

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-17-062502-102

DATE: May 10, 2012

By: THE HONOURABLE CLAUDETTE PICARD, J.S.C.

ASHRAF AZAR
Plaintiff / Respondent

v.

CONCORDIA UNIVERSITY
Defendant / Petitioner

-and-

ATTORNEY GENERAL OF QUÉBEC

-and-

ATTORNEY GENERAL OF CANADA
Mis en cause

JUDGMENT

[1] Concordia University (Concordia) is asking that Ashraf Azar (Azar) be prohibited from instituting legal proceedings against Concordia and others without the authorization of the Chief Justice of the Superior Court of Québec, since he would be a quarrelsome litigant.

[2] Azar contests the motion.

THE CONTEXT: AZAR'S ATTENDANCE AT CONCORDIA

[3] From 2001 to 2004, Azar was a student at Concordia.

[4] On September 22, 2004, Concordia's Academic Hearing Panel recommended Azar's expulsion from Concordia, subject to the confirmation of the Provost, for having entered into a professor's office and having tampered with exams and assignments (the Decision).

[5] Azar challenged the Decision, to no avail, before every available internal body of Concordia.

AZAR'S PROCEEDINGS AND COMMUNICATIONS**a) The Initial Proceedings**

[6] On or about September 12, 2007, Azar instituted legal proceedings seeking numerous conclusions against Concordia in a motion of approximately 140 pages (the 2007 Action). The 2007 Action sought (i) the Judicial Review of the Decision and other internal review decisions and (ii) damages of approximately \$15,070,000 plus costs, allegedly resulting from his expulsion from Concordia and from various other irregularities during his period of studies at Concordia.

i) The Judicial Review

[7] On or about October 15, 2007, Concordia instituted an Exception to Dismiss the 2007 Action, on the ground that even if the facts alleged were true, Azar's claim for Judicial Review was unfounded in law given that it was not instituted within a reasonable delay.

[8] On November 30, 2007, Israel S. Mass, j.s.c., granted Concordia's Exception to Dismiss the 2007 Action, with costs, and dismissed the Judicial Review portion thereof (the Mass Judgment). The remaining portion of the 2007 Action relating to the claim in damages proceeded separately.

[9] On or about December 27, 2007, Azar appealed the Mass Judgment on the grounds that the judge had erred by not taking into account certain case law and that the judge's and Concordia's Counsel's conduct was a "blatant disregard of ethical procedure and conduct". Azar requested that the Court of Appeal:

- (i) declare he has the "right to be heard before the Courts without legal representation and must have his rights maintained by the appropriate authorities specifically";
- (ii) reprimand Justice Mass "for his transgression of his jurisdiction bounds with respect to his conduct and absurd decision";

- (iii) reprimand “Concordia University’s legal council (sic) members, Langlois Kronström Desjardins (sic) and their representatives [...], specifically M^e Dimitrios Maniatis and M^e Rébecca St-Pierre for their unethical misleading and deception of the Court”.

[10] On or about February 27, 2008, Concordia instituted a Motion for Dismissal of Appeal on the ground that the appeal had no reasonable chance of success and was brought in an irregular manner.

[11] On May 21, 2008, the Court of Appeal granted Concordia’s Motion for Dismissal of the Appeal and dismissed Azar’s Inscription in Appeal (the Court of Appeal 2008 Judgment).

[12] On or about July 3, 2008, Azar requested leave to appeal the Court of Appeal 2008 Judgment to the Supreme Court of Canada (the 2008 Application for Leave to Appeal) on the ground that both the Superior Court and the Court of Appeal misinterpreted and/or misapplied the jurisprudence on the notion of “reasonable delay”.

[13] On October 23, 2008, the Supreme Court denied Azar’s 2008 Application for Leave to Appeal, following Concordia’s contestation.

[14] On or about May 27, 2009, Concordia’s Counsel requested that Azar pay and acquit three bills of costs arising from his claim in Judicial Review. Azar did not pay.

ii) The Claim in Damages

[15] On or about January 25, 2008, Azar instituted a Motion entitled “Motion for Disclosure of Evidence (Hearing Panel’s Decisions and Relevant Committee Notes and Minutes) and Motion to Find Concordia in Contempt of Court “(the Motion for Disclosure of Evidence and in Contempt of Court), while Azar’s claim in Judicial Review was pending before the Court of Appeal.

