

CANADA / JUDGMENT

Raji v. Schwartz

2024 FC 1779

COURT

Federal Court

DECIDED

7 November 2024

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Raji v. Schwartz

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Date

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T-1327-24

Decision Content

Date: 20241107

Docket: T-1327-24

Citation: 2024 FC 1779

St. John's, Newfoundland and Labrador, November 7, 2024

PRESENT: Associate Judge Trent Horne

BETWEEN:

STELLA AWAWU RAJI

Plaintiff

and

GLEN SCHWARTZ

LIBORIO LOMONACO

KENNETH NATHENS

NATHENS SIEGEL LLP

JENNIFER SAVILLE

NICOLAS LUCAS

ZITA VALERIO

LAURA STOIKOS

PORTIA BARIFFE

TORONTO DISTRICT SCHOOL BOARD

(GOVERNMENT OF ONTARIO)

JUSTICE FREYA KRISTJANSON

JUSTICE JAMES DIAMOND

JUSTICE SHARON SHORE

ONTARIO SUPERIOR COURT OF JUSTICE FAMILY COURT (GOVERNMENT OF ONTARIO)

ANDREW BONISTEEL

REGISTRAR, MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY: BUSINESS AND
PERSONAL PROPERTY BRANCH (BPPB) (ONTARIO)

Defendants

ORDER AND REASONS

I. Overview

- [1] It is plain and obvious that the statement of claim is vexatious and an abuse of process.
- [2] At the time the plaintiff was given notice that the statement of claim may be removed from the Court file, certain of the defendants had brought motions to strike. The results of those motions are inevitable. Given the plaintiff's conduct in this action, and to preserve the scarce resources of the Court, it is appropriate to use Rule 74 to bring this proceeding to a swift and final conclusion. The statement of claim is ordered removed from the Court file.

II. Background

- [3] The plaintiff was a party to family law proceedings in the Ontario Superior Court of Justice. In that litigation, the plaintiff's former spouse brought a motion to note her in default or to strike pleadings for non-compliance with the applicable Rules of that Court, failure to obey court orders, and abuse of the court process. The motion was granted (*Raji v Lomonaco*, 2023 ONSC 7033 ("Raji")).
- [4] Justice Kristjanson's decision describes the plaintiff's vexatious conduct in that proceeding. The Court described the materials filed by Ms Raji as abusive, inflammatory, propounding nonsensical legal theories, and were clearly influenced by many of the "Organized Pseudolegal Commercial Argument" ("OPCA") theories described in *Meads v Meads*, 2012 ABQB 571. The plaintiff was found to have used OPCA tactics to intimidate and threaten her former spouse and his lawyer, including by registering liens under the Personal Property Security Act, RSO 1990, c P 10 ("PPSA") in the amount of \$528,000,000. These liens, later vacated as vexatious registrations, were placed on property owned by both the plaintiff's former spouse and his lawyer's law firm (*Raji* at paras 13 and 16). Ms Raji's actions around these liens was found to constitute "paper terrorism" (*Raji* at para 23).
- [5] The Court in *Raji* also noted that the plaintiff advanced a theory that her property is the private property of the Awawu Stella Raji Trust, which was alleged to have a different legal existence than Ms Raji. This was described as a "classic OPCA divided personality tactic" (para 11).
- [6] Ms Raji was entirely unsuccessful in the Ontario Court motion. In assessing costs, the Court found that Ms Raji's actions in the litigation had been taken in bad faith, were reprehensible, scandalous, and outrageous, based on groundless allegations, calculated to avoid financial responsibility for her actions, and to defeat justice. The Court also found that positive misconduct of this nature must be discouraged and sanctioned (para 54). Among other things, the order in *Raji* prohibited Ms Raji from bringing certain motions without the prior written approval of the Court.
- [7] The statement of claim in this proceeding ("Claim") names as defendants the plaintiff's former spouse, his lawyers, several judges of the Ontario Superior Court of Justice, and the Toronto District School Board ("TDSB"). The Claim seeks payment of hundreds of millions of dollars against the defendants, including by way of a "surety bond" and writs of execution. The Claim seeks to recover \$528,000,000 against the plaintiff's former spouse and his lawyer, reinstatement of the plaintiff's PPSA account, and expungement of certain orders made by the Ontario Superior Court of Justice.
- [8] The plaintiff's former spouse and his lawyers filed a motion to strike the statement of claim on July 15, 2024. Similar motions were filed by His Majesty the King in Right of Ontario on behalf of a number of defendants on July 17, 2024, and by the TDSB and other defendants on July 18, 2024.

