Federal Court Cour fédérale

Date: 20241002

Docket: T-75-24

Citation: 2024 FC 1545

Toronto, Ontario, October 2, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

MINISTER DAVID SOLOMON OF AHAYAH

Plaintiff

and

RIKKI DIGOUT

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff is self-represented. In the context of an action commenced on January 8, 2024, he has brought an *ex parte* motion before the Court seeking to have the Defendant noted in default. For the reasons that follow, I will dismiss the Plaintiff's motion. Pursuant to Rule

210(4)(b) of the *Federal Courts Rules* [the Rules], I also dismiss this action, as it does not disclose any reasonable cause of action.

II. Background

[2] As noted, the plaintiff commenced an action in this matter by filing a statement of claim on January 8, 2024 [the "Claim"].

[3] Further to the action, the Plaintiff has brought an *ex parte* motion before this Court. In his own words, the Plaintiff states that "this motion is to note the defendant/respondent/Rikki Digout/RIKKI DIGOUT in default." The Plaintiff further provides that the grounds for this motion arise because the claim that he served on the Defendant was not answered, despite being given "exceptional time" to do so. While the Plaintiff did not specifically articulate this, I gather from his materials that what he seeks from this Court is a default judgment, pursuant to Rule 210(1) of the Rules.

[4] In the larger action, the Plaintiff seeks the following relief:

> i require an order preventing any more intimidation and coercion for any matter in respect of any all capital name by way of final order separating i from the name DAVID PALUCH and have placed upon a national database my status as mankind and minister, evangelist and prophet of God, Please by the grace of God.
>
> i require of Rikki Digout to compensate me for eight million dollars ($8,000,000) and step down from her job, or order her removal from her post forthwith
>
> Total compensation $8,000,000

[5] In support of his motion, the Plaintiff has provided a "verification and affirmation of facts," a copy of the Statement of Claim, and written representations.

[6] The Defendant has not responded to this action. This is to say that the Defendant has not filed a statement of defence, nor a notice of intention to respond, nor any motion materials in response to this motion.

III. Issues

[7] A motion for default judgment typically requires consideration of the following issues:

a) whether the defendant is in default; and

b) if the defendant is in default, whether there is evidence to support the plaintiff's claim, such that default judgment should be granted.

[8] While I will briefly consider these questions, I have concluded that the determinative issue in this motion is as follows:

c) Should the action be dismissed, pursuant to Rule 210(4)(b) of the Rules?

IV. The Claim

[9] It is difficult to describe the Plaintiff's Statement of Claim, as it consists of a largely incoherent stream of thoughts and accusations against the Defendant. To give a sense as to the Plaintiff's allegations, I reproduce here the first five paragraphs of his Statement of Claim:

> 1. Approximately 8 months ago, the woman Rikki Digout, in policy enforcement chose to assault me, kidnap me and take me to their clubhouse where I was forced and coerced in to being DAVID PALUCH in relation to a contract which is associated with said NAME
>
> 2. i called Rikki because of death threats against i; [a] man Named minister David Solomon of Ahayah by a man name Alex Tuck. I am not the person DAVID PALUCH but Rickki charged said person and applied that contract to i just after she made the comment on your GOVERNMENT NAME!!!!! This was the response when i inquired as to who is being charged.
>
> 3. Rickky was biased and hated me because of my Christian faith.
>
> 4. During her carrying and taking away of i from 197 colborne st w; Rikki disclosed she was a lesbian in retort to a comment that had nothing to do with the context of what i was saying. She clearly had a bias and revealing that fact shows that as she should have removed herself from the situation when she found i was a minister which i have never hid from any one
>
> 5. I asked rikki for lawful proof she was of the Crown, such as the oath of office wherein she replied "you mean the oath were sworn in with by the province?", but did not produce that which she is aware that she is required to have.

[10] The Statement of Claim continues on in this fashion for another 10 paragraphs. Little can be gleaned from these paragraphs in terms of an intelligible cause of action.

[11] Furthermore, at no point in the Statement of Claim is the Defendant specifically identified, or associated with any federal authority. Indeed, the only hint contained in the Statement of Claim regarding the identity of Ms. Rikki Digout, is that she may, at some point, have sworn a provincial oath of office.

V. Is the Defendant in Default?

[12] As noted above, the Plaintiff commenced his claim against the Defendant on January 8, 2024.

[13] On February 13, 2024, the Plaintiff filed with the Court a "Declaration of Service" indicating that he had personally served the originating documents on the Defendant on January 15, 2024.

[14] Since that time, the Defendant has been completely silent. She has not filed a statement of defence, nor a notice of intention to respond, nor any motion materials in response to this motion. In short, the Defendant has not filed any material in response to the Plaintiff's action.

[15] As a result, and for the sake of this discussion, I am prepared to accept that the Defendant is in default.

