Federal Court of Appeal  Cour d'appel fédérale

Date: 20140508

Docket: A-258-13

Citation: 2014 FCA 119

CORAM: **NOËL J.A.**
STRATAS J.A.
WEBB J.A.

BETWEEN:

RACHEL EXETER

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on May 7, 2014.

Judgment delivered at Ottawa, Ontario, on May 8, 2014.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: NOËL J.A.
WEBB J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] This is an appeal from an order dated July 11, 2013 of the Federal Court in file T-943-12 upholding Prothonotary Tabib's interlocutory order dated May 30, 2013.

[2] In issue before the Prothonotary was an email sent by the adjudicator of the Public Service Labour Relations Board. The email states "that a mediated [settlement] agreement was

reached." The time recorded on the mail suggests it was sent just a couple of hours before the appellant states she agreed to the settlement. The appellant has since maintained that the settlement is the product of duress. She seeks production of the email header, which, in her view, will confirm exactly what time zone the time on the email reflects. She believes that if the email was sent before the settlement, this will tend to support her allegation of duress.

[3] The Prothonotary denied the appellant's request for production, finding it irrelevant. The Federal Court dismissed the appellant's appeal from the Prothonotary under Rule 51. In the Federal Court's view, the appellant failed to show that the Prothonotary relied on an improper principle or fundamentally misapprehended the facts within the meaning of *Z.I. Pompey Industrie v. ECU-Line N.V.*, [2003] 1 S.C.R. 450, 2003 SCC 27 at paragraph 18 and *Canada v. Aqua-Gem Investments Ltd.*, [1993] 2 F.C. 425 at pages 462-63 (C.A.). The Federal Court added that the appellant's representations consisted of "statements unsupported by evidence" and do not "even establish an articulation of the alleged importance of the material sought," with the result that "it is impossible to understand how the material sought by the appellant can be relevant."

[4] In this Court, the appellant has not persuaded us that the Federal Court erred in any way. Indeed, even if we examined the matter on a *de novo* basis, we would find no merit whatsoever in the appellant's submission. The timing of an email stating that a settlement has been reached has no logical connection to the alleged existence of duress.

[5] Before this Court, the appellant alleged that the Prothonotary was biased based on certain statements she made in her reasons in this matter, and in certain words spoken in a hearing before her which resulted in a separate order dated May 22, 2013.

[6] In her written reasons in this matter, the Prothonotary noted that the appellant is prone to "fixate and elevate to extreme significance any perceived or real contradiction or inaccuracy in the respondent's arguments or affidavits" and advised the respondent to try to prevent inaccuracies in the future. This is an observation the appellant does not like, but it is no evidence of bias.

[7] I turn now to the appellant's submission that the Prothonotary was biased because of her comments in the earlier hearing resulting in the May 22, 2013 order. To make her submission, the appellant asked for leave to file the audio recording of that hearing. Out of generosity to the appellant, a self-represented litigant, and in the heat of the moment, we agreed to receive the recording to see if it had any bearing on the issues in this appeal. In fact, this is not what we should have done. Those seeking to raise matters of what was said during a hearing should order a transcript of the recording and file only necessary portions of the transcript as part of the appeal book under Rule 344(1)(*e*): see the direction dated January 21, 2014 of the Court in *Rahman v. AGC* in file A-365-13**.**

[8] I note that an appeal from the May 22, 2013 order has made its way to this Court and is pending. In these reasons, I have restricted my comments to the audio recording insofar as it

sheds any light on the appellant's allegation of bias. I express no views on the merits of the pending appeal.

[9] The audio recording demonstrates that far from showing bias, the Prothonotary acted with great courtesy, patience and professionalism in challenging circumstances. The appellant alleged perjury and other dishonourable conduct on the part of governmental officials, offering absolutely no evidence in support. She raised matters well beyond the scope of the notice of motion, even going so far as to request the Prothonotary to prefer charges against certain governmental officials. After hearing these submissions, the Prothonotary engaged in polite discourse with the appellant for over an hour to investigate whether she had even the tiniest bit of evidence in support of her serious allegations. In submissions before us, the appellant suggested that the Prothonotary used harsh words such as "you're holding me in bondage." The audio recording reveals no such thing.

[10] Overall, the appellant submitted that the Prothonotary's bias led her to make an adverse costs award against her. But the Prothonotary ordered only the usual level of costs against the appellant, consistent with the principle that the unsuccessful party pays. Given the absence of any merit in the matter and the appellant's behaviour before her, the Prothonotary could have awarded enhanced costs, indeed solicitor and client costs, against the appellant. But the Prothonotary did not.

[11] Alleging bias is "a serious step that should not be undertaken lightly": *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 at paragraph 113; *Es-Sayyid v. Canada (Public Safety and Emergency*

Preparedness), 2012 FCA 59 at paragraphs 38 and 50. Here, the appellant alleged bias with absolutely nothing in support.

[12] Alleging fraud is similarly most serious: *Bank of Nova Scotia v. Fraser*, 2001 FCA 267. Here, the appellant frequently alleged fraud and forgery against the officials involved in the matter giving rise to the appellant's application for judicial review, allegations unsupported on the record before us and unnecessary to the issue before us: whether the email header was relevant to the issue of duress.

[13] The appellant even went so far as to allege, without any evidence, that the audio recording of the proceedings before the Prothonotary, made by the Federal Court and held securely by it, was doctored, ostensibly by the Federal Court's staff.

[14] The audio recording reveals that the Prothonotary firmly but politely warned the appellant against the making of extreme allegations with nothing in support. Her reasons in that matter also warned her. In this Court, the appellant ignored the warning.

[15] For the foregoing reasons, the appeal has no merit and I would dismiss it. The appellant's conduct before us is vexatious and an abuse of process. A costs sanction is warranted. However, the Crown asked for fixed costs only in the amount of $1,500 and I do not consider it open to us to boost that quantum. Accordingly, I would fix costs against the appellant in the amount of $1,500, but payable forthwith.

[16] I encourage the appellant to focus on bringing her application for judicial review quickly and efficiently to a hearing on the merits instead of advancing serious allegations unsupported by evidence.

"David Stratas"

J.A.

"I agree
Marc Noël J.A."

"I agree
Wyman W. Webb J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-258-13
APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE ROY DATED JULY 11, 2013, NO. T-943-12	
STYLE OF CAUSE:	RACHEL EXETER v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 7, 2014
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	NOËL J.A. WEBB J.A.
DATED:	MAY 8, 2014

APPEARANCES:

Rachel Exeter	ON HER OWN BEHALF
Léa Bou Karam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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