- [9] On about July 22, 2024 the plaintiff presented a motion record for filing. Associate judge Cotter's direction of July 22, 2024 describes the relief requested in that motion as summary judgment, default judgment, injunction orders, writ of mandamus orders, enforcement orders, dismissal of defendant's motion to strike, protection order, and contempt of court orders. Associate judge Cotter's direction set out the numerous flaws in this record, and directed that it not be received for filing. This direction did not preclude the plaintiff from filing a responding motion record in connection with any of the pending motions to strike, provided that any such records complied with the Federal Courts Rules, SOR/98-106 ("Rules").
- [10] The plaintiff filed a responding record to the motion filed by His Majesty the King in Right of Ontario on August 2, 2024.
- [11] On August 15, 2024, the plaintiff wrote to the Court and requested a special sitting. The letter and attachments, comprising 53 pages, repeats the allegations in the statement of claim, requests default judgment, and sets out a number of "interrogatories" for the defendants to answer. Examples of these interrogatories include (sic throughout):

Justice Kristjanson: What Grounds of Law or Fact of Law are your assertions and assumptions of the Complainant/Plaintiff in your December 13, 2023 Endorsement based on? How did Glen Schwartz and Liborio Lomonaco gain knowledge of your statements about Bills of Exchange in your Endorsement at least two days before (possibly more) you released your Endorsement and Order to Complainant/Plaintiff? Did you collude with Mr. Schwartz and Mr. Lomonaco to defraud Complainant/Plaintiff of her substantive right to civilian due process by barring her from putting forward her own Motions? Leviticus 19:11 states "Ye shall not steal, neither deal falsely, neither lie to one another", how are you up holding this Law by your actions in this matter by which you are duty bound by oath to uphold and maintain?

Justice Diamond: Why did you proceed to ignore Complainant/Plaintiff's orders even though you received the Executor Letter and were told to release Complainant/Plaintiff's offspring back to her care? What Law under the authority of God, permits you to kidnap children from their mothers without a trial, against substantive civilian due process?

- [12] On August 27, 2024, associate judge Crinson made an order designating this action as a specially managed proceeding, and referred the matter to the Office of the Chief Justice for the appointment of a case management judge. The order also set a deadline for the parties to write to the Court with a status update.
- [13] I was assigned as the case management judge by order dated September 27, 2024. I scheduled a case management conference for November 7, 2024.
- [14] In preparation for the case management conference, I reviewed the statement of claim. After that review, I issued the following direction on October 23, 2024:

A case management conference is scheduled for November 7, 2024 at 9:30 am Eastern by teleconference. Dial-in particulars will be provided separately by the Registry.

In preparation for the case management conference, I have reviewed the statement of claim. The relief sought in the statement of claim appears to be vexatious and unfounded. It is not apparent that the relief sought in the statement of claim is justiciable, or if it is, that the claims are within the jurisdiction of the Federal Court. The statement of claim appears to be influenced by “Organized Pseudolegal Commercial Argument” theories described in *Meads v Meads*, 2012 ABQB 571.

Rule 74 of the Federal Courts Rules, SOR/98-106 provides that the Court may, at any time, order that a document be removed from the Court file if the document: (a) was not filed in accordance with these Rules, an order of the Court or an Act of Parliament; (b) is scandalous, frivolous, vexatious or clearly unfounded; or (c) is otherwise an abuse of the process of the Court. The Court may only make an order removing a document from the Court file if all interested parties have been given an opportunity to make submissions.

The plaintiff is directed to serve and file submissions as to why the statement of claim should not be removed from the Court file by no later than November 5, 2024. The plaintiff may also make submissions at the case management conference as to why the statement of claim should not be removed from the Court file.

The plaintiff has also written to the Registry and stated that she would prefer not to receive emails, and that telephone messages will suffice. To ensure that the plaintiff receives this direction and the dial-in particulars for the case management conference, the Registry is directed to send this direction and the dial-in particulars for the case management conference to the plaintiff by email. How the Court sends future communications to the plaintiff will be discussed at the case management conference.

III. Rule 74

[15] Rule 74 was amended following recommendations made in a report submitted by a subcommittee to the Rules Committee over a decade ago, on October 16, 2012 (Canada Gazette, Part I, Vol 155, No 15 (April 10, 2021)). According to the report, public consultations revealed a broad consensus that certain parties sometimes make excessive or disproportionate use of rights under the Rules. These excesses include the use of procedures to delay cases and the adoption of behaviours disproportionate to the objective of achieving an expeditious, just and cost-effective judicial decision. Such proceedings often languish in the justice system, wasting limited judicial resources. Self-represented litigants often bring multiple proceedings and motions for the same matter. They also sometimes initiate proceedings that clearly have no chance of success. Consequently, it became evident that decision-makers needed new tools to regulate proceedings (*Gaskin v Canada*, 2023 FC 1542 at para 16; appeal dismissed in an unreported decision in A-194-23 on January 18, 2024; leave to appeal to SCC dismissed August 29, 2024 in docket #41223 (“Gaskin”)).

- [16] With the addition of paragraphs (b) and (c) to subrule 74(1), this Court can now order that a document be removed from the Court record on additional grounds, similar to those applicable to motions to strike found at paragraphs (c) and (f) of subrule 221(1). Moreover, by replacing the words “to be heard” with “to make submissions” in subrule 74(2), it is clearly intended that the matter of removal of a document would normally be addressed in writing, with the onus placed equally on all parties, and not necessarily by making oral submissions in court at an in-person hearing (Gaskin at para 19).
- [17] As discussed below, the Claim is clearly an abuse of process. The Court is a public resource, and this proceeding wastes those resources. If the pending motions to strike are scheduled for a hearing, it is apparent that the plaintiff will continue to file documents with no legal consequence, and make untenable arguments on motions that will surely be granted. It is in the interests of all stakeholders to bring this action to a swift and final conclusion.

IV. The Plaintiff’s Evidence and Argument

- [18] On October 28, 2024, the plaintiff attended at the Registry and presented a “notice of default,” together with proof of service and a letter requesting that the documents be received for filing. The letter also stated that this was part of a larger submission that would be served and filed in the coming days.
- [19] These documents may not be received for filing. The Rules do not contemplate or permit a “notice of default.”
- [20] The pending motions to strike preserve the defendants’ right to defend the action. Once a motion to strike has been served, the responding party cannot attempt to defeat that motion by attempting to note the moving party in default. Any such attempt to defeat a motion to strike is improper (*Kornblum v Canada (Human Resources and Skills Development)*, 2010 FC 656 at para 29; see also *Viiv Healthcare Company v Gilead Sciences Canada, Inc*, 2020 FC 11 at para 26).
- [21] More fundamentally, the “notice of default” served by the plaintiff does not address the concerns raised in the October 23, 2024 direction.
- [22] Even if the plaintiff’s “notice of default” was properly before me, and it is not, no order for default judgment would be made.
- [23] The superior courts of some provinces have rules directed to noting a party in default. For example, Rule 19 of the Ontario Rules of Civil Procedure, RRO 1990, Reg 194 addresses default proceedings. In general terms, Rule 19 permits a plaintiff to require the registrar to note a defendant in default where a defendant fails to deliver a statement of defence within the prescribed time. The consequences of being noted in default include a defendant being deemed to have admitted the truth of all allegations of fact made in the statement of claim (subrule 19.02(1)(a)).

- [24] There is no equivalent rule in the Federal Court. Default proceedings are governed by Rule 210. This Rule provides that where a defendant fails to serve and file a statement of defence within the time set out in Rule 204, or any other time fixed by an order of the Court, the plaintiff may bring a motion for judgment against the defendant on the statement of claim.
- [25] There is consistent jurisprudence that, on a motion under Rule 210, the allegations in the statement of claim are not presumed to be true; indeed they are treated as denied. The moving party must support the motion with affidavit evidence that establishes, on a balance of probabilities, the allegations in the statement of claim (see, for example, *Microsoft Corp v PC Village Co*, 2009 FC 401 at para 12 and *Monsanto Canada Inc v Van Verdegem*, 2013 FC 50 at para 2).
- [26] The plaintiff has filed no proper or admissible evidence to support a request for default judgment, and in any event, it is plain and obvious that the statement of claim is vexatious and must be removed from the Court file.
- [27] The plaintiff attended at the Registry again on November 4, 2024 and re-submitted the same notices of default and letter, together with a letter to the Court, an “affidavit of Stella Awawu Raji - mandatory judicial notice,” and an “affidavit of Stella Awawu Raji –liens.” These documents, which effectively comprise the plaintiff’s submissions on the Rule 74 notice, will be received for filing.

V. The Claim is Vexatious and an Abuse of Process

- [28] It is apparent on the face of the Claim that it is vexatious and an abuse of process. It is plain and obvious that the Claim is a collateral and improper attack on orders made by the Ontario Superior Court of Justice, and an attempt to re-file the plaintiff’s liens for \$528,000,000, which have been determined to be vexatious. The Claim and the 24 attached documents, many of which appear to have their origin in the Ontario litigation, bear the hallmarks of OPCA litigation. These documents include “surety bonds”, “notices of trespass with intent to lien,” “affidavits of notice of default,” and a “notice of equitable subrogation and tender of special deposit.”

VI. Jurisdiction

- [29] None of the issues raised in the Claim are within the jurisdiction of the Federal Court.
- [30] The jurisdiction of the Federal Court is limited and specific. The Federal Court is not a court of last resort, nor does it provide an alternative forum to adjudicate civil complaints that belong in provincial courts, or an alternative forum to appeal orders made by a Superior Court of a province.

- [31] The Federal Court is a statutory court created by Parliament pursuant to section 101 of the Constitution Act, 1867, as a court “for the better Administration of the Laws of Canada.” As a result, the Federal Court’s jurisdiction is confined to that which is expressly or implicitly conferred upon it by statute. Any such statutory grant must also be within the constitutional boundaries of section 101 (*Kimaev v Ontario (Transportation)*, 2023 FC 475 (“*Kimaev*”) at para 11).
- [32] The Federal Courts Act, RSC 1985, c F-7 is the primary statutory source of the Federal Court’s jurisdiction. Subsection 17(1) grants the Federal Court “concurrent original jurisdiction in all cases in which relief is claimed against the Crown.” Paragraph 17(2)(a) provides an example of such a claim, namely cases in which “land, goods, or money of any person is in the possession of the Crown.” However, the term “Crown” that is used in each of these provisions is defined in subsection 2(1): “Crown means [His] Majesty in right of Canada” (emphasis added). As a result, subsection 17(1) and paragraph 17(2)(a) only grant concurrent jurisdiction to the Federal Court in respect of cases in which relief is claimed against the federal Crown. They do not grant jurisdiction in respect of cases in which relief is claimed against the provincial Crown (*Kimaev* at para 12). It is therefore plain and obvious that the Federal Court does not have jurisdiction over the Ontario Crown.
- [33] The Claim names a number of judges of the Ontario Superior Court of Justice as defendants. In addition to the doctrine of judicial immunity that applies to judges acting in the course of their judicial duties, which cannot be circumvented by merely pleading bald allegations of misconduct (*Carten v Canada*, 2009 FC 1233 at paras 48-21), to the extent the plaintiff is dissatisfied with the outcome of any court proceeding, the remedy is to appeal, not to commence a lawsuit in the Federal Court seeking to “expunge” those orders. The Claim as against these defendants discloses no reasonable cause of action, and is an abuse of process. Documents attached to the Claim such as a “notice of counter offer and contract” directed to a judge and a lawyer are simply meaningless, and have no legal consequence.
- [34] The Federal Court has almost no jurisdiction over divorce proceedings. Subsection 3(1) of the Divorce Act, RSC 1985, c 3 states that “a court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been habitually resident in the province for at least one year immediately preceding the commencement of the proceeding.” There is a limited exception where proceedings are commenced in different provinces on the same day. Subsection 3(3) states that in the event divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction, and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both spouses, determine which court retains jurisdiction by applying certain rules. There are similar provisions for proceedings for corollary relief (section 4), variation proceedings (section 5), and removal or retention of a child (section 6.2). None of that applies here; there is no allegation that the plaintiff and her former spouse commenced proceedings in different provincial courts on the same day. Any issues related to the plaintiff’s divorce must

be raised in the Ontario Superior Court of Justice, to the extent permitted by the relevant Rules, orders of that Court, and governing legislation.

[35] The Claim also makes allegations against the TDSB for an alleged violation of rights because the Board required the plaintiff's children to wear masks at school. Education is under provincial, not federal, jurisdiction. The Federal Court does not have jurisdiction over the policies and requirements of the TDSB. The Claim as against the TDSB discloses no reasonable cause of action, is doomed to fail, and is an abuse of process.

[36] The following is a representative sample of the submissions made in the plaintiff's lengthy "judicial notice" affidavit (sic throughout):

5. As stated in the previous paragraph, the serving and intended filing of the Notice of Default perfects the Statement of Claim, and is property of the Plaintiff/ Grantor/ Beneficiary. To remove it now from the court file would be theft. As Equity sees the Beneficiary as the true owner, fiduciary Administrators are bound by duty and oath to protect the interests of Beneficiaries. Removing the Statement of Claim and refusing to file the Notice of Default would be fraudulent and a violation of the following Law in Maxim of Equity: Equity regards the beneficiary as the true owner.

[...]

15. Moreover, claims within the Statement of Claim are within the jurisdiction of the Federal Court, as a superior court of record in Equity, as Glen Schwartz (called to the Bar in 2012), Jennifer Saville (called to the Bar in 2015), Kenneth Nathens (called to the Bar in 1994), James Diamond (called to the Bar in 1997), Freya Kristjanson (called to the Bar in 1989), and Sharon Shore (called to the Bar in 1998) all parties to the Action, are Officers of the Crown, as evidenced by oath to the Queen in attached Barristers and Solicitors Oaths, therefore, the court has jurisdiction to hear the matter. As per Law in Maxim of Equity: Equity will take jurisdiction to avoid a multiplicity of suits, Exclusive Equity Jurisprudence gives Federal Court jurisdiction over the entire matter to avoid a multiplicity of suits, i have no proof to the contrary, therefore i refute any contrary assertions without evidence or proof as false.

[Emphasis in original.]

[37] The plaintiff's written submissions, and the submissions made during the case management conference that largely repeated and relied on what had been previously submitted, fail to demonstrate that the statement of claim discloses a cause of action within the jurisdiction of the Federal Court. The Claim is ordered removed from the Court file forthwith.

VII. Costs

[38] The Court has full discretionary power over the amount and allocation of costs (subrule 400(1)).

- [39] This action was an abuse of process, and unnecessarily consumed the resources of the defendants and the Court. These kinds of proceedings must be discouraged and sanctioned through an award of costs.
- [40] Who I will describe as the “Ontario defendants,” namely the Ontario Crown and judges of the Ontario Superior Court of Justice, did not request costs, so none will be awarded.
- [41] The defendants Glen Schwartz, Liborio Lomonaco, Kenneth Nathens, and Nathens, Siegel LLP requested costs of \$3,000.00, which will be awarded.
- [42] Who I will describe as the “TDSB defendants” requested costs of \$1,500.00, which will be awarded.

ORDER in T-1327-24

THIS COURT ORDERS that:

The statement of claim shall be removed from the Court file forthwith.

Costs of the action are payable by the plaintiff to the defendants Glen Schwartz, Liborio Lomonaco, Kenneth Nathens, and Nathens, Siegel LLP, fixed at \$3,000.00, and are payable within 10 days of this order.

Costs of the action are payable by the plaintiff to the defendants Toronto District School Board, Portia Barriffe (incorrectly named as Portia Bariffe), Laura Stoikos, Nicholas Lucas (incorrectly named as Nicolas Lucas), Zita Valerio, and Jennifer Saville, fixed at \$1,500.00, and are payable within 10 days of this order.

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"Trent Horne"

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Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1327-24

STYLE OF CAUSE:

STELLA AWAWU RAJI v GLEN SCHWARTZ ET AL

PLACE OF HEARING:

HELD BY WAY OF TELECONFERENCE

DATE OF HEARING:

November 7, 2024

ORDER and REASONS:

HORNE A.J.

DATED:

nOVEMBER 7, 2024

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ONTARIO SUPERIOR COURT OF JUSTICE FAMILY COURT (GOVERNMENT OF ONTARIO), AND
ANDREW BONISTEEL, IMPROPERLY NAMED AS THE REGISTRAR OF THE MINISTRY OF PUBLIC
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