Siemens v. Canada, 2020 FC 941 (CanLII)

Date: 2020-09-30
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Date: 20200930

Docket: T-534-20

Citation: 2020 FC 941

Ottawa, Ontario, September 30, 2020

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

LEONARD SIEMENS

Plaintiff/Respondent

and

HER MAJESTY THE QUEEN,

THE PRIME MINISTER OF CANADA,

THE MINISTER OF NATIONAL REVENUE, CANADA REVENUE AGENCY,

CHIEF EXECUTIVE OFFICE OF THE CANADA REVENUE AGENCY

Defendants/Moving Parties

ORDER AND REASONS

[1] The Defendants move to have the statement of claim brought by Mr. Leonard Siemens, the Plaintiff, struck out with no leave to amend because (1) it discloses no reasonable cause of action, (2) it is frivolous and vexatious, and (3) it constitutes an abuse of process.

I. Statement of claim in the Federal Court

[2] The statement of claim was filed in Winnipeg on May 7, 2020. Mr. Siemens alleges that he earned some additional income over and above his salary from his regular employment. He was audited by the Canada Revenue

Agency (CRA) which disallowed all expenses the taxpayer claimed were incurred in the process of earning that income. It appears that the re-assessment was over a long period of time (2004 to 2017).

[3] Followed garnishment proceedings. The Plaintiff alleged:

- unlawful garnishee to the Plaintiff's employer for 100% of the Plaintiff's salary for three months;
- unlawful garnishee of the Plaintiff's payments pursuant to the Canada Pension Plan for a period starting on March 18, 2018.

[4] The Plaintiff alleges that, as a result, he lost his employment and he missed three mortgage payments, resulting in foreclosure action and loss of the Plaintiff's house. As is the rule on a motion to strike, the facts as alleged are held to be true.

[5] Mr. Siemens claims that the garnishment proceedings are illegal and in breach of his constitutional rights:

- the unlawful garnishment proceedings deprive him his constitutional right to have the matter adjudicated in a court of law;
- the Plaintiff invokes the Magna Carta;
- the Plaintiff invokes the remedial provisions of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, in the context of an alleged violation of section 8 which provides that "(e)very one has the right to be secure against unreasonable search or seizure".

[6] The Plaintiff states that he was audited twice by CRA in the past: both times he claims he was found to be in compliance. He should not have been audited a third time as these audits are "tedious and very time consuming". The "CRA's actions were and are malicious, evil, self-serving and intended to cause the Plaintiff undue hardship, stress, pain and considerable loss of earnings and revenue". There are no details supplied. Finally, Mr. Siemens alleges that there are no "avenues for taxpayers to address and defend their returns when they feel that CRA is in error or their returns are unjustly audited". Here too there is a complete lack of an articulation.

[7] As a result, the Plaintiff seeks:

- that the sums of money unlawfully garnished be returned with interest;
- that CRA cease any ongoing garnishment proceedings and desist from any future such proceedings;
- that all liens against properties owned by the Plaintiff and his wife be removed;
- $10,000,000 in damages for loss of income, loss of house and loss of investment opportunities;
- $10,000,000 in damages for the emotional stress, suffering, depression resulting from CRA's unlawful garnishment proceedings and malicious actions.

II. Motion to strike

[8] Faced with this statement of claim, the Defendants moved on July 10, 2020 for the statement to be struck out. The motion was served electronically on July 23, 2020, in accordance with a consent to electronic service signed by the Plaintiff on July 13, 2020. The Defendants' motion record was filed on July 27, 2020. Pursuant to rule 369, the respondent on the motion to strike had 10 days in order to respond. No response was filed by Mr. Siemens with the Court.

[9] The Defendants raise four grounds for which their motion to strike ought to be successful:

- the statement of claim does not plead a reasonable cause of action; there are insufficient facts in order to disclose a cause of action;

- the issues raised have been disposed of by the Saskatchewan Court of Queen's Bench;
- since the essence of the Plaintiff's claim is his tax assessment, which he claims was improper, the appropriate court is the Tax Court of Canada;
- a requirement to pay pursuant to the *Income Tax Act*, RSC 1985 (5th Supp) constitutes a ministerial decision that can be challenged by way of an application for judicial review under section 18.1 of the*Federal Courts Act*, RSC, 1985, c F-7.

III. Arguments and discussion

[10] In my view, the Defendants have made a compelling case as to why this statement of claim must be struck. There are two reasons for that conclusion: first, material facts on which Mr. Siemens has to rely were not pled; second this Court is not the appropriate forum in which to argue what is in fact an attack on tax assessments followed by collection measures provided for in the *Income Tax Act*.

A. *The laws*

[11] The starting point is of course rule 221 of the *Federal Courts Rules*, SOR/98-106, which provides for the Court to strike out pleadings, or anything contained therein:

Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	**221 (1)** À tout moment, la Cour peut, sur requête, or- donner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas:
(a) discloses no reasonable cause of action or defence, as the case may be,	**a)** qu'il ne révèle aucune cause d'action ou de défense valable;
(b) is immaterial or redundant,	**b)** qu'il n'est pas pertinent ou qu'il est redondant;
(c) is scandalous, frivolous or vexatious,	**c)** qu'il est scandaleux, frivole ou vexatoire;
(d) may prejudice or delay the fair trial of the action,	**d)** qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
(e) constitutes a departure from a previous pleading, or	**e)** qu'il diverge d'un acte de procédure antérieur;
(f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly.	**f)** qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.
Evidence	**Preuve**
(2) No evidence shall be heard on a motion for an order under paragraph (1)(a).	**(2)** Aucune preuve n'est admissible dans le cadre d'une requête invoquant le motif visé à l'alinéa (1)a).

[12] Motions to strike serve a useful purpose : a statement of claim is struck "if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action … Another way of putting the test is that the claim has no reasonable prospect of success" (*R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42,

[2011] 3 SCR 45 [*Imperial Tobacco Canada*], at para 17). The purpose thus served is articulated at paragraphs 19 and 20:

> [19] The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.
>
> [20] This promotes two goods — efficiency in the conduct of the litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless. The same applies to judges and juries, whose attention is focused where it should be — on claims that have a reasonable chance of success. The efficiency gained by weeding out unmeritorious claims in turn contributes to better justice. The more the evidence and arguments are trained on the real issues, the more likely it is that the trial process will successfully come to grips with the parties' respective positions on those issues and the merits of the case.

[13] The fundamental principle governing pleadings is found at Rule 174 of the *Federal Courts Rules*:

Material facts	**Exposé des faits**
174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.	**174** Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

That is because there must be sufficient details to support a claim as well as the relief sought. They give notice to the opposing parties so that they are not left to speculate as to the facts relied upon. Indeed the pleadings provide the parameters under which the litigation will take place. The Federal Court of Appeal encapsulated the reasons why pleading material facts is fundamental to the trial process in this often-quoted paragraph:

> [17] The latter part of this requirement – sufficient material facts – is the foundation of a proper pleading. If a court allowed parties to plead bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues. The proper pleading of a statement of claim is necessary for a defendant to prepare a statement of defence. Material facts frame the discovery process and allow counsel to advise their clients, to prepare their case and to map a trial strategy. Importantly, the pleadings establish the parameters of relevancy of evidence at discovery and trial.
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> *(Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227, 476 NR 219 [*Mancuso*])

[14] As instructed by the Court of Appeal, it is for the judge to consider the pleadings as a whole to consider whether the pleadings offer sufficient precision to make the process manageable and fair. In the words of the *Mancuso* Court, "(t)he pleading must tell the defendant who, when, where, how and what gave rise to its liability" (para 19) and "the requirement for adequate material facts to be pleaded is mandatory" (para 20)

B. *Material facts were not pled.*

[15] In the case at bar, there is a complete lack of material facts. The statement of claim is devoid of any precision as to the facts on which the Plaintiff seeks to rely. They are no more than bald assertions and conclusory statements of the law.

[16] The garnishment actions are said to be unlawful, but there is not one fact that is asserted, let alone material facts, that could support impugning such actions.

[17] The Plaintiff alleges that the actions of the Canada Revenue Agency were malicious, evil, self serving and intended to cause damages. There is no indication in the statement of claim as to what those actions may be or what tort is actually raised. *Paradis Honey Ltd. v Canada*, 2015 FCA 89, [2016] 1 FCR 446 is authority for the proposition that there is no requirement to plead a particular legal label which is associated with the cause of action. Nevertheless, there must be material facts in the claim to support the cause of action. On a motion to strike, the allegations are taken as true and the statement of claim will be struck if it is plain and obvious it will fail (*Hunt v Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959, *Imperial Tobacco Canada* (*supra*)). And the claim will fail if the material facts are not pleaded. The point is made in the Supreme Court's decision in *Imperial Tobacco Canada*:

> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. <u>But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.</u>
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> [My emphasis.]

[18] Although the Plaintiff did not put a label on the actions he claims were injurious to him, the allegations correspond loosely to the tort of misfeasance in public office. That is the conclusion reached by Justice Mitchell of the Court of Queen's Bench for Saskatchewan in a case where allegations resemble closely those made in the case at hand (*Siemens v Baker* 2019 SKQB 99 [*Siemens*]). Although the Plaintiff sought relief against different defendants before the Saskatchewan Court (except for the Chief Executive Office of the Canada Revenue Agency, which is an office occupied by Mr. Hamilton, the Defendants here are not employees of CRA but are rather Her Majesty the Queen, the Prime Minister of Canada, the Minister of National Revenue and the Canada Revenue Agency; the Defendants in the Saskatchewan case were all employees of CRA) the allegations concerning the Defendants bear a close similarity (*Siemens*, para 40) to those made before the Federal Court.

[19] The Ontario Court of Appeal described the tort of misfeasance in public office in *Conway v The Law Society of Upper Canada*, 2016 ONCA 72 in the following way:

> [20] The tort of misfeasance in public office has been variously described in the case law as the tort of abuse of public office or abuse of statutory power: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, at paras. 25 and 30. Whatever the nomenclature, <u>the essence of the tort is the deliberate and dishonest wrongful abuse of the powers given to a public officer, coupled with the knowledge that the misconduct is likely to injure the Plaintiff</u>: *Odjhavji Estate v. Woodhouse,* at para. 23. Bad faith or dishonesty is an essential ingredient of the tort: *Odhavji Estate v. Woodhouse*, at para. 28 and *Gratton-Masuy Environmental Technologies Inc. v. Ontario,* 2010 ONCA 321, at para. 85.
>
> [My emphasis.]

The seriousness of the allegations is such that it calls for the material facts found in the statement of claim to contain the particulars, which will include the individuals alleged to have committed the tort and enough information to have the actual underpinning for the tort.

[20] The Federal Court of Appeal, in *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184, 405 NR 160 [*Merchant Law Group*], required a particular state of mind in carrying out the impugned action which itself needs particularization:

> [35] To this, I would add that the tort of misfeasance in public office requires a particular state of mind of a public officer in carrying out the impunged action, *i.e.*, deliberate conduct which the public officer knows to be inconsistent with the obligations of his or her office:

> *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, 2003 SCC 69 at paragraph 28. For this tort, particularization of the allegations is mandatory. Rule 181 specifically requires particularization of allegations of "breach of trust," "wilful default," "state of mind of a person," "malice" or "fraudulent intention."

The Court elaborated on the nature of the identification required:

> [38] I do agree that the individuals involved should be identified. The Plaintiff is obligated under Rule 174 to plead material facts and the identity of the individual who are alleged to have engaged in misfeasance is a material fact which must be pleaded. But how particular does the identification have to be? In many cases, it may be impossible for a Plaintiff to identify by name the particular individual who was responsible. However, in cases such as this, a Plaintiff should be able to identify a particular group of individuals who were dealing with the matter, one or more of whom were allegedly responsible. This might involve identifying job positions, an organizational branch, an office, or a building in which those dealing with the matter worked. Often such information is readily available from the oral and written communications and dealings among the parties that gave rise to the claim. In cases such as this, identification at least at this level of particularity, will usually be sufficient. The purposes of pleadings will be fulfilled: the issues in the action will be defined with reasonable precision, the respondents will have enough information to investigate the matter and the respondents will be able to plead adequately in response within the time limits set out in the Rules.
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> [My emphasis.]

While in the Saskatchewan case the Plaintiff listed close to twenty employees or former employees, the statement of claim in the Federal Court does not identify anyone. It merely states that the "Plaintiff claims that the CRA's action were and are malicious, evil, self serving and intended to cause the Plaintiff undue hardship, stress, pain and considerable loss of earnings and revenue" (statement of claim, para 18). As can be readily seen, bald statements and conclusory phrases such as what is found in this statement of claim fell way short of the mark, as presented in *Merchant Law Group*:

> [34] I agree with the Federal Court's observation (at paragraph 26) that paragraph 12 of the amended statement of claim "contains a set of conclusions, but does not provide any material facts for the conclusions." When pleading bad faith or abuse of power, it is not enough to assert, baldly, conclusory phrases such as "deliberately or negligently," "callous disregard," or "by fraud and theft did steal": *Zundel v. Canada*, 2005 FC 1612, 144 A.C.W.S. (3d) 635; *Vojic v. Canada (M.N.R.)*, [1987] 2 C.T.C. 203, 87 D.T.C. 5384 (F.C.A.). "The bare assertion of a conclusion upon which the court is called upon to pronounce is not an allegation of material fact": *Canadian Olympic Association v. USA Hockey, Inc.* (1997), 1997 CanLII 5256 (FC), 74 C.P.R. (3d) 348, 72 A.C.W.S. (3d) 346 (F.C.T.D.). Making bald, conclusory allegations without any evidentiary foundation is an abuse of process: *AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112 at paragraph 5. If the requirement of pleading material facts did not exist in Rule 174 or if courts did not enforce it according to its terms, parties would be able to make the broadest, most sweeping allegations without evidence and embark upon a fishing expedition. As this Court has said, "an action at law is not a fishing expedition and a Plaintiff who starts proceedings simply in the hope that something will turn up abuses the court's process": *Kastner v. Painblanc* (1994), 58 C.P.R. (3d) 502, 176 N.R. 68 at paragraph 4 (F.C.A.).
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> [My emphasis.]

The requirements have not been met. Without the material facts, which are the basis on which there may be a possibility of success, there is no reasonable cause of action.

[21] The same can be said about pleading Charter violations. The Plaintiff claims boldly and baldly that constitutional rights have been violated:

- his right under the *Canadian Bill of Rights* (SC 1960, c 44) to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;

- his right to be secure against unreasonable search or seizure, a constitutional right guaranteed by section 8 of the *Canadian Charter of Rights and Freedoms*.

The Plaintiff invokes also the Magna Carta.

[22] There is nowhere to be seen any fact that could support any allegation of a violation of a constitutional (or quasi-constitutional) nature. It is simply impossible, on the basis of the statement of claim, to have any sense of what the violation may be. The *Mancuso* Court made it plain that material facts must be pleaded when Charter violations are alleged:

> [21] There are no separate rules of pleadings for Charter cases. The requirement of material facts applies to pleadings of Charter infringement as it does to causes of action rooted in the common law. The Supreme Court of Canada has defined in the case law the substantive content of each Charter right, and a Plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provision in question. This is no mere technicality, "rather, it is essential to the proper presentation of Charter issues": *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357 at p. 361.

Undoubtedly, the same general rule will apply to quasi-constitutional instruments such as the *Canadian Bill of Rights*.

[23] The general allegation that there are no "avenues for tax-payers to address and defend their returns when they feel that CRA is in error or their returns are unjustly audited" is devoid of any articulation or of any fact being alleged. It is indeed a surprising allegation when one considers the extensive and particularized regime provided by the *Income Tax Act* to challenge tax matters throughout the process.

C. *Federal Court as the appropriate forum*

[24] That takes me to the second reason why this statement of claim must be struck out. In *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 FCR 557, the Federal Court of Appeal advised that the Court must understand the true essence of the proceedings in order to leave to the Tax Court the matters which are of its jurisdiction:

> [49] Armed with sophisticated wordsmithing tools and cunning minds, skilful pleaders can make Tax Court matters sound like administrative law matters when they are nothing of the sort. When those pleaders illegitimately succeed, they frustrate Parliament's intention to have the Tax Court exclusively decide Tax Court matters. Therefore, in considering a motion to strike, the Court must read the notice of application with a view to understanding the real essence of the application.
>
> [50] The Court must gain "a realistic appreciation" of the application's "essential character" by reading it holistically and practically without fastening onto matters of form: *Canada v. Domtar Inc.*, 2009 FCA 218 at paragraph 28; *Canada v. Roitman*, 2006 FCA 266 at paragraph 16; *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585 at paragraph 78.

