Federal Court  Cour fédérale

Date: 20130116

Docket: 12-T-81

Citation: 2013 FC 39

Ottawa, Ontario, January 16, 2013

PRESENT: The Honourable Madam Justice Bédard

BETWEEN:

GRANT R WILSON

Applicant

and

CANADA REVENUE AGENCY

Respondent

ORDER

UPON motion by the applicant for "an extension of time to file an 'amended' appellant's application for leave";

UPON considering that the applicant has been declared a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [the Act] by order of Justice Robert L. Barnes, dated December 20, 2006, (*Wilson v Canada (Revenue Agency)*, 2006 FC 1535, 305 FTR 250) and requires leave from the Court to institute any proceedings before the Court;

UPON considering that in the same order, Justice Barnes dismissed the motion for an extension of time to bring an appeal against an order of Prothonotary Milczynski, dated April 20, 2006, in which she dismissed the action commenced by the applicant against the Canada Revenue Agency (the Agency) and Her Majesty the Queen (Docket T-2149-05);

UPON reading the parties' motion records and upon hearing their oral submissions;

UPON considering that the applicant's motion, and the material filed by the applicant in support of his motion, is not clear. However, the Court understands from the applicant's material and from his oral submissions that he is asking the Court to extend the time limit to allow him to seek leave from the Court to commence or continue proceedings aimed at rescinding, or in any other way, overturning Justice Barnes' order dated December 20, 2006, and to give him the opportunity to proceed on the merits of the action that he commenced in file T-2149-05;

UPON considering that the applicant also discussed his disagreement with the portion of Justice Barnes's order which barred him from bringing any further proceedings to this Court except with leave, in accordance with subsection 40(1) of the Act;

UPON considering that pursuant to subsection 40(4) of the Act, "the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding";

UPON considering that allowing the applicant's proposed proceedings to be commenced would be an abuse of the Court's process and that the proposed proceedings are bereft of any possibility of success and that, therefore, the Court will not grant the extension of time;

Endorsement

The applicant has had a long standing dispute with the Agency related to a decision to reverse a tax refund in the amount of $495 159.06 and the seizure and removal of such funds from his bank account in 1991.

The applicant argues that, despite all of his attempts, the merits of the substantive issues raised in the actions that he has instituted against the Agency have never been heard and determined by the Court. He argues that all he is asking from the Court is permission to finally proceed with the merits of his claim against the Agency and Her Majesty the Queen (the respondents) in file T-2149-05. He also argues that he was wrongly declared a vexatious litigant by Justice Barnes.

The applicant is correct when he states that the substantive issues relating to his dispute with the Agency have never been heard and determined by the Court, but that does not give him a right to re-open the final judgments that disposed of the actions that he instituted against the respondents before this Court in relation that that dispute.

The applicant first brought an action against the respondents in 1999 (Docket T-745-99). This action was dismissed by an order of Justice James Hugessen dated July 16, 2003. In his order, Justice Barnes outlined as follows the circumstances that led to Justice Hugessen's order and quoted the relevant portion of the Order:

> [4] I will not unduly belabour the history of the 1999 action because it is well-documented in previous decisions of this Court. It is sufficient to note that this action was dismissed by the Order of Justice James Hugessen on July 16, 2003. That dismissal was based on Mr. Wilson's failure to properly answer questions or to fulfil undertakings on discovery. It is also undisputed that Mr. Wilson failed to appear for the hearing before Justice Hugessen although he had been properly served with the motion materials. Justice Hugessen's Order stated in part:
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> > The plaintiff has repeatedly failed to answer proper questions on discovery, to give any or proper answers to undertakings and to produce documents as required; orders from the Court appear to have no effect upon him. The defendant's motion is accordingly allowed with costs to be assessed and the action is dismissed with costs.

The applicant brought two motions for reconsideration of Justice Hugessen's order that were dismissed by Justice Anne Mactavish (by orders dated November 25, 2004 and September 29, 2005). The applicant then brought a motion before the Federal Court of Appeal seeking an extension of time to appeal the dismissal of his action. On December 8, 2005, Justice Gilles Létourneau dismissed the applicant's motion. That order put an end to the action instituted in file T-745-99.

In November 2005, the applicant instituted a second action against the respondents (Docket T-2149-05). This second Statement of Claim essentially focused on the same issues that

were raised in the 1999 action. Justice Barnes discussed the similarities and differences between the two pleadings in paragraphs 9 and 10 of his order.

