Federal Court  Cour fédérale

Date: 20240808

Docket: T-760-24

Citation: 2024 FC 1239

Ottawa, Ontario, August 8, 2024

PRESENT: Associate Judge Benoit M. Duchesne

BETWEEN:

A. JOHN BELLOSILLO

Plaintiff

and

HIS MAJESTY THE KING

Defendant

ORDER AND REASONS

[1] The Defendant has brought a motion in writing by which he seeks an Order striking out the Plaintiff's Statement of Claim filed on April 8, 2024, pursuant to Rule 221(1)(a) and (c) of the *Federal Courts Rules*, (the *"Rules"*).

[2] The Defendant argues that the Statement of Claim does not disclose a reasonable cause of action and should be struck without leave to amend. The Defendant also pleads that the Statement of Claim's allegations fail to comply with Rules 174 and 181 of the *Rules* in that they are but bare and vague allegations that do not disclose a cause of action. Finally, the Defendant argues that the proper manner for the Plaintiff to seek redress is through the grievance procedure

set out at section 90 and following of the *Corrections and Conditional Release Act*, SC 1992, c 20 (the *"CCRA"*).

[3] The Plaintiff's response to the Defendant's motion is that the Defendant's motion is against the law and must be dismissed. He also argues that the Defendant's solicitor of record has put the Defendant in a position of conflict of interest by pitting the Defendant's constitutional duty to take care of the Plaintiff and the solicitor's personal interest in having the Plaintiff's claim dismissed. He also argues that the Defendant's solicitor of record has brought this motion in violation of her duties pursuant to section 4.2 of the *Law Society Act*, RSO 1990, c. L-8. The Plaintiff has not submitted any evidence on this motion.

[4] For the reasons that follow, the Defendant's motion is granted and the Plaintiff's Statement of Claim is struck without leave to amend.

I. **Principles on Motion to Strike**

[5] The law applicable to a motion to strike pursuant to Rule 221(1)(a) is well established. It was summarized by Justice Pentney in *Fitzpatrick v. Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040, as follows:

> *[13] Rule 221(1) of the Federal Courts Rules, SOR/98-106 [Rules], sets out the framework that applies to this motion:*

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.*
Evidence	***Preuve***
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	*(2) Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).*

[14] As noted above, the law governing a motion to strike seeks to protect the interests of the plaintiff in having his or her "day in court," while also taking into account the important interests in avoiding burdening the parties and the court system with claims that are doomed from the outset. In order to achieve this, the

courts have developed an analytical approach and a series of tests that apply in considering a motion to strike.

[15] The test for a motion to strike sets a high bar for defendants, and the onus is on the defendant to satisfy the Court that it is plain and obvious that the pleading discloses no reasonable cause of action, even assuming the facts alleged in the statement of claim to be true: R v Imperial Tobacco Canada Ltd, 2011 SCC 42 at para 17; Hunt v Carey Canada Inc, 1990 CanLII 90 (SCC), [1990] 2 SCR 959 at p 980. Rule 221(2) reinforces this by providing that no evidence shall be heard on a motion. In view of this Rule, the further evidence submitted by the Plaintiff in his response to the motion to strike cannot be considered.

[16] The facts set out in the statement of claim must be accepted as true unless they are clearly not capable of proof or amount to mere speculation. The statement of claim must be read generously, and mere drafting deficiencies or using the wrong label for a cause of action will not be grounds to strike a statement of claim, particularly when it is drafted by a self-represented party.

[17] Further, the statement of claim must set out facts that support a cause of action – either a cause of action previously recognized in law, or one that the courts are prepared to consider. The mere fact that a cause of action may be novel or difficult to establish is not, in itself, a basis to strike a statement of claim. Related to this, the claim must set out facts that support each and every element of a statement of claim.

[18] As explained by Justice Roy in Al Omani v Canada, 2017 FC 786 at para 17 [Al Omani], "[a] modicum of story-telling is required." The law requires, however, a very particular type of story to be set out in a statement of claim – one which describes the events which are alleged to have harmed the plaintiff, focused only on the "material facts," and set out in sufficient detail that the defendant (and the Court) will know what the specific allegations are based on, and that they support the specific elements of the various causes of action alleged to be the basis of the claim.

