

Federal Court



Cour fédérale

Date: 20151209

Docket: T-791-15

Citation: 2015 FC 1368

Ottawa, Ontario, December 9, 2015

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

JOHN CHARLES BEIMA

Plaintiff

and

PAIGE MACPHERSON

Defendant

ORDER AND REASONS

[1] This is a motion on behalf of the Defendant, Paige MacPherson, legal counsel for Canada Revenue Agency [CRA], for an order:

1. striking the Statement of Claim, with costs; or
2. in the alternative, an order:
 - a) striking all portions of the Statement of Claim which:
 - i) attack the validity of tax assessments and proceedings in other courts;
 - ii) raise matters outside the jurisdiction of this court;

- iii) allege wrongdoing against non-parties to the action; and
- b) extending the time for the Defendant to serve and file her Statement of Defence until 30 days after the disposition of this motion;

[2] The Plaintiff, Mr. Beima, is seeking \$50,000,000.00 CAD against the Defendant, Ms. Paige MacPherson, who is an employee of the Department of Justice, Canada and who was assigned as legal counsel to represent the Crown in tax litigation involving Mr. Beima.

[3] The complaints against the Defendant relate to events which occurred during, and leading up to, an audit, a tax assessment, a proceeding in the Tax Court of Canada and an application for a compliance order in this Court. I heard this motion in conjunction with a motion to strike in T-790-15 and my reasons and order herein should be read in conjunction with my reasons and order in T-790-15, because both claims arise out of the same context and background.

[4] The legal basis for this claim is never made clear in the Statement of Claim but, in the Plaintiff's written response to this motion, he says that:

I respectfully submit this claim is for damages as a result of criminal activities, the violation of my rights, the violation of various portions of Canadian Acts, negligence, malicious actions, lawyer misconduct, the endangerment of my life, the endangerment of my son's life and safety, and more.

[5] For the same reasons, as I have decided and set out in my reasons and order in T-790-15, Mr. Beima has not established how this Court has the jurisdiction to hear his allegations of "criminal activities," "the violation of my rights," "the violations of various portions of Canadian

Acts,” “malicious actions,” “lawyer misconduct,” “the endangerment of my life,” “the endangerment of my son’s life and safety,” “and more.”

[6] If it is anything, Mr. Beima’s claim against the Defendant appears to be a \$50,000,000.00 negligence claim against opposing counsel for various dealings that the Plaintiff has had with CRA. This Court has no jurisdiction to decide such a common law tort claim between subjects. See *Humby v Canada (Attorney General)*, 2009 FC 1238 at paras 17 and 18. Furthermore, opposing counsel does not owe a duty of care to the Plaintiff. See *Biron v Aviva Insurance Co*, 2014 ONCA 558 at para 6.

[7] Although Mr. Beima does not mention it, s 17(5)(b) of *Federal Courts Act*, RSC 1985, c F-7 [Act] grants concurrent jurisdiction to entertain claims against persons in relation to the performance of their duties as servants or officers of the Crown. However, Mr. Beima has not identified a statutory source for the liability that he seeks to rely upon, or for how the conduct of the Defendant was not authorized by the federal legislation under which she purported to act. In addition, the fact that a power allegedly misused by a public servant emanates from a federal law does not mean there is federal law to support the grant of jurisdiction. The rights arising from such misuse of power or breach of statutory duty, including the tort of misfeasance in public office, remain emanations of provincial law. In *Stephens v The Queen*, [1982] CTC 138, 26 CPC 1, 40 NR 620 (Fed CA), the Court held that an action in tort against Crown servants (the allegation was that they had acted outside their authority under the *Income Tax Act*) was not founded in federal law. The Court concluded that despite the necessary application of the provisions of a federal act to question the validity and justification of the defendant’s actions, the

right to damages is created by provincial law. *Pacific Western Airlines Ltd v The Queen*, [1979] 2 FC 476, 13 CPC 299, 105 DLR (3d) 44 (TD); affirmed [1980] 1 FC 86, 14 CPC 165, 105 DLR (3d) 44 (CA) tells us, in relation to what is now s 17(5)(b) of the *Act*, that the impleading of a Crown servant is not itself existing federal law on which a claim in negligence or otherwise can be founded and entertained by the Federal Court. Mr. Beima has not established in the present case how the actions of the Defendant (a claim in negligence or otherwise) can be entertained by the Federal Court.

[8] As regards any other claims which the Plaintiff is attempting to bring, my findings and conclusions in T-790-15 apply, *mutatis mutandis*, to this action. The allegations against the Defendant do not make out any cause of action justiciable in this Court or that is not a collateral attack upon other Court proceedings that are an abuse of process in this Court. The pleadings are defective for many of the same reasons set out in my reasons and order in T-790-15 but, once again, I see no point in allowing Mr. Beima to amend when he has done nothing to establish that this Court has the jurisdiction to hear his claims against the Defendant.

ORDER

THIS COURT ORDERS that

1. The Statement of Claim is struck with costs to the Defendant;
2. There is no leave to amend.

“James Russell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-791-15

STYLE OF CAUSE: JOHN CHARLES BEIMA v PAIGE MACPHERSON

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: SEPTEMBER 14, 2015

ORDER AND REASONS: RUSSELL J.

DATED: DECEMBER 9, 2015

APPEARANCES:

John Charles Beima ON HIS OWN BEHALF

Wendy Bridges FOR THE DEFENDANT

SOLICITORS OF RECORD:

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