

Federal Court



Cour fédérale

Date: 20171115

Docket: T-1480-17

Citation: 2017 FC 1041

Ottawa, Ontario, November 15, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

GRACE JOUBARNE

Applicant

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Respondent

ORDER AND REASONS

[1] On or about September 29, 2017, the Plaintiff introduced, by way of a simplified action, a claim for declaratory relief against the Her Majesty the Queen in Right of Canada [Her Majesty] for a dispute over property taxes levied by the City of Belleville against two properties she owns in that municipality. The Plaintiff contends that the only way the city can obtain property tax revenues from her two properties is by making an application to the federal Minister of Public Works and Government Services pursuant to the *Payments in Lieu of Taxes Act*, RSC 1985, c M-

13 [the Act] and have these revenues paid out of the Consolidated Revenue Fund, something the city is declining to do on the basis that the Act does not apply to these properties.

[2] In declining to do so, she says the City of Belleville is infringing upon her right to freely dispose – and be free from forced disposition – of her wealth and resources. She contends that this right is guaranteed by various international human rights law instruments and that the Act is designed, in fulfilment of Canada’s obligations under these instruments, to create conditions allowing her to exercise that right freely. That protection, entrenched in Canadian domestic law both statutorily and constitutionally, the argument goes, is triggered by the fact the properties she owns in Belleville are “federal property” within the meaning of the Act.

[3] While her action is directed at Her Majesty, the Plaintiff is for all intents and purposes seeking declaratory relief from the City of Belleville. In one instance, she seeks relief from the city’s inaction in making an application under the Act. In another, she is asking the Court to declare that she is entitled to a refund, by the city, of an amount of property taxes she unwillingly paid in 2017. Why sue Her Majesty then? Because the City of Belleville, according to the Plaintiff, is a “servant” of the Crown within the meaning of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 [CLPA] and its inaction amounts to a tort of misfeasance in public office engaging Her Majesty’s liability pursuant to section 3 of the CLPA.

[4] Unsurprisingly, Her Majesty has brought a motion in writing under rules 221 and 369 of the *Federal Courts Rules*, SOR/98-106 [the Rules] for an order striking out the Plaintiff’s action,

without leave to amend, both because this Court lacks jurisdiction to entertain it and because it does not disclose a reasonable cause of action. This is the motion currently before the Court.

[5] As is well settled, a statement of claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that it has no reasonable prospect of success (*R v Imperial Tobacco Canada Ltd*, [2011] 3 SCR 45, at para 17 [*Imperial Tobacco*]; *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959, at p 980). Here, this test is clearly met.

[6] The Plaintiff's claim rests on the following three propositions: the property she owns in Belleville is "federal property" within the meaning of the Act; the Act is aimed, in fulfillment of Canada international law obligations, at protecting the Plaintiff's right to freely dispose - and be free from forced disposition - of her wealth and resources; and the City of Belleville is a "servant" of the Crown within the meaning of the CLPA and engages, therefore, Her Majesty's liability for the torts it commits.

[7] All three propositions, on their face, are meritless.

[8] First, the property at issue does not, by any stretch of the imagination, meet the definition of "federal property" within the meaning of the Act. "Federal property" within the meaning of the Act is either property "owned" or "under emphyteusis" by Her Majesty and administered by a "minister of the Crown" or a "corporation" listed in Scheduled III or IV of the Act, or property which is "occupied or used" by a "minister of the Crown" and administered and controlled by

Her Majesty in right of a province. That definition, set out in subsection 2(1) of the Act, reads as follows:

<p><i>federal property</i> means, subject to subsection (3),</p> <p>(a) real property and immovables owned by Her Majesty in right of Canada that are under the administration of a minister of the Crown,</p> <p>(b) real property and immovables owned by Her Majesty in right of Canada that are, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,</p> <p>(c) immovables held under emphyteusis by Her Majesty in right of Canada that are under the administration of a minister of the Crown,</p> <p>(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and</p> <p>(e) real property and immovables occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province; (propriété fédérale)</p>	<p><i>propriété fédérale</i> Sous réserve du paragraphe (3) :</p> <p>a) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada dont la gestion est confiée à un ministre fédéral;</p> <p>b) immeuble ou bien réel appartenant à Sa Majesté du chef du Canada et relevant, en vertu d'un bail, d'une personne morale mentionnée aux annexes III ou IV;</p> <p>c) immeuble dont Sa Majesté du chef du Canada est emphytéote et dont la gestion est confiée à un ministre fédéral;</p> <p>d) bâtiment appartenant à Sa Majesté du chef du Canada, dont la gestion est confiée à un ministre fédéral mais qui est situé sur un terrain non imposable qui n'appartient pas à Sa Majesté du chef du Canada ou qui est contrôlé et administré par Sa Majesté du chef d'une province;</p> <p>e) immeuble ou bien réel occupé ou utilisé par un ministre fédéral et administré et contrôlé par Sa Majesté du chef d'une province. (federal property)</p>
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[9] A “minister of the Crown” is a federal minister of the Crown and a “corporation” listed in Schedule III and IV of the Act is a federal Crown corporation.

[10] By her own admission, the Plaintiff recognizes that the property she owns in Belleville is not owned or controlled by Her Majesty. However, she claims that, according to subsection 2(3) of the Act, the definition of “federal property” also includes buildings designed primarily for the shelter of people, driveways for single-family dwellings and real property or immovable leased to or occupied by a person or body that is not a department. Since her two Belleville properties are semi-detached buildings presenting all these characteristics, they fall, she says, within this extended definition.

[11] Again, by any stretch of the imagination, this cannot be what Parliament intended. Apart from the fact that real property or immovable leased to or occupied by a person or body that is not a department is excluded from the definition of “federal property”, a building designed primarily for the shelter of people or a driveway for a single-family dwelling can only fall within that definition if it is owned or controlled by Her Majesty. In other words, subsection 2(3) on which the Plaintiff relies to advance her argument, cannot be read in isolation that is without regard to the main definition of “federal property” found at subsection 2(1). Subsection 2(3), which makes an express reference to the definition of “federal property”, provides for a number of exclusions from that definition, with a number of exceptions to these exclusions. Buildings designed primarily for the shelter of people and driveways for single-family dwellings are two of these exceptions.

[12] These exceptions can only make sense however if such buildings or driveways are owned or controlled by Her Majesty in the first place. This is the only way to look at it because the sole purpose of the Act is to establish a regime of discretionary payments in lieu of taxes to provinces and municipalities to mitigate the fact that property owned by Her Majesty is constitutionally exempt from provincial and municipal taxation (*Halifax (Regional Municipality) v Canada*, [2012] 2 SCR 108, at paras 2 and 10). That purpose is not to alleviate, in furtherance of some international obligations, the burden of private property owners who claim that their property should be immune from municipal taxation in the name of one's right to freely dispose of his/her wealth and resources. The Act was not meant to assist tax objectors.

[13] It is therefore plain and obvious in my view that the Act has no application whatsoever to privately-owned and controlled property, such as is the case of the property owned by the Plaintiff in the City of Belleville, and that the first two propositions underlying the Plaintiff's action are devoid of any legal foundation.

[14] The Plaintiff's third proposition is as meritless as the first two. The City of Belleville is not a "servant" of Her Majesty within the meaning of subsection 3(b)(i) of the CLPA. A "servant" of the federal Crown for the purposes of the CLPA is someone who is either employed by the Crown or who acts as an agent for the federal Crown (*Ayangma v Canada*, 1998 CanLII 8926 (FC), at para 12). The City of Belleville is neither. As Her Majesty correctly points out, the City of Belleville has been created, as any other municipality in the province of Ontario, by virtue of the *Municipal Act, 2001*, a provincial statute. There is no indication in that statute, or in the material facts pleaded by the Plaintiff in her statement of claim, that the City of Belleville is

employed by Her Majesty or was acting as an agent of Her Majesty when she declined not to make an application under the Act as requested by the Plaintiff.

[15] It is true that the City of Belleville is a “taxing authority” for the purposes of the Act but as a “taxing authority”, it does not act on behalf of Her Majesty, such as raising or collecting taxes on her behalf, but it is acting for its own benefit, that is to seek payment in lieu of taxes that it would otherwise constitutionally not be entitled to levy. Her Majesty exerts no control of any kind on the City of Belleville.

[16] Finally, the Plaintiff’s contention that it is not open to Her Majesty to bring a motion to strike in the context of a simplified action because such a motion amounts to a motion for summary judgment, is equally flawed. It is clear from rule 298(2) of the Rules that a motion to strike can be brought in the context of a simplified action. Therefore, there is no doubt that the present motion to strike is properly before the Court.

[17] In *Imperial Tobacco*, the Supreme Court of Canada held that the power to strike out claims with no reasonable prospect of success is a valuable housekeeping tool, essential to effective and fair litigation as it ensures that only those claims with a chance of success proceed to trial (*Imperial Tobacco*, at para 19). This housekeeping tool is particularly valuable in a case such as this one where the claim has no chance to succeed at trial as it fails to disclose, in any way, shape or form, a reasonable cause of action.

[18] The Plaintiff's statement of claim will therefore be struck out, without leave to amend as I am satisfied that its defects are beyond redemption and cannot be cured, as a result, by amendment (*Simon v Canada*, 2011 FCA 6, at para 8).

THIS COURT ORDERS that:

1. The motion is granted;
2. The Statement of Claim is struck out, without leave to amend;
3. Costs on the motion are awarded to the Respondent.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1480-17

STYLE OF CAUSE: GRACE JOUBARNE v HER MAJESTY THE QUEEN IN
RIGHT OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE FEDERAL COURTS RULES**

ORDER AND REASONS: LEBLANC J.

DATED: NOVEMBER 15, 2017