Federal Court of Appeal | Cour d'appel fédérale

Date: 20140218

Docket: A-367-12

Citation: 2014 FCA 47

CORAM: **PELLETIER J.A.**
STRATAS J.A.
NEAR J.A.

BETWEEN:

ZOLTAN ANDREW SIMON

Appellant

and

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA
as represented by
The Attorney General,
The Minister of Human Resources and Skills Development (including Service Canada),
and
The Hon. Diane Finley, and Sharon Shanks
(the latter persons both in their public/ representative and personal capacity),
and
The federal authority* that approved the web site
http://www.scc-csc.gc.ca/ar-lr/gl-ld/gl-ld-eng.asp#1
[*Mr. Roger Bilodeau, according Ms. Janice Cheney's pleadings]

Respondents

Heard at Calgary, Alberta, on November 26, 2013.

Judgment delivered at Ottawa, Ontario, on February 18, 2014.

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: PELLETIER J.A.
STRATAS J.A.

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REASONS FOR JUDGMENT

NEAR J.A.

[1] Zoltan Simon appeals from the July 20, 2012 orders of the Federal Court in which Justice Tremblay-Lamer struck his statement of claim without leave to amend.

I. Facts and Procedural History

[2] Mr. Simon sponsored a former spouse to come to Canada in 1999. His former spouse may have improperly received social assistance benefits from the government of British Columbia. Mr. Simon was concerned that he may, as a result, owe a debt to the province of British Columbia for the amount of social benefits paid to his former spouse.

[3] In 2009, Mr. Simon wrote to Sharon Shanks, Director General of the Canada Pension Plan (CPP)/Old Age Security Division inquiring about the possible future garnishment of his future pension benefits given his possible sponsorship debt to the province of British Columbia. Her response, to the effect that there may be garnishment action in the future once he became eligible for and began receiving CPP, did not satisfy Mr. Simon and in 2011, he wrote another letter concerning the same subject matter to then-Minister of Human Resources and Skills Development, the Honourable Diane Finley. Mr. Simon states that he did not receive a response to this letter nor to a subsequent letter he wrote to the Minister on the same topic.

[4] Mr. Simon then attempted to "appeal" what he considered to be improper conduct on the part of Ms. Shanks and Minister Finley directly to the Supreme Court of Canada. Mr. Simon was advised by Mary Ann Achakji, a registry officer at the Supreme Court of Canada, that this was not

possible. Mr. Simon states that Ms. Achakji consulted with Roger Bilodeau, Q.C., the Registrar of the Supreme Court of Canada, with respect to this matter. Mr. Simon was given documents concerning the proper procedure and was referred to the Supreme Court website.

[5] Mr. Simon then brought an action against the Ministry of the Attorney General, the Ministry of Human Resources and Skills Development, Minister Finley and Ms. Shanks (hereinafter collectively referred to as the Crown respondents) and against the Registry of the Supreme Court of Canada, Ms. Achakji, Mr. Bilodeau, and the federal authority that approved the website http://www.scc-csc.gc.ca/ar-lr/gl-ld-eng.asp#1 (hereinafter collectively referred to as the Supreme Court respondents). The four individuals were named in both their personal and official/representative capacities.

[6] The statement of claim sets out numerous claims and allegations. However, it would seem that the main claim against the Crown respondents concerns a possible future garnishment action against Mr. Simon's future pension benefits. The main claim against the Supreme Court respondents is for failing to perform their legal obligations and accept his direct appeal for filing. Mr. Simon sought damages of $900,000.00.

[7] Both the Crown respondents and the Supreme Court respondents brought motions to strike the statement of claim on the grounds that it did not disclose a cause of action and that it did not plead sufficient material facts in support of the claims made.

[8] On July 20, 2012, the judge issued two orders striking the statement of claim after considering whether, pursuant to Rule 221 of the *Federal Courts Rules*, S.O.R./98-106, the statement of claim constituted an acceptable pleading and stated a cause of action.

[9] The judge found, with respect to Ms. Shanks and Minister Finley in their personal capacities, that she lacked jurisdiction to consider what she characterized as essentially common law torts without the presence of any body of federal law. She did not comment on whether the Federal Court has jurisdiction with respect to Ms. Shanks and Minister Finley in their representative capacities as officials of the federal government. In addition, the judge found, with respect to the Crown respondents, that it was plain and obvious on the facts as pleaded that the action could not succeed given that the "main claim in the pleading is to the alleged effect of a possible future administrative decision that could be subject to a review procedure; allegations regarding hypothetical decisions do not disclose a reasonable cause of action (*Operation Dismantle v Canada*, [1985] 1 S.C.R. 441 at paras. 30 and 31)" [emphasis deleted].The judge also expressed concern that the statement of claim did not contain a minimum level of fact disclosure.

[10] The judge issued a separate order with respect to the Supreme Court respondents. She found that "the Federal Court has no jurisdiction to declare any appeal to the Supreme Court of Canada constituting an appeal as of right and the subject matter of Mr. Simon's action for damages and declaratory relief is not based on a law of Canada." As a result, she found that the Federal Court did not have jurisdiction over the subject matter and that it was plain and obvious that the action could not succeed.

[11] Overall, the judge found the statement of claim to be vexatious, an abuse of process and devoid of merit as it did not state a viable cause of action.

[12] Mr. Simon now appeals to this Court. As against the Supreme Court respondents, Mr. Simon only appeals in relation to the federal authority that approved the website http://www.scc-csc.gc.ca/ar-lr/gl-ld-eng.asp#1.

II. Standard of Review

[13] To overturn the judge's orders, the appellant must show that the judge has proceeded on a wrong principle of law, the judge has seriously misapprehended the facts, or an obvious injustice would result. See *Apotex Inc. v. Canada (Governor in Council)*, 2007 FCA 374.

III. Analysis

[14] At the outset of the hearing before this Court, Mr. Simon explained that his action against the named individuals in his statement of claim was with respect to their actions as servants of the Crown and not in their personal capacities. Thus, with respect to the narrow issue of whether the Federal Court has jurisdiction over the alleged negligence of servants of the Crown, pursuant to the provisions of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Federal Court does have jurisdiction to consider whether the Crown was vicariously liable for the actions of its servants. Counsel for the Crown respondents conceded that such was the case in submissions made before this Court at the hearing of this matter. To the extent that the judge did not consider the possibility that the individuals were being sued in their official as well as their personal capacities, which was evident from the style of cause, this constitutes an error on the part of the judge.

However, in my view this error makes no difference to the result of this appeal as a viable cause of action must also be disclosed in any action taken before the Federal Court.

[15] The judge properly considered Rule 221 of the *Federal Courts Rules*, and struck the statement of claim in its entirety, finding that it was plain and obvious on the facts as pleaded that the action could not succeed. She concluded that the claims made by Mr. Simon with respect to the Crown respondents were based upon "an alleged effect of a possible future administrative decision" and found that any possible damage had not "yet materialized" and concluded that such allegations did not disclose a viable cause of action. She also determined that, with respect to the Supreme Court respondents, the Federal Court had no jurisdiction to declare any appeal to the Supreme Court of Canada an appeal as of right and thus concluded that no viable cause of action had been raised. Mr. Simon has not demonstrated any error in this reasoning that would warrant the intervention of this Court on the basis of paragraph 13, above.

[16] There is nothing in the record before this Court that would warrant our intervention. The judge reviewed the statement of claim and found it to be seriously deficient and to disclose no viable cause of action.

[17] In his notice of appeal, Mr. Simon also alleged that he was denied procedural fairness, but he did not provide particulars or expand on this ground in his memorandum of fact and law. He did so briefly in oral argument. When the respondents filed their motions to strike in the Federal Court, Mr. Simon did not file a responding motion record on time. Nor did he apply for an extension of time to file his record. On this basis the judge issued a direction that his record not be accepted for

filing. Where a respondent opposes a motion being disposed of in writing without an oral hearing, Rule 369(2) requires that party to file its record within 10 days of being served. Mr. Simon's failure to comply with this Rule does not amount to a denial of his rights to procedural fairness.

[18] Mr. Simon also alleged that the judge was biased. There is no evidence in the record that "an informed person, viewing the matter realistically and practically—and having thought the matter through—[would] conclude" that the judge exhibited any indicia of bias in this matter (*Committee for Justice and Liberty et al. v. National Energy Board et al.*, [1978] 1 S.C.R. 369 at 394).

[19] There has been no denial of procedural fairness to Mr. Simon that warrants the intervention of this Court.

IV. Conclusion

[20] Accordingly, I would dismiss the appeal with costs fixed in the amount of $1,500, with $750 payable to the Crown respondents and $750 payable to the remaining Supreme Court respondent.

"David G. Near"
J.A.

"I agree
J.D. Denis Pelletier J.A."

"I agree
David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-367-12

APPEAL FROM THE ORDERS OF THE HONOURABLE MADAM JUSTICE TREMBLAY-LAMER DATED JULY 20, 2012

STYLE OF CAUSE:	ZOLTAN ANDREW SIMON v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA *et al.*
PLACE OF HEARING:	CALGARY, ALBERTA
DATE OF HEARING:	NOVEMBER 26, 2013
REASONS FOR JUDGMENT BY:	NEAR J.A.
CONCURRED IN BY:	PELLETIER J.A. STRATAS J.A.
DATED:	FEBRUARY 18, 2014

APPEARANCES:

Zoltan Andrew Simon	ON HIS OWN BEHALF
Jaxine Oltean	FOR THE RESPONDENT, HER MAJESTY THE QUEEN
Janice E. Cheney	FOR THE RESPONDENT, THE FEDERAL AUTHORITY THAT APPROVED THE SUPREME COURT WEBSITE

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENTS