

Federal Court



Cour fédérale

Date: 20241016

Docket: T-1225-22

Citation: 2024 FC 1632

Ottawa, Ontario, October 16, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

YUCHENG SU

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

JUDGMENT AND REASONS

[1] The Plaintiff, Yucheng Su, appeals the determination that he failed to declare two bottles of wine when crossing the border into Canada. As a result of this finding, these bottles of wine were seized.

[2] The Plaintiff appeals under section 135 of the *Customs Act*, RSC 1985 (2nd Supp) (the “*Act*”), seeking a declaration that the seizure action was procedurally unfair and made in error.

He asks for a return of the bottles of wine that were seized, or monetary compensation in the alternative.

[3] The Defendant argues that the seizure was properly conducted and asks that the Plaintiff's action be dismissed, with costs.

[4] For the reasons set out below, the Plaintiff's appeal will be dismissed. I am not persuaded by the Plaintiff's arguments about the actions and evidence of the Border Services Officers (the "BSOs") who interacted with him at the border. Under the law, the Plaintiff had a heavy burden to make a full, accurate and complete disclosure of goods he was importing, and he failed to do that. Although the paperwork completed by the BSOs about their interaction with the Plaintiff was lacking in some respects, their evidence on the essential points was credible and consistent. I find the Plaintiff was given a full and fair opportunity to make a complete declaration, but he failed to do so. There is no basis to question the legality of the seizure of the wine, and therefore the appeal will be dismissed.

I. Background

[5] Certain aspects of the sequence of events that resulted in the seizure of the two bottles of wine are in dispute, and these are discussed in detail below. The following high-level summary provides an overview of the incident at the heart of this trial; the facts recounted below are not in dispute.

[6] The Plaintiff is 26 years old and a permanent resident of Canada. He made a trip to Renton, Washington state, to visit his cousin who recently had a baby. He had been unable to visit her after the birth of her child because of travel restrictions adopted as a result of the COVID-19 pandemic. He ordered some wine to be delivered to his cousin's house, which he brought back to Canada after his visit with his cousin.

[7] The Plaintiff returned to Canada via the Douglas port of entry in Surrey, British Columbia, on November 12, 2021. At the Primary Inspection booth ("Primary") he reported that he had been absent from Canada since November 10, 2021, and declared 13 bottles of wine as well as one package of cigarettes. He provided receipts for the wine indicating a total value of \$1,487.50 USD. He was then referred for the Secondary Inspection Building ("Secondary").

[8] At Secondary, the Plaintiff confirmed that he had 13 bottles of wine as well as one package of cigarettes. He indicated the wine was in the trunk area of his rental car. When the BSO opened the trunk, she found the 13 bottles in a box, as well as two other bottles that were stored separately. The two bottles were a 750 ml bottle of 2012 Domaine de la Romanee-Conti Richebourg, found in a side compartment in the rear of the vehicle on the driver's side, and a 750 ml bottle of 1996 Domaine de la Romanee-Conti La Tache, which was found wrapped in Styrofoam inside a bag in the rear area of the vehicle.

[9] The Plaintiff acknowledged that he had not declared the two bottles of wine, and stated he did not know their value. It was subsequently determined that each bottle of wine was worth

at least \$5,000.00 CAD (their precise value is not in evidence before me and it will not be necessary to determine it for the purposes of this proceeding).

[10] The BSO advised the Plaintiff that he had failed to declare all of the goods he was bringing back to Canada, contrary to section 12 of the *Act*. She indicated that the two bottles of wine would be seized. The Plaintiff paid the duty owing on the 13 bottles of wine and continued home. He subsequently sought a review of the seizure under section 129 of the *Act* from the Canada Border Services Agency (“CBSA”) Recourse Directorate. The Plaintiff and his counsel made submissions regarding the recourse request. On March 15, 2022, the CBSA communicated its decision refusing the Plaintiff’s request. The decision indicates three key findings: (i) under section 131 of the *Act*, the Plaintiff contravened the *Act* or the *Regulations* because he failed to report the two bottles of wine, contrary to section 12 of the *Act*; (ii) under section 133 of the *Act*, the two seized bottles of wine were held as forfeit; and (iii) pursuant to subsection 117(2) of the *Act*, the alcohol seized under the *Act* shall not be returned to the person unless it was seized in error. Finding no error in the seizure, the decision indicated that the wine would not be returned to the Plaintiff.

[11] The Plaintiff then launched this statutory appeal of the Recourse Directorate’s decision under section 135 of the *Act*.

