Date: 20071107

Docket: T-1758-07

Citation: 2007 FC 1155

Ottawa, Ontario, November 7, 2007

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

ZOLTAN ANDREW SIMON

Plaintiff

and

HER MAJESTY THE QUEEN
ELIZABETH II (REPRESENTING CANADA)

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] Zoltan Andrew Simon has commenced a simplified action against Her Majesty the Queen Elizabeth II (representing Canada). In addition to his claim for damages, Mr. Simon seeks an order from this Court granting a Canadian visitor's visa (now known as a temporary resident permit) to his current wife. Mr. Simon further asks that the Court recommend to various federal and provincial public officials that certain unidentified forms be reviewed and updated.

[2] The defendant has now brought a motion to strike Mr. Simon's statement of claim. According to the defendant, the statement of claim does not disclose a reasonable cause of action,

does not contain the level of material fact disclosure required of a pleading, is frivolous and vexatious, and amounts to an abuse of process. Moreover, the defendant submits that Mr. Simon has not exhausted the administrative remedies available to him.

[3] For the reasons that follow, I am of the view that the statement of claim must be struck.

Background

[4] As I understand it, the heart of Mr. Simon's claim relates to his inability to sponsor his third (and current) wife for permanent residency as a member of the family class under the *Immigration and Refugee Protection Act*.

[5] Mr. Simon had evidently sponsored an earlier wife (the "second wife"), who had subsequently left him, and gone on to collect social assistance benefits in British Columbia. As part of his sponsorship of his second wife, Mr. Simon had given an undertaking to repay any social assistance benefits paid to his spouse. This he evidently has not done.

[6] Subparagraph 133(1)(g)(i) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, provides that a sponsorship application may only be approved if the sponsor is not in default of any such undertaking. It appears that because Mr. Simon is in default of the undertaking given in relation to his sponsorship of his second wife, his application to sponsor his third wife was refused.

Analysis

[7] Motions to strike are governed by Rule 221 of the *Federal Courts Rules*, SOR/98-106. For such a motion to be granted, it must be plain and obvious that the action cannot succeed, assuming the facts alleged in the statement of claim to be true: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, 74 D.L.R. (4th) 321.

[8] Moreover, the statement of claim should be read as generously as possible, in a manner that accommodates any inadequacies in the allegations that are merely the result of deficiencies in the drafting of the document: see *Operation Dismantle Inc. v. R.*, [1985] 1 S.C.R. 441, at ¶14.

[9] Mr. Simon's statement of claim is lengthy, and at times difficult to understand. Many parts of the claim simply state conclusions of law, without reference to any material supporting facts.

[10] Some aspects of the claim appear to relate to Mr. Simon's unhappiness with the social assistance policy of the government of British Columbia. As I understand it, Mr. Simon blames the availability of what he characterizes as generous social assistance benefits in that province for contributing to the breakdown of his second marriage, as it gave his former spouse the economic freedom to leave him, against his wishes.

[11] Although it is not clear if any relief is being claimed in this regard, Mr. Simon's statement of claim also refers to garnishment proceedings initiated by the Family Maintenance Enforcement

authorities in British Columbia. These proceedings evidently relate to support orders made for the benefit of Mr. Simon's first wife and his children.

[12] Whatever Mr. Simon's complaints may be against the policies and actions of the government of British Columbia, they are clearly outside the jurisdiction of this Court, and as such it is plain and obvious that this aspect of Mr. Simon's claim cannot succeed.

[13] The remainder of Mr. Simon's claim appears to relate to the refusal of his sponsorship application with respect to his third wife. Mr. Simon acknowledges that this decision is the subject of proceedings currently pending before the Immigration Appeal Division of the Immigration and Refugee Board. Nevertheless, Mr. Simon wishes to pursue this action, as he is of the view that the IAD proceedings will take several months to complete, and this action may allow him to have his wife visit him in Canada more quickly.

[14] Subsection 63(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, clearly confers the right to appeal to the IAD on an individual who has received a negative decision in relation to an application to sponsor a foreign national as a member of the family class.

[15] In *Grenier v. Canada*, [2005] F.C.J. No. 1778, the Federal Court of Appeal held that a litigant who wishes to impugn the decision of a federal agency cannot choose whether to proceed by way of an application for judicial review or an action for damages. According to the Federal Court of Appeal, section 18 of the *Federal Courts Act* mandates that a plaintiff who wishes to bring action

against the Crown in civil liability for damages must first exercise the remedies that he or she is offered by administrative law: see also *Prentice v. Canada*, [2006] 3 F.C.R. 135, at & 76.

[16] As a consequence, to the extent that the claim relates to the refusal of Mr. Simon's second sponsorship application, it is plain and obvious that the action cannot succeed.

[17] Finally, the focus of much of Mr. Simon's concern seemingly relates to the form of the undertaking that he signed in relation to his sponsorship of his second wife, although neither the nature of these concerns nor the alleged defects in the form are clearly explained in the statement of claim.

[18] In this regard, I would observe that the form of the undertaking is to a large extent dictated by the provisions of section 131 of the *Immigration and Refugee Protection Regulations*.

[19] Moreover, to the extent that Mr. Simon is of that view that reliance on the undertaking that he gave in the earlier sponsorship is somehow unfair in the circumstances of his case, it is open to him to raise whatever arguments he may have based upon humanitarian and compassionate considerations in the context of his appeal under subsection 63(1) of the *Immigration and Refugee Protection Act*: see *IRPA*, section 65.

[20] For these reasons, I find that it is plain and obvious that the action cannot succeed. As a result, the statement of claim is struck out, without prejudice to Mr. Simon's right to initiate a new

action, one he has exhausted his administrative remedies. The defendant is entitled to her costs, which are fixed at $500.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that the defendant's motion is granted. The statement of claim is struck out, without prejudice to Mr. Simon's right to initiate a new action, one he has exhausted his administrative remedies. The defendant shall have her costs, fixed in the amount of $500.

"Anne Mactavish"
Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-1758-07
STYLE OF CAUSE:	ZOLTAN ANDREW SIMON v. HER MAJESTY THE QUEEN ELIZABETH II (REPRESENTING CANADA)
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	November 6, 2007
REASONS FOR JUDGMENT AND JUDGMENT:	Mactavish J.
DATED:	November 7, 2007

APPEARANCES:

Zoltan Andrew Simon	FOR THE PLAINTIFF
Alexandre Kaufman	FOR THE DEFENDANT

SOLICITORS OF RECORD:

ZOLTAN ANDREW SIMON (Self-represented litigant) Ottawa, Ontario	FOR THE PLAINTIFF
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE DEFENDANT