CITATION: Jones v. Ontario, 2024 ONSC 6682
COURT FILE NO.: CV-18-00593434-00CP
DATE: 20241204

2024 ONSC 6682 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: KIWAYNE JONES, Plaintiff

– and –

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO, Defendant

BEFORE: Justice E.M. *Morgan*

COUNSEL: *Kiwayne* Jones, on his own behalf

Brent McPherson, Lisa Brost, and *Wan Yao Chen*, for the Defendant

HEARD: December 4, 2024

MOTION TO DISMISS

[1] It has been over 6 years since the Statement of Claim was issued in this proposed class action, and it has not moved forward. At a case conference last year, the Plaintiff indicated that he is not interested in pursuing the matter any further. No other person has taken up the role of plaintiff since that time.

[2] On March 8, 2018, the Plaintiff served the Crown with his Statement of Claim. The proposed class was to be comprised of all persons who became Crown wards in Ontario on or after January 1, 1966 and who were not Canadian citizens when they ceased to be a Crown ward.

[3] The claim sought $100 million in damages on behalf of the class for negligence and breach of fiduciary duty, and another $100 million in punitive damages. In addition, the claim sought declarations that Ontario owed statutory, common law and fiduciary duties to the Plaintiff and breached those duties by failing to: (a) maintain, protect and preserve their residency and immigration status; (b) obtain, maintain and preserve their citizenship, nationality and/or immigration records; and (c) advise them of their rights to apply for citizenship upon attaining the age of eighteen years.

[4] On December 3, 2019, the Plaintiff amended the claim somewhat, and on April 30, 2020 the Crown served its Statement of Defence. On March 16, 2020, the parties advised the Court that they had agreed to a timetable for the certification motion. That timetable required the Plaintiff to serve his motion record by June 5, 2020. The Court scheduled the certification motion to be heard for two days, on September 29-30, 2021.

[5] The Plaintiff did not comply with the timetable and does not appear to have made any effort to comply. To date, he has not delivered any motion materials in support of certification or given any indication that he intends to do so.

[6] At a case conference on November 12, 2020, the Plaintiff's counsel at the time, Julie Ann Kirkpatrick, advised the Court that the Plaintiff would bring a motion to discontinue the action as a class proceeding and convert it to an individual action. A motion for leave to discontinue the action was scheduled for May 10, 2021. Two months later, on January 7, 2021, Ms. Kirkpatrick advised the Court that she was retiring and reiterated that the Plaintiff wished to convert his proposed class action into an individual claim. However, the Plaintiff failed to file any materials for a motion for leave to discontinue the class action and/or to convert it to an individual claim.

[7] At a case conference held on May 10, 2021, the Plaintiff attended in person along with his new counsel, Saron Gebresellassi. Ms. Gebresellassi advised the Court that the Plaintiff still intended to pursue the conversion of this proceeding from a proposed class action to an individual claim. She followed this up the next day, May 11, 2021, by sending counsel for the Crown a Notice of Change of Lawyer appointing her as lawyer of record for the Plaintiff.

[8] The Plaintiff and his counsel then went silent for two years. On April 17, 2023, the Crown requested a case conference to discuss next steps in the litigation. In response to this request, the Court scheduled a case conference for April 26, 2023. However, on April 20, 2023, Ms. Gebresellassi emailed to the Court and the Crown a Notice of Intention to Act in Person on behalf of the Plaintiff. The Notice appeared to have been signed by the Plaintiff two years previously, on May 28, 2021.

[9] The case conference proceeded as scheduled on April 26, 2023. Crown counsel attended, as did the Plaintiff. Ms. Gebresellassi did not appear. At that conference, the Plaintiff again said that he intended to discontinue the proposed class action. However, because Ms. Gebresellassi was not at the conference and the Court was anxious for the discontinuance to be done in an orderly fashion with some form of notice to the putative class, the matter was adjourned to a case conference date when Ms. Gebresellassi would be available.

[10] Counsel for the Crown has advised that they subsequently made numerous attempts to contact Ms. Gebresellassi's office to obtain her availability to attend a case conference, but never received any response. The Court then set a further case conference for July 31, 2024, putting both the Plaintiff and Ms. Gebresellassi on notice of that date. Crown counsel appeared at that case conference, but neither the Plaintiff nor Ms. Gebresellassi appeared.

[11] At the July 31, 2024 case conference, this motion for dismissal was scheduled for December 4, 2024. Crown counsel advises that numerous attempts were made to notify the Plaintiff and Ms. Gebresellassi of the hearing date. Ms. Gebresellassi has been unresponsive, but the Plaintiff has has appeared in person at the motion.

[12] Section 29.1(1) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 ("*CPA")*, provides that the Court shall, on motion, dismiss for delay a proceeding commenced under s. 2 of the *CPA* unless the parties have agreed in writing to a timetable for service of the Plaintiff's motion record for certification. Here, a timetable was initially filed with the Court four years ago, but the Plaintiff

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has effectively resiled from the timetable and stated multiple times that he does not wish to proceed with the matter; or, at least, not as a class proceeding. He has made it clear to the Court that he will not be moving forward with the proposed class action.

[13] Further, the Plaintiff appears to be without counsel and, in addition, no other potential representative plaintiff has come forward. At the hearing today, the Plaintiff confirmed that he is not interested in pursuing the action any further.

[14] While I hesitate to dismiss a proposed class action without counsel on the Plaintiff's side providing some form of notice to the putative class members, I am left with little choice here. That said, I am of the view that the dismissal of this proceeding for delay will not prejudice the putative class members. The matter has never reached the certification stage, and therefore only the Plaintiff's personal claim is being dismissed.

[15] Pursuant to section 28 of the *CPA*, the limitation period for the causes of action pleaded by the Plaintiff has been suspended in favour of the putative class members since the initial issuance of the Statement of Claim. Accordingly, with the dismissal of this action the class members will be left in the same position as if this proceeding had not been commenced.

[16] Crown counsel has indicated that they are not seeking costs.

[17] There will be an Order to go. I would ask counsel for the Crown to send a draft Order to my assistant in Word format.

Disposition

[18] The action is dismissed, without costs.

Date: December 4, 2024 **Morgan J.**

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