



Date: 20231128

Docket: T-1902-23

Citation: 2023 FC 1588

Vancouver, British Columbia, November 28, 2023

PRESENT: The Honourable Mr. Justice Lafrenière

**“PROPOSED CLASS PROCEEDING”
ACTION
ADMIRALTY ACTION IN REM**

BETWEEN:

**WINSTON E. GASKIN AS HIMSELF, AS
SOLE SURVIVING SHAREHOLDER,
DIRECTOR AND OFFICER OF STANDARD
LAND COMPANY INC. (AND
AFFILIATES), AND YOLANDA T. ZEBKO
OF IRVINE, CALIFORNIA, PARTNER TO
WINSTON E. GASKIN, AND FOR THE
“FAMILIES OF STANDARD LAND”**

Plaintiffs

and

**EDWARD ROGERS III, MELINDA
ROGERS-HIXON, THE ESTATE OF
LORETTA ANNE ROGERS, DECEASED,
ROGERS COMMUNICATIONS INC.,
“ROGERS COMMUNICATIONS (CANADA)
INC.”, ROGERS WIRELESS
PARTNERSHIP, ROGERS
COMMUNICATIONS PARTNERSHIP,
ROGERS CONTROL TRUST, ROGERS
FAMILY TRUST, ALL AFFILIATES,
DIRECTORS, TRUSTEES, OFFICERS,
AGENTS AND ASSIGNS, AND OTHERS,**

**AND THE OWNERS AND THE OWNERS
AND ALL OTHERS INTERESTED IN THE
SHIP ROGERS COMMUNICATIONS INC.,
AND HER CARGO AND FREIGHT**

Defendants

and

**ATTORNEY GENERAL OF CANADA AND
CANADIAN HUMAN RIGHTS
COMMISSION AND CANADA REVENUE
AGENCY AND COMPETITION BUREAU
CANADA AND COMPETITION TRIBUNAL**

Third Parties

ORDER AND REASONS

[1] These reasons concern an Order made under subsection (1) of Rule 74 of the *Federal Courts Rules*, SOR/98-106 (*Rules*), requiring the Plaintiffs to show cause why the Statement of Claim should not be removed from the Court file. They should be read in conjunction with the reasons provided in another related proceeding: *Gaskin v HMK*, 2023 FC 1542 [*Gaskin*].

[2] By way of background, an originating document entitled “Proposed Class Proceeding” and “Admiralty Action in Rem” was referred to the Court on August 21, 2023 for directions as to filing pursuant to Rule 72 of the *Rules* in light of numerous irregularities that were noted by the Registry, including:

- (a) the Statement of Claim was brought on behalf of a number of parties, but was only signed by one plaintiff, Winston E. Gaskin, who is not a solicitor, nor authorized to act in a representative capacity;
- (b) the defendants listed in the style of cause included the words “and others”; and
- (c) numerous parties were named as third parties, contrary to Rule 193, which only permits a defendant to commence a third party claim.

I. Rules 72 and 74

[3] When the Court receives a non-compliant document from the Registry, it may engage in two possible stages of review, the first one under Rule 72 and the second under Rule 74: *Rock-St Laurent v Canada (Citizenship and Immigration)*, 2012 FCA 192 at para 24.

[4] Under Rule 72, the Court must consider whether a statement of claim is “not in the form required by these Rules” or where the “conditions precedent to its filing have not been fulfilled.” This review focuses on form, not content. The Registry was instructed to accept the Statement of Claim for filing notwithstanding the irregularities as it substantially complied with Form 171A. However, that was not the end of the matter.

[5] As explained in *Gaskin* at paragraphs 15 to 20, as a result of recent amendments to Rule 74 of the *Rules*, the Court is now allowed to order that a document be removed from the judicial record on the grounds that it is scandalous, frivolous, vexatious and/or clearly unfounded

(74(1)(b)), or constitutes an abuse of the Court’s process (74(1)(c)). The addition of these new grounds provide the Court with the necessary tools to deal directly and expeditiously with dysfunctional or destructive conduct in the litigation process and essentially “nip it in the bud.”

