Federal Court Cour fédérale

Date: 20160222

Docket: T-135-16

Citation: 2016 FC 235

Vancouver, British Columbia, February 22, 2016

PRESENT: Prothonotary Roger R. Lafrenière

BETWEEN:

RICHARD JOSEPH BERGERON

Plaintiff

and

**CORRECTIONAL SERVICE OF CANADA,
BOWDEN INSTITUTION - ALBERTA, AND
MATSQUI INSTITUTION - BRITISH COLUMBIA**

Defendants

ORDER AND REASONS

[1] This is a motion in writing on behalf of the Defendants for an order striking the Statement of Claim and for other incidental relief. The Plaintiff has taken no position on the motion although duly served.

[2] On January 20, 2016, the Plaintiff, who is self-represented, filed a Statement of Claim which consists of two short paragraphs. In light of their brevity, the paragraphs are reproduced below in their entirety.

> 1. The Plaintiff claims the CSC did commit fraud on the Plaintiff by charging him $50.00 room and board on his monthly WCB cheque every month. It was also a violation of Commissioner's Directive 860-21. From October 2010 to Sept. 2013, in October 2013 I was charged $180.00 for room and board totals $1980 plus $2.05 fraud on postage.
>
> 2. Plaintiff claims Matsqui CSC committed fraud on him via depriving him of pay from September 2014 to present so approximately $320.00.

I. Motion to Amend the Style of Cause

[3] The Deputy Attorney General of Canada seeks an order removing "Correctional Service of Canada" (CSC), "Bowden Institution - Alberta" and "Matsqui Institution – British Columbia" as parties to the action and substituting Her Majesty the Queen as the Defendant.

[4] CSC is responsible for managing institutions of various security levels and supervising offenders under conditional release in the community. It operates under the rule of law and, in particular, the *Corrections and Conditional Release Act*, SC 1992, c. 20 [CCRA] which provides its legislative framework. Bowden Institution and Matsqui Institution are operated by CSC for the care and custody of inmates.

[5] To be sued, a defendant must be a natural person, a body corporate, or a body legislatively endowed with the capacity to be sued. There is nothing in the CCRA or the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50 [CLPA] suggesting that it was intended by Parliament that CSC or federal penitentiaries should have the capacity to be sued in this Court. In fact, these entities act through the conduct of individual Crown servants.

[6] Section 3(b) of the CLPA provides that the Crown is vicariously liable for the torts committed by its servants and agents. Section 48 of the *Federal Courts Act*, RSC 1985, c. F-7 [FCA] describes a procedure for instituting proceedings against the Crown, including the payment of the required filing fee and service on the Crown by filing the required document with the Court. Subsection 48(1) states:

> 48. (1) A proceeding against the Crown shall be instituted by filing in the Registry of the Court the original and two copies of a document that may be in the form set out in the schedule and by payment of the sum of two dollars as a filing fee.

[7] In the form set out in the schedule to the FCA "Her Majesty the Queen" is named as the defendant. I should also note that the definitions set out in section 2 of the FCA provide that for the purposes of the *Act* "Crown" means Her Majesty in right of Canada.

[8] I conclude that the CSC and the two penitentiaries were improperly named as Defendants and that the style of cause should be amended by removing the three entities and substituting Her Majesty the Queen in right of Canada as the sole Defendant.

II. Motion to Strike the Statement of Claim

[9] The Deputy Attorney General of Canada also seeks an order striking the Statement of Claim on the grounds that it does not contain the necessary facts to support an action in fraud and accordingly does not disclose a reasonable cause of action.

[10] The test to be applied on a motion to strike a pleading under Rule 221(1)(a) of the *Federal Courts Rules* can briefly be stated as follows. On the assumption that the facts stipulated in the statement of claim can be proven, the question is whether it is "plain and obvious" that the pleading discloses no reasonable cause of action. Only if the action is certain to fail because it contains a radical defect should it be struck: see *Hunt v Carey*, 1990 CanLII 90 (SCC), [1990] 2 CR 959.

[11] The threshold for sustaining a pleading is not high. However, in the context of this case, where fraud is alleged, the rules for pleading fraud contained at Rule 181 must be adhered to.

[12] The elements that must be pleaded in order to establish the tort of fraud/fraudulent misrepresentation are the following:

(a) a false representation was made by the defendant;

(b) that the defendant knew was false;

(c) the defendant made the representation with the intention of deceiving the plaintiff;

(d) the plaintiff was induced by the representation to alter his position; and

(e) damages resulted.

[13] The Plaintiff has failed to plead any particulars of fraud, such as what specific representation was made to him, what was false in the said representation, who made the representation and when the representation was made. The Plaintiff has also failed to plead that the person (or persons) who made the representation intended to deceive the Plaintiff or induce him to act or alter his position. These are all required elements of the tort of fraud: *Bruno Appliance and Furniture, Inc v Hryniak*, 2014 SCC 8 (CanLII) at paras 19 and 20.

[14] The Statement of Claim contains nothing more than bald allegations of fraud and legal conclusions. Moreover, there is no clear prayer for relief, making it difficult to ascertain whether the Plaintiff is intending to proceed by way of ordinary action or simplified action.

[15] It is plain and obvious that the Plaintiff's claim discloses no reasonable cause of action and has no reasonable prospect of success. In the absence of any submissions from the Plaintiff establishing otherwise, I can only conclude that the radical deficiencies in the pleading cannot be cured by amendment.

III. Conclusion

[16] For the above reasons, I conclude that the Defendants' motion should be granted. The style of cause shall be amended by substituting Her Majesty the Queen in right of Canada as the Defendant. The Statement of Claim shall also be struck, without leave to amend.

[17] I end by observing that section 90 of the CCRA establishes a grievance procedure to fairly and expeditiously resolve inmate complaints relating to the actions or decisions of CSC staff members. The Plaintiff may wish to avail himself of the grievance procedure to redress the substance of his complaints.

ORDER

THIS COURT ORDERS that:

1. The style of cause is amended by removing Correctional Service of Canada, Bowden Institution - Alberta and Matsqui Institution – British Columbia and substituting Her Majesty the Queen in right of Canada as the Defendant.

2. The Statement of Claim is struck out, without leave to amend.

3. Costs of the motion, hereby fixed in the amount of $150.00, inclusive of disbursements and taxes, shall be paid by the Plaintiff to the Defendant.

"Roger R. Lafrenière"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-135-16
STYLE OF CAUSE:	RICHARD JOSEPH BERGERON v CORRECTIONAL SERVICE OF CANADA, BOWDEN INSTITUTION - ALBERTA, AND MATSQUI INSTITUTION - BRITISH COLUMBIA

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	LAFRENIÈRE P.
DATED:	FEBRUARY 22, 2016

WRITTEN REPRESENTATIONS BY:

Richard Joseph Bergeron	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Philippe Alma	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

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