Federal Court  Cour fédérale

Date: 20240917

Docket: T-1765-24

Citation: 2024 FC 1461

Toronto, Ontario, September 17, 2024

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

DAHUI XU, JUAN LIU, SINCERE XU, GENUINE XU, EARNEST XU, AND KIN XU

Plaintiffs

and

CANADIAN FEDERAL DEPARTMENT OF FOREIGN AFFAIRS

Defendant

ORDER AND REASONS

I. Overview

[1] The Defendant brings this motion under Rule 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] to strike the Statement of Claim [Claim] issued on July 15, 2024, without leave to amend. The Defendant argues that the Claim is contrary to Rules 221(1)(a) and 221(1)(c) of the *Rules* as it discloses no reasonable cause of action and/or is scandalous, frivolous or vexatious.

[2] In the alternative, if this motion to strike is not successful, the Defendant seeks an Order removing the minor Plaintiffs, Sincere Xu, Genuine Xu, Ernest Xu and Kin Xu, as parties to the action pursuant to Rule 104(1)(a), extending the deadline for the service and filing of a Statement of Defence to 60 days from the date of the Court's order, and amending the style of cause to substitute His Majesty the King as the Defendant to this action.

[3] The Plaintiffs have not filed any materials in response to the motion, although they were served with the Defendant's motion materials.

[4] For the reasons noted, I am of the view that the Claim should be struck without leave to amend as it neither discloses nor is capable of disclosing any reasonable cause of action. I largely adopt the Defendant's submissions as set out further below.

II. **Analysis**

[5] The law relating to motions to strike is well settled. A claim will be struck only in the clearest of cases. On a motion to strike a claim as disclosing no reasonable cause of action, the moving party must establish that it is "plain and obvious" that the claim has no reasonable prospect of success: *R.* v. *Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17 [*Imperial Tobacco*]; *Hunt* v. *Carey Canada Inc*., [1990] 2 SCR 959 at p. 980. A motion to strike has been described as a "valuable housekeeping measure essential to effective and fair litigation": *Sivak* v. *Canada*, 2012 FC 272 at para 15 [*Sivak*]; *Imperial Tobacco supra* at paras 17 and 19.

[6] In determining whether to strike a claim as disclosing no reasonable cause of action, the allegations of fact in the statement of claim must be taken as true, unless patently ridiculous or incapable of proof: *Imperial Tobacco supra* at para 24; *Scheuer* v. *Canada* 2016 FCA 7 at para 12. While the Court will show flexibility towards a person who is self-represented, this does not exempt a self-represented litigant from complying with the requirements for pleading set out in the *Federal Courts Rules*: *Brauer* v. *Canada*, 2020 FC 828 at paras 30-31. A statement of claim must be supported by material facts, addressing the constituent elements of each cause of action or legal ground raised, such that the defendant and the Court knows on what basis the specific allegations are made: Rules 174 and 181 of the *Federal Courts Rules*; *Mancuso* v. *Canada (Minister of National Health and Welfare*, 2015 FCA 227 at paras 16-19 [*Mancuso*]. The "who", "when", "where", "how" and "what" must be sufficiently pleaded: *Mancuso supra* at para 19. Where there are deficient facts pleaded to support a claim against a party, there is no reasonable cause of action and the claim must be dismissed: *Sivak supra* at para 26.

[7] In this case, it is plain and obvious that the Claim cannot succeed. The Plaintiffs have not raised any identifiable cause of action, nor one that can be deciphered from the facts pleaded.

[8] The Plaintiffs assert that they were travelling under Canadian passports and were allowed to travel "visa-free for three months." The Plaintiffs allege that the Taiwanese Immigration Agency refused to allow them to board their flight operated by the airline Eva Air to Taiwan that was connecting through Vancouver from Toronto on February 18, 2023. They assert that their tickets were not refunded and their luggage was removed from the plane "without any reason or written decision."

[9] The Plaintiffs allege that they reported the incident to the "local police" and sought assistance from the Canadian Department of Foreign Affairs and "a number of federal lawmakers", but were not aided and instead were "stranded" at the airport for three days and three nights and contracted coronavirus. The Plaintiffs assert that they subsequently tried to re-enter Taiwan from "the motherland", but were again prevented from boarding the plane to Taiwan by the Taiwan Immigration Agency at the Xiamen Airport in China. The Plaintiffs assert that they sought assistance from the Canadian Consulate in Taiwan, but none was provided.

[10] The Plaintiffs appear to be alleging that the Canadian Consulate should have facilitated their entry into Taiwan. They broadly assert that "[t]he foreign affairs department of the federal government, the Consulate in Taiwan, etc., blatantly violated the law and did not protect citizens and oversees nationals". The Plaintiffs request an order requiring the "Consulate of the Ministry of Foreign Affairs in Taiwan to assist and protect [the Plaintiffs'] right to enter Taiwan" and compensation of $100,000 for alleged losses suffered while the Plaintiffs were travelling back to Taiwan from Canada.

[11] However, the Plaintiffs have referred to no Act that imposes a duty on a consular official to ensure entry into another country. As noted in *Kamel v Canada (Attorney General)*, 2009 FCA 21 at paragraph 17, it is "the authorities of a country that determine their own entry and exit conditions".

[12] Indeed, it is unclear how the Defendant is implicated in the dispute of the Plaintiffs. The Claim asserts that the Plaintiffs asked the Canadian Consulate in Taiwan for help but were

rejected twice for “the sole reason that the consulate is not responsible for protecting the interests of citizens living abroad, but only serves the national government!” However, it provides no further background on the Plaintiffs, their travel history and relationship to Taiwan, nor any details as to the nature of their communications with the Canadian Consulate. There are no facts pleaded as to why the Plaintiffs are of the view that the Canadian Consulate should have done more and what the Plaintiffs are asserting that they should have done. The Claim does not include sufficient material facts to identify any recognizable cause of action against the Defendant.

[13] As set out in *Simon v Canada*, 2011 FCA 6 [*Simon*] at paragraph 18, a vague narrative is not sufficient, “each cause of action must be pleaded with sufficient particularity”.

[14] Without proper material facts pleaded, it is not possible for the Defendant to properly understand the allegation made and how to respond. There is also no basis set out in the Claim as to why the Defendant would be liable for the damages asserted, which appear to seek to compensate the Plaintiffs for their travel expenses and unrefunded air tickets.

[15] Moreover, the remainder of the relief sought cannot be granted in this action. As noted by the Respondent, *mandamus* is an administrative law remedy that may be sought through judicial review, but is not available in an action before the Federal Court: subsection 18(3) *Federal Courts Act*; *Brake v Canada*, 2019 FCA 274 at para 26. The Defendant cannot accordingly be compelled to take certain steps as requested by the Plaintiffs.

[16] Where a pleading like the one in this case includes deficiencies that go to the root of the claim and shows no scintilla of a cause of action, it cannot be cured by amendment: *Al Omani v Canada*, 2017 FC 786 at paras 33-34; *Simon* at para 8. The Claim must accordingly be struck without leave to amend.

[17] In view of my findings on the Claim, I need not go on to consider further grounds of attack or the alternative relief relating to the minor Plaintiffs, extension of time for filing a Statement of Defence, and amendment to the style of cause.

[18] The Defendant requests costs in a fixed amount of $500.00, which shall be awarded.

ORDER IN T-1765-24

THIS COURT ORDERS that:

1. The motion is allowed and the statement of claim is struck in its entirety without leave to amend.

2. Costs are awarded to the Defendant in an amount fixed at $500.00.

"Angela Furlanetto"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1765-24
STYLE OF CAUSE:	DAHUI XU, JUAN LIU, SINCERE XU, GENUINE XU, EARNEST XU, AND KIN XU v CANADIAN FEDERAL DEPARTMENT OF FOREIGN AFFAIRS

MOTION IN WRITING CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	FURLANETTO J.
DATED:	SEPTEMBER 17, 2024

WRITTEN SUBMISSIONS BY:

Lauren McMahon	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANT