

Federal Court



Cour fédérale

Date: 20230501

Docket: T-995-21

Citation: 2023 FC 627

Ottawa, Ontario, May 1, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

LINA AHMED

Plaintiff

and

**ATTORNEY GENERAL OF CANADA (CSIS
AND NISRA), IAN GILES LEBLANC,
MINISTRY OF ATTORNEY
GENERAL/OFFICE OF INDEPENDENT
PROFESSIONAL STANDARD (OIPRD),
OTTAWA POLICE BOARD, STREET COP
JEFF AYLEN, CST. LEMIEUX MICHAEL,
CST. LEGROS PIERRE, DET. CHRI EVRIRE,
DET. ALI TOGROL, SGT. MARK
BAOUWMEESTER (OIPRD) AND CHIEF
PETER SLOLY**

Defendants

REASONS AND JUDGMENT

I. INTRODUCTION

[1] By a Statement of Claim issued on June 21, 2021, Lina Ahmed (the “Plaintiff”) commenced an action against the Attorney General of Canada (CSIS and NISRA), Ian Giles Leblanc, the Ministry of the Attorney General/Office of Independent Professional Standard (OIPRD), the Ottawa Police Board, Street Cop Jeff Ayles, Cst. Lemieux Michael, Cst. Legros Pierre, Det. Chri Evriere, Det. Ali Togrol, Sgt. Mark Baouwmeester (OIPRD) and Chief Peter Sloly (collectively “the Defendants”).

[2] In her Statement of Claim, the Plaintiff advanced allegations of torture, negligence, assault and intimidation, conspiracy, terrorism, and violations of the *Canadian Charter of Rights and Freedoms*, s. 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c. 11* (the “*Charter*”). She seeks the following relief [*sic* throughout]:

- a) Damages for injurious to Terror act, torture, assault, battery, intimidation abuse of public office, falsehood, and breaches of sections 7, 8, 9, 12 and 15 of the Canadian Charter of Rights and Freedoms (hereafter “*the Charter*”) in the amount of (“50,000,000”)
- b) Federal prosecution for a federal crime of terrorism conducted on me on ground of racial hate toward Arab.
- c) Special damages in an amount to be determined and provided prior to trial. This related to disability resulted from torture with loss of current and future income.
- d) Punitive, exemplary, and aggravated and damages pursuant to s.24(1) of the Charter in the amount of 10,000,000

e) Costs of this action on a substantial indemnity basis together with the applicable goods and services tax payable pursuant to the Excise Tax Act, R.S.C., c.E.15

f) Such further and other relief as this Court deems just.

g) Declaration that Canadian Security Intelligence Service, hereafter “CSIS” is liable to the plaintiff for damages caused by its breach constitution, statutory and *Charter of Rights and Freedoms* (*Charter*)

h) Declaration that National Security and Intelligence Review Agency hereafter “NISRA” is liable to the plaintiff for damages caused by its breach of constitutional, statutory, and common law duties.

i) Declaration that CSIC and NISRA had breach of customary international law (*jus cogens*) by conduction torture on plaintiff followed by intimidation and life endangerment, by defrauding other national and international security agents.

[3] Statements of Defence were filed on behalf of the Defendants, that is His Majesty the King; Mr. Ian Giles Leblanc; the Ottawa Police Services Board, Sgt. Jeff Ayles, Cst. Michael Lemieux, Cst. Pierre-Luc Legros, Det. Chris Evraire, Det. Ali Toghrol, Sgt. Mark Bouwmeester, and Chief Peter Sloly. The Defendants deny the allegations and plead that the Federal Court does not have jurisdiction to adjudicate the claim.

II. BACKGROUND

[4] By a Notice of Motion submitted for consideration without personal appearance, pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”), Counsel for His Majesty the King (“Canada” or the “Defendant”) seeks the entry of Summary Judgment against the Plaintiff, on the grounds that the Court lacks jurisdiction over the Plaintiff’s claim.

[5] In support of his Motion, the Defendant filed three affidavits, that is the affidavits of Mr. Ian Leblanc, of “Colin” and of Ms. Hailey Dang.

[6] Mr. Leblanc is named as a defendant in the Plaintiff’s Statement of Claim. In his affidavit, sworn on August 12, 2021, he deposed that he is not and never has been an employee of the Canadian Security Intelligence Service (“CSIS”). He further deposed that he never told the Plaintiff that he was an employee of CSIS.

[7] “Colin” affirmed his affidavit on March 11, 2022. In his affidavit, he described a history of interactions with the Plaintiff and the National Security and Intelligence Review Agency (“NSIRA”). He deposed that at no time was the Plaintiff told by CSIS that Mr. Leblanc was an employee of CSIS. He referred to the fact that on April 19, 2000, the Plaintiff filed a complaint against CSIS with the NSIRA. He deposed that the complaint included the allegations against Mr. Leblanc and CSIS that are set out in the Plaintiff’s Statement of Claim, together with other allegations.

[8] “Colin” further deposed that on June 8, 2021, NSIRA advised CSIS that it was taking jurisdiction over the Plaintiff’s complaint. He further deposed that as of the date of affirming his affidavit, that is March 11, 2022, NSIRA had taken no further steps in respect of the Plaintiff’s complaint.

[9] “Colin” attached, as an exhibit to his affidavit, an endorsement dated December 7, 2021, of Justice Pollack of the Ontario Superior Court of Justice, declaring the Plaintiff to be a vexatious litigant, pursuant to section 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[10] Ms. Dang is a legal assistant working with Counsel for the Defendant. She referred to certain documents that are attached as exhibits to her affidavit. These documents were issued in a proceeding in the Ontario Superior Court of Justice, filed in the names of Ian Leblanc, Gil Huns Leblanc also known as Gilles Leblanc and Clara Ocampo, as “Applicants”. The proceeding names Lina Saleh Ahmed Alghamdi, also known as Lina Saleh Ahmed Algahamdi, also known as Lina Ahmed as “Respondent”.

[11] The first documentary exhibit is a copy of the affidavit of Ms. Susan Charron, sworn on July 22, 2021. The affidavit was attached without exhibits. It appears that this affidavit was filed in support of the application to declare the Plaintiff a vexatious litigant in the Ontario Superior Court of Justice.

[12] The second documentary exhibit is an affidavit of Mr. LeBlanc, sworn on July 23, 2021. This appears to be an affidavit filed in support of the application to declare the Plaintiff a vexatious litigant in the Ontario Superior Court of Justice. This exhibit includes seventeen exhibits, including exhibits about a short-term rental agreement between Mr. Gils Leblanc and Mr. Ian Leblanc, and the Plaintiff relative to the occupation of a property situate at 1084 Millwood Court, Ottawa, Ontario.

[13] According to the affidavit of Mr. Leblanc filed in the Ontario proceeding, the rental relationship broke down and ultimately a Notice of Termination was served upon the Plaintiff. Proceedings were begun before the Landlord and Tenant Board (“the Board”) of Ontario. An Order was issued requiring the Plaintiff to vacate the property on or before April 19, 2019.

[14] The Plaintiff filed a Notice of Appeal before the Divisional Court of Ontario but according to Mr. Leblanc, he was not served with any documents after service of the Notice of Appeal and Stay Order.

[15] In the Statement of Claim filed in the within action, the Plaintiff seeks to recover damages for alleged assault, battery, abuse of public office, “physical, sexual and mental torture”, home invasions and fraud, perpetrated against her by Mr. Leblanc. She alleges conspiracy, intimidation and oppression against the other Defendants.

[16] In the Statement of Claim, the Plaintiff claims that on March 26, 2019, Mr. Leblanc forcefully entered her home, presented a CSIS badge, and assaulted her. She claims that she called the police and that they assaulted her when they arrived.

[17] In his affidavit sworn on July 23, 2021, Mr. Leblanc says that the Plaintiff allowed himself, Mr. Gilles Leblanc, and Ms. Clara Ocampo to enter the home. He says that the Plaintiff pushed Mr. Gilles Leblanc and that he called the police. He says the Plaintiff cut herself.

[18] Mr. Leblanc says that when the police arrived, they indicated that the Plaintiff was a risk to herself and others but they were unable to remove her without an order from the Board.

