

Federal Court



Cour fédérale

Date: 20160222

Docket: T-412-15

Citation: 2016 FC 230

BETWEEN:

STEVEN JOHN TONNER

Plaintiff

and

**BARRY LOWRY, REMAX TWIN CITY
REALTY INC.; GEORGE WATSON, ROYAL
LEPAGE THE BEACH AND BEYOND
REALTY INC.; ANITA MERLO, BOSLEY
REAL ESTATE LTD; CHRIS KAPCHES,
CHESTNUT PARK REAL ESTATE LIMITED;
LAURA GRAHAM, SUTTON GROUP
INCENTIVE REALTY INC.; CAROLE
MURPHY, COLDWELL BANKER STURINO
REALTY LTD.; TORONTO REAL ESTATE
BOARD AND CHERRY BODERA;**

Defendants

**CHRISTOPHER BREDT, MORGANA
KELLYTHORNE, MATHEW FURROW, AMY
WESTLAND, MARTIN ZARNET, ANITA
JOHN, BRUCE CUNNINGHAM, JOHN K.
BURNET, TOM WRIGHT, ELIZABETH
SILCOX, ALLAN JOHNSON, WENDY
PETTITT, BRUCE JACKSON, DAVID
ANDREW,**

Defendants

**BOARD OF DIRECTORS-BRUCE LAW,
DAVID ROSSI, GLENDA BRINDLE (AS
REPRESENTATIVE AND CHAIRMAN OF
THE BOARD OF DIRECTORS FOR THE
REAL ESTATE COUNCIL OF ONTARIO)
AND THE REAL ESTATE COUNCIL OF
ONTARIO, BOARD OF DIRECTORS
(REBECCA RYDER, MICHAEL APPLETON,
STEVE BOXMA, MIKE CUSANO, HOWARD
DRUKARSD, PETER HOFFMAN, JODY
LAVOIE, MARY SHENSTONE, HSHWANI
BHARDWAJ, BILL YETMAN), BORDEN
LADNER GERVAIS.**

Defendants

**ARLENE BONILLA, ROCCHINA GOLDEN,
OSWALD LOGOZZO, EDWARD BARISA,
SHELLY KORAL, ROBERT EBY, ROBERT
EBY REAL ESTATE, KEITH GUERTS,
MONIKA BOS, ONTARIO REAL ESTATE
ASSOCIATION, PETER MANDERVILLE,
GOWLING LAFLEUR HENDERSON.**

Defendants

**BOARD OF DIRECTORS OF ONTARIO
REAL ESTATE ASSOCIATION, COSTA
POULOPOULOS, PHIL DORNER, PATRICIA
VERGE, RAY FERRIS, TOM LEBOUR,
RICHARD LEROUX, AZIZALI KANJEE,
RON ABRAHAM, DIANE USHER, ETTORE
CARDARELLI, MAUREEN O'NEIL, LINDA
MCCALLUM, DAVID REID, DIANE
ERICKSON, JOHN ODDO, ANNA VOZZA.**

Defendants

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF CONSUMER AND BUSINESS
SERVICES, FATEMA DADA, COURTNEY
HARRIS, JAMES ARMSTRONG, RONALD
CHOUINARD, TORONTO POLICE SERVICE
BOARD AND WILLIAM BLAIR, JOHN
LEAVER, DOUG BROWN, ONTARIO
PROVINCIAL POLICE, MATT COHEN, LAW
HELP ONTARIO, DANIEL MARENTIC,**

Defendants

**ATTORNEY GENERAL OF ONTARIO AND
ATTORNEY GENERAL OF CANADA,
COMMISSIONER FOR JUDICIAL AFFAIRS
CANADA, CANADIAN JUDICIAL COUNSEL,
OFFICE OF THE PRIVACY COMMISSION
OF CANADA, DAVID MCCOMBS, EDWARD
BELOBABA, JAMES MCNAMARA,
POLOWIN J., DAVID DOHERTY, IAN
JURIAN, DAVID LASKIN, DAVID
ROSENBERG, CINDY PILLA,**

Defendants

**JUSTICE OF THE PEACE F. ROSS STUART,
DESJARDIN, ROMANALLI, R. SKJARUM
AND L. GONET, S. MALIK**

Defendants

ROYAL CANADIAN MOUNTED POLICE

Defendant

REASONS FOR ORDER

PHELAN J.

I. Introduction

[1] These are the Reasons for this Court's Order of January 26, 2016, which granted an Order under s 40 of the *Federal Courts Act*, RSC 1985, c F-7 (essentially declaring Mr. Tonner a vexatious litigant), requiring leave of this Court before initiating any proceedings, striking the Statement of Claim and ordering costs.

[2] Tonner has been declared a vexatious litigant twice in Ontario. Having been foreclosed from the provincial court system, he now wishes to engage, in apparently the same manner, the federal court system. That cannot be permitted.

II. Background

[3] Tonner's litigation history stems from discipline proceedings commenced by the moving party, Real Estate Council of Ontario [RECO], the non-profit corporation that manages and regulates the real estate industry in Ontario.

[4] Tonner was a real estate agent and member of RECO. In June 2004, the RECO Discipline Committee found that Tonner had violated RECO's Code of Ethics by making racist and anti-Semitic comments and imposed a two-year suspension and a \$5,000 fine.

[5] Tonner then began his litigation journey. He was unsuccessful at each step of his litigation, up to the Supreme Court of Canada, to overturn the suspension order by RECO. In the course of which he had numerous cost awards against him which remain unpaid.

[6] After the disciplinary proceedings, Tonner commenced a significant amount of litigation against RECO and others. This led the Superior Court of Justice of Ontario [Superior Court] to issue two orders declaring Tonner a vexatious litigant pursuant to the *Courts of Justices Act*, RSO 1990, c C43.

As a result of unrelated litigation, Tonner had previously been declared a vexatious litigant in 1998 but that order was partially vacated in 2004.

[7] On October 23, 2006, Justice Belobaba of the Superior Court declared Tonner a vexatious litigant, stayed all previous proceedings commenced by Tonner (except a case pending in the Supreme Court of Canada) and ordered that Tonner could not initiate any proceedings except with leave of a judge of the Superior Court.

His appeal of that order was dismissed when he failed to pay security for costs as ordered.

[8] Tonner then took varying steps to re-open the dismissed appeal including seeking leave from the Supreme Court. Those efforts were unsuccessful.

[9] Six years after Justice Belobaba's vexatious litigant order [Belobaba Order], Tonner attempted to have that Order rescinded by a judge sitting in Perth. Justice McNamara found

“absolutely no basis” for rescission and made another vexatious litigant order specifying that Tonner could not initiate proceedings without first obtaining leave in writing from the Regional Senior Judge of the Central West Region.

[10] As part of Tonner’s campaign, he procured criminal summons from the Deputy Registrar at the Brampton courthouse directed at a RECO representative. Justice Durno quashed the subpoenas and prohibited anyone other than a judge of the Superior Court from issuing subpoenas at Tonner’s request.

[11] There is a clear pattern of Tonner repeatedly disobeying court orders and attempting to initiate proceedings. These acts include:

- In 2005, despite an order prohibiting Tonner from initiating further summons without notice to the person involved, he laid a private charge against RECO employees for fraud and extortion without notice and procured summons in relation to the charges. Those charges were quashed, Tonner was arrested and charged with disobeying a court order and released on bail.
- In 2011, Justice Boswell of the Superior Court stayed four proceedings issued in Newmarket contrary to the Belobaba Order. Another action was heard and dismissed.
- In 2011, Justice Himmel refused leave to bring a new action in Toronto.
- Also, in 2011, Tonner attempted to set aside the Belobaba Order by filing a forged consent to an order to that effect. Tonner was convicted of criminal forgery, using

forged documents and obstruction of justice. His conviction was upheld on appeal.

[12] In addition to Tonner's acts of disobedience of court orders and his efforts to move around judicial districts, he has engaged in other vexatious acts including being charged with assault and criminal assault of a RECO representative and making numerous complaints to the Law Society of Upper Canada against various counsel; none of which have been upheld.

[13] In summary, Tonner, having been declared a vexatious litigant in Ontario twice, continued to flout the court's orders. He has failed to pay cost awards. He has tried to use the private criminal process by again disobeying court orders and in engaging in forgery and fraud on the courts. He has been prepared to move about the Ontario jurisdiction in a classic example of forum shopping.

[14] Tonner has now taken his campaign to the Federal Court where he has filed a 43-page Statement of Claim against these Defendants claiming damages of \$30 million in general damages, \$20 million in special damages and \$11.5 million in compensatory damages and other varying monetary claims – always in the millions of dollars.

[15] There is no intention to try to better define the myriad of Tonner's claims but suffice it to say that it makes outrageous claims without specifics, attacks the honesty and integrity of judges of the Superior Court, and repeats many of the allegations against a number of the Defendants already dealt with by the Superior Courts.

The Statement of Claim is a rambling set of disconnected allegations and sweeps within its purview almost everyone who has dealt with Tonner on his real estate and litigation problems (and sometimes people or entities who had nothing to do with him).

III. Analysis

[16] There are two issues to be determined:

- a) Should Tonner be declared a vexatious litigant?
- b) Should the claim be struck?

The Court has already ordered both.

[17] The Federal Court has the power under s 40(1) of the *Federal Courts Act* to grant a vexatious litigant order:

40 (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.

40 (1) La Cour d'appel fédérale ou la Cour fédérale, selon le cas, peut, si elle est convaincue par suite d'une requête qu'une personne a de façon persistante introduit des instances vexatoires devant elle ou y a agi de façon vexatoire au cours d'une instance, lui interdire d'engager d'autres instances devant elle ou de continuer devant elle une instance déjà engagée, sauf avec son autorisation.

[18] The consent of the Attorney General of Canada has been obtained.

[19] A vexatious litigant is one who persistently institutes vexatious proceedings or has conducted a proceeding in a vexatious manner.

Relief under s 40(1) is an exception and a serious matter; however, it does not deny a person the use of courts, it regulates its proper use.

[20] The characteristics of a vexatious litigant are fairly common across all Canadian jurisdictions. In particular, Ontario precedent lines up with Federal Court precedents. The Federal Court has identified key indications of vexatious behaviour:

- a propensity to re-litigate matters that have already been determined;
- the initiation of frivolous actions or motions;
- the making of unsubstantiated allegations of impropriety against the opposite party, legal counsel and/or the Court;
- the refusal to abide by rules and orders of the Court;
- the use of scandalous language in pleadings or before the Court; and
- the failure or refusal to pay costs in earlier proceedings and the failure to pursue litigation on a timely basis.

(see *Wilson v Canada (Revenue Agency)*, 2006 FC 1535 at paras 30-31, 305 FTR 250 – Barnes J.)

[21] I accept RECO's counsel's submission that Tonner displays all the recognized traits of a vexatious litigant:

- (a) For over a decade, he has been consistently re-litigating the same issues that were before the RECO Discipline Committee in 2004 in over twenty proceedings in the Superior Court, the Small Claims Court, the Divisional

Court, the Court of Appeal and the Supreme Court of Canada. Tonner has never been successful in relation to any of his complaints against RECO in any of the multiple fora in which he has sought to re-litigate these issues. It is as a result of this re-litigation of the same issues that Justices Belobaba and McNamara issued the 2006 and 2012 vexatious litigant orders against Tonner. The Amended Statement of Claim in the within action raises the same issues that were the subject of the proceedings that were the basis for these two vexatious litigant orders.

- (b) Tonner has instituted numerous frivolous and vexatious motions and applications, including to revive dismissed or abandoned applications and appeals, to rehear appeals, to appeal interlocutory motions, and to issue multiple subpoenas in relation to baseless private criminal charges.
- (c) Tonner has made numerous unsubstantiated allegations to the Law Society concerning counsel for RECO, many of whom are also named defendants in the within action. There are also numerous judges and justices of the peace named as defendants, against whom Tonner had made unsubstantiated and scandalous allegations. His allegations against Justice Belobaba are particularly scandalous. For example, the Amended Statement of Claim pleads:

The Plaintiff states and pleads that the defendant Belobaba is an anti semitic racists and a big community thug and bully and is known to defeat the course of justice. The defendant along with his co-conspirators should be stripped of their life, liberty and security and their beds should be put out on the street.

[...]

- (d) As discussed above, Tonner has refused to obey numerous court orders, and has been charged criminally for failing to do so.
- (e) Even a cursory reading of the Amended Statement of Claim in the within action, and nearly all the materials Tonner has filed in any of the proceedings he has commenced, reveals gratuitous use of scandalous language. For example, the Amended Statement of Claim in the within action pleads:

All of the front line defendants declared an act of war and hate intended squarely at the Plaintiff and indeed used their own aggression to further hi-jacking the criminal justice system as a means of Extortion to stop and prevent the Plaintiff from exercising his legal remedies in small claims court, Superior Court, Divisional Court and the Court of Appeal for Ontario.

...

The Plaintiff states and pleads that the “Big Wolf” is a evil emperor bully and a big coward and rules the defendants to varying degrees (see para 15-33) except the fraud artist Keith Guerts directly or indirectly or by proxy...

[...]

- (f) Tonner has failed to pay over \$51,000 of the outstanding cost awards against him in favour of RECO. Numerous proceedings he has instituted have been dismissed for delay.

[22] Against that backdrop Tonner has now filed a mish mash of a Statement of Claim that seeks to canvass all the past issues, adds a few current ones and seeks to engage the Federal Court process.

[23] Common sense, judicial comity and economy dictate that this Court take into account the experience of other courts in relation to Tonner. This has been done in this Court before;

Mazhero v Fox, 2011 FC 392, 387 FTR 244.

[24] The Federal Court need not wait for the ensuing burden of Tonner's type of conduct to fall upon it. There is no reason to doubt that Tonner will continue his vexatious conduct in this Court.

[25] An Order under s 40(1) ensures a balance between the right of every litigant to have access to this Court and protecting the Court and other parties from wasteful, frivolous unnecessary and unmeritorious claims. There is no good reason not to grant s 40(1) relief.

[26] With respect to the Statement of Claim, it pleads against persons and entities over whom, and in the context advanced, this Court would not appear to have jurisdiction.

[27] Absent anything more, it is not clear that this Court has neither personal nor subject matter jurisdiction over such entities as Her Majesty the Queen in Right of Ontario, over judges of the Ontario court system, Ontario court staff, provincial Crown counsel or police officers.

[28] Even if this Court did, it is impossible because of the way matters are pled, to discern the specific cause of action over which this Court has jurisdiction. In respect of federal entities, it is still impossible to discern a proper cause of action.

[29] Further, the pleadings are so interconnected and crossed over that it would be futile to sever some claims and leave others.

[30] The only sensible result is to strike the whole of the claim. If Tonner wishes to reinstitute proceedings, he will have to obtain leave pursuant to Rule 40(1).

[31] Lastly, costs were requested by RECO. The award of costs is for them only. Unless requested, the Court's Order need not be amended to clarify this award.

"Michael L. Phelan"

Judge

Ottawa, Ontario
February 22, 2016

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-412-15

STYLE OF CAUSE:

STEVEN JOHN TONNER v BARRY LOWRY, REMAX TWIN CITY REALTY INC.; GEORGE WATSON, ROYAL LEPAGE THE BEACH AND BEYOND REALTY INC.; ANITA MERLO, BOSLEY REAL ESTATE LTD; CHRIS KAPCHES, CHESTNUT PARK REAL ESTATE LIMITED; LAURA GRAHAM, SUTTON GROUP INCENTIVE REALTY INC.; CAROLE MURPHY, COLDWELL BANKER STURINO REALTY LTD.; TORONTO REAL ESTATE BOARD, CHERRY BODERA; CHRISTOPHER BREDT, MORGANA KELLYTHORNE, MATHEW FURROW, AMY WESTLAND, MARTIN ZARNET, ANITA JOHN, BRUCE CUNNINGHAM, JOHN K. BURNET, TOM WRIGHT, ELIZABETH SILCOX, ALLAN JOHNSON, WENDY PETTITT, BRUCE JACKSON, DAVID ANDREW, BOARD OF DIRECTORS-BRUCE LAW, DAVID ROSSI, GLENDA BRINDLE (AS REPRESENTATIVE AND CHAIRMAN OF THE BOARD OF DIRECTORS FOR THE REAL ESTATE COUNCIL OF ONTARIO) AND THE REAL ESTATE COUNCIL OF ONTARIO, BOARD OF DIRECTORS (REBECCA RYDER, MICHAEL APPLETON, STEVE BOXMA, MIKE CUSANO, HOWARD DRUKARSD, PETER HOFFMAN, JODY LAVOIE, MARY SHENSTONE, HSHWANI BHARDWAJ, BILL YETMAN), BORDEN LADNER GERVAIS. ARLENE BONILLA, ROCCHINA GOLDEN, OSWALD LOGOZZO, EDWARD BARISA, SHELLY KORAL, ROBERT EBY, ROBERT EBY REAL ESTATE, KEITH GUERTS, MONIKA BOS, ONTARIO REAL ESTATE ASSOCIATION, PETER MANDERVILLE, GOWLING LAFLEUR HENDERSON. BOARD OF DIRECTORS OF ONTARIO REAL ESTATE ASSOCIATION, COSTA POULOPOULOS, PHIL DORNER, PATRICIA VERGE, RAY FERRIS, TOM LEBOUR, RICHARD LEROUX, AZIZALI KANJEE, RON ABRAHAM, DIANE USHER, ETTORE CARDARELLI, MAUREEN O'NEIL, LINDA MCCALLUM, DAVID REID, DIANE ERICKSON, JOHN ODDO, ANNA VOZZA. HER MAJESTY THE

QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF CONSUMER AND BUSINESS SERVICES, FATEMA DADA, COURTNEY HARRIS, JAMES ARMSTRONG, RONALD CHOUINARD, TORONTO POLICE SERVICE BOARD AND WILLIAM BLAIR, JOHN LEAVER, DOUG BROWN, ONTARIO PROVINCIAL POLICE, MATT COHEN, LAW HELP ONTARIO, DANIEL MARENTIC, ATTORNEY GENERAL OF ONTARIO AND ATTORNEY GENERAL OF CANADA, COMMISSIONER FOR JUDICIAL AFFAIRS CANADA, CANADIAN JUDICIAL COUNSEL, OFFICE OF THE PRIVACY COMMISSION OF CANADA, DAVID MCCOMBS, EDWARD BELOBABA, JAMES MCNAMARA, POLOWIN J., DAVID DOHERTY, IAN JURIAN, DAVID LASKIN, DAVID ROSENBERG, CINDY PILLA, JUSTICE OF THE PEACE F. ROSS STUART, DESJARDIN, ROMANALLI, R. SKJARUM AND L. GONET, S. MALIK, ROYAL CANADIAN MOUNTED POLICE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 26, 2016

REASONS FOR ORDER: PHELAN J.

DATED: FEBRUARY 22, 2016

APPEARANCES:

N/A

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