

Federal Court



Cour fédérale

Date: 20121129

Docket: T-2102-10

Citation: 2012 FC 1393

Ottawa, Ontario, November 29, 2012

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

VLASTA STUBICAR

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] By motion to the Court, the defendant seeks summary judgment dismissing the plaintiff's Amended Statement of Claim on the grounds that it is statute-barred pursuant to section 106 of the *Customs Act*, RSC 1985, c 1 (2nd Supp) [Act] and that it otherwise raises no genuine issue for trial.

[2] In order to succeed, the defendant must establish that the plaintiff's case, as it stands, "is so doubtful that it does not deserve consideration by the trier of fact at a future trial." However, before reaching such a conclusion, this Court "must proceed with care, as the effect of the granting of summary judgment will preclude [the plaintiff] from presenting any evidence at trial with respect to

the issues in dispute. In other words, [the plaintiff would] lose [her] “day in Court” (see *Source Enterprises Ltd v Canada (Minister of Public Safety and Emergency Preparedness)*, 2012 FC 966 at paras 20-21, [2012] FCJ No 1032).

[3] The relevant provisions of the *Federal Courts Rules* (SOR/98-106) in the case at bar read as follows:

213. (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.

(2) If a party brings a motion for summary judgment or summary trial, the party may not bring a further motion for either summary judgment or summary trial except with leave of the Court.

(3) A motion for summary judgment or summary trial in an action may be brought by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.

213. (1) Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heures, date et lieu de l'instruction soient fixés.

(2) Si une partie présente l'une de ces requêtes en jugement sommaire ou en procès sommaire, elle ne peut présenter de nouveau l'une ou l'autre de ces requêtes à moins d'obtenir l'autorisation de la Cour.

(3) La requête en jugement sommaire ou en procès sommaire dans une action est présentée par signification et dépôt d'un avis de requête et d'un dossier de requête au moins vingt jours avant la date de l'audition de la requête indiquée dans l'avis.

(4) A party served with a motion for summary judgment or summary trial shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.

(4) La partie qui reçoit signification de la requête signifie et dépose un dossier de réponse au moins dix jours avant la date de l'audition de la requête indiquée dans l'avis de requête.

[...]

[...]

215. (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

215. (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

(2) If the Court is satisfied that the only genuine issue is

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.

b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :

(a) nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or

(b) dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

216. (1) The motion record for a summary trial shall contain all of the evidence on which a party seeks to rely, including

(a) affidavits;

(b) admissions under rule 256;

(c) affidavits or statements of an expert witness prepared in accordance with subsection 258(5); and

(d) any part of the evidence that would be admissible under rules 288 and 289.

(2) No further affidavits or statements may be served, except

(a) in the case of the moving party, if their content is limited to evidence that would be admissible at trial as rebuttal evidence and they are served and filed at least 5 days before

a) néanmoins trancher cette question par voie de procès sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;

b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

216. (1) Le dossier de requête en procès sommaire contient la totalité des éléments de preuve sur lesquels une partie compte se fonder, notamment :

a) les affidavits;

b) les aveux visés à la règle 256;

c) les affidavits et les déclarations des témoins experts établis conformément au paragraphe 258(5);

d) les éléments de preuve admissibles en vertu des règles 288 et 289.

(2) Des affidavits ou déclarations supplémentaires ne peuvent être signifiés que si, selon le cas :

a) s'agissant du requérant, ces affidavits ou déclarations seraient admissibles en contre-preuve à l'instruction et leurs signification et dépôt sont faits au moins cinq jours avant la

the day set out in the notice of motion for the hearing of the summary trial; or

date de l'audition de la requête indiquée dans l'avis de requête;

(b) with leave of the Court.

b) la Cour l'autorise.

[4] As set out by the Supreme Court of Canada and applied by this Court, while the moving party has the onus of establishing that there is no genuine issue for trial, the responding party (the plaintiff in this case), must “put her best foot forward” in order to show that her claim has “a real chance of success” (see *Hercules Managements Ltd v Ernst & Young*, [1997] SCJ No 51 at para 15 and *Baron v Canada*, [2000] FCJ No 263 at para 24). As will be discussed below, the plaintiff has attempted to achieve this through her detailed affidavit of September 17, 2012, and the many exhibits filed in support thereof.

The summary of facts as they appear from the plaintiff's Amended statement of claim, affidavit and exhibits

[5] The plaintiff has dual citizenship, Croatian by birth and Canadian by naturalization.

[6] On December 24, 2008, at 2:30 p.m., the plaintiff arrived at the Calgary International Airport from Croatia, through London Heathrow Airport. She was then in possession of both her Canadian and Croatian passports. In her Croatian passport, she had inserted her Croatian Identity Card and two photographs.

[7] She presented herself to the Canada Border Services Agency [CBSA] primary line Border Services Officer BXS010 [primary line BSO] (see plaintiff's exhibit C). A few questions were asked and answered, her E311 declaration card was stamped and she was directed towards the Border Services Officer stationed at point [point officer], who let her go through and wished her happy holidays. She was neither directed to the immigration secondary area, nor to the customs secondary area (see plaintiff's exhibit N, page 6).

[8] On December 27, 2008, the plaintiff realized that her Croatian passport, along with her Croatian Identity card and photographs [missing documents] were missing. She initially thought she had inadvertently lost them and went to the Air Canada lost and found office at the Calgary International Airport. She was told that they were not there and was given a printout of the search. The Air Canada employee suggested that she check with the Calgary police and the CBSA office at the Calgary International Airport, which she did. The CBSA officer looked in a drawer but did not find the missing documents (see plaintiff's exhibit L).

[9] On December 30, 2008, she went to the Croatian Embassy in Ottawa and reported having lost her Croatian passport (see plaintiff's exhibit L).

[10] On October 31, 2009 (i.e. over ten months after having noticed that her Croatian passport was missing) the plaintiff claims to have recalled, at the occurrence of an event which will be more fully discussed below, that the missing documents were seized on December 24, 2008, by the CBSA at her arrival at the Calgary International Airport. According to the plaintiff, she then

recalled that both her passports were handed over to the primary line BSO, but that only her Canadian passport, along with her E311 declaration card, were handed back to her.

[11] On March 16, 2010, the plaintiff wrote to the Minister of Public Safety and Emergency Preparedness [Minister] to request an extension of time, pursuant to sections 129 and 129.1 of the Act, in order to seek the Minister's intervention in accordance with section 131 of the Act (exhibit L). The plaintiff's request was reiterated through her Member of Parliament, Mr. Bernard Bigras on June 10, 2010.

[12] On September 8, 2010, the Minister wrote to the plaintiff (her exhibit M). His answer will be reproduced at length:

Dear Ms. Stubicar:

You Member of Parliament, Mr. Bernard Bigras, wrote to me on your behalf on June 14, 2010, concerning your border clearance at Calgary International Airport on December 24, 2008. I also want to acknowledge your correspondence to me on this issue and apologize for the delay in responding.

The Canada Border Services Agency (CBSA) border services officers are positioned to interview travellers and importers and to examine personal and commercial goods entering and leaving Canada. The agency's mandate is to ensure that only admissible people and goods have access to Canada. The CBSA takes seriously its commitment to provide high-quality service to travellers while ensuring that Canadian society is protected through the responsible enforcement of Canada's laws.

Upon receipt of your correspondences, I requested that CBSA officials investigate and provide a report. Their findings indicate that no seizure or detention actions were taken against you on December 24, 2008.

I am also advised that the CBSA and the Calgary Airport Authority have undertaken an exhaustive search of items brought to the Lost and Found areas at Calgary International Airport and that, unfortunately, your missing documents were not found. I regret that there is no action that the agency is able to take that may assist you in this matter.

Thank you for writing.

Yours sincerely,

*Vic Toews, P.C., Q.C., M.P.
c.c.: Mr. Bernard Bigras, M.P.
Rosemont-La Petite-Patrie*

[13] In addition to her fifteen requests to the CBSA pursuant to the *Privacy Act* and the *Access to Information Act* (which will be discussed below), the plaintiff brought the within action against her Majesty the Queen in Right of Canada on December 20, 2010, seeking:

- i. *“An order declaring that Defendant and her officers and agents have violated the plaintiff’s rights under s. 8 of the Canadian Charter of Rights and Freedom ...;*
- ii. *An order granting the following remedy pursuant to s. 24(1) of the Charter: that the Defendant and her officers and agents shall, without delay, return to the Plaintiff all personal documents, including copies thereof, that were seized, on December 24, 2008, at port of entry Calgary International Airport by Defendant’s officer, Border Services Officer (BSO), Bethany Haeckel;*
- iii. *Costs; and,*
- iv. *Such further and other relief as this Honourable Court deems just.”*

Defendant's motion for summary judgment

Is plaintiff's claim time-barred?

[14] According to the defendant, since the plaintiff claims that the defendant is vicariously liable for the action of the primary line BSO, pursuant to sections 32 of the *Crown Liability and Proceedings Act*, RSC, 1985, c C-50 [CLPA], the limitation period to be applied is the one set forth in section 106 of the Act, which reads as follows:

106. (1) No action or judicial proceeding shall be commenced against an officer for anything done in the performance of his duties under this or any other Act of Parliament or a person called on to assist an officer in the performance of such duties more than three months after the time when the cause of action or the subject-matter of the proceeding arose.

(2) No action or judicial proceeding shall be commenced against the Crown, an officer or any person in possession of goods under the authority of an officer for the recovery of anything seized, detained or held in custody or safe-keeping under this Act more than three months after the later of

(a) the time when the cause of action or the subject-matter of the proceeding arose, and

106. (1) Les actions contre l'agent, pour tout acte accompli dans l'exercice des fonctions que lui confère la présente loi ou toute autre loi fédérale, ou contre une personne requise de l'assister dans l'exercice de ces fonctions, se prescrivent par trois mois à compter du fait générateur du litige.

(2) Les actions en recouvrement de biens saisis, retenus ou placés sous garde ou en dépôt conformément à la présente loi, contre la Couronne, l'agent ou le détenteur de marchandises que l'agent lui a confiées, se prescrivent par trois mois à compter de celle des dates suivantes qui est postérieure à l'autre :

a) la date du fait générateur du litige;

(b) the final determination of the outcome of any action or proceeding taken under this Act in respect of the thing seized, detained or held in custody or safe-keeping.

[...]

b) la date du règlement définitif de toute instance introduite en vertu de la présente loi au sujet des biens en cause.

[...]

[15] As to section 32 of the CLPA, it provides that where the relevant time-bar is found “in any other Act of Parliament”, those provisions shall apply:

32. Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

32. Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s’appliquent lors des poursuites auxquelles l’État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

[16] The following dates are to be considered in determining at what point in time the plaintiff’s cause of action might have arisen: the missing documents were allegedly seized on December 24, 2008; the plaintiff noticed they were missing on December 27, 2008; she made a link between their loss and the defendant on October 31, 2009; and the Minister replied to her request on September 8, 2010. The defendant argues that at best, the plaintiff’s cause of action arose on September 8, 2010, so that her claim issued on December 20, 2010 (i.e. three months and 12 days later) is statute-barred.

[17] The plaintiff replies that section 106 of the Act does not apply to her claim since the primary line BSO did not act in pursuance of her duties under the Act. If she had, says the plaintiff, she would have notified her and issued the “seizure receipt” requested by section 110(4) of the Act.

[18] The plaintiff further argues that when the primary line BSO illegally seized her missing documents, she acted under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. To reach this last conclusion, she relies on the defendant’s affidavit sworn by Ralph Lombardo (which, according to plaintiff, should be given little to no weight), which states:

“had a seizure been made, Ms. Stubicar would have received a IMM 5265 “Seizure Form” stating that date, the items that were seized and signed by both the seizing Officer and Ms. Stubicar. There is no such document”

[19] The statutory authority for the IMM 5265 “Seizure Form” being the IRPA, says the plaintiff, the primary line BSO would have acted outside the scope of the Act.

[20] I disagree with plaintiff for several reasons.

[21] First, it is uncontested that neither the Seizure Receipt provided for in section 110(4) of the Act, nor the Seizure Form provided for by the IRPA, were filled and issued to the plaintiff. It is also uncontested that the primary line BSO did not refer the plaintiff to the immigration secondary area, but that she was referred to the point officer who simply let her go through.

[22] Furthermore, section 106 of the Act is found in its part VI entitled ENFORCEMENT (sections 98 to 163). This part begins with subtitle POWERS OF OFFICERS, and gives the “officers”, as defined in section 2, broad powers to ensure the effective enforcement of the Act. Section 106 of the Act is broad enough to cover any act performed by the primary line BSO on December 24, 2008, namely “anything done in the performance of [her] duties under this or any other Act of Parliament”. The primary line BSO was on duty at the Calgary International Airport on December 24, 2008, and the defendant is being held vicariously liable for an alleged fault or tort by her in her capacity of servant of the Crown, within the meaning of paragraph 3 b)(i) of the CLPA.

[23] Finally, the plaintiff has taken the following steps and made the following arguments based on part VI of the Act:

- a. In one of her requests under the *Access to Information Act* (exhibit D), the plaintiff was asking for “the name of officer BXS010 to whom [she] presented herself... on returning to Canada... on December 24, 2008, as that name appears on documents... prepared by officer BXS010 in the performance of her duties under the Customs Act (notably s. 11 (1)) or under any other Act of Parliament...”. Plaintiff is using the exact language found in section 106 of the Act;
- b. In her letter of March 16, 2010, to the Minister (exhibit L), plaintiff made an “Application pursuant to s. 129.1 of the **Customs Act** for extension of time (limited by s. 129 of the **Customs Act**) to apply for ministerial review under s. 131 of the **Customs Act** regarding specific seizure of “goods” as defined under s. 2(1) of the **Customs Act** including “any document in any form.”” (The emphasis are in her

original letter) Sections 129, 129.1 and 131, as section 106, are all found in part VI of the Act;

- c. The plaintiff blames the primary line BSO and other CBSA officers for having queried her name in the Integrated Customs Enforcement System (ICES), which contains “information [...] used by the Agency for the enforcement of the Customs Act” (see plaintiff’s exhibit R).

[24] I therefore conclude that section 106 of the Act applies to the plaintiff’s claim and that her action against the defendant, for *any* act allegedly performed on December 24, 2008, by the primary line BSO in the performance of her duties, is statute-barred. In so finding, I am following the approach favored by the Federal Court of Appeal in *Ingredia SA v Produits Laitiers Advidia Inc*, 2010 FCA 176 at paras 31-41, [2010] FCJ No 893.

Does plaintiff’s claim disclose a genuine issue for trial?

[25] In her Amended Statement of Claim and in her September 17, 2012 affidavit, the plaintiff enumerates a number of verifications made under her name by the CBSA officers in different systems available to them. The plaintiff is essentially seeking from this Court i) a declaration that her “right to be secure against unreasonable search or seizure”, as provided under section 8 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*] has been violated, and ii) an order enjoining the defendant to return her missing documents to her.

[26] The plaintiff admits not having noticed the loss of the missing documents until three days after she arrived at the Calgary International Airport. She further admits having first thought that she had lost them, hence the fact that that the first step she took was to visit the Air Canada lost and found office. She finally states that her memory of the December 24, 2008 incident was triggered over ten months later, on October 31, 2009, when she once again visited the Calgary International Airport. It is worth elaborating on the circumstances of that event, which is described in some details in the letter that the plaintiff wrote to the Senior Vice-President/Customer Service of Air Canada, on behalf of her mother (her exhibit H). The most relevant excerpts of the letter are reproduced below:

Dear...,

*RE: Harassment of Air Canada Passenger with Dual Citizenship by
Air Canada Ticketing Staff at Calgary International Airport*

Please allow me to bring to your attention the following account of my experience, on October 31, 2009, at the Calgary International Airport Air Canada ticketing counter.

With a confirmed reservation (MK562Z) and the applicable rebooking already paid, on my behalf, by my sister in Zagreb, Croatia, I arrived at the Calgary International Airport Air Canada ticketing area to get my ETKT printout and to check-in, around 17:00 (copies attached). Accompanying me was my daughter, Vlasta Stubicar.

The first in line, I expected to be called to proceed to the closest available counter (closer to the east side window), staffed by a young male with fair coloured hair. A tall South Asian Air Canada staff member arrived from behind, however, to direct me to the counter furthest removed from the said window. Waiting there for me was a tall young to middle-aged Caucasian female which naturally frizzy hair, sandy coloured, neatly pulled back, who was wearing the Air Canada uniform, but without a name tag. She would identify herself as "Susanna"

I handed “Susanna” my old ticket (copy attached), with a handwritten notation on the rebooking code (MK562Z), along with my passport, and asked her to check whether I could get on an earlier connecting flight to Zagreb. “Susanna” seemed to be taking longer than usual, as if she were not perfectly familiar with Air Canada's reservation system. Relying on TIAC rules, she eventually pulled up on her computer screen, “Susanna” asked to see proof of Croatian citizenship (“a residence card or passport”) before she could check me in. As I did not yet have a return ticket for Canada, and had no other proof that I would not be staying more than 90 days, except (as I would later point out) for my travel insurance policy, Croatian authorities would require proof of citizenship, claimed “Susanna”. In vain, my daughter and I protested that:

- 1) my Croatian nationality by birth (as documented in my Canadian passport- “HRV”) gave me the right to return to my native land without a visa and that, therefore, Air Canada had no right to demand further identification; and*
- 2) based on past travel experience with the Lufthansa and British Airways, for instance, this was not standard procedure.*

Before long, arrived a somewhat older Caucasian male colleague with auburn hair that seemed dyed and a matching moustache, also in the Air Canada uniform, but without a name tag to match the name given, “Terry”. In a very authoritarian manner, “Terry” asserted the right to decide whether or not I would get on the plane, and with my passport in hand, disappeared to a room in the back, along the north wall in the terminal. A couple of times, at intervals of approximately 10 minutes, he came out, with my passport still in his hand, only to add to an already tense atmosphere.

[...]

Hallowe'en night at Calgary International, with “Sneaky Susanna” and “Tricky Terry” may be a fitting title for this strange check-in tail that raises many a question [sic] in my mind.

- 1. under whose authority were “Susanna” and “Terry” working?*
- 2. How does their conduct, as described above, reflect on Air Canada's reputation for customer service?*
- 3. More importantly, under what authority were they allowed to demand further proof of my Croatian nationality, under threat of denying me the right to travel?*

4. *If not authorized to demand further proof of Croatian nationality, in addition to the clear annotation in my passport, were “Susanna” and “Terry” acting on improper, because unlawful and discriminatory, considerations?*
5. *Are other holders of dual citizenship routinely subject to such harassment? (emphasis are in the letter)*

[...]

[27] As indicated in a facsimile that was sent to the plaintiff on October, 31, 2009, and as it is clearly explained in Air Canada’s reply letter (exhibit H), the plaintiff’s mother was asked to present proof of her Croatian citizenship for the sole reason that she was flying on a one way ticket and did not have a visa delivered by the Croatian authorities. Commercial carriers are required to ensure that their passengers have the necessary visa or passport before they board a flight.

[28] That said, this was the event that allegedly triggered the plaintiff’s memory of her experience at the Calgary International Airport on December 24, 2008. When she was told that Terry would not keep her mother’s Croatian passport, she replied “Not as you sometimes do.” The Air Canada employee’s “spontaneous facial expression (a known [sic] smile)...confirmed for [her] the inference [she] had drawn in the course of [that] occurrence” (para 14 of plaintiff’s September 17, 2012 affidavit), that it must be what had happened to her missing documents on December 24, 2008.

[29] The Court is of the opinion that there is no need to consider the defendant's affidavit, sworn by Ralph Lombardo, to conclude that the plaintiff's claim raises no genuine issue for trial. There will therefore be no need to consider the plaintiff's argument that, since it is chiefly based on a firm belief rather than being confined to facts within the deponent's personal knowledge, it shall be given little weight by the Court for the purpose of the present motion.

[30] Having "put her best foot forward", the plaintiff has neither direct nor circumstantial evidence that a seizure of her missing documents occurred on December 24, 2008, and it is steadily denied by the defendant in its Amended statement of defence and by the CBSA in all the exhibits filed by the plaintiff in support of her affidavit. As indicated above, plaintiff has made fifteen requests to the CBSA pursuant to the *Privacy Act* and the *Access to Information Act* and filed, in support of her affidavit, all the information she received in response thereof. The plaintiff is thereby attempting to infer from the several verifications made under her name by the primary line BSO and other CBSA officers in the different systems available to them, that they had to have her Croatian passport on hand when they queried the systems. The Court has therefore thoroughly reviewed all the documents emanating from the CBSA, as well as all the other exhibits filed by the plaintiff. Her numerous requests to the CBSA are chronologically listed hereinafter and identified by the dates at which the CBSA replied to the plaintiff:

April 1, 2010

(exhibit C)

"A copy of Traveler's API from London LHR to Calgary on December 24, 2008, time 14:30 P.M. Air Canada Flight #AC851, Booking #8312100 144 093 for STUBICAR, Vlasta."

August 24, 2010

(exhibit Z) *“The internal intelligence report prepared for the CBSA and already released to the Canadian Press under the Access to Information Act, as per the 2-page Canadian Press article by Jennifer Ditchburn, titled “Visa exemption for Croatians could bring war criminals: border agency and dated 15 July 2009.”*

August 26, 2010

(exhibit D) *“The name of officer BXS010 to whom the undersigned presented herself and whose questions she answered, on returning to Canada, via Calgary International Airport, on December 24, 2008, as that name appears on documents, electronic or hard (paper) copy prepared by officer BXS010 in the performance of her duties under the Customs Act (notably s. 11(1)) or under any other Act of Parliament. Attachment: 1-page ICES TRAVELLER HISTORY – TRAVELLER PASSAGE REPORT March 11, 2010.”*

September 15, 2010

(exhibit F) *“1. Customs declaration card E311 filled out by STUBICAR, Vlasta on 24-12-2008.
2. All reports prepared by CBSA Officer BXS010 at Calgary International Airport, on 24-12-2008 as regards to STUBICAR, Vlasta.”
3. All notes made by CBSA Officer BXS010 at Calgary Int. Airport on 24-12-2008 as regards to STUBICAR, Vlasta.”*

October 4, 2010

(exhibit S) *“All personal information and/or data retrievable by my name, Vlasta Stubicar (original spelling Vlasta Stubicar) or by passport number [...] issued to the holder, Vlasta Stubicar, [...], in Croatia and by Croatian Identity Card number [...], issued to the same holder as found in PIB Travel and Identity Document System (TIDS)-CBSA PPU 036.” (Passport and identity card numbers, as well as date of birth intentionally withdrew)*

October 12, 2010

(exhibit V) “The name of the supervisor that was on duty on 24/12/08, 14:34 at Calgary International Airport for BSO (CBSA Officer) BXS010 Bethany Haeckal.”

October 15, 2010

(exhibit U) “All personal information retrievable by the undersigned’s name VLASTA STUBICAR (original spelling: Stubicar), DOB: [...], Croatia, in the CBSA – specific Personal Information Bank MWCS-C, “Modern War Crimes System – Classified”, CBSA PPU 028.”
(Date of birth intentionally withdrew)

November 22, 2010

(exhibit R) “CBSA Manuals (electronic versions):
1. Inland Services Procedures Manual
2. Recorded Information Management Policy and Procedures Manual
3. Traveller Processing;”

November 29, 2010

(exhibit W) “I. Officer ID numbers, respectively, for Murray EDWORTHY and Mike GERENCIR.
II. Customs Notebooks used on 24/12/2008, at Calgary International Airport, by the following officers: 1) BSO BXS010, Bethany HAECKEL. 2) Supervisor Murray EDWORTHY. 3) Supervisor Mike GERENCIR.
III. Record Number: CBSA ADM132 (1-page copy of relevant Info Source excerpt attached) The Information Sharing Agreement between the CBSA and Statistics Canada, relating to E311 Traveller Declaration Cards.”

October 13, 2011

(exhibit I) “The name and identifying (badge) number of the “point” officer on duty on 12-20-2008 [sic] at Calgary International Airport (Point of entry) to whom the undersigned handed her E311 card immediately following POE examination starting 14:34.”

December 15, 2011

(exhibit K) "The name and identifying badge number of the male CBSA officer on duty at the Canada Customs (Douanes Canada) office, at the arrivals level of Calgary International Airport, between 10:00 a.m. and 12:00 p.m., on Saturday, December 27, 2008. The said Canada Customs office is accessible to the public at the arrivals level of Calgary International Airport."

March 28, 2012

(exhibit BB) "The audit records generated the storage and access in PAXIS, and other CBSA databanks, of API/PNR data matching the undersigned's name, Vlasta STUBICAR, and record locator number PKD MSV."

July 20, 2012

(exhibit DD) "The work location (City, Department, Unit, Station, etc...) and job title, effective 24/12/2008, 15:00 00:00 (midnight), of respectively, Chris SOWDEN CXS 766 and June DUTHIE JCD 127."

[31] After careful consideration of all the exhibits filed by plaintiff, I am of the opinion that her view is neither supported by the evidence nor by her reasons. Nowhere in the documents issued by the CBSA do we see the plaintiff's Croatian passport number appear, nor do we see any indication that the CBSA would have in its possession plaintiff's missing documents. In all the systems queried under her name, the plaintiff is referred to by her birth date and her Canadian passport number.

[32] The plaintiff is unable to support her claim, and her allegations do not support the remedies sought. In that sense, the plaintiff's claim is more of a massive investigation (that so far did not lead her anywhere) than a genuine claim and allowing it to move forward would unduly use valuable Court time and resources.

[33] For these reasons, the Court finds that the plaintiff's claim is time-barred and that it raises no genuine issue for trial and accordingly allows the defendant's motion for summary judgment. Costs shall follow the event.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The defendant's motion for summary judgement is hereby granted and the plaintiff's action against the defendant is dismissed, with costs.

"Jocelyne Gagné"

Judge

Federal Court



Cour fédérale

SOLICITORS OF RECORD

DOCKET: T-2102-10

STYLE OF CAUSE: Vlasta Stubicar v Her Majesty the Queen

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 27, 2012

**REASONS FOR ORDER
AND ORDER:** GAGNÉ J.

DATED: November 29, 2012

APPEARANCE:

Vlasta Stubicar SELF REPRESENTED as Plaintiff

Me Max Binnie FOR THE DEFENDANT

SOLICITORS OF RECORD:

Vlasta Stubicar SELF REPRESENTED as Plaintiff

Me Max Binnie FOR THE DEFENDANT
Ottawa (Ontario)