Federal Court  Cour fédérale

Date: 20201015

Docket: T-663-20

Citation: 2020 FC 969

Vancouver, British Columbia, October 15, 2020

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

R. MAXINE COLLINS

Plaintiff/
Responding Party to Motion to Strike
Moving Party to Cross-Motion

and

CANADA POST CORPORATION

Defendant/
Moving Party to Motion to Strike
Responding Party to Cross-Motion

ORDER AND REASONS

I. Overview

[1] The Defendant has brought a motion, dated August 28, 2020, to strike the self-represented Plaintiff's Statement of Claim.

[2] The Plaintiff has filed a cross-motion seeking an order that would remove documents the Defendant has filed—a Notice of Appointment of Solicitor and the Motion to Strike—from the Court file.

[3] The Plaintiff's cross-motion to remove documents from the Court file is dismissed. I have adjourned the Defendant's Motion to Strike.

II. Background

[4] The Plaintiff takes the position that in naming Canada Post Corporation [CPC] as the Defendant, proceedings have been instituted against the Crown as provided for at section 48 of the *Federal Courts Act*, RSC 1985, c F-7 [the Act].

[5] Rule 133 of the *Federal Courts Rules*, SOR/98-106 [the Rules] provides that service of an originating document is effected on the Crown by filing the originating document at the Court Registry.

[6] The Plaintiff's Statement of Claim, naming CPC as the defendant, was originally filed at the Court Registry on June 22, 2020.

[7] The Defendant did not file a Statement of Defence within the timelines provided in the Rules and the Plaintiff brought a motion seeking default judgment. That motion was dismissed by Order dated July 29, 2020 [the July Order], it being determined that the Plaintiff's claim was not against the Crown, that section 48 of the Act was of no application, and that in the absence of

proof of service of the claim on the Defendant, default judgment could not be obtained. In dismissing the Motion for Default Judgment, the Court ordered that the Statement of Claim be refiled.

[8] The Plaintiff has appealed the July Order to the Federal Court of Appeal.

[9] On August 4, 2020, after the issuance of the July Order, a Notice of Appointment of Solicitor was filed on behalf of the Defendant. The Defendant then filed a motion seeking to strike the Statement of Claim in its entirety. The Motion to Strike was returnable at General Sittings on September 23, 2020. At the request of the Plaintiff, the Court directed the motion be heard in person.

[10] The Plaintiff filed a cross-motion objecting to the filing of the Notice of Appointment of Solicitor and the Motion to Strike. The Plaintiff seeks an Order removing both documents from the Court file.

[11] By Order dated September 18, 2020, the Federal Court of Appeal granted the Plaintiff's request to temporarily stay her pending appeal of the July 2020 Order until a decision is issued by this Court in respect of the Plaintiff's cross-motion.

[12] At the outset of the hearing the Parties were asked to address whether the motions, and in particular the Defendant's Motion to Strike, were premature in light of the appeal of the July 2020 Order. After hearing submissions from the parties I concluded, in brief oral reasons, that

the Plaintiff's motion would be heard and that the Motion to Strike adjourned pending final determination of the Plaintiff's appeal. The transcript of those reasons, edited for syntax and grammar, are attached at Annex A to these Reasons.

III. The Cross-Motion

[13] The July 2020 Order addresses the Plaintiff's Motion for Default Judgment and a second motion where the Plaintiff sought to file additional evidence. A series of recitals conclude the Statement of Claim is not an action against the Crown and notes the absence of proof of service of the claim on the Defendant. The following Order was made:

> 1. The Plaintiff shall refile the Statement of Claim in compliance with Rule 171(a) of the *Federal Courts Rules*;
>
> 2. The Plaintiff's Motion for default judgment is dismissed; and
>
> 3. The Plaintiff's Motion to file additional evidence is also dismissed.

