Federal Court  Cour fédérale

Date: 20240717

Docket: T-1553-23

Citation: 2024 FC 1121

Saskatoon, Saskatchewan, July 17, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

ADRIAN MALIQI

Plaintiff

and

HIS MAJESTY THE KING AND MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Defendants

ORDER AND REASONS

I. Overview

[1] The self-represented Plaintiff brings a motion, pursuant to Rule 51 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*], appealing the May 29, 2024 Order of Associate Judge Crinson striking the Plaintiff's Statement of Claim with leave to amend.

[2] The Plaintiff asserts the Associate Judge erred by (1) ignoring the discovery principle when considering whether the action was time-barred, and (2) in evaluating evidence.

[3] In oral submissions, the Plaintiff broadened the prayer for relief and now seeks an Order:

A. granting the appeal;

B. setting aside portions of the May 29 Order;

C. overturning the Associate Judge's costs award;

D. granting an extension of time to serve and file an amended Statement of Claim; and

E. awarding no costs on the appeal.

[4] The motion is dismissed in part. The Plaintiff shall be granted an extension of time to serve and file an amended Statement of Claim.

II. Background

[5] The Plaintiff commenced the underlying action on July 26, 2023. In the Statement of Claim, the Plaintiff alleges:

A. He is a permanent resident of Canada who lost his permanent residence card while visiting Europe in 2015.

B. In January 2016, he applied to the Canadian Embassy in Vienna for a travel document to return to Canada and was refused by letter in February 2016 because he was non-compliant with his residency obligation under the *Immigration and Refugee Protection Act*, SC 2001, c 27.

C. The decision not to issue a travel document was appealed to the Immigration Appeal Division [IAD] in February 2016.

D. In March 2016, he was deliberately misinformed by Embassy staff regarding the process to obtain a travel document to allow him to appear before the IAD. This was gross misconduct and a breach of natural justice.

E. In November 2017, the Plaintiff again requested a travel document from the Canadian Embassy in Vienna. This request was refused because the Plaintiff "ceased to be eligible for a Travel Document on April 3, 2016" – he was last in Canada on April 3, 2015.

F. He had previously requested a travel document "within that eligible period" – on March 13, 2016 – and was given "misleading instructions" instead of a travel document.

G. He claims $100,000 in general damages for being unable to return to Canada and $60,000 in punitive damages for "intentional malicious actions".

[6] The Defendant brought a motion in writing seeking an Order striking the Statement of Claim on the grounds it disclosed no reasonable cause of action citing a number of reasons, including that the Claim is time-barred.

[7] In the May 29, 2024 Order, the Associate Judge granted the motion, struck the Statement of Claim with leave to amend and awarded fixed costs calculated at the mid-point of column III of the tariff, payable forthwith.

III. Standard of Review

[8] The standard of review on an appeal of a discretionary decision of an associate judge is correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law for which there are no extricable questions of law (*Hospira Healthcare Corp v Kennedy Institute of Rheumatology*, 2016 FCA 215; *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36).

[9] Justice Denis Gascon noted the highly deferential nature of the "palpable and overriding error" standard in *Lessard-Gauvin v Canada (Attorney General)*, 2020 FC 730, aff'd 2021 FCA 94:

> [43] The FCA has repeatedly declared that the "palpable and overriding error" standard is a "highly deferential standard" (*Figueroa v Canada (Public Safety and Emergency Preparedness)*, 2019 FCA 12 at para 3; *Montana v Canada (National Revenue)*, 2017 FCA 194 at para 3; *1395804 Ontario Ltd (Blacklock's Reporter) v Canada (Attorney General)*, 2017 FCA 185 at para 3; *NOV Downhole Eurasia Limited v TLL Oilfield Consulting Ltd*, 2017 FCA 32 at para 7; *Revcon Oilfield Constructors Incorporated v Canada (National Revenue)*, 2017 FCA 22 at para 2). This is a heavy burden for an applicant to meet. As Justice Stratas metaphorically stated in *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 [*Mahjoub*] and in *Canada v South Yukon Forest Corporation*, 2012 FCA 165 [*South Yukon*], in order to meet this standard "it is not enough to pull at leaves and branches and leave the tree standing. The entire tree must fall" (*Mahjoub* at para 61; *South Yukon* at para 46), cited with approval by the SCC in *Benhaim v St-Germain*, 2016 SCC 48 [*Benhaim*] at para 38). [Emphasis added.]

IV. Analysis

[10] The Plaintiff acknowledges that the Statement of Claim is deficient in that it fails to plead material facts in support of certain of the allegations made.

[11] Despite this acknowledgement, the Plaintiff asserts the Associate Judge erred in finding that the cause of action arose in 2016 and that the pleadings are scandalous. The Associate Judge did not.

[12] The Statement of Claim advances bald allegations of deliberate misconduct unsupported by material facts. Pleadings that advance bald allegations of bad faith and ulterior motives are also "scandalous, frivolous and vexatious" and may be struck on that basis (Rule 221(1)(c) of the *Rules*; *Tomchin v Canada*, 2015 FC 402 at para 22, citing *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at paras 34-35).

