

Federal Court



Cour fédérale

Date: 20220503

Docket: T-146-22

Citation: 2022 FC 646

Edmonton, Alberta, May 3, 2022

PRESENT: Madam Prothonotary Catherine A. Coughlan

BETWEEN:

OLIVER KING

Plaintiff

and

**POLIZEIPRASHISUM STUTTGART,
GERMANY LANDGRECHT STUTTGART
GERMANY**

Defendants

JUDGMENT AND REASONS

I. Overview

[1] The Defendants seek an order pursuant to Rule 221(1)(a) and (f) of the *Federal Courts Rules* [*Rules*] striking out the Plaintiff's Statement of Claim (Claim), without leave to amend on the basis that it does not disclose a cause of action or is otherwise frivolous and vexatious and an abuse of the Court's process. Alternatively, the Defendants argue that the Claim has not been

properly served on the two German Defendants as required by Rules 137 and 203(1) of the *Rules* and ought to be dismissed.

[2] The Plaintiff, Oliver King is self-represented. Mr. King filed a one-page Statement of Claim against two German entities; the first is Polizeipraxisium [*sic*] Stuttgart, Germany and the second is Landgericht [*sic*] Stuttgart Germany. They are respectively, the Police Department and the regional Court of Stuttgart, Germany.

[3] While somewhat difficult to follow, the Claim alleges that the Plaintiff was hired by a German investor to perform a valuation of a company that the investor wanted to purchase from her business partner. The Plaintiff claims that the investor refused to pay for the report he produced and it was subsequently used by the Stuttgart Police and the Stuttgart Court to convict the business partner for embezzlement. The Plaintiff claims this use of the valuation report by the Stuttgart Police and the Stuttgart Court amounts to copyright infringement and he seeks recovery for that alleged infringement. The Plaintiff also seeks recovery against the Stuttgart Court for failing to grant him judgment in the related civil case against the investor.

[4] In total, the Plaintiff seeks 750,000.00 Euros from the Stuttgart Court for failing to grant him judgment; another 250,000.00 Euros from each of the Stuttgart Court and the Stuttgart Police for copyright infringement. The Plaintiff also seeks \$100,000.00 for the cost of his German lawyers.

A. *Preliminary Issue:*

[5] After receipt of motion records from the parties, it became apparent that the two named Defendants may be immune to the jurisdiction of Canadian courts because of their status as foreign states. As this issue was not addressed by either party in their motion records, prior to the hearing of the motion, the Court issued the following direction: “At the hearing of the Defendant’s [sic] motion to strike scheduled for Tuesday, April 12, 2022, the parties are directed to address the relevance and application of the State Immunity Act, R.S.C., 1985, c. S-18 and in particular, s.3 to the within proceeding.”

[6] On return of the motion, the Defendants sought to amend their notice of motion to assert foreign state immunity pursuant to the *State Immunity Act* [SIA] as a further jurisdictional ground to support their motion to strike the Claim. However, as observed by the Ontario Court of Appeal in *Schreiber v. Federal Republic of Germany*, 2001 CanLII 23999 (ONCA) at paras 16-18; upheld in *Schreiber v Canada (Attorney General)*, 2002 SCC 62, [2002] 3 SCR 269, the “plain and obvious” test applied on a motion to strike cannot be applied to claims of sovereign immunity:

[16] [...] That claim challenges the obligation of the foreign state to submit to the court's jurisdiction. Until that challenge is decided, the action cannot proceed. Unlike a court faced with an allegation that a claim does not disclose a cause of action, a court faced with an immunity claim cannot withhold its decision until the end of the trial. There can be no trial until the court decides whether the foreign state is subject to the court's jurisdiction.

