

Federal Court



Cour fédérale

Date: 20111228

Docket: T-1289-11

Citation: 2011 FC 1525

Ottawa, Ontario, December 28, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

MICHAEL AARON SPIDEL

Plaintiff

and

**HER MAJESTY THE QUEEN AND HER
SERVANT MR. MIKE COTE**

Defendants

REASONS FOR ORDER AND ORDER

I. Overview

[1] Mr. Spidel commenced a defamation claim against the defendants. The defendants have requested an order granting summary judgment in their favour, the effect of which would be to dismiss Mr. Spidel's action.

[2] The defendants rely primarily on the doctrines of absolute and qualified privilege, arguing that the remarks underlying Mr. Spidel's action are protected speech and, therefore, immune from an action in defamation. I am satisfied that the remarks fall under an absolute privilege and, therefore, that there is no action in defamation available in the circumstances. I must, therefore, allow this motion for summary judgment.

II. Factual Background

[3] In 2009, Mr. Spidel, who is imprisoned, filed a human rights complaint against the Correctional Service of Canada [CSC] in which he contended that he had been discriminated against on the basis of sex. He argued that female inmates have more private and unaccompanied visits with their children than male inmates.

[4] At various stages of the complaint, Mr. Spidel and CSC made written submissions to the Canadian Human Rights Commission. In his, Mr. Spidel mentioned his concern that he had been involuntarily transferred from a minimum to a medium security institution because of his frequent resort to grievance procedures. In turn, CSC informed the Commission that there was "no information that supports Mr. Spidel's allegations indicating that he received consequences after using the various internal and external redress mechanisms". This remark gave rise to Mr. Spidel's defamation action.

[5] After considering all of the submissions before it, the Commission decided to refer Mr. Spidel's complaint to the Canadian Human Rights Tribunal for a hearing.

III. Is There a Genuine Issue for Trial?

[6] The *Federal Courts Rules*, 1998, SOR 98/106 (Rules 213 and 214) permit the Court to grant a motion for summary judgment where there is no genuine issue for trial. The defendants argue that the doctrine of absolute privilege makes clear that there is no legal foundation for Mr. Spidel's defamation claim and, therefore, that there is no genuine issue to be tried. I agree.

[7] The comment about which Mr. Spidel complains was made in the course of a quasi-judicial proceeding. This type of comment falls within the doctrine of absolute privilege and cannot form the subject of a defamation action. In addition, I do not believe the comment was actually defamatory.

[8] The Commission performs a quasi-judicial role in the handling of human rights complaints. Accordingly, comments made in the course of the Commission's investigation into a complaint fall within the doctrine of absolute privilege: *Ayangma v NAV Canada*, 2001 PESCAD 1, at para 41. The comment in issue was made by a CSC official who was a potential witness at the hearing into Mr. Spidel's complaint.

[9] Mr. Spidel points out that CSC's comment was not relevant to the complaint under investigation. However, CSC's comment was made in response to a submission by Mr. Spidel. In that sense, it was not totally extraneous to the complaint and not beyond the reach of the privilege.

[10] In any case, I cannot see anything defamatory about CSC's statement. It is not reasonably capable of conveying a defamatory meaning; it would not injure Mr. Spidel's reputation in the mind of a reasonable or ordinary member of society (*Ayangma*, above, at paras 25-27). It merely related to an ancillary factual dispute between the parties (and the subject of separate legal proceedings). Further, the Commission referred the complaint to the Tribunal based on its merits. There is no evidence that CSC's comment had any adverse effect on Mr. Spidel's complaint.

[11] In my view, therefore, the allegedly defamatory comment was made in a context where absolute privilege applies, and it was not, in any case, capable of being characterized as defamatory. I see no genuine issue to be tried.

IV. Conclusion and Disposition

[12] There being no genuine issue for trial, I must allow the respondents' motion for summary judgement, with costs.

ORDER

THIS COURT ORDERS that the motion for summary judgment is allowed, with costs.

“James W. O’Reilly”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1289-11

STYLE OF CAUSE: MICHAEL AARON SPIDEL
v
HER MAJESTY THE QUEEN AND HER SERVANT
MR. MIKE COTE

**MOTION HELD BY
VIDEO-CONFERENCE ON:** NOVEMBER 21, 2011

PLACE OF HEARING: Vancouver, British Columbia

**REASONS FOR ORDER
AND ORDER:** O'REILLY J.

DATED: December 28, 2011

APPEARANCES:

Michael Aaron Spidel

FOR THE PLAINTIFF
ON HIS OWN BEHALF

Aman Sanghera

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Michael Aaron Spidel
Kwikwexwelhp Healing Village
Harrison Mills, B.C.

FOR THE PLAINTIFF
ON HIS OWN BEHALF

Myles J. Kirvan
Deputy Attorney General of Canada
Vancouver, British Columbia

FOR THE DEFENDANTS