Federal Court  Cour fédérale

Date: 20210629

Docket: T-1030-20

Citation: 2021 FC 689

Ottawa, Ontario, June 29, 2021

PRESENT: The Associate Chief Justice Gagné

BETWEEN:

ROSALINA TEMPLANZA

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHTS OF PUBLIC HOUSING IN CALGARY, AB AS REPRESENTED BY TRINITY PLACE FOUNDATION OF ALBERTA (TPFA) US BASE, ET AL; IRIS DERKSEN, MARY ANN FIELDING, LAWRENCE BRAUL, CRAIG CHEPPINS, ANTON AND CHARLENE JINKERSON, GARY DORMAN WHITE, DEBORAH LAMONT, JEFF BOTH OF RTDRS. EMS, CONST. SEAN GLYDON. FILE# 19-0212 PROFESSIONAL STANDARD SECTION. CONST. I. FERSTER # 4598/ CONST. M. SHAPANSKY # 5457. FILE # 20-0119, PETER CRISFIELD, LLP AND MASTER PROWSE, BOBBI MCDERMIT. CMO / CA. WILLIAM (BILL) FITZGERALD.

Defendants

JUDGMENT AND REASONS

I. Overview

[1] This case is one of the too many cases the Court has seen, where abusive litigants exhaust their recourses before the common law courts of their province of residence, without success, and then bring the same debate before this Court.

[2] Ms. Rosalina Templanza is a resident of Calgary, Alberta. At the Alberta Court of Queen's Bench, the Honourable R. A. Neufeld declared that Ms. Templanza was a vexatious litigant (Court file 1501-13040). Consequently, she is prohibited from commencing any appeal, action, application, or proceeding before the Alberta Court of Appeal, the Alberta Court of Queen's Bench, or the Provincial Court of Alberta, without the prior authorization from the Chief Justice, the Associate Chief Justice or the Chief Judge of the Court in which the proceeding is conducted.

[3] Before this Court, Ms. Templanza seeks an order that the individual defendants be incarcerated for over 50 years, that all Defendants pay her a financial compensation of 5 million dollars and punitive damages in the amount of 5 million dollars, and that she be reinstated in the residential unit she used to occupy at Carter's Place in Calgary.

[4] The event giving rise to the underlying claims is an altercation that Ms. Templanza had with another resident of Carter's Place over the position of her house plants in the solarium, and her subsequent arrest by the Calgary Police Service. Ms. Templanza is suing the individual with whom she had the altercation, the three police officers that were called on the scene, the

managers of Carter's Place, and Master J. T. Prowse of the Alberta Court of Queen's Bench, who eventually issued an eviction order against her.

[5] The Court is now seized with motions to strike Ms. Templanza's Amended Statement of Claim and Statement of Claim without leave to amend, brought by Master Prowse and by the three constables of the Calgary Police Service [CPS Defendants]. The moving parties also seek a declaration that they were not properly served with Ms. Templanza's Amended Statement of Claim.

[6] Master Prowse and the CPS Defendants also motion for an Order under section 40 of the *Federal Courts Act*, RSC 1985, c F-7 that Ms. Templanza be declared a vexatious litigant. They argue that she has conducted this proceeding in a vexatious manner, that this action may not be continued, and that no other Court action may be instituted by Ms. Templanza without leave of the Court.

[7] Ms. Templanza is self-represented. She opposes the Defendants' motions.

II. Issues

[8] These motions raise the following issues:

A. *Whether this Court should strike Ms. Templanza's Amended Statement of Claim as it relates to all Defendants;*

B. *Whether the Amended Statement of Claim was properly served on the Defendants; and*

3. *Whether this Court should issue a section 40 order against Ms. Templanza.*

III. Analysis

A. *Whether this Court should strike Ms. Templanza's Amended Statement of Claim as it relates to all Defendants*

[9] Master Prowse submits that this Court should strike Ms. Templanza's Amended Statement of Claim for the following reasons: 1) this Court does not have jurisdiction over Master Prowse; 2) the Amended Statement of Claim fails to disclose a reasonable cause of action against Master Prowse or the other Defendants; and, 3) Ms. Templanza's claim is an abuse of process because it is a collateral attack on prior eviction proceedings in the Alberta Court of Queen's Bench, because it is an attempt to avoid the court access restrictions that Ms. Templanza faces in Alberta, and because it is vexatious.