[19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: Barkley v Canada, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure

> *that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This will inevitably lead to "fishing expeditions" by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.*
>
> *[20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the Rules and the principles set out in the cases seek to ensure.*

[6] Although Rule 221(1)(c) is concerned with whether a pleading or anything contained therein is scandalous, frivolous, or vexatious rather than whether a pleading discloses a reasonable cause of action, the moving party continues to bear the onus of satisfying the court it is plain and obvious that the plaintiff's pleading has no chance of success assuming the facts pleaded the statement of claim to be true. Affidavit evidence is admissible on a motion pursuant Rule 221(1)(c).

[7] A pleading that is scandalous, frivolous, or vexatious, has been described as follows in *Specialized Desanders Inc. v. Enercorp Sand Solutions Inc.*, 2018 FC 689 (CanLII), at para 43:

> *"A scandalous, vexatious or frivolous action may not only be one in which the claimant can present no rational argument, based upon the evidence or law, in support of the claim, but also may be an action in which the pleadings are so deficient in factual material that the defendant cannot know how to answer, and a court will be unable to regulate the proceedings, is an action without reasonable cause, which will not lead to a practical result.*

[8] A pleading is scandalous, frivolous or vexatious when it improperly casts a derogatory light on someone or is with respect to their moral character. A claim is a frivolous one where it is of little weight or importance. A vexatious proceeding is one that is begun maliciously or without

a probable cause, or one which will not lead to any practical result (*Steiner v R*, 1996 CanLII 3869 (FC); *Zhao-Jie v TD Waterhouse Canada Inc*., 2024 FC 261 (CanLII), at para 7; *Sauve v Canada*, 2010 FC 217 (CanLII), at para 38).

[9] Rule 174 requires that a pleading contain a concise statement of the material facts on which the party relies but shall not include the evidence by which those facts are to be proven. What constitutes a material fact, or an essential element of a claim is determined in light of the cause of action advanced and the relief sought. A plaintiff must plead the constituent elements of each cause of action or legal ground raised in summary form but with sufficient detail. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. Every allegation must also contain particulars as required by Rule 181. These requirements are mandatory and apply to every litigant. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars: (*Mancuso v. Canada (National Health and Welfare*, 2015 FCA 227 (CanLII), at paras 17 to 20 (*"Mancuso"*).

[10] Pleadings that assert bald conclusions of law are not proper. Rule 175 allows for a conclusion of law to be pleaded, but only if the material facts that give rise to such a conclusion are pleaded elsewhere in the pleading. Doing otherwise may be an abuse of process that could cause the pleading to be struck (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).

[11] Although the applicable Rule and the origins of the Court's power to strike a pleading differ whether the underlying proceeding is an application or an action, the core of the Court's approach to allegations contained in the originating document is unchanged. Allegations of fact

that are patently ridiculous, incapable of proof, based on assumptions or speculations, inconsistent with common sense, vague generalizations, or otherwise not supported by any other material or particulars fact are not to be considered as true for the purposes of the court's analysis on a motion to strike. Likewise, *"the bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of a material fact"* (*Empire Company Limited v. Attorney General of Canada*, 2024 FC 810, at paras 22 and 23). Such bare assertions may also serve as the basis upon which the court may find that a pleading is an abuse of process (*Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34).

II. **The Statement of Claim**

[12] The Plaintiff's Statement of Claim is brief.

[13] The Plaintiff is an inmate at the Bath Institution in Ontario. He alleges that he purchased a personal computer pursuant to an agreement between himself and the Defendant, and also pursuant to sections 3, 4(d), 5(b), 58, 65(1) and 76 of the *CCRA*. None of these provisions refer to contractual relationships. He alleges that the express terms of his agreement with the Defendant permitted personnel at the Bath Institution to seize his computer at any time for the purpose of searching it, requiring him to correct any deficiencies within it or to remove any unauthorized hardware or software, and then return the personal computer to him. He alleges that there is nothing in the agreement he has with the Defendant that would permit the Defendant to seize his personal computer and to withhold it from him.

[14] He alleges that the Defendant, through personnel at the Bath Institution, seized his personal computer and has withheld it from him in breach of their agreement.

