Federal Court Cour fédérale

Date: 20250123

Docket: T-760-24

Citation: 2025 FC 137

Ottawa, Ontario, January 23, 2025

PRESENT: Madam Justice Azmudeh

BETWEEN:

A. JOHN BELLOSILLO

Plaintiff
(Moving Party)

and

HIS MAJESTY THE KING

Defendant
(Responding Party)

JUDGMENT AND REASONS

I. Overview and Standard of Review

[1] This is the decision to dismiss the appeal of an order of an Associate Judge dated August 8, 2024 (*Bellosillo v Canada*, 2024 FC 1239 [AJ's Order]). This Order granted the Defendant's motion to strike the statement of claim with no leave to amend.

[2] The basis for the AJ's Order decision was the lack of particulars in the Statement of Claim and the deficiencies of the remedies sought. He found that amendments to the Statement of Claim would not cure these deficiencies. He also ordered $500 costs against the Plaintiff.

[3] The Plaintiff has been self-represented throughout the process.

II. Relevant Fact and Context of the Case

[4] The Plaintiff is an inmate at the Bath Institution in Ontario. The Plaintiff alleged in his Statement of Claim that the Defendant, through personnel at the Bath Institution, seized his personal computer and withheld it from him. The Plaintiff alleges that this is in breach of an agreement between himself and the Defendant. In short, the claim was based on an alleged breach of contract.

[5] In his Statement of Claim, the Plaintiff did not provide any particulars on the existence of the contract, its terms, whether it was agreed to orally or in writing, who on behalf of the Defendant agreed to its terms, what terms it contained, and what terms were breached when the Defendant seized the computer.

[6] All of this is in the context that the statute that governs the relationship between the parties, namely the *Corrections and Conditional Release Act*, SC 1992, c 20 [*CCRA*] give the Defendant a wide latitude for search and seizure.

[7] It was in the context of lack of any particulars that the Associate Judge agreed with the Defendant that the Statement of Claim did not disclose a reasonable cause of action and should be struck without leave to amend. The Associate Judge found that the Statement of Claim failed to comply with rules 174 and 181 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] in that the allegations are bare, vague and do not disclose a cause of action.

[8] It was also in this context that the Associate Judge found that the remedies sought, namely *Charter* relief under s 24(1), was inappropriate for a breach of contract case, and that injunctive relief, in the absence of any particulars, would not succeed.

[9] Finally, the Associate Judge explained why he did not consider the Defendant's argument that the proper manner for the Plaintiff was to seek redress is through the grievance procedure set out at section 90 and following of the *CCRA*.

[10] On Appeal, the Plaintiff argued that in seizing his computer, the Defendant breached his rights under section 8 of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. However, this argument was not raised before the Associate Judge, and he, therefore, cannot be faulted for not addressing it.

[11] The Associate Judge also ordered the Plaintiff to pay the Defendant's costs in the amount of $500.

III. Analysis

A. *No reviewable error on the Associate Judge's decision to strike the claim with no leave to amend*

[12] At the appeal hearing, the Plaintiff admitted that his Statement of Claim was brief and contained little particulars. However, he argued that this was due to his limitations to access updated legal materials while incarcerated, and that his Access to Information and Privacy [ATIP] request had not resulted in a timely disclosure upon which he could provide the particulars.

[13] I find that the Associate Judge correctly identified and applied the applicable test governing motions to strike pursuant to rule 221 of the *Rules*, and in particular, the Court's discretion to strike a pleading without leave to amend on the ground that it discloses no reasonable cause of action and is scandalous, frivolous or vexatious. He specifically stated that under rule 174, the pleadings must contain a concise statement of the material facts but shall not include the evidence by which those facts are to be proven (AJ's Order at para 9).

[14] The ATIP argument was not before the Associate Judge, and he, therefore, cannot be faulted for not considering it. However, the Associate Judge knew that under the *Rules*, the pleadings need not contain evidence, and therefore, the Plaintiff's lack of access to that evidence would not absolve him from pleading the material facts.

[15] The Associate Judge explained that, on a motion to strike, the onus is on the defendant to demonstrate that it is plain and obvious that the claim has no chance of success assuming the facts pleaded to be true (AJ's Order at paras 5–6, citing *Fitzpatrick v Codiac Regional RCMP Force, District 12 and Her Majesty the Queen*, 2019 FC 1040 at paras 13–20).

[16] Moreover, the Associate Judge explained that a scandalous, frivolous or vexatious claim is where no rational argument can be presented, based upon the evidence or law, in support of the claim, and where the claim is so deficient in factual material that the defendant cannot know how to answer (AJ's Order at para 6, citing *Specialized Desanders Inc v Enercorp Sand Solutions Inc*, 2018 FC 689 at para 43).

[17] The Associate Judge also correctly identified and applied the relevant sections of the *Rules*, including rules 174 and 181, that pleadings must contain a concise statement of material facts relied upon, and that every allegation must contain particulars. He also acknowledged that the evidence by which those facts are to be proven is not required at the pleadings stage (AJ's Order para 9). However, this does not negate that the onus rests on the Plaintiff to explain the material facts on which he relies, which could include providing details of the alleged agreement. The Associate Judge distinguished between material facts and assertions and explained why the Statement of Claim only contained the latter (AJ's Order paras 20, 23 and 25).

[18] The Plaintiff's argument in his appeal that it is presumed that facts alleged in the pleadings are true does not take into account that this presumption does not extend to "matters which are manifestly incapable of being proven, to matters inconsistent with common sense,

vague generalization, opinion, conjecture, bare allegations, bald conclusory legal statements, or speculation that is unsupported by material facts" (see *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89 at para 52b).

[19] Moreover, the requisite elements of a cause of action for alleged breach of contract were simply not plead because the Claim did not include sufficient material facts with particulars, as the Associate Judge correctly explained it (AJ's Order at para 20). The expectation to see particulars, when it is also codified under rule 174 of the *Rules*, is fundamental to the fairness of the process. Without particulars, i.e., sufficient material facts, the Defendant cannot defend the case, frame the discovery process, or allow counsel to advise the clients (see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 17–19). In short, the lack of particulars goes to the core of the claim. In this case, the Plaintiff had made bald allegations of breach of contract, and yet, there were no particulars on the contract whatsoever. This is a question of mixed fact and law that is reviewed on the overriding and palpable standard and that the Associate Judge's analysis was not erroneous.

[20] The Plaintiff argued that as a self-represented litigant, he deserves a broader latitude. For this, he relied on the Canadian Judicial Council, "Statement of principles on self-represented litigants and accused persons" (September 2006). There is nothing in the above Statement that would suggest that substantive legal requirements are suspended or changed by self-represented litigants. Core requirements are not suspended for the self-represented party, especially when this could have a deleterious effect on the other. Particulars in pleadings are the core upon which the defence legal strategy is built, and self-representation is not a ticket to be unfair to the other

party. Further, the Associate Judge's thorough reasons provided a rationale for each of his findings and were transparent and reflective of his full engagement with the Plaintiff's arguments.

[21] Having correctly identified the applicable principles governing the pleadings and the test governing motions to strike, the Associate Judge applied these principles and test to the Plaintiff's Claim. He rightly concluded that the Defendant was unable to adequately defend himself against the claim for breach of contract advanced because of the lack of particulars (AJ's Order at paras 19–20).

[22] I find that the Associate Judge rightly noted that the nature of the Claim's defects cannot be cured through an amendment because the defects strike at the root of the claims advanced (AJ's Order at para 26). The jurisprudence is clear that, where there is no scintilla of a cause of action, leave to amend should not be granted (*Al Omani v Canada*, 2017 FC 786 at paras 33–34 [*Al Omani*]). In the same vein, where there is a "pervasive absence of material facts throughout the pleading," that is not a flaw that can be cured by amendment (*Qualizza v Canada*, 2024 FC 1801 at para 57).

[23] The Claim's core allegation is that an agreement between the Plaintiff and Defendant allows the Defendant to seize the Plaintiff's personal computer for search purposes and return it to him, but not withhold the computer (AJ's Order at para 13). He alleges that Defendant having withheld his computer is in breach of their agreement. He alleges this is part of a calculated agenda by the Correctional Service of Canada [CSC] to deprive him of his computer. For this, he

sought a declaratory relief under the *Charter*. He also sought injunctive relief without a rational connection between this core allegation and the relief sought. The allegation relied wholly on bald allegations and unfounded speculation. Even if the Plaintiff were able to particularize his allegations, these particulars would not serve to support the relief sought.

[24] The core allegation in the Claim did not establish that the computer's ownership or its maintenance were issues, or live controversies, between the parties. No amendment could cure this fundamental defect. Further, the core allegation in the Claim related to a breach of contract, a legal principle not connected to a section 24(1) *Charter* remedy. No amendment could cure this fundamental defect either.

[25] Finally, the Plaintiff also did not propose to the Associate Judge any amendment to the relief he sought or to the causes of action he raised, let alone any amendment that has a reasonable prospect of success (see *McCain Foods Limited v JR Simplot Company*, 2021 FCA 4 at para 20). It was, therefore, open to the Associate Judge to conclude that based on the Plaintiff's submissions before him—which were focused on the lawfulness of the motion to strike—the Plaintiff was either "unwilling or unable" to cure the defects in his Claim by way of amendment (see *Turmel v Canada*, 2022 FC 732 at paras 34, 37). There can therefore be no assessment of the "readiness" of the amendments that would be needed (*Al Omani* at para 94).

[26] In light of these fundamental deficiencies, the Plaintiff failed to establish that the Associate Judge committed a reviewable error in striking the Statement of Claim and in refusing to grant him leave to amend his Claim.

B. *No reviewable error in Associate Judge's finding that the Plaintiff's reliefs sought are inappropriate: Charter remedy fails to disclose a reasonable cause of action and injunctive relief is doomed to fail*

[1] The Plaintiff sought relief pursuant to section 24(1) of the *Charter* in the form of two declarations. He sought a declaration that he owns the computer and has a right to maintain it in good repair and to upgrade as necessary. The Associate Judge disagreed with him because there was no live controversy that he owned the computer or to keep it in good repair.

[27] The Associate Judge rightly noted that relief pursuant to section 24(1) of the *Charter* can only be awarded if the Plaintiff's *Charter* rights were violated. He did not err in finding that the Claim failed to disclose a reasonable cause of action warranting relief pursuant to section 24(1), given the Plaintiff did not allege any violation of his *Charter* rights in his Claim. The Plaintiff had only referred to the *Charter* in his request for relief under section 24(1). Given the Plaintiff's failure to plead any violation of his *Charter* rights, the Associate Judge's finding that this claim for relief was plainly and obviously doomed to fail discloses no reviewable error.

[28] On appeal, the Plaintiff based his argument to seek a *Charter* remedy on the *Charter*'s preamble that Canada "is founded upon principles that recognizes … the rule of law." An allegation that the Defendant violated the rule of law "does not equate to a Charter breach" (*JO v Alberta*, 2013 ABQB 693 at para 22). Nor can this be used as a "catch-all ground of constitutional attack" (*Lemus v Canada (Citizenship and Immigration),* 2014 FCA 114 at para 15 [*Lemus*]). Indeed, while the breach of a *Charter*-protected right undermines the rule of law the opposite cannot be said (*R v Zacharias*, 2023 SCC 30 at para 119 (per Martin and Kasirer JJ., dissenting); the rule of law is not an independently enforceable basis upon which to argue a

breach of the *Charter* in legal proceedings *(Poorkid Investments Inc v Ontario (Solicitor General),* 2023 ONCA 172 at para 55).

[29] Moreover, while the Plaintiff argues, for the first time in this motion to appeal, that the "search and seizure" of his computer breaches section 8 of the *Charter*, this allegation was not advanced in the Claim. The mere reference to a search and seizure in the Claim does not in itself amount to an allegation that the Plaintiff's section 8 *Charter* right was breached (see *Ewert v Canada*, 2023 FC 1054 at paras 14, 143–44). Moreover, this allegation is inconsistent with either the regime created by CCRA, which gives CSC broad powers to seize, or even the Claim itself, in which the Plaintiff himself acknowledged that the purported agreement allowed the Defendant to seize and search the Plaintiff's computer. The Plaintiff has failed to demonstrate that the Associate Judge committed a reviewable error in striking out the *Charter* relief sought because his Claim fails to disclose a reasonable cause of action.

[30] Finally, the Plaintiff's injunctive relief was based on general and broad allegations of CSC's calculated actions and mistreatment of him. Without material facts, while the Plaintiff is entitled to have a conspiracy theory, this is not enough to disclose a reasonable cause of action or seek an injunction for it (*Al Omani* at para 88).

[31] It was in this context that the Associate Judge rightly found that the Plaintiff had not raised an arguable case and that the Claim did not contain a cause of action justifying injunctive relief (see *Crown Liability and Proceedings Act,* RSC 1985, c C-50, s 22(1)). The injunctive relief the Plaintiff sought involved a structural injunction, which is an injunction only awarded in

"exceptional circumstances" that involves the Court supervising the application of its order and revising it occasionally to ensure the order achieves the ultimate relief intended (see *Thibodeau v Air Canada*, 2019 FC 1102 at paras 72–74 [*Thibodeau*]; *McGill University v Kahentinetha*, 2024 QCCA 1050 at para 38). The Plaintiff has not provided a scintilla of evidence that the Defendant "intends to deliberately break the law or breaks it with impunity without regard for its duties and the rights of others" (*Thibodeau* at para 72).

[32] The Associate Judge correctly identified the tri-part test for injunctive relief (AJ's Order at para 23, citing *RJR-Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR). He found that in this case, the Claim did not raise any serious issue to be tried given the lack of particulars about the alleged agreement between CSC and the Plaintiff or the allegation of a calculated agenda by CSC by deprive the Plaintiff of his computer as support for injunctive relief, and the sought injunctive relief was therefore doomed to fail. A review of the Claim supports this conclusion.

[33] In light of the Associate Judge's determination that he could not consider the alleged contractual terms—that the Defendant can seize the computer and require certain things of the Plaintiff, but is not permitted to permanently withhold the computer—nor the CSC's alleged calculated agenda as being true for the purposes of the motion to strike, the Associate Judge rightly could not identify a serious issue to be tried. I agree with the Defendant that the Plaintiff has failed to demonstrate that the Associate Judge committed a reviewable error in striking his sought injunctive relief.

[34] With respect to the remedies, as already stated above, the Plaintiff did not propose to the Associate Judge any amendment to the relief he sought or to the causes of action he raised, let alone any amendment that he has a reasonable prospect of success (see *McCain Foods Limited v JR Simplot Company*, 2021 FCA 4 at para 20). It was, therefore, open to the Associate Judge to conclude that, based on the Plaintiff's submissions before him—which were focused on the lawfulness of the motion to strike—the Plaintiff was either "unwilling or unable" to cure the defects in his Claim by way of amendment (*Turmel v Canada*, 2022 FC 732 at paras 34, 37). There can be no assessment of the "readiness" of the amendments that would be needed (*Al Omani* at para 94).

[35] In light of these fundamental deficiencies, the Plaintiff has failed to establish that the Associate Judge committed a reviewable error.

