

Federal Court



Cour fédérale

Date: 20181121

Docket: T-1408-18

Citation: 2018 FC 1176

Vancouver, British Columbia, November 21, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

**NAVOT BEN ABRAHAM A.K.A.
SEANN JAMES FRIESEN**

Plaintiff

and

**RABBI MEIR KAPLAN,
CHABAD OF VANCOUVER ISLAND,
CHABAD OF DOWNTOWN VANCOUVER
AND MCCONNAN BION O'CONNOR
& PETERSON (COUNSEL),
CHABAD COMMUNITY MEMBERS OF
RABBI MEIR KAPLAN:
MAJOR GENERAL EDWARD FITCH,
ZEON ZETLER, CHARLOTTE A.
SOLOMON, ALL OTHER MEMBERS,
RT. MAJOR GENERAL EDWARD FITCH,
COMMISSIONERS PAST CHAIR BORED MEMBER
ZEON ZETLER OF ABURGINE SPECIALTY FOODS
AND CHARLOTTE A. SOLOMON, MICHAEL MARK,
T. REID FRASER AND MCCONNAN BION
O'CONNOR & PETERSON AND
ATTORNEY GENERAL OF BRITISH COLUMBIA
AND VICTORIA CROWN COUNSEL
AND VICTORIA POLICE DEPARTMENT
BOARD OF DIRECTORS AND SARGENT
DEREK TOLMIE, DETECTIVE HINES,
VICTORIA POLICE**

Defendants

ORDER AND REASONS

[1] Mr. Abraham who is representing himself in a single action in this Court is seeking damages of 7 million dollars, in addition to punitive damages, “mental hardship damages”, defamation damages and a “constitutional remedy” under our *Charter of Rights and Freedoms*.

[2] In three separate motions, all the defendants with the exception of the Victoria Police Department Board of Directors, Sargent Derek Tolmie and Detective Hines of the Victoria Police have moved under Rule 221 of the *Federal Courts Rules* to strike out the Statement of Claim, without leave to amend on several grounds such as it being scandalous, frivolous, vexatious, an abuse of process, and above all that it discloses no reasonable cause of action within the subject matter jurisdiction of this Court.

[3] It would seem that the, what I shall term “Victoria Police Department”, have not yet got around to making a similar motion. In their Statement of Defence, they assert that this Court is without jurisdiction.

[4] In his Statement of Claim, Mr. Abraham seeks remedies on the basis that he was wrongfully committed to hospital in 2016, that Rabbi Meir Kaplan bilked him, that some of the

defendants improperly invested into his business, that the Crown stayed criminal charges against Rabbi Kaplan, that the lawyers representing Rabbi Kaplan were in a conflict of interest and committed perjury, that Mr. Zetler induced him to pursue a woman to be his wife; that Rabbi Kaplan defamed him, that the police threatened to charge him with harassment. Indeed, the list goes on and on.

[5] It is not necessary to go into any detail as to why the Statement of Claim is, scandalous, frivolous, vexatious and abuse of process. This Court clearly is without jurisdiction.

[6] Mr. Abraham claims he was not served with the motion record filed on behalf of the Attorney General of British Columbia and “Victoria Crown Counsel”. However, I accept the Affidavit of Service of Brian Sturgeon, the process server, that he personally served Mr. Abraham on November 2, 2018.

[7] The creation of courts is a matter of provincial jurisdiction under section 92 of the *Constitution Act*. By way of exception, section 101 provides that Parliament may create a general Court of Appeal as well as additional courts for the administration of the laws of Canada. The Federal Court, and the Federal Court of Appeal, are such Courts.

[8] In order for this Court to have jurisdiction, the subject matter thereof must be assigned to Parliament under the Constitution, there must be actual existing and applicable federal law, and the administration of that law must have been conferred upon it (*ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 SCR 752 (The Buenos Aires Maru)).

[9] None of the alleged bases of claim meet that test. It is not enough to allege the *Charter* or federal statutes. The Charter may provide a remedy if the underlying cause of action is federal and has been assigned to this Court. Generally speaking, a claim must fall within sections 17 to 25 of the *Federal Courts Act* or be specifically assigned by another federal statute. That is not the case here.

[10] Consequently, the Statement of Claim is struck without leave to amend.

[11] Mr. Abraham submits that if this Court does not have jurisdiction, I should refer the case to the Supreme Court of Canada. Mr. Abraham clearly has no knowledge of our court system. He has the right to appeal to the Federal Court of Appeal.

[12] This leaves the Victoria Police Department. Parties cannot give the Court jurisdiction over a subject matter which has not been assigned to it by Parliament. This Court may of its

own motion raise lack of jurisdiction as I did in *Crowe v Canada (Supreme Court)*, 2007 FC 1209. The appeal of that Order was dismissed by the Federal Court of Appeal in 2008 FCA 298.

[13] As Mr. Justice Pelletier speaking for the Federal Court of Appeal stated at paragraph 16:

The difficulty which Mr. Crowe faces is that the Federal Court is a statutory court and, as such, has only the jurisdiction conferred upon it by statute. It is not a court of inherent jurisdiction as are the provincial superior courts:

46 As a statutory court, the Federal Court of Canada has no jurisdiction except that assigned to it by statute. In light of the inherent general jurisdiction of the provincial superior courts, Parliament must use express statutory language where it intends to assign jurisdiction to the Federal Court...

[*Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, at para. 46.]

[14] Consequently, Mr. Abraham is called upon within 7 days of this Order to file a memorandum of argument supporting his proposition that this Court has jurisdiction. Depending on what, if anything, is filed, I may call upon the Victoria Police Department defendants to respond.

ORDER in T-1408-18

For reasons given:

1. The Statement of Claim is struck against all defendants, without leave to amend, with the exception of Victoria Police Department Board of Directors and Sargent Derek Tolmie, Detective Hines, Victoria Police.
2. The Plaintiff Navot Ben Abraham a.k.a. Seann James Friesen is called upon within seven days of this Order to file a memorandum of argument as to why he submits that this Court has jurisdiction against Victoria Police Department Board of Directors and Sargent Derek Tolmie, Detective Hines, Victoria Police
3. The whole with costs in favor of the pleading defendants.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1408-18

STYLE OF CAUSE: NAVOT BEN ABRAHAM A.K.A. SEANN JAMES
FRIESEN v RABBI MEIR KAPLAN AND OTHERS

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA
PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS HARRINGTON J.

DATED: NOVEMBER 21, 2018

WRITTEN REPRESENTATIONS BY:

Navot Ben Abraham a.k.a THE PLAINTIFF ON HIS OWN BEHALF
Seann James Friesen

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