[17] The *State Immunity Act* clearly contemplates that any claim of sovereign immunity will be decided on its merits before the action proceeds any further. Section 4(2)(c) provides that a state submits to the jurisdiction of a court where it "takes any step in the proceedings before the court". Section 4(3)(b), however, permits the foreign state to appear in the proceedings strictly for the purpose of asserting sovereign immunity without thereby

submitting to the court's jurisdiction. Participation beyond a claim of immunity may, however, result in the loss of any immunity to which the foreign state might otherwise have been entitled.

[18] If, on a motion to dismiss based on a sovereign immunity claim, a court were to conclude that it was not "plain and obvious" that the claim should succeed and direct that the matter proceed to trial, the foreign state would be in the untenable position of either not participating in the trial and risking an adverse result, or participating in the trial and thereby losing its immunity claim. The scheme set out in the *State Immunity Act* is workable only if immunity claims are decided on their merits before any further step is taken in the action.

[7] In consequence, this Court must determine the claim of sovereign immunity on its merits before considering the Defendants' motion to strike. That entails addressing the following issues:

1. Are the Defendants foreign states as defined in the *SIA*?
2. If so, is the Plaintiff's action presumptively barred by the *SIA*?; and
3. Are there any applicable exemptions to the immunity conferred by the *SIA* which would permit this Court to take jurisdiction of the action and consider the Defendants' motion to strike under Rule 221?

B. *Are the Defendants foreign states?*

[8] Foreign State is defined in the *SIA* as:

- (a) any sovereign or other head of the foreign state or of any political subdivision of the foreign state while acting as such in a public capacity;

- (b) any government of the foreign state or of any political subdivision of the foreign state, including any of its departments, and any agency of the foreign state; and
- (c) any political subdivision of the foreign state.

[9] Further, the *SIA* defines political subdivision as a province, state or other like political subdivision of a foreign state that is a federal state.

[10] In support of their motion, the Defendants filed the affidavit of Tatjana Grgic. Ms. Grgic deposes that she is the chief state attorney for the Federal State of Baden-Wurttemberg which is one of the 16 Federal States of Germany and the public legal entity to which the Polizeipräsidium Stuttgart, Germany and the Landgericht Stuttgart, Germany belong. Importantly, Ms. Grgic advises that the two named Defendants do not have separate legal identities and are divisions of the Federal State of Baden-Wurttemberg, Germany.

[11] It is therefore largely uncontroversial that the two named Defendants are subdivisions of a foreign state and the *SIA* presumptively applies to this proceeding.

C. *Is the action barred by the SIA?*

[12] Section 3 (1) of the *SIA* provides that:

State immunity

3 (1) Except as provided by this Act, a foreign state is immune from the jurisdiction of any court in Canada.

Immunité de juridiction

3 (1) Sauf exceptions prévues dans la présente loi, l'État étranger bénéficie de l'immunité de juridiction devant tout tribunal au Canada.

[13] Section 3(2) of the *SIA* provides that:

Court to give effect to immunity

(2) In any proceedings before a court, the court shall give effect to the immunity conferred on a foreign state by subsection (1) notwithstanding that the state has failed to take any step in the proceedings.

Immunité reconnue d'office

(2) Le tribunal reconnaît d'office l'immunité visée au paragraphe (1) même si l'État étranger s'est abstenu d'agir dans l'instance.

[14] As the Supreme Court of Canada determined in *Kazemi (Estate) v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 SCR 176, at paras 34-35, “state immunity is a ‘procedural bar’ which stops domestic courts from exercising jurisdiction over foreign states. In this sense, state immunity operates to prohibit national courts from weighing the merits of a claim against a foreign state or its agents.” As the Supreme Court explained, state immunity remains one of the organizing principles between independent states and ensures that individual nations and the international order remain faithful to the principles of sovereignty and equality. “Sovereignty guarantees a state’s ability to exercise authority over persons and events within its territory without undue external interference. Equality, in international law, is the recognition that no one state is above another in the international order.”

[15] From this I conclude the action is presumptively barred by the *SIA* subject only to exemptions arising from the *SIA*.

D. *Are there any applicable exemptions to the immunity?*

[16] While the *SIA* does create a procedural bar to actions against foreign states, it recognizes a number of exemptions to the broad scope of that immunity. Those exemptions include waiver by the foreign state, as well as for cases of death, bodily injury or damage to property occurring in Canada. Or, in cases where the foreign state is engaged in a commercial activity. Further, the *SIA* does not apply to criminal proceedings.

[17] At the hearing of this matter, the Plaintiff argued that the exemption found at s. 6(b) of the *SIA* applies so as ground jurisdiction in the Federal Court. That exemption provides: “A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to (b) any damages to or loss of property that occurs in Canada”.

[18] In support of his position, the Plaintiff filed his own affidavit to which he attached an unsworn statement from Kristina Jakimovska. Ms. Jakimovska describes herself as a professor who hired the Plaintiff to prepare the valuation report and that the report was delivered to the investor at the Canadian consulate in Thessaloniki, Greece. Ms. Jakimovska further notes that the investor used the valuation report in Germany without authorization from either Ms. Jakimovska or the Plaintiff and that the investor did not pay for the report.

[19] At the hearing of this motion, the Plaintiff attempted to rely on Ms. Jakimovska's unsworn statement to argue that the Defendants' conduct in using his report without payment or authorization amounted to a loss of property arising in Canada. By this, the Plaintiff appears to argue that the fact that he was not paid for the report, which he describes as his property, brings his claim within the s. 6(b) exemption to immunity. I do not agree. Even taking the Plaintiff's claims at their highest, a loss or destruction of property as contemplated by s. 6(b) is not made out on the facts. Rather, the Plaintiff's claim for recovery of monies is clearly one of pure economic loss and not actual destruction or loss of property in Canada as contemplated by the s. 6(b) exemption.

[20] In *United States of America v. Friedland*, 1999 Canlii 2432 (ON CA) at para 27, the Ontario Court of Appeal considered the proper interpretation of s. 6(b) as being limited to physical harm or to loss or destruction of property:

[27] In our view, s. 6(b) does not assist Friedland. On its face, "damage to or loss of property" refers to physical harm to or loss or destruction of property. The application of s. 6(b) depends upon the nature of the harm suffered rather than the nature of the relief claimed. The interpretation urged by counsel for Friedland would allow a party to invoke s. 6(b) whenever the damages suffered are capable of monetary quantification, an interpretation that is unduly broad and unsupported by the plain language of the section. The conventional international understanding of the "loss of property" exception is that the exception applies only to physical harm to or destruction of property and does not extend to pure economic loss. We cannot accept that Parliament intended to give the words "damage to or loss of property" a meaning substantially different from the conventional international understanding.

[21] I conclude therefore that the Plaintiff's argument that he sustained property loss in Canada as contemplated by s. 6(b) has no merit and the s. 6(b) exemption has no application to this case.

II. Conclusion

[22] Based on that conclusion, I am satisfied that the Plaintiff's claim against the two German Federal State Defendants is barred by s. 3 of the *SIA* and there are no exemptions that would otherwise displace the broad scope of that immunity. In the result, this Court has no jurisdiction to entertain the Plaintiff's action. It follows from that determination that this Court also has no jurisdiction to entertain the Defendants' Rule 221 motion.

[23] The action is dismissed and the Defendants' motion is otherwise dismissed.

[24] Both parties sought their costs in this matter but in view of my reasons for dismissing the action, there will be no order of costs.

JUDGMENT in T-146-22

THIS COURT'S JUDGMENT is that:

1. The action is dismissed.
2. The motion to strike is otherwise dismissed.

“Catherine A. Coughlan”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-146-22

STYLE OF CAUSE: OLIVER KING v POLIZEIPRASIUM STUTTGART,
GERMANY LANDGRECHT STUTTGART
GERMANY

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JUDGMENT AND REASONS: COUGHLAN P.

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APPEARANCES:

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