

CANADA / JUDGMENT

Thompson Bey v. Iyer

2016 FC 990

COURT

Federal Court

DECIDED

30 August 2016

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Thompson Bey v. Iyer Court (s) Database Federal Court Decisions Date 2016-08-30 Neutral citation 2016 FC 990 File numbers T-927-16 Decision Content Date: 20160830 Docket: T-927-16 Citation: 2016 FC 990 Toronto, Ontario, August 30, 2016 PRESENT: Prothonotary Kevin R. Aalto BETWEEN: DWIGHT THOMPSON BEY NICOLE THOMPSON BEY Plaintiffs and SRIRAM H. IYER [SRIRAM H. IYER] AND SPOUSE BRYAN DEVRIES [BRYAN DEVRIES] AND SPOUSE Defendants ORDER AND REASONS

- [1] A mortgage went into default. The mortgagee bank (ICICI Bank) enforced its remedies by way of power of sale. A judgment of the Ontario Superior Court of Justice was issued for possession of the mortgaged property and the balance owing on the mortgage debt. The mortgagors, the Plaintiffs, (whose names are Dwight Thompson and Nicole Thompson but who now use the names Dwight Thompson Bey and Nicole Thompson Bey) claim no original mortgage document was produced to support the enforcement of the mortgage. They take the position the enforcement of the mortgage was without due process.
- [2] Thus, the Plaintiffs have commenced three actions in this Court: 1) Court File No. T-954-16, against the lawyers acting on the enforcement of the mortgage for ICICI Bank; 2) Court File No. T-1040-16, an action against the judge of the Ontario Superior Court of Justice who granted the judgment in favour of ICICI Bank; and, 3) Court File No. T-927-16, this action against Sriram H. Iyer, the President and CEO of ICICI Bank and Bryan Devries, the Vice-President of Mortgages for ICICI Bank.
- [3] The first action was struck without leave to amend by order of the Court dated August 11, 2016. With respect to the second action, there is a pending Rule 369 motion to strike. The motion before the Court deals with the third action against the officers of ICICI Bank. The motion is for an order to strike the statement of claim (Claim) in its entirety without leave to amend and for an order declaring the Plaintiffs vexatious litigants to prevent them from commencing further actions in this Court without leave.
- [4] In the Order dated August 11, 2016 in Dwight Thompson Bey et al. v. Joseph Agueci et al. (Federal Court File No. T-954-16) the Court observed that these types of Plaintiffs are quintessential “OPCA” litigants, a term coined by Associate Chief Justice Rooke of the Court of Queen’s Bench of Alberta. As stated in the August 11, 2016 Order: Further, this type of

nonsensical litigation brought by this type of vexatious litigant has been described extensively in a lengthy judgment by Associate Chief Justice Rooke of the Court of Queen's Bench of Alberta in *Meads v Meads*, 2012 ABQB 571. In that judgment, Associate Chief Justice Rooke describes these types of litigants as "Organized Pseudolegal Commercial Argument" litigants or "OPCA" litigants for short. The Plaintiffs in this case fall squarely into that category.

- [5] The same applies here. The Plaintiffs are OPCA litigants.
- [6] Turning to the issue of striking the Claim, it is difficult to know where to begin to describe the absurdity of the alleged claims and causes of action. Suffice it to say, the thrust of the claim is that ICICI Bank did not produce a signed mortgage with the Plaintiffs and sent demand letters to the Plaintiffs without proper postage as there was no physical postage stamp. This somehow or other resulted in "failing to honour due process which resulted in a breach of trust and honor [sic] against Sriram H. Iyer and Bryan Devries doing business as ICICI Bank Canada and its assigned agents" [Affidavit of the Plaintiffs, page 1]. A claim for \$1,750,000 in compensatory damages and \$750,000 in punitive damages against each of the Defendants and spouse was made. There is no explanation as to why "and spouse" is included. The Claim then prattles on about "proper" versus "natural born citizens", an example of which is as follows: I, (Nicole Thompson Bey, Dwight Thompson Bey), demand this Federal court view this Petitioners / Plaintiffs (in my Proper Person) as a Moorish American National (Natural Born Citizen of the Land) and not as a (brand) NEGRO, BLACKMAN (person), COLORED, AFRICAN-AMERICAN, or any other SLAVE TITLE or 'nom de guerre' imposed upon me for misrepresentation 'Actions' or other acts of 'Misprision' that a misdirected society may "believe" to be true. I, (Nicole Thompson Bey, Dwight Thompson Bey), do not, under any condition or circumstance, by threat, duress, or coercion, waive any rights Inalienable or Secured by the Constitution or Treaty, and, hereby requests the Federal Court to fulfill their obligation to preserve the rights of this Petitioner (A Moorish American) and carry out their Judicial Duty in 'Good Faith' by ordering Defendants to be brought before the Law to answer for their criminal and unjust actions.
- [7] The Claim then makes assertions about the "Moorish National Republic"; the enforcement of the "Divine Constitution and By-laws of the Moorish Science Temple of America"; and other such nonsense. None of this amounts in any way, shape or form to a recognizable cause of action in Canadian law. A complete copy of the Claim is attached as Schedule A so that readers of this decision can get the flavour of the absurdity of the claims with which OPCA litigants encumber the Courts.
- [8] This type of litigation clogs the Courts and uses up judicial resources which typically would include a registrar issuing the claim; another registry officer entering the claim in the Court's database; when a motion is brought to strike, registry staff must file the motion and enter it into the system; then registry staff must organize the motion for hearing; a courtroom must be set aside and Court staff assigned; the presiding judicial officer will review the motion materials; Court is convened; and, finally, a decision is rendered. These

steps take time and money and do not include the time, effort and cost to litigants who are subjected to these types of nonsensical lawsuits to which they must respond.

- [9] The Courts have a duty to control access to the judicial system by these types of litigants. Quite apart from the remedy of striking out these vexatious actions, the Courts can award full indemnity costs to the unfortunate litigants who are subjected to these lawsuits. This action is a prime example where full indemnity costs should be awarded. The observations of the Honourable Justice Jamie Campbell of the Supreme Court of Nova Scotia in the recent decision *Cram v. Nova Veterinary Clinic Ltd.*, 2016 NSSC 18 are apposite:
- [11] Access to justice is an important issue. Courts are becoming increasingly aware of the importance of making court process more available to the public through the use of more simplified and user friendly forms and procedures and plain language documents. A litigant does not have a right to unrestrained access to the justice system for the purpose of pursuing an agenda that has nothing to do with a legitimate cause of action and everything to do with trying to bring a world of hurt down upon other parties through the aggressive abuse of the process itself. The courts are available for the controlled and restrained resolution of legal disputes. They are not available for litigants who grind out legal proceedings for the purpose of inflicting maximum punishment on their adversaries. . . .
- [51] The courts have to remain open to difficult, obstreperous, annoying, unreasonable, foolish, irrational, wasteful, and mean-spirited people. They are not restricted to internet blogs and postings on news websites. To some extent the legal system can become an open mike for the angry. But when a person crosses over into using multiple legal processes themselves as a cudgel to wreak vengeance on an opponent, the court is obliged to restrain them.
- [10] In all, there is no substance to this Claim. It is struck in its entirety without leave to amend and with full indemnity costs to the Defendants. The Plaintiffs filed a motion pursuant to Rule 369 for default judgment against the Defendants on the ground that no statement of defence had been filed. Obviously, no default judgment can be granted as the Claim upon which default judgment is sought is an abuse of the Court and is scandalous, frivolous and vexatious.
- [11] The Defendants also sought an order pursuant to section 40 of the Federal Courts Act declaring these Plaintiffs vexatious litigants. That section of the Federal Courts Act reads as follows: Vexatious proceedings Poursuites vexatoires 40 (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court. 40 (1) La Cour d'appel fédérale ou la Cour fédérale, selon le cas, peut, si elle est convaincue par suite d'une requête qu'une personne a de façon persistante introduit des instances vexatoires devant elle ou y a agi de façon vexatoire au cours d'une instance, lui interdire d'engager d'autres instances devant elle ou de continuer devant elle une instance

déjà engagée, sauf avec son autorisation. Attorney General of Canada Procureur général du Canada