II. The Plaintiffs’ Pleading

[6] When looking at the pleading from the optic of Rule 74, I apprehended that the Statement of Claim could fall within the grounds for removal of a document under paragraphs (b) and (c) of subsection 74(1). Among other things, the Statement of Claim seeks leave:

- (a) to amend the Application for judicial review brought by Mr. Gaskin against a decision of the Canadian Human Rights Commission (CHRC) in Court File No. T-353-22 (Application), as it pertains to his complaint against one of the named Defendants in the present proceeding, Rogers Communications Inc. (Rogers), to a class proceeding;
- (b) to add parties to the Application, including Mr. Gaskin “as himself, as class representative and as sole surviving shareholder of Standard Land Company Inc.,” as well as subsidiaries of Rogers and Rogers’ directors, agents, officers, affiliates and assigns; and
- (c) to amend the Application to include references to documentary exhibits that were not before the CHRC when it made its decision.

[7] It appeared on the face of the Statement of Claim that the Plaintiffs were attempting to use the proceeding to indirectly obtain a remedy that ought properly be sought in the

Application. They were accordingly provided an opportunity by Order dated September 12, 2023, in accordance with subsection 74(2) and procedural fairness, to show cause why the Statement of Claim should not be removed from the Court file (Show Cause Order). The Plaintiffs were also required to serve a copy of the Statement of Claim, the Show Cause Order and their written submissions on the named Defendants and Third Parties.

III. Submissions of the Parties

[8] A number of documents were subsequently presented by Mr. Gaskin to the Court via various local offices of the Registry, including documents concerning matters before the Federal Court of Appeal. The only document that appears to have any bearing on the Show Cause Order is a 55-page document entitled “Show Cause Submission” dated September 14, 2023. However, the document simply contains an affidavit of Mr. Gaskin “witnessed” on September 13, 2023 that is not responsive to the matter at hand. The submissions do not point to any basis to support the argument that the Statement of Claim should remain on the Court file. To the contrary, they are, in reality, the re-filing of an irregular affidavit and irregular written representations that Mr. Gaskin has already attempted to file in Court File No. A-194-23, and which were rejected for filing.

[9] I pause here to note that the Application in T-353-22 was dismissed without leave to amend or refile by Order of Associate Judge Catherine Coughlan, that an appeal of that Order was unsuccessful before Justice Patrick Gleeson, and that a further appeal was brought by Mr. Gaskin before the Federal Court of Appeal in A-194-23.

[10] In its response to the Show Cause Order, Rogers submits that the Statement of Claim should be removed from the Court's file. Rogers maintains that in the year that followed the launch of the Application in T-353-22, Mr. Gaskin engaged in persistent, improper and abusive conduct. Rogers contends that, among other improper actions, Mr. Gaskin sought relief and remedies that are not available in a judicial review application (such as damages, certification of class action proceedings, etc.); falsely accused Rogers and its counsel of improper conduct; disregarded the *Rules* and numerous Orders and Directions concerning the Application; and, refused to pay costs awarded against him. Related to this, Mr. Gaskin is said to have repeatedly sought from the outset of the proceeding to serve improper documents in breach of an Order directing him to refrain from serving and filing any materials without leave of the Court. In addition to numerous motion records seeking wide-ranging relief, these improper documents include eight (8) amended affidavits, six (6) amended Notices of Application; three (3) amended Application Records; and four (4) Statements of Claim, not including the present Statement of Claim.

[11] According to Rogers, the Statement of Claim is an extension of the abusive course of conduct of Mr. Gaskin that is evident in proceedings in T-353-22 and A-194-23. The history of Mr. Gaskin's course of conduct in those proceedings, demonstrates that he has no intention of respecting the *Rules*, the Court's Directions or Orders.

IV. Analysis

[12] While there may be substantial merit to Rogers' submissions, a review conducted under Rule 74 is not the proper forum to adjudicate whether a party is a vexatious or abusive litigant.

This can only be justified under section 40 of the *Federal Courts Act*, RSC 1985, c F-7; but no application has been brought pursuant to that section and the consent of the Attorney General of Canada has not been provided. The focus of a Rule 74 review is on the propriety of the document itself.

[13] For the reasons provided below, I conclude that the Statement of Claim should be removed from the Court file, as it is wholly unfounded, fundamentally vexatious and an abuse of this Court's process.

[14] In the prayer for relief, at paragraph 2 of the Statement of Claim, the Plaintiffs claim:

- (i) "such reasonable relief as the Federal Court may allow";
- (ii) restoration and full proportional relief and remedy: and,
- (iii) money damages in the amount of \$40 million;
- (v) costs in this proceeding
- (vi) injunctive relief as per 18.1, 18(1) and 18.3 as per the Applicant Notice of Motion dated November 18, 2023
- vii) It is alleged the Defendants acts, omissions and interference in this matter have contributed to and caused multi-generational trauma to the Plaintiffs in this matter that may attract a royalty-like compensation.