[10] The CPS Defendants submit that this Court should strike Ms. Templanza's Amended Statement of Claim for the same reasons as Master Prowse, including that this Court does not have jurisdiction over them either.

[11] In general, Ms. Templanza submits that the Defendants are lying and collaborating against her. Specifically, she accuses the CPS Defendants of arresting her using excessive force and fabricating the police report of the altercation. Her allegations against Master Prowse are less clear, but amount to his collusion in having her evicted.

[12] The starting point for this analysis is Rule 221 of the *Federal Courts Rules*, SOR/98-106 which allows the Court, on motion from a party, to strike out a pleading for a number of reasons enumerated therein. Many of these reasons are relevant here.

[13] I first turn my attention to Rule 221(1)(a) to assess whether it is plain and obvious that Ms. Templanza's Amended Statement of Claim discloses no reasonable cause of action (*Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at 979; *Carten v Canada*, 2009 FC 1233 at para 30 [*Carten*]). If so, the Court may exercise its discretion to strike out her pleading.

[14] As stated in *Carten* by Justice Roger Lafrenière, then a Prothonotary with the Court:

> [31] On a motion to strike a pleading on the grounds that it does not disclose a reasonable cause of action, those allegations that are capable of being proved must be taken as true: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959. This rule does not apply, however, to allegations based on assumptions and speculation: *Operation Dismantle Inc. v. The Queen* (1985), 18 D.L.R. (4th) 481 (S.C.C.) at 486-487 and 490-491. Moreover, the Court need not accept at face value bare allegations, factual allegations which may be regarded as scandalous, frivolous or vexatious, or legal submissions dressed up as factual allegations.

[15] This applies to Ms. Templanza for two very specific reasons: her written submissions are replete with inflammatory and derogatory language and accusations; and, her Amended Statement of Claim cannot disclose a reasonable cause of action justiciable in the Federal Court, which completely lacks jurisdiction over the matter (see also *Steeves v British Columbia*, 2020 FC 1177 at paras 8-10).

[16] There is a tripartite test for establishing the Federal Court's jurisdiction found in *ITO-Int'l Terminal Operators v Miida Electronics,* [1986] 1 SCR 752 at 766. There must be: (1) a statutory grant of jurisdiction by the federal Parliament; (2) an existing body of federal law essential to the disposition of the case; and (3) the law must be a law of Canada.

[17] I agree with both Master Prowse and the CPS Defendants that the Federal Court has no jurisdiction over them, nor over any of the Defendants.

[18] The matter raised by Ms. Templanza's claim is a private matter between private litigants. There is no statutory grant of jurisdiction to the Federal Court over such matters. In order to dispose of the case, the Court would have to apply a body of provincial statutes and common law torts applicable in the Province of Alberta. These are not laws of Canada within the meaning of section 101 of the *Constitution Act, 1867* (UK) 30 & 31 Victoria, c 3, reprinted in RSC 1985, Appendix II, No 5.

[19] In the case of Master Prowse, who is a judicial officer of the Alberta Court of Queen's Bench, the Federal Court of Appeal has already plainly stated that:

> [18] … there is no statutory grant of jurisdiction to the Federal Court by the Parliament giving it jurisdiction over the tortuous conduct of judges. Nothing in the *Judges Act*, R.S.C. 1985, c. J-1, or in any other act creates civil liability for acts done by judges in their capacity as judges. As a result, the question of judicial immunity simply does not arise since there is no liability enforceable in the Federal Court to which that immunity could apply. The allegation of loss of immunity by a judge as a result of deliberate misconduct does not create jurisdiction in the Federal Court: any action against the judge must be brought in the provincial superior court.
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> (*Crowe v Canada (Attorney General)*, 2008 FCA 298).

[20] As for the CPS Defendants, there is no statutory grant of jurisdiction over municipal police matters or over police officers governed by the *Police Act*, RSA 2000, c P-17, a provincial statute. There is no more federal law essential to the disposition of this case.

[21] In *Legere v Canada*, 2003 FC 869 [*Legere*], the plaintiff was unsuccessful before the Supreme Court of British Columbia in custody and access proceedings. He sought relief in the Federal Court from a Master and three Judges of the Supreme Court of British Columbia as well as from a municipal police force. This Court held that it does not have the jurisdiction to address an "alleged transgression of a municipal police force" (*Legere* at para 3). That is the case here as well.

[22] Having reached the conclusions that this Court does not have jurisdiction over either Master Prowse or the CPS Defendants, it is not strictly necessary to address their other arguments. However, I think it is useful to address the vexatious character of Ms. Templanza's Amended Statement of Claim. This intersects with the arguments of the moving parties that Ms. Templanza's Amended Statement of Claim fails to disclose a reasonable cause of action as it does not disclose any particulars to support her "outlandish and ridiculous claims" (Master Prowse Memorandum at para 49).

[23] Pleadings may be struck in accordance with Rule 221(1)(c) for being frivolous, scandalous, or vexatious. In *Ceminchuk v Canada*, [1995] FCJ No 914 at para 10 (QL) [*Ceminchuk*], Prothonotary Hargrave described what is meant by a scandalous, vexatious or frivolous action:

> [10] A scandalous, vexatious or frivolous action may not only be one in which the claimant can present no rational argument, based upon the evidence or law, in support of the claim, but also may be an action in which the pleadings are so deficient in factual material that the defendant cannot know how to answer, and a court will be unable to regulate the proceedings. It is an action without reasonable cause, which will not lead to a practical result.

[24] The above description has been upheld by this Court in *kisikawpimootewin v Canada*, 2004 FC 1426 at para 8 [*kisikawpimootewin*] and *Pelletier v Canada*, 2016 FC 1356 at para 23.

[25] In *kisikawpimootewin*, Justice Snider found that: "[t]he claim is vexatious in that the Defendant, if identifiable, is left both embarrassed and unable to defend itself. The Court is left with a proceeding so ill-defined that it is unable to discern an argument, or identify any specific material facts" (at para 9).

[26] I agree with the Defendants that Ms. Templanza's Amended Statement of Claim contains bald allegations of racism (while herself making a few racist comments), uses inflammatory and demeaning language, and lacks clarity and an air of reality in parts. Ms. Templanza makes so many varying accusations with few supporting facts that her claim is ill-defined or unidentifiable. Her claim is also replete with accusations that the various Defendants are conspiring against her. In my view, this is the situation described in *Ceminchuk* where the "claimant can present no rational argument, based upon the evidence or law" (at para 10). As a result, I also take the position that Ms. Templanza's Amended Statement of Claim can be struck in its entirety on the basis of Rule 221(1)(c), as it is not clear how the Court can regulate Ms. Templanza's conspiratorial, wide-reaching, and inflammatory accusations.

B. *Whether the Amended Statement of Claim was properly served on the Defendants*

[27] I agree with Master Prowse and the CPS Defendants that they were not properly served with Ms. Templanza's Amended Statement of Claim. However, this has no bearing on the outcome of this case considering it will be struck without possibility to amend.

[28] Considering Ms. Templanza's history of abusive proceedings, the Court prefers addressing the Defendants' substantial legal arguments rather than striking a pleading for improper service.

