Federal Court  Cour fédérale

Date: 20140604

Docket: T-2262-12

Citation: 2014 FC 538

Vancouver, British Columbia, June 4, 2014

PRESENT: Case Management Judge Roger R. Lafrenière

BETWEEN:

SAMEER MAPARA

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

[1] The Defendant, Her Majesty the Queen (the Crown), seeks an order pursuant to Rule 416 of the *Federal Courts Rules* that the Plaintiff, Mr. Sameer Mapara, give security for the Crown's costs in this action in the amount of $15,430.78.

[2] The Crown also seeks an order preventing the Plaintiff from taking any further step in this action until the security requested has been paid into Court and an extension of time to serve and file the Crown's pre-trial conference memorandum until 30 days from the date security is posted.

[3] For the reasons that follow, the motion is granted.

I. Nature of the Plaintiff's Claim

[4] The Plaintiff is a federally incarcerated inmate serving a life sentence for first degree murder at Ferndale Institution, a minimum-security federal correctional facility located in Mission, British Columbia.

[5] On December 18, 2012, the Plaintiff commenced the underlying action in damages against the Crown following his involuntary placement in administrative segregation for a 20-day period, from June 1, 2012 to June 20, 2012. The Plaintiff alleges that the Warden of Ferndale Institution wrongfully and without justification directed that the Plaintiff be removed from the general population, involuntarily transferred to Mission Institution and placed in administrative segregation in its secure custody unit.

[6] The Plaintiff was informed that the placement action was being taken according to subsection 311(2)(a) of the *Corrections and Conditional Release Act* because there were reasonable grounds to believe that the Plaintiff had acted, or attempted to act, in a manner that jeopardized "the penitentiary or the safety of any person". In particular, the Plaintiff was accused of making misrepresentations regarding a charitable fundraiser proposal and producing misleading documentation. The Ferndale Management Team expressed concern that the Plaintiff and his family members may have been beneficiaries of the charity.

[7] The Plaintiff claims that there is no factual foundation for the allegations against him and that the placement was in reprisal for the Plaintiff's use of the grievance process and for bringing several proceedings against the Warden of Ferndale Institution, including a number of applications for judicial review before this Court and several *habeus corpus* petitions to the

British Columbia Supreme Court, the British Columbia Court of Appeal and the Supreme Court of Canada.

[8] The Plaintiff alleges in the Statement of Claim that he was falsely and wrongfully imprisoned by the Warden, that the Warden was negligent is fulfilling the statutory duty owed to the Plaintiff, and that his section 7, 9 and 12 *Charter* rights were breached, thus warranting a remedy pursuant to section 24(1) of the *Charter*.

II. Procedural History

[9] The Crown's Statement of Defence was served on February 1, 2013. There is no record of any Reply being filed by the Plaintiff.

[10] On July 5, 2013, the Plaintiff brought a motion in writing seeking relief from the implied undertaking rule that would allow the Plaintiff to use certain documents produced in the present action for use in an appeal to the British Columbia Court of Appeal of a decision of the British Columbia Supreme Court pronounced on February 14, 2013 dismissing the Plaintiff's application for *habeus corpus*. By Order dated August 16, 2013, the motion was granted without costs.

[11] On February 7, 2014, the Chief Justice ordered that the proceeding continue as a specially managed proceeding. The Plaintiff was directed to submit, following consultation with the Crown, a proposed timetable for completion of the next steps in the proceeding within 20 days.

[12] On February 25, 2014, the Plaintiff submitted a letter advising that the parties had agreed that the Plaintiff would serve and file a requisition for pre-trial conference and a pre-trial conference memorandum by March 17, 2014. Directions were issued accordingly to the parties.

[13] Upon receipt of the Plaintiff's Requisition, the pre-trial conference was fixed for hearing on May 7, 2014.

[14] On April 10, 2014, the Crown brought the present motion. The pre-trial conference was adjourned pending disposition of the Crown's motion.

III. Evidence on the Motion

[15] The evidence adduced by the Crown in support of the motion is not particularly contentious. Since 2010, the Plaintiff has instituted 10 actions, applications or appeals against the Crown, the Attorney General of Canada or the Government of Canada before this Court and the British Columbia Supreme Court and Court of Appeal. The majority of the proceedings were either dismissed with costs or discontinued by the Plaintiff. Costs fixed or assessed by the courts against the Plaintiff total $13,228.97 and remain unpaid. Other costs ordered against the Plaintiff in favour of the Crown, which have yet to be assessed, are estimated at $9,633.52.

