

Date: 20080929

Docket: T-2256-07

Citation: 2008FC1090

Toronto, Ontario, September 29, 2008

PRESENT: Kevin R. Aalto, Esquire, Prothonotary

BETWEEN:

BOUZARJOMEHR BASSIJ

Plaintiff

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Defendant

REASONS FOR ORDER AND ORDER

[1] **THIS MOTION** is brought by the Defendant to strike the Amended Statement of Claim in its entirety without leave to amend.

[2] The Plaintiff (Mr. Bassij) is now a Canadian citizen. He arrived in Canada in 1987 from Iran and claimed refugee protection. His road to citizenship has not been easy. Mr. Bassij claims in this proceeding general damages in the amount of \$1,000,000.00 for malicious or alternatively negligent investigation, malicious prosecution, abuse of process, breach of his charter rights,

defamation, breach of his employment rights and wrongful hindrance to his employment of education rights. He also seeks special and exemplary damages in various amounts. His claim for damages arises from his strongly held belief that he was not treated fairly or equitably by Immigration Canada officials throughout the immigration process. In particular, his claim focuses on events which occurred during his efforts to enter the United States to write an exam and efforts to return to Canada in May, 1991. This event resulted in him being charged in the United States with illegal entry to the United States and being incarcerated for nine days. Thereafter, relying on the advice of various lawyers, he pleaded guilty to the charge. He also complains that Immigration Canada officials lost his file during the period of June, 1991 through April, 1992 which resulted in significant delays in the processing of his refugee application and that they failed to act appropriately with respect to spousal sponsorship.

[3] In his Amended Statement of Claim he also details other events in the 1990's which he claims delayed the processing of his immigration application. These delays and difficulties which he encountered with Immigration Canada officials, he says, caused him harm by delaying his ability to obtain remunerative employment as a professional engineer and caused him to endure nervous shock, insomnia, acute anxiety and fear of persecution. He alleges that this contributed to the break-up of his marriage and to the mental disorder from which his daughter now suffers and for whom he is the sole caregiver.

[4] The Crown alleges three basic grounds on which it seeks to strike the Amended Statement of Claim. First, they rely upon limitation periods in the *Crown Liability and Protection Act*, R.S.C. 1985, c. C-50; second, they rely upon the principles found in *Grenier v. Canada*, 2005 FCA 348,

[2006] 2 F.C.R. 287 to the effect that no action in tort lies unless a litigant has proceeded by way of judicial review to have decisions of a board or tribunal invalidated; and, third, that as a matter of law there is no duty of care owed by Immigration Canada officials to Mr. Bassij.

[5] As this is a motion to strike the allegations in Mr. Bassij's Amended Statement of Claim, those allegations must be accepted as true. Mr. Bassij, in his oral submissions, passionately described the circumstances of his arrival in Canada and the events dealing with Immigration Canada officials. Unfortunately, these events are well in the past and any claims arising from these events are now statute barred. Even if the lapse of time did not result in the striking of this claim, there are other significant legal hurdles to Mr. Bassij's claim. In the end result, for the reasons that follow, this action must be struck.

[6] Dealing first with the time limitation, there is clear authority that where an action is time-barred it may be struck [see, for example, *Elrofaie v. Canada*, October 6, 2005, file T-2104-04, Order of Prothonotary Martha Milczynski; and, *Miucci v. Canada*, 1991, 52 F.T.R. 216 (TD)]. Section 32 of the *Crown Liability and Proceedings Act* provides that provincial limitation periods apply to proceedings against the Crown arising in a province. As a result, subsection 7(1) of *Ontario's Public Authorities Protection Act*, R.S.O. 1990, c. C-38 applies. That means a six-month limitation period applies to the various decisions of the Immigration Canada officials concerning Mr. Bassij's status in Canada. Even although Mr. Bassij argues that he continues to suffer to this day, the continuance of the injury or damage is with reference to the acts which caused the damage not the continuation of the injury or damage itself [see *Elrofaie*, supra, at para. 4]. The acts alleged to have caused the damage to Mr. Bassij ceased at the absolute latest in 1998 at the time Mr. Bassij

achieved permanent resident status. These events are clearly well beyond the six-month limitation period.

