

Federal Court



Cour fédérale

Date: 20230103

Docket: T-1691-21

Citation: 2023 FC 10

Ottawa, Ontario, January 3, 2023

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

SHANEIL KUMAR SEWAK

Plaintiff

and

**HIS MAJESTY THE KING IN RIGHT OF
CANADA**

Defendant

ORDER AND REASONS

I. Overview

[1] By way of motion pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106, Mr. Shaneil Kumar Sewak, the Plaintiff, appeals the October 3, 2022 Judgment of Associate Judge Trent Horne, acting in the capacity of a Case Management Judge, striking out the Plaintiff's Statement of Claim without leave to amend. Mr. Sewak represents himself.

[2] Having considered the written and oral submissions of the parties, I find there is no basis to interfere with the Judgment of the Associate Judge. My reasons follow.

II. Background

[3] On November 5, 2021, the Plaintiff filed a Statement of Claim [Claim] alleging various justice system participants had engaged in racist conduct, illegal conduct, and tortious conduct that had breached his rights. The vast majority of the alleged misconduct relates to the provincial courts, provincial correctional institutions, and a municipal police service in Alberta. The Plaintiff's allegations of misconduct also include two incidents relating to the alleged arrest of the Plaintiff by the Royal Canadian Mounted Police [RCMP]. The Associate Judge refers to the two incidents involving the RCMP as the "Sylvan Lake Allegation" and the "Violation of Conditions Allegation," labels that I also use.

[4] The Claim names His Majesty the King in Right of Canada as the sole defendant. The Applicant alleges Canada has a duty to protect citizens subjected to conduct within a province that "would offend the court's sense of decency." The Plaintiff seeks damages under 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]*, special damages, and punitive and aggravated damages.

[5] On September 12, 2022, the Attorney General of Canada brought a motion in writing on behalf of the Defendant seeking an Order striking the Claim. Associate Judge Horne granted the

motion, without leave to amend and awarded the Defendant costs fixed at \$500 payable forthwith.

III. The Decision of the Associate Judge

[6] The Associate Judge first described the Claim, noting that all of the events set out involve provincial courts, provincial correctional institutions and the Edmonton Police Service with the exception of the Sylvan Lake and Violation of Conditions Allegations, which allege RCMP misconduct. The Associate Judge then stated:

[9] The Claim alleges that “Canada” has an obligation to protect Canadian citizens detained, arrested, charged and convicted because of their race and or color of their skin, and that Canada has failed to come to the plaintiff’s aid. The Claim also alleges that the Alberta justice system actively, knowingly, and willfully participated in harming the plaintiff.

[10] The Claim alleges that the plaintiff’s *Charter* rights have been infringed, and also relies on international conventions, including the *United Nations Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*.

[7] The law applicable to a strike motion was summarized and the following underlying principles were identified by the Associate Judge:

- A. To strike a claim on the basis it discloses no reasonable cause of action, it must be plain and obvious that the claim, assuming the pleadings to be true, has no reasonable prospect of success, or that the action is certain to fail due to a radical defect (*R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at paras 17, 19);

- B. In a pleading, a plaintiff is required to plead all material facts forming the basis of the claim and relief sought. The facts pled must provide sufficient details of each cause of action or legal ground raised. The material facts must explain the “who, when, where, how and what” that gives rise to the defendant’s liability. The relief sought must be set out and that relief must be of a type the action could produce and that is within the jurisdiction of the court to grant (Rule 174 of the *Federal Courts Rules*; *Pelletier v Canada*, 2016 FC 1356 at paras 8, 10; *Oleynik v Canada (Attorney General)* 2014 FC 896 at para 5; *Al Omani v Canada*, 2017 FC 786 at para 14);
- C. The statement of claim is to be read generously with a view to understanding its real essence and the court should err on the side of permitting a novel but arguable claim to proceed (*Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 19; *Lim v Canada (Justice)*, 2020 FC 628 at para 20 citing *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at paras 49–50); and
- D. Allegations may be struck on the basis that they are vexatious where the material facts are so deficient a defendant is unable to know how to answer the claim, and where they raise inflammatory allegations without supporting facts (*Carten v Canada*, 2009 FC 1233 at paras 64, 67; *Kisikawpimootewin v Canada*, 2004 FC 1426 at para 8).

[8] The Associate Judge then reviewed the three-part test set out by the Supreme Court of Canada in *ITO-International Terminal Operators Ltd v Miida Electronics Inc*, [1986] 1 SCR 752 for finding jurisdiction in the Federal Court. Citing *Windsor (City) v Canadian Transit Co*, 2016 SCC 54 the Associate Judge also noted that it is necessary to determine the essential nature or character of a claim before assessing whether the three-part test is met.

[9] Turning to the issues raised by the Plaintiff on the motion, the Associate Judge first concluded it was appropriate to consider the motion to strike prior to any further steps being taken in the proceeding. He then found it to be plain and obvious that allegations against the Edmonton Police Service and provincial correctional institutions were not within the Court's jurisdiction (*Tonner v Lowry*, 2016 FC 230 at para 27; *Legere v Canada*, 2003 FC 896 at para 11). In considering the allegations involving members of the Alberta judiciary, the Associate Judge cited the doctrine judicial immunity, noting that the pleading of bald allegations was insufficient to overcome the doctrine, and that in any event the allegations pled were in essence a collateral attack on judicial orders and therefore an abuse of process. The Associate Judge then considered the Plaintiff's reliance on international instruments, holding that instruments that are not part of domestic law cannot be relied upon in a claim to create substantive rights. Similarly, he found advancing a claim of a *Charter* breach neither extends nor creates jurisdiction in the Federal Court where that jurisdiction does not otherwise exist. The Associate Judge noted that a court of competent jurisdiction for the purpose of section 24(1) of the *Charter* is one that possesses: (1) jurisdiction over the person; (2) jurisdiction over the subject matter; and (3) jurisdiction to grant a remedy (*R v 974649 Ontario Inc*, 2001 SCC 81 at para 15).

[10] The Associate Judge acknowledged the Court might have jurisdiction in respect of the claims involving allegations of misconduct by the RCMP but found these claims did not amount to anything more than bald allegations.

[11] The Associate Judge struck the whole of the Claim, first on the basis that the Plaintiff had failed to disclose a reasonable cause of action and second, on the basis that the Claim was an abuse of process. In doing so, the Associate Judge cited the Plaintiff's filings in the Alberta Court of King's Bench relating to the same issues and claims – all which had been struck.

[12] Finally, the Associate Judge refused leave to amend, finding the absence of jurisdiction was not curable by way of amendment, and that the Plaintiff had had three opportunities to present a claim disclosing a proper cause of action against the RCMP and had failed to do so.

I. Issue and Standard of Review

[13] The Plaintiff's motion raises a single issue: has the Plaintiff demonstrated that the Associate Judge committed a reviewable error in striking the Claim and denying leave to amend?

[14] An Associate Judge's decision on a motion to strike is a discretionary determination (*Moore v Canada*, 2020 FC 27 at para 18). An Associate Judge's discretionary decisions are reviewed against the standard of palpable and overriding error in respect of questions of fact and mixed fact and law. Where issues of law arise or can be extracted from a matter of mixed fact and law, that issue of law is reviewable on a correctness standard (*Hospira Healthcare*

Corporation v Kennedy Institute of Rheumatology, 2016 FCA 215 at paras 28, 65, 79; *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36).

[15] As recently highlighted by the Federal Court of Appeal in *Bennett v Canada* 2022 FCA 73, the palpable and overriding error standard is highly deferential:

[7] As was explained to the appellant during the hearing, our function is not to retry his case or to re-weigh the evidence that was before the Tax Court. Quite the contrary, we can only intervene if we determine that the Tax Court either erred in law or made a palpable and overriding error of fact. The test for setting aside a decision for palpable and overriding factual error is an exacting one. An error is only palpable if it is obvious or plainly seen and only overriding if it affects the result reached. As stated by this Court in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165, 431 N.R. 286 at para. 46:

[46] Palpable and overriding error is a highly deferential standard of review: *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401; *Peart v. Peel Regional Police Services* (2006) 217 O.A.C. 269 (C.A.) at paragraphs 158-59; *Waxman, supra*. “Palpable” means an error that is obvious. “Overriding” means an error that goes to the very core of the outcome of the case. When arguing palpable and overriding error, it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall.

II. Analysis

[16] The Plaintiff argues that in striking the Claim the Associate Judge: (1) failed to consider the novelty and possible validity of the tort claim; (2) improperly labeled the claim as an abuse of the Court’s process; and, (3) in refusing leave to amend, improperly focused on proposed amendments as opposed to whether the Plaintiff could successfully amend the Claim.

[17] The Plaintiff has clearly and eloquently expressed his view on the novelty issue in the course of oral submissions. In this regard, the Associate Judge did not ignore or fail to recognize the nature of Canada's alleged duty towards its citizens; it was set out at paragraph 9 (reproduced above) of the Judgment. The Associate Judge also correctly recognized that pleadings are to be read generously and not struck simply on the basis of novelty.

[18] After reviewing the applicable law relating to the striking of pleadings and the Court's jurisdiction, the Associate Judge concluded, subject to two exceptions, that the claims advanced simply failed to establish any connection to the Federal Crown. Although the Plaintiff disagrees with this conclusion, he has not highlighted any specific error in fact or law that would warrant intervention on appeal.

[19] The Plaintiff further argues that the Associate Judge erred in concluding there was an absence of material facts to support the Sylvan Lake and Violation of Conditions Allegations. The Plaintiff argues that the substance of the claims is obvious, commonplace and easily understood. Again, the argument advanced reflects a disagreement with the Judgment but does not highlight any error of on the part of the Associate Judge that satisfies the palpable and overriding threshold.

[20] Similarly, the Associate Judge did not err in finding the alleged *Charter* violations had been pled without particulars, a conclusion that the Plaintiff has not expressly taken issue with.

[21] The Plaintiff argues the Associate Judge erred in striking the Claim as an abuse of process because the actions commenced in the Alberta Courts are fundamentally different in nature and focus. The Claim before this Court, he argues, names different defendants and seeks *Charter* relief. The Plaintiff also argues the Associate Judge erred in holding three claims had been previously struck in the Alberta Courts, because the third action was filed after the Federal Court action had been commenced. None of these arguments is persuasive.

[22] I am not convinced the Associate Judge in fact misapprehended the timing of the filings of the three actions in the Alberta Courts. However, even if I were to assume this to be so, the alleged error does not undermine the Associate Judge's finding that similar claims had been initiated and struck in the Alberta Courts. This is not palpable and overriding error.

[23] Further, the Associate Judge was not unaware of the effort to distinguish this Claim from those previously struck in the Alberta Courts but found "that a few passing references to the Federal Crown and the *Crown Liability and Proceedings Act*, RSC 1985, c C-50" were insufficient to distinguish the claims. On appeal, the Plaintiff's broad assertion that the claims in the Alberta Courts are fundamentally different without specifics is simply insufficient to disclose any error warranting intervention. In this regard the Defendant notes that the Plaintiff's action filed in the Alberta Court of King's Bench on February 22, 2022, and subsequently struck (*Sewak v Alberta*, 2022 ABQB 257 and *Sewak v Alberta*, 2022 ABQB 334), named the RCMP as a defendant, alleged violations of the *Charter* and sought *Charter* damages.

[24] With respect to the denial of leave to amend, the Plaintiff argues that the Associate Judge was required to consider whether the Claim was capable of amendment, not whether previous attempts had failed. The Plaintiff further submits that the refusal of leave to amend is inconsistent with the Court's obligations when dealing with self-represented litigants, citing the *Statement of Principles on Self-represented Litigants and Accused Persons* adopted by the Canadian Judicial Council in September 2006 and endorsed by the Supreme Court of Canada in *Pintea v Johns* 2017 SCC 23 at paragraph 4.

[25] The refusal to grant leave to amend was reached after the Associate Judge reviewed the proposed amendments to the pleadings and found that the proposed amendments failed to rectify any deficiencies in the Claim. In addition, the Associate Judge noted that the jurisdictional deficiencies could not be cured by way of amendment. The conclusion was also reached regarding the Sylvan Lake and Violation of Conditions Allegations and the *Charter* claims, because the pleadings did not contain any material facts to support these claims. The Associate Judge's finding is owed significant deference.

[26] I have carefully considered the Plaintiff's argument that the refusal of leave to amend was inconsistent with the *Statement of Principles on Self-represented Litigants and Accused Persons*. The principles provide that, in promoting equal justice, self-represented litigants should not be denied relief on the basis of minor or easily rectified deficiencies. As noted above, this is not a situation where the Claim was suffering a technical defect, but rather it was substantially deficient on numerous grounds.

[27] Finally, the Plaintiff argues that the timing of the Defendant's motion raises concerns because it was considered after the Plaintiff had initiated a motion for default judgment. The Associate Judge addressed the timing of the motion to strike, finding that Rule 221 allows a motion to strike to be brought at any time and noting that default judgment cannot be granted in the absence of jurisdiction or disclosure of a reasonable cause of action. No error has been demonstrated.

III. Conclusion

[28] The Plaintiff's Appeal is dismissed.

[29] The Defendant has sought and shall be awarded costs in the fixed amount of \$250.

ORDER IN T-1691-21

THIS COURT ORDERS that:

1. The motion is dismissed.
2. The Plaintiff shall pay costs to the Crown in the fixed amount of \$250.00 inclusive of all disbursements and taxes.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1691-21

STYLE OF CAUSE: SHANEIL KUMAR SEWAK v HIS MAJESTY THE
KING IN RIGHT OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: DECEMBER 12, 2022

ORDER AND REASONS: GLEESON J.

DATED: JANUARY 3, 2023

APPEARANCES:

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FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

Katrina Longo

FOR THE DEFENDANT

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