

Federal Court



Cour fédérale

Date: 20240828

Docket: T-1534-24

Citation: 2024 FC 1335

Toronto, Ontario, August 28, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

DAVID CHARLES PENNER

Plaintiff

and

HIS MAJESTY THE KING

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Defendant, the moving party in this motion, seeks an order to have Mr. Penner's Statement of Claim struck without leave to amend pursuant to Rule 221(1) of the *Federal Courts Rules*, SOR/98-106 ("Rules"). The Defendant maintains that the Federal Court does not have jurisdiction over the relief requested and that the Statement of Claim does not disclose a reasonable cause of action and that the action is frivolous, vexatious and an abuse of process.

[2] Mr. Penner filed a motion for leave to amend his Statement of Claim. The parties agreed that both motions would be heard and decided together.

[3] The Federal Court does not have jurisdiction over the relief requested in Mr. Penner's Statement of Claim and the Statement of Claim does not disclose a reasonable cause of action. The Defendant's motion will be granted, and the Statement of Claim will be struck. Mr. Penner's motion to amend his Statement of Claim will be dismissed.

II. Background

[4] Mr. Penner's Statement of Claim indicates that this matter is a parallel proceeding with a matter before the Tax Court of Canada ("Tax Court"). The Statement of Claim indicates that on May 29, 2023, Mr. Penner accepted a presentment from the Canada Revenue Agency ("CRA") and the matter was assigned to the CRA for closure ("May Presentment"). The Statement of Claim indicates that the same process occurred on June 20, 2023 ("June Presentment"). Mr. Penner alleges that on July 24, 2023, he provided a notice regarding the bills of exchange for these Presentments and that the CRA has lost its ability to seek recourse against him under section 152(3) of the *Bills of Exchange Act*, RSC 1985, c B-4 ("BEA").

[5] On October 25, 2023, Mr. Penner filed a Notice of Appeal with the Tax Court claiming he had repaid the balance owed to the CRA before July 24, 2023. He states that the bills of exchange were not provided for the May Presentment and June Presentment.

[6] According to Mr. Penner's Notice of Motion seeking leave to amend his Statement of Claim, the Tax Court rendered judgment on July 16, 2024, finding that all appeals in his

proceedings under the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) (“ITA”), “are quashed for lack of jurisdiction, all without costs.” In this proceeding, Mr. Penner asks the Federal Court to “settle and close” the Tax Court related matter or to confirm that the CRA has lost recourse against him under section 152(3) of the *BEA*.

III. Issues

[7] The issues in these motions are whether the Federal Court has jurisdiction to issue the relief sought and whether it is “plain and obvious or beyond reasonable doubt” that Mr. Penner’s action cannot succeed and cannot be cured by an amendment to his Statement of Claim (*Simon v Canada*, 2011 FCA 6 (“Simon”) at para 8).

IV. Analysis

[8] The Defendant submits that Mr. Penner’s Statement of Claim should be struck because the Federal Court cannot grant the relief sought, the Statement of Claim contains meritless, vexatious, and abusive arguments, and that the facts in the Statement of Claim do not support a reasonable cause of action.

[9] The Defendant further submits that in the alternative, the Federal Court ought to order that Mr. Penner provide particulars to substantiate his Statement of Claim. The Defendant requests that the Federal Court provides the Defendant time to serve and file a Statement of Defence if the Statement of Claim is not struck.

[10] Mr. Penner seeks leave to amend his Statement of Claim to provide the particulars sought out by the Defendant. The term “particulars” includes: the nature of the Presentments, the nature of Mr. Penner as a creditor, and Mr. Penner providing a “notice” in July 2023.

[11] I agree with the Defendant that the Federal Court cannot grant the relief sought, and that it is plain and obvious that Mr. Penner’s action cannot succeed.

A. *The Federal Court Cannot Grant the Relief Sought*

[12] The Tax Court has “exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under... the ITA” (*Tax Court of Canada Act*, R.S.C., 1985, c. T-2, s 12(1) (“TCCA”). The *ITA* provides that the Tax Court of Canada “may dispose of an appeal” in different manners (s 171(1)). The *Federal Courts Act*, R.S.C., 1985, c. F-7 (“Federal Courts Act”) provides that “if an Act of Parliament expressly provides for an appeal to... the Tax Court of Canada... from a decision or an order of a federal board, commission or other tribunal made by or in the course of proceedings before that board, commission or tribunal, that decision or order is not, to the extent that it may be so appealed, subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with that Act” (section 18.5).

[13] From Mr. Penner’s Statement of Claim, this matter is in relation to proceedings regarding his 2003-2004 taxation years. Mr. Penner filed a Notice of Appeal with the Tax Court—ostensibly against the CRA—on October 25, 2023. If so, the Federal Court does not have jurisdiction to intercede with respect to a notice of appeal under the *ITA* or the “Tax Court related matters” save for exceptions that have not been pleaded by Mr. Penner (*TCCA*, section 12(1); *ITA*, section

171(1); *Federal Courts Act*, section 18.5; see also *JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at paras 83, 89; *Dow Chemical Canada ULC v Canada*, 2024 SCC 23 at paras 48-49).

