

COURT FILE NO.: 99-CV-10694**DATE: 2007-11-30****SUPERIOR COURT OF JUSTICE - ONTARIO**

RE: Nicole Lacroix and Rosie Ladouceur vs. Canada Mortgage and Housing Corporation and Marc Rochon, Claude Poirier-Defoy, Jim Millar, Karen Kinsley, Gerald Norbraten, Jean-Guy Tanguay, David Metzack and Brian Knight being the Trustees of the Canada Mortgage and Housing Corporation Pension Fund

BEFORE: The Honourable Justice Michel Z. Charbonneau

COUNSEL: William Sammon et James Barnes, for the plaintiffs Lacroix et al
Brett Ledger and Denise Sayer, for the defendants
Paul N. Leaman, for the plaintiffs in the companion action No.07-CV-37862

ENDORSEMENT

[1] The plaintiffs have served a summons to Richard MacDonald, the pension fund administrator, at the material times. The plaintiffs intend to examine Mr. MacDonald as a witness before the hearing of the two pending motions. The summons was issued pursuant to the provisions of Rule 39.03.

[2] On the basis of the present record, I am satisfied that Mr. MacDonald has more likely than not relevant evidence on the issues to be decided at the jurisdiction and certification motions. He was the one directly involved with O.F.S.I., the actuaries and other decision makers when decisions were being made in relation to the workforce downsizing and how it impacted on the pension fund surplus and the pension fund beneficiaries. In view of the nature of the plaintiffs' claim, which includes an allegation that C.M.H.C. provided inaccurate or incomplete information to the Superintendent, Mr. MacDonald certainly has relevant evidence to provide. One of the fundamental issues in both motions will be whether the particular facts of this case warrant a court action notwithstanding the fact that the failure to declare a partial termination is

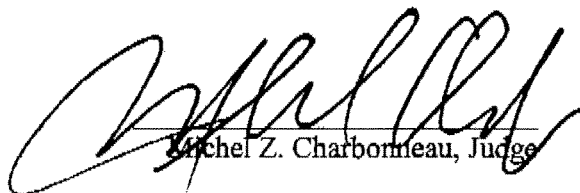
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at the heart of the action. This may considerably increase the ambit of the relevant evidence and it would be imprudent to find against the plaintiffs at this time.

[3] Although the defendants are correct to say that as a general rule, examinations pursuant to Rule 39.03 should not be allowed to become fishing expeditions, in the particular circumstances of this case, the examination of Mr. MacDonald is neither abusive nor overreaching. Moreover, I conclude that direct access to Mr. MacDonald will be more efficient and result in less delays than proceeding by having Mr. Millar undertake to inform himself from Mr. MacDonald and then provide the information to the plaintiffs. The facts of this case can easily be distinguished from those in Fehring v. Sun Media Corp. 2001, 14 C.P.C.(5th) (Ont. Sup. Ct.) on the following basis:

1. The plaintiffs were seeking to examine three additional witnesses.
2. The only pending motion was the certification motion and the judge was satisfied that the evidence was not relevant to that motion. In this case, there is also an issue of jurisdiction and the relevancy of Mr. MacDonald's evidence is more probable than not at this early stage.

[4] Mr. MacDonald is therefore ordered to attend for cross-examination by the plaintiffs on or before December 21st, 2007. There will however be only one cross-examination to be conducted by counsel in the Lacroix action. For reasons set out in my endorsement in the refusal motion, Mr. MacDonald is however not compelled to produce any documents. Moreover, the plaintiffs are to be guided by my reasons and decision in the refusals motion in order to avoid to engage into an exhaustive discovery of the merits of the action.



Michel Z. Charbonneau, Judge

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