

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180920

Docket: A-390-17

Citation: 2018 FCA 169

**CORAM: NEAR J.A.
DE MONTIGNY J.A.
WOODS J.A.**

BETWEEN:

GRACE JOUBARNE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on September 19, 2018.

Judgment delivered at Ottawa, Ontario, on September 20, 2018.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**DE MONTIGNY J.A.
WOODS J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

[1] The appellant, Grace Joubarne, appeals from the November 15, 2017 order and reasons of the Federal Court (T-1480-17). The Motions Judge, on motion by the respondent, Her Majesty the Queen (Her Majesty), struck the Statement of Claim of the appellant without leave to amend, with costs awarded to the respondent. At issue on appeal is whether the Motions Judge erred in striking the appellant's claim. As a preliminary matter, upon the suggestion of this Court the parties agreed that the style of cause should be changed to name Her Majesty as respondent,

rather than the Attorney General of Canada as originally stated in the appellant's Notice of Appeal.

I. Background

[2] On or about September 29, 2017, the appellant commenced, by way of a simplified action, a claim for declaratory relief against the respondent for a dispute over property taxes the City of Belleville (the City) levied against two properties (Properties) she owns in that municipality. Her claim asserts that the Properties meet the definition of "federal property" under ss. 2(1) and 2(3) of the *Payments in Lieu of Taxes Act*, R.S.C. 1985, c. M-13 (the PLTA), and that in order to collect municipal taxes over these Properties, the City is required to make application to the federal Minister of Public Works and Government Services under the PLTA and have the taxes paid out under the Consolidated Revenue Fund.

[3] The City declines to make such application on the ground that the PLTA does not apply to the Properties. In turn, the appellant contends that the refusal of the City to make such application interferes with her right to be free from forced disposition of her wealth and resources, a right which she claims is guaranteed under various instruments of international law and, by adoption, under the PLTA and the Canadian constitution as domestic law. She claims that the City's refusal to make an application under the PLTA amounts to the tort of misfeasance in public office engaging Crown liability under s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 [CLPA].

[4] In my view, I see no reason for this Court to intervene with the order and reasons of the Motions Judge. The submissions of the appellant remain, on their face, without merit. I agree

with the Motions Judge that it is plain and obvious that the properties the appellant owns in the City of Belleville are not “federal property” within the meaning of the PLTA. The PLTA, as a piece of legislation designed to mitigate against the fact that Crown property is constitutionally exempt from provincial and municipal taxation (*Halifax (Regional Municipality) v. Canada*, 2012 SCC 29), has no application to privately owned and controlled property in the City.

[5] Further, the argument that a motion to strike is prohibited under R. 297 of the Rules likewise has no merit. That provision prohibits summary judgment or trial in a simplified action and does not relate to motions to strike which, as the Motions Judge explained, are clearly permitted in the context of a simplified action under R. 298(2) of the Rules. I find that the Motions Judge applied the correct test for disposing of a motion to strike, which is that a claim will only be struck if it is “plain and obvious” that it had no reasonable prospect of success, assuming the facts to be true (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 17).

[6] In addition, I find no merit to the appellant’s submission that the respondent acted improperly or with malice in putting forward arguments relating to the interpretation of the PLTA, or otherwise tried to mislead the Court. I likewise do not find any merit to the appellant’s submission that the respondent purposefully omitted page seven of the appellant’s Statement of Claim from the respondent’s motion to strike materials. I accept the respondent’s submission that this was inadvertent, and in any event, caused no prejudice to the appellant as the Motions Judge had the entirety of her Statement of Claim before him on the motion.

[7] Despite the strongly held view of the appellant, I conclude that the Motions Judge made no error of fact or law in granting the respondent's motion to strike, and no obvious injustice results from his decision. The appellant's Statement of Claim was devoid of legal foundation and had no chance of success.

II. Order

[8] The appeal is dismissed with costs awarded against the appellant in the amount of \$750.00.

"David G. Near"

J.A.

"I agree.

Yves de Montigny J.A."

"I agree.

J. Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM AN ORDER AND REASONS OF THE HONOURABLE
JUSTICE R. LEBLANC DATED NOVEMBER 15, 2017, DOCKET NO. T-1480-17**

DOCKET: A-390-17

STYLE OF CAUSE: GRACE JOUBARNE v. HMTQ

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2018

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
WOODS J.A.

DATED: SEPTEMBER 20, 2018

APPEARANCES:

Grace Joubarne FOR THE APPELLANT
ON HER OWN BEHALF

Jennifer Bond FOR THE RESPONDENT
Michael Roach

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada