

Federal Court



Cour fédérale

Date: 20230317

Docket: T-281-21

Citation: 2023 FC 369

Ottawa, Ontario, March 17, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

**JOSELIA FERREIRA AND
CARLOS SOARES**

Plaintiffs

and

CANADA REVENUE AGENCY

Defendant

JUDGMENT AND REASONS

I. Overview

[1] By a Motion filed on November 7, 2022, the Canada Revenue Agency [CRA] seeks summary judgment against Joselia Ferreira and Carlos Soares [the Plaintiffs]. The CRA asserts the Statement of Claim [Action] filed by the Plaintiffs has no possibility of success on a number of grounds.

[2] In their Action, the self-represented Plaintiffs claim they have suffered damages as the result of actions taken by CRA to collect an income tax debt. They allege CRA breached statutory, constitutional, and common law duties. They claim CRA was negligent in carrying out their duties. They claim to have been harassed and bullied by CRA employees. They allege a breach of their confidentiality rights. The Plaintiffs say CRA is vicariously liable for the actions of its employees. The Plaintiffs allege that CRA registered a lien on their property without notice to them and the lien prevented them from refinancing a mortgage. The Plaintiffs claim non-pecuniary damages of \$2,500,000.00, pecuniary damages of \$5,000,000.00, and aggravated damages of \$2,500,000.00.

[3] The Plaintiffs did not file any materials in response to CRA's summary judgment Motion. On February 20, 2023, the day before the hearing of the Motion, the Federal Court Registry received an email from the Plaintiffs requesting an adjournment of the hearing because of illness. No information in support of this request was provided.

[4] The hearing date for this Motion (February 21, 2023) had been scheduled since September 23, 2022. After a Case Management call on October 25, 2022, attended by the Plaintiffs, the Case Management Judge issued an Order on October 27, 2022, confirming that this Motion would be heard in-person.

[5] The CRA served and filed its Motion Record on November 7, 2022.

[6] The deadline for the Plaintiffs to serve any Affidavit(s) was December 9, 2022, and the deadline for the Plaintiffs to file their responding Record was January 31, 2023. The Plaintiffs did not file any Affidavits nor a responding Record.

[7] Rule 213(4) of the *Federal Courts Rules*, SOR/98-106 [*Rules*] states that a party served with a motion for summary judgment *shall* serve and file a responding record by no later than ten (10) days prior to the hearing of the motion for summary judgment [emphasis added].

[8] Considering the late request by the Plaintiffs to adjourn, and considering that the Plaintiffs had not filed anything in response to the Motion for summary judgment or in support of their request for an adjournment, the Court refused the request for an adjournment.

[9] On February 21, 2023, the Plaintiffs attended the hearing in-person and again requested an adjournment. I advised them there were no grounds to grant an adjournment. However, as Ms. Ferreira advised the Court that she had not reviewed the Motion materials filed by the CRA, the Court adjourned the hearing for a short period of time to allow her to review the materials, following which the hearing proceeded.

II. Relevant Facts

[10] As noted, the Plaintiffs did not file any materials on this Motion. Further, although both Ms. Ferreira and her spouse, Mr. Soares, are named as Plaintiffs in the Action, it is only Ms. Ferreira's income taxes that form the basis of this Action.

[11] The CRA relies upon the Affidavit of Patricia Neville, the CRA Collections Team Leader who had carriage of Ms. Ferreira's tax matter. The facts detailed below are from the Neville Affidavit.

[12] In 2007, the CRA reassessed Ms. Ferreira's taxes for the 2005 and 2006 taxation years. As the CRA did not have a record of Ms. Ferreira's T4 slips for those two years to confirm that income tax had been deducted from her earnings, she was assessed as owing the sum of \$21,418.84.

[13] On May 15, 2007, the CRA advised Ms. Ferreira that she had been selected for a review.

[14] On October 6, 2007, Ms. Ferreira received a letter from the CRA, stating she had a tax debt of \$21,631.12 for the 2005 and 2006 taxation years. This letter also advised legal action might be taken to collect the debt.

[15] On December 5, 2007, Ms. Ferreira received another letter from the CRA, stating her tax debt was \$21,487.98.

[16] On January 18, 2008, Ms. Ferreira received a letter from the CRA, stating no adjustment would be made on her account. This letter states:

We have received your request to adjust the above noted income tax returns, however, no adjustment is warranted as you have not complied with the requests from the trust examiners regarding the applicable T4's submitted.

[17] On May 1, 2008, Ms. Ferreira received another letter, stating a balance of \$22,210.55 was owing on her tax account.

[18] The CRA sent letters to Ms. Ferreira on August 11, 2008, January 16, 2009, February 5, 2010, April 11, 2011, and February 10, 2016, regarding her outstanding 2005 and 2006 tax debt.

[19] The CRA also sent Ms. Ferreira a letter on July 3, 2018, warning that action might be taken against her without further notice if the tax debt was not paid, including income garnishment, seizure and sale of assets, or any other means available under the law.

A. *The CRA Lien*

[20] On January 29, 2018, the CRA filed a certificate with the Federal Court in accordance with subsection 223(3) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp). Ms. Ferreira's tax debt at this time was \$35,599.01, due to accrued interest.

[21] On November 30, 2018, the CRA registered a lien on the Plaintiffs' property, pursuant to subsection 223(5) of the *Income Tax Act*.

[22] The CRA sent Ms. Ferreira a letter on April 24, 2019, advising her of the Federal Court certificate and that the CRA might take action to collect the tax debt.

[23] On November 20, 2019, the CRA received Ms. Ferreira's 2005 and 2006 T4s by fax from H&R Block. Following receipt of the T4s, the 2005 tax debt was reversed on December 16, 2019 and the 2006 tax debt was reversed on December 18, 2019.

[24] The CRA discharged the lien on December 20, 2019.

B. *Other Charges on the Plaintiffs' Property*

[25] The Neville Affidavit also provides details on other charges against the Plaintiffs' property.

[26] On April 12, 2017, the Town of Bradford registered a municipal tax lien against the Plaintiffs' property. The lien was for a property tax debt of \$14,651.82. The lien indicated the property would be sold within one year if the tax debt was not paid.

[27] On October 15, 2019, Riverrock Mortgage Investment Corporation served the CRA with a Notice of Sale under mortgage for the property. According to the Notice of Sale, the Plaintiffs' owed \$342,725.49 and the Notice advised the property would be sold unless the debts were paid by November 17, 2019.

[28] The property was sold on January 13, 2020 for \$790,000.00. As noted above, by this date, the CRA had discharged its lien.

C. *Statement of Claim Allegations*

[29] The Plaintiffs filed no evidence in response to the CRA Motion. For context, below I will summarize some of the allegations and claims made by the Plaintiffs in the Action by reference to their paragraph numbers:

Paragraph 35: Ms. Ferreira had her 2005 and 2006 income taxes completed by H&R Block.

Paragraphs 37-38: After receiving the May 15, 2007 letter informing Ms. Ferreira she was selected for review, she went to H&R Block. Ms. Ferreira alleges H&R Block called the CRA on her behalf and was told to resend the 2005 and 2006 T4s. She alleges H&R Block resent the T4s.

Paragraphs 39-40: After receiving the October 6, 2007 letter, Ms. Ferreira returned to H&R Block, who again called the CRA on her behalf. Ms. Ferreira alleges the CRA told H&R Block the T4s were not received. Ms. Ferreira alleges H&R Block resent the T4s.

Paragraph 41: Ms. Ferreira alleges she received a letter from the CRA, dated November 14, 2007, stating she had a \$0.00 balance.

Paragraph 42: After receiving the December 5, 2007 letter, Ms. Ferreira again returned to H&R Block. Ms. Ferreira alleges the CRA told H&R Block the December 5, 2007 letter was sent in error, as there was a \$0.00 balance on her account.

Paragraph 43: After receiving the January 18, 2008 letter, Ms. Ferreira again returned to H&R Block. The CRA allegedly told H&R Block that no T4s were received, but Ms. Ferreira alleges the January 18, 2008 letter states the T4s were received. The CRA asked for the T4s again, which H&R Block allegedly sent again.

Paragraph 44: After receiving the May 1, 2008 letter, Ms. Ferreira again went to H&R Block, who again called CRA on her behalf. The CRA stated no T4s were received. H&R Block mentioned the January 18, 2008 and the November 14, 2007 letters. The CRA agent allegedly stated those letters were not on Ms. Ferreira's file, but that a note would be placed on Ms. Ferreira's file to have the issue looked into and cleared up.

Paragraph 45: Ms. Ferreira states she received no further correspondence from the CRA, other than her annual income tax assessments. She alleges she did not receive all of the assessments.

Paragraphs 47-48: In June 2019, the Plaintiffs decided to sell their house, which they claim was valued at \$1.1 million. As their mortgage was up for renewal, they decided to renew the mortgage for a short term.

Paragraph 49: On August 13, 2019, Ms. Ferreira received a phone call from a Ms. White. Ms. Ferreira states Ms. White told her she had a balance owing that needed to be paid as soon as possible. Ms. Ferreira states Ms. White did not introduce herself as a CRA employee.

Paragraph 50: At the end of August 2019, Ms. Ferreira received another phone call from Ms. White. Ms. Ferreira states Ms. White explained there was an outstanding tax balance from 2005 and 2006 that needed to be resolved. Ms. Ferreira told Ms. White the T4s in question had been sent years prior. Ms. White explained there was no record of the T4s on Ms. Ferreira's file, so she would need to resend the documents. Ms. White explained nothing could be done without the T4s. Ms. Ferreira alleges Ms. White never told her about the lien on her property in this call.

Paragraph 51: Ms. Ferreira alleges she contacted H&R Block to have the T4s resent, but encountered difficulties as most records are only retained for seven years.

Paragraph 52-54: Ms. Ferreira spoke with Ms. White again in September 2019 regarding the difficulties she was having in obtaining the T4s. Ms. White again told her nothing could be done without the T4s. Ms. Ferreira asked to speak with a supervisor, who also stated nothing could be done without the T4s. Ms. Ferreira continued to work with H&R Block to try to obtain copies of the 2005 and 2006 T4s.

Paragraph 55: When the Plaintiffs attempted to renew their mortgage, their mortgage broker informed them the mortgage renewal could not be processed, due to a lien on the property. The mortgage broker informed the Plaintiffs a lien was placed on the property by the CRA for an outstanding tax debt. Ms. Ferreira called the CRA, who told her the lien could not be removed until the full tax debt was paid.

Paragraph 80: Ms. Ferreira was directed to contact the Collections Officer in charge of her file, Mr. Mohammed.

Paragraph 91: Mr. Mohammed allegedly told Ms. Ferreira the only option available to her in order to have the lien removed from her property was to pay the tax debt in full. Ms. Ferreira alleges Mr. Mohammed was rude, talking over her and not letting her speak.

Paragraphs 91(f)-(j): Ms. Ferreira obtained copies of the 2005 and 2006 T4s and cheque stubs. She contacted Mr. Mohammed, who told her to send him the T4s. Ms. Ferreira alleges arrangements were made to drop the documents off with Mr. Mohammed in person.

Paragraph 91(m)-(n): Ms. Ferreira alleges different CRA employees continually told her the only person who could assist her with the lien removal was her Collections Officer, Mr. Mohammed. She alleges Mr. Mohammed continually told her there was nothing he could do until she paid the outstanding tax debt.

Paragraph 92: On November 18, 2019, Ms. Ferreira called the CRA. She spoke with an agent and explained her situation. She alleges this agent told her the 2005 and 2006 T4s were on her file and had been since 2008. This agent also allegedly confirmed the

January 18, 2008 letter was on her file as well. The agent allegedly told Ms. Ferreira another letter had been sent, asking for more information about the T4s. The agent told Ms. Ferreira to submit a letter asking for a reassessment of the 2005 and 2006 taxation years.

Paragraph 92(e): Ms. Ferreira alleges she called back to see if she could upload the letter via the CRA's online system, and was told by another agent that a letter was pointless, as over ten years had passed. She was allegedly told there was nothing she could do other than pay the full amount of the tax debt.

Paragraph 93: Ms. Ferreira reached out to Ms. Vachon, who was listed on one of the letters Ms. Ferreira received in 2007. Ms. Vachon assisted Ms. Ferreira and allegedly informed her the T4s had in fact been received in 2007 and 2008, but were not put on her main file for some reason. Ms. Vachon also informed Ms. Ferreira the tax debt would be reversed, though it would take some time to process.

III. Issues

[30] The following are the issues for determination on this summary judgment Motion:

- A. Applicable law on summary judgment.
- B. Was the Action filed beyond the limitation period?
- C. Is the Action really an attack on the tax assessments?
- D. Can the Plaintiffs' negligence claim succeed?
- E. Is there a breach of constitutional rights?
- F. Does a breach of trust claim arise?

IV. Analysis

A. *Applicable Law on Summary Judgment*

[31] The *Rules* allow the Court to make a summary determination on the merits of an action.

The *Rules* state:

213 (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.

(2) If a party brings a motion for summary judgment or summary trial, the party may not bring a further motion for either summary judgment or summary trial except with leave of the Court.

(3) A motion for summary judgment or summary trial in an action may be brought by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.

(4) A party served with a motion for summary judgment or summary trial shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.

214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

213 (1) Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heure, date et lieu de l'instruction soient fixés.

(2) Si une partie présente l'une de ces requêtes en jugement sommaire ou en procès sommaire, elle ne peut présenter de nouveau l'une ou l'autre de ces requêtes à moins d'obtenir l'autorisation de la Cour.

(3) La requête en jugement sommaire ou en procès sommaire dans une action est présentée par signification et dépôt d'un avis de requête et d'un dossier de requête au moins vingt jours avant la date de l'audition de la requête indiquée dans l'avis.

(4) La partie qui reçoit signification de la requête signifie et dépose un dossier de réponse au moins dix jours avant la date de l'audition de la requête indiquée dans l'avis de requête.

214 La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

(2) If the Court is satisfied that the only genuine issue is

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.

(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

(a) nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or

(b) dismiss the motion in whole or in part and order that the

éléments de preuve démontrant l'existence d'une véritable question litigieuse.

215 (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;

b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :

a) néanmoins trancher cette question par voie de procès sommaire et rendre toute

action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

ordonnance nécessaire pour le déroulement de ce procès;

b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

[32] The test on summary judgment is “not whether a party cannot possibly succeed at trial; rather, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial” (*Lauzon v Canada (Revenue Agency)*, 2021 FC 431 at para 21 [*Lauzon*], citing *Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 at para 33; *Kaska Dena Council v Canada*, 2018 FC 218 at paras 21, 23; see also *Gemak Trust v Jempak Corporation*, 2022 FCA 141 at para 66).

[33] When considering summary judgment, the Court is entitled to assume no new evidence will be presented at trial (*Lauzon* at para 21, citing *Samson First Nation v Canada*, 2015 FC 836 at para 94). Summary judgment can only be granted where the necessary facts to determine questions of fact and law are found in the material before the Court (*AMR Technology Inc v Novopharm Limited*, 2008 FC 970 at para 6 [*AMR*]).

[34] Here, the CRA has the burden to establish the necessary facts for a summary dismissal (*AMR* at para 8), however the Plaintiffs must adduce evidence to show there is a genuine issue for trial (*Lauzon* at para 21).

[35] I also note that the Plaintiffs do not have any additional rights as self-represented litigants, as “if [a party] insists upon representing himself, he must play by the same rules as everyone else” (*Brunet v Canada (Revenue Agency)*, 2011 FC 551 at para 10, citing *Scheuneman v Canada*, 2003 FCT 37 at para 4).

B. *Was the Action Filed Beyond the Limitation Period?*

[36] The CRA submits the Action is subject to the Ontario *Limitations Act, 2002*, SO 2002, c 24, Sch B [*Limitations Act*]. Section 32 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 incorporates the *Limitations Act* for proceedings brought against the CRA in Ontario.

[37] Section 4 of the *Limitations Act* provides that an action must be filed within two years of the date the claim was discovered. Subsection 5(1) states:

A claim is discovered on the earlier of,	Les faits qui ont donné naissance à la réclamation sont découverts celui des jours suivants qui est antérieur aux autres :
(a) the day on which the person with the claim first knew,	
(i) that the injury, loss or damage had occurred,	a) le jour où le titulaire du droit de réclamation a appris les faits suivants :
(ii) that the injury, loss or damage was caused	(i) les préjudices, les pertes ou les dommages sont survenus,

- | | |
|---|--|
| by or contributed to by an act or omission, | (ii) les préjudices, les pertes ou les dommages ont été causés |
| (iii) that the act or omission was that of the person against whom the claim is made, and | entièrement ou en partie par un acte ou une omission, |
| (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and | (iii) l'acte ou l'omission est le fait de la personne contre laquelle est faite la réclamation, |
| (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). | (iv) étant donné la nature des préjudices, des pertes ou des dommages, l'introduction d'une instance serait un moyen approprié de tenter d'obtenir réparation; |
| | b) le jour où toute personne raisonnable possédant les mêmes capacités et se trouvant dans la même situation que le titulaire du droit de réclamation aurait dû apprendre les faits visés à l'alinéa a). 2002, chap. 24, annexe B, par. 5 (1). |

[38] Subsection 5(2) states: “A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved”.

[39] The Plaintiffs filed the Action on February 16, 2021.