III. SUBMISSIONS

A. *The Defendant's Submissions*

[19] The Defendant moves for the dismissal of the Plaintiff's claim, on a summary basis, pursuant to Rule 215 of the Rules, on the grounds that there is no genuine issue for trial because the Court lacks jurisdiction.

[20] Relying on the decision of the Supreme Court of Canada in *International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752 ("ITO"), the Defendant submits that the Court has no jurisdiction over the claims. He argues that the Plaintiff advances common law torts against individuals who are not employees of the Defendant but who are subject to municipal or provincial law.

[21] The Defendant conceded that Canada would be vicariously liable for any torts committed by Crown servants and that the first branch of the ITO test is satisfied with respect to the allegations against CSIS or individuals working for CSIS.

[22] Regarding the second branch of the ITO test, the Defendant submitted that the Plaintiff's claim does not engage federal legislation that could resolve the claim. He argued that CSIS and NSIRA were not involved in the events alleged to give rise to liability.

[23] On the final branch of the ITO test, the Defendant argued that the resolution of the Plaintiff's claim will not be based on any "laws of Canada" because it is between private citizens and "non-federal defendants".

B. *The Plaintiff's Submissions*

[24] The Plaintiff argued that the Defendant's Motion should be dismissed. She submitted that there are questions of credibility that cannot be resolved in a summary manner. She also argued that the Federal Court has jurisdiction over all the Defendants and that her claim is supported by federal legislation, including the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27; the *Immigration and Refugee Protection Regulations*, SOR/2002-227; the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 and the *Canada Border Services Agency Act*, S.C. 2005, c. 38.

[25] The Plaintiff submitted that the Defendant failed to provide any evidence in support of his Motion "other than conflicting affidavit of mentally disabled person and very non credible affiant Susan Sharon" [sic]. She argued that the Motion should not be granted when issues of credibility are raised.

[26] The Plaintiff also noted that she did not have the opportunity to cross-examine the deponents whose affidavits were filed by the Defendant in support of his Motion and further, that she did not consent to the filing of this Motion for summary judgment.

[27] The Plaintiff submitted that the Defendant was in default of Rule 213 because he did not file a Defence. Overall, she opposed the Motion.

[28] The Plaintiff sought dismissal of the Motion with costs to her in the amount of \$6,000.00, together with a request for other relief including:

- A. An order directing that cross-examinations be conducted;
- B. An order directing that criminal proceedings be commenced in relation to the alleged crimes against the Plaintiff;
- C. An order requiring Canada to stop violating the Plaintiff's rights;
- D. An order anonymizing the Plaintiff's name; and
- E. An order for disclosure of fraudulent documents.

C. *The Defendant's Reply*

[29] In reply, the Defendant submitted that the disposition of his Motion does not require cross-examination upon the affidavits that he filed. He asked that the Court dispense with the requirement for cross-examination.

[30] The Defendant also argued that no issues of credibility arise upon the Motion for summary judgment. He relied upon the affidavit of Ms. Charron to support his contention that the root of the Plaintiff's action is a dispute arising from a private contract, that is a rental agreement, between the Plaintiff and Mr. Leblanc, as decided by the decisions of the Ontario Superior Court in *Leblanc v. Algahamdi*, 2021 ONSC 4899; *Lina Ahmed v. Ministry of the*

Attorney General, 2020 ONSC 7892 and *Ahmed v. Ontario (Attorney General)*, 2021 ONCA 427.

[31] The Defendant further submitted that the legislation and regulations cited by the Plaintiff in her written submissions do not satisfy the requirement that her action be grounded in federal law and do not provide the statutory grant of jurisdiction to support a claim against CSIS.

[32] As well, the Defendant argued that the Plaintiff filed no evidence in response to his Motion. The Rules require that parties to a motion for summary judgment present evidence in support of their respective positions and not wait for the production of evidence that may be available in the future.

[33] Finally, the Defendant submitted that the fact that NSIRA assumed jurisdiction over the Plaintiff's complaint involving CSIS does not confer jurisdiction of the Federal Court over that claim or any claim advanced in the Statement of Claim.

D. *Further Submissions*

[34] By letter dated January 5, 2023, the Plaintiff asked the Court to consider further submissions. She objected to the Defendant's request that the action be dismissed in its entirety, on the basis that the motion was brought only by one defendant.

[35] The Plaintiff also sought to introduce evidence about the investigation underway by NSIRA in respect of her complaint filed under the *National Security and Intelligence Review*

Agency Act, S.C. 2019, c. 13, s. 2. She also included a decision, dated May 20, 2022, of the Landlord and Tenant Board of Ontario.

[36] The Plaintiff also submitted a decision, dated October 7, 2022, of the Ontario Court of Appeal, dismissing her appeal from the “vexatious litigant” Order made by Justice Pollak of the Ontario Superior Court on December 7, 2021.

[37] In her letter, the Plaintiff asked that this action be assigned for Case Management, pursuant to the Rules.

[38] By email sent on January 5, 2023, counsel for the Defendant advised that all of the Defendants had consented to Canada’s motion for summary judgment.

[39] In a later email sent on January 5, 2023, Counsel for the Defendant opposed the request for Case Management at this time, reserving his right to reconsider the request in the future, if necessary.

IV. DISCUSSION AND DISPOSITION

[40] The Defendant moves for summary judgment pursuant to Rule 213(1) of the Rules which provides as follows:

Motion by a party

213 (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues

Requête d’une partie

213 (1) Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l’égard de

raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.

toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heure, date et lieu de l'instruction soient fixés.

[41] Rule 214 sets out the obligation of a responding party, in this case the Plaintiff, to a motion for summary judgment and provides as follows:

Facts and evidence required

214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

Faits et éléments de preuve nécessaires

214 La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve montrant l'existence d'une véritable question litigieuse.

[42] Rule 215 addresses the powers of the Court upon a motion for summary judgment. Rules 215(1), 215(2)(b) and 215(3) are relevant and provide as follow:

If no genuine issue for trial

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

Absence de véritable question litigieuse

215 (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense,

elle rend un jugement
sommaire en conséquence.

**Genuine issue of amount or
question of law**

(2) If the Court is satisfied
that the only genuine issue is

[...]

(b) a question of law, the
Court may determine the
question and grant
summary judgment
accordingly.

Powers of Court

(3) If the Court is satisfied
that there is a genuine issue of
fact or law for trial with
respect to a claim or a
defence, the Court may

(a) nevertheless determine
that issue by way of
summary trial and make
any order necessary for the
conduct of the summary
trial; or

(b) dismiss the motion in
whole or in part and order
that the action, or the
issues in the action not
disposed of by summary
judgment, proceed to trial
or that the action be
conducted as a specially
managed proceeding.

**Somme d'argent ou point de
droit**

2) Si la Cour est convaincue
que la seule véritable question
litigieuse est :

[...]

b) un point de droit, elle
peut statuer sur celui-ci et
rendre un jugement
sommaire en conséquence.

Pouvoirs de la Cour

(3) Si la Cour est convaincue
qu'il existe une véritable
question de fait ou de droit
litigieuse à l'égard d'une
déclaration ou d'une défense,
elle peut :

a) néanmoins trancher
cette question par voie de
procès sommaire et rendre
toute ordonnance
nécessaire pour le
déroulement de ce procès;

b) rejeter la requête en tout
ou en partie et ordonner
que l'action ou toute
question litigieuse non
tranchée par jugement
sommaire soit instruite ou
que l'action se poursuive à
titre d'instance à gestion
spéciale.

[43] The focus of the Defendant's Motion is that this Court lacks jurisdiction over the Plaintiff's claim.

[44] In *ITO, supra*, the Supreme Court identified three requirements for establishing the jurisdiction of the Federal Court over a particular matter. At page 766, the Court said as follows:

The question of the Federal Court's jurisdiction arises in this case in the context of Miida's claim against ITO, a claim involving the negligence of a stevedore-terminal operator in the post-discharge storage of the consignee's goods. 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*.

[45] The Defendant concedes that the first element of the ITO test is met in respect of the claim against CSIS and NSIRA. However, this concession is not enough to show that this Court has jurisdiction over the Plaintiff's claims. The fact that the Defendant "may" be vicariously liable for wrongful acts of servants of the Crown does not satisfy the remaining elements of the ITO test. Any issues of vicarious liability would arise under the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50.

[46] I agree with the Defendant's submissions that the Plaintiff's claims do not engage federal legislation that can "nourish" the statutory grant of jurisdiction.

[47] The Plaintiff's claims arise from a dispute about a residential rental agreement. That is a matter of provincial law, that is the *Residential Tenancies Act*, 2006, S.O. 2006, c. 17.

[48] The Plaintiff's Statement of Claim makes allegations against members of the Ottawa police force. Provincial police officers are not employees of the Defendant and the Federal Court enjoys no jurisdiction over them.

[49] The third element of the ITO test requires that the law underlying the case fall within the scope of the term "a law of Canada" as those words are used in section 101 of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91, reprinted in R.S.C. 1985, Appendix II, No. 5.

[50] The "law" that appears to apply to the matters raised by the Plaintiff in her Statement of Claim is either the law of Ontario or common law torts that cannot be adjudicated in this Court.

[51] The Federal Court is a statutory Court. Its jurisdiction is spelled out in the *Federal Courts Act*, R.S.C., 1985, c. F-7.

[52] The Plaintiff refers to several statutes, including the *Immigration and Refugee Protection Act*, *supra*. These references do not assist.

[53] According to the decision in *Peter G. White Management Ltd. v. Canada (Minister of Canadian Heritage)*, [2007] 2 F.C.R. 475 (F.C.A.), upon a motion for summary judgment, the Court is to look into the “pith and substance” of the claim.

[54] As noted above, the “pith and substance” of the Plaintiff’s claim is a dispute arising from a short-term residential rental agreement. There is no connection with federal law. Her allegations against Mr. Ian Leblanc do not relate to his alleged status or performance as a CSIS employee, but rather to his participation in the residential rental agreement with the Plaintiff.

[55] In general, the Federal Court does not enjoy jurisdiction over common law torts. I refer to the decision of the Federal Court of Appeal in *Stoney Band v. Canada (Minister of Indian & Northern Affairs)* (2005), 372 D.L.R. (4th) 176.

[56] I agree with the submissions of the Defendant that there are no issues of credibility that would justify the need for the Plaintiff to cross-examine Mr. Leblanc, “Colin” and Ms. Dang. The sole issue for determination upon the Defendant’s Motion for summary judgment is whether there is a serious issue for trial, arising from the Plaintiff’s Statement of Claim.

[57] Jurisdiction cannot be conferred by consent. The test for finding jurisdiction is well known. The Defendant has set out clear and persuasive arguments as to why this Court lacks jurisdiction over the Plaintiff’s claim and the Motion for summary judgment will be granted.

[58] The Plaintiff also alleges breaches of her rights pursuant to the *Charter*.

[59] According to the decision in *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086 at page 1099, the Supreme Court of Canada instructed that a Court should not engage in deciding a breach of *Charter* rights in the absence of a “proper factual foundation.” The Plaintiff has not provided such a foundation and her arguments about breaches of her *Charter* rights will not be considered.

[60] It is not necessary to address the further submissions made by the Plaintiff in her letter dated January 5, 2023. These submissions do not address the key issue raised by the Defendant’s Motion for summary judgment, that is whether the Plaintiff’s Statement of Claim raises a genuine issue for trial.

[61] Accordingly, the relief sought by the Defendant will be granted and the action will be dismissed in its entirety.

[62] The Defendant seeks costs in the amount of \$500.00.

[63] Pursuant to Rule 400(1) of the Rules, costs lie in the absolute discretion of the Court.

[64] Usually, costs are awarded to the successful party and I see no reason to depart from that practice in this case. In any event, the costs sought by the Defendant are modest.

[65] Costs in the amount of \$500.00 will be awarded to the Defendant.

JUDGMENT in T-995-21

THIS COURT'S JUDGMENT is that:

1. The Motion for summary judgment is granted and the action is dismissed in its entirety.
2. The Defendant is awarded costs in the amount of \$500.00.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-995-21
STYLE OF CAUSE: LENA AHMED v. ATTORNEY GENERAL OF CANADA (CSIS AND NISRA) ET AL.

MOTION IN WRITING CONSIDERED AT ST. JOHN'S, NEWFOUNDLAND AND LABRADOR PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

REASONS AND ORDER: HENEGHAN J.

DATED: May 1, 2023

WRITTEN REPRESENTATIONS

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