Federal Court  Cour fédérale

Date: 20210302

Docket: T-1140-19

Citation: 2021 FC 192

Ottawa, Ontario, March 2, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

TANYA REBELLO

Plaintiff

and

THE MINISTER OF JUSTICE AND THE ATTORNEY GENERAL OF CANADA AND THE PRIME MINISTER OF CANADA

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendants brought a motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 ("*Rules*"), seeking an order to strike the Plaintiff's Statement of Claim in its entirety and without leave to amend.

[2] The Plaintiff's Statement of Claim contains allegations which can be organized into three categories:

1. Vehicle issues: with support from the Defendants, the Premier of Ontario funded various provincial bodies, who transferred the Plaintiff's vehicle identification number, detached her license plate, and suspended her driver's license.

2. Police issues: with support from the Defendants, the Premier of Ontario funded various police agencies, who proceeded to stalk, terrorize, harass, and monitor the Plaintiff.

3. Legal issues: with support from the Defendants, the Premier of Ontario funded the Attorney General of Ontario, who created a false draft order in a Superior Court proceeding, and who funded and allowed judges of the Ontario Superior Court of Justice to breach the Plaintiff's rights and sign false draft orders.

[3] The Plaintiff alleges that the above acts give rise to more than a dozen recognized and unrecognized causes of action, including a breach of statutory duties, neglect of duties, a breach of confidence and trust, a breach of fiduciary duties, misfeasance in public office, conspiracy, negligence, and a breach of the Plaintiff's rights under sections 7, 8, 12, and 15 of the *Canadian Charter of Rights and Freedoms* ("*Charter*").

[4] The Plaintiff seeks general damages in the amount of $200,000,000, punitive damages in the amount of $100,000,000, special damages, and various other costs as well as declaratory relief.

II. History of Proceedings

[5] The Court has gone through great lengths to accommodate the Plaintiff's request to convene an oral hearing for this motion — a procedure that, under rule 369(4) of the *Rules*, is in the Court's discretion and not guaranteed to the Plaintiff as of right (*Verma v Canada*, 2006 FC 1353 at para 13). Accommodation, however, must have its limits. The Court cannot be flexible to the degree of prejudicing the Defendants and unduly straining judicial resources. As is evident by the history of these proceedings, described below, the Plaintiff has pushed the boundaries of the Court's ability to accommodate her request.

[6] The Plaintiff submitted her Statement of Claim on July 12, 2019. The Defendants then brought this motion on August 13, 2019, seeking to have the Plaintiff's claim struck.

[7] In a letter dated October 15, 2019, the Plaintiff requested that an oral hearing be convened for this motion. In that letter, the Plaintiff indicated the dates in November and December 2019 that she was unavailable.

[8] On November 8, 2019, Prothonotary Furlanetto scheduled an oral hearing of this motion for November 25, 2019. The Plaintiff did not indicate that she was unavailable on that date in her October 15, 2019 letter. On November 12, 2019, the Court received a letter from the

Plaintiff requesting that the oral hearing be adjourned, as it was "booked without [her] knowledge or consent" and she had appointments "booked months in advance" on that day which could not be changed.

[9] In a direction dated November 19, 2019, Prothonotary Furlanetto required the Plaintiff and Defendants to provide the Court with alternative joint dates of availability if the Plaintiff wished to reschedule the oral hearing. The parties agreed to reschedule the hearing to March 24, 2020, but this hearing was adjourned due to the COVID-19 pandemic.

[10] In a letter dated August 28, 2020, after much correspondence between the Plaintiff, the Defendants, and the Court, the Plaintiff requested that the oral hearing be scheduled for February 23, 2021. The Defendants requested that the hearing occur as soon as possible but, in the alternative, agreed to the Plaintiff's proposed date. On November 25, 2020, the Court confirmed that the oral hearing would take place remotely by Zoom videoconference on February 23, 2021.

[11] On January 18, 2021, the Court received a letter from the Plaintiff requesting an adjournment of the oral hearing, as she was no longer available on February 23 due to a "work training workshop." In a letter dated January 20, 2021, the Defendants opposed the Plaintiff's request for an adjournment. The Defendants submitted that the motion was initially filed on August 13, 2019 and, in light of the history of difficulties with scheduling the hearing, the motion should be heard as soon as possible. As noted by the Defendants, the January 18, 2021 request for an adjournment was the second time that the Plaintiff had previously provided her availability to the Court, only to later advise that she was no longer available after a hearing was

scheduled. The Defendants also reiterated that oral hearings are not usually required for motions to strike.

[12] In a direction dated January 27, 2021, I dismissed the Plaintiff's request for an adjournment. The Plaintiff then sent three letters to the Court — dated January 27, February 2, and February 10, 2021 — further requesting an adjournment and claiming breaches of natural justice, among other things.

[13] On February 18, 2021, the registry officer overseeing the hearing for this motion provided the Plaintiff with the connection details to the videoconference and confirmed that the hearing would begin at 1:00 pm on February 23, 2021. On February 19, 2021, the Plaintiff sent two further letters reiterating her request for an adjournment. On February 19, 2021, I once again directed that the oral hearing would be convened on February 23, 2021.

[14] Despite my two previous directions that the oral hearing would proceed on February 23, 2021 as scheduled, the Plaintiff sent at least six emails to the registry officer between February 19 and February 22, and she talked to the registry officer on the phone. The Plaintiff's repeated requests for an adjournment not only disregarded clear directions from the Court, but it burdened judicial resources by needlessly contacting the registry officer.

[15] When the hearing began at 1:00pm on February 23, 2021, the Plaintiff had yet to join the videoconference. I asked the registry officer to open the Court and proceeded with the hearing at its scheduled time, as I normally do.

[16] There were four interruptions to the hearing, which began approximately five minutes after it commenced. After the hearing was finished, the registry officer informed me that those interruptions were the Plaintiff's attempts to join the videoconference. In light of this information, I listened to the recording of the hearing and can now discern that at each of the interruptions an announcement was made, stating that "Tanya Rebello has joined the call." While I did notice the interruptions during the hearing, I could not hear their message and did not understand that they were the Plaintiff's attempts to join the videoconference. Interruptions on videoconferences are commonplace, and I was listening attentively to the Defendants' oral submissions.

[17] I do not provide instructions to registry officers regarding what to do if a participant attempts to join a videoconference after a hearing has commenced. Registry officers, not judges, have control over the technological functions of videoconferences. In this case, the registry officer did not interrupt the hearing without instruction from the Court to announce that the Plaintiff was attempting to join the videoconference, and rightfully so.

[18] The policy of the Court is that a videoconference hearing is "locked" once it has commenced, thus preventing participants from joining. This policy is reflected in the Court's E-hearings *User Guide for Participants*, which is publicly available information on the Court's website. The *User Guide for Participants* also states that participants are expected to join remote hearings 30 minutes prior to the hearing commencing to ensure that there are no issues with the connection. The Plaintiff should have been aware of this policy or, at the very least, have prepared herself to attend the hearing on time in the months between when the hearing was

scheduled and when it commenced. If the Plaintiff is capable of calling and repeatedly emailing the registry officer, I see no reason why she cannot call or connect to the videoconference in a timely manner.

III. Issue

[19] The sole issue upon this motion is whether the Plaintiff's claim should be struck pursuant to Rule 221(1) of the *Rules*.

IV. Legislation

[20] Rule 221(1) of the *Rules* reads as follows:

On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it:	À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas:
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;

(e) constitutes a departure from a previous pleading, or	e) qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	f) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

V. Analysis

[21] The Defendants bring their motion pursuant to Rules 221(1)(a) and (c) of the *Rules*. As the Defendants correctly point out, the test for striking out pleadings under Rule 221(1)(a) is whether it is plain and obvious that the claim has no reasonable prospect of success (*Canada v Scheuer*, 2016 FCA 7 at para 11).

[22] With respect to Rule 221(1)(c), the Defendants submit that there are two interrelated problems with the Statement of Claim that render it frivolous and vexatious: (1) it is so deficient in material facts that the Defendants cannot respond to it; and (2) it is overly long, unwieldly and repetitive.

[23] The Defendants submit that the Statement of Claim is deficient in material facts that concern the "who, when, where, how and what" of the Defendants' actions (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19). As such, the Defendants cannot know how to answer the claim against them (*Kisikawpimootewin v Canada*, 2004 FC 1426 at para 8).

[24] The Defendants also rely on *Wang v Canada*, 2016 FC 1052 at para 31, aff'd 2018 FCA 46, for the principle that prolixity, repetition, and the bare pleading of a series of events are not substitutes for the requirement that a defendant know what is being factually and legally alleged so that a proper answer and defence can be made.

[25] The Defendants' arguments concerning the deficiencies in the pleading are summarized as follows:

1. Breach of statutory duties and neglect of duties are not recognized causes of action (*The Queen (Can) v Saskatchewan Wheat Pool*, [1983] 1 SCR 205 at para 42);

2. The tort of malfeasance together with Rule 181 of the *Rules* requires that the allegations of the Defendants' state of mind be particularized (*Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 32; *Al Omani v Canada*, 2017 FC 786 at para 51);

3. The necessary elements of the breach of confidence (information is confidential; the information imparted in circumstances importing an obligation of confidence; and an unauthorized use of that information to the detriment of the party communicating it) are not made out (*Lac Minerals Ltd v International Corona Resources Ltd*, [1989] 2 SCR 574 at para 11);

4. A claim for breach of fiduciary duty, requiring that the defendant must act in their own interest against those of the beneficiary in a way that amounts to disloyalty, is also not made out (*KLB v British Columbia*, 2003 SCC 51 at paras 48-50);

5. The claim of negligence or negligent representation is not made out because the claim does not establish a duty of care (*Cooper v Hobart*, 2001 SCC 79 at para 30);

6. The claim of conspiracy requires identification of the parties, their relationship to one another, and the conspiratorial acts involved. It must be pleaded with clarity and has not been made out (*Lauer v Canada (Attorney General*), 2017 FCA 74 at para 24).

7. The alleged *Charter* violations do not provide particulars or engage in the respective legal tests.

[26] I have reviewed the Plaintiff's Statement of Claim, the parties' motion records, and the parties' supporting materials. In my view, the Statement of Claim makes bald allegations against various individuals and government agencies and cites causes of action that, as the Defendants clearly outline, the pleadings do not support. Accordingly, I find that the Statement of Claim has no reasonable prospect of success. I further find that the Statement of Claim is frivolous and vexatious because it is so deficient in factual material that the Defendants cannot know how to answer.

VI. Conclusion

[27] The Plaintiff's claim is struck in its entirety and without leave to amend pursuant to Rules 221(1)(a) and (c) of the *Rules*.

[28] The Defendants request a lump sum of $500 in costs. In light of the history of these proceedings, I find that this is a suitable amount.

ORDER IN T-1140-19

THIS COURT ORDERS that:

1. The motion of the Defendants is granted and the Plaintiff's Statement of Claim is struck without leave to amend.
2. The Defendants are granted $500 in costs.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1140-19
STYLE OF CAUSE:	TANYA REBELLO v THE MINISTER OF JUSTICE AND THE ATTORNEY GENERAL OF CANADA AND THE PRIME MINISTER OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERNCE BETWEEN OTTAWA AND TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 23, 2021
ORDER AND REASONS:	AHMED, J.
DATED:	MARCH 2, 2021

APPEARANCES:

Party did not appear	FOR THE APPLICANT (ON HER OWN BEHALF)
Benjamin Wong	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT