

CANADA / JUDGMENT

Szopa v. Canada (Attorney General)

2018 BCSC 2164

COURT

Supreme Court of British Columbia

DECIDED

30 August 2018

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2018 BCSC 2164 Szopa v. Canada (Attorney General) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Szopa v. Canada (Attorney General), 2018 BCSC 2164 Date: 20180830 Docket: S183127 Registry: Vancouver Between: Stanislaw Szopa Plaintiff And Attorney General of Canada Defendant Before: The Honourable Mr. Justice Macintosh Oral Reasons for Judgment In Chambers Appearing in person: S. Szopa Counsel for the Defendant: Jan J. Verspoor Jordan Marks Place and Date of Hearing: Vancouver, B.C. August 30, 2018 Place and Date of Judgment: Vancouver, B.C. August 30, 2018

- [1] The Defendant, the Attorney General of Canada, brings an application under Supreme Court Rule 9-5(1)(a) to strike the claim. The rule provides that:
- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
- (a) it discloses no reasonable claim or defence, as the case may be
- [2] The test to be employed in deciding whether a pleading will be struck is strict, as it must be. To strike a plaintiff's pleading is to deprive a claimant of the opportunity to present his or her case.
- [3] An expression of the test is found in *R v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 17, where it was said that a claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action. In that same paragraph, the Court put the test another way as well, saying that it will apply to a claim that has no reasonable prospect of success.
- [4] In strike applications, the Court gives wide latitude to the expression of the case as it is found in the pleading. That is because, if a simple amendment would rectify the pleading, the claim can proceed. What the Court must do is determine whether there is at least some prospect of the case being meritorious at the end of the day.

- [5] However, there are also some further and more general limitations on what will constitute an acceptable pleading. In *Dempsey v. Envision Credit Union*, 2006 BCSC 750, this Court said, at para. 17, that a pleading will be struck if it is unintelligible, confusing and difficult to understand; it does not establish a cause of action and advance a claim known in law; or if it is without substance in that it is groundless, fanciful and trifling with the Court's time. The Defendant relies on each of those characterizations in the current application.
- [6] The Notice of Civil Claim giving rise to today's application was filed February 26, 2018. It is 38 pages. It appears that the essence of the claim is for something akin to negligent misrepresentation, although that legal phrase is not used in the document. It appears from para. 7 in the Notice of Civil Claim that, in 1981, the then Canadian ambassador for Poland, "did nothing to inform highly educated professional immigrants to Canada that their diplomas will not be recognized at all in Canada."
- [7] Mr. Szopa points out in his response to the application that he was a master mechanical engineer in Poland, and intended to work as a master mechanical engineer in Canada. He and his family came to Canada in 1981, and first lived in Medicine Hat, Alberta. He explained to me today that, for him to receive welfare payments, the provincial government in Alberta essentially required him to work in menial positions, which were below those for which he was apparently qualified as a mechanical engineer from his training in Poland. When he moved with his family, in 1982, to British Columbia, the Association of Professional Engineers in this province was not welcoming, and did not give his qualifications from Poland the accreditation which he believed they deserved.
- [8] Returning to the Notice of Civil Claim, the pleading of course has to be tested in accordance with the governing law.
- [9] The *Queen v. Cognos Incorporated*, [1993] 1 S.C.R. 87, at p. 22, sets out the elements required for a party to succeed in a claim for negligent misrepresentation. Five elements are listed as essential, the first of which is that there is a duty of care owed.
- [10] The Attorney General of Canada relies on all five elements, and I accept that all of those elements would need to be present in order for such a claim to succeed. I cannot find that any of them is present from the pleading which I have read.
- [11] In *Selladurai Premakumaran and Nesamalar Premakumaran v. Her Majesty the Queen*, [2005] F.C.J. No. 1388, on facts which are sufficiently similar to make the decision applicable here, the Federal Court found that the defendant Government could not be held liable. The Court held that the defendant did not owe a duty of care to the individual plaintiffs.
- [12] It appears from Mr. Szopa's pleading that the relationship between the ambassador and prospective immigrants in his case was similar to the one the Federal Court examined in finding that no duty of care arose in *Premakumaran*.

- [13] In any event, even if a cause of action could be said to arise from the pleading, I accept the Attorney General of Canada's submission that the claim must be treated as statute-barred. The claim alleges a misrepresentation in 1981. Mr. Szopa argues that there should be a postponement of the time running for the limitation because of his disability.
- [14] The evidence related to his disability is found in his application record at tab 10, which is a medical doctor's statement from 2003, pointing out that he becomes anxious when endeavouring to speak in English, and thus finds it helpful to read from prepared written texts; and a document on the stationery of BC Housing, entitled a "Disability Confirmation", dated December 9, 2002, in which a physician apparently has signed that Mr. Szopa has believed for many years that he has been unfairly persecuted.
- [15] In my respectful view, that evidence is not enough to postpone the limitation time running. See, *Brown v. Canada (Attorney General)*, 2015 BCCA 102; and *Sandhu v. Insurance Corporation of British Columbia*, 2011 BCSC 793.
- [16] Therefore, even if I am incorrect in concluding that the case ought to be dismissed as showing no cause of action within the meaning of Supreme Court Rule 9-5(1)(a), I would have to conclude that the case cannot get around the provisions of the Limitation Act, S.B.C. 2012, c. 13, by which, in my view, the case is statute-barred. Those are my reasons, except I add that I am making no order as to costs. "MACINTOSH J."

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