

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190807

Docket: A-101-18

Citation: 2019 FCA 215

**CORAM: GAUTHIER J.A.
WEBB J.A.
RIVOALEN J.A.**

BETWEEN:

RADU HOCIUNG

Appellant

And

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Toronto, Ontario, on May 23, 2019.

Judgment delivered at Ottawa, Ontario, on August 7, 2019.

REASONS FOR JUDGMENT BY:

GAUTHIER J.A.

CONCURRED IN BY:

**WEBB J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] Mr. Hociung appeals the order of the Federal Court (per Gleeson J.) dated March 15, 2018 (T-1450-15) dismissing his motion to amend his statement of claim made in writing pursuant to Rule 369 of the Federal Courts Rules, SOR/98-106.

[2] In a companion appeal in file A-102-18, this Court dealt with Mr. Hociung's appeal in respect of the judgment of the Federal Court granting the respondent's motion for summary judgment and dismissing Mr. Hociung's action.

[3] As noted in our reasons granting the appeal in part in file A-102-18 (2019 FCA 214), the findings of our Court in that file have an impact on the merits of some of the proposed amendments. The factual background and the general nature of the amendments are described in paragraphs 1 to 11 of our reasons. I need not repeat them here (see also paragraph 1 of the order of the Federal Court).

[4] The Federal Court dismissed Mr. Hociung's motion on the following bases:

- 1) The action brought pursuant to section 135 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.), is limited to whether or not a contravention of that statute and any other plea for relief must be pursued separately. The substantive aspects of Mr. Hociung's proposed amendments consist of pleas for criminal penalties, damages and for extraordinary remedies pursuant to section 18.1 of the *Federal Courts Act*, R.S.C., 1985, c. F-7, and are beyond the scope and intent of section 135 of the *Customs Act*.
- 2) The claim for damages arising from the performance by officers of their duties under the *Customs Act* must be brought within the limitation period set out at subsection 106(1) of the *Customs Act*, and in this case, the limitation period has passed.

- 3) The absence of a reasonable prospect of success is a valid basis upon which a court may dismiss a motion for leave to amend. While elements of the proposed amendments (see for example the proposed amendments at paras 1(i) and 2) supplement the original claim by adding some factual details or update the plaintiff's contact information, these elements do not substantially update or change the claims.

[5] In file A-102-18, this Court held that Mr. Hociung's action was not limited to an appeal under section 135 of the *Customs Act* and that Rule 101, allowing for joinder of causes of action applied. That said, our Court also confirmed that the allegations relating to the appeal under section 135 could be dismissed. This confirmation made it obvious that the officers involved in the seizure of Mr. Hociung's coins, as well as the prosecution of his opposition to the said seizure, were acting in the performance of their duties when they concluded that Mr. Hociung had contravened section 12 of the *Customs Act* when he failed to report these goods upon re-entering Canada after his day trip to the United States.

[6] This also means that any amendments to new claims in tort relating to the said seizure, or the fact that Mr. Hociung contravened section 12 (see for example the proposed amendment at paras 6 c) to g)) were properly dismissed for they clearly have no chance of success.

[7] Furthermore, the Federal Court has no inherent criminal jurisdiction, and I agree that any amendments, such as the references to courts having jurisdiction under section 469 of the *Criminal Code*, R.S.C. 1985, c. C-46 (C.C.), to deal with allegations of fraud as defined under

the C.C., to criminal conduct (such as indictable offences as per section 467.11 of the C.C., and to criminal penalties were also properly dismissed.

[8] That said, this Court did not agree with the Federal Court that the action based on alleged threats of violence could be dismissed simply on the basis referred to in the motion for summary judgment. This means that amendments relating to this claim such as the addition of the Crown as a defendant (section 3 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50) could not be dismissed on the Federal Court's interpretation of section 135 of the *Customs Act*.

[9] Thus, although the majority of the amendments could be dismissed by the Federal Court, it could not dismiss them all.

[10] Should Mr. Hociung decide to pursue his action further, the parties may be able to agree on which amendments are still in play, and they should have an opportunity to present submissions should they not be able to do so. Furthermore, Mr. Hociung may have to clarify certain things such as what portion of the damages are claimed solely as a result of the alleged threats of violence (see for example paragraph 17(a)) Whatever they may agree on should be submitted to the Federal Court.

[11] Thus, in my view, the matter should be remitted to the Federal Court to enable it to reassess whatever amendments are still sought after considering our reasons in file A-102-18 and the parties' additional representations, if any.

[12] I conclude that I would grant the appeal in part, quash the order of the Federal Court and remit the matter back for reconsideration. As in file A-102-18, I believe that each party should bear their own costs. I will note for the benefit of Mr. Hociung that disbursements arising from the fact that he now lives outside of Canada would not have been granted in any event.

“Johanne Gauthier”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
Marianne Rivoalen J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE GLEESON DATED
MARCH 15, 2018, NO. T-1450-15**

DOCKET: A-101-18

STYLE OF CAUSE: RADU HOCIUNG v. MINISTER
OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 23, 2019

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: WEBB J.A.
RIVOALEN J.A.

DATED: AUGUST 7, 2019

APPEARANCES:

Radu Hociung FOR THE APPELLANT
ON HIS OWN BEHALF

Eric Peterson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada