Federal Court  Cour fédérale

Date: 20240216

Docket: T-2650-23

Citation: 2024 FC 265

Toronto, Ontario, February 16, 2024

PRESENT: Associate Judge John C. Cotter

BETWEEN:

PHONG LAM

Plaintiff

and

LAW SOCIETY OF ONTARIO

Defendant

JUDGMENT AND REASONS

UPON motion by the defendant, the Law Society of Ontario ("LSO") dated February 5, 2024, for an order:

a) An order pursuant to Rule 221 of the *Federal Courts Rules* striking the statement of claim, without leave to amend, and dismissing the action;

b) In the alternative, an order pursuant to Rule 8 of the *Federal Courts Rules* extending the time for the LSO to serve and file a statement of defence by 30 days from the date of the order in respect of this motion;

c) If necessary, an Order that this motion be heard remotely by way of video conference;

d) Costs of this motion on a substantial indemnity basis payable forthwith; and

e) Such further and other relief as counsel may advise and this Honourable Court deems just.

AND UPON reviewing and considering the motion record of the LSO dated and filed February 5, 2024;

AND UPON reviewing and considering the statement of claim in this action ("Claim");

AND UPON noting that the plaintiff did not file a respondent's motion record pursuant to Rule 365 (1) (a) of the *Federal Courts Rules*;

AND UPON hearing the submissions of counsel for the defendant at the hearing of the motion on February 13, 2024, by video conference, which the plaintiff did not attend;

AND UPON considering:

I. <u>Plaintiff's failure to file a respondent's motion record, or attend the hearing of the motion</u>

[1] The plaintiff, Phong Lam ("Mr. Lam"), did not file a respondent's motion record. In addition, Mr. Lam did not attend at the hearing of the motion.

[2] Mr. Lam was served with the LSO's motion record and was aware of the motion. Service on Mr. Lam of the LSO's motion record is confirmed in the solicitor's certificate of service dated February 5, 2024. Mr. Lam's awareness of the LSO's motion record, and that the motion was scheduled to be heard on February 14, 2024, is apparent from his emails to the Registry, some of which are referred to in the Court's Direction dated February 12, 2024, discussed below.

[3] As a result of emails sent by Mr. Lam to the Registry in connection with the LSO's motion, the Direction, attached as Appendix A. was issued on February 12, 2024.

[4] It is apparent that Mr. Lam received the above-noted Direction as he sent an email to the Registry on the morning of February 13, 2024, that included the following:

> This letter clarifies the [DIRECTION] document under the name of Associate Judge John C. Cotter dated February 12 2024, and reports fraud to defraud the Court and deceiving the Administrator to believe this is the genuine [DIRECTION] from the Federal Court.
>
> […]
>
> The registrar [name deleted from this quotation] impersonating Associated Judge John Cotter, giving misleading directions and scheduling motion hearing on February 13, 2024 without my consent […]
>
> (Content above in [ ] did not appear in the email, with the exception of "[DIRECTION]", which did)

[5] Despite the notice Mr. Lam had of the LSO's motion, and that it was being heard on February 13, 2024, by video conference at 1:00 PM Eastern, Mr. Lam did not attend the hearing of the motion, nor did he request an adjournment of the motion. Similarly, he did not file a respondent's motion record, nor did he request an extension of time to do so.

[6] As a result, the hearing of the motion proceeded on February 13, 2024, without Mr. Lam.

II. The Claim

[7] The plaintiff in the present case, Phong Lam, is the same plaintiff as in the action in this Court under Court file number T-1394-23 ("T-1394-23"). In T-1394-23, by Order and Reasons of Associate Judge Crinson dated October 25, 2023, and bearing neutral citation 2023 FC 1423 ("T-1394-23 Decision"), Mr. Lam's statement of claim in that action was struck out, without leave to amend, and costs were awarded to the defendants in that case, to be paid by Mr. Lam.

[8] Although much of the Claim is difficult to follow or incomprehensible, key aspects of it include:

a. An attack on the T-1394-23 Decision. Mr. Lam alleges that the T-1394-23 Decision is a "fabricated judgment" (for example, see paragraphs 1, 2, 3, 7, 10 of the Claim). Among other things, Mr. Lam alleges that the LSO fabricated the T-1394-23 Decision to defraud the Court and to have his claim dismissed.

b. Not only does the Claim make allegations regarding the T-1394-23 Decision, the Claim includes the T-1394-23 Decision as an attachment.

c. The T-1394-23 Decision is alleged to have been "created" by four lawyers on October 25, 2023, and that the LSO "purposely published [the T-1394-23 Decision] on Canlii website as a genuine judgment by the LSO, spreading false judgment and perjury…". In allegedly publishing the decision, it is alleged the LSO "violated one of the most serious crimes of fraud in the Federal Court" (Claim, paragraphs 2 and 3).

d. That the LSO issued two other "fake judgments […] illegally" dismissing a complaint in the Human Rights Tribunal of Ontario and a claim in the Superior Court of Justice of Ontario (Claim, paragraph 2).

e. "After receiving 3 fake judgments, the Plaintiff decided to file this claim against the LSO, the Law Society should be held responsible for the misconduct of the lawyers and the offense of fabricating judgment against the justice." (Claim, paragraph 9)

f. Mr. Lam claims compensation of $480,000, which is the amount claimed in T-1394-23; and "punitive damages based on 30 percent annual income of the LSO."

III. Applicable Rules

[9] The LSO has brought this motion to strike under Rules 221 (1)(a) and (c) of the *Federal Courts Rules*, SOR/98-106, which provides:

Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	**221 (1)** À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans

	autorisation de le modifier, au motif, selon le cas :
(a) discloses no reasonable cause of action or defence, as the case may be,	**a)** qu'il ne révèle aucune cause d'action ou de défense valable;
[…]	[…]
(c) is scandalous, frivolous or vexatious,	**c)** qu'il est scandaleux, frivole ou vexatoire;
[…]	[…]
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

IV. Principles on a Motion to Strike

[10] The applicable principles on a motion to strike are aptly set out by Justice Pentney in *Fitzpatrick v. Codiac Regional RCMP Force, District 12, and Her Majesty the Queen*, 2019 FC 1040:

> [14] As noted above, the law governing a motion to strike seeks to protect the interests of the plaintiff in having his or her "day in court," while also taking into account the important interests in avoiding burdening the parties and the court system with claims that are doomed from the outset. In order to achieve this, the courts have developed an analytical approach and a series of tests that apply in considering a motion to strike.
>
> [15] The test for a motion to strike sets a high bar for defendants, and the onus is on the defendant to satisfy the Court that it is plain and obvious that the pleading discloses no reasonable cause of action, even assuming the facts alleged in the statement of claim to be true: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980. Rule 221 (2) reinforces this by providing that no evidence shall be heard on a motion. In view of this Rule, the further evidence submitted by the Plaintiff in his response to the motion to strike cannot be considered.

[16] The facts set out in the statement of claim must be accepted as true unless they are clearly not capable of proof or amount to mere speculation. The statement of claim must be read generously, and mere drafting deficiencies or using the wrong label for a cause of action will not be grounds to strike a statement of claim, particularly when it is drafted by a self-represented party.

[17] Further, the statement of claim must set out facts that support a cause of action – either a cause of action previously recognized in law, or one that the courts are prepared to consider. The mere fact that a cause of action may be novel or difficult to establish is not, in itself, a basis to strike a statement of claim. Related to this, the claim must set out facts that support each and every element of a statement of claim.

[18] As explained by Justice Roy in *Al Omani v. Canada*, 2017 FC 786 at para 17 [*Al Omani*], "[a] modicum of story-telling is required." The law requires, however, a very particular type of story to be set out in a statement of claim—one which describes the events which are alleged to have harmed the plaintiff, focused only on the "material facts," and set out in sufficient detail that the defendant (and the Court) will know what the specific allegations are based on, and that they support the specific elements of the various causes of action alleged to be the basis of the claim.

[19] The Court generally shows flexibility when a party is self-represented, but this does not exempt the party from complying with the rules set out above: *Barkley v Canada*, 2014 FC 39 at para 17. The reason for this is simple – it is not fair to a defendant to have to respond to claims that are not explained in sufficient detail for them to understand what the claim is based on, or to have to deal with claims based on unsupported assumptions or speculation. Neither is it fair to the Court that will have to ensure that the hearing is done in a fair and efficient manner. A court would have difficulty ruling that a particular piece of evidence was or was not relevant, for example, if the claim is speculative or not clear. This will inevitably lead to "fishing expeditions" by a party seeking to discover the facts needed to support their claims, as well as to unmanageable trials that continue far longer than is appropriate as both sides try to deal with a vague or ever-changing set of assertions.

[20] A degree of flexibility is needed to allow parties to represent themselves and to have access to the justice system; but flexibility cannot trump the ultimate demands of justice and fairness for all parties, and that is what the *Rules* and the principles set out in the cases seek to ensure.

[11] Justice Gleeson addressed exceptions to the rule that allegations in the pleading are taken as true in *Bounpraseuth v. Canada*, 2023 FC 1220, paragraph 11 E:

> Allegations based on assumptions and speculation, bare allegations, factual allegations that are scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations need not be accepted as true or accepted at face value (*Templanza v Canada*, 2021 FC 689, at para 14, citing *Carten v Canada*, 2009 FC 1233 at para 31)

[12] Although the LSO has not filed any evidence on this motion, it is useful to briefly set out the law on that point and, of significance for present purposes, documents referred to in a pleading. As explained in *Bouchard v. Canada*, 2016 FC 983:

> [18] Rule 221 (2) provides that no evidence shall be heard on a motion for an order under paragraph (1)(a). […] Documents referred to in a statement of claim were admitted and taken into account because they are incorporated by reference and are deemed to be part of the pleadings: *Cremco Supply Ltd. v. Canada Pipe Company*, 1998 CanLII 7616 (FC) at par. 22.

[13] Since the Claim makes numerous references to the T-1394-23 Decision, and includes it as an attachment, I have reviewed and considered it for the purposes of the motion under both Rule 221 (1) (a) and (c).

V. Analysis—Rule 221 (1)(a)—Jurisdiction

[14] Rule 221 (1) (a) may be applied if it is plain and obvious that the Federal Court lacks jurisdiction to hear a matter. Further, "[t]he jurisdiction of the Federal Court is statutory. As such, the statutory basis for jurisdiction must be identified." (*Berenguer v. Sata Internacional* -

Azores Airlines, S.A., 2023 FCA 176 ["*Berenguer*"], at paras 26 and 34). Regarding the jurisdiction of the Federal Court, the Federal Court of Appeal stated the following in *Berenguer*:

> [29] The scope of the Federal Court's jurisdiction has been considered by the Supreme Court in several decisions. The most relevant in this appeal are *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.* (1976), [1977] 2 S.C.R. 1054, 9 N.R. 191 [*Quebec North Shore*]; *McNamara Construction (Western) Ltd. v. The Queen*, [1977] 2 S.C.R. 654; *Rhine v. The Queen*, [1980] 2 S.C.R. 442 [*Rhine*]; *ITO-Int'l Terminal Operators v. Miida Electronics*, [1986] 1 S.C.R. 752 at p. 766, 28 D.L.R. (4th) 641 [*ITO*]; and, most recently, *Windsor*.
>
> [30] I would also note two decisions of this Court which provide a good summary of the relevant law: *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, 2006 FCA 190 [*Peter G. White*] and *744185 Ontario Incorporated v. Canada*, 2020 FCA 1 [*Air Muskoka*].
>
> [31] As a result of this jurisprudence, the following principles are well established:
>
> > (a) Jurisdiction is subject to a three part test commonly known as the ITO test: (1) Does a statute grant jurisdiction to the Court? (2) Is there an existing body of federal law that nourishes the grant of jurisdiction and is essential to the disposition of the case? (3) Is the case based on a valid law of Canada (*ITO*).
> >
> > (b) For purposes of applying step 1 of the ITO test to s. 23 of the Federal Courts Act, the action must be created or recognized under federal law (*Windsor*).
> >
> > (c) For purposes of applying step 2 of the ITO test to a breach of contract claim, the test may be satisfied if there is a sufficiently detailed federal regulatory scheme that applies to the contract (*Rhine*).
>
> [32] The *Windsor* decision adds a further principle but it is not controversial in this case. The majority in *Windsor* cautioned that the ITO test is to be applied to the "essential nature of the claim" regardless of how the claim is framed in the pleading. In this case, it is clear that the claim as framed in the pleading is the

> same as the claim's essential nature. The claim is for breach of contract.

[15] As the plaintiff did not file a responding motion record, or attend the hearing of the motion, the plaintiff has not identified any statutory basis for jurisdiction in this case, or made any submissions on that issue. In any event, reading the Claim generously, and considering the applicable principles regarding the jurisdiction of the Federal Court noted above, I am unable to identify any basis for jurisdiction. I note that reading the Claim generously, does not assist much in the analysis given that much of the Claim is difficult to follow or incomprehensible.

[16] To the extent that the essential nature of the Claim can be discerned, it is a collateral attack on three decisions: the T-1394-23 Decision; a decision of the Human Rights Tribunal of Ontario; and a decision of the Superior Court of Justice of Ontario (collectively, the "Three Decisions"). The Claim alleges that the Three Decisions are fraudulent, fake and fabricated, for which Mr. Lam seeks to hold the LSO responsible. Even if this was a recognized cause of action (and I am not suggesting that it is), such a claim against the LSO is not within the jurisdiction of this Court.

VI. Analysis—Rule 221 (1)(c)

[17] As to what constitutes a pleading that is scandalous, frivolous or vexatious, in *Tomchin v. Canada*, 2015 FC 402, Justice Manson held that:

> [22] As well, any pleading of misrepresentation, fraud, malice or fraudulent intent must provide particulars of each and every allegation; bald allegations of bad faith, ulterior motives or *ultra vires* activities is both "scandalous, frivolous and vexatious", and an abuse of process of this Court (*Federal Court Rules*,

Rule 191; *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paras 34-35).

[18] As noted above, central to the Mr. Lam's Claim are the allegations that the Three Decisions are fraudulent, fake and fabricated. Particulars have not been provided of each and every such allegation. As a result, the Claim is scandalous, frivolous and vexatious.

[19] In addition, a proceeding which attempts to relitigate issues is vexatious (see *Lavigne v. Pare*, 2015 FC 631, at para 5; aff'd, 2016 FCA 153; leave to appeal to SCC refused, 2017 CanLII 1346.) The Claim attempts to do that in respect of the Three Decisions and is vexatious for that reason as well.

VII. Conclusion

[20] While other arguments were advanced by the LSO in support of its motion, the above is sufficient to dispose of this motion.

[21] In conclusion, the Claim shall be struck because it discloses no reasonable cause of action as the Federal Court does not have jurisdiction, and because it is vexatious, any one of which is a sufficient basis to strike the Claim.

[22] In order to strike pleading without leave to amend, the defect must be one that cannot be cured by amendment (*Collins v. Canada*, 2011 FCA 140, at para 26; *Simon v. Canada*, 2011 FCA 6 at para 8). The defects in the Claim which have resulted in it being struck are not ones that can be cured by amendment.

[23] As a result, the Claim shall be struck without leave to amend.

[24] Regarding costs, the LSO in its notice of motion, and in its written representations, requests costs of this motion “on a substantial indemnity basis” payable forthwith (paragraph d) of the notice of motion, and paragraph 47 of the written representations). At the hearing of the motion, counsel requested costs based on the high end of column IV of the table to Tariff B.

[25] Having regard to Rules 400 and 401 (1), including the factors articulated in Rule 400 (3), and Tariff B, and having regarding LSO’s success on the motion, the nature of the allegations made in the Claim, and the Claim being vexatious, costs of this motion are awarded to the LSO, fixed in the amount of $2,000, to be paid by the plaintiff forthwith.

JUDGMENT in T-2650-23

THIS COURT'S JUDGMENT is that:

1. The statement of claim is struck out, without leave to amend, and this action is dismissed.

2. Costs of the motion are awarded to the defendant and are fixed in the amount of $2,000, and shall be paid by the plaintiff to the defendant, forthwith.

"John C. Cotter"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2650-23
STYLE OF CAUSE:	PHONG LAM v LAW SOCIETY OF ONTARIO
PLACE OF HEARING:	(ZOOM-VIDEOCONFERENCE)
DATE OF HEARING:	FEBRUARY 13, 2024
JUDGMENT AND REASONS:	COTTER A.J.
DATED:	FEBRUARY 16, 2024

APPEARANCES:

Sam Campbell	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Phong Lam (Self-Represented)	FOR THE PLAINTIFF
BORDEN LADNER GERVAIS LLP Barristers and Solicitors Toronto, Ontario	FOR THE DEFENDANT

Appendix A

Docket: T-2650-23

Toronto, Ontario, February 12, 2024

PRESENT: Associate Judge John C. Cotter

BETWEEN:

PHONG LAM

Plaintiff

and

LAW SOCIETY OF ONTARIO

Defendant

DIRECTION

On February 5, 2024, the defendant served and filed a motion record ("Defendant's Motion Record") for a motion ("Defendant's Motion") seeking, among other things, an order striking out the statement of claim and dismissing the action. The defendant's notice of motion, contained in the Defendant's Motion Record, specified that the defendant "will make a motion to the Court on Tuesday, February 13, 2024, at 9:30 a.m., or as soon after that time as the motion can be heard, at Toronto, by video conference". The notice of motion also indicated that the: "Defendant estimates that 1 hour will be required for the hearing of the motion." The defendant also filed on February 5, 2024, a solicitor's certificate of service indicating that the Defendant's Motion Record was served on the plaintiff by email on February 5, 2024.

As provided for in Rule 34(1)(b), General Sittings for the hearing of motions are held at Toronto every Tuesday, except during the seasonal or summer recess. Consistent with paragraph 63 of the *Amended Consolidated General Practice Guidelines* December 20, 2023, the defendant's notice of motion specified that the motion will be heard by video conference.

Appropriate notice of the Defendant's Motion was provided pursuant to Rule 362(1) of the *Federal Courts Rules*. Pursuant to Rule 365(1)(a), the deadline for the plaintiff to serve and file a respondent's motion record was "2:00 p.m. on the day that is two days before the day fixed for the hearing of the motion". The plaintiff did not file a respondent's record, nor has the plaintiff sought an extension of time to do so, or sought an adjournment of the hearing of the defendant's Motion. Instead, the plaintiff filed a motion record dated February 9, 2024, for a motion, made in writing pursuant to Rule 369, seeking default judgment against the defendant. In addition, the plaintiff has been sending emails to the Registry with abusive content, the following examples of which are from a series of emails sent to a Registry Officer on February 9, 2024, in connection with the defendant's Motion:

> "The defendant LSO knew that they will loose for sure, that why they pay for the corrupted Registrar like you to dismiss my claim before the official hearing"
>
> [and in another email]
>
> "Are you trying to test my knowledge? don't you see the agreement in form 141. We agreed to send email to all parties without proof of service. Doesn't matter how hard you tried, you still failed to defend for the defendant LSO. Who

allowed you to schedule illegal video hearing in Federal Court to dismiss my claim in next week?"

[and in another email]

"You can be held liable under Canada's anti-corruption laws and may be subject to maximum jail terms ranging between 5 to 14 years. You will be held liable where the act was committed with your knowledge of a senior officer, as defined under the Criminal Code 120 Corruption.

You knowing that the video hearing in the Federal Court is illegal process, but you still insist to schedule the crime for the Law Society of Ontario to dismiss my claim in next week. Why did you want to serve jail time for the LSO ?"

In addition, the plaintiff sent an email on February 12, 2024 to the same Registry Officer and others stating:

"I, Phong Lam, the plaintiff of Federal Court file number T-2650-23 , in this letter to report fraud and corruption, which is committed by your colleague Registrar, [name deleted] conspiracy to conduct fraud in the Federal Court, schedule unlawful hearing, intending to dismiss my statement of claim in tomorrow, Tuesday February 13, 2024.

1. The Registrar, [name deleted] abused authority, using Federal Court video links, scheduling hearings without the consent of Justices, to dismiss my statement of claim. The Registrar violated Federal Court rule of procedure,

contempt of court. [name deleted] unlawful conduct would be subject to jail terms up to 14 years imprisonment, as defined under the Criminal Code 120. She also violated the Charter of Rights and Freedoms.

2. [name deleted] interfered in the judicial proceedings, representing the defendant, arguing with the plaintiff on Friday, threatening to dismiss my statement of claim, if I have no motion submission before the deadline at 2:00 PM. The Registrar imposed her own rule, replacing the rule of the Federal Court. [name deleted] does not deserve to be a registrar of the Federal Court. She must disqualify herself immediately.

3. [name deleted] applied double standards while handling the process. Allowed the defendant LSO not to file a statement of defence and allowed them to submit irregular documents without proof of service, but she limited within a few hours for me to complete a motion for default judgment, then she complained that I had to prove that she had received my documents.

4. These are just a few typical issues that need to be resolved immediately before there is a fair trial. If the fraudulent hearing occurs then it is all your fault. The only way for [name deleted] to dismiss a merit claim without a statement of defence is corruption. In such an unusual situation, do you have any advice for me ? Do I have to file this email to the E Filing system of the Federal Court for proof of service?."

The Court will not tolerate abusive conduct towards Registry staff, including by email. The plaintiff is directed not to send emails to Registry staff with abusive content, or to communicate in any other way with Registry staff in an abusive manner.

Regarding **the Defendant's Motion, it will be heard on Tuesday, February 13, 2024. The motion will be heard remotely by video beginning at 1:00 PM Eastern, for a duration not to exceed one hour**. The Zoom link for the hearing of the motion was sent by the Registry to the parties on February 9, 2024.

"John C. Cotter"
Associate Judge