



Ruman v. Canada, 2005 FC 389 (CanLII)

Date: 2005-03-18

File number: T-194-05

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Date: 20050318

Docket: T-194-05

Citation: 2005 FC 389

Ottawa, Ontario, March 18, 2005

PRESENT: THE HONOURABLE MR. JUSTICE BEAUDRY

BETWEEN:

MARIA J. ENNS RUMAN

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

REASONS FOR ORDER AND ORDER

[1] This is a motion on behalf of the defendant pursuant to Rule 369 of the *Federal Court Rules, 1998* for an order to strike the Statement of Claim and for summary judgment dismissing the claim pursuant to Rules 221(1)(c), 221(1)(f) and 213(2) of the *Federal Court Rules*. The plaintiff has filed a Motion Record in response to the defendant's motion on February 22, 2005.

BACKGROUND

[2] On June 19, 2000, Robert A. Ruman, the plaintiff's husband, commenced an action in Federal Court alleging damages arising from the investigation named "PROJECT KAFFIR" and his subsequent prosecution (T-1067-00). The claim is detailed as follows:

36. Compensation for 10,000 man hours either taken from me by the charge of conspiracy or lost on account of this case. Compensation to be paid at the set rate of \$ 30.00 per man hour.

37. The man hours involved that were lost in this case and the money owed to me will be considered outstanding in the event of a negative outcome of this file for any reason and will be considered to be owed by the government of Canada and the public of Canada.

38. **Addition compensation for all costs incurred directly and indirectly involved with the charge of conspiracy, including but not limiting to, the equal hours provided by my wife, Maria J. Ruman, for all research, preparation of all documents and correspondence, typing, photocopying of all material, computer costs, supplies, incidental supplies, all costs of education, loss of income, etc. Compensation to be paid at the set rate of \$ 20.00 per above calculated man hour.**

39. **I want the situation of poverty caused by the charge of conspiracy changed for myself and my family by this compensation for proper housing, proper transportation, proper income and equal opportunity.**

40. **I want my good name and my family's good name restored and cleared of anything regarding the government of Canada's claim of conspiracy and the claim that I owe the government money.**

41. Additional compensation for my rights infringed upon and/or denied guaranteed by the [Canadian Charter of Rights and Freedoms](#), 1982, in the amount of
\$ 250,000.00.

42. Additional compensation for the torts committed against me by the Government of Canada in the amount of \$ 250,000.00.

43. Relief for all costs incurred during the course of this matter that may be claimed against me and that I could become liable for.

44. All costs involved with this action.

45. Such further and other relief as this Honourable Court shall deem just in these circumstances.
[My emphasis]

[3] On February 3, 2005, the plaintiff commenced an action against the defendant. She alleges having suffered economic loss from March 11, 1996 to date due to "PROJECT KAFFIR". She claims the following:

11. Compensation for Tort of Economic Loss in the amount of \$ 300,000.00.

12. **Compensation** for Punitive Damages for the Violations of the individuals rights guaranteed in the [Canadian Charter of Rights and Freedoms](#) in the amount of
\$ 150,000.00.

13. All costs involved with this action.

14. Costs to be in the cause of this action.

15. Such further and other relief as this Honourable Court shall deem just in the circumstances.
[emphasis in the original]

ANALYSIS

[4] The issues are as follows:

a) Is the Plaintiff's Claim barred by the [Limitations Act](#) of Alberta?

b) Is the Statement of Claim vexatious and an abuse of process?

[5] In making its decision, the Court should be guided by [Rule 3](#) of the *Federal Courts Rules*, where it provides that the rules shall be interpreted and applied so as to secure the just, most expeditious and least expensive determination of every proceeding on its merits (*Educational Testing Service v. Maple Leaf International Consulting, Inc.*, [2001] F.C.J. No. 1590 (T.D.) (QL) paragraphs 6 and 7).

[6] In *Jim Scharf Holdings Ltd. v. Sulco Industries Ltd.*, [2000] F.C.J. No. 1103 (C.A.) (QL), affirmed by the Federal Court of Appeal, it was held that when the evidence in the affidavits is conflicting, summary judgment is inappropriate.

[7] However, the jurisprudence is also quite clear that a Court hearing a motion for summary judgment may make findings of fact and law if these are reasonably open to it on the materials filed and if it is just to do so (Rule 216(3)). The mere existence of a conflict in the evidence should not preclude summary judgment. Rather, the Court is expected to take a "hard look" at the evidence and to make findings whenever possible (*Granville Shipping Co. v. Pegasus Lines Ltd. S.A.*, [1996 CanLII 4027 \(FC\)](#), [1996] 2 F.C. 853 (T.D.)).

[8] In the present case, the Plaintiff alleges that there is conflicting evidence arising from each party's affidavit and that a decision granting Summary Judgment before she has the chance to

cross-examine the deponent on his affidavit is unfair and prejudicial to her case (paragraph 11, page 3 of her memorandum).

[9] I must admit that the affidavits filed by both parties are conflicting. There appears to be two conflicting areas: (a) the limitation period and (b) the abuse of process and the vexatious and frivolous claim.

a) The limitation period of time

[10] The defendant submits that the plaintiff knew or ought to have known a long time ago the circumstances which lead to her claim. Consequently, it alleges that the plaintiff's claim was filed outside the limitation period and that she should not be allowed to continue.

[11] On the other hand, the plaintiff argues that there is no way that she could have known the extent of the documents held in the possession of the defendant before that time. She indicates that she discovered the document leading to her claim on September 3, 2004, after she

personally paid the defendant the photocopying fees requested for the documents required in file T-1067-00.

This is a question of fact and needs to be addressed by way of *viva voce* evidence.

b) The abuse of process and the vexatious and frivolous claim

[12] The defendant alleges that there are already two proceedings involving the Plaintiff with respect to "PROJECT KAFFIR". It submits that a comparison of the Statement of Claim in the matter filed before the Court of Queen's Bench of Alberta and the Statement of Claim in file No. T-1067-00 before the Federal Court makes it clear that the plaintiff's claim for economical loss is arising from the same events.

[13] Even though the plaintiff is not named as a party in file T-1067-00, her husband is claiming damages on her behalf for economical loss she would have suffered due to "PROJECT KAFFIR".

[14] On the other hand, the plaintiff is alleging that her claim is not vexatious and that it is not a duplication of file T-1067-00. She argues that a proper reading of both statements of claims makes it clear that there is absolutely no way that any reasonable person could construe or deduce any similarities.

[15] She even goes further and contends that the multiple attacks by the defendant on her Statement of Claim are an abuse of process and unfair since she has not had the opportunity to file

a Reply to the Defendant's Statement of Defence. She is alleging that the motion to strike her Statement of Claim should not proceed until she had a chance to do so.

[16] First, I do not believe that the motion by the defendant to strike the Statement of Claim and for Summary Judgment is an abuse of process. Rule 213(2) states that a defendant may, after serving and filing a defence and at any time before the time and place for trial are fixed, bring a motion for summary judgment dismissing all or part of the claim set out in the Statement of Claim. There is nothing in the Rule that requires the defendant to wait until the Reply to the Statement of Defence has been filed.

[17] Second, the following jurisprudence is instructive in making a determination on the issue of a vexatious and frivolous claim as alleged by the defendant.

[18] In *Pfizer Inc. v. Apotex Inc.* (1999), [1999 CanLII 8371 \(FC\)](#), 172 F.T.R. 81 (F.C.T.D.), it was decided that a pleading is frivolous and vexatious where it is so clearly futile that it has not the slightest chance of success. In *Steiner v. Canada* (1996), [1996 CanLII 3869 \(FC\)](#), 122 F.T.R. 187 (F.C.T.D.) : A pleading presenting no rational argument based on the evidence is frivolous. An action begun maliciously, without probable cause or not leading to a practical result, is vexatious.

[19] *Black v. NsC Diesel Power Inc. (Trustee of)* (2000), [2000 CanLII 15469 \(FC\)](#), 183 F.T.R. 301 (F.C.T.D.): Repeated attempts to litigate essentially the same dispute, by naming

slightly different parties, or applying in different capacities and relying on slightly different statutory provisions, constitutes an abuse of the process under Rule 221(1)(f).

[20] Considering all of the above, and based on the evidence before me, I cannot conclude that the plaintiff's claim is frivolous and vexatious. The heads of damages are not the same but both actions are based on the same factual situation except for the timeframe, both actions rely on the same evidence. In file T-1067-00, Mr Ruman is claiming some damages on behalf on his wife for economical losses due to "PROJECT KAFFIR".

[21] In the present file, the plaintiff is claiming damages for other economical losses she would have suffered due to "PROJECT KAFFIR".

[22] It would be a waste of judicial resources to have two separate hearings. The Statement of Claim will be consolidated with file T-1067-00 such as provided by Rule 105 (*John E. Canning Ltd. v. Tripap Inc.*, [1999] F.C.J. No. 715 (T.D.) (QL)).

ORDER

THIS COURT ORDERS that:

1. The matter shall continue as a specially managed proceeding;
2. File T-194-05 shall be consolidated with file T-1067-00;
3. All examinations for discovery shall be made no later than June 30, 2005;
4. The applicants shall file and serve a requisition for hearing on or before July 30, 2005;
5. Any further directions will be issued by the case management judge or prothonotary;
6. The present motion is dismissed with costs.

_____ "Michel Beaudry" _____

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-194-05

STYLE OF CAUSE: MARIA J. ENNS RUMAN v.

HER MAJESTY THE QUEEN

MOTION PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:

BEAUDRY J.

DATED:

March 18, 2005

WRITTEN SUBMISSIONS BY:

Maria J. Enns Ruman

FOR PLAINTIFF

(self-represented)

Barry Benkendorf

FOR DEFENDANT

SOLICITORS OF RECORD:

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