

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-17-055858-107

DATE: May 16, 2013

IN THE PRESENCE OF THE HONOURABLE PAUL MAYER, J.S.C.

POST-GRADUATE STUDENTS' SOCIETY OF MCGILL
UNIVERSITY INC.
PLAINTIFF

v.

CANADIAN FEDERATION OF STUDENTS
DEFENDANT

AND

FÉDÉRATION CANADIENNE DES ÉTUDIANTES ET
ÉTUDIANTS, ÉLÉMENT QUÉBEC
MISE EN CAUSE

JUDGEMENT

1. INTRODUCTION

[1] Following a hearing to settle objections, the Canadian Federation of Students (“**CFS**”) asks the Court to condemn the Post Graduate Students’ Society of McGill University Inc. (“**PGSM**”) to pay the legal fees they incurred with respect to PGSM’s latest request for documents.

[2] CFS is of the view that this procedure was improper, excessive, unreasonable and unjustified in law. It wishes the Court to exercise its discretion pursuant to Article

54.4 of the *Code of Civil Procedure*¹ (the “**CCP**”) to condemn PGSM to pay the requested extrajudicial fees.

[3] PGSM insists that the Court should dismiss the claim. It states that it has not been abusive procedurally. Rather, it has been forced to repeatedly request documents in response to CFS’ bad faith resistance to provide them.

2. ISSUES

[4] The Court proposes to analyse the following questions:

- a) has there been an abuse of procedure?
- b) if so, what is the appropriate remedy in the circumstances?

3. THE FACTS

[5] Before dealing with the issues at hand, it is necessary to look at some of the relevant procedural steps of this case to date. Clearly, the wheels of justice have not turned roundly and swiftly in this instance.

[6] The case began some four years ago. In January 2010, PGSM instituted proceedings for the purposes of holding a referendum in order to defederate from CFS.

[7] Mr. Justice Roger E. Baker denied the request for an interim safeguard order to fix a referendum date.

[8] In April, PGSM amended its Motion to ask the Court to: (i) declare that it is no longer a member of CFS; (ii) cancel its membership fees for the years 2009-2010; and (iii) condemn CFS to pay it a share of its net value.

[9] On September 8, 2010, some 30 undertakings to provide documents were subscribed during the examination of the Director of Organising of CFS, Mrs. Lucy Watson (“**Mrs. Watson**”). These were responded to on November 10, 2010 by CFS. Objections were raised by CFS with respect to only two of the undertakings.

[10] In November, Mr. Justice Martin Castonguay dealt with a series of objections with respect to documents requested by CFS. These were generally of a financial nature about CFS and one of its affiliates, Canadian Federation of Student Services (“**CFSS**”).

¹ **54.4** *On ruling on whether an action or pleading is improper, the court may order a provision for costs to be reimbursed, condemn a party to pay, in addition to costs, damages in reparation for the prejudice suffered by another party, including the fees and extrajudicial costs incurred by that party, and, if justified by the circumstances, award punitive damages. If the amount of the damages is not admitted or may not be established easily at the time the action or pleading is declared improper, the court may summarily rule on the amount within the time and under the conditions determined by the court.*

[11] Having resolved the objections, Mr. Justice Castonguay made the following decisions, notably that:

- a) CFSS was not a party to the proceedings. As such, no documents concerning this entity need be provided;
- b) the request for contracts, leases, etc., entered into by CFS was dismissed as the financial situation of CFS is reflected in its audited financial statements; and
- c) all documents concerning lawsuits against CFS as well as the legal fees incurred in relation thereto, were not be furnished: *“puisque cette demande sort carrément du débat actuellement mû devant les tribunaux”*.

[12] On December 3rd, CFS responded to the judgement rendered by Mr. Justice Castonguay by providing the information it was ordered to furnish.

[13] On December 14th, Mrs. Watson and Mr. David Molenhuis (**“Mr. Molenhuis”**) were examined after plea. Seventeen undertakings to provide documents were subscribed. They were responded to by CFS on January 19, 2011. Only one objection was raised by CFS to these undertakings.

[14] On January 27, 2011, the parties appeared before Madam Justice Carol Cohen. She settled some 40 objections with respect to documentation requested. She also made the following orders with respect to the case management of the file:

- a) any amendment to Defendant’s Plea was to be filed by or before February 25, 2011;
- b) the final examination of Mr. Molenhuis and Mr. David Hare (**“Mr. Hare”**) would take place on March 10, 2011;
- c) the PGSM was to file a final motion for the production of documents after the examination of March 10th, should any remaining documents requested by subpoena not be produced by or before the examination date and to that end, any subpoena or request for production of documents were to be communicated by PGSM to CFS by no later than March 1, 2011.

[15] In February, in preparation for the abovementioned final examinations, PGSM requested CFS to furnish some 40 additional documents. CFS responded to this request upon receipt, raising objections to five of the 40 documents requested.

[16] In March, PGSM made another request for CFS to furnish more documents. This request was broken down in some 19 categories. The following is an example of the wide open nature of the documents being requested:

15. All CFS' financial records, ledgers and accounts concerning CFSQ (currently RAI) and the Quebec component from October 2007 to April 30, 2010 showing all financial transactions, receipt and disbursements with all supporting documents, bank statements, cheques, invoices and vouchers.

[17] On the day the request was made, CFS responded. It raised numerous objections.

[18] In March, two representatives of CFS were examined, namely Mr. Molenhuis and Mr. Hare. During those examinations, 16 undertakings to provide documents were made. CFS responded to same on May 4, 2011.

[19] At this point in time, six examinations had been held, three undertakings to provide various documents had been responded to and four separate further requests for documentation (April and December 2010, February and March 2011) had been answered.

[20] Then, on April 19th, PGSM filed a Motion seeking further documents. CFS made it clear that it intended to contest the Motion.

[21] In response, PGSM decided not to present its Motion.

[22] In May, PGSM filed a response to the defence submitted by CFS.

[23] In June, PGSM inscribed the case for proof and hearing pursuant to Article 274.1 CPC. It declared that it was ready to proceed.

[24] The parties expect that the trial will last nine days.

[25] In March 2012, the parties appeared before Mr. Justice Jean-François de Grandpré to fix the date for the trial. During the hearing, PGSM suggested that if it was able to obtain more documentation, this would certainly shorten the time scheduled for trial.

[26] Of course, those words produced the desired affect on the presiding judge, whose principal objective pursuant to Article 279 C.P.C. is to find appropriate preventative measures to simplify trials and shorten their anticipated length. He decided that the matter should be referred to the Associate Chief Justice in order that a judge be appointed to manage the file and to dispose of this most recent request for documentation.

[27] On May 10th, the Associate Chief Justice ordered PGSM to make a list of the documents being requested and for CFS to indicate its position with respect to each document being demanded.

[28] On June 7, 2012, the attorneys for PGSM made a list of over 100 documents that they wished to obtain. Among others, they wanted information concerning CFSS' finances and corporate structure, the law suits against CFS, the capital assets of CFS, including copies of deeds, pictures, copies of the leases of the entire building, furniture and leasehold improvements, correspondence and plans of the building owned by CFS.

[29] CFS responded to the list. The combined document is 21 pages long. It illustrates a large impasse between the parties.

[30] On March 13, 2013, Mr. Justice André Wery appointed the undersigned to manage this file.

[31] In preparation for the hearing to be presided by the undersigned, PGSM was asked to prepare a new document listing therein a pared down version of the numerous documents it wished to receive. Unfortunately, the list had not shortened significantly. Rather, more documents were wanted.

4. HAS THERE BEEN AN ABUSE OF PROCEDURE?

[32] The Court finds that there has been an abuse of procedure in respect to the request for documentation of June 7, 2012 for three reasons.

[33] Firstly, the requests for documentation in this file have gotten out of hand. The rules of proportionality set out in Sections 4.1 and 4.2 C.P.C.² are not being respected. PGSM has not ensured that this latest procedure was proportionate in terms of the costs and time required with respect to the nature and ultimate purpose of the case.

[34] Secondly, when PGSM inscribed the case for proof and hearing in June 2011, it confirmed that the case was ready to be heard.

[35] Article 274.1 C.P.C. and Article 77 (a) of the *Rules of practice* have a two fold objective: (i) the declaration certifies that the case is ready to be heard, and (ii) it ensures that no further document will be produced without authorization of the Court.

[36] An Article 274.1 declaration cannot be conditional or under reserve. The case must be entirely ready.

² **4.1** *Subject to the rules of procedure and the time limits prescribed by this Code, the parties to a proceeding have control of their case and must refrain from acting with the intent of causing prejudice to another person or behaving in an excessive or unreasonable manner, contrary to the requirements of good faith.*

The court sees to the orderly progress of the proceeding and intervenes to ensure proper management of the case

4.2 *In any proceeding, the parties must ensure that the proceedings they choose are proportionate, in terms of the costs and time required, to the nature and ultimate purpose of the action or application and to the complexity of the dispute; the same applies to proceedings authorized or ordered by the judge.*

[37] Yet, a year after the case was inscribed to be heard, PGSM requested more than 100 documents under the guise of saving time during the yet to be scheduled hearing on the merits.

[38] In doing so, PGSM ignored the basic and fundamental rule that it had signalled that it was ready to proceed. It acted as if the *Code of Civil Procedure* did not exist. In requesting further documentation during the hearing of March 2012, it derailed the legal process and breached its judicial undertaking to proceed with the trial.

[39] In ordering PGSM to make a list of the documents it wished to obtain, the Associate Chief Justice did not open the door for PGSM to ask for documents that had already been denied or to breach Article 7 of the *Civil Code of Quebec* that stipulates that no right may be exercised in an excessive or unreasonable manner.

[40] On the other hand, the Court finds that CFS acted promptly and expeditiously to furnish undertakings. There is no evidence of bad faith on its part.

[41] Mrs. Watson testified candidly about the more than 200 hours spent by CFS to gather information and undertakings to date. She also stated that it would take some 80 hours of work to furnish the new documents being requested.

[42] Thirdly, Mr. Justice Castonguay's decision of November 2010 was clear: CFSS was not a party to the proceedings, lawsuits against CFS and copies of contracts entered into by CFS were not to be provided.

[43] Despite the aforementioned, time and time again, the same information keeps being requested by PGSM.

[44] All of this, for close to nothing. During the two day hearing before the undersigned, nearly half of the requests for documents were withdrawn. Objections were maintained with respect to all of the balance, save for one.

[45] Precious Court time was wasted and expensive legal fees were incurred.

[46] Hence, the Court concludes that the request of June 7, 2012, was a frivolous and unnecessary exercise and a breach of PGSM's judicial contract. Nothing has been gained from this procedure. PGSM has offered no reasonable or convincing justification for such blameworthy conduct.

[47] In proceeding in this matter, PGSM was not acting in good faith.

5. WHAT IS THE APPROPRIATE REMEDY IN THE CIRCUMSTANCES?

[48] The Court concludes that CFS is entitled to recuperate the extrajudicial fees incurred since June 7, 2012 when PGSM made its latest request for documentation.

[49] In this instance, the appropriate standards of legal process have not been followed.

[50] There is a direct link between PGSM's abusive use of legal procedure and the legal fees paid by CFS to respond to same and to prepare for and attend the hearing scheduled to hear this latest request for documentation.

[51] Mrs. Watson filed into the record evidence of the fees incurred by CFS following the request for documents of June 7, 2012.³ These appear reasonable in the circumstances given the number of hours spent by its attorneys to respond to the volume of information requested and to prepare for and attend the two day hearing.

[52] The Court will, therefore, order PGSM to pay CFS the sum of \$16,740.50.

FOR THESE REASONS, THE COURT:

[53] **GRANTS** the Defendant's Motion;

[54] **ORDERS** the Plaintiff to pay the Defendant the sum of \$16,740.50;

[55] **WITH COSTS.**

PAUL MAYER, J.S.C.

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Dates of hearing: April 29 and 30, 2013

³ Exhibit LW-1.