[15] By doing so, he alleges that the Defendant acted *"on a CSC (Correctional Service of Canada) agenda calculated to deprive inmate computer owners of their computer systems and to otherwise act in violation of sections 3, 4(d), 5(b), 58, 65(1) and 76 of the CCRA to the end of denying inmates generally contrary to the purpose of the federal correctional system of a computer ownership program"*.

[16] He seeks relief pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the *"Charter"*), as well as:

a) a declaratory order as to his right to his continued ownership of his computer system in accordance with the express terms of his agreement with the Defendant;

b) a declaratory order as to his right to maintain his computer system in good repair and to upgrade it as necessary in accordance with his agreement with the Defendant and sections 3, 4(d), 5(b), 58, 65(1) and 76 of the *CCRA*; and,

c) an injunction against the Defendant to better administer the *CCRA*, to the Plaintiff's benefit and protection in reference to *"the Agreement at common law pursuant to section 4(d) of the CCRA against any CSC agenda calculated to deprive the Plaintiff of his computer system including its good repair and upgrades as necessary"*.

III. **Analysis**

[17] In *Canada (Attorney General) v. Power*, 2024 SCC 26 (CanLII), at paragraph 36, the Supreme Court of Canada reiterated that relief pursuant to section 24(1) of the *Charter* is a

personal remedy in the sense that it is specific to the violation of an applicant's *Charter* rights. The Plaintiff has not alleged any violation of his *Charter* rights in his Statement of Claim. It follows that his claim for relief pursuant to section 24(1) of the *Charter* is plainly and obviously doomed to fail because the necessary condition for a *Charter* remedy to be awarded is not alleged. The Plaintiff's claim pursuant section 24(1) of the *Charter* will therefore be struck as it fails to disclose a reasonable cause of action.

[18] The Plaintiff also pleads that there is an agreement as between himself and the Defendant that contains express terms that allow him to own a personal computer, allows the Defendant to seize the personal computer from time to time, but does not provide the Defendant with any right to withhold his personal computer from him. His claims of relief for declaratory orders are rooted in the existence and the terms of the alleged agreement.

[19] In *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 (CanLII), [2020] 2 SCR 420, at paragraphs 49 and 67, the Supreme Court of Canada explained that whether a claim for breach of contract discloses a reasonable cause of action should be considered in light of the remedies actually sought in the pleading. If the claim based in contract does not support the remedies sought, then the hollow claim in contract should be struck as not disclosing a reasonable cause of action.

[20] The particulars of the agreement alleged in the Statement of Claim such as the parties to the agreement, the date upon which the alleged agreement was entered into, where the agreement was entered into, what its alleged express terms are, whether the agreement was oral or written, and the specific language of the express term the Defendant has allegedly violated by his seizure of the Plaintiff's computer have not been pleaded. These particulars are necessary for the

Defendant to adequately defend the claims advanced against him. Because the particulars are not pleaded and the express contractual terms that are allegedly breached are not pleaded, the prevailing jurisprudence requires that I not consider these alleged contractual terms as being true for the purposes of this motion. The pleading is deficient as it does not meet the minimum elements required by Rules 174, 177 and 181 (*Mancuso*, at paras 17 to 20). It is apparent that the Defendant cannot respond to the Statement of Claim's allegations based in contract as the pleading is currently drafted.

[21] Perhaps more to the point, however, is that the Defendant's seizure and withholding of the Plaintiff's personal computer is not a denial of the Plaintiff's ownership interest in the personal computer or of his interest in maintaining the personal computer in a state of good repair. Rather, the seizure and withholding of his computer is a restriction on his ability to use his computer. It follows that the rights he seeks to have declared by way of declaratory orders as pleaded with respect to the same are unnecessary and would not serve any practical result. The claims for declaratory orders pertaining to the Plaintiff's ownership interest in the personal computer and his right to maintain his computer system in good repair as set out in the pleading are accordingly frivolous and shall be struck.

[22] The remaining issue raised by the Plaintiff's pleading is whether relief by way of an injunction as pleaded or in the nature of an injunction *"for the better administration of the CCRA"*, against the Defendant on the basis of his alleged agreement with the Defendant and against any *"CSC agenda calculated to deprive the Plaintiff of his computer system"* is doomed to fail, or is frivolous, scandalous or vexatious.

[23] Injunctive relief based on a contract might be available at law depending on the circumstances and the content of the agreement between the parties. Much depends on the nature of the contract, the rights created by the parties through their agreement and the nature of the injunction sought. At a minimum, however, a party seeking injunctive relief must allege and plead, with particulars, that there is a serious issue to be tried, that they would suffer irreparable harm if the injunction is not granted, and that they would suffer the greater inconvenience as compared to the Defendant if the injunction is not granted (*RJR-MacDonald Inc. v. Canada (Attorney General),* 1994 CanLII 117 (SCC), [1994] 1 SCR 311).

[24] Because there are no properly pleaded particulars of the alleged agreement and of its express terms that would have to be considered in the larger context of injunctive relief based on its terms, the Court must conclude that there is no allegation as framed by the Plaintiff and contained in the Statement of Claim that raises a serious issue to be tried. It is plain that the sought injunctive relief is doomed to fail.

[25] Injunctive relief may also be granted to restrain someone or a group of people from engaging in particular conduct that is intended to harm another person. Because the conduct to be restrained is alleged as being intentional (*"any CSC agenda calculated to…."*), Rule 181 requires that particulars of the alleged conduct be pleaded in the Statement of Claim in order for the Defendant to be in a position to respond to it. There are no particulars of the *"CSC agenda calculated to deprive the Plaintiff of his computer system"* alleged in the Statement of Claim and there are no alleged essential elements of any cause of action that could give rise to injunctive relief as sought. The allegation of a CSC agenda as support for injunctive relief is therefore a bald statement that the Court cannot presume to be true in its determination of the Defendant's

motion. Given the absence of particulars and that the alleged CSC agenda is but a bald allegation, the Court must conclude that the injunctive relief sought by the Plaintiff is doomed to fail.

[26] The relief sought through the pleading is not supported by the allegations made. I find that the nature of the defects in the Plaintiff's pleading are not in the nature of defects than can be cured by an amendment to the pleading itself or simply through the provision of particulars as they strike at the root of the claims advanced. Leave will not be provided for the Plaintiff to amend his Statement of Claim.

[27] The Court has not considered the Defendant's argument that the Plaintiff's complaints are best dealt with by him through the grievance procedure set out sections 90 and following of the *CCRA* in great detail. The Defendant's argument relies on the requirement for an applicant to exhaust their internal remedies through the administrative process available to them prior to seeking judicial review before this Court. The Defendant is correct that the principle of exhaustion applies to potentially strike a premature application for judicial review (*Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61 (CanLII), *Dugré v. Canada (Attorney General*), 2020 FC 789 (CanLII), *Nome v. Canada*, 2016 FC 187). The proceeding before the Court is an action, however, and not an application for judicial review. As such, the Defendant's argument does not apply on this motion.

[28] The Plaintiff's arguments in response to the Defendant's motion must be rejected.

[29] The Defendant's motion is not against the law. The Defendant may bring a motion strike pursuant to the *Rules* when he considers its appropriate although common wisdom in litigation is

that a motion to strike should be brought early in a proceeding in order to avoid costs being incurred in defending a proceeding that plainly and obviously has no chance of success.

[30] The Defendant is also not in a position of conflict of interest as a result of this motion and there is no evidence before the Court of the Defendant's solicitor of record's personal interest in this motion. Finally, there is no evidence to suggest that section 4.2 of the *Law Society Act* is at actually at issue in this proceeding or should be.

[31] The Plaintiff's pleading will therefore be struck without leave to amend.

THIS COURT ORDERS that:

1. The Defendant's motion to strike the Plaintiff's Statement of Claim is granted.

2. The Plaintiff's Statement of Claim is hereby struck in its entirety, without leave to amend.

3. Pursuant to Rule 168, this proceeding is dismissed.

4. Pursuant to Rules 400(1), (3) and (4), 401, 407, and Tariff B, I hereby Order the Plaintiff to pay the Defendant his costs of this motion which I fix in the amount of $500.00.

"Benoit M. Duchesne"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-760-24
STYLE OF CAUSE:	A. JOHN BELLOSILLO v HIS MAJESTY THE KING
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	AUGUST 8, 2024 (IN WRITING)
REASONS FOR ORDER:	ASSOCIATE JUDGE BENOIT M. DUCHESNE
DATED:	AUGUST 8, 2024

SOLICITORS OF RECORD:

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