C. *Whether this Court should issue a section 40 order against Ms. Templanza*

[29] The Defendants also seek an Order under section 40 of the *Federal Courts Act* that the Plaintiff has conducted this proceeding in a vexatious manner, that this action may not be continued by Ms. Templanza, and that no other Court action may be instituted by Ms. Templanza without the leave of the Court.

[30] Unfortunately, an Order under section 40 of the *Federal Courts Act* "may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application" (subsection 40(2)). Although the Defendants state they are seeking consent, they have not received confirmation. Without consent, the Defendants have not satisfied an essential prerequisite to their Motions (see for example *Simon v Canada (Attorney General)*, 2019 FCA 28 at paras 6-7).

[31] I say unfortunately, as this mandatory ministerial gatekeeping is a clear impediment to the Court's control over its own processes in cases like this one where the Attorney General of Canada is not a party or has no interest in the outcome. It ignores the fact that the Attorney General of Canada may have no interest in the control of an abusive litigant who is consuming much Court time and resources. The Attorney General of Canada may also be reluctant to initiate or consent to an application under section 40 of the *Federal Courts Act* because of "political optics".

[32] Even in cases where the Attorney General of Canada is a party, this gatekeeping role has attracted the following comments by the Federal Court of Appeal in *Canada v Olumide*, 2017 FCA 42:

> [44] In the Federal Courts system, the applicants in this case [the Crown] are often respondents to proceedings. In some of them, they face litigants who exhibit vexatiousness. Too often though, the applicants do not start vexatious litigant applications for months, if not years, even many years. In the meantime, much damage to many is done.
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> [45] To reiterate, section 40 aims in part to further access to justice by those seeking the resources of the Court in a proper way. All participants in litigation—courts, parties, rule-makers and governments—must have a pro-access attitude and act upon it: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87. And as community property, courts deserve to be protected for the benefit of all.

[33] Therefore, although unfortunate, the Court cannot consider the Defendants' Motions under section 40 of the *Federal Courts Act*.

IV. Conclusion

[34] Considering that this claim is being struck out mainly for a want of this Court's jurisdiction over the entire matter, it will be struck out as it relates to all Defendants to this action, without leave to amend. However, the Defendants' Motions under section 40 of the *Federal Courts Act* are dismissed for lack of consent by the Attorney General of Canada.

JUDGMENT in T-1030-20

THIS COURT'S JUDGMENT is that:

1. The Defendants' Motions are granted in part;
2. The Plaintiff's Statement of Claim and Amended Statement of Claim are struck out as they relate to all of the Defendants, without leave to amend;
3. The Defendants' Motions under section 40 of the *Federal Courts Act* are dismissed;
4. Costs in the amount of $250 each are granted to Master J. T. Prowse and the Calgary Police Service Defendants (Const. Sean Glydon, Const. I Ferster, and Const. M. Schapansky).

"Jocelyne Gagné"
Associate Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1030-20
STYLE OF CAUSE:	ROSALINA TEMPLANZA v HER MAJESTY THE QUEEN IN RIGHTS OF PUBLIC HOUSING IN CALGARY, AB AS, REPRESENTED BY TRINITY PLACE FOUNDATION OF ALBERTA (TPFA) US BASE, ET AL; IRIS DERKSEN, MARY, ANN FIELDING, LAWRENCE BRAUL, CRAIG CHEPPINS, ANTON AND CHARLENE JINKERSON, GARY, DORMAN WHITE, DEBORAH LAMONT,, JEFF BOTH AT RTDRS. EMS, CONST. SEAN GLYDON. FILE# 19-, 0212 PROFESSIONAL STANDARD SECTION. CONST. I. FERSTER # 4598/ CONST. M., SHARANSKY # 5457., FILE # 20-0119, PETER CRISFIELD, LLP AND MASTER PROWSE, BOBBI MCDERMIT. CMO / CA. WILLIAM, (BILL) FITZGERALD.

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	GAGNÉ A.C.J.
DATED:	JUNE 29, 2021

WRITTEN SUBMISSIONS BY:

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