

Federal Court



Cour fédérale

Date: 20180711

Docket: T-961-18

Citation: 2018 FC 721

Edmonton, Alberta, July 11, 2018

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

DAVID VICTOR JOHN BJORKMAN

Plaintiff

and

**HER MAJESTY THE QUEEN &
MINISTER OF NATIONAL REVENUE**

Defendants

JUDGMENT AND REASONS

I. Background

[1] The Defendants bring this motion, by notice of motion filed June 21, 2018, under Rule 221 of the *Federal Courts Rules*, SOR/98-106, for an order (a) striking out the statement of claim in this proceeding, or, in the alternative (b) extending the time for the service and filing of the Defendants' statement of defence, by 30 days from today's date. The Plaintiff, David Victor John Bjorkman, did not file any responding materials in advance, but did appear at the hearing of

this motion at the General Sitting in Edmonton, Alberta on July 9, 2018. I allowed the Defendants' motion from the Bench and these are the reasons for my disposition.

[2] Mr. Bjorkman, who is self-represented, commenced the within action by statement of claim issued May 23, 2018, the substance of which I transcribe in full here:

- Total 2016 amount x by 7/12 (months as a single father). ie) 4274.76 represents 2 dependents with Jerreca qualifying for disability and Searra as a regular dependant multiplied by 7 out of 12 months of (2016) legal sole custody @ 115 900.00 annual income (2016). Total for June to Dec 31st 2016 = 2493.61 + plus interest

- Total 2017 amount of 11,703.50 represents 2 dependents with Jerreca qualifying for disability and Searra as a regular dependant @ 55 900.00 annual income (2017). Total for Jan-1st-2017 to December 31st 2017 = 11 703.50 + plus interest

Total Personal Claim: \$14,197.11 + plus interest + court costs
Total Pain and Suffering: \$25,000.00 for loss of home, R7 status, Jerreca's Medical Expences & Searra's Medical Expences.

Total: \$39,197.11 + interest on claim #1 and court costs

I wouldn't have filed if the government would accept my Canadian Status, my court documents and my medical doctors notes.

Time is running out, Jerreca is Autistic and a type 1 diabetic. Searra was born with severe facial deformaties. Many surgeries and extreme dental.

I'm asking for Judgement concerning Child Tax Credit that has been refused to myself and my dependents, multiple times.

II. Positions of the Parties

[3] The Defendants contend that Mr. Bjorkman's statement of claim should be struck as it (a) discloses no reasonable cause of action, (b) is an abuse of process, and (b) is a collateral

attack on Mr. Bjorkman's income tax assessment. The Defendants rely on *Canada v Roitman*, 2006 FCA 266 [*Roitman*] (at para 16) to submit that this Court must look beyond the words used in Mr. Bjorkman's claim to ensure that it is not a disguised attempt to reach before the Federal Court a result that is otherwise unreachable here. The Defendants submit, in this vein, that Mr. Bjorkman's action is in substance a challenge to Mr. Bjorkman's income tax assessment, and thus within the exclusive jurisdiction of the Tax Court of Canada, pursuant to subsection 12(1) of the *Tax Court of Canada Act*, RSC, 1985, c T-2 and section 169 of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp). As a result, the Defendants argue that the claim should be struck out for being outside of the jurisdiction of this Court (*Roitman* at para 24).

[4] Mr. Bjorkman advised in oral submissions that he wished to file his statement of claim prior to the expiry of any limitation period, so as to preserve his litigation, in spite of other avenues potentially open to him — such as an objection to any assessment(s) or an appeal to the Tax Court of Canada.

III. Analysis

[5] The applicable test on a motion to strike under Rule 221 is that it must be “plain and obvious” that Mr. Bjorkman's claim cannot succeed (*Roitman* at para 15). Here, I agree with the Defendants that Mr. Bjorkman's claim, notwithstanding that it seeks \$25,000 for “pain and suffering”, is in reality a challenge to a denial of Canada Child Tax Benefits available under the *Income Tax Act*, and thus within the exclusive jurisdiction of the Tax Court of Canada (see *Bouchard v Canada*, 2016 FC 983 at para 28). As held in *Roitman*:

[20] It is settled law that the Federal Court does not have jurisdiction to award damages or grant any other relief that is sought on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court. To do so would be to permit a collateral attack on the correctness of an assessment...

[Citations omitted.]

[6] Therefore, as explained to Mr. Bjorkman at the hearing of this motion, it is “plain and obvious” that his claim cannot succeed as this Court has no jurisdiction to hear it.

[7] I will accordingly order that Mr. Bjorkman’s statement of claim be struck out without leave to amend, because I am also satisfied that the defects in his claim are such that they are not potentially curable by amendment (*Simon v Canada*, 2011 FCA 6 at para 8). However, my ruling is without prejudice to Mr. Bjorkman’s ability to pursue any remedies that may be open to him in the Tax Court of Canada, should he so choose.

[8] Given the submissions and circumstances in which Mr. Bjorkman finds himself, no costs will be ordered.

JUDGMENT in T-961-18

THIS COURT'S JUDGMENT is that:

1. The statement of claim is struck, without leave to amend.
2. No costs will issue.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-961-18
STYLE OF CAUSE: DAVID VICTOR JOHN BJORKMAN v HER MAJESTY
THE QUEEN & MINISTER OF NATIONAL REVENUE
PLACE OF HEARING: EDMONTON, ALBERTA
DATE OF HEARING: JULY 9, 2018
JUDGMENT AND REASONS: DINER J.
DATED: JULY 11, 2018

APPEARANCES:

David Victor John Bjorkman

FOR THE PLAINTIFF
ON HIS OWN BEHALF

Paige MacPherson

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Attorney General of Canada
Edmonton, Alberta

FOR THE DEFENDANTS