

Federal Court



Cour fédérale

Date: 20180315

Docket: T-1450-15

Ottawa, Ontario, March 15, 2018

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

RADU HOCTUNG

Plaintiff

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Defendant

ORDER

UPON MOTION by the plaintiff for leave to amend the Statement of Claim by adding Canada Border Services Agency and Her Majesty the Queen in Right of Canada as defendants, pleading criminal activities carried out by the proposed new defendants and their employees, amending the pleadings concerning the characterization of precious metal coins as goods under the *Customs Act*, RSC 1985, c 1 (2nd Supp) [*Customs Act*], pleading for additional relief, and updating the plaintiff's contact information;

UPON CONSIDERING the submissions of the parties concerning the proposed amendments;

AND UPON NOTING that the plaintiff's action is brought pursuant to section 135 of the *Customs Act* which states at subsection 135(1) "A person who requests a decision of the Minister under section 131 may, within ninety days after being notified of the decision, appeal the decision by way of an action in the Federal Court in which that person is the plaintiff and the Minister is the defendant";

AND UPON CONSIDERING that a decision of the Minister under section 131 of the *Customs Act* is limited to a determination by the Minister as to whether or not there has been a contravention of that Act and any other plea for relief must be pursued separately (*Customs Act*, subsection 131(1), *Starway v. Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1208 at para 22, *Nguyen v. Canada (Public Safety and Emergency Preparedness)* 2009 FC 724 at paras 19 and 20).

AND UPON CONSIDERING that the substantive aspects of the plaintiff's proposed amendments consist of pleas for criminal penalties, damages, and for extraordinary remedies pursuant to section 18.1 of the *Federal Courts Act* ;

AND UPON CONSIDERING the relief sought through the proposed amendments is beyond the scope and intent of section 135 of the *Customs Act*;

AND UPON CONSIDERING that a claim for damages arising from officers' performance of their duties under the *Customs Act* must be brought within the limitation period set out at subsection 106(1) of the *Customs Act*;

AND UPON CONSIDERING that the limitation period for the commencement of a proceeding pursuant to subsection 106(1) of the *Customs Act* has passed;

AND UPON CONSIDERING that the absence of a reasonable prospect of success is a valid basis upon which a Court may dismiss a motion for leave to amend (*Bauer Hockey Corp. v. Sport Maska Inc. (Reebok-CCM Hockey)*, 2014 FCA 158 at para 16; *Teva Canada Limited v. Gilead Sciences Inc.*, 2016 FCA 176);

AND UPON CONSIDERING that while elements of the proposed amendments (see for example the proposed amendments at para 1(i) and para 2) supplement the original claim by adding some factual detail to the matter or update the plaintiff's contact information, these elements of the proposed amendments do not substantively update or change the claim;

AND UPON CONCLUDING that the proposed amendments expanding the plaintiff's claims do not demonstrate a reasonable chance of success in an action brought pursuant to section 135 of the *Customs Act* and therefore it cannot be said that it is in "the interests of justice" to allow the motion for leave to amend (*Maximova v. Canada (Attorney General)*, 2017 FCA 230 at para 15, citing *AbbVie Corp. v. Janssen Inc.*, 2014 FCA 242 at para 3);

THIS COURT ORDERS that:

1. The motion to amend is dismissed.
2. Costs in the cause.

"Patrick K. Gleeson"

Judge