[16] On or about January 31, 2008, the portion of the motion relating to the Contempt of Court was struck by Kirkland Casgrain, j.s.c., and the portion of the motion relating to the Disclosure of Evidence was dismissed with costs. During the hearing, Azar contested the judge’s impartiality, alleging that he was “instructing” Counsel for Concordia and “winking at them”.

[17] On or about January 23, 2009, Azar instituted a Motion to be Relieved of the Default to Inscribe the Case for Proof and Hearing (the Motion to be Relieved of the Default to Inscribe the Case).

[18] On or about March 30, 2009, Concordia instituted a Contestation to Azar’s Motion to be Relieved of the Default to Inscribe the Case.

[19] On May 20, 2009, A. Derek Guthrie, j.s.c., rendered a judgment (the Guthrie Judgment) whereby he confirmed Azar's default to inscribe his action within the peremptory time limit of 180 days, dismissed Azar's Motion to be Relieved of the Default to Inscribe the Case and declared that Azar was deemed to have discontinued his action, with costs.

[20] On or about June 19, 2009, Azar inscribed in appeal the Guthrie Judgment. Azar claimed that numerous irregularities occurred at the hearing of his Motion to be Relieved of the Default to Inscribe the Case, questioned the impartiality of the judge and made allegations of bad faith on the part of Concordia's Counsel.

[21] On or about August 6, 2009, Concordia instituted a Motion for Dismissal of the Appeal on the ground that the Appeal had no reasonable chance of success and was improper and dilatory.

[22] On October 5, 2009, the Court of Appeal rendered a judgment whereby it dismissed Azar's Inscription in Appeal on the ground that it had no reasonable chance of success.

[23] In October 2009, both portions of Azar's Initial Proceedings had been dealt with before all instances.

b) The 2010 Communications between Azar and Concordia

[24] In 2010, Azar attempted again to obtain a reinstatement or a new internal hearing at Concordia and damages, as appears from various e-mail communications from Azar to Dr. David Graham, Provost at Concordia and to others employees of Concordia and from Dr. David Graham and Concordia's Counsel to Azar.

[25] On December 3, 2010, Azar emailed various representatives of Concordia, enclosing a draft Motion for Permanent Mandatory Injunction, and gave Concordia the opportunity to remedy the situation before he filed it.

[26] On December 7, 2010, Concordia's Counsel wrote to Azar to inform him that Concordia considered his case to be closed and that any further legal proceedings against Concordia would be an abuse of process. Concordia's Counsel also asked that all future communication with Concordia be directed to their office.

c) The Second Wave of Proceedings

[27] On or about December 8, 2010, Azar initiated a Request for Permanent Mandatory Injunction (the Request for Injunction) with respect to his expulsion from Concordia.

[28] On or about January 17, 2011, Azar initiated a Motion for Clarification, whereby he sought to have certain questions answered concerning the Mass Judgment and the Guthrie Judgment.

[29] On February 7, 2011, Claude Auclair, j.s.c., heard Azar's Motion for Clarification. During the hearing, Azar asked the judge to recuse himself on the basis of partiality. Justice Auclair refused to do so and dismissed Azar's Motion for Clarification, with costs.

[30] On or about February 9, 2011, Concordia moved to have Azar's Request for Injunction dismissed on the grounds that it was *res judicata*, time-barred and an improper procedure pursuant to Article 54.1 C.C.P. (Motion for Dismissal of Request for Injunction).

[31] On August 17, 2011, Geneviève Marcotte, j.s.c., granted Concordia's Motion for Dismissal of Request for Injunction on the basis that the claim was *res judicata*, time-barred and improper pursuant to Articles 54.1 *et seq.* C.C.P. and dismissed Azar's Request for Injunction (the Marcotte Judgment). Justice Marcotte wrote the following:

[70] In the case at hand, the Court has already concluded that the matter should be dismissed under both articles 165 (1) and 165 (4) C.C.P., but without addressing the abusive nature of Plaintiff's proceedings. Do the circumstances justify that an additional determination be made in this respect, based on article 54.1 C.C.P.?

[71] In the case at hand, under the guise of a different title, Plaintiff is attempting to raise the same issues which were alleged in the 2007 Proceedings and adjudicated upon before all instances up to the Supreme Court of Canada.

[72] Unhappy about Concordia's refusal to reinstate him or provide him with his degree despite the Decision to expel and the fate of his legal recourse, Plaintiff is making use of the legal system to threaten and pressure the University to reconsider its position, not without being aware of the resulting prejudice for Concordia in terms of costs and time, not to mention the burden imposed on the legal system in general. All this, without even having assumed the legal costs associated with the previous dismissals of his 2007 Proceedings.

[73] While the Court appreciates Plaintiff's distress in the circumstances and the fact that he may be acting out of despair, it must also underline that Plaintiff is unfortunately the author of his own misfortune.

[74] The Court is of the opinion that, in light of the principles set out by the Court of Appeal in the above-cited case of *Acadia Subaru* [...], Plaintiff's use of procedure is unreasonable and vexatious, to the point where it is appropriate for this Court to declare his proceedings improper and dilatory within the meaning (sic) article 54.1 C.C.P.

[32] On or about September 19, 2011, Azar filed a Motion for Leave to Appeal the Marcotte Judgment.

[33] On September 27, 2011, Nicholas Kasirer, j.c.a., dismissed Azar's Motion for Leave to Appeal on the ground that it was tardy and that a single judge of the Court of Appeal did not have the jurisdiction to provide special leave outside the prescribed time limit.

d) The Further Communications with Concordia in 2012

[34] On or about January 5, 2012, Azar wrote to multiple officials at Concordia to ask for a settlement and stated that if Concordia was unwilling, he would take all the necessary avenues available to make sure that the unacceptable circumstances surrounding his case be made known to all who might benefit from its knowledge. He annexed to his letter a 17 page addendum wherein he outlined that nine judges of the Superior Court, five judges of Court of Appeal and two judges of the Supreme Court of Canada, who were involved in his cases, circumvented the law and had a direct and unambiguous conflict of interest.

e) The Third Wave of Proceedings

[35] On or about January 20, 2012, Azar initiated two Motions for Revocation of Judgment, one before each of the Superior Court and the Court of Appeal, wherein he requests the revocation of all the decisions rendered against him by the judges named therein. Azar alleges that at least nine judges of the Superior Court, three judges of the Court of Appeal and two judges of the Supreme Court of Canada adjudicated in his proceedings against Concordia, before their respective Courts, while they were in conflicts of interest. Because of the alleged precariousness of the situation of the judges of the Courts, Azar puts the Attorney General of Québec and the Attorney General of Canada, as mis en cause, to assist the judges in forwarding the matter to the Supreme Court and, if not, to the Parliament of Canada.

f) The Further Communications with Concordia

[36] On or about February 8, 2012, Concordia's Counsel requested that Azar pay two bills of costs arising from the Second Wave of Proceedings. Azar did not pay.

[37] On or about February 13, 2012, Concordia instituted the present motion.

[38] On February 26, 2012, Azar communicated again directly with Concordia, requesting the implication of the President of Concordia.

[39] On February 27, 2012, Concordia's Counsel reiterated to Azar that he was not to communicate directly with Concordia.

[40] On May 8, 2012, during the délibéré, Azar e-mailed the undersigned enclosing what purports to be a discontinuance of his suit before the Court of Appeal. Azar states that he has also decided not to pursue his reconsideration of appeal before the Supreme Court of Canada.

THE REMEDY SOUGHT

[41] Concordia is requesting that Azar be prohibited from instituting any legal proceedings against Concordia and others, without having obtained the authorization of the Chief Justice of the Superior Court of Québec.

[42] Concordia contends that Azar (i) did not accept any of the decisions of Concordia's internal bodies and now refuses to accept and abide by the decisions of the Courts; (ii) continues to pursue Concordia on the basis of clearly frivolous claims; (iii) has accused not only Concordia of impropriety in the handling of his case but also its attorneys and almost every judge who has rendered any decision concerning him; (iv) files legal proceedings with impunity and (v) has not paid any of the multiple cost awards rendered against him. In so doing, Azar would be engaged in conduct that is quarrelsome and he would be abusing the legal process.

THE LAW

[43] The Civil Code of Québec (C.C.Q.), the Code of Civil Procedure C.C.P. and the Rules of Practice of the Superior Court in Civil Matters all contain dispositions pertinent to the questions raised herein.