[40] Based upon the documentary evidence, the CRA asserts the claim arose on August 27, 2007, being the date of the CRA letter to Ms. Ferreira advising her of the reassessment of her 2005 and 2006 taxation years. Additionally, the CRA asserts that Ms. Ferreira was advised by letter on October 6, 2007, that collection action could take place. The CRA relies upon these documents to establish the relevant dates from which to calculate the applicable limitation period.

[41] The evidence on the Record is that the CRA sent Ms. Ferreira the August 27, 2007 and the October 6, 2007 letters. There is no evidence Ms. Ferreira did not receive these letters. She therefore had notice of the CRA claim that she had unpaid income tax owing. With respect to her knowledge of the outstanding taxes, I further note that she continued to receive annual notices of assessment from the CRA, which listed the outstanding tax debt.

[42] Based upon the evidence, I accept that Ms. Ferreira had knowledge of her tax debt as early as August 2007. Further, although Ms. Ms. Ferreira denied ever owing the amounts claimed by the CRA, it is not disputed that she had knowledge of the CRA's position that she had an outstanding income tax debt.

[43] Accepting that Ms. Ferreira had notice of the tax debt in either August or October 2007, the limitation period within which to bring a claim lapsed two years later in August or October 2009.

[44] The Court in *Lauzon* notes that the two-year limitation period in the *Limitations Act* applies to claims against the CRA and is a valid basis for summary dismissal (at para 40).

[45] The Plaintiffs did not file this Action until 2021, which is well after the two-year limitation period expired. I therefore conclude that the Plaintiffs filed this Action outside of the limitation period provided for in the *Limitations Act*.

[46] Although my finding that this Action was filed after the limitation period expired is determinative of the Motion, I will nonetheless address the other grounds argued by the CRA on this Motion.

C. *Is the Action Really an Attack on the Tax Assessments?*

[47] The CRA argues the Action is, at its core, a challenge to the 2007 reassessment of Ms. Ferreira's 2005 and 2006 taxes. They point to the language in the Action where the Plaintiffs say they seek damages for the "wrongful outstanding balance."

[48] The CRA submits that any challenges to tax assessments must be brought to the Tax Court of Canada, who has the exclusive jurisdiction to review the correctness of a tax assessment. As noted by the Federal Court of Appeal in *Canada v Roitman*, 2006 FCA 266 at paragraph 20:

It is settled law that the Federal Court does not have jurisdiction to award damages or grant any other relief that is sought on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court. To do so would be to permit a

collateral attack on the correctness of an assessment. [Citations omitted.]

[49] It is not disputed that Ms. Ferreira did not file an objection to the reassessment or pursue an appeal to the Tax Court of Canada (per sections 165 and 169 of the *Income Tax Act*, respectively).

[50] With respect to action taken by the CRA in filing a lien, the CRA submits this step was authorized by sections 222-225.2 of the *Income Tax Act*. Further, the CRA relies upon *Alessandro v Canada*, 2006 FC 895, where the Court held that collection action taken by the CRA that was lawful when it was carried out continues to be valid even if the underlying debt is later challenged by virtue of an adjustment.

[51] In any event, the CRA submits the Federal Court has found there is no obligation on the CRA to remove a lien when requested by a taxpayer for the purposes of refinancing (893134 *Ontario Inc (Mega Distributors) v Canada (National Revenue)*, 2008 FC 715 at para 20). They also note Ms. Ferreira did not take any steps to seek judicial review of the lien under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

[52] Based upon the claims outlined in the Action, it is clear that the core of the dispute is the 2007 reassessment of Ms. Ferreira's 2005 and 2006 taxes by the CRA. The Action is a challenge to the validity or correctness of those reassessments. Ms. Ferreira should have challenged the reassessment through the procedures outlined in the *Income Tax Act* and/or she should have sought relief in the Tax Court of Canada. The Federal Court does not have the jurisdiction or

authority over tax assessments. Lack of jurisdiction means the Federal Court is unable to consider such claims as they belong in the Tax Court.

[53] With respect to the lien, as noted by the Court in *Oddi v Canada (Revenue Agency)*, 2022 FC 1313 at paragraph 64 [*Oddi*], the CRA is not obligated to consider lifting or postponing a lien. Based upon the evidence and the facts, the steps taken by the CRA in registering a lien against the Plaintiffs' property were specifically permitted by the *Income Tax Act*.

D. *Can the Plaintiffs' Negligence Claim Succeed?*

[54] Ms. Ferreira alleges she was bullied and harassed by the CRA staff when she made inquiries about her outstanding tax debt or the lien. However, beyond these allegations, Ms. Ferreira offered no evidence in support. In any event, I will nonetheless consider if the "conduct" she complains of could, on its own, support a claim of negligence against the CRA.

[55] To establish negligence, the Plaintiffs must establish: (1) the CRA owed them a duty of care; (2) the CRA breached the standard of care; and (3) the CRA caused the damages alleged.

[56] Justice Ahmed, in *Oddi*, considered a negligence claim against the CRA and noted, "the jurisprudence supports the finding that the CRA does not owe a duty of care to taxpayers" (at para 77). The Ontario and Alberta Courts of Appeal have also confirmed no private law duty of care exists when assessing taxes (*Jayco Inc v Canada (Revenue Agency)*, 2022 ONCA 277; *Grenon v Canada Revenue Agency*, 2017 ABCA 96). A CRA auditor is performing a public law duty, which is inconsistent with a duty of care to any one taxpayer.

[57] Even if a duty of care was owed by the CRA, as noted, once the CRA was provided with Ms. Ferreira's 2005 and 2006 T4 forms, the CRA acted promptly in reversing the tax debt and lifting the lien. I am satisfied that this conduct complied with the CRA's statutory duties and would meet the necessary standard of care, if it were applicable.

[58] The final issue to consider on negligence is whether the CRA caused any damages to the Plaintiffs. The Plaintiffs offered no evidence on this issue. The evidence provided by the CRA demonstrates the Plaintiffs' property was sold as the result of a power of sale proceedings initiated by their mortgage corporation.

[59] The CRA did not take any steps to sell the property and the CRA did not receive any funds from the sale of the property. Accordingly, there is no evidence that the sale of the property was impacted by the actions of the CRA (per *Oddi* at paras 90-91).

[60] Based upon the facts and the evidence before the Court, I conclude the Plaintiffs would not be able to establish a claim of negligence against the CRA. Courts have consistently found there is no private law duty owed by the CRA to individual taxpayers. Further, any losses suffered by the Plaintiffs resulting from the sale of their property did not arise from the actions of the CRA.

[61] In their Action, the Plaintiffs make bald allegations of bullying, harassment, and negligence on the part of the CRA. The Plaintiffs have provided no evidence in support of these allegations. I therefore conclude that the negligence claim cannot succeed.

E. *Is There a Breach of Constitutional Rights?*

[62] In their Action, the Plaintiffs claim the CRA breached “constitutional” duties to the Plaintiffs.

[63] Although the Plaintiffs have not indicated precisely what rights have been breached, such allegations must be clearly articulated and supported with material facts (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 21). There are no supporting facts provided by the Plaintiffs in the Action.

[64] The Court in *Oddi* rejected a claim of a breach of section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]* in similar factual circumstances (at paras 98-99).

[65] In this case, there is no evidence to support the claim of a breach of a constitutional or *Charter* rights. The Plaintiffs have not identified what constitutional rights they allege the CRA breached. This claim therefore has no merit.

F. *Does a Breach of Trust Claim Arise?*

[66] The Plaintiffs allege the CRA breached their trust by disclosing Ms. Ferreira’s information to third parties. It is unclear what information is alleged to have been disclosed. However, I note that subsection 241(1)(c) of the *Income Tax Act* expressly authorizes the release of taxpayer information in the administration and enforcement of the *Act*. As there is no

evidence that information was released other than in the administration and enforcement of the *Income Tax Act*, this allegation cannot succeed.

V. Conclusion

[67] Although it is unfortunate that it took many years before Ms. Ferreira's tax reassessments were reversed, the blame for that does not lie with the CRA. The fact that the reassessment was reversed very shortly after the CRA received the required T4 information demonstrates that had Ms. Ferreira provided this information earlier, this situation could have been entirely avoided.

[68] Overall, I am satisfied that there is no genuine issue for trial. I grant CRA's Motion for summary judgment and order that the Action be dismissed in its entirety.

VI. Costs

[69] The CRA is entitled to its costs.

JUDGMENT IN T-281-21

THIS COURT'S JUDGMENT is that:

1. The Motion for summary judgment is granted.
2. The Plaintiffs' action is dismissed in its entirety.
3. Costs are awarded to the Defendant.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-281-21

STYLE OF CAUSE: JOSELIA FERREIRA AND CARLOS SOARES v
CANADA REVENUE AGENCY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 21, 2023

JUDGMENT AND REASONS: MCDONALD J.

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APPEARANCES:

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