[15] By way of example, at paragraph 33, it is alleged that "the Defendant has routinely over an extended period of over 7 years, sought to deprive the Plaintiffs of relief due to them through unconscionable behavior which includes anticipatory fraud, willful misconduct, adverse discrimination, concealment and delay." Further, at paragraph 95, it is alleged that "the Defendant committed acts and/or omissions tantamount to fraudulent misconduct, willful

negligence, fraudulent preference in the context of a scheme, and concealment of fraud in violation of the Consumer Protection (Fair Trading) Act, 2003 in the context of negotiating, administering and implementing practices related to its Master Services Agreement.”

[16] There are repeated references throughout the Statement of Claim to “the Defendant” or “the Defendants” having engaged in various acts and/or omissions in violation of completely unrelated “rules, laws, codes and statutes,” including the Canada, US and Mexico Agreement (on trade), the Holy Bible and the *Wrecked, Abandoned and Hazardous Vessels Act*, SC 2019, c 1; however, it is clear from the context of the pleading as a whole that Rogers is the target of the litigation, based on alleged adverse discrimination in violation of sections 5 and 6 of the *Canadian Human Rights Act*, RSC 1985, c H-6.

[17] It is trite law that absent a specific statutory grant of jurisdiction to the Federal Court, a private party cannot assert a contractual or tortious claim in this Court against another private party to obtain a remedy. None of the remedies sought by the Plaintiffs in their prayer for relief are available by way of action in this Court. As a result, the proceeding is doomed to fail, as it serves no useful purpose.

[18] I further conclude that the pleading constitutes an abuse of this Court’s process. Mr. Gaskin openly admits in the Statement of Claim that “the facts in [the] matter are related to the facts in Federal Court file T-353-22.” This proceeding is an improper collateral attack on Orders issued in the Application.

[19] In short, the Statement of Claim represents yet another attempt by Mr. Gaskin to seek relief that is not available to him in this Court and to do an end-run around this Court's Orders.

ORDER IN T-1902-23

THIS COURT ORDERS that:

1. The Statement of Claim be removed from the Court file.
2. The action is dismissed, without leave to amend.

“Roger R. Lafrenière”
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1902-23

STYLE OF CAUSE: WINSTON E. GASKIN AS HIMSELF, AS SOLE SURVIVING SHAREHOLDER, DIRECTOR AND OFFICER OF STANDARD LAND COMPANY INC. (AND AFFILIATES), AND YOLANDA T. ZEBKO OF IRVINE, CALIFORNIA, PARTNER TO WINSTON E. GASKIN, AND FOR THE "FAMILIES OF STANDARD LAND" v EDWARD ROGERS III, MELINDA ROGERS-HIXON, THE ESTATE OF LORETTA ANNE ROGERS, DECEASED, ROGERS COMMUNICATIONS INC., "ROGERS COMMUNICATIONS (CANADA) INC.," ROGERS WIRELESS PARTNERSHIP, ROGERS COMMUNICATIONS PARTNERSHIP, ROGERS CONTROL TRUST, ROGERS FAMILY TRUST, ALL AFFILIATES, DIRECTORS, TRUSTEES, OFFICERS, AGENTS AND ASSIGNS, AND OTHERS, AND THE OWNERS AND ALL OTHERS INTERESTED IN THE SHIP ROGERS COMMUNICATIONS INC., AND HER CARGO AND FREIGHT AND ATTORNEY GENERAL OF CANADA AND CANADA AND CANADIAN HUMAN RIGHTS COMMISSION AND CANADA REVENUE AGENCY AND COMPETITION BUREAU CANADA AND COMPETITION TRIBUNAL

MOTION CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 74 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: LAFRENIÈRE J.

DATED: NOVEMBER 28, 2023

WRITTEN REPRESENTATIONS BY:

Winston E. Gaskin

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Christopher D. Pigott

FOR THE DEFENDANT
(ROGERS COMMUNICATIONS INC.)

SOLICITORS OF RECORD:

Fasken Martineau DuMoulin
Barristers and Solicitors
Toronto, Ontario

FOR THE DEFENDANT
(ROGERS COMMUNICATIONS INC.)