Federal Court  Cour fédérale

Date: 20180511

Docket: T-946-17

Citation: 2018 FC 504

Ottawa, Ontario, May 11, 2018

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

BRADMAN LEE

Plaintiff

and

HER MAJESTY THE QUEEN AND THE MINISTER OF NATIONAL REVENUE

Defendants

JUDGMENT AND REASONS

[1] Mr. Bradman Lee (the "Plaintiff") appeals from the Order of Prothonotary Aalto, dated September 8, 2017, granting the motion of Her Majesty the Queen and the Minister of National Revenue (the "Defendants") to strike out his Statement of Claim without leave to amend, on the grounds that it is scandalous, frivolous or vexatious and is an abuse of the process of the Court, within the meaning of Rule 221 of the *Federal Courts Rules*, SOR/ 1998 – 106 (the "Rules").

[2] In this appeal, the Plaintiff alleges that the Prothonotary did not understand the facts and showed bias in favour of the Defendants.

[3] The Plaintiff is a Canadian taxpayer residing in Ontario. In his Statement of Claim, he alleges wrongdoing in the manner in which he was treated by the Defendants relative to assessments for income tax and GST under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), and the *Excise Tax Act*, R.S.C., 1985, c. E-15.

[4] In his Order, the Prothonotary reviewed the history of litigation undertaken by the Plaintiff before the Ontario Court of Justice, the Superior Court of Justice of Ontario , the Court of Appeal for Ontario, the Tax Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada.

[5] The proceedings in the Ontario Courts were related to the conviction of the Plaintiff upon charges of filing false and misleading tax returns; the proceedings before the Tax Court and on appeal to the Federal Court of Appeal related assessments for payment of GST. The Plaintiff sought leave to appeal before the Supreme Court of Canada in respect of both the proceedings in the Ontario Courts and before the Tax Court and the Federal Court of Appeal. The applications for leave were dismissed.

[6] In deciding the motion brought by the Defendants to strike the Plaintiff's Statement of Claim in the present action, the Prothonotary said the following:

> In the circumstances of this case the facts alleged in the Claim cannot be accepted as true on their face as there are clear and

> specific findings of other Courts which clearly contradict what is in the Claim. As is obvious from the history of Mr. Lee's involvement with the judicial system, clear and unequivocal findings have been made regarding what happened, all of which were subjected to the appellate process. The doctrine of *re judicata* applies. These matters have been finally and conclusively determined against the interests of Mr. Lee and the Claim is therefore scandalous, frivolous, vexatious and, as noted, an abuse of process as defined in the Rules of the Court. There are no reasonable causes of action alleged and the Claim is bereft of any chance of success. One example of this relates the claim for malicious prosecution. That tort requires a finding the claimant was not guilty of the charges alleged. That is clearly not the case here. Those convictions, in large part, are the foundation of the Claim

[7] The test upon a motion to strike a pleading is set out in the decision in *Hunt v. Carey Canada Inc*., [1990] 2 S.C.R. 959, that is whether it is plain and obvious that the pleading discloses no reasonable cause of action According to the decision in *Bérubé v. Canada* (2009), 348 F.T.R. at paragraph 24, a claim must show the following three elements in order to disclose a reasonable cause of action

i. Allege facts that are capable of giving rise to a cause of action

ii. Indicate the nature of the action which is to be founded on those facts, and

iii. Indicate the relief sought, which must be of a type that the action could produce and that the court has jurisdiction to grant

[8] The test upon an appeal from the Order of a prothonotary is set out in the decision in *Hospira Healthcare Corporation v. The Kennedy Institute of Rheumatology et al*, 2016 FCA 215. An Order of a Prothonotary will not be reversed unless there is palpable and overriding error

with respect to factual conclusions or for questions of law or mixed fact and law; where a legal principle is in issue, the standard of corrections will apply.

[9] An Order upon a motion to strike a statement of claim involves the exercise of discretion, as informed by the relevant jurisprudence.

[10] As noted by Prothonotary Aalto, the Defendants relied upon Rule 221 of the Rules in bringing their Motion to Strike. Rule 221 provides 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	Elle peut aussi ordonner que l'action soit rejetée ou qu'un

accordingly.	jugement soit enregistré en conséquence.
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[11] According to the decision in *Condon v. Canada* (2015), 474 N.R. 300 allegations in a statement of claim are presumed to be true. However, as noted by the Prothonotary, the alleged facts "are only to be taken to be true if they are provable". The Prothonotary determined that the Plaintiff's Statement of Claim disclosed no reasonable cause of action but, rather, on the known facts, constitutes an abuse of process.

[12] In *OIeynik v. Canada (Attorney General)* 2014 FC 896, the Court said the following at paragraph 23:

> [23] It is an abuse of process to re-litigate essentially the same dispute when earlier attempts at relief have failed; see the decision in *Black v. NsC Diesel Power Inc. (Bankrupty) et al.* (2000), 183 F.T.R. 301 at paragraph 11. The substance of this dispute has already been considered by this Court on two previous occasions. In both cases, the applications were dismissed; see the decisions in *Oleinik v. Canada (Privacy Commissioner),* 2011 FC 1266, affirmed by *Oleinik v. Canada (Privacy Commissioner)* 2012 FCA 229, and *Oleinik v Privacy Commissioner (Can.)* (2013), 425 F.T.R. 228. The Plaintiff's present action is therefore an abuse of process.

[13] In my opinion the same principle applies here.

[14] Upon reading the Order of Prothonotary Aalto, I am satisfied that he made no error in granting the Defendants' motion.

[15] The Prothonotary determined that the allegations in the Plaintiff's Statement of Claim relate to matters that have been adjudicated and decided, with recourse to all available levels of appeal, up to and including applications for leave to appeal to the Supreme Court of Canada. He determined that the presentation of these allegations in the Statement of Claim offend the principle of *res judicata*, as found by Justice Woods, then writing as a judge of the Tax Court of Canada.

[16] The Prothonotary did not err in his appreciation of the facts nor in his application of the law. He did not err in finding that the issues raised by the Plaintiff in his Statement of Claim or claim have been litigated. He made no " palpable and overriding error" and the appeal will be dismissed.

[17] There is no support for the Plaintiff's allegation of bias. The test for a finding of bias is high; see the decision in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R 369 at pp. 394-95. The fact that the Prothonotary granted the Defendants' motion to strike does not show bias.

[18] The Defendants did not seek costs upon this motion. In the exercise of my discretion, pursuant to the Rules, no costs will be awarded.

JUDGMENT in T-946-17

THIS COURT'S JUDGMENT is that the appeal is dismissed, no order as to costs**.**

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-946-17
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APPEARANCES:

Bradman Lee	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Kaitlin Coward	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

N/A	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
The Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANTS