Federal Court  Cour fédérale

Date: 20221214

Docket: T-1818-22

Citation: 2022 FC 1721

Ottawa, Ontario, December 14, 2022

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

SERGEY KAKUEV

Plaintiff

and

HIS MAJESTY THE KING

Defendant

JUDGMENT AND REASONS

I. Introduction

[1] The Plaintiff, Mr. Kakuev, a citizen of Russia, filed a Statement of Claim (the "Claim") in this Court on September 6, 2022. The Claim, including attachments, constitutes 46 pages, contains 135 numbered paragraphs – excluding those contained in the attachments – and includes 48 footnotes. Mr. Kakuev asserts that he is bringing the action on behalf of his daughter Victoria, ("Ms. Kakueva"), a person of the age of majority, who has apparently assigned to him, her rights

to bring the action.

[2] The Claim has its genesis in two separate claims brought in the Small Claims Division of the Court of Québec. Ms. Kakueva's efforts to enforce her judgment in Québec also forms part of her Claim in this Court. In the first claim, Court file # 500-32-706348-184 (the "Execution Costs case"), Ms. Kakueva was successful in bringing a claim against CRI Group Canada, where she was awarded $4,368 plus interest at 5%, and legal costs of $205.

[3] The second claim, Court file # 500-32-707248-185, was brought by Ms. Kakueva against Newsam Construction ("Newsam Construction" or the "Newsam Construction case"). In the Newsam Construction case, Ms. Kakueva had claimed $15,000 pursuant to the *Consumer Protection Act*, RLRQ, c P-40.1 [*CPA*] for alleged improper performance of a construction contract related to renovations to her apartment in the Province of Québec. There was also a counterclaim brought by Newsam Construction against Ms. Kakueva for $4,942.94. Newsam Construction prevailed in the litigation and was awarded costs in its favour. The Civil Division of the Court of Québec dismissed an application for revocation of the judgment on April 30, 2021. On October 19, 2021 *Le Conseil de la magistrature du Québec* dismissed a complaint brought by Ms. Kakueva against the trial judge on the basis that it (the complaint) was "unfounded".

[4] The Claim also contains allegations about the costs of enforcing the judgment that Ms. Kakueva obtained against CRI Group Canada on January 25, 2021.

[5] While it is impossible to do justice to the breadth of the Claim in these reasons, I will provide some of the highlights. Mr. Kakuev complains about the advance payment required by the bailiff in Québec, in order to enforce the judgment against CRI Group Canada, Court file # 500-32-706348-184. In this regard, the Claim relies, in part, upon Russian law. In the Claim, Mr. Kakuev relies upon article 23 of the Québec *Charter of Human Rights and Freedoms,* CQLR c C–12 [*Québec Charter*], in support of his contention that the Province of Québec evaded its obligation to provide "proportionate and predictable execution". Mr. Kakuev refers extensively in the Claim to the contract between Ms. Kakueva and Newsam Construction, including the negotiations, carried out in the Province of Québec, which led to the contract. Mr. Kakuev relies extensively upon cases from the European Court of Human Rights. He refers to "Book VIII of the Québec Code of Civil Procedure". He alleges the Court of Québec violated Ms. Kakueva's right to a fair hearing as guaranteed by article 23 of the *Québec Charter*. In paragraphs 54 to 58 of the Claim, Mr. Kakuev refers to the duty of the "national courts" – which I presume to be a reference to this Court and the Federal Court of Appeal – to ensure access to justice. In paragraph 65, the Claim states that arbitrary court findings infringe article 6 (right to a fair trial) of the European Court of Human Rights. The Claim goes on to refer to, among others, additional case law from the European Court of Human Rights, allegations of violations of article 23 of the *Québec Charter* (right to a full and equal, public and fair hearing by an independent and impartial tribunal), the erroneous judgment of the Court of Québec, violations of various articles of Québec's *CPA*, violations of various articles of the *Code of Civil Procedure,* CQLR c C–25.01 [*CCP*] (references to articles 9, 338 and 345, among others), violations by *Le Conseil de la magistrature du Québec* of the right to fair trial procedure, the absence of an effective remedy for the miscarriage of justice in the Small Claims Division of the Court of Québec, the tariff of

judicial fees in the Province of Québec, and Part VIII of Québec's *Courts of Justice Act*, CQLR c T–16.

[6] The assignment from Ms. Kakueva purports to assign to Mr. Kakuev a right to bring action "against the Province of Québec". I note the Province of Québec is not a party to the litigation.

[7] Importantly, in the Relief Sought from this Court, Mr. Kakuev states in the Claim:

> **Relief Sought**
>
> (a) Declare that legislation mentioned in the Statement of Claim and judiciary of Province of Quebec do not provide the right on fair hearing guaranteed by article 23 of the Charter;
>
> (b) Condemn the Defendant to pay the Plaintiff award equal to $14,341 in compensation of the damage caused by the judiciary in case No. 500-32-707248-185 and $4,368 plus interest with 5% rate and legal costs $205 in compensation of the damage caused by non-execution of the judgment in case No. 500-32-706348-184;
>
> (c) Make other order that the Honorable judge thinks fit and fair to restore rights violated in Small Claim Division of Court of Quebec. [all *sic*]

[8] The Defendant brings a motion to strike the Claim in its entirety, without leave to amend, pursuant to Rules 221(1)(a), 221 (1)(c) and 221(1)(f) of the *Federal Courts Rules*, SOR/98-106 [*Rules*] and alternate relief.

[9] For the reasons set out below, I grant the motion. The Statement of Claim will be struck in its entirety without leave to amend.

II. Relevant Provisions of the *Rules*

[10] The relevant provision is s. 221(1) of the *Rules*:

***Federal Courts Rules,* SOR/98-106**	***Règles des Cours fédérales,* DORS/98-106**
Motion to strike	**Requête en radiation**
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;
(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.

III. Analysis

A. No reasonable cause of action under Rule 221(1)(a) and lack of jurisdiction

[11] Rule 221(1)(a) provides that a pleading, or anything contained therein that "discloses no reasonable cause of action" may be struck out, with or without leave to amend. In *Theriault v Canada (Attorney General)*, 2022 FC 722 at para 14, the Court summarized the applicable test and the underlying principles to a finding that a Statement of Claim discloses no reasonable cause of action:

A. To strike a claim on the basis it discloses no reasonable cause of action, it must be plain and obvious that the claim discloses no reasonable cause of action or has no reasonable prospect of success (*Hunt v Carey Canada Inc*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959 at para 36 [*Hunt*]; *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17);

B. All facts plead must be accepted as provided unless patently ridiculous or incapable of proof: *Hunt* at paras 33 and 34; *Edell v Canada*, 2010 FCA 26 at para 5; *Operation Dismantle v The Queen* (1985), 1985 CanLII 74 (SCC), 18 DLR (4th) 481 (SCC) at 486-487 and 490-491 [*Operation Dismantle*]);

C. The statement of claim is to be read generously and in a manner that accommodates drafting deficiencies (*Operation Dismantle* at para 14);

D. That to disclose a cause of action the pleading must (1) allege facts capable of giving rise to the action; (2) disclose the nature of the action; and (3) indicate the relief sought – the statement of claim is to contain a concise statement of the material facts to be relied upon but not the evidence by which the facts are to be

proved (*Oleynik v Canada (Attorney General)*, 2014 FC 896 at para 5; Rule 174 of the Rules);

E. What constitutes a material fact is to be determined by the cause of action and the relief sought. The pleading must disclose to the defendant the who, when, where, how and what, that give rise to the claimed liability – a narrative of what happened and when will rarely suffice and neither the court nor opposing parties are to be left to speculate as to how the facts support various causes of action (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19; *Simon v Canada*, 2011 FCA 6 at para 18).

[12] Pursuant to Rule 221(1)(a) of the *Rules*, this Court may also strike a statement of claim when it is "plain and obvious" that the claim discloses no reasonable cause of action or if it has no reasonable prospect of success (see *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45 at para 17). This Court has consistently affirmed that to disclose a reasonable cause of action, a claim must show the following three elements (see *Bérubé v Canada*, 2009 FC 43 (CanLII) at para 24; *Oleynik v Canada (Attorney General)*, 2014 FC 896 (CanLII) para 5; and *Zbarsky v Canada*, 2022 FC 195 (CanLII) at para 13):

> (a) *it must allege facts that are capable of giving rise to a cause of action (the requirement of Rule 174 of the Rules);*
>
> (b) *it must disclose the nature of the action which is to be founded on those facts; and*
>
> (c) *it must indicate the relief sought, which must be of a type that the action could produce and that the Court has jurisdiction to grant.*

[13] Even though I must generously read Mr. Kakuev's Claim in order to accommodate any drafting deficiencies or defects in his pleadings, he is not exempt from setting out sufficient material facts to support the Claim (see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 (CanLII) at para 16; *Brauer v Canada*, 2021 FCA 198 (CanLII) at para 14). Mr. Kakuev's Claim simply has no reasonable chance of succeeding in the context of the law and the litigation process. A generous reading of the Claim cannot save these defects and deficiencies.

