

Federal Court



Cour fédérale

Date: 20211026

Docket: T-878-17

Citation: 2021 FC 1142

Ottawa, Ontario, October 26, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**CHIEF JEFFREY NAPAOKESIK, IN HIS
PERSONAL CAPACITY AS CHIEF OF
SHAMATTAWA FIRST NATION AND THE
AFORESAID SHAMATTAWA FIRST
NATION**

Applicants

and

**MARGARET "MARGO" THOMAS, NORA
THOMAS, CHEYENNE REDHEAD AND
JANE DOE AND JOHN DOE**

Respondents

ORDER AND REASONS

[1] The Respondents, Margaret “Margo” Thomas, Nora Thomas and Cheyenne Redhead [the Respondents] have moved for an order for costs against the Applicants in the present proceeding, as well as costs in a related action, in the lump-sum amount of \$15,000.00 or, in the alternative, in a lump-sum award in an amount to be determined by the Court.

[2] Although the relief is not specifically requested in their notice of motion, the Respondents also seek an order pursuant to Rule 397(1)(b) of the *Federal Courts Rules*, SOR/98-106 that the Court reconsider the Orders dated October 1, 2021 dismissing the action in Court File No. T-1788-16 and the present application on a without costs basis. The ground cited by the Respondents for reconsideration is that a matter that should have been dealt with had been overlooked or accidentally omitted. For the following reasons, I am not prepared to reconsider the said Orders since it has not been shown that they were issued in error.

[3] By way of background, the proceedings in T-1788-16 and T-878-17 laid dormant for over two years after two case management conferences held in mid-2017.

[4] On July 16, 2019, counsel for the Plaintiffs in T-1788-16 submitted a letter to advise of the Plaintiffs' intention to discontinue the action and to requisition a case management conference at the joint request of the parties.

[5] A case management conference was held on September 10, 2019 for the purpose of canvassing what steps needed to be taken to conclude the two proceedings. Counsel for the Applicants advised of their intention to abandon the application in T-878-17. Counsel for the parties also agreed that the injunction issued in T-1788-16 and continued by Orders in T-878-17 should be vacated. The only live issue was that of costs being claimed by the Respondents.

[6] During the conference, counsel for the Respondents requested six weeks to bring their motion for costs. In the absence of any objection from the Applicants/Plaintiffs, leave was granted to do so by October 31, 2019.

[7] Counsel for the Applicants/Plaintiffs was directed at the conclusion of the case management conference to submit a draft order to reflect the matters decided during the conference, but failed to do so in a timely manner. The two proceedings then lay dormant once again for almost two years.

[8] By Orders dated September 1, 2021, the Applicants/Plaintiffs were required to serve and file written representations by September 22, 2021 stating the reasons why the proceedings should not be dismissed for delay.

[9] On September 21, 2021, counsel for the Applicants/Plaintiffs submitted a letter providing an explanation for the delay. He also requested that the two applications be dismissed without costs. Counsel referred to a draft order recently agreed to by the parties in his letter; however, he failed to attach it. He was therefore directed to submit the draft order for review by the Court. In response, counsel submitted separate draft orders for each proceeding.

[10] The terms of the draft orders were consistent with the matters decided during the case management conference held on September 10, 2019, including the requirement that the Respondents bring their motion for costs by October 31, 2019.

[11] The Respondents submit that the late filing of the draft order by the Applicants/Plaintiffs resulted in leave effectively being denied for them to apply for costs. They further submit, based on their reading of Rule 392(2), that the matters decided during the course of the case management conference held on September 10, 2019 were not effective because the Orders were not signed until October 1, 2021. I do not find this argument persuasive.

[12] First, it was not strictly necessary in the particular circumstances of this case to issue an order granting leave to the Respondents to bring their motion for costs. This could have been authorized by oral direction as the relief requested was unopposed, as was explained by Justice Karen Sharlow in *Mazhero v. Fox*, 2014 FCA 200, at para. 19:

[19] [...] In my view, where a party or the Registry is being compelled to take certain action or to refrain from taking a certain action, an order should be made unless the *Federal Courts Rules* specifically contemplate a direction (for example, Rule 72 dealing with the right of the Registry to seek a direction as to the filing of irregular documents). By exception, a direction is appropriate where it is required to guide the parties or the Registry in matters of procedure, or to deal with a matter to which the parties have consented or that for other reasons may reasonably be considered not to be controversial. [...]

[13] Second, an order is effective when pronounced if the provisions of the order are clear and unambiguous, the order requires action by a party and the said party or their solicitor is present when it is made. As was stated by the Supreme Court of Canada in *Baxter Travenol Laboratories v. Cutter (Canada)*, [1983] 2 SCR 388, at page 398, the terms of an order must be obeyed from the time the reasons and order are delivered and affected persons have notice of it.

Reasons for decision are not meant to be tentative. The hiatus between reasons for decision and formal judgment simply provides an opportunity to settle the precise language to implement the judge's conclusions. Once a judge has rendered his decision by

giving reasons, and assuming any prohibitions contained therein are clearly worded, it is not, in my view, open to any person to flout his disposition of the case on the ground that there is no judgment yet in effect.

[14] My oral decision granting leave to the Respondents to bring their cost motion enabled the Respondent to move for the relief if they had so desired, provided they did so by October 31, 2019. It was not conditional on a formal order being signed.

[15] The Respondents do not dispute that they were required to bring their motion for costs within a specific timeframe. My intention in imposing a deadline was to ensure that the proceedings would be promptly brought to a conclusion.

[16] In any case, it would have been a simple matter for the Respondents to request when they consented to the terms of the draft orders that an additional provision be added extending the deadline to bring their motion for costs. Alternatively, they could have signalled their intention to file written submissions in response to the Applicants/Plaintiffs' request that the two applications be dismissed without costs. They chose instead to remain silent, leading the Court to believe that they had abandoned their intention to pursue costs.

[17] For the above reasons, I conclude that the motion for reconsideration should be dismissed because nothing was overlooked or omitted by the Court when the two Orders dated October 1, 2021 were issued.

[18] As a result, the motion for costs cannot be entertained since I am *functus* as it relates to the matter of costs.

[19] Finally, I wish to add that the Respondents' motion for costs would have been dismissed in any event given the absence of an affidavit in support of the motion or, at the very least, a draft bill of costs. There is therefore no evidence before me to allow me to assess the reasonableness of Respondents' legal fees and disbursements.

[20] Neither party has requested costs of the present motion. In the circumstances, no costs are awarded.

ORDER IN T-878-17

THIS COURT ORDERS that the motion is dismissed without costs.

“Roger R. Lafrenière”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-878-17

STYLE OF CAUSE: CHIEF JEFFREY NAPAOKESIK, IN HIS PERSONAL
CAPACITY AS CHIEF OF SHAMATTAWA FIRST
NATION AND THE AFORESAID SHAMATTAWA
FIRST NATION v MARGARET "MARGO" THOMAS,
NORA THOMAS, CHEYENNE REDHEAD AND
JANE DOE AND JOHN DOE

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: LAFRENIÈRE J.

DATED: OCTOBER 26, 2021

WRITTEN REPRESENTATIONS BY:

Brent C. Buss FOR THE APPLICANTS

Markus Buchart FOR THE RESPONDENTS

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