

Federal Court



Cour fédérale

Date: 20201020

Docket: T-412-19

Citation: 2020 FC 989

[ENGLISH TRANSLATION]

Ottawa, Ontario, October 20, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

ARI BEN MENASHE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Ari Ben Menashe [Mr. Ben Menashe], alleges that he was unfairly denied access to basic banking services by many Canadian financial institutions. He therefore asks the Court to compel, by way of *mandamus*, the Financial Consumer Agency of Canada [Agency] and the Department of Finance [Department] to investigate these institutions and to impose on them the appropriate sanctions and orders, to determine whether the applicant is entitled to

access basic banking services, and to establish a monitoring system for the decisions of financial institutions.

[2] I am dismissing this application for the following reasons.

[3] Mr. Ben Menashe is a Canadian businessman who claims to have been deprived of basic banking services by major Canadian financial institutions since 2012. The Minister of Finance is the Minister responsible for the Agency, established pursuant to section 3 of the *Financial Consumer Agency of Canada Act*, SC 2001, c 9 [the *Agency Act*].

[4] On September 29, 2011, the Canadian Imperial Bank of Commerce [CIBC] terminated Mr. Ben Menashe's banking services citing a risk to CIBC's reputation and concerns about certain activities in his account.

[5] On December 23, 2011, after Mr. Ben Menashe filed an application for an injunction against CIBC to maintain his banking services, CIBC and Mr. Ben Menashe agreed to maintain his banking services until January 31, 2012, to allow Mr. Ben Menashe to find another financial institution. The matter was settled, and the application for an injunction was withdrawn.

[6] During that period, Mr. Ben Menashe allegedly contacted all of Quebec's major financial institutions, which apparently all denied him access to basic banking services, without stating their reasons, contrary to certain provisions of the *Access to Basic Banking Services Regulations*, SOR/2003-184 [*Regulations*].

[7] More than six and a half years later, on September 17, 2018, Mr. Ben Menashe sent a complaint to the Agency concerning the financial institutions' refusal to give him access to basic banking services without a written explanation. On December 13, 2018, dissatisfied with the developments in his complaint to the Agency, Mr. Ben Menashe brought his complaint to the Department.

[8] On April 26, 2019, after the proceeding before this Court was instituted, the Department responded to Mr. Ben Menashe's letters of September 17 and December 13, 2018.

[9] Mr. Ben Menashe alleges that the Agency and the Department did not investigate despite his complaint and that they did not establish a financial institution monitoring system.

Mr. Ben Menashe is asking the Court to make an order of *mandamus* against the Agency and the Department, compelling them to:

[TRANSLATION]

Investigate the following financial institutions and impose the appropriate sanctions and orders to ensure compliance with the obligations arising from the *Bank Act*, SC 1991, c. 46 [*Bank Act*], and its regulations, and the *Agency Act* with respect to the applicant's right to access basic banking services:

Bank of Montreal, Royal Bank of Canada, Bank of Nova Scotia, Toronto Dominion, Laurentian Bank of Canada, Fédération des caisses Desjardins du Québec

[The Banks]

Determine whether the applicant is entitled to access basic banking services and whether the reasons given by the financial institutions, if applicable, for refusing to grant the applicant access to such services, if applicable, are valid;

Establish a system for monitoring and reviewing decisions made by financial institutions and more specifically the decisions made under the *Bank Act* and its regulations, and the *Agency Act* with respect to the applicant's right to access basic banking services.

[10] The respondent, the Attorney General of Canada, raised several preliminary issues, such as the fact that Mr. Ben Menashe was applying for several orders in respect of which he was seeking relief, contrary to Rule 302 of the *Federal Courts Rules*, SOR/98-106 [FCR], and that the FCR were not complied with in respect of the manner in which the applicant's record was prepared.

[11] In view of my decision on the merits of Mr. Ben Menashe's application, I do not have to rule on the preliminary issues.

[12] Mr. Ben Menashe did not present any evidence of a failure to act or of a breach of a legal obligation, or evidence suggesting mal-administration by the Agency or the Department in support of his application. For reasons unknown, the applicant's record contained an affidavit of documents as well as a copy of the documents listed therein, but it did not contain any affidavit from Mr. Ben Menashe to support the important allegations in his application, as required by rule 309 of the FCR. In fact, no such affidavit was served on the Attorney General of Canada by Mr. Ben Menashe's counsel, as required by rule 306 of the FCR.

[13] On February 5, 2020, Mr. Ben Menashe filed an application for leave to file an additional affidavit, for leave to call witnesses at the hearing, and for an extension of time to file a

requisition for a hearing. Apart from the request for an extension of time to file a requisition for a hearing, the Court dismissed this application on April 30, 2020.

[14] On June 2, 2020, Mr. Ben Menashe filed a motion, this time for leave to testify orally and in person at the hearing of his application for *mandamus*. In a very detailed decision, Prothonotary Steele dismissed Mr. Ben Menashe's motion on September 10, 2020.

[15] Despite there being no affidavit or any evidence in support of the important allegations in his application, Mr. Ben Menashe nonetheless filed a requisition for a hearing on July 17, 2020, requesting a hearing lasting no more than three days. In an order dated September 21, 2020, this Court ordered that the case be held by Zoom videoconference on Tuesday, October 20, 2020, over a period of three days.

[16] Although the hearing was scheduled for three days, the parties only needed 90 minutes to deal with the matter. The sole issue was whether the application for *mandamus* should be allowed.

[17] The classic test for *mandamus* is succinctly set out by the Federal Court of Appeal in *Canada (Health) v The Winning Combination Inc*, 2017 FCA 101 at paragraph 60:

- (1) there must be a legal duty to act;
- (2) the duty must be owed to the applicant;
- (3) there must be a clear right to performance of that duty;
- (4) where the duty sought to be enforced is discretionary, certain additional principles apply;

- (5) no adequate remedy is available to the applicant;
- (6) the order sought will have some practical value or effect;
- (7) the Court finds no equitable bar to the relief sought; and
- (8) on a balance of convenience an order of *mandamus* should be issued.

[18] In addition, a relatively recent trend in the case law has opened the door to awarding *mandamus* in cases of mal-administration (*D'Errico v Canada (Attorney General)*, 2014 FCA 95 at para 16; *Canada (Public Safety and Emergency Preparedness) v Lebon*, 2013 FCA 55 at para 14, citing Justice LeBel's dissenting reasons in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 148).

[19] However, Mr. Ben Menashe does not specify in his memorandum which legal provision would require the Agency and the Minister to act. He merely refers in general terms to the *Agency Act* and the *Bank Act*.

[20] Before me, Mr. Ben Menashe argued that each of the Banks was obliged to give him access to a bank account under section 448.1 of the *Bank Act* and that if they refused to do so under the *Regulations*, they were required to give him the reasons for this refusal in writing, in accordance with section 5 of the *Regulations*.

[21] However, in the absence of any legitimate evidence that Mr. Ben Menashe actually contacted the banks to secure access to a bank account and that they refused to grant him this, it

would be difficult for me to conclude that the banks acted illegally by refusing to provide written reasons for their refusal.

[22] Mr. Ben Menashe attempted to suggest that the letters of complaint sent to the Agency and the Department attached to his affidavit of documents, as well as those in the Attorney General's record, proved that the Banks had denied him access to a bank account. Frankly, other than establishing that the letters of complaint were sent by his lawyers, I do not see how those letters constitute proof of their content.

[23] In the absence of any clear legal obligation requiring the Agency or the Department to act in accordance with the orders requested of the Court and in the absence of any evidence that they breached any obligation to Mr. Ben Menashe, I do not see how I could grant the orders sought by him.

[24] As a result, I dismiss the application for *mandamus* with costs.

[25] Furthermore, I find that the award of costs in favour of the Attorney General of Canada should reflect the fact that this application was doomed to fail because of a complete lack of supporting evidence.

[26] Mr. Ben Menashe's lawyers were clearly aware of the shortcomings in their application, as they in fact conceded to me, because they tried to rectify the situation twice, but failed both times. Rather than stopping there and withdrawing his application, Mr. Ben Menashe filed a

requisition for a hearing, thereby inappropriately mobilizing the resources of this Court and the Attorney General of Canada to prepare for a three-day hearing. Mr. Ben Menashe also suggested that the three-day hearing had been requested on the assumption that the Court would authorize his in-person testimony to complete his evidence. This assumption was not only misguided, but ultimately proved to be entirely wrong.

JUDGMENT in T-412-19

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The applicant will pay the respondent \$7,500 in costs.

“Peter G. Pamel”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-412-19

STYLE OF CAUSE: ARI BEN MENASHE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE IN MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 20, 2020

JUDGMENT AND REASONS: PAMEL J.

DATED: OCTOBER 20, 2020

APPEARANCES:

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Robert Astell

Marie-Ève Sirois Vaillancourt FOR THE RESPONDENT
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