Federal Court Cour fédérale

Date: 20160829

Docket: T-1066-16

Citation: 2016 FC 976

Ottawa, Ontario, August 29, 2016

PRESENT: Prothonotary Mandy Aylen

BETWEEN:

ZOLTAN ANDREW SIMON AND ZUANHAO ZHONG (REPRESENTED BY HER HUSBAND ZOLTAN A. SIMON)

Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA REPRESENTED BY THE ATTORNEY GENERAL OF CANADA AND THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP (NONE OF THEM IS ACTING IN A PERSONAL CAPACITY, ONLY AS REPRESENTATIVE)

Defendants

REASONS FOR ORDER AND ORDER

[1] This is a motion in writing dated August 4, 2016 on behalf of the Defendants, pursuant to Rule 369 of the *Federal Courts Rules*, for:

(a) an Order pursuant to Rule 221(1)(a),(c), or (f) that the Statement of Claim be struck out, without leave to amend;

(a) an Order requiring the Plaintiffs to pay to the Defendants elevated costs associated with this motion; and

(b) in the alternative, if the Statement of Claim is not struck, an Order extending the time for service and filing of the Defendants' Statement of Defence, to 30 days from the date of the Order.

[2] The Plaintiffs have opposed the motion.

I. Facts

[3] On July 5, 2016, the Plaintiffs, who are self-represented, filed a 155 page Statement of Claim naming as a Defendant Her Majesty the Queen in Right of Canada represented by the Attorney General of Canada and the Minister of Immigration, Refugees and Citizenship.

[4] I have reviewed the Statement of Claim very carefully and attempted to discern the material facts and any reasonable causes of action. It is clear that the Plaintiffs' claims are rooted in a decision made by Citizenship and Immigration Canada [CIC] to refuse the sponsorship application filed by the Plaintiff, Zoltan Simon, to sponsor the other Plaintiff, Zuanhao Zhong, who is his current wife. The sponsorship application was refused on the basis that Mr. Simon

was found by CIC to be in default of his previous undertaking to sponsor his previous wife, Ms. Reyes.

[5] The undertaking that Mr. Simon had signed in relation to his sponsorship of Ms. Reyes included a provision that if the sponsored individual received social assistance, the social assistance would become a debt owed by Mr. Simon and a default of the undertaking would mean that Mr. Simon could not sponsor another individual in the future.

[6] Between 2000 and 2005, Ms. Reyes received approximately $38,000.00 in social assistance from the government of British Columbia.

[7] In 2008 and again in 2009, the Province of British Columbia garnished funds standing to Mr. Simon's credit in his tax account with Revenue Canada to partially satisfy his indebtedness arising from the sponsorship of Ms. Reyes.

[8] CIC's refusal of Mr. Simon's sponsorship application for Ms. Zhong resulted in the commencement of a series of court actions by Mr. Simon in various jurisdictions.

[9] On October 1, 2007, Mr. Simon brought an action in the Federal Court (T-1758-07) alleging wrongdoing in relation to the CIC's sponsorship forms, the government of British Columbia's provision of social benefits to Ms. Reyes and the CIC's treatment of his application to sponsor Ms. Zhong. By order of Madam Justice Anne Mactavish dated November 7, 2007, the

statement of claim was struck as Mr. Simon had not exhausted his remedies at the Immigration Appeal Division of the Immigration and Refugee Board [IAD].

[10] On May 31, 2007, Mr. Simon appealed the sponsorship refusal to the IAD. By decision dated November 17, 2009, the IAD upheld the refusal, finding that Mr. Simon understood the terms of the sponsorship undertaking and that the debt was still owing. By order of Mr. Justice Luc Martineau dated March 30, 2010, the Federal Court dismissed Mr. Simon's application for leave to appeal the decision of the IAD (IMM-6265-09).

[11] In October 2009, Mr. Simon brought an action in the Supreme Court of British Columbia (S-097926) with allegations similar in nature to those made in Federal Court action T-1758-07. Mr. Simon ultimately discontinued that action in May 2010.

[12] On April 23, 2010, Mr. Simon commenced an action in the Federal Court (T-639-10) seeking a declaration that he did not owe a debt to the government of British Columbia under the sponsorship agreement for Ms. Reyes and seeking visas for Ms. Zhong and her son. By order of Mr. Justice Russell Zinn, the action was struck out, without leave to amend, on the basis that Court did not have jurisdiction to determine the claims made.

[13] Mr. Simon appealed the order of Justice Zinn, which was allowed in part by the Federal Court of Appeal (A-237-10) by way of a grant of leave to Mr. Simon to file an amended statement of claim. In granting Mr. Simon leave, the Federal Court of Appeal provided very precise direction to Mr. Simon regarding any proposed amendment to his pleading. Specifically:

a) Failure to comply with all of the *Federal Courts Rules* governing pleadings would likely lead to the claim being struck;

b) Each constituent element of each cause of action must be pleaded with sufficient particularity, a requirement that is not satisfied with a narrative of the events;

c) Materials relating to the propriety of the claim to reimbursement advanced by authorities in British Columbia will not likely fall within the jurisdiction of the Federal Court; and

d) Certain relief sought against federal entities may only be claimed through an application for judicial review.

[14] On February 17, 2011, Mr. Simon filed an amended statement of claim in T-639-10. By order dated May 19, 2011, Madam Justice Judith Snider struck out the amended statement of claim without leave to amend. Justice Snider found that Mr. Simon's claim was lengthy and incomprehensible and suffered from various defects, including the same defects that the Federal Court of Appeal required Mr. Simon to correct.

[15] Mr. Simon appealed the order of Justice Snider to the Federal Court of Appeal (A-232-11). On February 13, 2012, the Federal Court of Appeal dismissed the appeal. Mr. Simon sought leave to appeal the Federal Court of Appeal's decision from the Supreme Court of Canada, which application was refused on October 4, 2012 (see *Simon v. Canada*, [2012] S.C.C.A. No. 199).

[16] On May 25, 2012, Mr. Simon commenced an action in the Federal Court (T-1029-12) for damages and declaratory relief against Her Majesty the Queen in Right of Canada, the Ministry of the Attorney General, the Ministry of Human Resources and Skills Development, the Honourable Diane Finley (Minister of Human Resources and Skills Development), Sharon Shanks (Director General of the Canada Pension Plan/Old Age Security Division), Roger Bilodeau, Q.C. (Registrar of the Supreme Court of Canada), and Mary Ann Achakji (Registry Officer of the Supreme Court of Canada), as well as against the Registry of the Supreme Court of Canada and "the federal authority that approved the [Supreme Court of Canada] web site" in relation to the Supreme Court of Canada's refusal to accept for filing a notice of appeal in a proceeding Mr. Simon claimed was an appeal as of right to the Supreme Court of Canada. Mr. Simon also claimed damages on the basis that the authorities have been "unwilling to issue any official document regarding a guaranteed amount of his future pension benefits".

[17] By orders dated July 20, 2012, Madam Justice Danièle Tremblay-Lamer struck the statement of claim in its entirety, without leave to amend, on the basis that the pleading was vexatious, an abuse of process and disclosed no reasonable cause of action. In doing so, Justice Tremblay-Lamer held that Mr. Simon had no appeal as of right to the Supreme Court of Canada and that the Federal Court lacked jurisdiction to grant that type of relief.

[18] Mr. Simon appealed the orders of Justice Tremblay-Lamer to the Federal Court of Appeal (A-367-12). On February 18, 2014, the Federal Court of Appeal dismissed Mr. Simon's appeal in its entirety.

[19] On April 14, 2014, Mr. Simon sought leave of the Supreme Court of Canada to appeal the decision of the Federal Court of Appeal in A-367-12 and filed a "unwilling to issue any official document regarding a guaranteed amount of his future pension benefits". The motion was dismissed on October 23, 2014 and the application for leave to appeal was dismissed on February 26, 2015.

[20] In 2015, the Plaintiffs commenced an action in the Supreme Court of British Columbia against the Attorney General of Canada and the Attorney General of British Columbia with allegations similar in nature to those made in the current action. On February 27, 2015, Madam Justice S.A. Donegan struck out of the Plaintiffs' pleading, without leave to amend (see *Simon v. Canada (Attorney General)*, 2015 BCSC 924). In doing so, Justice Donegan stated at para 100:

> In my view, it is plain and obvious that the plaintiffs' claims must be struck under Rule 9-5(1)(b) as well. These claims, I find, are frivolous, vexatious and scandalous. The pleadings are without substance, fanciful, groundless, and will waste the time of the court. They are so prolix and confusing that it is difficult, if not impossible, for the defence to understand the case to be met in court. The notice of civil claim does not meet any standard which enables a proper response to be filed by the defendants. The pleadings are vague, over-inclusive, and contain a great deal of irrelevant information. The pleadings run afoul of Rule 3-1(2) and Rule 3-7(1), (9) and (14). The plaintiffs' lengthy legal arguments, which include case law, hypothetical scenarios, reference to irrelevant statutes, and diagrams, are incapable of supporting proof of any cause of action.

[21] The Statement of Claim at issue on this motion contains 54 paragraphs of requested relief based on at least twenty causes of action in relation to the alleged conduct of various government entities and agents, including the Minister of Immigration, Refugees and Citizenship, the Minister of National Revenue, the Minister of Foreign Affairs, the Standing Committee on

Citizenship and Immigration, unnamed Canadian visa officers, officers and employees of the Information Commissioner of Canada and the Registrar and Deputy Registrar of the Supreme Court of Canada.

[22] The causes of actions, as framed by the Plaintiffs, include fraud, conspiracy, misrepresentation of the Immigration and Refugee Protection Act [IRPA] and Regulations, false pretences, misfeasance of public office, breach of trust, fraudulent conversion, contravening various acts of Parliament, interference and failure to deliver monies, fraudulent conspiracy and attempted conspiracy, mental torture and pressuring of the re-victimized sponsors, corruption, fraud on government, designing and carefully maintaining a cruel nationwide money extortion scheme, facilitating terrorist activity against the re-victimized sponsors, possession and laundering of the proceeds of crime from a money extortion scheme, unjust enrichment, and defrauding the public.

II. Analysis

[23] Rule 221(1) of the *Federal Courts Rules* [Rules] provides, in part, as follows:

221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;

(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	e) qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	f) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

[24] The test to be applied on a motion to strike a pleading under Rule 221(1)(a), (c) or (f) of the Rules is whether it is plain and obvious that the claim cannot succeed (see *Hunt v. Carey Can. Inc.*, 1990 CanLII 90 (S.C.C.), [1990] 2 S.C.R. 959). In applying this test, all allegations of fact, unless patently ridiculous or incapable of proof, must be accepted as proved (see *Edell v. Canada*, 2010 FCA 26).

[25] The Statement of Claim should be read as generously as possible, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document (see *Operation Dismantle Inc. v. R*, [1985] 1 S.C.R. 441 at para 14).

[26] A claim found not to be within the jurisdiction of the Court in which it is filed will be struck out as being frivolous, as having no reasonable cause of action or as being an abuse of process (*Canada v. Roitman*, 2006 FCA 266 at para 15).

[27] Notwithstanding the length and lack of intelligibility of the Statement of Claim, it is clear that the key elements of the Plaintiffs' claims are the denial of Mr. Simon's sponsorship application for Ms. Zhong, the enforceability of the sponsorship agreement executed by Mr. Simon in relation to his sponsorship of Ms. Reyes, the liability owed by Mr. Simon to the government of British Columbia in respect of social assistance benefits received by Ms. Reyes, and the Supreme Court of Canada's refusal to grant his applications for leave to appeal.

[28] Although the Plaintiffs are now attempting to characterize their claims in a different manner, I find that the majority of the Plaintiffs' claim have been heard by a court or tribunal and dismissed or struck out. The defaulted sponsorship agreement and consequent inability to sponsor Ms. Zhong was heard by the IAD and this Court then denied leave to appeal. This Court has also previously found that it does not have jurisdiction to determine the claims related to Mr. Simon's sponsorship debt to the government of British Columbia and claims against the Registrar of the Supreme Court of Canada.

[29] Through this latest proceeding, the Plaintiffs are improperly attempting to re-litigate claims that were already struck by this Court in previous proceedings on the basis that they were abusive, frivolous, vexatious, res judicata and/or beyond the jurisdiction of this Court. Such conduct amounts to an abuse of process (see *Mazhero v. Fox*, 2014 FCA 219 at para 34).

[30] Moreover, I find that the Plaintiffs are continuing to plead numerous causes of action that are not known in law and that were confirmed by the Supreme Court of British Columbia as unknown at law, such as the tort of interference and failure to delivery monies, the tort of

contravening several acts of Parliament, the tort of mental torture, and the tort of defrauding the public by deceit. Continuing to assert such claims is both abusive and vexatious.

[31] Rule 181 requires that a pleading must contain particulars of every allegations contained therein, including particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence. Bald allegations of such allegations cannot stand. The majority of the claims asserted by the Plaintiffs, including newly formulated claims, are of this nature, yet the Plaintiffs fail to provide sufficient, or any, particulars as required by the *Rules*.

[32] Moreover, the Statement of Claim is so unintelligible and devoid of material facts that it is difficult, if not impossible, for the Defendants to understand the case to be met. On this basis, I find that the entirety of the pleading is frivolous and vexatious.

[33] In addition, I find that the Statement of Claim is replete with legal argument, references to irrelevant statutes, hypothetical scenarios and case law, all of which are improper.

[34] For certain elements of the relief sought by the Plaintiffs, such as the issuance of a visitor visa to Ms. Zhong and her son, there is simply no basis for the Court to grant such relief. There is nothing discernable in the record that indicates that any application for a visitor visa has been made, let alone denied. Accordingly, although a remedy might well be available in this Court if the visa applications are denied, there is currently no foundation for the remedy sought.

III. Conclusion

[35] I find that the Statement of Claim discloses no reasonable cause of action, is scandalous, vexatious and an abuse of process. It is therefore plain and obvious that the Plaintiffs' claims cannot succeed and the pleading should be struck out in its entirety.

[36] Given the nature of the serious deficiencies in the Statement of Claim and given Mr. Simon's past conduct in refusing to heed the direction offered by the Federal Court of Appeal on how to prepare a proper pleading, I find that the deficiencies in the Statement of Claim cannot be cured by amendment and leave to amend will therefore not be granted.

[37] I find that a heightened award of costs is warranted. The amount requested by the Defendants, namely $1,540.00 inclusive of disbursements and taxes, is entirely reasonable in the circumstances.

ORDER

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 $1,540.00, inclusive of disbursements and taxes, shall be paid by the Plaintiffs to the Defendants.

"Mandy Aylen"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1066-16
STYLE OF CAUSE:	ZOLTAN ANDREW SIMON ET AL v HER MAJESTY THE QUEEN IN RIGHT OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369

ORDER AND REASONS:	AYLEN P.
DATED:	AUGUST 29, 2016

WRITTEN REPRESENTATIONS BY:

ZOLTAN ANDREW HOMES	THE PLAINTIFFS ON THEIR OWN BEHALF
BARRY BENKENDORF	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Zoltan Andrew Simon and Zuanhao Zhong Red Deer, Alberta	THE PLAINTIFFS ON THEIR OWN BEHALF
William F. Pentney Deputy Attorney General of Canada Edmonton, Alberta	FOR THE DEFENDANTS