

Federal Court



Cour fédérale

Date: 20240308

Docket: T-1686-21

Citation: 2024 FC 404

Ottawa, Ontario, March 8, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

CHRISTOPHER JOHNSON

Plaintiff

and

**CANADIAN TENNIS ASSOCIATION,
MILOS RAONIC, GENIE BOUCHARD,
DENIS SHAPOVALOV and
FELIX AUGER-ALIASSIME**

Defendants

ORDER AND REASONS

[1] The Moving Defendants, Canadian Tennis Association, Denis Shapovalov, and Felix Auger-Aliassime, seek an order pursuant to Rule 416(1) of the *Federal Courts Rules*, SOR/98-106, requiring that the Plaintiff, Christopher Johnson, within 60 days of such an order, give security for their costs in this action in the amount of \$48,428.50 [the Security].

[2] They also seek an order preventing the Plaintiff from taking any further steps in this action until the Security has been paid into Court and, if the Security has not been paid before the deadline set by the Court, that this action be dismissed without further order from the Court. Lastly, they seek their costs of this motion in the amount of \$5,000.00.

[3] For the following reasons, the Court will order the Plaintiff to post security for costs in the amount of \$44,870.50.

I. Nature of the Plaintiff's Claim

[4] I agree with the submission of the Moving Defendants that the underlying cause of action alleged against them “involve alleged unauthorized reposting of [the Plaintiff's] photographs, primarily on social media, between approximately June 2016 to mid-2019.” The Plaintiff seeks damages and an injunction restraining the alleged breaches of his copyright.

II. History of Costs Awarded Against the Plaintiff

[5] Since the commencement of this action in November 2021, several pre-trial motions have been heard and costs therein awarded against the Plaintiff:

- a) Order of Justice Diner dated May 27, 2022, dismissing the Plaintiff's appeal of a Prothonotary's Order of April 5, 2022: *Johnson v Canadian Tennis Association*, 2022 FC 776. The Plaintiff was ordered to pay costs to the Defendants of \$250.00.
- b) Order of Case Management Judge Catherine A. Coughlan dated August 25, 2022 (and amended September 1, 2022), striking some of the Plaintiff's written

examination for discovery questions of Felix Auger-Aliassime. The Plaintiff was ordered to pay costs “forthwith” to that defendant of \$500.00.

- c) Order of Case Management Judge Catherine A. Coughlan dated August 25, 2022 (and amended September 1, 2022), striking some of the Plaintiff’s written examination for discovery questions of Canadian Tennis Association. The Plaintiff was ordered to pay costs “forthwith” to that defendant of \$500.00.
- d) Order of Case Management Judge Catherine A. Coughlan dated January 11, 2023, dismissing the Plaintiff’s motion seeking, among other things, the personal attendance of the personal defendants and representative(s) of the corporate defendants for discovery. The Plaintiff was ordered to pay costs “forthwith” to the Defendants of \$1,000.00.
- e) Order of Case Management Judge Catherine A. Coughlan dated October 26, 2023, dismissing the Plaintiff’s motion seeking an order compelling answers from Defendants Felix Auger-Aliassime and Tennis Canada CEO and President to questions arising from their answers previously given on examination for discovery. The Plaintiff was ordered to pay costs to the Defendants “in the amount of \$2,000.00 payable forthwith and in any event of the cause.”
- f) Order of Case Management Judge Catherine A. Coughlan dated November 8, 2023, striking most of the questions the Plaintiff posed to Denis Shapovalov. The Plaintiff was ordered to pay \$4,500.00 in costs to that Defendant on an elevated scale because of his “abusive litigation conduct.”

- g) Order of Justice Turley dated November 30, 2023, dismissing the Plaintiff's appeal of the Order of the Case Management Judge Catherine A. Coughlan dated October 26, 2023: *Johnson v Canadian Tennis Association*, 2023 FC 1605. The Plaintiff was ordered to pay the Defendants Canadian Tennis Association and Felix Auger-Aliassime costs in the total amount of \$4,000 "forthwith."
- h) Order of Justice Turley dated January 23, 2024, dismissing the Plaintiff's appeal of the Order of the Case Management Judge dated November 8, 2023: *Johnson v Canadian Tennis Association*, 2024 FC 110. The Plaintiff was ordered to pay \$5,000 in costs "forthwith" to Denis Shapovalov.

[6] In addition to these cost awards in this Court, the Provincial Court of Alberta in an order dated November 3, 2022, dismissed a similar action filed by the Plaintiff against the Defendants and ordered him to pay the Defendants costs of \$2,120.50.

[7] To date, the Plaintiff has not paid any of these cost awards.

III. Analysis

[8] The Plaintiff submits that two of these Orders are under appeal and therefore it is premature to say that their costs have not been paid. I agree with the Moving Defendants' submission at paragraph 12 of its Reply that the Plaintiff's submissions are without merit. First, the Order dated November 30, 2023, states that the costs are to be paid "forthwith" and the Plaintiff has not sought to stay enforcement of that Order. The mere filing of an appeal does not

serve that purpose. Second, the appeal of the Order dated November 8, 2023, has been dismissed: *Johnson v Canadian Tennis Association*, 2024 FC 110.

[9] Several of the judicial officers involved in aspects of this litigation have noted the Plaintiff's "abusive" litigation conduct, the failure of the litigation to advance, and the several interlocutory matters that have required this Court's attention: see, for example, *Johnson v Canadian Tennis Association*, 2023 FC 483 at para 3. The Moving Defendants at paragraph 3 of their memorandum of fact and law put it this way:

In the more than two years of litigation in this Action to date there have been at least 13 orders, 18 directions, and numerous case management conferences. The significant majority of that litigation has involved frivolous, vexatious and unsuccessful motions and appeals by the Plaintiff. The Plaintiff has persisted in similar frivolous and vexatious litigation steps despite numerous warnings and sanctions of this Honourable Court.

[10] Rule 416(1) of the Rules sets out eight circumstances where the Court may order a plaintiff to give security for the defendant's costs. The Moving Defendants submit that three apply here: Rule 416(1)(c), (f), and (g). I need not explore all of these as I am satisfied that Rule 416(1)(f) applies, thus laying the necessary foundation for the order sought. That paragraph permits the Court to order security for costs where "the defendant has an order against the plaintiff for costs in the same or another proceeding that remain unpaid in whole or in part."

[11] As detailed earlier, the Moving Defendants have unpaid orders against the Plaintiff for cost awards totalling \$19,870.50.

[12] Rule 417 provides that the Court may refuse to order security for costs if “a plaintiff demonstrates impecuniosity and the Court is of the opinion that the case has merit.” It is a conjunctive test.

[13] The Plaintiff has not alleged impecuniosity, let alone demonstrated it. In fact, in his Memorandum at paragraphs 134 to 136, he implies that he is not impecunious as he has a line of credit of \$45,000, which an impecunious person could not obtain.

[14] When a plaintiff is self-represented, as the Plaintiff is here, the Court should allow considerable latitude when assessing the plaintiff’s pleadings, submissions, and evidence: *Sauve v Canada*, 2014 FC 119 at para 19. However, as other judicial officers have noted, the Plaintiff here has “already been accorded a great deal of latitude but he persists in deliberately flouting Orders and Directions of the Court” Order of Case Management Judge Catherine A. Coughlan dated November 8, 2023 at para 21. In any event, being self-represented is not grounds for being exempt from the Rules: *Johnson v Canadian Tennis Association*, 2022 FC 776 at para 45. The Plaintiff has not met the high threshold of demonstrating impecuniosity: *Heli Tech Services (Canada) Ltd v Weyerhaeuser Co*, 2006 FC 1169 at para 8. This is sufficient to find that Rule 417 does not apply.

[15] Bearing in mind the Plaintiff’s history of bringing meritless issues on appeal, I explicitly note that I do not permit the Plaintiff to augment his responding motion record for the insignificant reason of adding a table of contents.

[16] Therefore, given the Plaintiff's extensive history of non-compliance with orders to pay costs and lack of demonstrated impecuniosity, I am satisfied that it is appropriate to grant the Moving Defendants security for their costs under Rule 416(1)(f).

IV. Amount of Security

[17] The sole remaining issue is the amount of security the Court ought to order. Pursuant to Rule 400(1), I have full discretion over the amount and allocation of costs.

[18] The Moving Defendants seek a costs Order that includes the costs already ordered but which remain unpaid, as well as costs for the probable costs of a trial.

[19] The Moving Defendants have provided a Bill of Costs calculated on the basis of a three-day summary trial at the high end of Column V. That shows a total of fees, disbursements, and taxes of \$33,558.00.

[20] It is not obvious to the Court that this action will require three trial days. Nor is it clear that costs will be awarded based on the high end of Column V. I agree with the Moving Defendants that the amount of security must fairly balance the "need for the security to provide meaningful indemnity and not be illusory, while also not being so oppressive so as to prevent a plaintiff from bringing a lawsuit": see *Fortyn v Canada*, [2000] 4 FC 184 at para 10. In my discretion, I fix the probable costs of the trial of this action at \$20,000. Adding the costs ordered to date results in an Order for security of \$39,870.50.

[21] Additionally, I am satisfied, given the Plaintiff's conduct on this motion and throughout, that an elevated award of costs of \$5,000 for this motion is appropriate. Adding that sum to the subtotal results in an Order for security of \$44,870.50.

[22] Given the Plaintiff's failure to date to pay any of the ordered costs, it is appropriate to order that the Plaintiff take no further steps in this matter until the security is posted, and if not posted within 60 days of this Order, that this action be dismissed, without the need for a formal motion.

ORDER in T-1686-21

THIS COURT ORDERS that

1. The Moving Defendants' motion is allowed with costs to them from the Plaintiff fixed at \$5,000 inclusive of fees, disbursements and taxes;
2. Within 60 days of this Order, the Plaintiff shall post \$44,870.50 as security for the Moving Defendants' costs (which sum includes costs ordered to be paid to date and the costs ordered to be paid to them in this Order);
3. The Plaintiff shall not take any further steps in this action, save any outstanding appeals as of this date, until he posts \$44,870.50 as security for the Moving Defendants' costs;
4. Should the Plaintiff not post \$44,870.50 as security for the Moving Defendants' costs within 60 days of this Order, the Moving Defendants are at liberty to bring an informal written motion, without notice to the Plaintiff, advising that the security ordered herein has not been posted and asking the Court to dismiss this action, and the Court shall then issue an Order dismissing this action.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1686-21

STYLE OF CAUSE: CHRISTOPHER JOHNSON v CANADIAN TENNIS ASSOCIATION, MILOS RAONIC, GENIE BOUCHARD, DENIS SHAPOVALOV and FELIX AUGER-ALIASSIME

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS: ZINN J.

DATED: MARCH 8, 2024

WRITTEN REPRESENTATIONS BY:

Christopher Johnson

FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Blake P. Hafso

FOR THE DEFENDANTS,
CANADIAN TENNIS ASSOCIATION,
DENIS SHAPOVALOV and
FELIX AUGER-ALIASSIME

SOLICITORS OF RECORD:

McLennan Ross LLP
Barristers and Solicitors
Calgary, Alberta

FOR THE DEFENDANTS,
CANADIAN TENNIS ASSOCIATION,
DENIS SHAPOVALOV and
FELIX AUGER-ALIASSIME

Mark A. Feigenbaum Professional
Corporation
Barristers and Solicitors
Thornhill, Ontario

FOR THE DEFENDANT,
MILOS RAONIC