The respondents in that action brought a motion to strike out the Statement of Claim on the grounds that the pleadings were frivolous, vexatious, an abuse of process and raised issues that had previously been determined. Prothonotary Milczynski granted the motion and dismissed the applicant's action. The essential portion of Prothonotary Milczynski's finding reads as follows:

> It is clear, based upon a review of the statement of claim, that the substance of the cause of action in this proceeding is identical to that in an action already commenced by the Plaintiff, and in which there as been a final disposition. The chronology and factual background relating to the Plaintiff's complaint, and that gave rise to the first action and the within action need not be reproduced here, but I note they are set out in detail in the Defendant's written representations at paragraphs 2 to 7 inclusive, which I adopt. The issues are the same, and the facts that allegedly give rise to the claim are the same. It is also clear that much of the relief sought by the Plaintiff in this action is not available.

The applicant sought to appeal this order and brought a motion for an extension of time to appeal Prothonotary Milczynski's order. The respondents replied by moving for an order declaring the applicant a vexatious litigant pursuant to subsection 40(1) of the Act. Both motions were heard by Justice Barnes. In his order, Justice Barnes determined that he would not exercise his discretion to grant an extension of time since the applicant's Statement of Claim did not raise an arguable case. Justice Barnes concluded that he could "see nothing in Prothonotary Milczynski's decision which constitutes an arguable error." He also determined that the doctrine of abuse of process by re-litigation was applicable.

The applicant argues, and has argued before Justice Barnes, that the principle of *res judicata* could not apply in his case because the substantive issues raised in his previous actions of 1999 had not been dealt with. Justice Barnes dealt with this argument in the following manner:

> [19] It was contended by Mr. Wilson that he has never had the benefit of a decision on the merits of his legal complaint. He says that the principle *res judicata* only applies where such a substantive judicial determination has been previously rendered. Mr. Wilson is correct that there is judicial authority which limits the application of the principle of *res judicata* to a situation where there has been a prior merit-based adjudication. It is, however, well understood that abuse of process is a complimentary or adjunctive doctrine to *res judicata* which also prevents relitigation in appropriate circumstances to preserve the integrity of the Court's process: see *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, [2003] S.C.J. No. 64, 2003 SCC 63 at para. 38..*U.P.E.), Local 79*, [2003] S.C.C. No. 64, 2003 SCC 63 at para. 38.
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> [20] The question here is whether Mr. Wilson's repeated and flagrant disregard for the Court's rules and procedures, leading to the dismissal of the 1999 action, should simply be ignored in the face of the present action. It is inconceivable to me that the Court could ever reasonably countenance such an outcome because to do so would encourage disrespect for due process and seriously prejudice the interests and reasonable expectations of the opposite party.
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> [21] This is a situation where the doctrine of abuse of process by relitigation clearly applies. […]
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> [22] I am satisfied that substantially all of Mr. Wilson's 2005 Statement of Claim is an attempt to relitigate matters which were finally determined upon the dismissal of his 1999 action or, as Prothonotary Milczynski correctly put it, "the substance of the first action is essentially reproduced in this proceeding". To the extent that those actions overlap, the 2005 pleadings obviously constitute an abuse of the Court's process by relitigation and, therefore, could not be allowed to stand on any plausible basis. In the result, I have concluded that Mr. Wilson's proposed appeal from Prothonotary Milczynski's decision, insofar as the two claims overlap, has no legal merit and absolutely no prospect for success.

Justice Barnes' order cannot be disturbed as it is final and binding. The applicant has exhausted all avenues to challenge Justice Barnes' order. First, in July 2007, he filed a motion for an extension of time to appeal Justice Barnes' order before the Federal Court of Appeal. That motion was dismissed by Justice Sharlow in an order dated July 27, 2007 (Docket 07-A-25). No appeal is permitted from such an order. However, in November 2007, the applicant brought a motion trying to appeal Justice Sharlow's order. Justice Sharlow treated the motion brought by the applicant as a motion for reconsideration of her order of July 2007 and, in an order dated November 20, 2007, she dismissed the motion for reconsideration (Docket 07-A-25). Then, on May 1, 2008, the Supreme Court of Canada dismissed the application for leave to appeal both orders of Justice Sharlow (Docket 32437).

The final order of Justice Barnes has put an end to the applicant's attempts to commence or continue before this Court proceedings that relate to his 1991 dispute with the Agency and the Court will not grant the applicant an extension of time to file any proceedings that would lead to a re-litigation of matters that have been finally disposed of. This would clearly constitute an abuse of the Court's process.

Furthermore, the applicant has raised before the Court essentially the same arguments that he presented before Justice Barnes. The applicant also argues that he was wrongly declared a vexatious litigant by Justice Barnes. As previously stated, the applicant cannot commence proceedings aimed at rescinding Justice Barnes' order.

THIS COURT ORDERS that the Motion for "an extension of time to file an 'amended' appellant's application for leave" is dismissed with costs in favour of the respondent.

"Marie-Josée Bédard"

Judge