

Stick a Fork in It: Federal Court Ends Latest Chapter in “Room Full of Spoons” Saga

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On April 20, 2022, the Federal Court released its decision in *Wiseau Studio, LLC v. Harper*, 2022 FC 568, in which Case Management Judge Horne struck the latest action in Tommy Wiseau’s *Room Full of Spoons* litigation saga on the basis of cause of action estoppel. This decision adds to a particularly tough month for Wiseau from a legal perspective: it arrived just six days after the Supreme Court of Canada dismissed his application for leave to appeal from a rare order for security for judgment.

Background

Tommy Wiseau is the writer, director and lead actor of *The Room*, a film that has attained modern cult classic status for being considered by many to be one of the worst films ever created. Due to the film’s notoriety, Richard Harper created a documentary about the film called *Room Full of Spoons*, named after the framed photographs of spoons that inexplicably appear throughout *The Room*.

According to Wiseau, Harper promised him before the documentary was released that the documentary would portray Wiseau in a positive light. However, after seeing the documentary, Wiseau alleged that the documentary mocked *The Room* and made unsubstantiated allegations about Wiseau’s private life.

The lengthy litigation history between these parties started in June 2017, when Wiseau brought an action against Harper in the Ontario Superior Court of Justice for copyright infringement, infringement of moral rights, misappropriation of personality, and more. The trial judge dismissed Wiseau’s claims in their entirety—finding, among other things, that Harper’s use of clips from *The Room* were fair dealing for the purpose of criticism, review, and news reporting—and allowed a counterclaim against Wiseau for having improperly obtained an *ex parte* injunction to prevent the release of *Room Full of Spoons*.

After an unsuccessful attempt to vary the trial judge’s decision, Wiseau appealed the decision to the Ontario Court of Appeal. Before the appeal was heard, however, Wiseau was ordered to post security both for the costs of the trial and the appeal and for the trial judgment itself—a “rare and exceptional” remedy that the Court saw fit to order nonetheless, owing in part to what it described as a “frivolous” notice of appeal that did not articulate the errors supposedly made in the trial decision. While the Supreme Court of Canada considered Wiseau’s application for leave to appeal that order, Wiseau failed to post security for costs by the required deadline. As a result, the Ontario Court of Appeal dismissed the appeal.

Undeterred by his track record to date, Wiseau commenced another action in the Ontario Superior Court of Justice in August 2021, this time alleging fraudulent misrepresentation and intentional infliction of mental suffering. The court stayed that action for being “quite clearly” an abuse of process.

At the same time, Wiseau commenced yet another action, this time in the Federal Court. That third action alleged breach of section 41.1(1) of the *Copyright Act*, which deals with the circumvention of technological protection measures. Although Wiseau had not raised that specific cause of action in either of his previous Ontario actions, he sought the same relief: an order requiring Harper to deliver up or destroy all copies of *Room Full of Spoons*. In response, Harper brought a motion to strike the action for cause of action estoppel and abuse of process.

The Estoppel Decision

Case Management Judge Horne applied the test for cause of action estoppel and concluded that it was met in this case. He therefore struck the Federal Court action.

First, the case management judge found that there had been a final court decision in the original Ontario action. The case management judge had agreed to reserve his decision until the SCC had decided Wiseau’s application for leave to appeal (which the case management judge acknowledged had a “slim” chance of success). After the SCC’s decision came out on April 14, the case management judge was satisfied that Wiseau had exhausted all rights of appeal.

The case management judge also concluded that the causes of action in the current Federal Court action were not separate and distinct from the original Ontario action. Although Wiseau was technically relying on a different provision of the *Copyright Act*, both claims were for copyright infringement, involved the same works, and sought identical relief.

The case management judge held further that Wiseau could have argued the basis of the Federal Court action in the original Ontario action had he exercised reasonable diligence. Wiseau claimed that he did not plead circumvention of technological protection measures in the Ontario action because he was not aware of Harper’s wrongful circumvention acts at the time. However, that directly contradicted his own affidavit, in which he stated that he was closely involved in the production of the Blu-ray discs of *The Room*. Issues related to circumvention of technological protection measures had also arisen during the discovery phase of the Ontario action, so Wiseau could have amended his statement of claim in that action to include those new allegations.

The case management judge ended his analysis by pushing back firmly against Wiseau’s “hollow” submission that he was merely “honestly seeking [his] day in court.” Wiseau had been given ample opportunities in court via a full trial, numerous motions and appeals, and commencing a second Ontario

proceeding. Permitting this third action to proceed would be, in Case Management Judge Horne's words, "an abuse, not only for the defendants, but also for the Court."

Takeaway

From a legal perspective, the walls seem to be closing in on *The Room*. While no one can predict exactly what Tommy Wiseau might do next, the SCC's decision on April 14 and the Federal Court's decision on April 20 have closed more doors to Wiseau. These decisions also highlight the courts' growing impatience with Wiseau's use of the Canadian judicial system to pursue this line of litigation for years on end. Although the legacy of *The Room* may live on for years to come in other ways, it is unlikely to be remembered for a successful action for copyright infringement.

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