

Federal Court



Cour fédérale

Date: 20100608

Docket: T-639-10

Citation: 2010 FC 617

Edmonton, Alberta, June 8, 2010

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ZOLTAN ANDREW SIMON

Plaintiff

and

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA

Defendant

REASONS FOR ORDER AND ORDER

[1] The defendant is seeking an order that the statement of claim be struck, without leave to amend. The defendant also sought alternative remedies in the event this relief was not granted. I have concluded that the statement of claim must be struck without leave to amend and, accordingly, the alternative remedies need not be explored.

[2] In January 1999 the plaintiff sponsored Margarita Reyes, his then wife, and her two sons as permanent residents of Canada. He signed a sponsorship agreement with her whereby he undertook to provide her essential needs. He is adamant that he had no such agreement with Canada.

[3] In June 2000, she and her sons left him and they began to receive social assistance benefits from the Province of British Columbia. Mr. Simon was unaware of these payments or that the Province of British Columbia held him as their sponsor liable to repay them until some time in 2007.

[4] In 2008 and again in 2009 the Province of British Columbia garnisheed funds standing to his credit in his tax account with Revenue Canada.

[5] Mr. Simon has since remarried and he sought to sponsor his new family to come to Canada. That application was refused because Mr. Simon was found to be in default of his previous undertaking. That application was unsuccessfully appealed to the Immigration and Refugee Board of Canada, Immigration Appeal Division. This Court refused leave to judicially review that decision.

[6] At the hearing of this motion, Mr. Simon was clear that he is not seeking to challenge the decisions made by the immigration authorities; rather he is seeking to challenge the “financial decisions.”

[7] When asked to explain specifically what he was seeking through this action, he said that he was seeking

- a. A declaration that he has no “effective debt” owed in connection with the undertaking he gave in January 1999;
- b. A declaration that his current wife and her son are entitled to visas to visit him in Canada; and
- c. His costs.

[8] Mr. Simon argues that there is no “effective debt” owed by him because there was no agreement between him and the Government of Canada to repay the payments that were made by British Columbia, that the payments to Mrs. Reyes were excessive and improper, and that, in any event, the amounts claimed from him are statute barred. In short, his position is that he has never owed anything to the Province of British Columbia on account of its payments to Mrs. Reyes and that it improperly garnisheed his tax account with Revenue Canada.

[9] The question of whether he had an agreement with Canada may or may not have been determined between Canada and himself by the decisions of the IAD and this Court in IMM-6265-09; however, it is clear to me that his current dispute is not directly with the Federal Government but with the Province of British Columbia. In this respect it is noted that he commenced litigation in the British Columbia Superior Court against both the Province of British Columbia and the Government of Canada with respect to these financial claims. He says that the action has been discontinued by him but the Court record shows otherwise. The state of that action is irrelevant to this motion.

[10] What is critical is that the plaintiff's financial dispute is not directly with Canada and the real dispute he has does not fall within the jurisdiction of this Court. In my view, he should be seeking his declaration and repayment of the funds taken illegally, in his view, against the Provincial authorities in the B.C. Superior Court, either in the action already commenced or in a new one.

[11] The second remedy he seeks in this action is a declaration that his new family may be issued visitors visas. There is nothing in the record that indicates that any application for a visitor visa has been made, let alone denied. Counsel for the respondent informed the Court that the government has no record of any such application and Mr. Simon did not suggest otherwise. Accordingly, although a remedy might well be available in this Court if the visa applications are denied, there is currently no foundation for the remedy sought.

[12] Accordingly, for these reasons, the motion is granted and the statement of claim is struck without leave to amend.

[13] Both parties sought costs in the amount of \$500.00 which, in my view, is a reasonable amount. Costs of \$500.00 are awarded to the defendant.

ORDER

THIS COURT ORDERS that:

1. The statement of claim filed in this action is struck, without leave to amend; and
2. The defendant is awarded its costs fixed at \$500.00, inclusive of fees, disbursements, and taxes.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-639-10

STYLE OF CAUSE: ZOLTAN ANDREW SIMON v.
HER MAJESTY THE QUEEN IN THE RIGHT OF
CANADA

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: June , 2010

**REASONS FOR ORDER
AND ORDER:** ZINN, J.

DATED: June 8, 2010

APPEARANCES:

Zoltan Andrew Simon

ON OWN BEHALF

Camille N. Audain

FOR THE DEFENDANT

SOLICITORS OF RECORD:

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FOR THE DEFENDANT