[7] With respect to Mr. Bassij's citizenship application any cause of action relating to that application expired more than two years prior to the commencement of this action and thus this action to the extent it relates to any events flowing from the citizenship application is also time-barred. Applying a two-year limitation period to the citizenship application arises by virtue of *Ontario's Limitations Act, 2002*, and thus any aspect of Mr. Bassij's claim relating to the citizenship application is similarly time-barred.

[8] Even if I am wrong regarding the application of the limitation periods and there is some scintilla of a cause of action which survives the application of the limitation periods, Mr. Bassij's claim still fails because no judicial review was taken of the immigration decisions [the *Grenier* principle] and, there is no private law duty of care owed by Immigration Canada officials to Mr. Bassij. Thus, there is no reasonable cause of action.

[9] Immigration decisions made in respect of Mr. Bassij's case are presumed to be valid and final unless set aside by way of, for example, judicial review. No judicial review of any immigration decisions were undertaken by Mr. Bassij except for the successful judicial review of the denial of his citizenship application in 2004. The decisions which were made concerning Mr. Bassij involve his denial of re-entry, denial of designated class membership, spousal sponsorship applications and delays in relation to his 1993 spousal sponsorship. The only judicial review which Mr. Bassij undertook was the denial of citizenship on which he was successful and which ultimately

resulted in his obtaining Canadian citizenship. Mr. Bassij, in effect, is seeking to impugn decisions made by Immigration Canada officials. Thus, he should have engaged in a judicial review proceeding. In *Grenier*, supra, the Federal Court of Appeal has stated that a litigant is not free to choose between a judicial review proceeding and an action in damages. The litigant must proceed by way of judicial review in order to have the decision invalidated. There are many cases which have applied this principle. Although Mr. Bassij clearly feels wronged by Immigration Canada officials, he is nonetheless caught by the principle in *Grenier*, and thus on this ground the claim should also be struck.

[10] Dealing with the duty of care, Mr. Bassij's claim also fails because no private law duty of care is owed by Immigration Canada officials to Mr. Bassij. In *Khalil v. Canada*, 2007 FC 923, 160 C.R.R. (2d) 234, Justice Carolyn Layden-Stevenson carefully analyzed the private law duty of care in circumstances which bears some comparison to Mr. Bassij's circumstances, and concluded that no private law duty of care was owed to the plaintiffs. There, the plaintiffs had alleged, *inter alia*, that there were delays in the processing of their applications for permanent residence which caused them harm. Even though Justice Layden-Stevenson found that there was unreasonable and inordinate delays in the processing of their applications for permanent residence, she concluded that there was no free-standing cause of action which allowed them to claim damages for the harm which they alleged was caused by the delays of the Immigration Canada officials. Again, Mr. Bassij is caught by the determination in *Khalil* that there is no private law duty of care.

[11] The Respondent raised several other arguments as to why Mr. Bassij's claim was an abuse of process and should be struck out. Because of my conclusions on the three points noted above, it

is not necessary to engage in an analysis of the remaining points raised by the Respondent. I have considered all of the arguments in the written representations of the Respondent and, suffice it to say, they add further support to the conclusion that this action must be struck. I have also carefully reviewed Mr. Bassij's written representations and considered his affidavit in support of his position even though no evidence is usually allowed on motions of this sort.

[12] In coming to the conclusion that this Amended Statement of Claim should be struck, I have considered all of the allegations in the Amended Statement of Claim in light of the teachings of the Supreme Court of Canada in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. Applying the test in *Hunt v. Carey* it is plain and obvious, even on the most generous reading of Mr. Bassij's Amended Statement of Claim, that it cannot succeed. In his impassioned argument, Mr. Bassij indicated that he wanted closure to these chapters of his life. While the result of this motion may not be the result Mr. Bassij was seeking, in my view, these matters must come to an end for the reasons noted above.

ORDER

THIS COURT ORDERS that the Amended Statement of Claim herein is struck without leave to amend.

“Kevin R. Aalto”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2256-07

STYLE OF CAUSE: BOUZARJOMEHR BASSIJ
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 16, 2008

**REASONS FOR ORDER:
AND ORDER** AALTO P.

DATED: September 29, 2008

APPEARANCES:

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(SELF REPRESENTED)

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