Federal Court  Cour fédérale

Date: 20110429

Docket: T-555-10

Citation: 2011 FC 499

Ottawa, Ontario, April 29, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

ANTON OLEINIK

Applicant

and

THE PRIVACY COMMISSIONER OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant seeks reconsideration of my order of March 18, 2011, dismissing the applicant's previous appeal motion of Prothonotary Morneau's Order of February 18, 2011, which dismissed the applicant's original motion pursuant to Rule 74(1) of the *Federal Courts Rules*, 1998, SOR/98-106 [FCR], to remove the solicitor's certificate of service which was filed by the respondent, the Office of the Privacy Commissioner of Canada [OPC], on December 16, 2010.

[2] The applicant is self-represented and this motion for reconsideration will be decided on the basis of written representations.

[3] Rule 397 specifies that a notice of motion to request reconsideration must be made within ten days after the making of the order. The applicant's motion for reconsideration was filed on March 23, 2011, and is, therefore, within the prescribed time period.

[4] Rule 397(1) allows a party to request that the Court, as constituted at the time the order was made, to:

Reconsider its terms on the ground that:

a) the order does not accord with any reasons given for it; or

b) a matter that should have been dealt with has been overlooked or accidentally omitted.

[5] The applicant's grounds for his motion to reconsider are that:

a) the documented evidence produced by the applicant does not accord with the reasons given for the Order, namely with the finding that neither the questions raised in an appeal from the Order issued by Prothonotary Morneau, Esq., on the February 18, 2011, are vital to the final determination of the case nor it is based on a misapprehension of the facts nor it is based on a wrong principle of law;

b) the matter of the management of court file No T-555-10 should have been dealt with but has been overlooked.

[6] With respect to his first ground for reconsideration, the applicant claims that the reasons for my Order are outlined in just one sentence, in contrast to the ample documented evidence included in the motion record, and more importantly, that the motion record does not contain any documented evidence confirming the respondent's claim that the OPC's record was duly served on December 17, and again on December 29, 2010.

[7] The applicant also claims that the issue raised in the Motion is vital to the final issue in the case, because it refers to the respondent's record, and that he was unable to respond to a series of the motions filed by the respondent, as a result of the respondent's unwillingness to contact him at the invalid address for service.

[8] The applicant also claims that the precedents to which he refers in his submissions clearly show that his requests for relief are reasonable and within the proper scope of Rule 74.

[9] Finally, the applicant reiterates his position that the service of the respondent's record by means of electronic communication was neither completed on the 17th or on the 29th of December, 2010, and that the respondent failed to provide a satisfactory proof of due service, as per the Federal Court's Notice to the Profession with respect to Electronic filing.

[10] To summarize the applicant's position, he claims that when attempting to serve OPC's record, the respondent failed to follow the instructions given in the July 6, 2010, Order, and the relevant Rules of the FCR, more specifically that the respondent did not expeditiously follow the

first attempt of service by means of electronic communication, the service by e-mail was not complete.

[11] On the second issue, that is the matter of the management of court file No T-555-10, the applicant claims that it is vital to the final issue of the case because it refers to the collection and protection of the applicant's personal information by the government bodies (namely, the Social Sciences and Humanities Research Council of Canada [SSHRC] and the Office of the Privacy Commissioner of Canada [OPC], when investigating, complaints filed by the applicant against SSHRC, and the Courts Administration Service [CAS] when managing court file No T-555-10) and that this issue has been totally overlooked by the Order.

[12] The applicant is therefore asking this Court to reconsider its Order taking into consideration the documented evidence produced and addressing the issue of the management of court file No T-555-10, in the alternative to provide more detailed and elaborate reasons for its Order.

[13] The respondent takes the position that the motion for reconsideration should be dismissed with costs, on the grounds that the Court did not commit a mistake, error or omission in its March 18, 2011, Order, that the applicant's motion is beyond the scope of Rule 397, and that the applicant's motion and requested relief are unreasonable, unnecessary, vexatious and an abuse of the process of this Court.

[14] The respondent relies on the Federal Court of Appeal's decision in *South Yukon Forest Corporation v Canada*, 2006 FCA 34, [2006] FCJ No 114 (QL), and on *Pharmascience Inc v*

Canada (Minister of Health), 2003 FCA 333, [2003] FCJ No 1339 (QL), to affirm the principle that motions under Rule 397 are intended to deal with inadvertent mistakes or omissions that should be rectified by the judge who rendered the original judgment and not to appeal an order.

[15] The respondent further submits that the Court did not have to provide reasons for its Order of March 18, 2011, and that it did provide reasons. Therefore, there are no error or omissions that would warrant reconsideration.

[16] The respondent further contends that the applicant is in fact appealing the March 18, 2011, Order, which is beyond the scope of a motion for reconsideration under Rule 397 and cites several authorities in support.

[17] Finally, the respondent takes the position that the applicant's most recent motions are vexatious, unnecessary and an abuse of the Court's resources, the OPC's resources and that this should be taken into consideration, and costs should therefore be awarded against the applicant.

[18] In reply the applicant contends that the respondent has failed to provide the Court with any documented evidence supporting its position and that the Court has failed to provide the applicant with reasons for its order relying on both *Klockner Namasco Corp v Federal Hudson (The)*, [1991] FCJ No1073 (QL) and *Pharmascience Inc v Canada (Minister of Health)* 2003 FCA 333, [2003] FCJ No 1339, at para 12 (QL).

[19] The applicant submits that two further issues have been identified whether the Order of March 18, 2011, contains inadvertent mistakes and certain omissions.

