

Federal Court



Cour fédérale

Date: 20100311

Docket: T-2106-04

Citation: 2010 FC 281

Ottawa, Ontario, March 11, 2010

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

FRANCIS MAZHERO

Plaintiff

and

**THE HONOURABLE J. EDWARD RICHARD,
THE HONOURABLE BEVERLY BROWNE,
LUCILLE BERTRAND, JANE DOE AND JOHN DOE**

Defendants

REASONS FOR ORDER AND ORDER

[1] In 2004, Mr. Mazhero proffered to this Court a statement of claim directed against the Honourable Beverly Browne, Judge of the Nunavut Court of Justice, the Honourable J. Edward Richard, Judge of the Court of Appeal of Nunavut and Lucille Bertrand, a Registry Officer at the Supreme Court of Canada.

[2] According to that statement of claim, Mr. Mazhero had commenced various proceedings in the Nunavut courts and as well had applied for leave to appeal to the Supreme Court of Canada. The basis of all these proceedings was said to be an allegation made by the principal of the school where he was teaching by which he claims he was maliciously characterized as a child molester. His various proceedings in the Nunavut courts and an application for leave to the Supreme Court of Canada were allegedly thwarted by criminal activity and other malfeasance on the part of the defendants. He sought damages and a declaration that their actions violated his constitutional rights as provided for in the *Canadian Charter of Rights and Freedoms*.

[3] The Federal Court Registry sought directions as to whether the statement of claim should be accepted for filing.

[4] I first directed that the statement of claim not be accepted for filing and that the filing fee of \$150 be returned to him on the grounds that the claim alleged was beyond the jurisdiction of this Court which has no general criminal jurisdiction, and certainly has no jurisdiction over judges or court officials of other courts. I added, however, that if Mr. Mazhero still considered that the Federal Court had jurisdiction, he could bring on a motion, without notice to the defendants, requesting that the Court accept the statement of claim for filing. The motion record was to set out reasons why he thought the Federal Court had jurisdiction.

[5] He then filed the motion, although he did not set out grounds on which this Court had jurisdiction.

[6] I then directed that the statement of claim be accepted for filing and on my own motion on 25 November 2004 ordered that the action be dismissed as the statement of claim disclosed no reasonable cause of action before this Court, was scandalous, frivolous and vexatious, and was otherwise an abuse of process of this Court. That decision is reported as *Mazhero v. Nunavut (Court of Justice, Judge)*, 2004 FC 1659. Mr. Mazhero's appeal of that decision was dismissed by the Federal Court of Appeal for want of prosecution in May 2006.

[7] A number of other non-relevant events transpired, including a complaint by Mr. Mazhero to the Canadian Judicial Council about me and other judges of this Court.

[8] The normal recourse for those not satisfied by a decision in first instance is to launch an appeal, which Mr. Mazhero did. However Rule 397 and following of the *Federal Courts Rules* permit the court of First Instance, in certain circumstances, to reconsider, set aside or vary its original order. Now Mr. Mazhero has moved, pursuant to Rule 399, for an order that my decision of 25 November 2004 be set aside on the grounds that "the defendants Madam Justice Browne and Mr. Justice Richard, jointly and severally, perpetrated a fraud upon the Federal Court and the plaintiff in 2004."

[9] Rule 399(2)(b) provides that on motion, "...the Court may set aside or vary an order ...where the order was obtained by fraud."

[10] In his supporting affidavit, he sets out a litany of complaints against the two judges in question, complaints along the lines of the allegations in the original statement of claim. He also asserts that my original order was fatally flawed because I raised the question of this Court's jurisdiction on my own motion, without notice to the defendants. As they did not appear on the motion, it follows that the defendants were not in position to perpetrate a fraud upon this Court, and for that reason alone the motion to set aside should be dismissed.

[11] Mr. Mazhero appears not to accept that the jurisdiction of this Court is limited by section 101 of the *Constitution Act, 1867*. For the reasons expressed in my 2004 order, this Court simply has no jurisdiction over the cause of action alleged in the statement of claim, no matter how fraudulently Mr. Mazhero asserts the defendants may have acted.

[12] Since that order was issued, in *Crowe v. Canada (Supreme Court Judge)*, 2007 FC 1209, 319 F.T.R. 203, I again raised on my own motion the jurisdiction of this Court over an action against various judges of the Supreme Court of Canada, the Court of Appeal for Ontario, and the Ontario Superior Court of Justice. I dismissed the action for lack of jurisdiction.

[13] The appeal of that order was dismissed by the Federal Court of Appeal in a decision reported at 2008 FCA 298, 393 N.R. 50. Speaking for the Court, Mr. Justice Pelletier stated at paragraphs 16 and 17:

[16] The difficulty which Mr. Crowe faces is that the Federal Court is a statutory court and, as such, has only the jurisdiction conferred upon it by statute. It is not a court of inherent jurisdiction as are the provincial superior courts:

46 As a statutory court, the Federal Court of Canada has no jurisdiction except that assigned to it by statute. In light of the inherent general jurisdiction of the provincial superior courts, Parliament must use express statutory language where it intends to assign jurisdiction to the Federal Court...

[*Ordon Estate v. Grail*, [1998] 3 S.C.R. 437, at para. 46.]

[17] In *ITO-International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, the Supreme Court of Canada set out the conditions required to support Federal Court jurisdiction at p. 766:

The general extent of the jurisdiction of the Federal Court has been the subject of much judicial consideration in recent years. In *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054, and in *McNamara Construction (Western) Ltd. v. The Queen*, [1977] 2 S.C.R. 654, the essential requirements to support a finding of jurisdiction in the Federal Court were established. They are:

1. There must be a statutory grant of jurisdiction by the federal Parliament.
2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.
3. The law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the *Constitution Act, 1867*.

[14] The defendants, the Honourable J. Edward Richard and the Honourable Beverly Browne have been vexatiously pursued in this Court, and this time retained counsel. It is only fit and proper that the motion be dismissed, with costs taxed on a solicitor/client basis.

[15] Mr. Mazhero is annoyed by the fact that the defendant Lucille Bertrand has not appeared and filed representations. She is under no obligation to do so. However no costs shall be awarded in her favour.

ORDER

THIS COURT ORDERS that:

1. The motion to set aside this Court's order of 25 November 2004 is dismissed, with costs in favour of the Honourable J. Edward Richard and the Honourable Beverly Browne on a solicitor/client basis.

“Sean Harrington”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2106-04

STYLE OF CAUSE: Mazhero v. The Honourable J. Edward Richard et al.

MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF THE PARTIES
PURSUANT TO RULE 369 OF THE *FEDERAL COURT RULES*

**REASONS FOR ORDER
AND ORDER:** HARRINGTON J.

DATED: March 11, 2010

WRITTEN SUBMISSIONS BY:

Francis Mazhero FOR THE PLAINTIFF

Ronald D. Lunau FOR THE DEFENDANTS
Catherine Beaudoin (THE HON. J. EDWARD RICHARD AND
THE HON. BEVERLY BROWNE)

No one appearing FOR THE DEFENDANTS
(LUCILLE BERTRAND, JANE DOE AND
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