

CANADA / JUDGMENT

Blake v. Ahmed

2024 BCSC 2189

COURT

Supreme Court of British Columbia

DECIDED

12 December 2024

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2024 BCSC 2189 Blake v. Ahmed

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Blake v. Ahmed,

2024 BCSC 2189

Date: 20241212

Docket: S250112

Registry: New Westminster

Between:

Daniel E Blake

Plaintiff

And

Amr Ahmed and TD Bank and TD Bank Group

Defendants

Before: The Honourable Justice Norell

Reasons for Judgment

The Plaintiff, appearing in person

D. Blake

Counsel for the Applicant, Attorney General of Canada for the Defendant, A. Ahmed:

J. Lebel

Counsel for the Defendant, TD Bank:

D. Siracusa

Place and Dates of Hearing:

New Westminster, B.C.

October 25 and 30, 2024

Place and Date of Judgment:

New Westminster, B.C.

December 12, 2024

[1]

Overview

- [1] This case arises out of a Request to Pay ("RTP") issued by the Canada Revenue Agency ("CRA") to garnish funds in the plaintiff Mr. Blake's bank account at the defendant TD Bank ("TD"). The defendant Mr. Ahmed, a CRA employee, issued the RTP. Pursuant to the RTP, TD removed \$12,671 from Mr. Blake's bank account and forwarded it to the CRA. The CRA used those funds to reduce Mr. Blake's personal tax debt. Mr. Blake has sued Mr. Ahmed and TD, alleging theft, fraud, and negligence.
- [2] The Minister of National Revenue on behalf of His Majesty the King in right of Canada, and on behalf of Mr. Ahmed, applies for an order that this action be dismissed in its entirety pursuant to Rule 9-6 of the Supreme Court Civil Rules. TD does not bring its own application to dismiss, but consents to the application brought by Mr. Ahmed and seeks special costs. Mr. Blake opposes the application.
- [3] Mr. Ahmed submits that Mr. Blake's action is bound to fail, as Mr. Blake owes the personal taxes, and the actions of Mr. Ahmed as an employee of the CRA were authorized pursuant to the Income Tax Act, R.S.C. 1985 c. 1 (5th Supp) [ITA]. TD submits that pursuant to the ITA, it was required to comply with the RTP. Mr. Blake submits that he has no obligation to pay income taxes. He claims that he is a natural person, he has not agreed to pay taxes, and the government cannot impose any obligation on him to pay taxes.
- [4] For the reasons that follow, I dismiss all of Mr. Blake's claims against Mr. Ahmed, with costs payable by Mr. Blake to Mr. Ahmed in his capacity as a CRA employee, at Scale B. I dismiss Mr. Blake's claims for theft and fraud against TD. However, I do not dismiss Mr. Blake's claim against TD for negligence. There was no evidence filed by Mr. Blake or TD which would enable this court to make a determination regarding this claim or defence. Finally, I dismiss TD's application for special costs.

Legal Principles

- [5] Rule 9-6(4) and (5) state that on application, this court must dismiss "all or part of a claim" if satisfied that there is "no genuine issue for trial" with respect to the claim.
- [6] Upon application by a defendant, if the court is satisfied that a plaintiff is "bound to lose or the claim has no chance of success", the application must be granted. A defendant can succeed on such an application by "showing that the case pleaded by the plaintiff is unsound or by adducing sworn evidence that gives a complete answer to the plaintiff's case": *Beach Estate v. Beach*, 2019 BCCA 277 at para. 48. If the plaintiff submits evidence "contradicting the defendant's evidence in some material respect, or if the defendant's evidence in support of the application fails to meet all of the causes of action raised by the plaintiff's pleadings, the application must be dismissed": *Beach Estate* at para. 48.
- [7] The lack of a genuine issue for trial must be "manifestly clear". The onus of establishing this is on the applicant: *Beach Estate* at para. 65.
- [8] On a summary judgment application, the court does not weigh evidence or choose between conflicting versions of events: *Beach Estate* at para. 49.
- [9] Although Rule 9-6 does not require affidavit evidence, it is "highly desirable": *Drummond v. Moore*, 2012 BCSC 496 at para. 26.

Notice of Civil Claim

- [10] Mr. Blake's notice of civil claim ("NOCC") pleads the following:
 - 2. At all material times to the action, the Defendant TD was responsible for personal Banking and credit services, as well as the protection, screening, safeguarding of these accounts including overseeing the purchasing patterns of such accounts. Notifying account holder of irregular or large transactions that would take place on any Visa Account or Bank Account.
 - 3. On or about March 15 2023 the Plaintiff tried to do some banking and became aware his chequing account was empty of any money he had in there and his savings account was frozen and still is. There was an unauthorized fraud/theft of \$12,671 perpetrated by Amr Ahmed
 - 4. This Fraud/theft and the resulting injuries, loss and expenses are from the negligence of the Defendants Amr Ahmed and TD BANK.
 - 5. By reason of the negligence of the Defendants, the Plaintiff has sustained injuries and has suffered losses and expenses

[Particulars and paragraphs claiming damages for personal injuries including headaches, anxiety and depression, and past and future loss of income].

Part 3: LEGAL BASIS

The Fraud/Theft and the resulting injuries, loss, damage and expense were caused solely as a result of the Negligence of the Defendants, Amr Ahmed, TD BANK, TD BANK GROUP some particulars of which include:

- a) Failing to take care or reasonable care to ensure the Plaintiff had some kind of protection/safeguard or security;
- b) forged paper work with my name on it claiming I have a contract;
- c) All the Plaintiffs attempts with Amr Ahmed to quickly and easily correct this negligence, FAILED. TD BANK refused to take any action
- d) Exposing the plaintiff to this lack of protection/safeguard or security when they knew or ought to have known about this inherent lack of protection/safeguard or security.
- e) In adopting and implementing the process of opening and closing a BANK Account in which they knew or ought to have known this lack of protection/safeguard or security.
- f) Failing to give the plaintiff any warning or in the alternative, any adequate warnings of this lack of protection/safeguard or security
- g) Such further and other particulars of negligence as before the trial of this matter may become apparent.

Evidence

Mr. Ahmed's Affidavit

- [11] Mr. Ahmed is employed by the CRA as a Collections Contact Officer. His uncontradicted evidence is summarized below.
- [12] In February and October 2021, the CRA issued letters to Mr. Blake requesting that he file his outstanding tax returns for the 2013 to 2019 taxation years. The CRA received correspondence from Mr. Blake stating that he would not file these, and he has not done so.
- [13] In January 2022, the CRA issued notices of assessment to Mr. Blake with respect to the 2013, 2014, and 2016 to 2019 taxation years. The CRA based the notices of assessment on information obtained from Mr. Blake's banking records. The notices of assessment advised Mr. Blake that he owed a total of \$42,549.53 in personal income tax for those years.
- [14] Mr. Blake did not pay any of the amounts owing to the CRA, nor did he file a notice of objection with the CRA.
- [15] In April 2022, the CRA issued a notice of collection to Mr. Blake advising of the amounts he owed for personal income taxes. In August 2022, the CRA assigned Mr. Ahmed to the collection of the tax debt.

- [16] In October 2022, Mr. Ahmed issued a warning letter to Mr. Blake advising that he owed funds to the CRA. In the same month, the CRA received correspondence from Mr. Blake which denied any responsibility for the tax debt (the "October Response"). I will discuss the October Response when reviewing Mr. Blake's affidavit.
- [17] In February 2023, Mr. Ahmed received the October Response and telephoned Mr. Blake regarding his tax debt. Mr. Blake told Mr. Ahmed that he would be pursuing legal action against him.
- [18] On March 9, 2023, Mr. Ahmed issued the RTP in the amount of \$45,553.26 to TD.
- [19] On March 18, 2023, the CRA received another copy of the October Response. On March 20, 2023, Mr. Blake telephoned Mr. Ahmed. Mr. Blake denied owing any debt to the CRA as he had not signed any contract agreeing to pay tax. Mr. Blake indicated that he would be suing Mr. Ahmed and the CRA.
- [20] On March 27, 2023, pursuant to the RTP, the CRA received \$12,671.53 (the "Funds") from TD and applied it against Mr. Blake's personal tax debt.
- [21] On March 30, 2023, Mr. Blake filed a notice of claim in the Provincial Court of British Columbia against Mr. Ahmed, which claimed that he "forged paperwork with my name on it and claimed I had a contract which is completely false". Mr. Blake further claimed "theft from my TD Bank Acct of \$12,671.53". Mr. Blake apparently obtained default judgment, as Mr. Ahmed applied to set aside the default judgment, and for leave to file a reply to the claim. Mr. Ahmed's position was first, that the Provincial Court lacked jurisdiction; second, that pursuant to the Crown Liability and Proceedings Act, R.S.C., 1985, c. C-50, default judgment cannot be obtained against Canada without leave of the Court; and third, in the alternative, the same arguments made on this application, being that Mr. Ahmed as a CRA employee, acted lawfully within CRA's statutory authority.
- [22] On June 9, 2023, Judge D. Gaffar dismissed Mr. Blake's claim in the Provincial Court. The Order states:
1. Mr. Blake's application for a default order is dismissed and, pursuant to Rule 6(b) of the Small Claims Rules, Mr. Blake's claim is dismissed. Mr. Blake has not provided a basis for his claim known to law.
 2. The Defendant withdraws the application filed June 8th, 2023 to set aside a default order.
- [23] Mr. Blake has not made any voluntary payments toward his outstanding personal tax debt. As of May 27, 2024, Mr. Blake is indebted to the CRA in the amount of \$36,851.53 with interest accruing daily.

Mr. Blake's October Response and Affidavit

- [24] The October Response contains:

- a) A letter from Mr. Blake to the CRA disputing the tax debt and requesting "validation", which is defined as "competent evidence" that Mr. Blake has a contractual obligation to the CRA. The letter threatens that an RTP may be a form of mail fraud, requests the CRA to complete a questionnaire, and gives notice that failure to do so would be construed as a waiver of any and all claims against Mr. Blake;
 - b) A document claiming sui juris status in connection with Mr. Blake's "property or name" and demanding that the CRA produce all documents being held that create a "legal disability to the claimed Sui Juris status". The Uniform Commercial Code is mentioned;
 - c) A document with quotes from Black's Law Dictionary, and a statement that the "Legal System is not an extension or arm of Government, it's a Private Corporation", and that Mr. Blake has no obligation to any corporation, the Crown or Templars;
 - d) Documents showing that in 2002, Mr. Blake and others published a notice in the National Post that these "flesh and blood private people" have copy-righted and claimed their trade names "for the purpose of facilitating commercial transactions or interactions"; and
 - e) An "Affidavit of Truth" addressed to all governments and courts, stating that he is a "natural, freeborn sovereign individual" who is not subject to "any entity anywhere", and is not a "person" as defined in statutes when such definition includes "artificial entities". He states that he may voluntarily choose to comply with "laws", which others "attempt to impose" on him, but neither the laws nor their "enforcers" have authority over him. The affidavit outlines Mr. Blake's arguments with respect to certain topics such as his birth certificate, driver's licence, passport and citizenship, voting, and tax returns. With respect to bank accounts, he states that if there is a "hidden contract" behind an account, his signature gives no validity to it. The signature is only for verification of identity and he cannot be obligated to fulfil any such contract.
- [25] At this application, Mr. Blake filed an identical Affidavit of Truth, but sworn at a later date from the one above. He also read a prepared argument to the Court. This repeated the arguments in his affidavit. Attached to the affidavit, but not referred to in the body of it, are certified copies of his certificate of birth, the National Post documents, a copy of correspondence with the BC Vital Statistics Agency regarding the capitalization on his son's birth certificate, the same sui juris notice, and then several pages of argument discussing the legal system, private banking system, quotes, and references to the Uniform Commercial Code and the Personal Property Security Act, R.S.B.C. 1996. c. 359.

TD Affidavit

- [26] The only affidavit filed by TD was from a legal assistant appending a letter from its counsel to Mr. Blake. The letter sets out TD's position that Mr. Blake's claim is without merit and advises Mr. Blake that if he does not discontinue his claim voluntarily, TD will seek special costs.

Analysis

- [27] I have summarized Mr. Blake's arguments as to why he does not owe a tax debt, and the CRA cannot garnish the Funds. All of his arguments mirror those which were discussed and rejected in *Meads v. Meads*, 2012 ABQB 571, and many other court decisions in BC and Canada. His arguments that there is a distinction between him as a natural person and another legal fiction which bears his name, that the government cannot create laws which are binding on him, that he is not a person under those laws, and that he has not entered into a contract to pay taxes, are legally unsound and factually without merit.
- [28] Without limiting the portions of *Meads* which are relevant in this application, I highlight certain sections which demonstrate the point. At paras. 422-423, the Court references case authorities which reject a distinction between a natural person and a legal fiction. The Court similarly rejects various name-related arguments, including the capitalization of names, at paras. 323-324. At para. 388, the Court rejects the argument that a person has no obligation to pay taxes unless that person has entered into a contract to do so. Related to this, at para. 411-413, the Court rejects arguments that the lack of a contract restricts the scope of state or court authority. Finally, at para. 347, the Court states that there "really is no question that the Canadian government is authorized to require individuals pay income tax or other forms of indirect tax."

Theft and Fraud

- [29] I have read Mr. Blake's pleadings liberally as a claim for the tort of conversion and a claim for civil fraud (the tort of deceit).
- [30] The elements of conversion are: (1) a "wrongful interference" with the chattels or funds of another; (2) such as "taking, using or destroying" the chattels or funds; and (3) "in a manner inconsistent with the owner's right of possession": *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 SCR 727 at para. 31, 1996 CanLII 149 (SCC); *Pang v. Zhang*, 2021 BCSC 591 at paras. 41-48.
- [31] The elements of civil fraud are: (1) the defendant made a false representation to the plaintiff; (2) the defendant knew or was reckless as to the falsity of the representation; (3) the false representation caused the plaintiff to act; and (4) the plaintiff's actions resulted in a loss: *Bruno Appliance and Furniture Inc. v. Hryniak*, 2014 SCC 8 at para. 21; *Singh v. Insurance Corporation of British Columbia*, 2022 BCCA 320 at para. 16.
- [32] Mr. Blake's pleadings for theft and fraud are defective as they do not set out all of the material facts to support the causes of action. However, it is possible to discern from Mr. Blake's application materials and submissions that the heart of his claim is that Mr. Ahmed, on behalf of the CRA, and TD, had no lawful authority to remove the Funds from his account. All of Mr. Blake's arguments led to this assertion. I will therefore consider this application on that basis.

- [33] The CRA had the lawful authority to issue the notices of assessment. Subject to the notices of assessment being varied or vacated through the process of a notice of objection or appeal, and subject to reassessment, they are deemed to be valid and binding: ITA ss. 152(7), 152(8).
- [34] Mr. Blake did not serve a notice of objection within the applicable 90-day time period for doing so or apply to extend the time period to serve one: ITA ss. 165(1), 166.1.
- [35] Mr. Ahmed was authorized to act on behalf of the CRA to collect Mr. Blake's tax debt: ITA ss. 220(1), 220(2), 220(2.01); Canada Revenue Agency Act, S.C. 1999, c. 17 ss. 4(2), 6, 8.
- [36] The CRA had the statutory authority to issue the RTP to garnish the Funds, and TD was obligated to pay the Funds: ITA ss. 224(1), 224(4), 47. At the time of issuing the RTP, there was no statutory impediment to doing so: ITA ss. 225.1(1), 225.1(1.1).
- [37] TD's remittance to comply with the RTP is good and sufficient discharge of TD's liability to pay the Funds to Mr. Blake: ITA s. 224(2).
- [38] The alleged taking or removing of the Funds without lawful authority is the wrongful act which is the first element of the tort of conversion. As the CRA and TD did have that authority, this claim is bound to fail.
- [39] The NOCC alleges a forgery. Mr. Blake could not point to any evidence where his signature had been forged, but he explained that someone must have done so in order to obtain information on which to assess his taxes. Mr. Ahmed states that the notices of assessment were based on banking information obtained by the CRA. Although Mr. Ahmed does not state this specifically, counsel pointed out that s. 231.1 and s. 231.2 of the ITA provides the CRA with authority to obtain this information. There is no evidence of a forgery.
- [40] It is difficult to envision how the taking or removing of the Funds without alleged lawful authority otherwise fits into the claim for the tort of deceit. As already noted, Mr. Blake's pleadings for fraud are defective, and he did not plead or suggest in argument that the CRA or TD made a false representation to him and that he was induced to act on it. At best, there might be an argument that Mr. Ahmed, on behalf of the CRA, implicitly represented to TD that Mr. Blake was indebted to the CRA, and that the CRA had the legal authority to garnish the money in Mr. Blake's bank account. However, this is not a representation to Mr. Blake. Regardless, the underlying premise, that the CRA and TD did not have lawful authority, is without merit, and Mr. Blake's claim for fraud or the tort of deceit is bound to fail.

Negligence

- [41] The elements of a claim of negligence are: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff sustained damage; and (4) the damage was caused, in fact and in law, by the defendant's breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 3.

- [42] It is necessary to separately address the negligence claims against Mr. Ahmed and TD, because they rest on different footings.
- [43] Mr. Ahmed submitted that he does not owe a duty of care to Mr. Blake, however, he did not provide any case authority or any analysis. Mr. Ahmed simply asserted the conclusion that there was no arguable claim that he (or the CRA) had or has a relationship with Mr. Blake that gives rise to a *prima facie* duty of care based on foreseeability and proximity. Further, any such duty would be negated by policy considerations.
- [44] There are no material facts pleaded against Mr. Ahmed with respect to the negligence claim, except that the alleged fraud and theft "are from the negligence" of Mr. Ahmed, and that he failed to "quickly and easily correct this negligence". Mr. Blake did not plead or argue any broader allegation against Mr. Ahmed, for example, a defect in the RTP or a breach of the standard of care with respect to the administration of the ITA, or the process followed. I raised this with Mr. Blake during the hearing in case his allegations were actually broader than his pleadings, and a possible amendment to his pleadings should be considered.
- [45] There are many cases which find that the CRA and its employees do not owe a duty of care to a taxpayer, but that is not necessarily so. It depends on the facts and allegations. For example, in *Oddi v. Canada (Revenue Agency)*, 2022 FC 1313, which reviews many of those cases, no duty of care was found. However, in *Leroux v. Canada Revenue Agency*, 2014 BCSC 720, which involved negligent audits over more than 10 years, and very large penalties, a duty was found.
- [46] In this case, Mr. Blake's allegation is that Mr. Ahmed's breach of the standard of care was issuing the RTP when he did not have the statutory authority to do so. Mr. Blake does not allege negligence in the carrying out of the garnishment. I have found that Mr. Ahmed did have that authority, so even if there was a duty of care, it is an allegation of negligence which is bound to fail.
- [47] I turn to the claim in negligence against TD. The particulars are that TD: (1) owed a duty of care to "protect, screen, and safeguard" Mr. Blake's account by "overseeing the purchasing patterns" and "notifying the account holder of irregular or large transactions"; and (2) breached that duty.
- [48] TD relied upon Mr. Ahmed's application seeking dismissal of the entire action rather than bringing its own application. I raised this with counsel at the hearing. Counsel for TD referred to Rule 9-6(4) which permits a defendant (in this case Mr. Ahmed) to apply to dismiss "all or part of a claim".