[13] That the Associate Judge concluded the cause of action arose in 2016 more that six years prior to the commencement of the proceeding is reflective of the facts pled. The Plaintiff asserts that he was not in a position to discover the cause of action until 2017 but does not plead material facts in support of this assertion in the Statement of Claim. Again, the Associate Judge did not err in finding the action to be time-barred based on the content of the Statement of Claim.

[14] The Associate Judge, having correctly identified the applicable law, did not commit any palpable and overriding error in applying that law to the facts in this matter.

[15] The Plaintiff seeks and shall be granted an extension of time to serve and file an amended Statement of Claim.

V. Costs

[16] In oral submissions, the Plaintiff took issue with the Associate Judge's cost award and the requirement that costs be paid forthwith. The Plaintiff argues that it is unfair to require a self-represented party to pay costs. This, the Plaintiff argues, discourages a party who believes they have been aggrieved from accessing the courts and fails to acknowledge that a self-represented party may take ill-advised steps in litigating and should not suffer a cost consequence due to inexperience.

[17] Although raised as a new issue in oral submissions, the Defendant did not argue that the Court decline to consider the question. Defendant's counsel submits significant deference is owed on the issue of costs and that the award was made in the context of a fully contested motion where the Plaintiff waited until oral argument to concede the Statement of Claim was deficient. The Defendant further requests that this Court require the Plaintiff satisfy the forthwith costs award before the Plaintiff be permitted to file an amended Statement of Claim.

[18] The courts may demonstrate some flexibility to self-represented parties, however a self-represented party is not accorded special rights or dispensations due to their lack of knowledge or legal skills – the application of the *Rules* will not be varied where a litigant represents themselves (*Ballantyne v Canada*, 2014 FC 242 at para 11; *Brunet v Canada (Revenue Agency)*,

2011 FC 551 at para 10; *Kalevar v Liberal Party of Canada*, 2001 FCT 1261 at paras 22-24, aff'd 2002 FCA 246, leave to appeal to SCC refused, 2003 CarswellNat 91).

[19] Costs awards are within the full discretion of the Court and should only be set aside on appeal if the court below has erred in principle or the costs award is plainly wrong (*Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at para 247, citing *Nolan v Kerry (Canada) Inc*, 2009 SCC 39 at para 126, and *Hamilton v Open Window Bakery Ltd*, 2004 SCC 9 at para 27).

[20] Although the Plaintiff argues that the award is unfair and discourages access to justice, there is nothing in the record before me to indicate the Associate Judge was not cognizant of the circumstances or failed to consider the wide ranging and non-inclusive list of factors set out at Rule 400 of the *Rules*.

[21] Rule 401 of the *Rules* further provides that costs may be awarded on a motion and that a court shall order costs to be payable forthwith where the motion should not have been opposed.

[22] The costs award is not contrary to the principles reflected in the factors identified in Rule 400 and is consistent with Rule 401. The Associate Judge did not err in principle nor is the award plainly wrong.

[23] There being no grounds to intervene, and recognizing that the award is presently payable, the Plaintiff shall not be permitted to file an amended Statement of Claim unless and until the Associate Judge's forthwith cost award has been satisfied.

VI. Costs on this Motion

[24] On this appeal, the Defendant seeks costs payable forthwith in the fixed amount of $2,500. Defendant's counsel submits the fixed amount sought is in accord with the tariff and includes a premium to reflect the Defendant's view that the motion was unnecessary, noting the Plaintiff's acknowledgment that the Statement of Claim is deficient and that the Associate Judge granted leave to amend.

[25] Having considered all of the circumstances, noting in particular that the issues raised on the motion are straightforward and required minimal effort to respond, a costs award in the amount of $2,500 is excessive. I am of the view that a nominal award in the amount of $300 is appropriate in the circumstances.

[26] Although the motion is without merit, I have considered the Plaintiff's circumstances as detailed in his oral submissions and decline to order that costs on this motion be payable forthwith. Costs on this motion shall therefore be payable upon the conclusion of the proceedings in accordance with this Court's jurisprudence (*Buck v Canada (Attorney General),* 2022 FC 352 at paras 17 and 19, citing *John Stagliano, Inc v Elmaleh*, 2006 FC 1096 at para 8; *Aic Ltd v Infinity Investment Counsel Ltd,* 1999 CanLII 7617 at paras 21, 24 and 28 (FC)).

ORDER IN T-1553-23

THIS COURT ORDERS that:

1. The Appeal is dismissed.

2. The Plaintiff is granted an extension of time to serve and file any amended Statement of Claim.

3. Any amended Statement of Claim shall be served and filed by Monday, September 16, 2024.

4. The Plaintiff shall not be permitted to file any further documents in this action until the costs awarded in the May 29, 2024 Order have been paid.

5. The Plaintiff shall pay costs to the Crown in the fixed amount of $300.00 inclusive of all disbursements and taxes on this motion.

"Patrick Gleeson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1553-23
STYLE OF CAUSE:	ADRIAN MALIQI v HIS MAJESTY THE KING AND MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 2, 2024
ORDER AND REASONS:	GLEESON J.
DATED:	JULY 17, 2024

APPEARANCES:

Adrian Maliqi	FOR THE PLAINTIFF (ON HIS OWN BEHALF)
Lorne McClenaghan	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANTS