

Date: 20080505

Docket: A-489-07

Citation: 2008 FCA 173

**CORAM: LINDEN J.A.
NOËL J.A.
RYER J.A.**

BETWEEN:

MOHAMMAD ASLAM CHAUDHRY

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on May 5, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on May 5, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on May 5, 2008)

RYER J.A.

[1] This is an appeal from an Order of Justice Gibson (the "motions judge") of the Federal Court (Docket: T-702-07) dated October 22, 2007, dismissing a motion made by Mr. Mohammad Aslam Chaudhry for an order that contempt had been committed by an unnamed Federal Court Administrator and by Prothonotary Kevin R. Aalto on the basis that Mr. Chaudhry had failed to make out a *prima facie* case that the alleged contempt had been committed.

[2] In this appeal, Mr. Chaudhry seeks the contempt orders that the motions judge denied. In addition, Mr. Chaudhry seeks a fair, open and impartial inquiry to determine what he describes as the “real causes” behind the actions of the Prothonotary and the Federal Court Administrator that gave rise to Mr. Chaudhry's motion for contempt, as well as compensation for the additional sufferings that he alleges were caused to him by the actions of the Prothonotary.

[3] Dealing first with the latter two remedies, it is sufficient to note that because neither of them was in issue before the motions judge, they are not properly before this Court. Accordingly, no further consideration will be given to those matters.

[4] The allegations of contempt on the part of the Prothonotary and the unnamed Federal Court Administrator are matters that require the consideration of this Court.

[5] At the outset, we observe that an allegation of contempt of Court is a very serious matter. This is evident from Rule 469 of the *Federal Courts Rules*, which states that a finding of contempt requires proof beyond a reasonable doubt.

[6] Before a person alleged to be in contempt will be ordered to appear before the Court to address the allegation of contempt, Rule 467(3) of the *Federal Courts Rules* stipulates that the Court must be satisfied that there is a *prima facie* case that contempt has been committed by that person. To so satisfy the Court, the alleging party must show a *prima facie* case of wilful and contumacious

conduct on the part of the contemnor (see *Imperial Chemical Industries PLC v. Apotex Inc.*, [1989] F.C.J. No. 130; 24 C.P.R. (3d) 176 (F.C.T.D.)).

[7] The evidence that was before the motions judge consists of a two paragraph affidavit sworn by Mr. Chaudhry that, in sum and substance, states that he received the July 11, 2007 Order of the Prothonotary on August 22, 2007, and not before. That evidence says nothing with respect to any alleged "wilful and contumacious conduct" on the part of the Prothonotary or any Federal Court Administrator. It is, therefore, unsurprising that the motions judge concluded that no *prima facie* case of contempt had been made out and, in so concluding, we can detect no error on his part that warrants our intervention.

[8] For the foregoing reasons, the appeal is dismissed. In view of our admonition that an allegation of contempt of Court is a very serious matter and given that Mr. Chaudhry has failed to adduce any evidence of the contempt that he alleges, costs in the amount of \$500.00 inclusive of fees, disbursements and GST are awarded against Mr. Chaudhry.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-489-07

(APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE GIBSON DATED OCTOBER 22, 2007, WHEREBY THE MOTION IN FILE NO. (DOCKET NUMBER T-702-07) WAS DISMISSED)

STYLE OF CAUSE: MOHAMMAD ASLAM CHAUDHRY v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 5, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LINDEN, NOËL & RYER JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

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FOR THE RESPONDENT

SOLICITORS OF RECORD:

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