

CANADA / JUDGMENT

Girard v. Canada

2004 FC 757

COURT
Federal CourtDECIDED
25 May 2004

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Girard v. Canada Court (s) Database Federal Court Decisions Date 2004-05-25 Neutral citation 2004 FC 757 File numbers T-1520-02 Decision Content Date: 20040525 Docket: T-1520-02 Citation: 2004 FC 757 Ottawa, Ontario, the 25th day of May 2004 Present: THE HONOURABLE MR. JUSTICE SIMON NOËL BETWEEN: CAROLE GIRARD Applicant and HER MAJESTY THE QUEEN Respondent REASONS FOR ORDER AND ORDER

- [1] This is a motion pursuant to Rules 75 and 369 of the Federal Court Rules ("the Rules") to amend the applicant's statement of claim to add the following paragraph 13, which I reproduce in full: [TRANSLATION] The aforesaid assault is the result of a conspiracy formed and carried out primarily by the following persons to injure the reputation of Robert Derosby and discredit him in order to terminate his activities, which were injuring, or were likely to injure, them or persons whom they sought to protect:
- (a) Maj. René Marion: having agreed that reprehensible acts were committed by subordinates without any reaction on his part, and being blamed for this, he had an interest in terminating the activities of the informant Robert Derosby;
 - (b) Maj. Gen. Dwight Davis: as commanding officer of the Bagotville base, he was informed of irregularities which were occurring at the base and did not terminate those activities although he could have done so, so that he had an interest in terminating the activities of the informant Robert Derosby;
 - (c) Gen. Patricia Samson (Ret.): as Provost Marshal of the military police, she was informed, primarily by Master Corp. Bellavance and Capt. Sylvie Beaudry as well as Robert Derosby, in the presence of Capt. Steve Boudreault, and did nothing to reach a conclusion of this investigation, so that she had an interest in terminating the activities of the informant Robert Derosby;
 - (d) Lt. Col. Marcotte: as commanding officer of the Bagotville base he was informed of irregularities occurring at the base and did not terminate those activities although he could have done so, so that he had an interest in terminating the activities of the informant Robert Derosby;

- (e) Master Corp. Bellavance: after conducting an investigation at the Bagotville base in response to complaints, he concluded that indictable offences had been committed, and despite this terminated the matter as a "closed file", so that he had an interest in terminating the activities of the informant Derosby, who continued to report the said indictable offences;
 - (f) Capt. Sylvie Beaudry: as immediate superior of Sgt. Caron and Master Corp. Bellavance, she saw the informant Robert Derosby continuing to report facts that had been uncovered by Master Corp. Bellavance and despite this authorized the closing of the file with no further action, so that she had an interest in terminating the activities of the informant Robert Derosby;
 - (g) Sgt. Gaétan Caron: being under the orders of Capt. Beaudry and taking part in the investigations resulting from those of Master Corp. Bellavance, his interest was in planning the action that could succeed in terminating the activities of the informant Robert Derosby . . .
- [2] To review, the undersigned ordered that the former paragraph 13 be struck out at the respondent's request, in view of the brief and incomplete nature of the said paragraph, and invited counsel for the applicant to file a motion for leave to amend, which was done within the required deadlines.
- [3] The respondent filed her reply belatedly and submitted a motion for an extension of time, the reason being that counsel was on vacation. The application for an extension of time to file the reply is granted.
- [4] The respondent objected to the application to amend, as she considered that the allegations were incomplete since all the substantial and material facts of the conspiracy had not been alleged as required by Rules 171 and 174. Further, she argued that the evidence provided by the examinations held to date and the documents filed did not support the conspiracy argument.
- [5] A conspiracy is difficult to prove and a party undertaking to do so must often do it by using witnesses for the opposing party. That is the case here.
- [6] As the judge responsible for managing the proceeding and, therefore, for disposing of the motion at bar, I see my function as being to ensure that the Rules are observed, taking into account the position of each of the parties, and with a view to preparing the record for the trial judge as speedily as possible. At this stage of the proceedings, I am not in a position to weigh the evidence and consequently I cannot make a judgment on the merits of the case. That is a task for the trial judge.
- [7] The conspiracy allegation has been the basis of the claim from the outset and it did not take the respondent by surprise. The background to the case has always reflected that possibility. As worded, the allegation discloses the names of the persons allegedly participating in the conspiracy, their interest in doing so and the objective sought.

- [8] The respondent required that all facts surrounding the conspiracy be disclosed. I do not believe the Rules contain any such requirement. In fact, the precedents as stated in cases such as *Lubrizol Corp. v. Imperial Oil Ltd. (C.A.)*, [1996] F.C.J. No. 454, *Murray v. Canada*, [1978] F.C.J. No. 406, and *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc.*, [1992] 2 S.C.R. 1065, at 1077, in which Gonthier J. indicated: The judge must allow the respondent a certain degree of latitude in respect of the relevance of the evidence presented in attempting to justify himself or herself . . . Further, the Rules and precedents seek to ensure that the respondents will understand the allegations made (including the facts underlying them) so they can defend themselves and the Court will be able to identify the points of fact and law that arise. For these reasons, I feel that the amendment should be granted.
- [9] Further, I note that the respondent will suffer no specific prejudice as a result of the amendment. Clearly the allegations are serious, but I feel a decision regarding them should be made by the trial judge.
- [10] In view of the respondent's right to reply to paragraph 13, the undersigned intends to finalize the transcript resulting from the pre-trial conference and send it to the parties in June 2004. If this procedure is not agreeable to one of the parties, it should inform the undersigned. FOR THESE REASONS, THE COURT ORDERS THAT:
- the application for an extension of time to file the reply is granted;
 - the application for an amendment is granted and paragraph 13 will be inserted in the statement of claim: the applicant will have five days from receipt hereof to serve and file her amended statement of claim;
 - costs to the applicant. "Simon Noël" Judge Certified true translation Suzanne M. Gauthier, C Tr, LLL FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-1520-02 STYLE OF CAUSE: Carole Girard and Her Majesty the Queen WRITTEN MOTION HEARD WITHOUT APPEARANCE BY PARTIES REASONS FOR ORDER AND ORDER BY: THE HONOURABLE MR. JUSTICE SIMON NOËL DATED: May 25, 2004 APPEARANCES: Jacques Ferron FOR THE APPLICANT Stéphane Lilkoff FOR THE RESPONDENT SOLICITORS OF RECORD: Jacques Ferron FOR THE APPLICANT 5500, boul. des Galeries, Bureau 502 Québec, Quebec G2K 2E2 Morris Rosenberg FOR THE RESPONDENT Deputy Attorney General of Canada Ottawa, Ontario

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Prepared on 30 October 2026 · Esheria