[14] Furthermore, it also appears that proceedings under the *BEA* in tandem with the *ITA* can be heard at the Tax Court (see *e.g.*, *Armenti v The Queen*, 2007 TCC 389 at para 17). Thus, I do not agree with Mr. Penner that the Tax Court cannot have jurisdiction over payment of a bill of exchange under the *BEA*, should the matter have to do with a proceeding under the *ITA*.

[15] Mr. Penner asks the Federal Court to confirm that the CRA has lost its right of recourse against him, ostensibly because he provided a notice on July 24, 2023, to the CRA about the May and June bills of exchange. However, Mr. Penner does not state that he provided a notice to the CRA, only a “notice” including reference to the BEA and that “Bob Hamilton/CRA has now lost the right to recourse against the principal DAVID CHARLES PENNER and/or the agent without recourse david charles.” In my view, I cannot discern what the notice means, whether it is in respect of a matter under the *ITA*, and how exactly the CRA has lost its recourse against Mr. Penner.

[16] From the nature of Mr. Penner’s claim and the facts as described in the Statement of Claim, it is therefore not clear that the Federal Court has jurisdiction to hear it with respect to CRA losing its recourse against him (see *e.g.*, *Collins v Canada (Attorney General)*, 2024 FC 1250 at para 40). The Federal Court can show “flexibility” to self-represented parties in these matters, “but this does not exempt the party from complying with the rules” regarding statements of claim (*Fitzpatrick v Codiac Regional RCMP Force, District 12*, 2019 FC 1040 at para 19, citing *Barkley v*

Canada, 2014 FC 39 at para 17). Mr. Penner has not provided the necessary details to support his claim in the Federal Court (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 19-20). In my view, it is therefore plain and obvious that his claim will fail.

B. *Vexatious and Abuse of Process*

[17] I further agree with the Defendant that Mr. Penner cannot impose an obligation on the CRA that his tax obligations would be paid via bills of exchange under the *BEA*, nor has he led any evidence to support that the CRA assented to such an arrangement prior to his tax obligations being paid. This claim must therefore fail (*Steinke v Canada*, 2017 FC 124 (“*Steinke*”) at para 6, citing *Papadopoulos v Borg*, 2009 ABCA 201 (CanLII) at para 4; see also *Knutson (Re)*, 2018 ABQB 858 (“*Knutson*”) at para 70).

[18] Furthermore, I agree with the Defendant that Mr. Penner is seeking to unilaterally extinguish his tax liability through the bills of exchange mechanism under section 152(3) of the *BEA*, and invokes concerns regarding Mr. Penner being an “Organized Pseudolegal Commercial Argument” (“OPCA”) litigant (*Meads v Meads*, 2012 ABQB 571 at paras 447, 449-450).

[19] In Alberta, OPCA establishes an abuse of process (*Knutson* at para 2). In Newfoundland, “fractionating” the human personality to avoid being subject to the law creates a presumption that the submissions are vexatious (*Fiander v Mills*, 2015 NLCA 31 at para 40). Here, Mr. Penner lists himself as “debtor, DAVID CHARLES PENNER,” “David Charles Penner, Authorised Representative for DAVID CHARLES PENNER,” and “david charles for DAVID CHARLES

PENNER.” Indeed, the second claim sought differentiates between “DAVID CHARLES PENNER,” the “principal” and “david charles” the “agent of recourse.”

[20] Nevertheless, there is little evidence to support that Mr. Penner is seeking to have himself exempt from Canadian law. In respect of this argument, while the Federal Court has concerns, I reiterate that Mr. Penner’s attempt to unilaterally extinguish his tax liability through the bills of exchange mechanism under section 152(3) of the *BEA* is simply a unilateral imposition upon the CRA that has no legal effect (*Steinkey* at para 6).

V. Conclusion

[21] I have been mindful of the challenges faced by self-represented litigants. At the hearing for this matter, Mr. Penner was a respectful individual. The Court hopes that he feels that he has been heard.

[22] Nevertheless, the Respondent’s motion is granted. Mr. Penner’s Statement of Claim will be struck pursuant to section 221(1) of the Rules and his motion for leave to amend his Statement of Claim is dismissed. In my view, the Federal Court cannot grant the relief he seeks, he has not disclosed a reasonable cause of action, and he may be engaging in vexatious and abusive conduct.

JUDGMENT in T-1534-24

THIS COURT’S JUDGMENT is that:

1. The Defendant’s motion to strike the Statement of Claim is granted, with costs.
2. The Plaintiff’s motion for leave to amend the Statement of Claim is dismissed.

“Michael Battista”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1534-24

STYLE OF CAUSE: DAVID CHARLES PENNER v HIS MAJESTY
THE KING

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: AUGUST 19, 2024

JUDGMENT AND REASONS: BATTISTA J.

DATED: AUGUST 28, 2024

APPEARANCES:

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FOR THE PLAINTIFF
(ON HIS OWN BEHALF)

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Janice Calzavara

FOR THE DEFENDANT

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