Federal Court  Cour fédérale

Date: 20160427

Docket: T-1276-15

Citation: 2016 FC 475

Ottawa, Ontario, April 27, 2016

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

STU PEARCE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

[1] Mr. Stu Pearce (the "Plaintiff") appeals from the Order dated October 14, 2015 by which Prothonotary Morneau granted the motion brought by Her Majesty the Queen (the "Defendant") to strike the Statement of Claim issued on July 30, 2015. In his Order, Prothonotary Morneau struck out the Statement of Claim without leave to amend.

[2] Mr. Pearce is a resident of Port Aux Basques, Newfoundland and Labrador. He commenced this action on July 30, 2015, seeking the following relief:

a) An Order that the defendant honour Her obligations to the applicant, *inter alia*, as outlined in Article 7 of Schedule B of the *Constitution Act*, 1982.

b) An Order that the defendant arrange for the return of care and control of the applicant's security to him and it is the applicant, not the *Constructive Registered Holder*, who is "*entitled to vote, to receive notices, to receive any interest, dividend or other payment in respect of the security*". [the bold text is taken from Section 93(1) of the Bank Act.]

c) An Order that the defendant arrange for the transfer of care and control over the applicant's patrimony, the remaining portion of the Consolidated Revenue Fund that represents the "*interest, dividend or other payment in respect of the* (applicant's) *security*".

d) An Order that the defendant pay damages to the applicant in the amount of $50,000,000.00.

e) An Order that the defendant pay the applicant $50,000,000.00 in punitive damages.

f) An Order to cease and desist hindering the applicant in his expression and operation of his individual rights and fundamental freedoms by allowing the applicant to use Promissory Notes without interference of any representative of the defendant's Bank OR the defendant.

g) An order that the defendant safeguard the applicant's rights, *inter alia*, as expressed in Article 7 of the Charter, "*Everyone has the right to life, liberty and security of the person"*. The applicant, a Human Being, has the right to the security of his person and no one can deprive him of this right.

[3] The Defendant submitted its Notice of Motion on August 31, 2015, for consideration without personal appearance pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the " Rules"), relying on Rule 221(1)(a) and 221(1)(c). The Prothonotary granted the motion on the basis that the Statement of Claim does not disclose a reasonable cause of action and is scandalous, frivolous and vexatious.

[4] By Notice of Motion dated October 25, 2015, the Plaintiff appealed against that Order, setting out the following grounds of appeal:

> …
>
> 8. The *Federal Courts Act, inter alia*, Sections 3, 4, and 20(2), confirms that the *Federal Courts* have law and equitable jurisdiction and the act of striking the applicants' *Claims* was an absolutely inequitable act and when law and equity conflict, equity is to prevail.
>
> 9. Prothonotary "Morneau's" Order is inequitable because the applicant's *Statements of Claim* does indeed plead *material facts* and disclose several *reasonable causes of action*. The applicant is not a lawyer and cannot be held to the same standard of "form" as a lawyer and if the Claim is deficient in any manner of form, leave to amend ought to be the route to take, not striking the Claim.
>
> 10. The *Claim* was "heard and struck" without the applicant having any opportunity to argue the "*Merits" (cause of action), inter ilia*, of his claim as Counsel for the Defendant SARAH DRODGE, in her letter to the applicant, dated Sept. 15, 2015, wrote; "*Moreover there is no reason to permit the Plaintiff to be present evidence in response to the Defendants motion"*, " *To strike the claim*" .
>
> 11. Thus rendering the applicant voiceless and denying the applicant, "Access To The Courts" and in doing so by her actions, is *"Perverting the course of Justice"*.
>
> 12. Maxim: *"Equity will not suffer a wrong to be without a remedy*".
>
> 13. The decision of Prothonotary Morneau is aimed at the destruction of the applicants' fundamental rights and freedoms, *inter alia*, denying access to a Court of Law to obtain remedy pursuant to Article 24 of the Charter.
>
> 14. The actions of Prothonotary "Morneau" brings the *administration of justice* into disrepute and creates reasonable apprehension of bias on the part of Prothonotary "Morneau".
>
> 15. The actions of Prothonotary "Morneau", are "Subverting the course of Justice".
>
> 16. The foundation *cause of action* contained in the applicant's *Claim* can be summarized as follows:

a. There can be no argument that the land and natural wealth and resources of this land mass belongs, speaking only for himself, to the applicant. [the Royal Law establishes this fact]

b. There can also be no argument that the applicant does not possess and control those resources and that the defendant does.

c. There can be no argument that the defendant then, must be managing those resources for the applicant, and that results in a Trust, with the defendant as Trustee and the applicant as Beneficiary.

d. There can also be no argument that the defendant is selling those resources (royalties) for money and keeping the money.

e. That is a big, big, problem because do we not have criminal activity here, such as unjust enrichment or theft?

17. Whatever it may be called, this little summary reveals the foundation of the applicant's *Claim* and there can be no argument that the applicant does indeed have a *reasonable cause of action* against the defendant.

18. The defendant either wittingly or unwittingly changed the style of the spelling of the applicant's name from the way it was presented in the *Style of Cause* of the applicant's *Claim* from upper and lower case letters (e.g. Stu Pearce) to ALL CAPS (e.g. STU PEARCE).

19. This act changes the status of the applicant from a human being to that of an artificial person and the venue of the court from non-statutory to statutory.

20. The applicant has been patient and extended sufficient time to allow the Court to do the just and equitable thing, but the Court has failed to do so.

21. The applicant claims the Trust.

22. Therefore, the applicant, private person (human being) with full capacity and beneficiary of the Trust, respectfully demand s that this file be sealed and move in exclusive equity in the High Court of Chancery (*in Chambers*) where the defendant, or Her appropriate agent, such as the Public Guardian and Trustee, as Trustee, will provide a complete accounting of the value of the

> instant private Trust and all other Trusts created in the applicants' names dating back to, *inter alia,* February 24, 1954 (*the dated of registration of the birth of the applicant*).

[5] The Plaintiff supported his Notice of Motion by a motion record dated October 26, 2015. On January 12, 2016, he filed a further motion record including his affidavit sworn on January 8, 2016.

[6] The Defendant filed a responding motion record on November 5, 2015 and a further responding motion record on January 18, 2016. The matter was heard in St. John's, Newfoundland and Labrador on January 20, 2016.

[7] The Defendant argues that the Plaintiff has failed to show any error of law on the part of the Prothonotary or any error upon which this appeal could be allowed. The Defendant also raises an argument about the timeliness of the appeal.

[8] The Defendant argues that the appeal was not filed within the time limited under the Rules, that is 10 days from the date of the order appealed against. The Prothonotary's Order is dated October 14, 2015 and the Plaintiff's Notice of Motion was filed on October 26, 2015. The Defendant raises this argument about timeliness in both her original response to the Plaintiff's motion and in oral submissions.

[9] In my opinion, this argument cannot succeed. The motion was before the Prothonotary without personal appearance, that is pursuant to Rule 369 of the Rules. His Order was made on October 14, 2015 and according to the entries in the "A" file, the Order was sent out by

registered mail on the same day. There is nothing on the file, such as a signed receipt, to indicate when it was received by the Plaintiff.

[10] Surely, the time did not begin to run against the Plaintiff for the filing of his appeal until he had received the Order. This point was addressed by the Newfoundland Court of Appeal in *City of St. John's v. F.W. Woolworth Co. Limited* (1980), 130 D.L.R. (3d) 171.

[11] There is nothing on the record to show that the Plaintiff was out of time in filing his notice of appeal.

[12] At the beginning of the hearing, the Plaintiff asked that he be sworn in. This request was refused since the hearing was an appeal from an order of a prothonotary and the Plaintiff, who was self-represented, had no right to present evidence pursuant to Rule 221(2) of the Rules.

[13] In the course of the hearing, the Plaintiff sought leave to file a "bill of equity". This request was also refused, on the grounds that no evidence was admissible upon the hearing of an appeal.

[14] The Plaintiff also sought an order sealing the file. That request was refused because there was no basis to seal the file and the request is contrary to the fundamental principle in Canadian law about open courts and public hearings.

[15] The Plaintiff further indicated that he had planned to bring a motion excluding Counsel for the Defendant from the hearing. No such motion was presented. In any event, the Defendant was entitled to be represented by Counsel of her choice and there was no apparent ground for granting such a request.

[16] Pursuant to Rule 119, the Plaintiff was allowed to represent himself. He sought standing as the representative for Mr. James H. Ford, the Plaintiff in cause T-1275-15. This request was also refused, since the Rules do not provide that one self-represented party may act on behalf of another self-represented party. However, Mr. Ford was invited to speak and asked if he was satisfied that the representations made by the Plaintiff would also apply to his appeal, since the two appeals are virtually mirror images of each other. Mr. Ford was also given the opportunity to speak on his own behalf.

[17] In both his written and oral submissions, the Plaintiff argued that he was invoking the equitable jurisdiction of this Court to recognize his claim against Her Majesty, on the basis of a trust created between him and Her Majesty relative to his ownership of the natural resources of the earth which are managed by the Defendant. The Plaintiff characterized this as a taking of his property, in trust, for which Her Majesty must account.

[18] In his submissions on the equitable jurisdiction of this Court, the Plaintiff referred repeatedly to the *Judicature Act* of Newfoundland, R.S.N.L. 1990, c. J-4, in particular those provisions dealing with the Supreme Court of Newfoundland and Labrador's jurisdiction to grant equitable relief.

[19] In response, the Defendant submitted that the Plaintiff had failed to identify any error in the Order of the Prothonotary which would justify the intervention of this Court.

[20] The Prothonotary described the Plaintiff as an "Organized Pseudolegal Commerical Argument" litigant ("OPCA"). In the course of his submission, the Plaintiff said that he did not know what this term means.

[21] The Plaintiff acknowledged that he had received the Motion Record of the Defendant. The Record includes a Memorandum of Fact and Law in which reference is made to the "OPCA" litigants, as discussed at length in the decision in *Meads v. Meads*, [2013] 3 W.W.R. 419.

[22] According to the decision in *Meads*, *supra* at paragraph 4, an OPCA litigant is one who expresses:

> a general rejection of court and state authority … . Arguments and claims of this nature emerge in all kinds of legal proceedings and all levels of Courts and tribunals. This group is unified by:
>
> 1. a characteristic set of strategies (somewhat different by group) that they employ,
>
> 2. specific but irrelevant formalities and language which they appear to believe are (or portray as) significant, and
>
> 3. the commercial sources from which their ideas and materials originate.
>
> This category of litigant shares one other critical characteristic: they will only honour state, regulatory, contract, family, fiduciary, equitable, and criminal obligations if they feel like it. And typically, they don't.

[23] A discretionary order of a prothonotary ought not be disturbed on appeal unless the issue raised in the motion is vital to the final issue of the case, or the order is clearly wrong in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of the facts; see the decision in *Merck & co. v. Apotex Inc.* (2003), 315 N.R. 175.

[24] In this case, the effect of the Order is to dismiss the Plaintiff's action. Accordingly, it is a final Order and subject to a *de novo* review; see the decisions in *R. v. Aqua-Gem Investments Ltd.*, [1993] 2 F.C.R. 425 and *Sauvé v. Canada*, 2011 FC 1074.

[25] In the within proceeding, the Prothonotary dealt with a motion pursuant to Rules 221(1)(a) and 221(1)(c) of the Rules. Since I am considering the appeal on a *de novo* basis, I must consider the initial basis for the Defendant's motion to strike the Statement of Claim.

[26] Rules 221(1)(a) and (c) of the Rules provide as follows:

221. (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	221. (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	a) qu'il ne révèle aucune cause d'action ou de défense valable;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;

[27] Upon a motion to strike out a pleading pursuant to Rule 221(1)(a), the applicable test is whether it is "plain and obvious" that the claim discloses no reasonable cause of action; see *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

[28] The allegations which are capable of being proved must be accepted as true. According to the decision in *Bérubé v. Canada* (2009), 348 F.T.R. 246 at paragraph 24, in order to disclose a reasonable cause of action, a claim must show the following three elements:

i. allege facts that are capable of giving rise to a cause of action;

ii. disclose the nature of the action which is to be founded on those facts; and

iii. indicate the relief sought, which must be of a type that the action could produce and that the Court has jurisdiction to grant.

[29] The Plaintiff broadly complains in his Statement of Claim that the Defendant has breached his fundamental rights. He alleges the Defendant has breached his right to security of the person, his right to an adequate living, his freedom of expression and his liberty, specifically his right to gain his living by work. In this regard, the Plaintiff relies upon section 7 of the *Canadian Charter of Rights and Freedoms, Part 1, Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the "Charter"), *International Covenant on Economic, Social and Cultural Rights*, (1976) 993 U.N.T.S. 13., and the *International Covenant on Civil and Political Rights*, (19 December 1966), 999 U.N.T.S. 171.

[30] The Plaintiff also alleges that the Defendant is a trustee and constructive registered holder pursuant to the *Bank Act*, S.C. 1991, c. 46. He argues that the Defendant is improperly holding his security.

[31] In striking out the Statement of Claim without leave to amend, the Prothonotary properly followed the applicable principles and jurisprudence. Since this appeal is a review *de novo*, where I can decide the issues myself, I will follow and apply the same principles and the case law, in particular the decision of the Alberta Court of Queen's Bench in *Meads*, *supra*.

[32] The Charter challenges made by the Plaintiff do not, by themselves, disclose a reasonable cause of action. The Plaintiff has not set out a sufficient factual foundation or context to adjudicate the claims which he makes.

[33] The Plaintiff appears to be making a generalized challenge to the application, to him, of unnamed statutes. In these circumstances, his claim appears to fall within the circumstances described in Meads, supra at paragraph 379 as "common OPCA litigation".

