

Federal Court



Cour fédérale

Date: 20210429

Docket: T-91-21

Citation: 2021 FC 372

Fredericton, New Brunswick, April 29, 2021

PRESENT: Madam Justice McDonald

BETWEEN:

WENXIAN LOU

**Plaintiff
(Moving Party)**

and

HER MAJESTY THE QUEEN

**Defendant
(Responding Party)**

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, Wenxian Lou, who is self-represented.

[2] On this Rule 51(1) Motion the Plaintiff appeals the March 18, 2021 Order of Prothonotary Molgat, which Order struck out the Plaintiff's Statement of Claim without leave to amend. The Plaintiff was also ordered to pay costs.

[3] For the reasons that follow, this appeal is dismissed. The Prothonotary did not err in the application of the law to her 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.

Relevant Background

[4] On January 11, 2021 the Plaintiff filed a Statement of Claim against “Her Majesty the Queen” claiming she has been the victim of various wrongs and unusual treatments. She makes broad and varied allegations in which she claims to have been the victim of various “financial frauds” including bank fraud, insurance fraud, “school fraud”, “business fraud” and “government fraud”, as well as “illegal tracking and monitoring”, illegal access to her personal residence, rape, sexual assault or abuse and the “releasing of illicit drugs”.

[5] The relief she seeks in her Statement of Claim is to “end all illegal behaves” and damages in the amount of \$70 million CAD “for the money which was defrauded, illegally charged, compensation, suffering.”

[6] The Defendant filed a motion to strike the Statement of Claim pursuant to Rule 221. The Plaintiff filed responding materials.

Prothonotary Order of March 18, 2021

[7] After considering the Motion materials filed the Prothonotary states:

I have carefully reviewed and taken a generous approach to the reading of the Statement of Claim to determine whether the facts pleaded, construed generously, give rise to a cause of action against the Defendant. I find that they do not and that the Statement of Claim should be struck out.

The allegations contained in the Statement of Claim defy summarization as they essentially consist of bare assertions and conclusory statements. While it is clear that the Plaintiff's Claim is rooted in her negative experiences in dealing with (among other) immigration consultants, financial institutions, insurers, schools, landlords and property managers as a result of which she claims to be in financial crisis, it is not clear what cause of action is being alleged.

The allegations of "illegal tracking and monitoring", "illegal access to personal residence", drugs, rape, sexual assault and "Government organized human traffic", are mere conclusory assertions. The Statement of Claim extensively pleads evidence and lacks any material facts setting out how and what gives rise to the Defendant's alleged liability.

It is evident from the repeated allegations of "fraud" in the Statement of Claim that the Plaintiff feels that she has been taken advantage of and that she feels cheated and aggrieved as a result. The pleading however consists of a rambling narrative which is void of any material facts that could support a cause of action for civil fraud or any other cause of action known at law.

...I conclude that it is plain and obvious that the Statement of Claim discloses no reasonable cause of action. Accordingly, it shall be struck in its entirety.

Given the nature of the deficiencies noted, I find that the defects in the Claim are not curable by amendment. Accordingly, leave to amend will not be granted.

[8] By Order dated March 18, 2021, Prothonotary Molgat struck the Statement of Claim in its entirety without leave to amend (March Order).

[9] On March 23, 2021, the Plaintiff filed a motion pursuant to Rule 397 for reconsideration of the March Order.

Prothonotary Order of April 7, 2021

[10] On April 7, 2021 Prothonotary Molgat dismissed the motion for reconsideration (April Order) stating in part:

Considering that Rule 397 cannot be used to reverse what has already been ordered, and that it is not a means whereby an unsuccessful party may validate or complete their plea or re-argue an issue in the hope that the Court will change its mind (citations omitted);

Considering that the plaintiff has not filed an affidavit in support of this motion; that she has neither demonstrated that the order does not accord with the reasons given for it, nor identified a matter which ought to have been dealt with but which was overlooked or accidentally omitted, and that the Court finds that her written representations simply consist of a recital of “evidence” the plaintiff continues to insist support her various claims;

Considering that the Court concludes that the Plaintiff seeks to re-argue the merits of the motion to strike and draw the Court’s attention to facts and conclusions which she once again urges the Court to accept, and that for those reasons the motion should be dismissed;

Appeal Motion

[11] On April 7, 2021, the Plaintiff filed this motion pursuant to Rule 51 (1) appealing the Prothonotary Order to strike the Statement of Claim (March Order). In in her written representations in support of her Appeal Motion, the Plaintiff outlines the following issues:

13. The motion orders to strike my claim entirely for no cause of action. I am self represented. The statement of claim is not

professional to support the cause of action but all the facts material are true and real. Using banks, insurance companies to defraud my money should not be ignored. If the law enforcement can be kept in silence to these illegal behaviours, this is government organized and where is the law.

14. The motion order overlooked fact materials for frauds and drugs, did not mention based on which rules these frauds are justified, did not mention the drug released through floor, and I was refused to get a drug test.

15. If the wrongdoing cannot be justified and the fact materials related to the wrongdoing haven't been responded properly, this claim should not be dismissed.

[12] In response, the Defendant argues that the Plaintiff's Appeal Motion has not been filed within 10 days of the March Order as required by Rule 51(2). In any event, the Defendant argues that the Plaintiff has failed to identify any error with the Prothonotary's March Order.

[13] In response to the Defendant's submissions, the Plaintiff filed a written response stating in part as follows:

1. The issue of the prothonotary's order is that the prothonotary's order does not recognize the conspiracy between the Government of Canada and the people related to this claim, a number of government regulated institutions such as, a public college, rental board Hamilton, two banks, three insurance companies, law enforcement, and other companies such as private school, property management company, an immigration consultant to defraud my money and organize drug rape.

4a. I filed reconsideration of prothonotary's order within 10 days after the order was issued because prothonotary Sylvie M. Molgat did not read my written representations which filed on February 17 and objected to the disposition of the motion in writing.

[14] On this Appeal Motion, the Plaintiff seeks an order to continue with the claim and she seeks costs on the motion.

Analysis

Has the appeal Motion been filed late?

[15] It is clear that by this motion the Plaintiff is appealing the March 18, 2021 Order. As required by Rule 51(2), the Appeal Motion should have been filed within 10 days of the March Order.

[16] However, the Plaintiff filed a Motion for Reconsideration pursuant to Rule 397, which resulted in the April Order. In my view, the Plaintiff failed to appreciate that a motion for reconsideration is not a motion to appeal and does not extend the period of time within which to bring an appeal motion.

[17] Recognizing that the Plaintiff may have misunderstood the purposes of the reconsideration proceedings, I am prepared to accept, pursuant to Rule 55, that the Plaintiff has demonstrated special circumstances and the Court can consider the Appeal Motion on its merits.

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 where she states as follows:

Pursuant to Rule 174 of the *Rules*, every pleading must contain a concise statement of the material facts on which a party relies, but shall not include evidence by which those facts are to be proved. This technical requirement means has a precise meaning at law: “Each constituent element of each cause of action must be pleaded with sufficient particularity. A narrative of what happened and when it happened is unlikely to meet the requirements of the *Rules*.” (see *Simon v. Canada*, 2011 FCA 6 at para. 18).

What constitutes material facts is determined in light of the cause of action and the damages claimed. The plaintiff must plead, in

summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised, so as to inform the defendant “who, when, where, how and what gave rise to its liability”. Viewing the pleadings as a whole and considering all the circumstances, the Court must ensure that the issues are defined with sufficient precision to make the proceedings “manageable and fair” (see *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*] at para. 19; *Enercorp Sand Solutions Inc. v. Specialized Desanders Inc.*, 2018 FCA 215 at paras. 36-37).

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

A statement of claim containing bare assertions but no facts on which to base those assertions discloses no reasonable cause of action and may also be struck as an abuse of process. Bare assertions of conclusions that the Court is called upon to pronounce are not allegations of material fact, and making bald conclusory allegations without any evidentiary foundation constitutes an abuse of process (see *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184 at para. 34; *Mancuso* at paras. 17 & 27).

[24] After considering the various allegations in the Statement of Claim, the Prothonotary concluded that the Statement of Claim “consists of a rambling narrative which is void of any material facts that could support a cause of action for civil fraud or any other cause of action known at law.”

[25] The Prothonotary applied the correct test to her consideration of the Statement of Claim.

[26] The Plaintiff’s Appeal Submissions do not provide any substantive arguments as to how or where the Prothonotary erred. The Plaintiff makes repeated assertions that the Prothonotary made errors, but no detail or explanation is provided in support of these assertions. Bare

assertions are not sufficient to support an appeal motion where errors are alleged. More is needed.

[27] The Plaintiff also makes vague allegations that the Prothonotary erred by overlooking “facts and facts material”. However, in considering the motion to strike a Statement of Claim, the primary document for consideration is the Statement of Claim itself. The Prothonotary properly considered and analysed the contents of the Statement of Claim.

[28] In conclusion, the Prothonotary identified and applied the applicable law, and no error has been established.

[29] The Plaintiff’s Motion is dismissed with costs.

ORDER IN T-91-21

THIS COURT'S JUDGMENT is that the Appeal of the Prothonotary's Order is dismissed with costs in the amount of \$500.00 payable by the Plaintiff to the Defendant.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-91-21

STYLE OF CAUSE: WENXIAN LOU v HER MAJESTY THE QUEEN

MOTION DEALT WITH IN WRITING, WITHOUT APPEARANCE OF THE PARTIES

ORDER AND REASONS: MCDONALD J.

DATED: APRIL 29, 2021

WRITTEN REPRESENTATIONS:

Wenxian Lou

PLAINTIFF
(ON HER OWN BEHALF)

Nathan Joyal

FOR THE DEFENDANT

SOLICITORS OF RECORD:

- Nil -

SELF-REPRESENTED PLAINTIFF

Attorney General of Canada
Department of Justice Canada
Ottawa, Ontario

FOR THE DEFENDANT