II. Legal Framework

[12] Section 12 of the *Act* requires that all imported goods be reported to customs. Section 7.1 and para 13(a) of the *Act* set out the obligations of a person making such a report:

Provision of Information

Obligation to provide accurate information

7.1 Any information provided to an officer in the administration or enforcement of this *Act*, the Customs Tariff or the Special Import Measures *Act* or under any other *Act* of Parliament that prohibits, controls or regulates the importation or exportation of goods, shall be true, accurate and complete.

Obligation to answer questions and present goods

13 Every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with section 99.1 shall

(a) answer truthfully any question asked by an officer with respect to the goods; and

Fourniture de renseignements

Obligation de fournir des renseignements exacts

7.1 Les renseignements fournis à un agent pour l'application et l'exécution de la présente loi, du Tarif des douanes ou de la Loi sur les mesures spéciales d'importation, ou sous le régime d'une autre loi fédérale prohibant, contrôlant ou réglementant l'importation ou l'exportation de marchandises doivent être véridiques, exacts et complets.

Obligations du déclarant

13 La personne qui déclare, dans le cadre de l'article 12, des marchandises à l'intérieur ou à l'extérieur du Canada, ou qu'un agent intercepte en vertu de l'article 99.1 doit :

a) répondre véridiquement aux questions que lui pose l'agent sur les marchandises

[13] Sections 13(b) and 99(1)(a) of the *Act* provide BSOs with extremely broad authority and discretion to inspect any goods being reported for import into Canada:

Obligation to answer questions and present goods

13 Every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with section 99.1 shall

(b) if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.

Examination of goods

99 (1) An officer may (a) at any time up to the time of release, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts;

Obligations du déclarant

13 La personne qui déclare, dans le cadre de l'article 12, des marchandises à l'intérieur ou à l'extérieur du Canada, ou qu'un agent intercepte en vertu de l'article 99.1 doit :

b) à la demande de l'agent, lui présenter les marchandises et les déballer, ainsi que décharger les moyens de transport et en ouvrir les parties, ouvrir ou défaire les colis et autres contenants que l'agent veut examiner.

Visite des marchandises

99 (1) L'agent peut : a) tant qu'il n'y a pas eu dédouanement, examiner toutes marchandises importées et en ouvrir ou faire ouvrir tous colis ou contenants, ainsi qu'en prélever des échantillons en quantités raisonnables;

[14] An individual, whose goods are seized under the *Act*, can apply to the Minister for a review of the decision, and the Minister can either confirm the seizure on the basis that the *Act* or *Regulations* were contravened (para 131(1)(a)), or find there has been no contravention and authorize the release from custody of the goods that were seized (para 132(1)(a)).

[15] An individual may appeal the Minister's decision to this Court under section 135 of the *Act*. In such an appeal, the only question is whether the decision under *Act* was done in

conformity with the law. In this case, the decision includes the finding of a failure to report, the seizure of the wine, and holding it as forfeit.

[16] An appeal under section 135 is conducted as a trial *de novo*. The Court is to determine the matter on the basis of the evidence, and no deference is owed to the Minister's findings on questions of fact, or law, or mixed fact and law: *Robidoux v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 766 at para 22; *Wise v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 1027 at para 5; *Tourki v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 50 at para 16. The onus is on the Plaintiff to demonstrate that the seizure was not lawful: *Kennedy v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 1196 [*Kennedy*] at para 59.

[17] In this case, each party conducted written examination for discovery, and filed affidavits and conducted cross-examination in open court. Documentary evidence was also filed. This is reviewed in more detail below.

III. Plaintiff's Preliminary Objection

[18] Before turning to the merits of the case, I will deal with the Plaintiff's objections to certain portions of the affidavits filed by the Respondent. I ruled on this objection at the outset of the trial, and so these reasons simply record the reasons for my decision. The Plaintiff brought a motion to strike portions of the affidavits of the BSOs who were involved in the seizure. He argued that some statements were argumentative while others contained opinion evidence, but

the affiants had not been qualified as experts. The Plaintiff argued that these statements were self-serving and highly prejudicial.

[19] The Respondent objected to the lateness of the motion because it was brought just before the start of the trial, and argued that the motion should be dismissed because any potential prejudice to the Plaintiff could be mitigated through cross-examination of the affiants. The Respondent also submitted that the BSOs were required to exercise their judgment in determining whether to seize goods under section 110 of the *Act*, which provides that an officer may seize goods as forfeit “where he believes on reasonable and probable grounds” that the *Act* or *Regulations* have been contravened. This inevitably involves forming an opinion about whether a contravention has occurred and whether seizure is warranted.

[20] I dismissed the motion with brief reasons given from the Bench. In summary, I found that certain of the objections related to statements of fact and that to the extent others involved opinion evidence, the Plaintiff would not be prejudiced because he could test the BSOs’ statements on cross-examination. In the context, I accepted the Respondent’s submission that the work of the BSOs involves the exercise of discretion and judgment, which inevitably involved forming and expressing opinions. I noted that my ruling did not foreclose further submissions regarding the probative value and weight to be attributed to this evidence.

IV. The Evidence

[21] The Plaintiff does not dispute several key facts, in particular that he brought two bottles of wine across the border and did not initially include them in his customs declaration. He also

does not dispute that those bottles of wine are valued at not less than \$5,000.00 CAD each. The Plaintiff's claim concerns the sequence of events from the time of his arrival at the Douglas border crossing to the end of the examination at Secondary and the seizure of the wine. This involved his interactions with the first BSO at the Primary booth, followed by the exchange with a second BSO at the Secondary screening area which resulted in the seizure of the two bottles. I will review the evidence of the principal actors involved in these events in that order, and then set out my findings on the key question in the appeal.

A. *Primary Inspection*

[22] When the Plaintiff arrived at the CBSA's Primary booth at the Douglas port of entry, he was greeted by BSO Jace Findlay (BSO Findlay). BSO Geoffery Maclean (BSO Maclean) was also in the booth, acting as a mentor to BSO Findlay, but did not interact with the Plaintiff.

[23] The Plaintiff states that BSO Findlay asked him what he was bringing back to Canada, and he answered that he had wine and gave BSO Findlay the receipts. He then made a smoking gesture, indicating he had one package of cigarettes. The Plaintiff states that BSO Findlay did not ask him the total value of the goods, but rather just handed him a card and told him to go to the office building (for Secondary inspection).

[24] In contrast, BSO Findlay's evidence is that he asked the Plaintiff a number of questions, which he indicated were "mandatory" questions he usually asked of persons crossing into Canada. According to BSO Findlay, he asked all of the mandatory questions, including the total value of goods, whether the Plaintiff had over \$10,000.00 CAD in currency, whether he was

bringing in any business or commercial goods, weapons or firearms, or food, plants or animals. BSO Findlay testified he also asked the Plaintiff whether he had any alcohol, tobacco or cannabis, to which the Plaintiff replied, “13 bottles of wine, 1 pack of cigarettes and no cannabis.” He stated that he also asked the Plaintiff whether he had received any gifts, to which he replied, “No”.

[25] BSO Findlay stated that he completed a Secondary Inspection referral slip (referred to as a “BSF235” form) and referred the Plaintiff to the secondary area for examination. A copy of the slip was entered into evidence, and it shows a number of notations, including 13 bottles of wine, 1 pack of cigarettes, and “NC”, which indicated that the Plaintiff had declared that he had no cannabis. BSO Findlay marked “verify dec[laration]” on the form in two locations, including in a handwritten notation inside a box next to the 13 bottles of wine. According to BSO Findlay, the referral to Secondary was made because the Plaintiff declared a large quantity of relatively high value wine, and it was necessary to match the bottles in his possession with the receipts in order to ensure that the Plaintiff was not paying too much – or too little – duty on the value of the wine.

[26] At trial, the Plaintiff pointed out a number of errors in the BSF235 form. The most important mistake was that BSO Findlay did not indicate the value of the goods declared. He also wrongly marked the box for “no items declared”, despite the clear indication in his handwritten notes that the Plaintiff had declared 13 bottles of wine and 1 package of cigarettes. BSO Findlay also mistakenly marked the Plaintiff’s status as “non-resident” even though the Plaintiff had provided his Permanent Resident card. In his affidavit, BSO Findlay acknowledged

his error in failing to indicate the dollar value of the goods, stating “I thought that writing the piece count that was reported to me was sufficient in this case.” In cross-examination, BSO Findlay readily acknowledged that error, as well as his mistake in checking the “no items declared” box and in reference to the immigration status of the Plaintiff.

[27] BSO Maclean provided evidence about his role as a mentor to BSO Findlay, as well as his actions on the day in question. He acknowledged that he did not hear the exchange between BSO Findlay and the Plaintiff, nor did he inspect the BSF235 form. BSO Maclean admitted that the form contained mistakes and that he should have been aware of them in his role as mentor. He testified that he believed BSO Findlay asked all of the mandatory questions as he had been trained to do, but he could not be certain of this because he did not hear the interaction with the Plaintiff. He did not inspect the BSF235 form because he believed it would be completed correctly since BSO Findlay was well-advanced in his training. BSO Maclean agreed that there were errors in the form. He testified that he had an independent recollection of the incident because he is interested in wine and recognized the name brand of the wine that was seized.

[28] The parties agree that upon the completion of the PIL interaction, the Plaintiff was referred to the Secondary Inspection.

B. *Secondary Inspection*

[29] BSO Kimberly Scott (“BSO Scott”) met the Plaintiff at Secondary. The evidence about their encounter diverges on several points, but the Plaintiff and BSO Scott agree on the general sequence of events.

[30] The Plaintiff's evidence is that BSO Scott asked him why he was bringing back so much wine and why he had gone to the United States. He says she never asked him about any gifts. The Plaintiff continues that BSO Scott searched his vehicle, discovered the two bottles of wine, and asked him why he had not declared them. In his affidavit, the Plaintiff states that he had forgotten about the two bottles of wine, that they had been given to him by his cousin and he did not know their value. He states that he likes wine, but is not a "wine collector." In his affidavit, the Plaintiff adds that the two bottles were not concealed from sight in the trunk of his car, and that he has crossed the border previously without encountering any difficulties.

[31] In cross-examination, the Plaintiff acknowledged that he had crossed the Canada-United States border at least 5-8 times previously, and had made customs declarations regarding the wine he had transported across the border. He also acknowledged that he knew that he was required to declare the total value of all goods and gifts he acquired while outside of Canada.

[32] BSO Scott testified that upon his arrival at Secondary, the Plaintiff handed her the BSF235 form, which she reviewed. According to her evidence, she noted the absence of a dollar value on the form and contacted the PIL booth to inquire about the referral. Following that, BSO Scott asked the Plaintiff where the wine was located in his vehicle, and he told her it was in the back compartment of the SUV. Upon inspecting the rear area of the vehicle, BSO Scott found the 13 bottles of wine in a box, as well as the two other bottles – one stored in a side compartment on the driver's side and the other in a bag and wrapped in Styrofoam in the back rear area of the vehicle.

[33] The parties agree that BSO Scott asked the Plaintiff why he did not declare the two bottles of wine, and that he replied that he had forgotten them and they were a gift from his cousin. BSO Scott asked the Plaintiff about the value of the two bottles of undeclared wine, to which he replied that he did not know. They each then undertook research to determine the value of the wine. The Plaintiff contacted his cousin, who did not know the value of the wine; he also conducted an internet search on his phone. BSO Scott did her own research on the internet. The parties agree that they discovered that the bottles of wine were valued at more than \$5,000.00 CAD each.

[34] Following this, BSO Scott decided that the Plaintiff had contravened the *Act* by failing to declare the two bottles of wine, and that the undeclared wine should be seized. She consulted with her supervisor, who concurred with the decision to seize the bottles of wine. BSO Scott completed a Seizure Receipt and Statement of Goods seized document, gave a copy of these forms to the Plaintiff, and explained his right to appeal. The Plaintiff then paid the duty on the wine he had declared, and departed the Secondary Inspection area.

[35] The evidence about the interaction at Secondary diverges on two main points. The parties agree that BSO Scott added the dollar value of \$1,459.50 USD on the BSF235 form. The Plaintiff says that he did not provide this number to BSO Scott, noting that it is a very specific number and he would not have been able to produce it on request. BSO Scott's evidence is that she asked the Plaintiff and he provided the amount that she then added to the form. The significance of this, if any, is discussed below.

[36] The parties also disagree as to whether a “point of finality” had been reached. This is important because under CBSA policy, an officer must allow a traveller the opportunity to complete their declaration before reaching a point of finality, after which the declaration will be treated as valid and complete and enforcement steps may be taken, if appropriate. According to BSO Scott, she did not think that a point of finality had been reached by BSO Findlay because the dollar value was not indicated on the BSF235 form. She therefore asked the Plaintiff the value of the goods, and the point of finality was reached only after she wrote the total value on the form. Once again, the importance of this, if any, is discussed below.

[37] That completes the sequence of events that gave rise to the seizure, which the Plaintiff challenges as unlawful.

