

Federal Court



Cour fédérale

Date: 20210507

Docket: T-171-21

Ottawa, Ontario, May 7, 2021

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MICHEL DENIS ETHIER

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

[1] This Plaintiff has brought a motion in writing pursuant to Rule 369 seeking an order pursuant to Rule 51 of the *Federal Courts Rules* allowing an appeal of Prothonotary's Aylen's April 8, 2021 Order [the Order]. Prothonotary Aylen is case managing this action and several other actions involving essentially the same matter.

[2] The Plaintiff's action is one of more than 60 actions in which self-represented plaintiffs seek relief from the federal Government's COVID-19 mitigation measures. The Statements of Claim in each action are almost identical and are based on a kit made available on the internet by Mr. John Turmel [Mr. Turmel], the Plaintiff in T-130-21.

[3] As case manager, Prothonotary Ayles ordered that, pursuant to Section 50(1)(b) of the *Federal Courts Act*, it was in the interests of justice to stay certain actions before her, including the Plaintiff's claim, in order for Mr. Turmel's action to proceed. The basis of this Order was due, in short, to the almost identical feature of the statements of claims. Prothonotary Ayles also determined that, rather than ordering the Defendant to keep the Plaintiffs updated on the status of Mr. Turmel's action, the Plaintiffs in the case management matters before her could access any updates on Mr. Turmel's action from the Federal Court's website, and from Mr. Turmel's website. Ultimately, all Plaintiffs would be provided a copy of the decision of Mr. Turmel's action and could take the necessary action thereafter.

[4] The Order set out the following:

THIS COURT ORDERS that:

1. The actions bearing Court File Nos. T-138-21, T-171-21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21 and T-242-21 are hereby stayed pending the final determination (by judgment or order) in T-130-21 and any appeal therefrom.

2. The Registry shall provide a copy of any final determination in T-130-21 to each of the Plaintiffs in T-138-21, T-171-21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21 and T-242-21.

3. In the event that any party in T-138-21, T-171-21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21 or T-242-21 takes the position that their action is differently situated than T-130-21 such that the final determination in T-130-21 (and any appeal therefrom) should not apply to their action, that party shall, within 30 days of the final determination in T-130-21 and any appeal therefrom, requisition a case management conference to establish a schedule for a motion to determine whether their action should move forward.

4. The terms of this Order shall apply to any new Statement of Claim filed subsequent to the date of this Order which is substantially identical to those filed in T-130-21, T-138-21, T-171-

21, T-208-21, T-219-21, T-212-21, T-220-21, T-221-21, T-230-21 or T-242-21.

5. The terms of this Order may be varied or amended as the Court determines necessary.

6. There shall be no costs associated with this Order.

[5] As this motion is made under Rule 51 of the *Federal Courts Rules*, SOR/98-106, and reviews a Prothonotary's Order, the Court will apply the standard of review as given in *Housen v Nikolaisen*, 2002 SCC 33. The Federal Court of Appeal has recently approved of this standard in the context of a prothonotary's decision in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79 [*Hospira*]. That is, "palpable and overriding error" for questions of fact and questions of mixed fact and law; and "correctness" for questions of law (*Hospira* at para 66). Therefore, I will afford substantial deference to the aspects of Prothonotary Aylen's Order that relate to the facts and the application of the law to the facts. I will afford no deference to Prothonotary Aylen's determinations of the applicable law.

[6] As the case management judge, Prothonotary Aylen is "intimately familiar with the history, details and complexities" of this matter (*C. Steven Sikes, Aquero LLC v Encana Corporation Fccl Ltd.*, 2016 FC 671 at para 13).

[7] I have reviewed the Order and note that Prothonotary Aylen correctly identified the legal authority for issuing a stay pursuant to section 50(1)(b) of the *Federal Courts Act*, namely that it is in the interests of justice to do so [*Clayton v Canada (Attorney General)*, 2018 FCA 1]. Prothonotary Aylen, at paragraphs 16 to 22 then considered the totality of the circumstances and the applicable principles in exercising her discretion.

[8] I find that Prothonotary Aylen did not make a palpable and overriding error in making the Order. I also find that Prothonotary Aylen considered the totality of the circumstances and applied the correct legal principles in exercising her discretion.

[9] The Appeal is therefore dismissed.

THIS COURT ORDERS that:

1. The appeal of Prothonotary Aylen's April 8, 2021 Order is dismissed.
2. The Defendant is granted costs in the amount of \$500.00.

"Paul Favel"

Judge