VI. If the defendant is in default, should default judgment be granted?

[16] However, despite the Defendant being in default, there is no basis upon which to grant default judgment. Default judgment is not automatic when a defendant is in default. A plaintiff must establish that they are entitled to the judgment sought. The law on this point was recently canvassed by my colleague Justice Little in *NuWave Industries Inc v Trennen Industries Ltd*, 2020 FC 867:

[16] As NuWave submitted, on a motion for default judgment, all of the allegations in its statement of claim are to be taken as denied. Unlike in some provincial superior court regimes, in the Federal Court the plaintiff bears the onus, and must lead evidence that establishes, on a balance of probabilities, the claims set out in its statement of claim and its entitlement to the relief it requests: *BBC Chartering Carriers GMBH & CO. KG v Openhydro Technology Canada Limited*, 2018 FC 1098 (McDonald, J.), at para 15; *Canada (Citizenship and Immigration) v Rubuga*, 2015 FC 1073 (Gleason, J.), at para 77; *Teavana Corp. v Teayama Inc.*, 2014 FC 372 (Bédard, J.), at para 4; *Aquasmart Technologies Inc. v Klassen*, 2011 FC 212 (Shore, J.), at para 45; *Louis Vuitton Malletier S.A. v Yang*, 2007 FC 1179 (Snider, J.), at para 4.

[17] To determine whether the plaintiff has met its burden on this motion for judgment, I am guided by the principles established in *FH v McDougall*, 2008 SCC 53, [2008] 3 SCR 41. Speaking for a unanimous Court, Justice Rothstein stated that in all civil cases, the "evidence must be scrutinized with care by the trial judge" and that "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test": *McDougall,* at paras 45 and 46. The Supreme Court reiterated this standard in *Canada (Attorney General) v Fairmont Hotels Inc.*, 2016 SCC 56, [2016] 2 SCR 720, at paras 35-36, and in *Nelson (City) v Mowatt*, 2017 SCC 8, [2017] 1 SCR 138, at para 40.

[18] The requirement of "sufficiently clear, convincing and cogent" evidence has been recognized by this Court in patent matters: *Bombardier Recreational Products Inc. v Arctic Cat Inc.*, 2017 FC 207 (Roy, J.), at para 368, rev'd in part on other grounds 2018 FCA 172, leave to appeal dismissed, SCC File No. 38416 (May 16, 2019); *Bombardier Recreational Products Inc. v Arctic Cat, Inc.*, 2020 FC 691 (Roy, J.), at para 40.

[19] I have been unable to locate a default judgment case from this Court in which the principles from *McDougall* have been expressly applied. However, one can see the principles in *McDougall* in default judgment decisions. Justice Bédard declined to give effect to certain submissions of the moving party in *Teavana Corporation,* citing at various points, insufficient evidence, "bald assertions", no convincing evidence, or no evidence at all (at paras 24-26, 30 and 36). In addition, it is clear from the reasons of Justice Snider in *Louis Vuitton Malletier S.A.* (decided before *McDougall*) that judgment was only granted on the basis of significant direct evidence and careful review by the Court (see e.g. paras 9-11, 30, 35 ("[i]n spite of careful and detailed analysis

> by the affiants, I have some difficulties with the calculations"), 38 and following).
>
> [20] Having said that, I am also mindful that a plaintiff's burden is to prove a claim on a balance of probabilities, not a higher standard. In addition, as the Supreme Court noted in *McDougall*, there is no objective standard to measure the "sufficiency" of evidence (at para 46).
>
> [21] In *Johnson v Royal Canadian Mounted Police*, 2002 FCT 917, Justice Dawson held that default judgment is never automatic; it is a discretionary order (at para 20).

[17] The only material included in the Plaintiff's motion record is the Statement of Claim, together with the affidavit of service filed in respect of the claim. While he also provides brief written submissions in support of the motion, he has filed no evidence to support the merits of the Claim.

[18] Accordingly, even assuming that the Defendant is in default, there is no evidence upon which to conclude that the Plaintiff has made out any of the allegations set out in the Claim, or any entitlement to the judgment sought of $8,000,000.00, or any other amount. This is not a case where the determination turns on an assessment as to whether the evidence adduced is sufficiently clear, convincing and cogent, as there is no evidence to assess. Further, as explained below, the Statement of Claim fails to disclose a cause of action which is in itself fatal to a motion for default judgment, regardless of the evidence. As a result, the Plaintiff has failed to establish that an order for default judgment is warranted.

VII. Should the action be dismissed?

[19] While the above is sufficient to dismiss this motion, I also consider Rule 210(4)(b) of the Rules to be applicable to this matter. Rule 210(4) of the Rules sets out the possible remedies on a motion for default judgment:

> (4) On a motion under subsection (1), the Court may
>
> (a) grant judgment;
>
> **(b) dismiss the action; or**
>
> (c) order that the action proceed to trial and that the plaintiff prove its case in such a manner as the Court may direct. [emphasis added]

[20] The jurisprudence supports the plain language of Rule 210(4)(b) - the Court may dismiss an action pursuant to Rule 210(4)(b) where it is plain and obvious that the action has no reasonable prospect of success: *Alam v Drew Bieber*, 2024 FC 499 [*Bieber*].

[21] In *Bieber*, Associate Judge Cotter dismissed an action following a motion for default judgment, applying the test on a motion to strike: see *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959. In applying that test to the present case, it is plain and obvious that the Plaintiff's Statement of Claim discloses no reasonable cause of action. In coming to this conclusion, I have taken guidance from the recent decision of the Federal Court of Appeal in *Brink v. Canada*, 2024 FCA 43 [*Brink*]. In incorporating the principles set out at paragraphs 43-58 of the Brink decision, I have read the Plaintiff's pleadings generously, mindful of his lack of legal representation, and aware of the possibility that any shortcomings in the Claim may be a result of simple drafting deficiencies: Brink at para 45, citing *Operation Dismantle v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, [1985] S.C.J. No. 22 at 451.

[22] I have also considered whether the Plaintiff's claim contains any novel, but arguable allegations that would warrant allowing it to proceed: Brink at para 46. With this in mind, I am also mindful of Rule 174 of the *Rules*, which provides that "[e]very pleading shall contain a concise statement of the material facts on which the party relies..." Moreover, Rule 181(1) requires that pleadings "contain particulars of every allegation contained therein …"

[23] Finally, I refer to the decision of the Federal Court of Appeal in *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 (cited at paragraph 53 of the *Brink* decision). In that case, the Court of Appeal underscored the importance of proper pleadings (at para 16): "[i]t is fundamental to the trial process that plaintiffs plead material facts in sufficient detail to support the claim and relief sought".

[24] With these principles in mind, I have concluded that this action should be dismissed, as there are no material facts to support even a "scintilla of a cause of action": *Al Omani v Canada*, 2017 FC 786 at paras. 32-34; *McMillan v Canada*, 2023 FC 1752, at paragraph 80.

[25] Many aspects of the Claim are simply bald assertions, which do not constitute the pleading of material facts: *Brink*, paragraphs 55 and 56. Read in the most charitable light possible, it could be said that the Plaintiff feels he was wrongfully taken to the Defendant's "club house" where he was coerced into admitting that he was someone named David Paluch.

[26] Even if I were to accept that this were the case, and that a tort – such as the torts of false arrest or false imprisonment – were applicable to the case, the Claim still does not plead any

constituent elements of a cause of action, and nor does it plead any intelligible, let alone material, facts.

[27] Moreover, to the extent that I could surmise that the Plaintiff alleges that the Defendant has mistreated him, or acted negligently in respect of him, I have no basis on which to conclude that this matter falls within the jurisdiction of this Court. A common law claim of negligence between two individuals would not fall within the jurisdiction of this Court.

[28] As noted above, the Defendant's identity in this case is only hazily described and is devoid of any particulars. The only clue that the Defendant may have a role related to the public service is the reference, noted above, to the oath she may have sworn with the province. Assuming, without finding, that the Defendant is affiliated with the province, this would also vitiate this Court's jurisdiction to hear the matter.

[29] The above represents a generous reading of the Plaintiff's Claim. The reality is that much of the Claim is completely unintelligible. As another example, the Plaintiff states as follows at paragraph 9 of the Claim:

> My Name is David Solomon: Ahayah and that is the only Name i will ever know or recognize and i have many years of documentation[s] which properly demonstrates to show who and what i Am. I believe wholeheartedly in the King James Bible and i Am a minister and prophetic evangelist of the highest God and God is not a liar which informed me by way of the Holy Spirit of the mal use and fraud in our court systems under color of law by altering names into an all capital variant for unjust gain.

[30] While I have no doubt that the Plaintiff genuinely believes that he has been wronged, it is plain and obvious that the Claim does not disclose any reasonable cause of action for any claims that could be advanced before this Court. Accordingly, the action will be dismissed pursuant to Rule 210(4)(b).

VIII. Costs

[31] As the Plaintiff is self-represented, and as the Defendant has not participated in these proceedings, no costs will be awarded.

JUDGMENT in T-75-24

THIS COURT'S JUDGMENT is that:

1. The plaintiff's motion is dismissed.

2. The action is dismissed pursuant to Rule 210(4)(b).

3. There is no order as to costs.

"Angus G. Grant"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-75-24
STYLE OF CAUSE:	MINISTER DAVID SOLOMON OF AHAYAH v RIKKI DIGOUT
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 24, 2024
JUDGMENT AND REASONS:	GRANT J.
DATED:	OCTOBER 2, 2024

APPEARANCES:

Minister David Solomon	FOR THE PLAINTIFF (SELF-REPRESENTED)