Federal Court of Appeal | Cour d'appel fédérale

Date: 20161129

Docket: A-346-15
A-347-15
A-348-15

Citation: 2016 FCA 305

CORAM: **PELLETIER J.A.**
SCOTT J.A.
DE MONTIGNY J.A.

BETWEEN:

SAMEER MAPARA

Appellant

And

CANADA (ATTORNEY GENERAL)

Respondent

Heard at Vancouver, British Columbia, on November 28, 2016.

Judgment delivered at Vancouver, British Columbia, on November 29, 2016.

REASONS FOR JUDGMENT BY: DE MONTIGNY J.A.

CONCURRED IN BY: PELLETIER J.A.
SCOTT J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] Mr. Mapara, on his own behalf, appeals from three Orders dated May 8, 2015 whereby the Motions Judge granted the Respondent's motions for security for costs in each of Federal Court File Nos. T-1879-14, T-1925-14 and T-2248-14. Having carefully considered the Record as well as the oral and written submissions of the parties, I am of the view that these appeals should be dismissed.

[2] Mr. Mapara is serving a life sentence for first degree murder; he has been incarcerated since 2001 and will not be eligible for parole until 2027.

[3] Since 2010, Mr. Mapara has commenced 17 actions, applications or appeals against Canada, in the Federal Court, the Supreme Court of British Columbia, the Court of Appeal for British Columbia and the Supreme Court of Canada. The three appeals now before this Court arise from one action for damages against Her Majesty the Queen (T-1879-14), and two applications for judicial review of third level grievance decisions by the Commissioner of Corrections (T-1925-14 and T-2248-14).

[4] In response to each of the Respondent's motions for security of costs, Mr. Mapara conceded that he was indeed indebted to Canada for unpaid costs. It would appear that the total amount of these unpaid costs is $20,899.49, to which must be added a further $11,734.50 for costs and disbursements already incurred or anticipated in the three files that are the subject of this appeal, according to the affidavit filed by the Respondent.

[5] In light of the above, and pursuant to paragraph 416(1)(f) of the *Federal Courts Rules*, S.O.R./98-106, the Respondent is entitled on a *prima facie* basis to security for costs, and the Motions Judge found accordingly.

[6] Rule 417 of the *Federal Courts Rules*, however, prescribes that poverty should not be a bar to litigation. As this Court stated in *Sauve v. Canada*, 2012 FCA 287 at para. 7 [Sauve], "…fairness also requires that when it is clear that the effect of an order for security for costs

would be to preclude an impecunious plaintiff from advancing an otherwise meritorious claim, security for costs in favour of the defendant should usually be denied."

[7] Under Rule 417, the Court must be satisfied that (1) the applicant or the plaintiff (as the case may be) is impecunious, and (2) the case has merit, before it can exercise its discretion to refuse to order security for costs. These two requirements are conjunctive. Rule 417 provides as follows:

Grounds for refusing security	**Motifs de refus de cautionnement**
417 The Court may refuse to order that security for costs be given under any of paragraphs 416(1)(a) to (g) if a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.	417 La Cour peut refuser d'ordonner la fourniture d'un cautionnement pour les dépens dans les situations visées aux alinéas 416(1)a) à g) si le demandeur fait la preuve de son indigence et si elle est convaincue du bien-fondé de la cause.

[8] It is also well established that the onus of proof to establish impecuniosity is high, and must be discharged with "robust particularity": see *Morton v. Canada (Attorney General)* (2005), 75 O.R. (3d) 63 at para. 32, [2005] O.J. No. 948; *Heli Tech Services (Canada) Ltd v. Weyerhaeuser Company*, 2006 FC 1169 at para. 8, [2006] F.C.J. No. 1494; *Chaudhry v. Canada (Attorney General)*, 2009 FCA 237 at para 10, 393 N.R. 67. Material evidence must therefore be submitted to sustain a claim of impecuniosity, and bald statements will not be sufficient (see *Sauve* at paras. 9-10).

[9] The Motions Judge found that the Appellant's evidence did not meet that threshold. His conclusion is based entirely on the fact that Mr. Mapara had been financially able to pay court fees to commence his numerous legal proceedings against the Respondent, and had been

financially able to pay his litigation disbursements in these various matters. Accordingly, he determined that impecuniosity had not been established, and held it unnecessary to comment on the merits of the underlying proceedings.

[10] To succeed on his appeals, Mr. Mapara must convince this Court that the Motions Judge either erred in law or made a palpable and overriding error in his appreciation of the facts: *Imperial Manufacturing Group Inc. v Decor Grates Incorporated*, 2015 FCA 100; *Hospira Healthcare Corporation v The Kennedy Institute of Rheumatology*, 2016 FCA 215.

[11] The gist of Mr. Mapara's arguments before this Court is that the Motions Judge failed to appreciate the massive amount of evidence submitted to substantiate his impecuniosity. Indeed, Mr. Mapara did file financial statements, tax returns and printouts of his institutional accounts. There is no doubt in my mind, on the basis of that evidence, that Mr. Mapara has limited financial means.

[12] The Motions Judge, nevertheless, found that Mr. Mapara had not established his impecuniosity since he was able to pay court fees and disbursements to commence several proceedings. With all due respect, this inference is questionable for two reasons. First, the fact that Mr. Mapara was able to pay the filing fees and disbursements with respect to previous legal proceedings is no indication that he has the means to pay a much larger amount of legal costs resulting from these proceedings. Second, the Motions Judge could not come to the conclusion that Mr. Mapara is not impecunious on the basis of a single factor; such a determination must be based on the assessment of the overall financial situation of the applicant or the plaintiff.

[13] That being said, Mr. Mapara also had to establish that he could not borrow from family members, especially when some of them have financially helped him in the past. To that effect, Mr. Mapara introduced affidavits from his father and brother indicating that they were not in a position to assist him financially, despite having done so previously. I agree with the Respondent that these affidavits are short on the particulars that could have explained their change of circumstances. This should not be interpreted as imposing an obligation on family members to assist an applicant. However, in this case, the appellant's family members did not provide any explanation as to why they were no longer able to assist.

[14] As for Mr. Mapara's wife, who had also assisted him beforehand, Mr. Mapara deposed that she was ill and unable to work. Yet he did not adduce any direct evidence from his wife herself or from her doctors to that effect; moreover, the medical records upon which he relied to establish his wife's medical condition were not up to date, and he did not provide any information with regard to her financial resources or assets. In those circumstances, it cannot be said that Mr. Mapara has discharged his onus to establish the impracticability of borrowing from a third party with "robust particularity".

[15] I would venture to add, out of an abundance of caution, that none of the underlying proceedings on these appeals have merit. Essentially for the reasons advanced by counsel for the Respondent in her factum, the Appellant does not meet the second prong of Rule 417 and this is a second reason why his appeal should be dismissed.

[16] In light of the foregoing, I am therefore of the view that the decision of the Motions Judge should be upheld, albeit for different reasons than those he provided. A careful reading of the record as a whole supports his overall finding that Mr. Mapara is not impecunious for the purpose of Rule 417.

[17] Accordingly, I would dismiss the appeals with costs.

"Yves de Montigny"
J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
A.F. Scott J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-346-15 A-347-15 A-348-15
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REASONS FOR JUDGMENT BY:	DE MONTIGNY J.A.
CONCURRED IN BY:	PELLETIER J.A. SCOTT J.A.
DATED:	NOVEMBER 29, 2016

APPEARANCES:

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