[34] The Plaintiff's arguments about the Judicature Act are not relevant. That Act governs proceedings in the Supreme Court of Newfoundland, it has no application to proceedings in the Federal Court. As noted by Counsel for the Defendant, the Plaintiff chose to bring his action in this Court. He could equally have brought his action in the Supreme Court of Newfoundland and Labrador where reliance on the Judicature Act alone would be no guarantee that his action could proceed.

[35] As noted by the Plaintiff, this Court enjoys an equitable jurisdiction, pursuant to section 3 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 which provides as follows:

> 3. The division of the Federal Court of Canada called the Federal Court — Appeal Division is continued under the name "Federal Court of Appeal" in English and "Cour d'appel fédérale" in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.
>
> 3 La Section d'appel, aussi appelée la Cour d'appel ou la Cour d'appel fédérale, est maintenue et dénommée « Cour d'appel fédérale » en français et « Federal Court of Appeal » en anglais. Elle est maintenue à titre de tribunal additionnel de droit, d'equity et d'amirauté du Canada, propre à améliorer l'application du droit canadien, et continue d'être une cour supérieure d'archives ayant compétence en matière civile et pénale.

[36] However, that jurisdiction is not exercised in a vacuum. The decision in *Garford Pty Ltd. v. Dywidag Systems International, Canada, Ltd* (2010), 375 F.T. R. 57 (F.C.) at paragraph 8 provides as follows:

> This Court does have some equitable jurisdiction by virtue of section 3 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. This statutory grant allows the Court to apply the rules of equity in cases in which it otherwise has jurisdiction (as for example, in admiralty matters), but it does not give the Court a general jurisdiction in a civil action to consider equitable claims and remedies where the action is based on a statutory cause of action. See *Bedard v. Kellogg Canada Inc.*, [2007] F.C. J. No. 714; 325 F.T.R. 79; 2007 FC 516.

[37] A mere claim for the exercise of equity is not sufficient to establish a cause of action. The Plaintiff has failed to disclose a reasonable cause of action in his Statement of Claim and the

Statement of Claim was properly struck by the Prothonotary. The Plaintiff has failed to show any error of law on the part of the prothonotary and accordingly, this appeal is dismissed.

[38] The Defendant also sought to have the Statement of Claim stuck on the basis of Rule 222(1)(c), that the Statement of Claim is scandalous, frivolous and vexatious.

[39] In considering a motion to strike on these grounds, the Court is required to consider the merits of the claim; see the decision in *Blackshear v. Canada*, 2010 FC 590 at paragraph 12.

[40] A vexatious pleading is one that is so deficient in factual material that the defendant cannot know how to answer; see the decision in *Kisikawpimootewin v. Canada*, 2004 FC 1426**.**

[41] In *Fiander v. Mills* (2015) 1149 A.P.R. 80, Chief Justice Green of the Newfoundland and Labrador Court of Appeal said at paragraph 40 the following about litigants involved in OPCA litigation:

> In this case, this Court has now declared that arguments relating to opting out of legislation, the fractionating of human personality to support claims of not being subject to law and the fanciful use of arguments based on birth certificates to create notions of estates to advance submissions that would otherwise have no rational support in the jurisprudence, have no basis in the law of this jurisdiction. It would therefore be open to a trial court in the future, when made aware of such submissions in other proceedings, to treat those submissions as presumptively vexatious and abusive and to act preemptively to prevent such claims from improperly clogging up the legal system to the cost and prejudice of those who would otherwise have to face and deal with them.

[42] I note that the Plaintiff sought to represent a person in *Fiander*, *supra*. That request was refused. Nonetheless, the fact that the Plaintiff is mentioned by name in that case suggests that he has some personal knowledge about OPCA litigation and OPCA litigants.

[43] In any event, the decision in *Fiander*, *supra* supports the conclusion that the Plaintiff's Statement of Claim in the present proceeding is vexatious and scandalous, and should be struck without leave to amend.

[44] The Defendant seeks elevated costs on this motion. In the exercise of my discretion, I award costs in favour of the Defendant in the amount of $750.00, inclusive of fees, disbursements and GST.

JUDGMENT

THIS COURT'S JUDGMENT is that this appeal is dismissed with costs to the Defendant in the amount of $750.00, inclusive of fees, disbursements and GST.

"E. Heneghan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1276-15
STYLE OF CAUSE:	STU PEARCE V. HER MAJESTY THE QUEEN
PLACE OF HEARING:	ST. JOHN'S, NEWFOUNDLAND AND LABRADOR
DATE OF HEARING:	JANUARY 20, 2016
JUDGMENT AND REASONS:	HENEGHAN J.
DATED:	APRIL 27, 2016

APPEARANCES:

STU PEARCE	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
SARAH DRODGE	FOR THE DEFENDANT

SOLICITORS OF RECORD:

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