Federal Court Cour fédérale

Date: 20250709

Docket: T-958-25

Citation: 2025 FC 1222

Ottawa, Ontario, July 9, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

KANIZ FATEMA

Plaintiff

and

N CAMERON MURKAR

Defendant

ORDER AND REASONS

I. Overview

[1] The Plaintiff and moving party, Ms. Kaniz Fatema, brings this motion under Rule 51 of the Federal Courts Rules, SOR/98-106 [Rules] to appeal the June 13, 2025 Judgment of Associate Judge Coughlan striking the Plaintiff's Statement of Claim ("Claim") for want of jurisdiction (the "Decision"). The Plaintiff also seeks further relief in this appeal, including

$100,000 in damages, $25,000 in costs, and various orders compelling the Defendant to provide certain information and take certain steps on behalf of the Plaintiff.

[2] For the reasons below, the appeal is dismissed. Associate Judge Coughlan made no palpable and overriding error in striking the Claim without leave to amend.

II. Background

[3] In the Claim dated March 21, 2025, the Plaintiff alleges that that the Defendant, legal counsel for the municipality of Ajax and Ajax Fire and Emergency Services, has covered up the vandalism of the Plaintiff's tenant and covered up the negligence of the Ajax Fire and Emergency Services by causing her lawsuit in the Alberta Court of Justice to be stayed. Most of the events described in the Claim relate to a dispute regarding fire code violations between the Plaintiff and her tenant, who is not a party to this action. The Defendant's role in the Claim relates to his involvement as counsel for one of the parties in the proceeding before the Alberta Court of Justice.

[4] The Plaintiff asserts that the Statement of Claim was brought in the Federal Court because the alleged dispute involves both Alberta and Ontario and that she has also commenced an action against two other related (but unidentified) individuals in the Federal Court. No statutory authority for the jurisdiction of the Federal Court is referenced in the Claim.

[5] On June 13, 2025, Associate Judge Coughlan struck the Claim in its entirety without leave to amend pursuant to Rule 221 of the *Rules*. She found that it was plain and obvious this

Court, as a statutory court, did not have jurisdiction over the Defendant and the subject matter of the dispute. Consequently, the Claim was incurable by amendment (citing *Enercorp Sand Solutions Inc v Specialized Desanders Inc*, 2018 FCA 215 [*Enercorp*] at para 27).

[6] Associate Judge Coughlan held that the Federal Court does not have jurisdiction over the Defendant as the Court's jurisdiction is limited to the federal Crown, not the provincial Crown, under subsections 17(1) and (2) of the *Federal Courts Act*¸ RSC 1985, c F-7 [*Act*] (*Pasqua First Nation v Canada (Attorney General)*, 2016 FCA 133 at para 50). The Federal Court does not have jursidction over the subject matter of the Claim as "the essential nature of the claim relates to matters that were before the Alberta Court of Justice", for which there is no federal law essential to the disposition of the case, and the subject matter does not fall within sections 17-26 of the *Act*. I agree.

[7] Accordingly, the Plaintiff failed to meet the first part of the test for the grant of jurisdiction to the Federal Court (*ITO-Int'l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752 at 766, 28 DLR (4th) 641 [*ITO*]). Since this finding was dispositive of the motion, Associate Judge Coughlan did not consider the other parts of the *ITO* test, nor did she deal with the alternative grounds raised by the Defendant.

III. Analysis

[8] The standard of review on an appeal of a discretionary order of an associate judge is palpable and overriding error for questions of fact and questions of mixed fact and law, and correctness for questions of law and questions of mixed fact and law where there is an extricable

legal principle at issue (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras 64, 66; *Housen v Nikolaisen*, 2002 SCC 33).

[9] The Applicant raises two main arguments on appeal. First, she says that the Defendant did not properly serve the motion materials and Statement of Defence in this proceeding as it was not personally served on her. Second, the Plaintiff reiterates her allegations against the Defendant from the Statement of Claim and raises new issues related to public safety and the Plaintiff's asserted status as a "victim of crime", claiming these factors were not considered by the Associate Judge in the Decision.

[10] The Defendant properly served the Plaintiff with the Statement of Defence and motion materials by courier and registered mail to the Plaintiff's address, which are proper methods of service for non-commencing documents pursuant to Rule 139(1) of the *Rules*.

[11] The sole remaining issue is whether the Associate Judge erred in striking out the Claim without leave to amend, and in doing so, committed a palpable and overriding error.

[12] The Associate Judge was correct in finding that the Federal Court does not have jurisdiction over the Plaintiff's Claim. The alleged new issues raised by the Plaintiff relating to public safety and the Plaintiff's asserted status as a "victim of crime" are not new, and in any event, fail to bring the Claim within the jurisdiction of this Court. It is plain and obvious that the Federal Court lacks jurisdiction in respect of this matter (*ITO* at 766).

[13] Moreover, this action on its face appears to be an attempt to relitigate matters arising from the Alberta Court of Justice Action No. P2290102607, making it vexatious and an abuse of process (*Lavigne v Pare*, 2015 FC 631 at para 5, aff'd 2016 FCA 153; *Quinn v Canada*, 2021 FC 1302 at paras 18 and 19).

[14] Further, the Claim is so defective and ill-founded that it cannot be cured by amendment (*Collins v Canada*, 2011 FCA 140 at para 26; *Enercorp* at para 27).

[15] With respect to costs, under Rule 400 of the *Rules*, the Court has "full discretionary power over the amount and allocation of costs and the determination by whom they are to be paid", guided by the factors in Rule 400(3) of the *Rules*. Costs on a solicitor-and-client basis is intended to provide full indemnification of costs reasonably incurred in the litigation, and while only awarded in very limited circumstances, are justified when a party's conduct is "reprehensible, scandalous, or outrageous" and where a party's actions are dismissive towards the proceedings at hand and past Judgment of the Court (*Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at para 67; *Louis Vuitton Malletier SA v Singga Enterprises (Canada) Inc*, 2011 FC 776 at para 184).

[16] Here, I find that the Plaintiff's conduct in pursuing the Claim on appeal constitutes not only an abuse of process, but also is scandalous and vexatious. As such, I award the Defendant costs on a solicitor-and-client basis.

ORDER in T-958-25

THIS COURT ORDERS that:

1. The appeal of the Decision of Associate Judge Coughlan is dismissed.

2. Costs to the Defendant on a solicitor-and-client basis.

"Michael D. Manson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-958-25
STYLE OF CAUSE:	KANIZ FATEMA v N CAMERON MURKAR

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

ORDER AND REASONS:	MANSON J.
DATED:	JULY 9, 2025

WRITTEN REPRESENTATIONS BY:

Kaniz Fatema	FOR THE PLAINTIFF (ON HER OWN BEHALF)
Zul Verjee, K.C.	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Verjee Law Barristers and Solicitors Calgary, Alberta	FOR THE DEFENDANT