C. *Further arguments raised by the Plaintiff*

[36] The Associate Judge also provided reasons for rejecting the Plaintiff's arguments that the Defendant's motion was against the law, that the Defendant was in a position of conflict of interest, or that there was any violation of the *Law Society Act*, RSO 1990, c L.8. The Plaintiff is arguing that the Defendant's counsel, in defending the case, did not uphold the public interest which was in breach of their ethical duties as officers of the Court. There is no basis for this argument, and I reject it.

[37] The Plaintiff also made arguments based on generalities, such as on Defendant violating the rule of law. At the hearing of the Appeal, the Plaintiff also submitted an undisputed principle

that the rule of law applies to the incarcerated. However, I agree with the Defendant that such allegations cannot be used as a "catch all ground of constitutional attack" (*Lemus* at para 15) and that an allegation of a violation of rule of law does not equate to a *Charter* breach, even though the opposite can be said (*JO v Alberta*, 2013 ABQB 693 at para 22).

[38] For the first time on appeal, the Plaintiff alleged that the Associate Judge's reasons to strike down the Claim constituted bias. He criticizes the Associate Judge for "punishing the [Plaintiff] for vexatious, scandalous, and frivolous [pleadings] and not doing the same to the defendant" since the Associate Judge summarily rejected the Defendant's argument related to alternative available recourses by following through with a grievance.

[39] The Plaintiff has not established that an informed person, viewing the matter realistically and practically and having thought the matter through would think that it is more likely than not that the Associate Judge, whether consciously or unconsciously, would not decide fairly (*Johnson v Canadian Tennis Association*, 2023 FC 1605 at para 27 [*Johnson*], citing *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 56). As the Plaintiff is making this allegation, it is his onus to meet the high threshold to demonstrate it (*Johnson* at para 27). An allegation of bias against a member of the judiciary is very serious and must not be made lightly; the presumption of judicial integrity and impartiality is strong and not easily rebutted (*Johnson* at paras 25–26). Therefore, it is not enough for the Plaintiff to merely suspect, insinuate or be of the impression that there was bias; he must adduce cogent, convincing and substantial evidence (*Johnson* at para 28).

[40] Finally, the Plaintiff faults the Associate Judge for not hearing the Defendant's motion orally. It was in conformity with rules 3 and 369 of the *Rules* that the Associate Judge had every right to decide the motion in writing.

[41] In short, upon reviewing the decision of the Associate Judge, the arguments raised by the Plaintiff and the Defendant, I am satisfied that the Plaintiff has not established that the Associate Judge has committed a reviewable error.

D. *No reviewable error in Associate Judge's costs order and costs of current appeal*

[42] The Associate Judge agreed with the Defendant seeking their costs in the amount of $500. Rule 400 gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." Given the Court's broad discretion, and the fact that the Plaintiff had advanced a meritless Claim, I find that the Associate Judge committed no error to award costs. The Plaintiff has failed to demonstrate that the Associate Judge committed a reviewable error in awarding these costs to the Defendant as the successful party.

[43] For the present appeal, the Defendant is seeking a further $500 in costs. The Plaintiff argued that he is of limited means, and his incarceration has further limited his income. He also sees costs as an unfairly punitive measure against the vulnerable and the incarcerated. Having considered the factors listed in rule 400(3) of the *Rules*, while I find that the Defendant's request is reasonable, I appreciate the Plaintiff's limitations, and I do not award any costs. Given the

Defendant's success, and the absence of any potentially acceptable legal foundation for this appeal, I exercise my discretion in favour of the Plaintiff as an exception.

IV. Conclusion

[44] The Plaintiff's appeal of the Associate Judge's decision is dismissed, without costs.

JUDGMENT in T-760-24

THIS COURT'S JUDGMENT is that

1. The Plaintiff motion to appeal the decision of the Associate Judge is dismissed without costs.

"Negar Azmudeh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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