[44] The basic principles relating to the right to institute legal proceedings are found at Articles 6 and 7 C.C.Q.

[45] Articles 4.1 and following and Articles 54.1 and following C.C.P. apply.

[46] "Quarrelsome conduct" is defined in the Rules of Practice of the Superior Court of Québec in Civil Matters as follows:

84. Necessity to obtain prior authorization. If a person acts in a quarrelsome manner, that is if that person exercises litigious rights in an excessive or unreasonable manner, the Court may prohibit that person from instituting an action or an application without having first obtained prior judicial authorization. (underlined by the Court)

[47] The jurisprudence recognizes the right of intervention of the Courts when there is an excessive and unreasonable exercise of the right to initiate court proceedings. This

right of intervention is even more established when the behaviour attains a level that can be qualified as quarrelsome¹.

[48] The jurisprudence and doctrine have identified the criteria to establish that a person is quarrelsome. Justice Clément Gascon, now at the Court of Appeal, summarizes these criteria in a decision rendered in 2010².

[81] [...] Une doctrine [...] et une jurisprudence [...] bien établies cernent une dizaine de caractéristiques ou traits permettant d'identifier si un plaideur doit être assujéti aux restrictions qu'imposent les articles 54.5 *C.p.c.* et 84 *R.p.c.*

[82] Ces facteurs indicatifs se résument pour l'essentiel à ceci :

- 1° Le plaideur quérulent fait montre d'opiniâtreté et de narcissisme;
- 2° Il se manifeste généralement en demande plutôt qu'en défense;
- 3° Il multiplie les recours vexatoires, y compris contre les auxiliaires de la justice. Il n'est pas rare que ses procédures et ses plaintes soient dirigées contre les avocats, le personnel judiciaire ou même les juges, avec allégations de partialité et plaintes déontologiques;
- 4° Il réitère les mêmes questions par des recours successifs et ampliatifs : la recherche du même résultat malgré les échecs répétés de demandes antérieures est fréquente;
- 5° Les arguments de droit mis de l'avant se signalent à la fois par leur inventivité et leur incongruité. Ils ont une forme juridique certes, mais à la limite du rationnel;
- 6° Les échecs répétés des recours exercés entraînent à plus ou moins longue échéance son incapacité à payer les dépens et les frais de justice afférents;
- 7° La plupart des décisions adverses, sinon toutes, sont portées en appel ou font l'objet de demandes de révision ou de rétractation;
- 8° Il se représente seul;
- 9° Ses procédures sont souvent truffées d'insultes, d'attaques et d'injures.

¹ Yves-Marie MORISSETTE, *Abus de droit, quérulence et parties non représentées*, (2003) 49 *R.D. McGill* 23; *Barreau du Québec c. Srougi*, 2007 QCCS 685; *Dubé c. Commission des relations de travail*, 2007 QCCS 4276.

² *Pogan c. Barreau du Québec (FARPBQ)*, 2010 QCCS 1458.

[83] Pour sa part, le Tribunal ajouterait à cette énumération deux autres traits assez courants en la matière :

- a) La recherche de condamnations monétaires démesurées par rapport au préjudice réel allégué et l'ajout de conclusions atypiques n'ayant aucune commune mesure avec l'enjeu véritable du débat [...];
- b) L'incapacité et le refus de respecter l'autorité des tribunaux dont le plaideur quérulent revendique pourtant l'utilisation et l'accessibilité.

[84] Cela dit, pour conclure à un comportement quérulent, excessif et déraisonnable sur la foi de ces caractéristiques, il ne faut pas qu'elles soient nécessairement toutes présentes. Chaque cas est d'espèce. C'est la globalité de l'analyse qui importe.

THE ANALYSIS

[49] The Court will deal firstly with Azar's argument that the present motion is premature and that it would be necessary to await the outcome of the Motion in Revocation. The Court rejects this argument. It is appropriate to intervene as of now.

[50] Azar has presented proof in contestation of the present motion which goes to the circumstances of his expulsion from Concordia and which is not pertinent to the present motion.

[51] The summary of the proceedings filed by Azar, after his initial proceedings had been dealt with before all instances, demonstrates the abusive character thereof.

[52] The Marcotte Judgment found that Azar's use of procedure was unreasonable and vexatious, to the point where it was appropriate to declare Azar's proceedings improper and dilatory within the meaning of Article 54.1 C.C.P.

[53] Azar's Motion for Leave to Appeal the Marcotte Judgment was dismissed in September 2011.

[54] Justice Marcotte's determination did not deter Azar who, in January 2012, initiated two motions for revocation, before the Superior Court and before the Court of Appeal, of all decisions rendered against him by the judges named therein. Azar alleges that at least nine judges of the Superior Court, three judges of the Court of Appeal and two judges of the Supreme Court of Canada adjudicated in his proceedings against Concordia, before their respective Courts, while they were in conflict of interest. He puts as mis en cause, the Attorney General of Québec and the Attorney General of Canada.

[55] Azar's behaviour in his proceedings against Concordia satisfies most of the characteristics of the quarrelsome litigant, that is: self represented; obstinate; actions seeking to harass Concordia; multiplication of recourses notably against officers of

justice; institution of proceedings which seek to obtain judgments on issues that have already been decided; appeals of decisions rendered against him and attempts to have them reviewed or revoked; failure to pay the costs and fees to which he is condemned; proceedings which contain insults and attacks and, lastly, monopolization of judicial resources and non respect of the authority of the Courts.

[56] Azar's obstinacy in depositing the Second Wave and Third Wave of Proceedings described hereinabove demonstrates that, without his right to institute legal proceedings being subject to the authorization of the Chief Justice of the Superior Court of Québec, Azar may continue to multiply the proceedings, causing a prejudice to many persons and to himself.

[57] In exchanges of the Court with Azar during the hearing, Azar stated that he was exhausted with respect to the proceedings. He also stated that he would not be proceeding with the Motion for Revocation of Judgment before the Superior Court. He was unable, however, to voluntarily agree to the conclusions sought by Concordia to ensure that the litigation with Concordia would be finally terminated.

[58] During the délibéré, Azar communicated by email with the undersigned to indicate that there would be a discontinuance of his suit before the Court of Appeal and that he had decided not to pursue his reconsideration of appeal before the Supreme Court of Canada.

[59] The Court considers that it is in the best interest of all parties, particularly Azar, so that he can go on with his life, to grant the order requested by Concordia. Consequently, the Court will prohibit Azar from instituting legal proceedings against Concordia and others, except with the authorization of the Chief Justice of the Superior Court of Québec.

[60] It is also appropriate, for a proper administration of justice, to add a conclusion declaring that any officer of any Office of the Clerk must refuse the deposit of any such proceedings by Azar unless such proceedings have been authorized as aforesaid.

[61] It is also appropriate in this case to declare the present judgment executory notwithstanding appeal.

[62] **FOR THESE REASONS, THE COURT:**

[63] **ORDERS** Ashraf Azar not to institute, initiate or file, directly or indirectly, any legal proceedings, complaints, demands, requests or other proceeding of any nature against Concordia University or its past, present and future officers, professors, employees or members of the Board of Governors or other body of Concordia University, or its attorneys, including any member of Langlois, Kronström, Desjardins, or any judge of any court, before the Superior Court of Québec, or before any tribunal, professional order, association or court subject to the superintending jurisdiction of the Superior Court of Québec, except with the authorization of and subject to the conditions

determined by the Chief Justice of the Superior Court of Québec or any other judge designated by him;

[64] **DECLARES** that any officer of any Office of the Clerk must refuse the deposit of any such proceedings by Ashraf Azar unless such proceedings have been authorized as aforesaid;

[65] **AUTHORIZES** service of the present judgment on Ashraf Azar outside of legal hours of service and even on a non-judicial day, by leaving a copy thereof in the mail box or by transmitting a copy to Ashraf Azar by any reliable means of communication, including by registered mail, facsimile or electronic mail;

[66] **DECLARES** the present judgment executory notwithstanding appeal;

[67] **THE WHOLE WITH COSTS.**



CLAUDETTE PICARD, J.S.C.

Mr. Ashraf Azar
For himself

Me Dimitrios Maniatis
Me Fabrice Anglade Vil
LANGLOIS KRONSTRÖM DESJARDINS
For Concordia University

Dates of hearing: April 30 and May 1, 2012