[25] The Court of Queen's Bench for Saskatchewan came to the conclusion in *Siemens* (*supra*) that it lacked jurisdiction to adjudicate arguments which in reality purport to challenge the validity of tax assessment. I share that view. In the complete absence of any fact supporting an allegation of a tort, including that of misfeasance in public office, there is not much the Plaintiff can rely on but his disagreement with any re-assessment leading to the contested collection measures taken. In fact, that is all that is left.

[26] In *Canada v Roitman*, 2006 FCA 266, 353 NR 75 [*Roitman*], the Court of Appeal stated that "(a) claim found not to be within the jurisdiction of the court in which it is filed will be struck out as being frivolous, as having no

reasonable cause of action or as being an abuse of process" (para 15). The Court goes on to find:

> [16] A statement of claim is not to be blindly read at its face meaning. The judge has to look beyond the words used, the facts alleged and the remedy sought and ensure himself that the statement of claim is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court. To paraphrase statements recently made by the Supreme Court of Canada in *Vaughan v. Canada*, 2005 SCC 11 (CanLII), [2005] 1 R.C.S. 146 at paragraph 11, and applied by this Court in *Prentice v. Canada (Royal Canadian Mountain Police)*, 2005 FCA 395, at paragraph 24, leave to appeal denied by the Supreme Court of Canada, May 19, 2006, SCC 31295, a Plaintiff is not allowed to frame his action, with a degree of artificiality, in the tort of negligence to circumvent the application of a statute.

That in my view is what the Plaintiff attempts to do in this case.

[27] When read as a whole, the statement of claim cannot be based on anything other than the Plaintiff's disagreement with the re-assessment conducted after an audit which was "based on the premise that no expenses were incurred while earning this extra income" (statement of claim, para 6). Mr. Siemens goes on to allege at paragraph 8 that "(a)s the Plaintiff was unable to pay these exaggerated and incomprehensible and unsubstantiated amount, CRA did issue an unlawful garnishee to Plaintiff's employer, …, for 100% of the Plaintiff's salary for 3 months". It is evidently the tax assessment that generates the collection actions. The tax assessment, and its validity, is to be challenged before the Tax Court. The statement of claim is a direct challenge to the tax assessment or, alternatively, a collateral attack on the assessment.

[28] The *Roitman* Court addressed the issue squarely:

> [19] Subsection 152(8) of the *Income Tax Act* deems an assessment to be valid and binding unless varied or vacated in accordance with the appeal process under the Act. The Tax Court has exclusive jurisdiction to determine the correctness of tax assessments. This exclusive jurisdiction is established by a combination of ss. 152(8) and 169 of the *Income Tax Act*, s. 12 of the *Tax Court of Canada Act* and ss. 18, 18.1 and 18.5 of the *Federal Courts Act*.
>
> [20] It is settled law that the Federal Court does not have jurisdiction to award damages or grant any other relief that is sought on the basis of an invalid reassessment of tax unless the reassessment has been overturned by the Tax Court. To do so would be to permit a collateral attack on the correctness of an assessment. (See *M.N.R v. Parsons*, 84 D.T.C. 6345 (F.C.A.) at p. 6346; *Khan v. M.N.R.*, 85 D.T.C. 5140 (F.C.A.); *Optical Recordings Corp. v. Canada*, [1991] 1 F.C. 309 (C.A.), at pp. 320-321; *Bechtold Resources Limited v. M.N.R.* 86 D.T.C. 6065 (F.C.T.D) at p. 6067; *A.G. Canada v. Webster* (2003), 2003 FCA 388 (CanLII), 57 D.T.C. 5701 (F.C.A.); *Walker v. Canada*, 2005 FCA 393; *Sokolowska v. The Queen*, 2005 FCA 29; *Walsh v. Canada(M.N.R.)*, 2006 FC 56; *Henckendorn v. Canada*, 2005 FC 802; *Angell v. Canada (M.N.R.)*, 2005 CF 782.)
>
> [My emphais.]

In my view, once the Court considers the essential nature of the claim, beyond the words and the remedy sought, and taking a realistic appreciation of the practical result the Plaintiff seeks, it is left with the essential character of the pleadings being that the assessment is challenged directly or as a collateral attack.