[14] The Plaintiff submits that paragraph one of the July 2020 Order had the effect of ordering the removal of the Plaintiff's Statement of Claim from the Court file as contemplated by Rule 74. She relies upon *Ignace v Canada (Attorney General)* 2019 FCA 239 to argue that the removal of the originating process closed the file in T-663-20. The effect was to end the action and therefore the Defendant's documents could not have been accepted for filing. The Plaintiff also takes the position that if the Court file was not closed, the Defendant's documents should nonetheless be removed from the file as they are not compliant with the Rules.

[15] The Defendant takes the position that paragraph one of the July Order was made pursuant to Rule 72. Rule 74, the Defendant submits, is of no application but even if it were, it is implicit in the July Order that the Court file was to remain open.

[16] Rule 74 provides that the Court, may at any time, order that a document not filed in accordance with the Rules, an Order of the Court, or an Act of Parliament be removed from the Court file. If the Court makes such an order on its own initiative all interested parties are to be provided an opportunity to be heard:

Removal of documents improperly filed	**Retrait de documents irrégulièrement déposés**
74 (1) Subject to subsection (2), the Court may, at any time, order that a document that is not filed in accordance with these Rules or pursuant to an order of the Court or an Act of Parliament be removed from the Court file.	**74 (1)** Sous réserve du paragraphe (2), la Cour peut à tout moment ordonner que soient retirés du dossier de la Cour les documents qui n'ont pas été déposés en conformité avec les présentes règles, une ordonnance de la Cour ou une loi fédérale.
Opportunity for interested parties to be heard	**Condition**
(2) An order may be made of the Court's own initiative under subsection (1) only if all interested parties have been given an opportunity to be heard.	**(2)** La Cour ne peut rendre une ordonnance en vertu du paragraphe (1) de sa propre initiative que si elle a donné aux parties intéressées l'occasion de se faire entendre.

[17] Rule 72 addresses irregular documents submitted for filing and provides for the reference of such documents to a judge or prothonotary:

Irregular documents	**Documents non conformes**

72 (1) Where a document is submitted for filing, the Administrator shall	**72 (1)** Lorsqu'un document est présenté pour dépôt, l'administrateur, selon le cas :
(a) accept the document for filing; or	**a)** accepte le document pour dépôt;
(b) where the Administrator is of the opinion that the document is not in the form required by these Rules or that other conditions precedent to its filing have not been fulfilled, refer the document without delay to a judge or prothonotary.	**b)** s'il juge qu'il n'est pas en la forme exigée par les présentes règles ou que d'autres conditions préalables au dépôt n'ont pas été remplies, soumet sans tarder le document à un juge ou à un protonotaire.
Acceptance, rejection or conditional filing	**Refus ou acceptation**
(2) On receipt of a document referred under paragraph (1)(b), the judge or prothonotary may direct the Administrator to	**(2)** Sur réception du document visé à l'alinéa (1)b), le juge ou le protonotaire peut ordonner à l'administrateur :
(a) accept or reject the document; or	**a)** d'accepter ou de refuser le document;
(b) accept the document subject to conditions as to the making of any corrections or the fulfilling of any conditions precedent.	**b)** d'accepter le document à la condition que des corrections y soient apportées ou que les conditions préalables au dépôt soient remplies.

[18] The Plaintiff's position is premised upon the view that the July 2020 Order holds that the Statement of Claim is to be removed from the file as improperly filed under section 48 of the

Act. In my view that underlying premise is flawed and for that reason the Plaintiff cannot succeed.

[19] Rules 72 and 74 fulfill different purposes. The Federal Court of Appeal in *Canada (Citizenship and Immigration) v Tennant*, 2018 FCA 132, addressed the different roles and purposes of the two rules. Justice Stratas states at para 7:

> [7] Rule 72 and Rule 74 fulfil different purposes. Rule 72 concerns formal defects in a document presented for filing or the failure to satisfy conditions precedent for the filing of a document; Rule 74 deals with whether a document should be removed because it suffers from a fatal substantive defect, such as jurisdiction. See *Rock-St Laurent v. Canada (Citizenship and Immigration)*, 2012 FCA 192, 434 N.R. 144 at paras. 20-29.

[20] The July 2020 Order does not order the removal of the Statement of Claim from the Court file, rather it orders the Claim be refiled to address a defect in the claim—the Plaintiff's reliance on section 48 of the Act. The Order does not refer to Rule 74 and the interested parties were not provided an opportunity to be heard (*Ignace v Canada (Attorney General)*, 2019 FCA 239 at para 14). All of these circumstances run contrary to the Plaintiff's position that the Statement of Claim was ordered removed from the Court file and the Court file closed pursuant to Rule 74.

[21] Further, it has not been demonstrated that the identified defect in the Statement of Claim is a defect of the nature engaging Rule 74. The reference to section 48 of the Act is a reference that, if erroneous (a question currently before the Court of Appeal), might be easily addressed by way of amendment in accordance with the Rules or by refiling the Statement of Claim.

[22] Counsel for the Defendant advised the Court that the Defendant has notice of the Claim and received instructions to accept service. The Defendant's acceptance of service has been communicated to the Plaintiff, and the Defendant has not objected to service. I note that Rule 147 provides for the validation of service in circumstances where a document has come to the notice of the person to be served. This reinforces my view that if the Plaintiff has erroneously relied upon section 48 of the Act, that error or defect is not a fatal substantive defect that would engage Rule 74.

[23] The Plaintiff's reliance on section 48 of the Act for the purposes of effecting service on the Defendant was unquestionably fatal in regards to the Plaintiff's Motion for Default Judgment. However, this does not equate to a fatal substantive defect in the originating Statement of Claim and the Plaintiff's ability to pursue the claim.

[24] The July 2020 Order did not have the effect of closing Court file T-663-20. It remains open and documents may be filed.

[25] I am similarly unpersuaded by the Plaintiff's submissions that the Defendant's documents should be removed from the Court file on the basis that they do not accord with the Rules.

[26] The Plaintiff objects to the Defendant's Notice of Appointment of Solicitor on the basis that it is not in a form provided for in the Rules. I see no merit in the Plaintiff's objection. The Rules do not include a form that provides for the Defendant's precise circumstances. The Defendant therefore modified form 124B for the purpose of notifying the Court and the Plaintiff

that a solicitor of record had been appointed. Rule 5 recognizes that a form may be modified to incorporate any variations the circumstances require. That is what has occurred here. The variation in this instance does not render the form non-compliant. The modified form was filed and served and evidences the Defendant's appointment of a solicitor of record (Rule 123).

[27] The Plaintiff objects to the Motion to Strike on the basis that it was served electronically and she had not consented to electronic service. The record does demonstrate that the Defendant initially served the motion electronically. However, on being notified that the Plaintiff had not consented to electronic service the Defendant served the motion in accordance with the Rules and filed proof of service with the Court.

[28] The Plaintiff has not demonstrated that either document in issue suffers from a defect that warrants removal of the documents from the Court file. The Plaintiff's cross-motion is dismissed.

IV. Costs

[29] The Defendant has succeeded on the cross-motion and shall have its costs calculated in accordance with Column III of Tariff B of the Rules.

[30] In light of the Court's decision to adjourn the hearing of the Motion to Strike, the Defendant also seeks costs thrown away in preparing for the Motion. The Defendant submits that costs incurred in preparing to argue the Motion to Strike could have been avoided had the Plaintiff not refused to participate in a pre-motion case management conference to address this

preliminary question. The Plaintiff's refusal to participate was maintained even after she was advised of potential costs consequences.

[31] The Plaintiff has apologized to the Court for her failure to participate in the case management conference. She noted that the process made her nervous, that she seeks to avoid case management conferences, and that she did not understand what the issue was.

[32] The Plaintiff's apology is acknowledged. The litigation process can be difficult and stressful and this is particularly so for self-represented litigants. However, the purpose of the case management conference was identified in the Court's Direction to the parties. The Plaintiff was also referred to the Rules and the potential for costs consequences as result of her initial response but she did not revisit her position. I also note that the record indicates the Plaintiff has some experience as a self-represented litigant in this Court.

[33] Self-represented litigants deserve latitude to the extent necessary to ensure that they have the opportunity to advance their case; however, they acquire no additional rights or special dispensation (*Sauve v Canada*, 2014 FC 119 at para. 19; *Scheuneman v Her Majesty the Queen*, 2003 FCT 37 at para 4). I am satisfied that the Defendant is entitled to any incremental costs attributable directly to preparations relating to the hearing of the Motion to Strike and incurred after Monday, September 21, 2020, the date the case management conference was to proceed. I will receive brief submissions for the purpose of demonstrating that costs as described above have been incurred.

ORDER IN T-663-20

THIS COURT ORDERS that:

1. The Defendant's Motion to Strike is adjourned pending final disposition of the Plaintiff's appeal of this Court's July 29, 2020 Order;

2. The Plaintiff's Motion to Remove Documents from the Court file is dismissed and the Defendant shall have its costs in accordance with Column III of Tariff B of the Rules;

3. The Defendant may serve and file written submissions on costs thrown away as a result of the adjournment of the Defendant's motion limited to three (3) pages in length, within five (5) days of the date of this Order;

4. The Plaintiff may serve and file written submissions in reply, also limited to three (3) pages in length, within five (5) days of the service of the Defendant's submissions.

"Patrick Gleeson"
Judge

ANNEX A

Excerpted oral reasons edited for grammar and syntax.

MS. CORMIER: Court resumed.

JUSTICE GLEESON: All right. Thank you for your patience, and I appreciate the submissions that you've both provided on the issue of prematurity. I have decided that I will hear the issues raised in the cross-motion, but that the motion to strike will be adjourned until the [Plaintiff's appeal] is dealt with in the Court of Appeal. I will briefly set out my rationale.

Mr. Brook, you've identified three reasons as to why the matter is not premature at this point in time. One, the appeal has been stayed. While it does appear that the appeal has been stayed, the Court of Appeal has done so for a very specific reason, and that is to address the issues with respect to the status of the file in this Court – in the Federal Court, specifically with respect to the ability to continue to file on that Court file number. The Appeal has not been stayed for the purposes of dealing with the motion that you have brought on behalf of your client.

You've noted the fact that a motion to strike can be brought at any time and there's a requirement to act promptly. I don't disagree with those principles, however, these principles do not stand for the premise that a motion might nonetheless be premature in a given circumstance. In the rather unique circumstances we have here, there is at least a concern that the motion is premature given the outstanding matter in the Court of Appeal.

Finally, you relied on the Court of Appeal's decision in *Collins v. Canada*, 2011 FCA 11. I've had an opportunity to very briefly look at that decision. It deals with the Federal Court addressing the issue of costs.

The decision holds that an appeal doesn't prevent the Federal Court from addressing the cost issue on a matter that it has heard and decided. It is distinguishable from the facts here where, at least on the surface, the issues before the Federal Court and what might well be before the Court of Appeal are interrelated.

So for those reasons I am of the view that it is appropriate at this point to adjourn the motion to strike, pending resolution of the Appeal. I am prepared to hear the cross motion and the issues raised.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-663-20
STYLE OF CAUSE:	R.MAXINE COLLINS v CANADA POST CORPORATION
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 23, 2020
ORDER AND REASONS:	GLEESON J.
DATED:	OCTOBER 15, 2020

APPEARANCES:

R. Maxine Collins	FOR THE PLAINTIFF (ON HER OWN BEHALF)
Ted Brook	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Norton Rose Fulbright LLP Toronto, Ontario	FOR THE DEFENDANT