[20] The applicant further contends that my true intentions were to render an Order consistent with previous rulings in this case and that my Order of March 18, 2011, was inconsistent with the previous rulings of this Court with regard to the applicant's valid address for service.

[21] The applicant further contends that there are no grounds for the respondent to claim its costs.

[22] The applicant also submits that the Order of March 18, 2011, contains omissions since the matter of the management of Court file No T-555-10 has not been addressed in spite of its relevance to the final issue and its impact on outcomes of interlocutory decisions and that, in itself, constitutes grounds for reconsideration.

[23] Finally, the applicant maintains his initial request for relief, adding that in the alternative, he requests that this Court grants an extension of time to commence an appeal under section 27(2) of the FCR and issues instructions as to how to file this appeal via LexisNexis, taking into consideration his very particular circumstances, namely his stay abroad until August 2011, on the grounds that such instructions cannot be obtained from a Registry Officer because of the unresolved character of the issue of the management of the Court file no T-555-10.

Analysis

[24] The issue raised by this motion is whether I should reconsider my Order on the ground that my Order does not accord with the reasons given for it and that a matter that should have been dealt with was overlooked or accidentally omitted. That is the test set out in Rule 397 (1) (*a*) and 397 (1) (*b*).

[25] As I review the reasons provided for my Order of March 18, 2011, I have denied the applicant's appeal of Prothonotary Morneau's decision of February 18, 2011, on the grounds that, firstly, a discretionary Order of a Prothonotary should only be reviewed de novo or set aside if the questions raised in that motion are vital to the final determination of the case, in my view they are not in this instance. Secondly, the Prothonotary's Order must be clearly in error, that is based on a misapprehension of the facts or a wrong principle of law as stated in *Merck& Co Inc v Apotex Inc* 2003 FCA 488, [2003] FCJ No 1925 (QL)**.**

[26] As I have stated previously, I have reviewed carefully all the documentation filed and read attentively Prothonotary Morneau's Order of February 18, 2011.

[27] It is a well established principle that reconsideration of a final decision is only allowed in the narrowest of circumstances. The Federal Court of Appeal stated in *Metodieva v Canada (Minister of Employment and Immigration* (1991), 132 NR 38, [1991] FCJ No 629 (QL):

> …I think it is important to point out that the Court does not have jurisdiction to decide the matter again, and that this is so whatever the reason for dismissing the first application for leave…

[28] In the case of *Samaroo v Canada (Minister of Citizenship and Immigration*), 2007 FC 431, [2007] No 607, at para 3 (QL), Justice Barnes, in discussing the limited scope of an application under Rule 397(1), wrote:

> …What is required for such relief is evidence that the Court overlooked a matter or accidentally omitted something material from the decision. The Rule does not provide a basis for the Court to reconsider its decision on the merits or to provide an opportunity for an applicant to correct deficiencies in the evidence tendered in the earlier proceeding". I fully agree with this description of the purpose of Rule 397(1).

[29] The essence of Rule 397 is technical, it is meant to permit the Court to correct an oversight on its part not that of a party (see *Boateng v Canada (Minister of Employment and Immigration)* (1990), 11 Imm LR (2d) 9, [1990] FCJ No 422 (QL), at the time, Rule 337(5) (*b*).

[30] The principle being clearly established, in order for the applicant to succeed, he must establish that this Court overlooked a matter or accidentally omitted something material from the decision.

[31] In support of his motion, the applicant is relying on his written representations and supporting documentation which I have reviewed carefully. The applicant's two primary grounds for reconsideration are that the documented evidence does not accord with the reasons given for the

Order and that the management of the Court file should have been dealt with but has been overlooked.

[32] To alleviate any concerns of the applicant, I can reiterate that in coming to my Order issued on March 18, 2011, I considered all the elements that were before me, including the relevant Rules of this Court, and more specifically Rules 2, 6c and 147. I can assure the applicant that all his documentation was duly considered and assessed in light of the Rules and more specifically that I considered the documents to have been validly served since it came to the notice of the applicant on December 16, 2010, as per the Order rendered by Prothonotary Morneau on July 6, 2010. Having come to the same conclusion as Prothonotary Morneau I see no reason to disturb his Order of February 18, 2011.

[33] Furthermore, I see no reason that meets the criteria set for reconsideration since I have not overlooked any matter nor do I consider that the reasons I provided for my Order do not accord with the documentation filed.

[34] Consequently, I am dismissing the applicant's motion for reconsideration since it constitutes in essence an appeal of my Order dated March 18, 2011, and fails to meet the criteria established in our jurisprudence.

[35] The applicant has also requested that in the alternative that this Court grants an extension of time to commence an appeal under section 27(2) of the *Federal Court Acts* and issues instructions as how to file this appeal via LexisNexis, taking into consideration his very particular

circumstances, namely his stay abroad until August 2011, on the grounds that such instructions cannot be obtained from a Registry Officer because of the unresolved character of the issue of the management of Court file no T-555-10.

[36] This alternate request is not receivable in a motion for reconsideration and the applicant should file a proper motion for extension of time to commence an appeal and issuance of consequent instructions.

ORDER

THIS COURT ORDERS that

The motion for reconsideration is dismissed with costs.

"André F. J. Scott"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-555-10
STYLE OF CAUSE:	ANTON OLEINIK v THE PRIVACY COMMISSIONER OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	SCOTT J.
DATED:	April 29, 2011

WRITTEN REPRESENTATIONS BY:

Anton Oleinik	FOR THE APPLICANT
Louisa Garib	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Anton Oleinik	FOR THE APPLICANT (ON HIS OWN BEHALF)
Office of the Privacy Commissioner of Canada	FOR THE RESPONDENT