

Date: 20090109

Docket: T-1609-08

Citation: 2009 FC 23

Ottawa, Ontario, January 9, 2009

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

RUI BIN XU

Plaintiff

and

**M. MURPHY, OC TRANSP, S. FLINT,
SPT. CST. MEKEL, SPT. CST. BLEECKER,
K. FAHEY AND G. CLARK**

Defendants

REASONS FOR ORDER AND ORDER

[1] Rui Bin Xu seeks to appeal the decision of a prothonotary striking out his statement of claim as against the defendants, without leave to amend, on the basis that it was plain and obvious that this Court did not have jurisdiction to entertain the action. While there are deficiencies in the procedure that Mr. Xu has followed in bringing this appeal, I am of the view that it is in the interests of justice that the appeal be dealt with on its merits.

[2] Mr. Xu has not identified any errors in the prothonotary's decision, nor has he provided any jurisprudence to demonstrate that the Court does in fact have jurisdiction in relation to claims against a municipal transit system and its employees. As I understand his notice of motion, the sole basis for the appeal is Mr. Xu's allegation that because of her ethnicity, the prothonotary lacked the necessary adjudicative ability to deal with his case.

[3] Mr. Xu's allegations with respect to the competence of the prothonotary lack any evidentiary foundation whatsoever. Moreover, his submissions reflect stereotypical assumptions about the political views, capacity and integrity of an individual, based solely upon her ethnicity. Not only are these submissions deeply offensive, they also do not disclose any basis for interfering with the prothonotary's decision.

[4] Given that the prothonotary's decision finally disposed of Mr. Xu's action, the decision should be reviewed on a *de novo* basis: see *Merck & Co. Inc. v. Apotex*, [2003] F.C.J. No. 1925, 2003 FCA 488 at ¶18-19.

[5] Pursuant to the provisions of section 2 and 17 of the *Federal Courts Act*, the Federal Court has jurisdiction over matters involving the Federal Crown.

[6] Having examined the matter *de novo*, I am of the view that the prothonotary was correct in finding that it is plain and obvious that OC Transpo and its employees are not the Federal Crown, or

servants or agents of the Federal Crown, such that this Court plainly has no jurisdiction in this matter.

[7] Moreover, it is plain and obvious that the causes of action identified in Mr. Xu's statement of claim sound in tort, and that these causes of action are outside the jurisdiction of the Federal Court, unless brought against the Federal Crown, its employees or agents, pursuant to the provisions of section 2 and 17 of the *Federal Courts Act*.

[8] As a consequence, the appeal is dismissed, with costs to the defendants payable forthwith, fixed in the amount of \$250.

ORDER

THIS COURT ORDERS that the appeal is dismissed, with costs to the defendants payable forthwith, fixed in the amount of \$250.

“Anne Mactavish”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1609-08

STYLE OF CAUSE: RUI BIN XU v. M. MURPHY, OC TRANSP, S. FLINT, SPT. CST MEKEL, SPT. CST BLEECKER, K. FAHEY and G. CLARK

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: January 8, 2009

REASONS FOR ORDER AND ORDER: MACTAVISH, J.

DATED: January 9, 2009

APPEARANCES:

Rui Bin Xu SELF-REPRESENTED PLAINTIFF

Martin Dolan FOR THE DEFENDANTS

SOLICITORS OF RECORD:

CITY OF OTTAWA
LEGAL DEPARTMENT
Ottawa, Ontario FOR THE DEFENDANTS