

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180228

Docket: A-339-16

Citation: 2018 FCA 46

**CORAM: WEBB J.A.
RENNIE J.A.
GLEASON J.A.**

BETWEEN:

ZHENHUA WANG AND CHUNXIANG YAN

**Appellants
(Plaintiffs)**

and

**HER MAJESTY THE QUEEN, OXANA M.
KOWALYK (ID MEMBER), SUSY KIM (ID
MEMBER), IRIS KOHLER (ID MEMBER),
OFFICER O'HARA (CBSA OFFICER), HAL
SIPPEL, ERIC BLENKARN, ANDREJ
RUSTJA, CBSA OFFICERS, ALL JOHN AND
JANE DOE CBSA/CIC OFFICIALS
UNKNOWN TO THE PLAINTIFFS,
INVOLVED IN THE ARREST, DETENTION
AND CONTINUED DETENTION OF THE
PLAINTIFFS, MINISTER OF CITIZENSHIP
AND IMMIGRATION, ATTORNEY
GENERAL OF CANADA**

**Respondents
(Defendants)**

Heard at Toronto, Ontario, on February 28, 2018.
Judgment delivered from the Bench at Toronto, Ontario, on February 28, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on February 28, 2018).

GLEASON J.A.

[1] The appellants appeal from the judgment of the Federal Court in *Wang and Yan v. The Queen et al*, 2016 FC 1052 (per Barnes, J.) in which the Federal Court struck the appellants' Statement of Claim, with leave to amend it in part. We see no basis for interfering with the Federal Court's judgment as the Federal Court correctly set out the law applicable on a motion to strike and made no palpable and overriding error in applying that law to the appellants' Statement of Claim.

[2] More specifically, it was open to the Federal Court to conclude that the claims against the individual members of the Immigration Division of the Immigration and Refugee Board (the ID) should be struck in the absence of any material facts that could conceivably ever support a claim against them. Likewise, it was open to the Federal Court to dismiss as abusive those portions of the claim that sought to re-litigate issues that had previously been finally decided by the Ontario Superior Court of Justice and to conclude that what remained of the pleading was so devoid of material fact that it ought to be struck, with leave to amend. Although the Federal Court did not deal with the appellants' claim for *habeas corpus*, the appellants have been released from custody and the circumstances have therefore changed from those that existed at the time of the pleading. It is unnecessary for us to address in this appeal the extent, if any, of the Federal Court's jurisdiction to hear a new application for *habeas corpus* based on these changed facts, which application has not yet been made.

[3] We would accordingly dismiss this appeal with costs, fixed in the all-inclusive amount of \$2000.00, payable to the respondent members of the ID and in the all-inclusive amount of

\$2000.00, payable to the remaining respondents. We would grant the appellants the requested 60 days within which to amend their Statement of Claim, if they wish.

“Mary J.L. Gleason”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-339-16

STYLE OF CAUSE:

ZHENHUA WANG AND
CHUNXIANG YAN v. HER
MAJESTY THE QUEEN, OXANA
M. KOWALYK (ID MEMBER),
SUSY KIM (ID MEMBER), IRIS
KOHLE (ID MEMBER),
OFFICER O'HARA (CBSA
OFFICER), HAL SIPPEL, ERIC
BLENKARN, ANDREJ RUSTJA,
CBSA OFFICERS, ALL JOHN
AND JANE DOE CBSA/CIC
OFFICIALS UNKNOWN TO THE
PLAINTIFFS, INVOLVED IN THE
ARREST, DETENTION AND
CONTINUED DETENTION OF
THE PLAINTIFFS, MINISTER OF
CITIZENSHIP AND
IMMIGRATION, ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

FEBRUARY 28, 2018

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.
RENNIE J.A.
GLEASON J.A.

DELIVERED FROM THE BENCH BY:

GLEASON J.A.

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FOR THE RESPONDENTS
OXANA M. KOWALYK (ID
MEMBER), SUSY KIM (ID

MEMBER), IRIS KOHLER (ID
MEMBER)

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FOR THE RESPONDENTS

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OXANA M. KOWALYK (ID
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