[14] Mr. Kakuev's Claim makes bald and broad representations on a myriad of issues – including the cost of bailiff services in Québec, the decisions made by two judges of the Court of Québec, the decision made by *Le Conseil de la magistrature du Québec*, and the whole of the procedure in the Small Claims Division. At its core, the Claim concerns Mr. Kakuev's dissatisfaction with the results obtained in the Execution Costs case with CRI Group Canada, and the Newsam Construction case. The essence of the Claim relates to the validity and alleged misapplication of the laws, regulations, processes and procedures of Québec. These issues fall under the provincial heads of power of property and civil rights and/or of the administration of justice in the province (respectively, s. 92(13) and s. 92(14) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 [*Constitution Act*]). They engage provincial jurisdiction.

[15] It is trite law that a pleading fails to disclose a reasonable cause of action if it is "plain and obvious" that the court lacks jurisdiction. In *ITO-Int'l Terminal Operators v Miida Electronics*, 1986 CanLII 91 (SCC), [1986] 1 SCR 752 [*ITO*], the Court concluded that the jurisdiction of the Federal Court depends upon the existence of: (1) a statutory grant of

jurisdiction by Parliament; (2) an existing body of federal law, essential to the disposition of the case, which nourishes the statutory grant of jurisdiction; and (3) law underlying the case falling within the scope of the term "a law of Canada" used in s. 101 of the *Constitution Act.* None is evident in the present case.

[16] Furthermore, Mr. Kakuev claims to have standing before this Court and a right of action against Canada based on two “assignment agreements” through which he alleges Ms. Kakueva ceded to him the “right to sue the Crown”. However, neither of these legal proceedings has any connection to federal law or federal government actors; these agreements do not provide a basis for Mr. Kakuev’s Claim against the Federal Crown as they purport to assign to him, the “[…] right of claim and right of action against the Province of Quebec”. As none of the elements set out in *ITO* apply, this Court has no jurisdiction to entertain the Plaintiff’s Claim. Furthermore, one cannot assign a right that one does not possess. Ms. Kakueva had no right to bring action in the Federal Court regarding her complaints about processes and procedures in Québec.

B. *Scandalous, frivolous or vexatious allegations – Rule 221(1)(c) – and Abuse of Court Process – Rule 221(1)(f)*

[17] Rule 221(1)(c) of the *Rules* also permits the Court to strike a statement of claim when it is scandalous, frivolous or vexatious. The standard is met where the pleadings are so deficient in material facts that the defendant cannot know how to answer, and is thus unable to defend itself, and the Court is unable to regulate the proceedings (see *Kisikawpimootewin v Canada*, 2004 FC 1426 at para 8; *Zbarsky v Canada*, 2022 FC 195 at para 40). The claim can also be struck under

Rule 221(1)(f) if it constitutes an abuse of the process of the Court. It is patently obvious that both rules are engaged in the present matter. Nothing more need be said.

IV. Conclusion

[18] Given all of the above, it is clear that Mr. Kakuev's Claim has no "scintilla of a cause of action". In light of this fatal defect, the pleadings should be struck without leave to amend (see *Spatling v Canada (Solicitor General)*, 2003 FCT 445 at para 8; *Kiely v Canada (Minister of Justice)*, 10 FTR 10, 4 ACWS (3d) 94, [1987] CarswellNat 236 at 11; and *Larden v Canada*, [1998] FCJ No 445 (QL), 145 FTR140 at 149–150).

[19] The Defendant's motion is allowed. The Statement of Claim is dismissed without leave to amend. Costs are awarded to the Defendant in the amount of $2,000.00, inclusive of taxes and disbursements.

JUDGMENT in T-1818-22

THIS COURT'S JUDGMENT is that the motion to dismiss the Statement of Claim, without leave to amend, is allowed, with costs of $2,000.00, all-inclusive of taxes and disbursements, payable by the Plaintiff to the Defendant.

"B. Richard Bell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1818-22
STYLE OF CAUSE:	SERGEY KAKUEV v HIS MAJESTY THE KING
PLACE OF HEARING:	MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*
JUDGMENT AND REASONS:	BELL J.
DATED:	DECEMBER 14, 2022

WRITTEN REPRESENTATIONS BY:

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