

Federal Court



Cour fédérale

Date: 20191008

Docket: T-745-19

Citation: 2019 FC 1268

Vancouver, British Columbia, October 8, 2019

PRESENT: Madam Justice McDonald

BETWEEN:

NITAI CHAND GOSWAMI

Plaintiff

and

**HER MAJESTY THE QUEEN
ATTORNEY GENERAL OF CANADA
ATTORNEY GENERAL OF BRITISH COLUMBIA
CITY OF GREENWOOD
HERITAGE CREDIT UNION
ROYAL CANADIAN MOUNTAIN POLICE
(MIDWAY BC DETACHMENT)**

Defendants

ORDER AND REASONS

[1] This is a Motion in writing pursuant to Rule 369(1) of the *Federal Courts Rules* [the *Rules*], by the Plaintiff, Nitai Chand Goswami who is self-represented. In his Motion under Rule 51(1), the Plaintiff appeals the July 23, 2019 Order of Prothonotary Aalto [the Order], striking

out the Plaintiff's Statement of Claim as against all of the Defendants without leave to amend. The Plaintiff was also ordered to pay costs.

[2] For the reasons that follow, the appeal is dismissed. The Prothonotary did not err in the application of the law to his consideration of the Statement of Claim. In applying the standard of review set out in *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 [*Hospira*], there is no basis for this court to intervene.

A. *Relevant Background*

[3] On May 3, 2019, the plaintiff filed a Statement of Claim against the following Defendants: "Her Majesty the Queen, Attorney General of Canada, Attorney General of British Columbia, City of Greenwood, Heritage Credit Union, Royal Canadian Mountain Police (Midway BC Detachment)".

[4] At paragraph 2 of the Statement of Claim the Plaintiff describes his claim as follows: "Compensation of financial losses incurred by the breach and failure to provide a safe place for the plaintiff to live and operate in the City of Greenwood BC and in the province of BC."

[5] In the Statement of Claim, the plaintiff makes broad and varied allegations which can be summarized as: complaints of corruption, abuse of power, lack of independence and poor functioning of the BC judicial system; failure to protect unspecified *Charter* rights; victimizing and harassment; failure to provide a fair media; malicious conduct of provincial government

officials; unlawful acts by the RCMP; privacy violations; promotion of false refugee claims; and, failure to act on complaints against financial institutions.

[6] In June 2019, prior to filing their Statements of Defence, the defendants the City of Greenwood, the Attorney General of Canada and the Attorney General of British Columbia filed motions to strike the statement of claim pursuant to Rule 221.

[7] The Plaintiff did not file responding Motion materials in compliance with the *Rules*.

II. Prothonotary Order

[8] After considering the Motion materials filed by the Defendants and noting that the Plaintiff did not file any responding submissions despite being served with the Motion records, the Prothonotary states:

The statement of claim, even given a generous reading, fails to raise a cause of action. In essence it seeks relief which neither this Court nor arguably any Court could grant.

...

The balance of the statement of claim made further sweeping bald allegations of wrongdoing and failures by government and agencies.

...

None of this provides the basis for a justiciable claim or reasonable cause of action against any of the Defendants. There are no material facts other than generalizations. The statement of claim is frivolous, vexatious and an abuse of process. There is an abundance of jurisprudence cited by the parties in their respective written representations to support the striking of the statement of claim on all of these grounds. These cases include *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184; *Sivak v R.* 2012

FC 272 and the cases cited therein. It also appears from the motion records filed by the parties seeking to strike the statement of claim that the Plaintiff has commenced other actions in other courts making similar egregious allegations.

[9] By Order dated July 23, 2019, Prothonotary Aalto struck the Statement of Claim in its entirety without leave to amend.

III. Appeal Motion

[10] In his Appeal Notice of Motion, the Plaintiff outlines 17 grounds of appeal of the Prothonotary's Order which are addressed below.

[11] At paragraphs 1, 2, and 3 of the Notice of Motion the Plaintiff requests:

1. To allow the appeal the order of Prothonotary Kevin R Aalto made on July 23, 2019 striking the action of the Plaintiff on false grounds.
2. To set aside all the terms of the order of Prothonotary Kevin R Aalto made on July 23, 2019 in entirety which struck the action of the Plaintiff on false grounds and granted costs against the plaintiff.
3. To add the 1596 page Motion record including all evidence materials filed by the Plaintiff in response to the Motion of Attorney Generals of Canada on June 10, 2019 which was removed by the Federal Court Registry Staff against the federal court rules and the same record be reinstated in Federal Court file and considered and served as previously served on the defendants on June 10, 2019 outlined in Affidavit of Nitai Chand Goswami made and filed on June 12, 2019.

[12] At paragraphs 4, 5, 6, 8, 9, 10, and 11 of the Notice of Motion, the Plaintiff requests that all 6 of the named Defendants be noted in default for failing to file a defence within the applicable time and/or that the defendants not be permitted to file any further documents.

[13] In paragraphs 7, 12, 13, 14, of the Notice of Motion the Plaintiff raises objections to the Motions filed by the Defendants in June 2019, which resulted in the Order which he now seeks to appeal.

[14] In paragraph 15 of the Notice of Motion, the Plaintiff asks that the Defendants be ordered to provide copies of all documents that have been filed along with certificates of service.

[15] Paragraphs 16 and 17 of the Notice of Motion seek “judicial investigation” and “disciplinary actions against the staff members” of the Federal Court registry in relation to the issue raised by the Plaintiff at paragraph 3 of the Notice of Motion.

[16] In support of the Motion, the Plaintiff filed a 990 page Motion Record which contains 4 Affidavits all affirmed by Nitai Chand Goswami on August 2, 2019.

[17] This Motion is opposed by the Respondents/Defendants who have filed responding materials as follows:

1. Motion Record on behalf of the Defendant the Attorney General of Canada filed on August 19, 2019;
2. Motion Record on behalf of the Defendant the City of Greenwood filed on August 22, 2019; and

3. Motion Record on behalf of the Defendant the Attorney General of British Columbia filed on August 26, 2019.

IV. Analysis

Standard of Review

[18] The decision of the Prothonotary to strike the Statement of Claim was an exercise of discretionary power pursuant to Rule 221(1).

[19] The applicable standard of review is that “discretionary orders of prothonotaries should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts” (*Hospira* at para 64).

[20] A palpable and overriding error is an error that is both obvious and apparent, “the effect of which is to vitiate the integrity of the reasons” (*Maximova v Canada (Attorney General)*, 2017 FCA 230 at para 5).

Has the Plaintiff Established an Error with the Order?

[21] In *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, the Federal Court of Appeal held at para 16 [*Mancuso*] that it is “fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought.” Even though a pleading is to be given a fair and generous reading, bald assertions of conclusions in a pleading is not appropriate and is not a material fact (*Mancuso* at para 17-18).

[22] The Prothonotary properly considered and applied the relevant jurisprudence. He cited the decision of Justice Russell in *Sivak v Canada* 2012 FC 272 where the test is outlined as follows:

[15] The test in Canada to strike out a pleading under Rule 221 of the Rules is whether it is plain and obvious on the facts pleaded that the action cannot succeed. In this regard, the Supreme Court of Canada has noted that the power to strike out a statement of claim is a “valuable housekeeping measure essential to effective and a fair litigation.” See *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 and *R v Imperial Tobacco Canada Ltd.* 2011 SCC 42, at paragraphs 17 and 19.

[16] In determining whether a cause of action exists, the following principles are to be considered:

- a. The material facts pled are to be taken as proven, unless the alleged facts are based on assumptive or speculative conclusions which are incapable of proof;
- b. If the facts, taken as proven, disclose a reasonable cause of action, that is, one with some chance of success, then the action may proceed; and
- c. The statement of claim must be read as generously as possible, with a view to accommodating any inadequacies in the form of the allegations due to drafting deficiencies.

See *Operation Dismantle Inc. v Canada*, [1985] 1 SCR 441.

[23] In his Order, the Prothonotary notes with regard to the Plaintiff’s Statement of Claim:

“the statement of claim, even given a generous reading, fails to raise a cause of action. In essence it seeks relief which neither this court nor arguably any court could grant.”

[24] The Prothonotary also found that the statement of claim made “sweeping bald allegations of wrongdoing and failures by governments and agencies.”

[25] After considering the various allegations in the statement of claim, the Prothonotary concluded:

None of this provides the basis for a justiciable claim or reasonable cause of action against any of the defendants. There are no material facts other than generalizations. The statement of claim is frivolous, vexatious and an abuse of process.

[26] The Prothonotary applied the correct test to his consideration of the Statement of Claim.

[27] The Plaintiff's Appeal Record and Submissions do not provide any substantive arguments as to how the Prothonotary erred. The Plaintiff simply makes the repeated assertions that the Prothonotary made an error. No facts are provided in support of this assertion. To the same effect that bare assertions cannot form the basis of a statement of claim, they also cannot form the grounds to support an Appeal.

[28] The Plaintiff has not demonstrated any error in the Prothonotary's Order.

Additional Relief Sought by the Plaintiff

[29] In his Appeal, the Plaintiff argues that the Defendants were required to file Statements of Defence in advance of filing their Motions to strike. This is not a correct statement of the law (see: *Kornblum v Canada (Human Resources and Skills Development)*, 2010 FC 656 at paragraph 30). This ground of appeal is without merit.

[30] The Plaintiff also argues, as a separate ground of appeal, that the Prothonotary erred by failing to address his complaint that the Federal Court Registry prevented him from filing his

1596 page Motion Record in response to the Motions to strike. The record shows that the Plaintiff's motion record was not accepted for filing in July 2019 because it was not filed in compliance with the *Rules*.

[31] The Plaintiff, who has chosen to represent himself, is, like all litigants, obligated to follow the Rules of the Court and file documents in accordance with those *Rules*. His failure to follow the *Rules* was the sole reason for the Federal Court Registry's refusal to accept his motion record for filing. It was not an error for the Federal Court Registry to insist that the Plaintiff file documents in compliance with the *Federal Courts Rules*. Likewise, there was no error on the part of the Prothonotary in proceeding to consider the Motion without the Plaintiff's Motion record. This ground of appeal has no merit.

[32] In any event, on a Motion to strike a Statement of Claim, the primary document for consideration and analysis is the Statement of Claim. Therefore, the fact that the Prothonotary did not have the Plaintiff's responding record is of no consequence to the Prothonotary's consideration of the contents of the Statement of Claim itself.

[33] The Appeal Motion Record filed by the Plaintiff on this Appeal is largely a collection of documents relating to property seizures, BC Supreme and Appeal Court proceedings, and Immigration proceedings. The Motion record (like the Statement of Claim) is replete with a long list of accusations of wrongdoings by various organizations and governments, but devoid of any factual basis in support. It is completely bereft of substantive content. To the extent that much of

this information does not relate to the Prothonotary's Order under Appeal, it has not been considered.

[34] Overall, the Prothonotary identified and applied the applicable law, and no error has been established. The Plaintiff's Motion is dismissed with costs.

ORDER in T-745-19

THIS COURT ORDERS that the Appeal of the Prothonotary's Order is dismissed with costs to the Defendants.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-745-19

STYLE OF CAUSE: NITAI CHAND GOSWAMI v HER MAJESTY
THE QUEEN AND OTHER

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

ORDER AND REASONS: MCDONALD J.

DATED: OCTOBER 8, 2019

WRITTEN REPRESENTATIONS BY:

Nitai Chand Goswami THE PLAINTIFF ON HIS OWN BEHALF

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ATTORNEY GENERAL OF CANADA AND
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