V. Analysis

[38] The Plaintiff acknowledges that the two bottles of wine were in his possession when he crossed the border and that he failed to declare them. He says that the seizure of the wine was nevertheless unlawful because the mistakes made by the BSOs call into question the integrity of their decision-making process. The Plaintiff claims that these errors were not mere minor missteps, but rather involved matters that were key to the decision. He argues that the credibility of the BSOs’ testimony is called into question by their sloppiness in following procedures and completing forms, and asks that his evidence be preferred.

[39] I will discuss the significance of the errors admitted by the BSOs as regards their credibility, and then assess whether the seizure was done in conformity with the *Act*.

A. *Did the BSOs' Errors Undermine their Credibility?*

[40] The Plaintiff zeroes in on the errors made during the Primary and Secondary Inspections. He notes that BSO Findlay admitted that he did not properly complete the referral slip because he failed to include the total value of the goods that were declared. He also mistakenly checked the box showing the Plaintiff as a non-resident, despite having been provided his Permanent Resident card. The Plaintiff argues that this lack of attention must call into question whether BSO Findlay asked the mandatory questions. If he did not, the Plaintiff contends that he was deprived of the opportunity to be reminded about the gifts he received and not prompted to think about whether he had any other alcohol beyond the 13 declared bottles of wine.

[41] For his part, BSO Findlay testified that he asked the Plaintiff all of the mandatory questions, including the value of the goods, whether he had any alcohol or tobacco, and whether he received any gifts. He points to the notes he made on the night of the incident, which were prepared in accordance with CBSA policy because the wine had been seized. These notes list the mandatory questions BSO Findlay says that he asked, and the Plaintiff's responses.

[42] I find the evidence of BSO Findlay to be more reliable on this point, for several reasons. His statement that he had asked all of the mandatory questions was not shaken in cross-examination. It was stated in the notes he made on the night of the incident, a record he prepared in the ordinary course of his duties because the wine was seized. His evidence was consistent that he had asked all of the usual mandatory questions on the day in question. In contrast, the Plaintiff's affidavit indicated that he was only asked a generic question about what he had

brought back. In cross-examination, the Plaintiff admitted that BSO Findlay also asked him several of the other mandatory questions, but he denied being asked about the total value of the goods and whether he was bringing back any gifts – the crucial questions that he says support his legal arguments.

[43] As explained below, even if I accepted the Plaintiff's evidence that the BSOs failed to ask whether he was bringing back any gifts, I am not persuaded that this would be sufficient to call the seizure into question. That said, I accept BSO Findlay's evidence that he did, in fact, ask the Plaintiff the usual mandatory questions.

[44] At trial, the Plaintiff emphasized that BSO Findlay was an "officer in training" at the time of the incident, arguing that this cast doubt over his evidence. I am not persuaded by this line of argument, for several reasons. First, the Respondent acknowledged that BSO Findlay was still in training at the relevant time and that was why BSO Maclean was also in the booth on that day. However, BSO Findlay was not a brand-new recruit; he started his employment with CBSA on May 25, 2021, and the incident with the Plaintiff occurred on November 12, 2021. BSO Maclean confirmed that BSO Findlay had undergone extensive training by the time of the incident in question.

[45] Second, I find it more plausible that BSO Findlay was more likely to try to follow the standard procedures he had been taught because he was still in his training period, especially with his mentor present in the booth. His failure to include the dollar value for the wine in the BSF235 form may appear to contradict this, but I am persuaded that he has provided a plausible

explanation for this. BSO Findlay had recorded the number of bottles of wine on the BSF235, and the Plaintiff had provided him with receipts showing the total. One of the purposes of the referral to Secondary Inspection was to cross-reference the wine in the Plaintiff's possession with the items on the receipts. In that circumstance, one can understand BSO Findlay's lapse in failing to record the total dollar value on the form.

[46] The other errors BSO Findlay made in completing the BSF235 form were checking off the "no goods declared" box and the incorrect notation regarding the Plaintiff's status in Canada. These are insignificant. The Plaintiff had declared goods and these were marked on the BSF235, and he had provided his Permanent Resident card. These facts guided BSO Findlay's actions, as demonstrated by the absence of any further questions about the Plaintiff's status in Canada. I am not persuaded that these minor errors are sufficient to call BSO Findlay's credibility into question. It is of more significance that he correctly noted that only 13 bottles of wine were declared, as well as the one package of cigarettes. BSO Findlay also correctly noted the Plaintiff's declaration that he did not have any cannabis. These elements go directly to the contravention and seizure decisions, and they were properly indicated on the BSF235.

[47] For all of the reasons set out above, I am not persuaded that BSO Findlay's credibility has been called into question. He gave his evidence in a forthright manner, readily acknowledging his mistakes in completing the form and providing his explanation for the most significant lapse relating to the dollar value of the wine.

