

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170714

Docket: 17-A-19

Citation: 2017 FCA 155

[ENGLISH TRANSLATION]

Present : SCOTT J.A.

BETWEEN:

GUILLAUME LEMAY

Applicant

and

HER MAJESTY THE QUEEN

Respondent

Motion dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 14, 2017.

REASONS FOR ORDER:

SCOTT J.A.

Federal Court of Appeal



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REASONS FOR ORDER

SCOTT J.A.

[1] UPON the motion filed on May 5, 2017, under Rules 8 and 369 of the *Federal Courts Rules*, SOR/98-106, by the applicant, Guillaume Lemay (Mr. Lemay), requesting an extension of time to appeal from a judgment on a motion for summary judgment (the Judgment), rendered on January 18, 2016, by the Honourable Jocelyne Gagné (the Judge).

[2] **UPON** our Court's decision in *Pharmascience Inc. v. Canada (Minister of Health)*, [2004] 2 FC 349, 2003 FCA 333, at paragraph 6 which outlines the principles for deciding whether or not to grant a motion for an extension of time to commence an appeal:

[6] In deciding whether or not to grant an extension of time to commence an appeal, the basic test is whether the interests of justice favour granting the extension. The factors to be considered are conveniently summarized in *Karon Resources Inc. v. Canada*, [1994] 1 C.T.C. 307 (F.C.T.D): (1) whether there is an arguable case on appeal, (2) whether there are special circumstances that justify the delay in commencing the appeal, (3) whether there was a continuing intention to appeal, (4) whether the delay has been excessive, and (5) whether the respondent will be prejudiced if the extension of time is granted. The weight to be given to each of these factors will vary with the circumstances.

[3] When the Court applies these criteria to the motion brought by Mr. Lemay, certain factors assume a greater importance—notably, whether his request involves an arguable case on appeal, whether Mr. Lemay had a continuing intention to pursue the appeal, and whether the explanations given justified the delay.

[4] On reading Mr. Lemay's motion, I note that the main reason for Mr. Lemay's appeal stemmed from a decision rendered by Veterans Affairs Canada (VAC) in January 2017 to recognize again his entitlement to benefits under the Earnings Loss Benefit program, that is, after the Judge's decision. I also note that this motion does not allege any error in law by the Judge when she found that the motion commenced by Mr. Lemay did not raise any valid cause of action and that he had not exhausted his administrative recourse. Mr. Lemay therefore did not identify an arguable case that he intends to appeal. The fact that VAC decided to recognize his entitlement under the Earnings Loss Benefit program in January 2017 cannot affect the Judge's decision.

[5] Furthermore, in this case, there is nothing to indicate that Mr. Lemay had a continuing intention to pursue the appeal.

[6] Mr. Lemay's motion gives no explanation to justify his delay or to confirm his continuing intention to appeal the Judgment.

[7] In short, more than 16 months have passed since Mr. Lemay received the Judgment. Absent allegations of a serious and arguable case on appeal and explanations to justify his delay and confirm his continuing intention to appeal the judgment, it is my opinion that this motion for extension of time should be denied.

“A.F. Scott”

J.A.

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: 17-A-19
STYLE OF CAUSE: GUILLAUME LEMAY v.
HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR JUDGMENT BY: SCOTT J.A.

DATED: JULY 14, 2017

WRITTEN SUBMISSIONS BY :

Guillaume Lemay

FOR THE APPLICANT
Representing himself

Marie-Josée Bertrand

FOR THE RESPONDENT

SOLICITORS OF RECORD :

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FOR THE RESPONDENT