[29] My colleague Justice Cecily Strickland summarized the state of play in *Mason v Canada (Attorney General)*, 2015 FC 926:

> [35] However, because the Federal Court does not have jurisdiction to hear challenges to tax assessments, as these are within the jurisdiction of the Tax Court of Canada, if an application is, in reality, challenging the correctness of the assessment under the guise of seeking judicial review, judicial review will not be available (*Coombs* at para 15; *Johnson* at para 23). Nor does the Federal Court have jurisdiction to award damages or grant any other relief sought on the basis of an invalid reassessment of tax, unless the reassessment has been overturned by the Tax Court, as doing so would permit a collateral attack on the correctness of an

> assessment (*Canada v Roitman*, 2006 FCA 266 at para 20). Therefore, the Minister is correct that if the Applicant was not satisfied with the results of his objection, his recourse lay in an appeal to the Tax Court of Canada (*Newcombe v Canada*, 2013 FC 955 at para 30) and then to the Federal Court of Appeal, which he did for some of the tax years in issue.

As already stated, there are no material facts presented in this statement of claim concerning the legality of the garnishment actions taken with respect to the Plaintiff. The core allegation is the assessment which produced, according to the Plaintiff, "exaggerated and incomprehensible and unsubstantiated amounts" which resulted in the collection actions. That is a matter that is within the exclusive jurisdiction of the Tax Court.

[30] Given my conclusion that the claim has no reasonable prospect of success in view of the complete lack of material facts in support of the statement of claim and that the matter of the assessment of the taxes by the Minister of National Revenue is within the exclusive jurisdiction of the Tax Court, I will not address subsidiary arguments raised by the Defendants that the claim is barred by *res judicata* or that it constitutes an abuse of the process of the Court. For one thing, it is not clear that the conditions for *res judicata* (*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 SCR 460) have been strictly met on the facts of this case. Furthermore, the argument on the application of the abuse of process doctrine in this case is less than fulsome. The Defendants quote a short passage taken from long paragraph 37 of *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 SCR 77 which reports on Canadian courts having applied the doctrine to preclude relitigation in circumstances where the strict requirements of issue estoppel are not met, to then state, without more, that "(a)ll these factors apply to the case at bar" (memorandum of fact and law, para 46). In my view, it is more appropriate to decline at this stage to consider more fully these issues in view of the previous findings which dispose directly of the motion to strike.

[31] For obvious reasons, the Plaintiff has not attempted to seek leave to amend his statement of claim: he did not challenge the motion to strike. At any rate, there are simply no facts which would disclose a cause of action and, furthermore, this Court lacks jurisdiction to entertain the action once its true essence has emerged. There would be very little room indeed to amend the pleadings.

[32] As a result the motion to strike must be granted. The Defendants request their costs for the motion to be paid forthwith. Before the Court of Queen's Bench for Saskatchewan, costs were sought, but not granted. The situation is significantly different in this Court. The Court of Queen's Bench considered that the Plaintiff "believed he had a legitimate grievance against CRA" (para 60). In this Court, the Plaintiff brings his ill-conceived and misguided pleading yet again. The pleading's quality was not any better in this Court after having failed in the Queen's Bench Court, essentially for the same reasons. This motion should not have been brought. I would order costs in favor of the Defendants, and order that costs be paid forthwith, in accordance with rule 401.

ORDER in T-534-20

THIS COURT ORDERS:

1. The motion to strike out the statement of claim, without leave to amend, is granted;
2. Costs of this motion are granted to the Defendants.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-534-20
STYLE OF CAUSE:	LEONARD SIEMENS v HER MAJESTY THE QUEEN, THE PRIME MINISTER OF CANADA, THE MINISTER OF

	NATIONAL REVENUE, CANADA REVENUE AGENCY, CHIEF EXECUTIVE OFFICE OF THE CANADA REVENUE AGENCY
PLACE OF HEARING:	MOTION IN WRITING CONSIDERED AT OTTAWA (ONTARIO) PURSUANT TO RULE 369 OF THE FEDERAL COURTS RULES
ORDER AND REASONS:	ROY J.
DATED:	SEPTEMBER 30, 2020

WRITTEN REPRESENTATIONS BY:

Leonard Siemens	FOR THE PLAINTIFF/RESPONDENT
	(SELF-REPRESENTED)
Darren Grunau	FOR THE DEFENDANTS/MOVING PARTIES

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