Date: 20090529

Docket: IMM-62-08

Citation: 2009 FC 559

Ottawa, Ontario, May 29, 2009

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

TIMOTHY E. LEAHY, Esq.
and
FOREFRONT MIGRATION LTD.

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an appeal in writing by the Applicants, pursuant to Rules 51 and 369 of the *Federal Courts Rules* (the *Rules*), from the February 23, 2009 decision of Prothonotary Aalto, striking out the Applicants' application for leave and judicial review challenging the decision of John Burroughs, Consul (the Consul), Canadian Consulate General in Hong Kong (the Consulate General) "made covertly at an unknown date to refuse en masse sans interview work permits at Wing's Foods of Alberta Ltd. in Edmonton (File Nos. W070700215/16/17/18/19/25/26/27" (the proceeding)).

[2] The application for leave and judicial review was launched naming Timothy E. Leahy, Esq. and Forefront Migration Ltd. (Forefront) as Applicants. Mr. Leahy signed the application "Timothy E. Leahy – Applicant, General Counsel and Director Forefront Migration Ltd." The principal remedy sought by the Applicants is an order quashing "Consul Burroughs' decision, applied eight times". Prothonotary Aalto granted the Minister's motion to strike on the ground the Applicants had no standing to initiate the proceeding as they were not, as required by section 18.1(1) of the *Federal Courts Act*, directly affected by the matter in respect of which relief is sought.

[3] The record indicates through the affidavit of Imelda On (Applicants' Application Record, page 31), she had formed some sort of association with Mr. Leahy in 2007 to seek Alberta employers "who would retain us to fill their staff shortages" and that in June 2007, "Mr. Leahy, who resides abroad, set up a Calgary office … and, in September 2007, my son and I moved to Calgary so that I could devote more time to securing contracts with Alberta employers".

[4] Imelda On deposes she had secured Wing's Foods of Alberta Ltd. as a client in February 2007. She states the owner of Wing's Foods asked her to find ten workers, preferably Cantonese-speaking, because that is the primary language of most of his 50+ work force.

[5] The record shows she submitted the work permit applications to the Canadian Consulate in Hong Kong. Her affidavit speaks of ten individuals who signed employment contracts with Wing's Foods for specified main duties and covering terms of employment: hours of work, hourly pay,

vacations, etc. She adds Service Canada approved these contracts on June 23, 2007. She hand delivered these applications to the Consulate General.

[6] She alleges that in August 2007, the Consulate embarked on a campaign to smear Mr. Leahy by sending out letters to clients "falsely asserting that Mr. Leahy does not meet the requirement for being an "authorized representative"", which the letter stated includes anyone who is a "member in good standing of a provincial … law society …". The record shows Mr. Leahy sued for damages.

The standard of review

[7] The Federal Court of Appeal in *Merck & Co. v. Apotex Inc*., 2003 FCA 488, building on the Court's decision in *Canada v. Aqua-Gem Investments Ltd. (C.A.),* [1993] 2 F.C. 425, held that on an appeal from a Prothonotary's decision, the reviewing court should first determine whether the questions raised in the appeal are vital to the final issue of the case. If so, the reviewing Court must determine the matter *de novo*. If the vitality test is not met, then a Prothonotary's discretionary order is not to be set aside on appeal unless clearly wrong.

[8] In this case, the Prothonotary's order is vital to the final issue of the case as the Applicants' application for leave and judicial review has been struck with no possibility of amendment.

Analysis and Conclusions

[9] Subsection 72(1) of the *IRPA* provides, by filing an application for leave and judicial review in this Court from any decision made under *IRPA*.

[10] The *Federal Courts Immigration and Refugee Protection Rules* speak to procedural rules dealing with application for leave and the prescribed form.

[11] If leave is granted, the matter proceeds on judicial review under the *Federal Courts Act*. Section 18.1(1) of that *Act* provides an application for judicial review may be made "by anyone directly affected by the matter in respect of which relief is sought".

[12] Section 221.(1) of the *Federal Courts Rules* says the Court may strike a pleading that is "scandalous, frivolous or vexatious". In *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (C.A.), the Federal Court of Appeal held the Federal Court had inherent jurisdiction to dismiss an application for judicial review "that was so clearly improper as to be bereft of any possibility of success".

[13] Prothonotary Aalto had before him several motions from the Applicants seeking various orders including an extension of time to seek leave and judicial review, a consolidation request and a number of declaratory orders. He also had before him a motion to strike the application for leave and judicial review on the grounds that its initiation by the Applicants "is clearly improper and bereft of any possibility of success" since they are not persons directly affected by Officer Burroughs' decision. Thus, says counsel for the Respondent, they lack standing.

[14] Counsel for the Respondent raised another ground namely that in one leave application, the Applicants seek "eight different and unrelated work-permit decisions contrary to Rule 302 of the

Federal Courts Rules", pointing out that "two of the eight decisions being challenged had not (then) been rendered".

[15] Counsel for the Respondent adds that, in the application for judicial review, the Applicants are seeking an award of damages which they cannot do on judicial review. This is a correct view of the law.

[16] The jurisprudence cited to the Prothonotary by the counsel for the Respondent on persons directly affected is persuasive and determinative in this case. Mr. Leahy did not attempt to rebut that jurisprudence.

[17] In the circumstances, the appeal must be dismissed with costs. I reached the same result recently in *Timothy E. Leahy, Esq. et al v. the Minister of Citizenship and Immigration*, 2009 FC 509.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES this appeal is dismissed with costs.

"François Lemieux"

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Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-62-08
STYLE OF CAUSE:	TIMOTHY E. LEAHY, Esq. et al v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
DEALT IN WRITING:	Ottawa, Ontario
REASONS FOR JUDGMENT AND JUDGMENT:	Lemieux J.
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SOLICITORS OF RECORD:

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