



Okeke v Chen, 2024 ABCA 28 (CanLII)

Date: 2024-01-25
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In the Court of Appeal of Alberta

Citation: Okeke v Chen, 2024 ABCA 28

Date: 20240125
Docket: 2301-0243AC
Registry: Calgary

Between:

Barnabas Chukwuemeka Okeke

Appellant

- and -

Andrew D. Chen

Respondent

The Court:

**The Honourable Justice Dawn Pentelechuk
The Honourable Justice Bernette Ho
The Honourable Justice Alice Woolley**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice G.H. Poelman

Memorandum of Judgment

The Court:

[1] Barnabas Okeke appeals the order denying his application to strike a statement of defence and enter judgment against the respondent, Andrew Chen. Mr Chen chose not to file any materials or participate in the appeal.

[2] On January 17, 2024, the Court filed a letter from Mr Okeke dated January 16, 2024 requesting that the oral hearing scheduled for January 18 be held virtually because Mr Okeke had relocated and it would be unduly onerous for him to attend in-person. Virtual hearings are conducted in extenuating circumstances. The Court declined to hear the matter through a virtual hearing, but Mr Okeke had indicated on his filed Notice of Appeal that the matter could be dealt with in writing. As a result, Mr Okeke's appeal was considered in writing and without oral argument in accordance with [Rule 14.32\(2\)](#) of the *Alberta Rules of Court, Alta Reg 124/2010*.

[3] On May 15, 2023, Mr Okeke filed an originating application which named Mr Chen, his landlord, as the respondent. Mr Okeke sought "at least" \$2.5 million in damages on the basis that Mr Chen had breached the residential tenancy agreement and disturbed Mr Okeke's peaceful enjoyment of the premises. After being ordered to proceed with his action by way of a statement of claim, Mr Okeke filed a statement of claim seeking a minimum of \$5 million in damages. The claim alleged, among other things, that Mr Chen had breached the residential tenancy agreement, sent people to the premises to attack him, and refused to evict a tenant who had assaulted him.

[4] Mr Chen filed a statement of defence on July 10, 2023.

[5] On August 25, 2023, Mr Okeke applied to strike the statement of defence and for judgment against Mr Chen. He argued the statement of defence disclosed no reasonable defence to the claim and was frivolous, irrelevant, improper, and constituted an abuse of process. The chambers judge dismissed the application and ordered that all applications and proceedings in the action be stayed until Mr Okeke provided security for costs, which had been previously ordered. In dismissing the application, the chambers judge referred to the fact that the earlier security for costs order suggested there was some merit to the statement of defence. He also noted that the statement of defence and Mr Okeke's arguments related to factual and legal matters which were not suitable for an application to summarily strike the statement of defence and enter judgment.

[6] We understand Mr Okeke's main arguments to be that the chambers judge erred by relying on the security for costs decision to determine there was merit to the defence and that it was improper to stay all applications and proceedings in the action until Mr Okeke provided security for costs as he had no notice of this potential remedy. Mr Okeke also

appears to challenge the security for costs order and a costs award dated June 21, 2023; however, these orders are not properly before this court.

[7] A decision not to strike a claim or defence is discretionary and is entitled to deference, absent an extricable question of law: see, *HOOPP Realty Inc v The Guarantee Company of North America*, 2015 ABCA 336 at para 10. The question to ask on an application to strike is whether it is plain and obvious that there is no defence: *Patry v Sellin*, 2010 ABCA 407 at para 10.

[8] Mr Okeke has failed to identify any error in the chambers judge's decision that would warrant appellate intervention. While the chambers judge mentioned that the security for costs decision suggested there was some merit to the defence, he stated that he had himself reviewed the statement of defence and Mr Okeke's written submissions. The four-page statement of defence denied each and every allegation in the claim and provided specific denials in response to Mr Okeke's allegations. On review of the pleadings and the record of proceedings, we see no basis to interfere with the chambers judge's conclusion that the statement of defence should not be struck.

[9] Mr Okeke's submission that it was improper for the chambers judge to stay all applications and proceedings in the action until he provided security for costs is also rejected. The chambers judge gave Mr Okeke an opportunity to respond to this request made by Mr Chen's counsel and given the procedural history it was not unreasonable for the chambers judge to make such an order.

[10] The appeal is dismissed.

Written submissions only filed October 24, 2023

Memorandum filed at Calgary, Alberta
this 25th day of January, 2024

Authorized to sign for: Pentelechuk J.A.

Ho J.A.

Woolley J.A.

Written submissions only:

Appellant, B.C. Okeke

J. Alas (no submissions)
for the Respondent