[16] The Plaintiff filed an affidavit in response replete with personal opinion and argument. To the extent that the affidavit offends the *Rules*, the inadmissible portions have been ignored.

[17] The Plaintiff concedes that certain costs orders remain unpaid. He states, however, that he is impecunious and that he has depleted all his financial resources "many years ago." He affirms that he has no resources to provide the security for costs requested by the Crown and does not have the means to raise such funds or security. He further states that if the Court were to grant the Crown's motion, it would deprive him of his right to the courts, thus exacerbating the injustice against him.

[18] The Plaintiff states that he has had limited financial support from his wife since he married her in 2007 but that, due to health problems, she has not been able to work since the Spring of 2012. The Plaintiff submitted a doctor's note dated April 18, 2014 which states that his wife "is temporarily disabled at this time for regular activities."

[19] The Plaintiff also describes the changes to inmate rates of pay in his affidavit, which he claims have left him unable to build a savings reservoir. In order to establish his impecuniosity, the Plaintiff has provided copies of his financial account balances as of early 2014 at both Mission Institution and Ferndale Institution, which reflect balances of $0.00 and $84.06, respectively.

[20] At paragraph 62 of his affidavit, the Plaintiff states that he had to borrow $300.00 from his family to pay the filing fee for the requisition for pre-trial conference.

IV. Relevant Rules

[21] This motion has been brought under Rule 416. Pursuant to Rule 416(1), the Court may order a plaintiff to give security for the defendant's costs where, among other things:

f) the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part,	*f*) le défendeur a obtenu une ordonnance contre le demandeur pour les dépens afférents à la même instance ou à une autre instance et ces dépens demeurent impayés en totalité ou en partie

[22] Subrule 416(3) states that unless the Court orders otherwise, the Plaintiff may not take any further steps in the action (other than an appeal from that order) until the security required by an order under subsection (1) has been given.

[23] Rule 417 provides that the Court may refuse to order that security for costs be given if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.

V. Issues to be Determined

[24] A defendant is *prima facie* entitled to security for costs where there is an unpaid costs order against the plaintiff in whole or in part (*Ayangma v The Queen*, 2003 FC 1013 at para 14; *Coombs v Canada*, 2008 FC 894 at para 7; *Lavigne v Canada Post Corporation*, 2009 FC 756 at para 64; *Sauve v Her Majesty the Queen*, 2011 FC 1081, at para 14; aff'd 2012 FCA 287, 2012 FCA 287, at para 6).

[25] The Plaintiff concedes that he owes costs to the Government of Canada in the context of other litigation matters, although he argues that the Crown has grossly misstated those obligations. He further argues that any amount(s) owing will likely be set off by the costs that will be awarded to him upon conclusion of his other pending litigation matters.

[26] As the Crown has filed clear and uncontradicted evidence of outstanding costs orders against the Plaintiff, I am satisfied that the Crown is *prima facie* entitled to an order for security for costs.

[27] Since the Plaintiff takes no position with respect to the Crown's request for an extension of time to serve and file a pre-trial conference memorandum, the only disputed issue to be determined on this motion is whether the Plaintiff has met the test under Rule 417 for avoiding giving security for costs.

VI. Analysis

A. *The Plaintiff's Alleged Impecuniosity*

[28] The onus falls on the Plaintiff to demonstrate that he is impecunious. In *Heli Tech Services (Canada) Ltd v Weyerhaeuser Company*, 2006 FC 1169, [*Heli Tech*] Mr. Justice Douglas Campbell described the type of disclosure that is necessary:

> [8] As to the evidence required to prove impecuniosity, a high standard is expected; frank and full disclosure is required. That is, the onus must be discharged with "robust particularity", so that "there be no unanswered material questions (*Morton v. Canada (Attorney General)* (2005), 75 O.R. (3d) 63 (S.C.J.) at para.32).

[29] More recently, Mr. Justice Robert Mainville provided the following description of the type of evidence required to trigger the application of section 417 in *Sauve v Canada*, 2012 FCA 287:

> [10] Material evidence must be submitted in order to sustain a claim of impecuniosity, including complete and clear financial information presented in a comprehensible format. Tax returns, bank statements, lists of assets, and (where possible) financial statements should be submitted. Evidence of the impracticability of borrowing from a third party to satisfy the security order should also be provided. The possibility of accessing family and community resources should be considered. No material issue should be left unanswered.

[30] While the Plaintiff has provided some institutional financial statements, the evidence provided falls well short of the "full and frank disclosure" described in the above jurisprudence. Impecuniosity must be demonstrated to a high standard, with particularity and full disclosure. This means complete, clear and current financial information, supported by documentation such as tax returns, bank statements and lists of assets.

[31] The Plaintiff states that he "has no resources to provide the security for costs requested" and does not "have the means to raise such funds or security"; however, the evidence before me would suggest otherwise. The Plaintiff appears to have had no difficulty in coming up with almost $1,000.00 over the past three years to pay filing fees in pursuit of his various litigation efforts against the Crown. No information is provided regarding the source of such funding, other than for the most recent filing fee for the requisition for pre-trial conference in the present proceeding.

[32] Further, other than a bald statement by the Plaintiff, there is no indication that the friends and family members that he mentions, such as his father and brother, would be unwilling to provide him with financial assistance. To the contrary, the Plaintiff's own evidence suggests that he has been able to borrow money from family when necessary in order to pursue litigation.

[33] As for his wife's illness, it does not speak to her financial means, resources or ability to provide financial assistance to the Plaintiff.

[34] The Plaintiff has consistently paid filing fees to advance the various proceedings he has brought over the past three years. Notwithstanding, when costs are sought from the Plaintiff, he conveniently pleads poverty. The evidence tendered by the Plaintiff to make out that position is inconsistent and insufficient.

[35] I therefore conclude that the Plaintiff has failed to establish that he is impecunious.

[36] Although this finding is dispositive of the motion, for the sake of completeness, I will now turn to the merits of the Plaintiff's action.

B. *The Merits of the Case*

[37] On the issue of the merits of his case, the Plaintiff simply states that he believes that his claim not only has sufficient merit, but is also compelling and persuasive. In this regard, he relies on his Pre-Trial Conference Memorandum already served and filed. He further states that the Crown has no compelling defence, which is why they did not prepare their pre-trial conference memorandum, and have attempted to use this motion for security and his legal disability as an inmate to gain leverage against him to end his litigation and avoid judicial scrutiny.

[38] The Crown submits that the Plaintiff's case has no merit as he simply makes bald statements of fact that provide no basis upon which to conclude that he has discharged his burden under Rule 417. The Crown also relies on a decision of the Supreme Court of British Columbia where the Plaintiff advanced similar allegations of retaliation by the Warden, but in relation to an involuntary transfer to another institution. The Court dismissed the Plaintiff's application, finding that there was no basis for a conclusion that the Warden or the institution had acted in bad faith. The Plaintiff's appeal of that decision was also dismissed (see: *Mapara v Warden of Ferndale Institution*, BCSC No 26236 (Vancouver Registry), February 14, 2013, Silverman J. and *Mapara v Ferndale Institution* [*Warden*], 2014 BCCA 49).

[39] The Crown further submits that the Plaintiff has made similar allegations in other proceedings, but that his assertions have been given no credence. The Plaintiff has not provided any proof that the Warden retaliated against him for exercising his rights, only his suspicions. The Plaintiff's allegations are serious and it was incumbent on the Plaintiff to demonstrate in response to the Crown's motion that there is some evidence, beyond conjecture and suspicion, to prove such allegations.

[40] I am not satisfied that the Plaintiff has adequately demonstrated that his case has merit. As the burden under Rule 417 falls on the Plaintiff to satisfy the Court that the case has sufficient merit, I conclude that both elements of the conjunctive test under Rule 417 are missing.

VII. Conclusion

[41] For the above reasons, I find that the Plaintiff has failed to demonstrate both impecuniosity and that his case has any merit. In making these findings, I am mindful of the two fundamental values in our system of litigation, that is "that everyone should be able to have their day in court" and "that defendants must have reasonable protection from claims that have no merit" (*Wall v Horn Abbot Ltd*, 176 NSR (2d) 96, 29 CPC (4th) 204 (CA) at 208).

[42] I acknowledge that the Plaintiff's circumstances as a prisoner incarcerated in a federal institution raise the concern of proper access to justice. In *Heli Tech* above, Justice Campbell discussed access to justice in the context of Rule 417:

> [4] The jurisprudence supports the Rule in providing access to justice even though a litigant might be required to pay security for costs but is unable to do so:
>
> > Justices of this court have stated that care should be taken in exercising a power to order security for costs to ensure that the order does not deprive an appellant of his right to appeal (*Phoenix Transportation Consultants Ltd. v. Pacific Freightways Ltd*., [1989] B.C.J. No. 2189);
> >
> > …'the general rule is that poverty is no bar to a litigant'. The power to require security for costs ought not to be used so as to bar even the poorest man from the courts…(*Kropp v. Swaneset Bay Golf Course Ltd*., [1997] B.C.J. No. 593 quoting from the leading English decision *Pearson v. Naydler*, [1977] 3 All E.R. 531 at para.16; and

> There can be no question that an injustice would result if a meritorious claim were prevented from reaching trial because of the poverty of a plaintiff. If the consequence of an order for costs would be to destroy such a claim no order should be made. Injustice would be even more manifest if the impoverishment of plaintiff were caused by the very acts of which plaintiff complains in the action (*John Wink Ltd. v. Sico Inc.*, [1987] O.J. No. 5).

[43] More recently, in *Nicholas v Environmental Systems (International) Limited*, 2009 FC 1160 Mr. Justice Richard Mosley addressed the issue of access to justice in the context of Rule 417 in the following terms:

> [20] The Courts have been anxious to ensure access to justice where a litigant is required to pay security for costs but is unable to do so. This was expressed in the following terms by Reid J. in *John Wink Ltd. v. Sico Inc.*, (1987), 57 O.R. (3d) 705, 15 C.P.C. (2d) 187, [1987] O.J. No. 5, at paragraph 8:
>
> > There can be no question that an injustice would result if a meritorious claim were prevented from reaching trial because of the poverty of the plaintiff. If the consequence of an order for costs would be to destroy such a claim no order should be made.

[44] While I am sympathetic to the challenges that the Plaintiff must face as a self-represented federal inmate conducting litigation in the courts, the fact that he has made no payment, or any arrangements to pay the outstanding costs awards over time militate against him. Further, I cannot ignore that the Plaintiff is no ordinary litigant. The Plaintiff has chosen to bring numerous proceedings against the Crown. It should therefore have come as no surprise to the Plaintiff that there would be cost consequences in the event he was unsuccessful.

[45] Based on all of the foregoing, I am satisfied that it is appropriate to grant the Crown's motion for security for costs in this matter.

[46] As for the amount of costs to be provided by the Plaintiff, I note that the draft Bill of Costs provided by the Crown includes a claim for fees related to preparation for contested motions. The claim as it relates to the Plaintiff's motion for relief from the implied undertaking is denied as the motion was dismissed without costs. The claim for the present motion is allowed at 5 units.

[47] As for the claims for anticipated fees for written argument following the trial (5 units), and assessment of costs (3 units), I am not satisfied that such fees will be incurred in the event the matter proceeds to trial. In addition, the amount of $2,000.00 claimed for anticipated disbursements appears to be somewhat high.

[48] In the circumstances, the security to be paid by the Plaintiff is hereby fixed in the amount of $12,000.00.

[49] The Crown requests that the security be provided in full before any further steps are taken by the Plaintiff in this proceeding. Given the late stage of this proceeding, I find payment of security in full to be appropriate.

ORDER

THIS COURT ORDERS that:

1. The Plaintiff shall pay security for costs in the amount of $12,000.00, within ninety (90) days of the date of this Order.

2. The Plaintiff shall not take any further steps in this application, including the bringing of any motions, until he has paid the security for costs hereby ordered. This provision shall not apply to the bringing of an appeal from this Order.

3. The Defendant is granted an extension of time to serve and file a pre-trial conference memorandum within 30 days of payment of the security for costs in accordance with paragraph 1 of this Order.

4. Costs of this motion hereby fixed in the amount of $500.00, inclusive of disbursements and taxes, shall be paid by the Plaintiff in any event of the cause.

"Roger R. Lafrenière"
Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2262-12
STYLE OF CAUSE:	SAMEER MAPARA v HER MAJESTY THE QUEEN

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

REASONS FOR ORDER AND ORDER:	LAFRENIÈRE P.
DATED:	JUNE 4, 2014

WRITTEN REPRESENTATIONS BY:

Sameer Mapara	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Liliane Bantourakis	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Sameer Mapara c/o Mission Institution Mission, British Columbia	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
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