Federal Court  Cour fédérale

Date: 20160812

Docket: T-630-16

Citation: 2016 FC 921

Ottawa, Ontario, August 12, 2016

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

RICHARD CADOTTE
NATALIA SOKOLOVA
EKATERINA NOVOSELOVA

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

[1] Is before the Court a motion to strike the statement of claim filed by the Plaintiffs on April 20, 2016. The motion is made pursuant to Rule 221 of the *Federal Courts Rules*, (SOR/98-106):

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	**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

amend, on the ground that it	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;
(b) is immaterial or redundant,	b) qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	c) qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	e) qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court,	f) qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

I. History of the Proceedings

[2] It appears that one of the Plaintiffs, Mr. Richard Cadotte, a Canadian residing in Ontario, has attempted on a number of occasions to obtain visitors' visas for the other two Plaintiffs, Natalia Sokolova and Ekaterina Novoselova. They are citizens and residents of Russia. It appears that Mr. Cadotte and Ms. Sokolova were married in Russia in December 2012. Ekaterina Novosolova is Ms. Sokolova's daughter.

[3] The Plaintiffs allege that "tourists' visas" were denied by the Canadian authorities in June 2011, July 2011, October 2013, December 2014 and March 2015. It appears that none of these rejections was challenged on judicial review.

[4] The Plaintiffs, who are not represented by counsel, chose to issue a statement of claim on April 20, 2016. Mr. Cadotte made a request under Rule 380 for the action to continue as a specially managed proceeding. The request for special case management notes that on April 27 the Defendant offered the Plaintiffs "to file a stop of proceeding", without costs, as there was in their view no valid case against the Crown. That request for a specially managed proceeding was denied by my colleague Madam Justice Tremblay-Lamer who concluded in a Direction issued on May 26, that the request was premature.

[5] Instead of filing a statement of defence within 30 days of service of the statement of claim, the Defendant chose to seek to have the action stricken by a motion dated June 16, 2016.

[6] The motion to strike seems to have coincided with a motion for default judgment on the part of the Plaintiffs on June 17, 2016. Madam Prothonotary Tabib issued an oral Direction on June 23rd. The affidavit of service of the Defendant in respect of the motion to strike was deficient. However, considering that the Plaintiffs attempted to file a reply and that a letter to the Court confirmed that Mr. Cadotte had received the Defendant's motion record, it was decided that the Defendants' motion to strike and to extend time will be considered as a response and cross-motion to the Plaintiffs' motion for default judgment. Furthermore, the Plaintiffs' reply in accordance with Form 171C was ruled premature (no defence had yet been filed) and it was returned to the Plaintiff Cadotte. A letter to the Court, which I have not read, was also returned as such a document is not contemplated by the Rules of this Court. In the end, the Plaintiffs were allowed to serve and file a responding motion record to the Defendant's motion to strike within 10 days of the date of this Direction.

[7] Thus, if a responding motion record to the motion to strike was to be filed by the Plaintiffs, it was due by July 4, 2016. On June 30, 2016, the Registry received some documentation from the Plaintiffs which was meant to be their responding motion record to the motion to strike. That documentation being submitted without proof of service, the Plaintiffs were advised that the documentation could not be received for filing until proof of service had been filed. Proof of service was filed after July 4, 2016, on July 8th. More importantly, the record was deficient on a number of fronts.

[8] Said responding motion record was not accepted for filing "as it has not been served within the deadline specified in the Court's Direction dated June 23, 2016, and as it does not conform to the requirements set out in Rule 365(2) of the *Federal Court Rules*". Such oral Direction was issued by my colleague Mr. Justice Leblanc on July 15, 2016. I note in passing that the documentation that the Plaintiffs sought to file in response to the motion to strike did not have supporting affidavits and there were no written representations. It would have been of very limited assistance.

[9] More than three weeks have now elapsed since the latest oral Direction and more than one month since the last attempt to file a responding record. Nothing has been done in these proceedings, such that is before the Court for decision the motion to strike of June 16, 2016, without the Plaintiffs' response, and the motion for default judgment. Moreover, the motion for default judgment, which was accepted for filing on June 23, 2016, is constituted of the Plaintiffs' general assertions having to do with the statement of defence not having been served and filed within the time set out in the Rules of this Court. Finally, I note that the Defendant's motion to strike, which is considered to be both the response and a cross-motion to the Plaintiffs' motion

for default judgment, seeks an Order such that, if the statement of claim is not to be stricken, the Court extend the time allowed for service and filing of a statement of defence. As a result, the motion for default judgment will be defeated if the motion to strike is successful or the Defendant is allowed to file a statement of defence.

II. Analysis

[10] For the reasons that follow, I have come to the conclusion that the motion to strike should be granted. It is irretrievably deficient.

[11] The Crown is relying on paragraphs 221(1)(a)(c) and (f) of the Rules as it argues that the statement of claim does not disclose a reasonable cause of action, is scandalous, frivolous or vexatious and is otherwise an abuse of the process of the Court.

[12] In essence, the Plaintiffs complain about the fact that visitors' visas were denied on five occasions since June 2011. That is not disputed. However, these rejections appear to have been based on the conclusion that the Russian residents would not leave Canada by the end of the authorized period in this country. Instead of addressing that core issue, the Plaintiffs rely heavily on their applications to obtain a visitor's visa being filled properly. That is largely irrelevant. Indeed, it is ironic that the statement of claim itself speaks in terms of starting a life together and seeking permanent immigration in Canada. One can read at paragraph 18 of the statement of claim that "[d]ue to multiple rejection Natalia wife of Richard who both were hoping to start a life together". Then, the Plaintiffs seek as a remedy in the nature of an injunction, that "Citizens and Immigration submitted to plaintiff Natalia and Ekaterina, visitors visa for the coming

summer and winter holidays and for the ongoing years in an attempt to mend the damage family until they the Plaintiff's Natalia and Ekaterina decide to evoke the permanent immigrations to Canada" [sic]. The cause of action, if any, must be related to the reasons for the rejections. The pleadings would have had to provide the particulars concerning what is alleged to have been wrongful rejections.

[13] The Crown's first argument is to the effect that, at its core, the Plaintiffs are challenging an administrative decision. They should have tried to seek judicial review of these rejections. In support of their contention, the Defendant relies on paragraph 78 of *Canada (A.G.) v TeleZone*, 2010 SCC 62; 2010 3 S.C.R. at 585 [*TeleZone*]:

> [78] To this discussion, I would add a minor caveat. There is always a residual discretion in the inherent jurisdiction of the provincial superior court (as well as in the Federal Court under s. 50(1) of its Act), to stay the damages claim because in its essential character, it is a claim for judicial review with only a thin pretence to a private wrong. Generally speaking the fundamental issue will always be whether the claimant has pleaded a reasonable private cause of action for damages. If so, he or she should generally be allowed to get on with it.

[14] I am not satisfied that because a challenge to an administrative decision could have been launched, the statement of claim of the Plaintiffs could not survive. Indeed, the Court spoke in terms of a residual discretion in *TeleZone,* above. To the extent that the Plaintiffs were injured by the Crown's action, an action before this Court would be available. However, the more difficult question is whether or not these Plaintiffs have "pleaded a reasonable private cause of action for damages" in this case. In my view, the statement of claim is deficient to the point of not disclosing a reasonable cause of action.

[15] In fairness to the Plaintiffs, they are not legally trained and they should not be held to the highest standard concerning the requirements for their statement of claim. Some leeway should be allowed. However, also in fairness, the Defendant is entitled to have sufficient details for the purpose of defending against an action. It is understandable that no statement of defence has been filed because it is very much unclear what the Defendant would have been defending against.

[16] Recently, the Federal Court of Appeal provided guidance as to the requirements for a statement of claim to be sufficient. In *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, Rennie J.A. wrote:

> [16] It is fundamental to the trial process that a Plaintiff plead material facts in sufficient detail to support the claim and relief sought. As the judge noted "pleadings play an important role in providing notice and defining the issues to be tried and that the Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action".
>
> [17] The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a Defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.

[17] As the Federal Court of Appeal put it, "[t]he pleading must tell the Defendant who, when, where, how and what gave rise to its liability" [para. 19]. This is mandatory. This must be done upfront, in the statement of claim.

[18] I have read, re-read and read again the statement of claim. It boils down to complaining about what is considered by the Plaintiffs to be unfair rejection of visa applications that were properly filled. The fact that the paperwork has been done is no guarantee that a visa will issue. Conditions for its issuance must be satisfied. It is as if the Plaintiffs imply some wrong on the basis that the applications required in order to obtain the visas were filled and presented to the authorities. They never provided the particulars of their complaint, the sufficient material facts that are the foundation of proper pleadings. Hence, one can read at paragraph 21 of the statement of claim:

> 21. Natalia Sokolova, Ekaterina Novoselova, Richard Cadotte are accusing Citizen and Immigration of unfairly rejection of proper visa application, wrongfully dismissing and lack of any recours after paying for visa. Rejection visa on unproven facts in the visitors visa. The multiple visa was stated to be good by Anthony Rotta, Jay Aspin, and Kathleen Sigordson. Canada is frauduleny in visa applications. [sic]

For good measure, the Plaintiffs claim that the rejection of the visas is unconstitutional as well as disgraceful, without supporting these allegations with any kind of material, argument or detail.

[19] There is no cause of action, articulated in the statement of claim, just a general allegation that visitors' visas ought to have been issued in view of the fact that applications had been duly filed. How the rejections of visas can be unfair or wrong is never articulated. We are far removed from the who, when, where and how, and what gives rise to the Crown's liability. If the Plaintiffs somehow claim that the visa applications were rejected in a wrongful or fraudulent or abusive manner, they were under an obligation to provide particulars. They did not. My colleague Mr. Justice Manson wrote at paragraph 22 of *Tomchin v The Minister of Public Safety and Emergency Preparedness*, 2015 FC 402:

> [22] As well, any pleading of misrepresentation, fraud, malice or fraudulent intent must provide particulars of each and every allegation; bald allegations of bad faith, ulterior motives or *ultra vires* activities is both "scandalous, frivolous and vexatious", and an abuse of process of this Court (*Federal Court Rules*, Rule 191; *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paras 34-35).

I agree with him. Bald and bold allegations will not do. It is worth quoting at length para. 34 of *Merchant Law Group* as it provides an articulation of the rule, and the importance and reasons for it:

> [34] I agree with the Federal Court's observation (at paragraph 26) that paragraph 12 of the amended statement of claim "contains a set of conclusions, but does not provide any material facts for the conclusions." When pleading bad faith or abuse of power, it is not enough to assert, baldly, conclusory phrases such as "deliberately or negligently," "callous disregard," or "by fraud and theft did steal": *Zundel v. Canada*, 2005 FC 1612, 144 A.C.W.S. (3d) 635; *Vojic v. Canada* (M.N.R.), [1987] 2 C.T.C. 203, 87 D.T.C. 5384 (F.C.A.). "The bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of material fact": *Canadian Olympic Association v. USA Hockey, Inc.* (1997), 74 C.P.R. (3d) 348, 72 A.C.W.S. (3d) 346 (F.C.T.D.). Making bald, conclusory allegations without any evidentiary foundation is an abuse of process: *AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112 at paragraph 5. If the requirement of pleading material facts did not exist in Rule 174 or if courts did not enforce it according to its terms, parties would be able to make the broadest, most sweeping allegations without evidence and embark upon a fishing expedition. As this Court has said, "an action at law is not a fishing expedition and a plaintiff who starts proceedings simply in the hope that something will turn up abuses the court's process": *Kastner v. Painblanc* (1994), 58 C.P.R. (3d) 502, 176 N.R. 68 at paragraph 4 (F.C.A.).

[20] In the circumstances of this case, it would be impossible for the Defendant to properly respond to the statement of claim as filed.

[21] It follows that the motion to strike is granted and the Plaintiffs' motion for summary judgment is dismissed. The costs of this motion go to the Defendant.

ORDER

THIS COURT ORDERS that

1. The statement of claim is struck, without leave to amend;

2. The motion for summary judgment is dismissed;

3. Costs of the motion to the Defendant.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-630-16
STYLE OF CAUSE:	RICHARD CADOTTE, NATALIA SOKOLOVA AND EKATERINA NOVOSELOVA v HER MAJESTY THE QUEEN
PLACE OF HEARING:	OTTAWA, ONTARIO
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