[48] As for the Secondary Inspection, the Plaintiff argues that BSO Scott's evidence should not be believed, for a number of reasons. He points out that she admitted that she failed to follow standard procedure when she neglected to note the start and end of her vehicle inspection in her notebook. The Plaintiff submits that BSO Scott's evidence that he provided her the dollar value of the goods declared should not be believed. He notes that the number is quite precise (\$1,459.50 USD), and that in order to calculate it one would have known that it was necessary to subtract the shipping costs (\$28.00 USD) from the total shown on the receipts he provided (\$1487.50 USD minus \$28.00 USD= \$,1459.50 USD). The Plaintiff states that he would not have been able to produce such a number immediately in response to a question. He argues that it is much more likely that the specific number was added to the BSF235 form after the seizure occurred.

[49] BSO Scott's affidavit states that she asked the Plaintiff the dollar value of the goods he purchased or acquired and he said \$1,459.50 USD. She indicates that this amount was supported by the two invoices he had provided. She also indicates that she had reviewed the Plaintiff's passage history into Canada on an internal CBSA system, and discovered that he had crossed into Canada approximately 25 times in the past five years.

[50] The Plaintiff also argues that BSO Scott failed to follow CBSA policy in other respects, including failing to advise him about why he was referred to Secondary Inspection. While BSO Scott acknowledged this mistake, she testified that she had informed the Plaintiff about why he was referred to Secondary Inspection and that she gave him an opportunity to complete his declaration before finding he had violated the *Act* by failing to declare.

[51] On balance, I accept BSO Scott's evidence over that of the Plaintiff in regard to their overall interactions and the sequence of events. I have some doubts regarding her evidence that the Plaintiff supplied the precise number when asked the total value of the goods he purchased or acquired. I accept the Plaintiff's argument that the amount that was entered reflects the total amounts minus shipping, and that this was a very precise calculation. However, in the end nothing in particular turns on the precise value of the goods declared, and it is not necessary for me to determine whose evidence is more credible on this particular point. Even if BSO Scott is mistaken that the Plaintiff immediately supplied her with this information (rather than it being the result of some back and forth about how to calculate the correct amount), the fact remains that she added the correct amount to the form after she asked the Plaintiff for the information.

[52] I note here that BSO Scott provided consistent evidence on this point, referring to her handwritten notes prepared at the time as well as the record she prepared later that evening after the seizure of the wine. There is no question that she added the amount, and I accept her evidence that she asked the Plaintiff about the total value. I also accept her evidence that her interactions with the Plaintiff provided him with an opportunity to make a full declaration and to correct any omissions from his initial statement at the Primary Inspection booth.

[53] The Plaintiff argues that BSO Scott's lapses in failing to follow certain other details as set out in CBSA policy should undermine the credibility of other aspects of her evidence. I disagree. BSO Scott acknowledged that she should have noted the precise time that she began and ended the physical inspection of the Plaintiff's vehicle, but her failure to do so was a minor lapse.

[54] I find BSO Scott's evidence to be clear and consistent regarding the main elements of her interactions with the Plaintiff, and in particular I find that she did provide him with the opportunity to complete his declaration before she reached the point of finality. This is a key question. Although there is a difference of views as between BSO Findlay and BSO Scott about whether a point of finality was reached before the Plaintiff was referred to Secondary Inspection, in the end this benefitted the Plaintiff because BSO Scott provided a further opportunity to complete his declaration before she initiated enforcement action. This undermines the Plaintiff's argument that he was never given the chance to recall that his cousin had gifted him the two bottles of wine.

[55] For the reasons set out above, I prefer the evidence of BSO Findlay and BSO Scott over that of the Plaintiff on the essential elements of their interaction on the day in question. With this, I turn to an analysis of the core legal question at the heart of this case: has the Plaintiff met his onus to demonstrate that the seizure of the wine was unlawful?

B. *Were the BSOs' Actions in Conformity with the Law?*

[56] As noted earlier, the key question on this appeal is whether the Plaintiff has established that the actions of the BSOs did not comply with the *Act*. This includes the finding that the Applicant failed to declare the goods, the decision to seize the wine, and holding it as forfeit.

[57] The Plaintiff argues that he was denied procedural fairness in his interactions with the BSOs, and their sloppiness in filling out forms and their failure to follow procedures should call into question the integrity of their actions. He says that the fact that subsection 117(2) of the *Act*

stipulates that there can be no terms of release of alcohol that is seized makes it even more important for Officers to be scrupulous in following the law and procedure before seizing such goods. In this case, according to the Plaintiff, the deficiencies in the Officers' evidence should be contrasted with the consistent and persuasive nature of his own evidence. He submits that the serious mistakes acknowledged by the BSOs should call into question the integrity of the overall procedure.

[58] I am not persuaded by the Plaintiff's arguments.

[59] In an action under section 135 of the *Act*, the onus is on the Plaintiff to establish, on a balance of probabilities, that the seizures were unlawful: *Kennedy v Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 FC 1196 [*Kennedy*] para 59. Abundant case-law confirms two key things: section 12 of the *Act* is contravened where an incorrect declaration is made on behalf of an importer, and the reason for the error is irrelevant: see *Kennedy* at para 60; *Chen v Canada (Minister of Public Safety and Emergency Preparedness)*, 2018 FC 477 [*Chen*] at para 23, aff'd 2019 FCA 170. Second, as stated in *Kennedy* at para 61: "The good faith of the importer is also irrelevant: the *Act* is contravened when an incorrect declaration or no declaration is made, even though there may be a lack of intent to mislead customs officials...(citations omitted)."

[60] The rationale for the strict approach reflected in the case law is set out by Justice Gleeson in *Robidoux v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 766:

[35] The *Customs Act* seeks to oversee, regulate and control the cross-border movements of people and goods. To achieve these

objectives, the *Customs Act* provides for and relies upon, an effective voluntary self-reporting scheme. This self-reporting obligation is reflected in the requirement that individuals provide full, accurate and complete information to officers administering or enforcing the *Customs Act* (s. 7.1).

[36] The obligation to provide full, accurate and complete information imposes a heavy burden on an individual, a burden that is not displaced by forgetfulness or good faith (*Samson v Canada (Minister of National Revenue)* 2007 FC 975 at para. 35).

[61] The apparent harshness of this is off-set, to some degree, by the policy regarding the “point of finality.” In recognition that some travellers may arrive at a port of entry in a state of some exhaustion or confusion, perhaps after a long and tiring journey and challenged by the responsibility of caring for children or elderly parents, the policy provides that BSOs are to provide an opportunity to complete a declaration before commencing enforcement action. The point of finality is only reached when the traveller has had a chance to consider the accuracy and completeness of their declaration.

[62] In the case before me, the Plaintiff has acknowledged from the outset that he declared 13 bottles of wine and one package of cigarettes, but he did not declare the two bottles of wine either when questioned by BSO Findlay at Primary or when he was questioned by BSO Scott at Secondary Inspection area. He has put forward several different explanations for this lapse. At trial, he asserted that the wine was a gift that he had simply forgotten about. He claimed that the BSOs’ failure to ask him about whether he had received any gifts denied him the opportunity to be reminded about the need to declare the two bottles of wine.

[63] In his recourse request, the Plaintiff offered the following explanation:

[BSO Scott] also asked me [is] this the first time I am trying to import wine? I said yes. [This] is where the misunderstanding happened. This is my first time to bring so many wines back to Canada. I know the rule everyone can bring up to 1.5 L [wine] usually 2 bottles. But I [don't] know the duty-free wine should also be count[ed] in my total wine import to Canada.

[64] It is not necessary to make a determination as to which of the explanations is most credible, because neither of them would call into question the legality of the BSOs' actions in this case. Mistakes, forgetfulness or a misunderstanding of the legal rules are not a defence to a failure to declare goods that are being imported: *Robidoux* at para 36.

[65] The Plaintiff argues that he was denied procedural fairness, citing *Nassar v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 378, [2021] 3 FCR 363 [*Nassar*]. This case is of limited assistance to the Plaintiff because it deals with an entirely different legal framework and factual scenario. The *Nassar* case involved judicial review of a decision finding that the applicant had contravened the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c 17, and upholding the cancellation of his NEXUS membership. The applicant in that case had failed to declare that he was carrying more than \$10,000.00 CAD in cash, and was thus found to have contravened the legislation. Based on this, his NEXUS card was cancelled because he no longer met the eligibility criteria, in particular the requirement that he be of "good character."

[66] The Court found that the cancellation of the NEXUS card was unreasonable, because there was no explanation for why his technical breach of the law supported the finding that he was no longer of good character. The Court accepted that procedural fairness applied, but

concluded that Mr. Nassar knew the case he had to meet and had a full and fair opportunity to put forward his position.

[67] In this case, I find that the Plaintiff knew that he was required to declare goods he was importing; he acknowledged this in cross-examination. The Plaintiff has crossed the border on many occasions, and his declaration of the 13 bottles of wine and one package of cigarettes to BSO Findlay confirms that he was familiar with his reporting obligations. In addition, the Plaintiff was provided a further opportunity to make sure his initial declaration was complete and accurate when he met BSO Scott at the Secondary Inspection area. He claims that BSO Scott never explained why he was referred to Secondary . BSO Scott disagrees with the Plaintiff on this point, but I find nothing turns on this.

[68] The Plaintiff was given the opportunity to complete his declaration before his vehicle was inspected, and he knew that he was required to pay duty on the wine he was importing. He did not arrive at the border after a long or arduous trip, and can point to no other factor that would lead to doubt about his capacity or opportunity to make a fulsome declaration. As noted in *Chen* at para 23, “(t)he obligation to report is not dependent on any questioning or prompting by a [BSO] as to whether any goods are being brought into Canada...”

[69] Even if I accept the Plaintiff’s argument that the BSOs were under some sort of heightened duty of fairness towards him when seizing the wine, because subsection 117(2) of the *Act* provides that seized wine cannot be returned, I find that he was treated fairly. The Plaintiff knew he had to make a full, complete and accurate declaration of all of the goods he was

importing. He was provided with two opportunities to do just that. That is all that fairness demanded, in the circumstances. To the extent it is pertinent, I also find the Plaintiff was treated fairly in the course of seeking recourse from the Minister, because the letter seeking his input set out the Minister's case against him in very clear terms and he was given the chance to respond.

[70] In the circumstances, I find that the Plaintiff was not denied procedural fairness.

[71] I am also not persuaded by the Plaintiff's argument that the BSOs' sloppiness in completing the paperwork calls into question the legality of their actions in finding he contravened the *Act* and seizing the two bottles of wine. As explained previously, I prefer the BSOs' evidence over that of the Plaintiff on the key elements relating to the contravention finding and subsequent seizure. Their lapses in certain aspects of their record-keeping do not undermine the core elements of their evidence in relation to the sequence of events on the day in question. The BSOs' evidence is credible and consistent on the two key questions at issue here: whether the Plaintiff failed to declare the two bottles of wine, and whether he had a full and fair opportunity to complete his declaration.

[72] Simply put, the Plaintiff was provided the opportunity to make a full declaration of the goods he was importing, but he failed to do so. He acknowledges that he did not declare the two bottles of wine, and his efforts to shift the blame for this to the BSOs' have not succeeded.

[73] To repeat, "(t)he obligation to provide full, accurate and complete information imposes a heavy burden on an individual, a burden that is not displaced by forgetfulness or good faith..."

(*Robidoux* at para 36). In this case, the Plaintiff failed to meet that “heavy burden,” and he has not met his onus to show that the seizure of his goods was not lawful.

VI. Conclusion

[74] For the reasons set out above, I am dismissing the Plaintiff’s appeal under section 135 of the *Act*. He was not denied procedural fairness. Furthermore, although the record-keeping of the BSOs was not perfect, their evidence on the finding that he contravened the *Act* and *Regulations* by failing to make a full declaration of the goods he was importing is credible and consistent. The Plaintiff’s explanations, on the other hand, were not entirely consistent over time, and his evidence on certain key aspects of the interaction with the BSOs did not withstand scrutiny.

[75] Based on the foregoing, I find in favour of the Defendant. The Plaintiff’s action will be dismissed.

[76] Following the trial, the parties submitted a joint costs submission indicating that they had agreed that the successful party would be paid the all-inclusive amount of \$10,000.00 CAD, covering costs and disbursements, from the other party. In the circumstances, and in the exercise of my discretion pursuant to Rule 400 of the *Federal Courts Rules*, SOR/98-106, I find this to be an appropriate amount of costs considering the proceeding as a whole. The Plaintiff shall be ordered to pay costs to the Defendant in the all-inclusive amount of \$10,000.00 CAD, including legal fees and disbursements.

JUDGMENT in T-1225-22

THIS COURT'S JUDGMENT is that:

1. The appeal is dismissed.
2. The Plaintiff shall pay to the Defendant all-inclusive costs in the amount of \$10,000.00 CAD.

"William F. Pentney"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1225-22

STYLE OF CAUSE: YUCHENG SU v MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 10 AND 11, 2024

JUDGMENT AND REASONS: PENTNEY J.

DATED: OCTOBER 16, 2024

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