

Federal Court



Cour fédérale

Date: 20220211

Docket: T-717-21

Citation: 2022 FC 192

St. John's, Newfoundland and Labrador, February 11, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

WENXIAN LOU

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS AND ORDER

I. INTRODUCTION

[1] By a Notice of Motion submitted for consideration without personal appearance, pursuant to Rule 369 of the *Federal Courts Rules*, S.O.R. 98/106 (the “Rules”), Ms. Wenxian Lou (the “Plaintiff”) appeals from the Order (the “Order”) dated June 15, 2021 of Madam Prothonotary Aylen (as she then was). In that Order, then Prothonotary Aylen granted the Motion

filed by the Attorney General of Canada (the “Defendant”), also pursuant to Rule 369 of the Rules.

[2] The Order strikes the Statement of Claim in its entirety, without leave to amend. Costs of the motion were fixed in the amount of \$500.00 inclusive of disbursements and taxes, to be paid by the Plaintiff to the Defendant.

II. BACKGROUND

[3] The following details are taken from the Exhibits attached to the affidavit of Ms. Alexis McEwan, an Officer Manager/Legal Assistant Supervisor with the Department of Justice, Counsel for the Defendant in this proceeding.

[4] The Exhibits consist of the following documents:

1. Exhibit “A” is a copy of the Statement of Claim issued on January 11, 2021 in cause number T-91-21, by the Plaintiff against the Defendant;
2. Exhibit “B” is the Order dated March 18, 2021, issued by Prothonotary Molgat granting the Motion of the Defendant to strike the Plaintiff’s Statement of Claim in its entirety, with costs in the amount of \$300.00;
3. Exhibit “C” is the Order dated April 7, 2021, issued by Prothonotary Molgat, dismissing the Plaintiff’s Motion for reconsideration of the Order of March 18, 2021;
4. Exhibit “D” is a copy of the Statement of Claim issued on April 30, 2021, in the within action; and
5. Exhibit “E” is the Order dated June 15, 2021, issued by Prothonotary Aylen (as she then was) granting the Motion of the Defendant to strike the Plaintiff’s Statement of Claim, in

its entirety, without leave to amend, with costs to the Defendant.

[5] It is not necessary to give a detailed review of the facts set out in the Plaintiff's Statements of Claim. The challenges to the Statements of Claim were based, broadly, upon the lack of facts to support causes of action that could proceed in this Court.

[6] The Plaintiff arrived in Canada on August 21, 2016, in possession of a visitor visa, for her son to attend school. In the first Statement of Claim, issued in cause number T-91-21, she claimed to have been victimized by various "frauds", including bank fraud, insurance fraud, "business fraud" and "government fraud". According to the Order of Prothonotary Molgat, in this Statement of Claim the Plaintiff sought recovery of \$70 million in damages for the breach of her legal rights and security of the person "subjected to unusual treatment".

[7] Prothonotary Molgat reviewed the law applicable to a motion to strike. She observed that the burden upon the moving party, that is the Defendant, is high. The test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action, relying upon the decisions in *Hunt v. Carey Inc.*, 1990 [2 S.C.R. 959] and *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45.

[8] The Prothonotary accepted the arguments of the Defendant and concluded that the Plaintiff's Statement of Claim disclosed no reasonable cause of action and struck it out, in its entirety. She found that the defects in the Statement of Claim could not be cured by amendment and denied leave to amend.

[9] Upon a Motion by the Plaintiff for reconsideration of the Order, Prothonotary Molgat applied Rule 397 of the Rules. That Rule provides as follows:

Motion to reconsider

397 (1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that

(a) the order does not accord with any reasons given for it; or

(b) a matter that should have been dealt with has been overlooked or accidentally omitted.

Réexamen

397 (1) Dans les 10 jours après qu'une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l'ordonnance, telle qu'elle était constituée à ce moment, d'en examiner de nouveau les termes, mais seulement pour l'une ou l'autre des raisons suivantes :

a) l'ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;

b) une question qui aurait dû être traitée a été oubliée ou omise involontairement.

[10] Prothonotary Molgat concluded that in submitting the Motion for reconsideration the Plaintiff was trying to re-argue the Defendant's Motion to strike, in an attempt to achieve a different result. She found that this attempt is contrary to the purpose of a motion for reconsideration and dismissed the Plaintiff's Motion, with costs.

[11] The Plaintiff then filed the Statement of Claim which is the originating document in the present proceeding. That Statement of Claim was issued on April 30, 2021.

[12] On May 31, 2021, the Defendant submitted a Motion in writing, pursuant to Rule 369 of the Rules, seeking an Order striking the Statement of Claim. The Plaintiff did not file a response to this Motion.

[13] The Motion was decided by Prothonotary Ayles (as she then was). She reviewed the applicable law upon a motion to strike. According to the Order, she compared the paragraphs of the April 30, 2021 Statement of Claim with those set out in the first Statement of Claim, that is the originating document in cause number T-91-21. She concluded that essentially, the Plaintiff was repeating the allegations set out the Statement of Claim that had already been struck.

[14] Prothonotary Ayles (as she then was) determined that the “new” Statement of Claim failed to disclose a reasonable cause of action, that it suffered from the same defects as the “first” Statement of Claim - that is with bare assertions and conclusory statements. She further decided that the “new” Statement of Claim was an abuse of process since it was a veiled restatement of the allegations set out in the Statement of Claim that had been struck out, without leave to amend, by Prothonotary Molgat.

[15] The Statement of Claim in question was issued on January 11, 2021. Paragraph 7 of the Order refers to the Statement of Claim as follows:

On January 11, 2021, the Plaintiff filed a Statement of Claim (T-91-21) seeking that the Defendant end all illegal behaviours against the Plaintiff and damages in the amount of \$70 million. The pleading made allegations of “illegal tracking and monitoring”, “illegal access to personal residence”, drugs, rape, sexual assault and “Government organized human traffic” and referred to the Plaintiff’s dealings with immigration consultants,

financial institutions, insurers, schools, landlords and property managers.

[16] Prothonotary Ayles (as she then was) granted the Defendant's Motion. She decided that it was plain and obvious that the Statement of Claim discloses no reasonable cause of action and constitutes an abuse of process. Specifically, she found the pleading replete with bare assertions and conclusory statements, consisting of a rambling narrative which is devoid of any material facts that could support a cause of action for conspiracy or any other cause of action known at law and over which the Federal Court has jurisdiction.

[17] The Plaintiff appealed the Order, pursuant to Rule 51(1) of the Rules, by a Notice of Motion filed on June 22, 2021 and seeks to amend the Statement of Claim.

III. SUBMISSIONS

[18] The Plaintiff argues that Prothonotary Ayles (as she then was) erred in finding that the Statement of Claim could not be cured by way of amendment.

[19] The Defendant filed a responding Motion Record and argues that there Prothonotary Ayles (as she then was) made no palpable and overriding error when striking out the Statement of Claim in its entirety, without leave to amend, as disclosing no reasonable cause of action and for constituting an abuse of process.

[20] The Defendant submits that the Plaintiff's Appeal should be dismissed with costs fixed by the Court pursuant to Rules 400(3)(i), 400(3)(k)(i) and 401(1) of the Rules.

IV. DISCUSSION AND DISPOSITION

[21] The applicable test upon appeal from a decision of a Prothonotary is set out in *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, [2017] 1 F.C.R. 331 at paragraphs 27 and 66, as follows:

[27] ...A discretionary decision made by a prothonotary is clearly wrong, and thus reviewable on appeal by a judge, where it is based: (1) upon a wrong principle – which implies that correctness is required for legal principles – and (2) upon a misapprehension of facts – which seems to be the equivalent of the “overriding and palpable error” criterion of the *Housen* standard if it caused the prothonotary’s decision to be “clearly wrong”.

...

[66] In *Housen*, the Supreme Court enunciated the standard of review applicable to decisions of trial judges. More particularly, it concluded that with respect to factual conclusions reached by a trial judge, the applicable standard was that of palpable and overriding error. It also stated that with respect to questions of law and questions of mixed fact and law, where there was an extricable legal principle at issue, the applicable standard was that of correctness (paragraphs 19 to 37 of *Housen*).

[22] By her Order, the Prothonotary (as she then was) struck the Applicant’s Statement of Claim in its entirety, without leave to amend.

[23] In doing so, the Prothonotary (as she then was) considered the relevant jurisprudence, including the decisions in *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441 at paragraphs 7-8, 27, *Imperial Tobacco Canada Ltd., supra*, *Mancuso v. Canada (National Health and Welfare)*, [2015] 476 N.R. 219 (FCA), *Enercorp Sand Solutions Inc. v. Specialized*

Desanders Inc., [2018] 160 C.P.R. (4th) 79 (FCA), and *Apotex Inc. v. Syntex Pharmaceuticals International Ltd.*, [2005] 44 C.P.R. (4th) 23 (FC).

[24] I see no reviewable error in the Prothonotary's (as she then was) finding that the Statement of Claim discloses no reasonable cause of action and constitutes an abuse of process.

[25] The Prothonotary (as she then was) considered the applicable legal principles and applied relevant jurisprudence. The Plaintiff's Statement of Claim has been reviewed effectively four times since the Statement of Claim in this action reflects the Statement of Claim in cause number T-19-21.

[26] In the result, the Plaintiff's appeal is dismissed.

[27] The Defendant seeks costs, if successful in resisting the Plaintiff's appeal.

[28] Pursuant to Rule 400, costs lie in the discretion of the Court.

[29] In the exercise of my discretion pursuant to Rule 400 of the Rules, I award costs to the Defendant in the amount of \$500.00.

ORDER in T-717-21

THIS COURT'S ORDER is that the motion is dismissed, with costs to the Defendant in the amount of \$500.00.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-717-21

STYLE OF CAUSE: WENXIAN LOU v. HER MAJESTY THE QUEEN

**MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND
LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

REASONS AND ORDER: HENEGHAN J.

DATED: FEBRUARY 11, 2022

WRITTEN REPRESENTATIONS BY:

Wenxian Lou

FOR THE PLAINTIFF
(SELF REPRESENTED)

Nathan Joyal

FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE DEFENDANT