inc v Sargeant III*, 2021 FCA 130 at para 48).

[23] An exercise of discretion by an Associate Judge involves applying legal standards to the facts as found. For the purposes of the *Housen* framework, exercises of discretion are questions of mixed fact and law (*Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at para 72 [*Mahjoub*]). Such questions of mixed fact and law, including exercises of discretion, can be set aside only on the basis of palpable and overriding error unless an error on an extricable question of law or legal principle is present (*Mahjoub* at para 74).

[24] The palpable and overriding error standard is a highly deferential one (*Feeney* at para 4). "Palpable" means an error that is obvious, while "overriding" means an error that goes to the very core of the outcome of the case (*Canada v South Yukon Forest Corporation*, 2012 FCA 165 at para 46 [*South Yukon*]). When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing, rather the entire tree must fall (*South Yukon* at para 46; *Mahjoub* at para 61).

[25] Associate Judge Steele is the case management judge in the present proceedings. As stated by my colleague Justice Andrew D. Little, on a Rule 51 appeal "a case management judge is assumed to be very familiar with the particular circumstances and issues in a proceeding" and their "decisions are afforded deference, especially on factually-suffused questions" (*Hughes v Canada (Human Rights Commission)*, 2020 FC 986 at para 67).

III. Analysis

[26] On the whole, I find that the Plaintiff has not clearly identified a reviewable error on the part of Associate Judge Steele. It is evident that the Plaintiff disagrees with the contents of the Order, however, disagreement in and of itself is insufficient to meet the test on appeal outlined above.

A. *The Plaintiff's allegations of bias on the part of Associate Judge Steele*

[27] As a preliminary point, the Plaintiff alleges bias on the part of Associate Judge Steele. In particular, he alleges that the contents of the Order give rise to a reasonable apprehension of bias

on the part of the Associate Judge. By way of example, Associate Judge Steele found that the contents of the Amended Statement of Claim did not enable her to conclude that the requested amendments would cure the shortcomings and deficiencies identified in the Statement of Claim. The Plaintiff states that he felt that this finding by Associate Judge Steele was a contemptuous value judgment, gratuitous, frivolous and unnecessarily vexatious. The Plaintiff submits that the Court adopted the Defendants' position and entered into a collective effort with them in order to destroy by any means what he considers to be his valid claim. The fact that the Court declined to provide him with an opportunity to amend, in his view, evidences bias. The Plaintiff submits that the denial of his motion to amend is effectively the Court refusing to hear him based on superficial, scandalous, frivolous and vexatious reasons.

[28] An allegation of bias engages the very foundation of our judicial system. It calls into question not only the personal integrity of Associate Judge Steele in this instance but generally the integrity of the entire administration of justice (*Coombs v Canada (Attorney General)*, 2014 FCA 222):

> [14] Further, the appellants repeatedly attack the integrity of the Prothonotary, of the Judge and of the Federal Court …. The appellant's allegations are most serious, and such a step should not be undertaken lightly. Indeed, an allegation of bias engages the very foundation of our judicial system. The appellants' allegations call into question not only the personal integrity of the Prothonotary and of the Judge, but the integrity of the entire administration of justice.
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> [Citation omitted.]

[29] The test for determining whether there is actual bias or a reasonable apprehension of bias by a decision maker is well established. The Supreme Court in *Committee for Justice and Liberty et al v National Energy Board et al*, [1978] 1 SCR 369 at pages 394 and 395 explains:

> [T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude"
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> . . . The grounds for this apprehension must, however, be substantial . . . [and not] related to the "very sensitive or scrupulous conscience".

[30] More recently, the Federal Court of Appeal in *Firsov v Canada (Attorney General)*, 2022 FCA 191 has confirmed that the test is:

> [56] … .whether "an informed person, viewing the matter realistically and practically – and having thought the matter through – … [would] think that it is more likely than not that the [decision-maker], whether consciously or unconsciously, would not decide fairly": *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at paras. 20-21, 26.

[31] The Supreme Court in *Cojocaru v British Columbia Women's Hospital and Health Centre*, 2013 SCC 30 [*Cojocaru*] explains that the presumption of judicial impartiality is strong and cannot be easily rebutted:

> [15] Judicial decisions benefit from a presumption of integrity and impartiality — a presumption that the judge has done her job as she is sworn to do. This reflects the fact that the judge is sworn to deliver an impartial verdict between the parties, and serves the policy need for finality in judicial proceedings.
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> [20] The threshold for rebutting the presumption of judicial integrity and impartiality is high. The presumption carries

> considerable weight, and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption.
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> [22] The basic framework for assessing a claim that the judge failed to decide the case independently and impartially may be summarized as follows. The claim is procedural, focussing on whether the litigant's right to an impartial and independent trial of the issues has been violated. There is a presumption of judicial integrity and impartiality. It is a high presumption, not easily displaced. The onus is on the person challenging the judgment to rebut the presumption with cogent evidence showing that a reasonable person apprised of all the relevant circumstances would conclude that the judge failed to come to grips with the issues and decide them impartially and independently.

[32] It is the Plaintiff, the one alleging bias, who bears the onus of rebutting the presumption with cogent evidence showing that a reasonable person apprised of all the relevant circumstances would conclude that Associate Judge Steele failed to come to grips with the issues and decide them impartially and independently (*Cojocaru* at para 22).

[33] Having considered the Plaintiff's arguments, which are based on the text of the Order and his experience of his exchanges with Associate Judge Steele at the hearing, I find that he has failed to adduce any evidence that could meet the high threshold necessary to rebut the presumption of judicial integrity and impartiality. I have also noted the contents of Exhibit X of the Plaintiff's motion record, which are his transcriptions of certain extracts of the hearing on May 27, 2021.

[34] The fact that a member of the Court, in this instance Associate Judge Steele, disagrees with and rejects a litigant's argument is not, in and of itself, bias. Ultimately, Associate Judge Steele agreed with the position of the Defendants rather than that of the Plaintiff. Based on the

material before me, I am not persuaded that a reasonable apprehension of bias exists in the present case.

B. *The Plaintiff's failure to file a notice of motion within 10 days after the Order*

[35] The Order was rendered on March 3, 2022. The Plaintiff served and filed his notice of motion to appeal on May 4, 2022. Pursuant to Rule 51(2) of the Rules, the notice of motion ought to have been filed within ten days after the day upon which the Order was rendered.

[36] In his initial submissions, the Plaintiff states that he missed the deadline because of difficulties with obtaining confirmation of service; he was self-represented; and the matter is complex. In his reply submissions the Plaintiff states that since he was already late, he decided to take the time to properly analyze the Order and submit a compliant document.

[37] The Defendants submit that it is not in the interest of justice to permit an extension of time on the basis that the Plaintiff provided no circumstances justifying the delay; the Plaintiff is simply seeking to re-plead his motion; he has not identified a reviewable error; and the appeal is abusive in nature.

[38] The Federal Court of Appeal in *Alberta v Canada*, 2018 FCA 83 sets out the criteria that are helpful in determining whether granting an extension is in the interest of justice:

> [44] In *Canada (Attorney General) v. Hennelly (1999)*, 44 N.R. 399 (F.C.A.) (*Hennelly*), this Court listed four questions relevant to the exercise of discretion to allow extension of time under Rule 8:
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> (1) Did the moving party have a continuing intention to pursue the proceeding?

> (2) Is there some merit to the proceeding?
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> (3) Has the defendant been prejudiced from the delay?
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> (4) Does the moving party have a reasonable explanation for the delay?
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> [45] These questions are helpful to determine whether the granting of an extension is in the interest of justice, because the overriding consideration or the real test is ultimately that justice be done between the parties (*Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C.R. 263 at 277-279 (F.C.A.)). Thus, *Hennelly* does not provide an extensive list of questions or factors that may be relevant in any given case, nor is the failure to give a positive response to one of the four questions referred to above necessarily determinative (*Canada (Attorney General) v. Larkman*, 2012 FCA 204, at para. 62).

[39] The Plaintiff does evidence a continuing intention to pursue the appeal and I find that the Defendants have not been prejudiced by the delay.

[40] The fact that the Plaintiff is self-represented is not, in and of itself, a reasonable explanation for the delay, nor is choosing to take an additional month and a half of time in order to draft a more considered and fulsome document.

[41] What is determinative, in my view, is whether there is some merit to the appeal. Given the points raised by the Plaintiff in his motion record and his reply, I am satisfied that there is no merit to the present appeal and it is not in the interest of justice to grant an extension. Nevertheless, given that this is a motion in writing that has been fully ventilated, I will proceed to discuss the merits of the present appeal in greater detail below.

C. *Merits of the Appeal*

[42] Associate Judge Steele granted each of the Defendants' motions to strike the Statement of Claim and dismissed the Plaintiff's motion to amend his Statement of Claim.

[43] Ultimately, the Associate Judge found that the Plaintiff failed to allege what part of the alleged Work had been reproduced by Forestia. The Associate Judge found that while the Plaintiff alleged that the notion of an agricultural component to the Forestia Project was borrowed from his work, this was an allegation based on an idea rather than one based on the expression of an idea. Associate Judge Steele relied on the following paragraph from *Cinar Corporation v Robinson*, 2013 SCC 73:

> [24] The [Copyright] Act protects original literary, dramatic, musical, and artistic works: s. 5. It protects the expression of ideas in these works, rather than ideas in and of themselves: *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 S.C.R. 339, at para. 8. An original work is the expression of an idea through an exercise of skill and judgment: *CCH*, at para. 16. Infringement consists of the unauthorized taking of that originality.

[44] The Associate Judge noted that an action based on the infringement of copyright requires an allegation that a defendant has reproduced a work or a substantial portion of a work, rather than an idea or a concept. She determined that the Plaintiff did not allege that the Defendants plagiarized specific passages of one or more texts, drawings, or plans, but rather he alleged they plagiarized a central theme or concept being that of an agricultural component to the project.

[45] Associate Judge Steele found that the absence of allegations to the effect that the Defendants had reproduced all or part of the alleged literary and artistic work was fatal to the claim. Consequently, Associate Judge Steele concluded that the Plaintiff's action for copyright infringement reveals no reasonable cause of action, is doomed to fail, and thus must be struck.

[46] As to the Amended Statement of Claim, Associate Judge Steele noted it was contained in three volumes totalling 1,656 pages. She found it confusing, lengthy, difficult to follow, and neither reasonable nor proportional in light of the nature or complexity of the matter. Associate Judge Steele concluded that the proposed amendments did not permit the Defendants to properly respond nor did it allow the Court to properly conduct the proceedings. The Associate Judge noted that the Amended Statement of Claim was signed by a lawyer, and found that the Plaintiff knew or ought to have known that the document was non-compliant and the proposed amendments had no reasonable chance of being accepted.

[47] Having carefully read both the Statement of Claim and the Amended Statement of Claim, I am not persuaded that Associate Judge Steele committed a palpable and overriding error with respect to her appreciation and characterization of the contents of the Plaintiff's pleadings.

[48] What the Plaintiff appears to fail to appreciate is that despite the very large volume of material in his Statement of Claim, Amended Statement of Claim, and attached documentation, he fails to allege with any detail how the Work, or a substantial part thereof, was reproduced. He makes numerous general allegations that "his intellectual property had been misappropriated by

the Defendants" but never states that a specific part of the Work was copied beyond a general concept or idea, namely the agricultural component.

[49] The Plaintiff claims that the Work is comprised of 14 documents prepared between 2009 and 2012, which include reports, agreements, letters, and an oral presentation. The Statement of Claim states that the ensemble of the documentation contains 249 references to "the radical 'agr' as in agriculture, agricultural, agrarian, agriculturalist, agronomy, etc.," that "confirms that the integration of an agricultural component is the essential innovative characteristic that makes it possible to differentiate the [Kanata Project] from any other projects in Canada." I note that it is common ground that the land sought to be developed is in fact agricultural land that the City and Forestia have been seeking to have rezoned.

[50] Other than specifically referencing the presence of "agr" in the documentation as a basis for the integration of an agricultural component in the project, the Plaintiff provides no specific references in the Statement of Claim as to what portions of the Work is alleged to be reproduced in full or in part.

[51] The Plaintiff alleges that the Order falsely declares that he has not identified what was "borrowed" by Forestia. The Plaintiff states that paragraph 47 of the Statement of Claim in fact specifies six borrowed elements. It is worthwhile quoting several paragraphs of the Statement of Claim, including paragraph 47, for context:

> 45. The project announced on June 20, 2019 by Le Quartier Forestia on land partly owned by Kanata is based on the integration of an agricultural component with a housing development project of 5,000 homes. This is the direct borrowing

> of the main feature of the Boisbriand Écopolis concept. It is the crossing of a red line by Kanata whom should have officially informed Forestia of the existence of the Écopolis project, the promoters of the Forestia District and the city of Boisbriand since the current owners of the site including KANATA as well as the City of Boisbriand are well informed of the copyright ownership of the Plaintiff who has been recognized in successive agreements signed between Kanata and the Plaintiff. It is impossible that the promoter was not informed of the copyrights affecting the specificity of the Boisbriand Écopolis.
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> 46. The Boisbriand Écopolis project has greatly increased the real estate value of land owned by Kanata, SENC Dubois and Alain Poudrette. This increase in value was however conditional on the implementation of the approach described in the literary work of the Boisbriand Écopolis. The literary support of Écopolis has been partly borrowed without authorisation to create the description of the Forestia and City of Boisbriand project.
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> 47. The misappropriation made by Quartier Forestia supported by City of Boisbriand and allowed by Kanata affects the general concept, the agricultural component, the sugar bush component, the component of market places and public services and the component resulting from the involvement of the city. Quartier Forestia completely ignores the agricultural and natural heritage component. In addition, the major-component of agriculture that Quartier Forestia announces in its texts is not reflected in its concept of preliminary development. There is no mention of any agricultural in Forestia's preliminary plan. See Exhibit P-44.
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> 48. Having used the proposition of an agricultural component that is the main characteristic of the Écopolis description support, not only infringes the copyright of the Plaintiff but damages the reputation of the idea itself and, therefore, harms the Plaintiff whose implementation of the experimental project remains the only possibility of obtaining the approvals required for the project to materialize.

[52] The Plaintiff alleges that the misappropriation affects the "general concept" and lists a number of components, including the agricultural component. In my view, the Plaintiff appears to be alleging that Forestia's misappropriation of the agricultural component affects the general

concept and related components of his concept and ultimately damaged the reputation of his idea.

[53] Furthermore, although the Plaintiff now pleads on appeal that the "sugar bush component" is an element that he identified as "borrowed" by Forestia and the City from the Work, this contradicts the statement in his Amended Statement of Claim. The Plaintiff alleges in his Amended Statement of Claim that the protection of the sugar bush component, the maple forest, and the water courses is required by law and "[f]or that reason Plaintiff does not consider them as the result of misappropriation but of a legal obligation for any developer" (Amended Statement of Claim, at para 8.55.11 at 266-267, 1165-1167 of the motion record). The Amended Statement of Claim confirms later that the "protection of Sugar Bush" is "compulsory application of environmental protection law".

[54] The Amended Statement of Claim states Forestia directly borrowed the component of a public market, and that in the Plaintiff's concept it was an essential component to create a relationship between agriculture and neighbourhood life (*ibid*, para 8.55.11). The Plaintiff, however, then alleges that "in the end you realize the Public Market in Forestia's project is an empty shell in the middle of a Transit Parking lot" (*ibid*, para 8.55.11). In any event, the Plaintiff has not specified in his submissions on appeal how the concept of having a public market and public services in a development project of several thousand homes is protected by copyright or how Associate Judge Steele erred by not recognizing that it could be protected as such.

[55] Similarly, I do not find that Associate Judge Steele erred by failing to explicitly address such general concepts or ideas as the “general concept”, “the component of market places and public services” and the “component resulting from the involvement of the city”, mentioned in paragraph 47 of the Statement of Claim in the Order. As noted above, Associate Judge Steele addressed the “agricultural component” in detail in the Order.

[56] The Plaintiff pleads that if Associate Judge Steele had allowed his motion to amend the Statement of Claim, it would have resolved the issues with the Statement of Claim. Upon examination, however, the Plaintiff’s Amended Statement of Claim suffers from the same ultimate defect that his Statement of Claim does. I am not persuaded that Associate Judge Steele erred by not permitting the Plaintiff to seek to cure the defects in his Statement of Claim with his Amended Statement of Claim.

[57] By way of example, the Plaintiff makes general allegations that the Defendants “misappropriate[d] the intellectual literary and artistic Plaintiff’s property” (para 8.56.13, at 274); misappropriated “concepts and orientations” and became “an ode to urban agriculture” (para 8.56.14, at 274-275); and “the importance was to have a non-compromising agricultural proposition to loot the quintessence of the Plaintiff’s innovative intellectual property” (para 8.56.17, at 276).

[58] In the Amended Statement of Claim, the Plaintiff spends paragraphs 8.56.23 through 8.56.32 detailing his position that the “agricultural component” is not simply a neutral idea but rather is the essential component of his intellectual property. He likens it to “haute couture”, a

sculpture, a painting, a piece of music, and pleads that even taking a portion of his idea, is akin to stealing a piece of "a Leonardo painting, a Michelangelo sculpture, or a Saint-Laurent dress" that would immediately be recognized. The Plaintiff alleges that this component is not simply an idea akin to a golf club, cricket field, deer forest, casino, skate park or marina, but instead is "an essential Part of the quintessence of the [Kanata Project] [and] [w]hat Defendants City of Boisbriand and Forestia looted from Plaintiff's intellectual property is not only an agricultural component, it is the quintessence of the [Kanata Project]".

[59] In paragraph 8.65.1 and following of the Amended Statement of Claim (at 328-335), the Plaintiff reproduces the key word search of the documents comprising the alleged Work mentioned in the Statement of Claim, including those words that are variations on the word agriculture. The Plaintiff also includes a chart containing the frequency of key words from documents relating to the Forestia Project that he describes as "a series of documents that we qualify as 'publicité' in the sense that it is a corpus containing everything that has been made public at (sic) about this project by the real estate developer including newspaper articles or radio reports that describe or refer to this project". The Plaintiff then alleges that the keyword most often used for the Forestia Project is "project" with 92 occurrences, followed by "agr" with 74 occurrences. The Plaintiff alleges that the use of the term "agriculture" in Forestia's advertising evidences the misappropriation of the Plaintiff's "intellectual, literary and artistic property".

[60] As stated above, in my view, the foregoing is insufficient to demonstrate that Associate Judge Steele committed a palpable and overriding error by not permitting the Plaintiff to seek to

cure the defects in his Statement of Claim by permitting him to file his Amended Statement of Claim.

[61] The Plaintiff alleges on appeal that the Order failed to mention a number of key elements in the Amended Statement of Claim, notably allegations of collusion, a tacit agreement between Kanata and Forestia, circumstantial evidence of the personal and professional involvement of an ex-mayor and a director of the City, and documentary evidence of infringement. Having reviewed the paragraphs referenced by the Plaintiff, I am not persuaded that the Associate Judge erred by not specifically mentioning those sections of the Amended Statement of Claim. By way of example, in paragraphs 8.60.1 and following of the Amended Statement of Claim (at 316-331), the Plaintiff compares the text of various published materials side-by-side in chart form, however the comparison is between earlier descriptions of the Forestia Project and later descriptions of the Forestia Project. The aim appears to be to demonstrate that the publicity surrounding the Forestia Project changed with the addition of an agricultural component to the project. The Plaintiff does not provide a comparison of his alleged Work with the material published on the Forestia Project. The contents of those paragraphs do not serve to demonstrate a palpable and overriding error on the part of the Associate Judge.

[62] The Plaintiff alleges that Associate Judge Steele sought to discredit his Amended Statement of Claim by referring to it as being comprised of 1,656 pages. He states that it was comprised of three volumes but once you remove the tables of contents, images, tables, and evidence, what remains is only 223 pages of alleged facts. I do not consider Associate Judge Steele’s description of the Amended Statement of Claim to be a reviewable error. The tables,

images and exhibits are spread through each of the three volumes and frequently inserted among the alleged facts. It is a well-established principle that a member of the Court is presumed to have considered all of the material before them (*Gordon v Canada*, 2023 FCA 12 at para 16), and thus it was not a palpable and overriding error for the Associate Judge to mention the total number of pages before her.

[63] The Plaintiff alleges that the Court recognized his copyright in the Kanata Project at paragraph 48 of the Order and that this recognition is a major finding that ought to have been stated as part of the Order. Contrary to what the Plaintiff alleges, Associate Judge Steele did not make a finding on his rights in the alleged Work. Rather, as part of her analysis on the motions to strike, she properly assumed the facts alleged in the Statement of Claim to be true.

[64] Finally, a point on the issue of language. The Plaintiff objects to Associate Judge Steele's description of the Amended Statement of Claim at paragraph 19, in which she remarked that the amended text was difficult to follow, the line between fact, criticism and opinion was blurred, and she struggled to identify the purpose and intent of a number of the amendments, including what was being replaced, corrected, supplemented, and what was new.

[65] The Plaintiff pleads that this commentary by the Associate Judge is inexplicable given that he produced a 62-page request at the request of the Registry and "in French" [emphasis in the original] explaining the amendments and making links between the paragraphs in the Statement of Claim and the Amended Statement of Claim. This request, which is structured like a memorandum, is contained at the motion record at Exhibit H.

[66] The Statement of Claim and the Amended Statement of Claim are in English. The Defendants' defences are in French. The Plaintiff appears to submit that he prepared the document at Exhibit H in French so as to ensure he would be understood. I wish to assure the Plaintiff that files such as the present, where there are documents in both official languages, are assigned to members of the Court who are bilingual. Associate Judge Steele and I are bilingual members of the Court.

[67] Nevertheless, given what appears to be the Plaintiff's concern and that it is important that the Plaintiff fully understand the reasons for which his motion to appeal is denied, I have prepared this judgment in English. A translation in French will follow.

IV. Conclusion

[68] The Plaintiff bears the burden of establishing an error in law or a palpable and overriding error on the part of the Associate Judge. Based on the motion record before me, he has failed to do so. Consequently, this motion to set aside the Order of Associate Judge Steele is hereby dismissed.

V. Costs

[69] The Defendants seek costs but have not made submissions as to quantum. The Defendants submit that the motion to appeal was an abuse of process given its length and absence of alleged reviewable errors. The Plaintiff has simply submitted that the costs awarded in the Order are premature.

[70] There is no reason in the present matter to depart from the usual practice of awarding costs to the successful parties, the Defendants.

[71] Pursuant to Rule 400(1), the Court has full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. In exercising that discretion, the Court may consider the factors set out in Rule 400(3), which include: the result of the proceeding; the importance and complexity of the issues; whether the public interest in having the proceeding litigated justifies a particular award of costs; any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; and, any other matter that the Court considers relevant. The Court may fix all or part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs (Rule 400(4)).

[72] I find, under the circumstances, that an award of costs to the Defendants, as the successful parties, based on Column III of Tariff B is appropriate (Rule 407).

JUDGMENT in T-326-20

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's motion to set aside Associate Judge Steele's Order, dated March 3, 2022, striking out his Statement of Claim without leave to amend, dismissing his motion to amend his Statement of Claim, striking out his replies to the Defendants' defences, with costs, is hereby dismissed; and

2. The Defendants are each awarded costs based on Column III of Tariff B (Rule 407).

"Vanessa Rochester"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-326-20
STYLE OF CAUSE:	GÉRALD McNICHOLS TÉTREAULT v CITY OF BOISBRIAND ET AL

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	ROCHESTER J.
DATED:	FEBRUARY 6, 2023

WRITTEN REPRESENTATIONS BY:

Gérald McNichols Tétreault	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Grace Mahoney	FOR THE DEFENDANT CITY OF BOISBRIAND
Denis Cloutier	FOR THE DEFENDANT LE QUARTIER FORESTIA INC.
Mathieu Piché-Messier Stéphane Gascon	FOR THE DEFENDANT INVESTISSEMENTS KANATA INC.

SOLICITORS OF RECORD:

Bélanger Sauvé S.E.N.C.R.L. Montréal, Quebec	FOR THE DEFENDANT CITY OF BOISBRIAND
Cain Lamarre S.E.N.C.R.L. Montréal, Quebec	FOR THE DEFENDANT LE QUARTIER FORESTIA INC.
Borden Ladner Gervais S.E.N.C.R.L. Montréal, Quebec	FOR THE DEFENDANT INVESTISSEMENTS KANATA INC.