- (2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).
 - (2) La présentation de la requête visée au paragraphe (1) nécessite le consentement du procureur général du Canada, lequel a le droit d'être entendu à cette occasion de même que lors de toute contestation portant sur l'objet de la requête. Application for rescission or leave to proceed Requête en levée de l'interdiction ou en autorisation
 - (3) A person against whom a court has made an order under subsection (1) may apply to the court for rescission of the order or for leave to institute or continue a proceeding.
 - (3) Toute personne visée par une ordonnance rendue aux termes du paragraphe (1) peut, par requête au tribunal saisi de l'affaire, demander soit la levée de l'interdiction qui la frappe, soit l'autorisation d'engager ou de continuer une instance devant le tribunal. Court may grant leave Pouvoirs du tribunal
 - (4) If an application is made to a court under subsection (3) for leave to institute or continue a proceeding, the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.
 - (4) Sur présentation de la requête prévue au paragraphe (3), le tribunal saisi de l'affaire peut, s'il est convaincu que l'instance que l'on cherche à engager ou à continuer ne constitue pas un abus de procédure et est fondée sur des motifs valables, autoriser son introduction ou sa continuation. No appeal Décision définitive et sans appel
 - (5) A decision of the court under subsection (4) is final and is not subject to appeal.
 - (5) La décision du tribunal rendue aux termes du paragraphe (4) est définitive et sans appel.
- [12] The approach of this Court and the analysis of the requirements for an order pursuant to section 40 have recently been usefully set out by Madam Prothonotary Mandy Aylen in *Holmes v HMQ*, 2016 FC 918. Many of the indicia of vexatious litigants as discussed by Madam Prothonotary Aylen in *Holmes* are present here.
- [13] However, it is to be noted that sub-section 40(2) requires that the Attorney General of Canada must consent to a request for a vexatious proceedings order and is entitled to be heard on the hearing. Unfortunately, the Defendants' request for a vexatious proceedings Order must be denied as the pre-condition in sub-section 40(2) has not been met. But for that requirement, this would be a case where a vexatious proceedings order would be appropriate given that three proceedings have been commenced relating to the enforcement over a mortgage, matters which do not fall within the jurisdiction of this Court. Moreover, given the proliferation of proceedings by OPCA litigants such orders are another important way in which courts, in general, can prevent abuse of the judicial system. ORDER THIS

COURT ORDERS that:

1. This Claim is hereby struck without leave to amend.
2. The Defendants shall have their costs on a full indemnity basis which costs shall be fixed by the Court. The Defendants shall file their costs submissions on or before September 9, 2016. The Plaintiffs may file responding submissions on or before September 23, 2016. “Kevin R. Aalto” Prothonotary FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-927-16 STYLE OF CAUSE: DWIGHT THOMPSON BEY, NICOLE THOMPSON BEY v SRIRAM H. IYER [SRIRAM H. IYER] AND SPOUSE, BRYAN DEVRIES [BRYAN DEVRIES] AND SPOUSE PLACE OF HEARING: Toronto, Ontario DATE OF HEARING: AUGUST 23, 2016 ORDER AND reasons: AALTO P. DATED: August 30, 2016 APPEARANCES: DWIGHT THOMPSON BEY NICOLE THOMPSON BEY For The Plaintiffs CRISTINA INTERNICOLA For The Defendants SOLICITORS OF RECORD: DWIGHT THOMPSON BEY NICOLE THOMPSON BEY (Lay Litigants) For The Plaintiffs AGUECI & CALABRETTA BARRISTERS & SOLICITORS TORONTO, ONTARIO For The Defendants

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