

Federal Court



Cour fédérale

Date: 20160829

Docket: T-249-15

Citation: 2016 FC 983

Vancouver, British Columbia, August 29, 2016

PRESENT: Case Management Judge Roger R. Lafrenière

BETWEEN:

**MARCIEN PAUL EMILE BOUCHARD
DBA BOUCHARD BROS LTD AND
BOUCHARD NATURAL POWER INC.**

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS AND ORDER

[1] The Defendant, Her Majesty the Queen (the Crown), has moved in writing for an order striking the Statement of Claim in its entirety, without leave to amend. In the alternative, the Crown seeks an order striking all portions of the Statement of Claim that directly attack the

validity of a tax assessment and collection actions taken following the assessment, as well as an extension of time to serve and file a statement of defence.

Identity of the Parties

[2] My review of the Statement of Claim and the submissions on this motion leads to a preliminary observation regarding who is bringing this action and the identity of tortfeasor.

[3] The style of cause indicates that the Plaintiff is “Marcien Paul Emile Bouchard DBA Bouchard Bros Ltd and Bouchard Natural Power Inc.” The nomenclature is confusing as it is unclear in what capacity Mr. Bouchard is bringing this action. Although Mr. Bouchard can bring an action in his own name and is entitled to represent himself in this proceeding, he cannot bring suit in the name of a corporation.

[4] The Crown submits that the two named corporations did not seek or obtain leave to be represented by an officer or director. Mr. Bouchard insists, however, that there is only one plaintiff in this proceeding. This is consistent with the fact that Mr. Bouchard signed the Statement of Claim in his personal capacity and repeatedly refers to himself as “the applicant” in the singular throughout the pleading. Moreover, there are no allegations made by or on behalf of the two corporations. It is Mr. Bouchard’s choice to bring the action in his personal capacity. He will accordingly be referred to as the Plaintiff in these reasons. I will say more, however, later on about his standing to bring this action and obtain the relief requested in the Statement of Claim.

[5] Similarly, there is confusion about who and what actions are targeted by the claim. The Statement of Claim contains bald and conclusory assertions that “an internal administration process” was used by “the defendants” to levy an amount against the Plaintiff, that the process was an “an abuse of power”, and that the administrative actions and decisions taken by these unnamed individuals were “contrary to prescriptive law”, “a prejudice against (the Plaintiff)” and “without justifiable reasoning”.

[6] The Plaintiff was obligated under Rule 174 to plead material facts, including the identity of the individuals who are alleged to have engaged in misfeasance: *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 (CanLII), at par. 38. Although none of the “defendants” are referred to by name, it would appear that the Plaintiff is alleging tortious conduct on the part of Canada Revenue Agency (CRA) and/or CRA employees.

Nature of the Proceeding

[7] The Plaintiff commenced the underlying action in damages against the Crown on February 20, 2015. The Statement of Claim consists of 41 paragraphs of allegations and a prayer for relief, all set out in 5 fairly densely typed pages. The pleading also refers to various exhibits, a newspaper article, court decisions and extracts of legislation. These documents were ordered to be produced following a motion to compel by the Crown pursuant to Rule 206 of the *Federal Courts Rules*.

[8] The Statement of Claim is certainly not a model of clarity and concision. It is replete with evidence, conjecture, opinion, argument and bald conclusions. Despite these deficiencies, it is still possible to discern the basis of the Plaintiff's claim.

[9] The Plaintiff's dispute with CRA stems back to incidents that occurred in November 2009. The Plaintiff alleges that he received a notice from CRA requesting that he file forms 5018 for any contractors that the Plaintiff had engaged in business within 2006 and 2007 (par. 4 of the Statement of Claim). I pause here to mention that the notice referred to by the Plaintiff (Exhibit 1 to the Statement of Claim) is addressed to Bouchard Bros Ltd., and not the Plaintiff. The notice states that contract payment reporting by the construction industry became mandatory following the February 24, 1998 Federal Budget. Any corporation, trust, individual or partnership with construction as their primary source of business income that makes payments to subcontractors has to file T5018 slips, failing which a penalty of up to \$2,500 may be imposed under subsection 162(7) of the *Income Tax Act [ITA]*.

[10] According to the Plaintiff, he received a similar request for T5018 slips in 2000 and complied with the request (par. 5). The Plaintiff alleges that upon receiving the T5018 forms in 2000, the defendants proceeded to audit and reassess every individual and corporation that was in contract with the Plaintiff at the time (par. 6). The Plaintiff claims that the defendants' actions "shows a prejudice" against him as "it was not standard procedure to audit every 5018 slip" (par. 7). The Plaintiff claims that his reputation was tainted due to the defendants' actions (par. 9). According to the Plaintiff, individuals and corporations were fearful to contract with him because of their concern of being audited (par. 10).

[11] At paragraph 12 to 16, the Plaintiff explains why the individuals he contracted with were independent contractors and not employees. He claims that the individuals he is presently involved with requested that no personal information be shared with any government body, agent or third party representative (par. 18). He therefore refused to provide any T5018 forms to CRA relating to these individuals, citing “privacy issues” and section 17.1 of *The Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 of Ontario [*FIPPA (Ontario)*] (par. 19).

[12] As stated earlier in these reasons, the Plaintiff alleges that the defendants have taken certain administrative actions against him “contrary to prescriptive law” and have used “an internal administration process” to levy an amount against him. At paragraphs 22 and 23 of the Statement of Claim, the Plaintiff claims that he received a notice of assessment from the defendants declaring that he was the employer of employees and requesting that he contribute \$1,467,000 towards the Canada Pension Plan and unemployment insurance benefits of the apparent employees. The Plaintiff alleges that the defendants assessed him in this manner to penalize him for his actions and his failure to provide the T5018 forms.

[13] The Plaintiff alleges at paragraph 32 that the defendants failed to follow their own guidelines concerning the determination of workers employed or independent contractors, as set out in Exhibit 4, disregarded information provided to them, and arbitrarily pronounced an administrative judgment.

[14] In the prayer for relief, the Plaintiff seeks an order nullifying the notice of assessment in the amount of \$1,467,000 and punitive damages of \$3,246,800 for damage to his reputation and the hardships he and his family had to endure.

Principles Applicable on a Motion to Strike

[15] The Crown has moved to strike the Statement of Claim under Rule 221 of the *Federal Courts Rules* on the grounds that it does not disclose a reasonable cause of action (paragraph (1)(a)), is immaterial (paragraph (1)(b)), is frivolous (paragraph (1)(c)), and is otherwise an abuse of the process of the Court (paragraph (1)(f)). The motion is opposed by the Plaintiff.

[16] The fact that the claim is a novel or difficult one is not a sufficient ground to strike the claim. The burden on the Crown is very high and the Court should exercise its discretion to strike only in the clearest of cases. The pleading should be read generously with allowance for inadequacies due to drafting deficiencies.

[17] On a motion to strike a pleading on the grounds that it does not disclose a reasonable cause of action, those allegations that are capable of being proved must be taken as true: *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959. This rule does not apply, however, to allegations based on assumptions and speculation: *Operation Dismantle Inc. v. The Queen* (1985), 18 D.L.R. (4th) 481 (S.C.C.) at 486-487 and 490-491. Moreover, the Court need not accept at face value bare allegations, factual allegations which may be regarded as scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations.

[18] Rule 221(2) provides that no evidence shall be heard on a motion for an order under paragraph (1)(a). Consequently, the Plaintiff's affidavit, sworn August 5, 2016, was not considered for the purpose of determining whether the Statement of Claim fails to disclose a reasonable cause of action. Documents referred to in a statement of claim were admitted and taken into account because they are incorporated by reference and are deemed to be part of the pleadings: *Cremco Supply Ltd. v. Canada Pipe Company*, 1998 CanLII 7616 (FC) at par. 22.

Analysis

[19] The Statement of Claim purports to assert various causes of action against the Crown. Although the language used in the pleading is imprecise, and the pleading is replete with opinion, conclusions and argument, the gist of the Plaintiff's claim is that he was harmed by a number of actions and decisions taken by CRA and its employees. However, to the extent that the Plaintiff may be asserting any cause of action on behalf of Bouchard Bros Ltd. (or Bouchard Natural Power Inc., which is not mentioned at all), the pleading does not disclose a reasonable cause of action since the Plaintiff has no standing to bring the action.

[20] The law on the integrity of the corporate entity is well settled. Following the seminal decision in *Salomon v. Salomon & Co. Ltd.*, [1897] AC 22 (HL), the courts have applied the general rule that the corporation is a legal entity distinct from its shareholders or other corporations, or persons, and it must be treated as such in law. This means that in interpreting a statute, or a contract, or in applying the common law, the corporation must be treated as a separate and distinct entity from its shareholders, partners, or principals.

[21] The creation of the corporate entity as a distinct legal construct has led to advantages and disadvantages as well as responsibilities for those who choose the corporate vehicle for business. By choosing the benefits of a business structure, individuals must be prepared to accept the necessary consequences. As was stated by Madam Justice L'Heureux-Dubé in *National Bank of Canada v. Houle*, [1990] 3 SCR 122 at pp. 178-79:

One of these consequences is that it is the corporation which suffers damages when there is a wrong to the corporation...

...

The consequences of any other position would not be logical. There would be no value to the corporate structure if whoever does business with a corporation would at the same time become liable not only to the company but also to every shareholder for any damage that may be caused to the company.

[22] There are inconsistencies between the Plaintiff's allegations and the facts set out in the letters referred to in the pleading (Exhibits 1 and 2, as well as a third letter contained in Exhibit 3). The three letters are indisputably addressed to Bouchard Bros Ltd., and not to the Plaintiff. There are no material facts suggesting that a notice of assessment was issued in the Plaintiff's name or that penalties were ever imposed on the Plaintiff personally.

[23] The Plaintiff has failed to explain on what basis he purports to be "doing business as" in a corporation's name and how he suffered any personal damages. The Plaintiff was provided an opportunity to amend the pleading to clarify the situation, but declined to do so. The problem with the pleading overall is that the Plaintiff is not the real party in interest to virtually all of the claims. In the circumstances, I conclude that the Statement of Claim should be struck out for lack of standing.

[24] I should add the Statement of Claim does not disclose a reasonable cause of action against the Crown, even if the Plaintiff had standing or the proceeding was brought by Bouchard Bros Ltd.

[25] To the extent that the Plaintiff is alleging the tort of misfeasance of public office, the essential elements of the tort have not been pleaded. Misfeasance in a public office is an intentional tort distinguished by: (1) deliberate, unlawful conduct in the exercise of public functions; and (2) awareness that the conduct is unlawful and likely to injure the plaintiff: *Odhavji Estate v. Woodhouse*, [2003] 3 SCR 263, 2003 SCC 69 (CanLII) at par. 23.

[26] The tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff. There are no material facts to support the conclusion that the CRA or any of its employees acted improperly, let alone unlawfully. To the contrary, it appears that CRA was simply using responsible enforcement tools to promote awareness of and compliance with the *ITA*. In addition, no material facts are plead to support a conclusion that CRA or any of its employees were aware that their conduct was unlawful and that it was likely to harm the Plaintiff or Bouchard Bros Ltd.

[27] The Plaintiff's claim is largely premised on the false assumption that he (or more properly Bouchard Bros Ltd) was free to disregard the CRA's request to provide T5018 slips on privacy grounds. The Plaintiff relies on sections 11 and 17 of *FIPPA (Ontario)*; however, these provisions only apply to institutions, as defined in section 2. The disclosure of personal information is not an unreasonable invasion of a third party's privacy if an enactment of Canada

expressly authorizes or requires the disclosure. The Plaintiff is ultimately the author of his own misfortune.

[28] Moreover, the claim, in pith and substance, constitutes an improper collateral attack of a tax assessment. The damages claimed in the prayer for relief are in reality sought on the basis of an alleged invalid reassessment made on the basis of a wrong interpretation of the law. However, the federal legislator has established a system of appeals specific to tax assessment disputes. The Tax Court of Canada is granted exclusive original jurisdiction to hear appeals of tax assessment disputes. It is the exclusive court with specialized expertise designated to decide disputes involving the complex statutory regime of federal tax assessments. The claim is clearly a matter within the exclusive jurisdiction of the Tax Court of Canada. I adopt and make mine paragraphs 27 to 33 of the Crown's written representations.

[29] In response to the Crown's motion, the Plaintiff filed rambling and incoherent submissions. He submits that the Statement of Claim shows how the Crown has "trespassed" against him, citing the *Charter of Rights and Freedoms*, the International Covenant on Economic, Social and Cultural Rights (a multilateral treaty adopted by the United Nations General Assembly) and some case law. The submissions fail, however, to address the issue on this motion – whether the Statement of Claim should be struck pursuant to Rule 221(1).

[30] For the above reasons, the Crown's motion will be granted. As the Plaintiff was provided an opportunity to amend his pleading and declined to do so, and has not proposed any amendments that would cure the radical defects in the pleading, I conclude that the Statement of

Claim should be struck without leave to amend. As for costs of the motion, I see no reason why they should not follow the event.

[31] Finally, since the Plaintiff's motion for default judgment was dismissed by Order dated July 20, 2016, I need not deal with paragraphs 37 to 49 of the Crown's written representations.

THIS COURT ORDERS that:

1. The Statement of Claim is struck out, without leave to amend.
2. Costs of the motion, hereby fixed in the amount of \$750.00, shall be paid by the Plaintiff, Marcien Paul Emile Bouchard.

"Roger R. Lafrenière"

Case Management Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-249-15

STYLE OF CAUSE: MARCIEN PAUL EMILE BOUCHARD DBA
BOUCHARD BROS LTD AND BOUCHARD
NATURAL POWER INC. v HER MAJESTY THE
QUEEN

MOTION IN WRITING DATED JULY 14, 2016 FROM WINNIPEG, MANITOBA

ORDER AND REASONS: LAFRENIÈRE, CMJ

DATED: AUGUST 29, 2016

WRITTEN REPRESENTATIONS BY:

Marcien Paul Emile Bouchard FOR THE PLAINTIFF

Denyse T. Côté FOR THE DEFENDANT

SOLICITORS OF RECORD:

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