- [49] While I accept that TD can rely on Mr. Ahmed's application to dismiss the theft and fraud allegations against it because the evidence and basis for dismissal is the same for both Mr. Ahmed and TD, the difficulty TD faces is that the negligence claim against it is broader and rests on a different footing. Mr. Blake claims that TD had an obligation to safeguard his account and notify him of an RTP. I express no views on the merits of that allegation, but that is the claim.
- [50] Further, TD made arguments in its response to application which were in addition to the arguments made by Mr. Ahmed in his notice of application. In my view, if TD wants to make those arguments, it must do so in its own application. In addition to the basis argued by Mr. Ahmed, TD argues that Mr. Blake's claims are an abuse of process and that *res judicata* applies because Mr. Blake brought a claim against Mr. Ahmed in the Provincial Court and it was dismissed. I will not consider those arguments when there is no notice of application filed by TD. Further, I did not receive any case authorities or detailed argument from TD. Finally, I note that TD was not a defendant in the Provincial Court action, and it does not appear that any claim of negligence was advanced.
- [51] Mr. Blake has not filed any evidence on this application with respect to the negligence claim, but equally, TD has not done so. The onus on this application is on TD. TD argued that a clause in its account agreement states that TD will comply with lawful demands, and is not bound to advise the account holder of the demand. That agreement was produced at the hearing, but it was not appended to any affidavit and is not properly in evidence. In these circumstances, there is no sworn evidence upon which the broader claim in negligence against TD can be dismissed. I grant TD leave to bring its own application to dismiss this claim upon properly filed evidence.
- [52] On the assumption that the action would be dismissed entirely against it, TD sought special costs. I decline to order these in favour of TD. TD did not bring its own application. Part of the claims against TD have been dismissed because of Mr. Ahmed's application. TD was not successful in having the negligence claim dismissed against it at this time.

Other arguments

- [53] Mr. Blake argued that there is no harm in his action proceeding to trial, and that he has a right to question Mr. Ahmed either at an examination for discovery or trial. He said he had a right to defend himself. He stated that he would call a police officer, an employee from the Ministry of Vital Statistics, a law professor, an economics professor, and tender videos and books to support his arguments. He stated he has had numerous traffic tickets dismissed, even though he was "100% guilty", because he had shown that he is the "creditor of his corporate name".
- [54] I do not agree with these arguments. There is harm and cost to the parties, the court system, and the public when manifestly unmeritorious claims proceed to trial. Mr. Blake does not have a "right" to question Mr. Ahmed when his claim has no merit. He did not avail himself

of processes under the ITA to challenge the notices of assessment. Even if the witnesses that Mr. Blake intends to call could give admissible evidence to support Mr. Blake's position, his arguments have been consistently rejected by the courts. No admissible evidence was filed on these proceedings as to why Mr. Blake's traffic tickets were dismissed, but his arguments as to why they were, do not affect the law in Meads, which I am applying.

Orders

[55] Mr. Blake's claim against Mr. Ahmed is dismissed in its entirety, with costs payable by Mr. Blake to Mr. Ahmed in his capacity as an employee of the CRA, at Scale B.

[56] Mr. Blake's claims against TD for theft and fraud are dismissed. Mr. Blake's claim against TD for negligence is not dismissed, but TD has leave to bring a summary judgment or another application it considers appropriate, upon a proper evidentiary record. TD's application for special costs is dismissed.

"Norell J."

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