

Federal Court



Cour fédérale

Date: 20210506

Docket: T-72-17

Citation: 2021 FC 409

Ottawa, Ontario, May 6, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

CARL LEONE

Plaintiff

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Defendant

ORDER AND REASONS

I. Overview

[1] This is a motion brought by the Defendant for an order to strike the Plaintiff's Statement of Claim in its entirety.

[2] For the reasons that follow, I find the Plaintiff's claim discloses no reasonable cause of action. I therefore grant this motion and strike the Plaintiff's claim in its entirety without leave to amend pursuant to Rule 221(1)(a) of the Federal Courts Rules, SOR/98-106 ("*Rules*").

II. Facts

A. *The Plaintiff*

[3] Since September 7, 2011, the Plaintiff has been an inmate at Joyceville Institution ("Joyceville"), a federal correctional institution operated by the Correctional Service of Canada ("CSC"). The Plaintiff and his fellow inmates are provided a *per diem* allowance, currently \$5.08, to purchase food at a grocery store in Joyceville. The Plaintiff uses the food he purchases to prepare meals within a common kitchen.

[4] Since arriving at Joyceville and until mid-2016, a 10% surcharge was placed on the Plaintiff's *per diem* allowance. The surcharge was made pursuant to section 78 of the *Corrections and Conditional Release Act*, SC 1992, c 20 ("*CCRA*"), which authorizes the CSC to make deductions on the payments it provides to inmates.

[5] The stated purpose of the surcharge was to cover theft and spoilage of food. In total, the surcharge siphoned off \$839 from the Plaintiff's allowance, and those funds were at no time returned to him.

[6] In January 2017, the Plaintiff filed a Statement of Claim in this Court, which proposed a class action proceeding against the Defendant and her servants pursuant to the surcharge levied against the Plaintiff and similarly situated inmates. On August 31, 2017, the Plaintiff filed a motion for leave to amend his Statement of Claim. On October 5, 2017, the Defendant filed a cross-motion to strike the Plaintiff's Amended Statement of Claim in its entirety.

[7] On February 9, 2018, a case management conference ("CMC") was held between the parties and myself. I sought further information from the parties, which was provided to me in letters sent in March 2018. I also provided the Plaintiff with leave to submit a Further Amended Statement of Claim, which he filed on April 9, 2018.

[8] On July 6, 2020 a further CMC was held, wherein the Plaintiff requested to discontinue his claim as a class action and have the matter proceed only with respect to himself. I again provided the Plaintiff with leave to submit a Further Amended Statement of Claim, which he submitted on July 23, 2020 (the "2020 Statement of Claim"). On July 30, 2020, The Defendant submitted an Amended Motion Record, including an Amended Cross-Motion to Strike.

B. *The 2020 Statement of Claim*

[9] In the 2020 Statement of Claim, the Plaintiff asserts the warden and administrators of Joyceville owed a fiduciary duty to the Plaintiff because they are "the trustees of the feed [sic] purchase funds and are required to use these to the benefit of the Plaintiff." The Plaintiff asserts the Defendant breached those obligations by forcing the Plaintiff to pay the surcharge.

[10] The Plaintiff further claims the warden and administrators acted without “lawful justification” in deducting the surcharge because it was not authorized under CSC policy and was effected without consultation or participation of the inmates at Joyceville. Similarly, the Plaintiff alleges the funds collected from the surcharge were used without “legal justification” because the CSC used the funds to supplement costs associated with the “O-Mess staff dining lounge” and finance a program that trained inmates to be caterers and chefs.

[11] According to the Plaintiff, the implementation of the surcharge was contrary to the Defendant’s obligations under section 76 of the *CCRA*, which states the CSC “shall provide a range of programs designed to address the needs of offenders and contribute to their successful reintegration into the community.”

[12] The Plaintiff also alleges that the Defendant imposed and collected the surcharge negligently, thus causing harm to the Plaintiff. In doing so, the Plaintiff claims the Defendant breached its “duty of reasonable care to safeguard the personal effects and funds of the Plaintiff” in a manner that could foreseeably result in harm.

[13] Finally, the Plaintiff claims the imposition of the surcharge caused the Plaintiff “significant emotional distress.”

[14] As remedy, the Plaintiff requests \$500,000 in compensatory damages, and \$5,000 in punitive damages.

III. Issue

[15] The sole issue on this motion is whether the 2020 Statement of Claim should be struck in its entirety pursuant to Rule 221(1)(a) of the *Rules*.

IV. Analysis

[16] Rule 221(1)(a) of the *Rules* allows a claim to be struck in its entirety if it discloses no reasonable cause of action:

Motion to strike

221(1) 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:

(a) discloses no reasonable cause of action or defence, as the case may be [...]

Requête en radiation

221(1) 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) qu'il ne révèle aucune cause d'action ou de défense valable [...]

[17] A claim will only be struck under Rule 221(1)(a) of the *Rules* if, assuming the facts pleaded to be true, it is “plain and obvious” the claim discloses no reasonable cause of action or, said differently, “no reasonable prospect of success” (*Condon v Canada*, 2015 FCA 159 at para 12, citing *R v Imperial Tobacco Canada*, 2011 SCC 42 (“*Imperial Tobacco*”) at para 17).

[18] The purpose of striking claims with no reasonable prospect of success is to serve the administration of justice by weeding out the hopeless claims and ensuring those claims that have some chance of success are adjudicated (*Imperial Tobacco* at paras 19-20). This purpose is reflected in Rule 3 of the *Rules*, which requires the interpretation and application of Rule 221(1)(a) be made in accordance with the principle of securing the just, most expeditious and least expensive determination of every proceeding on its merits.

[19] To disclose a reasonable cause of action, a claim must meet the following three criteria (*Williams v Payette*, 2019 FC 800 at para 45, citing *Bérubé v Canada*, 2009 FC 43 at para 24):

1. allege facts that are capable of giving rise to a cause of action;
2. disclose the nature of the action, which is to be founded on those facts; and
3. indicate the relief sought, which must be of a type that the action could produce and that the Court has jurisdiction to grant.

[20] Applying the above authorities, a number of the Plaintiff's claims can be dismissed summarily.

[21] First, I agree with the Defendant that acting without "lawful reason" or "lawful justification" are not torts that the Plaintiff has established to be known in law. Accordingly, I strike those claims without leave to amend because it is "plain and obvious" they cannot succeed.

[22] Similarly, I find a breach of section 76 of the *CCRA* is not a reasonable cause of action. That provision is the CSC's statutory mandate to provide rehabilitative programs. While the Plaintiff may argue the decision to implement the surcharge constitutes an unreasonable exercise of that authority, such claims must be made by way of judicial review — a form of proceeding that does not provide for the damages sought by the Plaintiff as remedy: section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. I therefore strike this component of the Plaintiff's claim, as I find its essential character is a claim for judicial review with only a thin pretence to a private wrong (*Stuart v Canada*, 2019 FC 801 at para 59, citing *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62 at para 78).

[23] Finally, I find the Plaintiff's claim that the Defendant caused him "significant emotional distress" also discloses no reasonable cause of action. While the intentional infliction of mental suffering is a tort known in law, the Plaintiff has pleaded no facts to indicate the surcharge constituted flagrant or outrageous conduct that was calculated to produce harm and resulted in the Plaintiff suffering a visible and provable illness (*Brazeau v Canada (Attorney General)*, 2012 FC 648 ("*Brazeau*") at para 36, citing *Prinzo v Baycrest Centre for Geriatric Care*, 215 DLR (4th) 31, 60 OR (3d) 474 (ONCA) at para 48). I therefore strike this component of the Plaintiff's claim as well.

[24] In my view, the Plaintiff makes two claims that warrant further discussion: the Defendant breached its fiduciary duty, and the Defendant acted negligently. For the reasons that follow, I find those claims also fail to disclose a reasonable cause of action.

A. *Breach of Fiduciary Duty*

[25] As noted by the Defendant, fiduciary relationships may be *per se* (*i.e.*, relationships the law recognizes as fiduciary because of their nature and inherent purpose) or *ad hoc* (*i.e.*, relationships determined to be fiduciary on a case-by-case basis) (*Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 (“*Elder Advocates*”) at para 32, citing *Galambos v Perez*, 2009 SCC 48 (“*Galambos*”) at para 77). In claiming the Defendant breached its fiduciary duty, the Plaintiff claims the Defendant owed him either a *per se* or *ad hoc* fiduciary duty.

(1) *Per se* fiduciary duty

[26] The Plaintiff claims he was the beneficiary of the food purchase funds, which the Defendant held in trust for him. The trustee-beneficiary relationship is a *per se* fiduciary relationship (*Elder Advocates* at para 33). A trust is the legal relationship created when a person controls assets (the trustee) for the benefit of another (the beneficiary).

[27] To create an express or implied trust, three certainties must be established: certainty of intention (*i.e.*, the settlor intended to create the trust); certainty of subject matter (*i.e.*, the property subject to the trust); and certainty of object (*i.e.*, the beneficiary of the trust) (*Tozer v Bank of Nova Scotia and Atcon Group Inc et al.*, 2012 NBCA 57 at paras 9-12, citing *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 83). The Plaintiff, however, pleaded no material facts that show the three certainties of a trust were met in this case, as there is nothing to indicate that the *per diem* funds were intended to be held in trust by the Defendant

for the benefit of the Plaintiff. Accordingly, I find the Plaintiff's claim that the Defendant breached its *per se* fiduciary duty as a trustee has no reasonable prospect of success.

(2) *Ad hoc* fiduciary duty

[28] To establish an *ad hoc* fiduciary duty, a claimant must show (*Elder Advocates* at para 36):

1. vulnerability arising from the relationship between the parties;
2. an undertaking by the fiduciary to act in the best interests of the beneficiary;
3. a defined person or class of persons vulnerable to a fiduciary's control (*i.e.*, the beneficiary); and
4. a legal or substantial practical interest of the beneficiary that stands to be adversely affected by the fiduciary's exercise of discretion or control.

[29] The Defendant concedes the Plaintiff is vulnerable in relation to the administration of Joyceville and the CSC. However, the Defendant asserts it did not give an undertaking, either implicitly or explicitly, to bind itself to protect and advance the interests of the Plaintiff, or to relinquish its own self-interest to act in the interest of the Plaintiff (*Galambos* at para 78).

[30] The Plaintiff submits the Defendant has a statutory duty to care for the funds administered under the *CCRA* and the *Financial Administration Act*, RSC 1985, c F-11, such that the warden and administrators of the Joyceville act as trustees of the food purchase funds for inmates. However, in my view, the Plaintiff has not identified which legislative provisions create such a duty. As noted by the Defendant, section 3.1 of the *CCRA* states the protection of society is the paramount consideration of the CSC in the corrections process — an obligation that contradicts the fiduciary duty the Plaintiff alleges to exist under that statute.

[31] I accept the Defendant's argument that the Plaintiff has not pleaded facts that establish he has a legal or substantial interest in the *per diem* allowance that stands to be adversely impacted by the Defendant's exercise of discretion or control (*Elder Advocates* at para 36). It is not enough that the acts of the alleged fiduciary impact generally on a person's well-being, property or security; rather, the interest affected must be a specific private law interest to which the person has a pre-existing, distinct and complete legal entitlement, such as those created by statute (*Elder Advocates* at para 51). Given that the Plaintiff has failed to identify any such interest, I find the Plaintiff's claim that the Defendant owes him an *ad hoc* fiduciary duty has no reasonable prospect of success (see also *Squires v Canada (Attorney General)*, 2002 NBQB 309 at para 68; *Johnson v Ontario*, 2016 ONSC 5314 at paras 40-41).

[32] In light of the above, I find the Plaintiff's allegation that the Defendant has breached its fiduciary duty, either *per se* or *ad hoc*, discloses no reasonable cause of action. I therefore strike this component of the Plaintiff's claim.

B. *Negligence*

[33] For the Plaintiff's claim in negligence to succeed, he must establish three things: (i) the Defendant owed the Plaintiff a duty of care; (ii) the Defendant breached that duty of care; and (iii) damages resulted from that breach (*Brazeau* at para 27, citing *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 44).

[34] The Plaintiff claims "the Defendant's servants imposed and collected the surcharge negligently," and that the Defendant "had a duty of reasonable care to safeguard the personal effects and funds of the Plaintiff [...] and to fairly administer inmate allowances and deductions therefrom both directly and as trustees of such inmate funds."

[35] In my view, these are bald assertions. The Plaintiff has not pleaded facts that establish the Defendant owes him a duty of care with respect to administering the *per diem* allowance, that the implementation of the surcharge constitutes a breach of that duty, or that the Plaintiff suffered losses resulting from that breach.

[36] In light of the above, I find the Plaintiff's claim in negligence discloses no reasonable cause of action.

V. Conclusion

[37] I find it is plain and obvious that the 2020 Statement of Claim discloses no reasonable cause of action. I therefore grant the Defendant's motion to strike the Plaintiff's claim in its entirety without leave to amend, pursuant to Rule 221(1)(a) of the *Rules*.

[38] Given the numerous opportunities the Plaintiff has been provided to remedy the defects in his claim, I find this determination accords with the principle under Rule 3 of the *Rules*, as it provides a just, expeditious and cost-effective resolution to the matter at hand.

[39] The Defendant requests it be awarded costs if successful in this motion. Considering that costs are ultimately in the discretion of the Court, I find this motion does not warrant an award for costs.

ORDER IN T-72-17

THIS COURT ORDERS that:

1. The Defendant's motion is granted and the Plaintiff's July 23, 2020 Further Amended Statement of Claim is struck without leave to amend.
2. No costs are awarded.

"Shirzad A."

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-72-17

STYLE OF CAUSE: CARL LEONE v HER MAJESTY THE QUEEN IN
RIGHT OF CANADA

ORDER AND REASONS: AHMED J.

DATED: MAY 6, 2021

BY WRITTEN SUBMISSIONS:

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