

FILED	FEDERAL COURT COUR FÉDÉRALE	DÉPOSÉ
	JUN 13 2022	
	ERIN LIVINGSTONE	
	VANCOUVER, BC 1	

Court File No. T-1225-22

FEDERAL COURT
(Simplified Action)

BETWEEN:

Yucheng SU

Plaintiff

and

Minister of Public Safety and Emergency Preparedness

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or


WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: JUN 13 2022

Issued by: 
(Registry Officer) **ERIN LIVINGSTONE**
REGISTRY OFFICER
AGENT DU GREFFE

Address of
local office: Pacific Center
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO: The Minister of Public Safety and Emergency Preparedness
269 Laurier Avenue West
Ottawa, ON
K1A 0P8

A. François Daigle
Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

Claim

1. The Plaintiff, Yucheng Su, claims:
 - a) A declaration that the seizure action taken by the Defendant was made in breach of procedural fairness and that the seizure action was made in error;
 - b) An order that the Defendant return the improperly seized wine to the Plaintiff upon payment of the applicable duties and taxes, or alternatively, if the wine has been destroyed, that the Defendant pay to the Plaintiff a monetary amount in satisfaction of the market value of the wine (to be determined by the Court) that was improperly seized minus the applicable duties and taxes;
 - c) Costs;
 - d) Such further and other relief as this Honourable Court may deem just.

The Parties

2. The Plaintiff is a 25-year old Permanent Resident of Canada.
3. The Defendant is responsible for and has overall direction of several agencies including, the Canada Border Services Agency (“CBSA”).

Facts Relied Upon

Background

4. The Plaintiff was returning to Canada from a two-day trip in Renton, Washington in the United States on November 12, 2021.
5. The Plaintiff was processed at the Primary Inspection booth (“Primary”) at the Douglas Port of Entry in Surrey, British Columbia by an officer in training, Jace Findlay (“BSO Findlay”).

6. Following an examination in Secondary by Kimberly Scott (“BSO Scott”), the Plaintiff was issued a seizure receipt for 2 bottles of wine totalling \$10,000 CAD with no terms of release.
7. The Plaintiff on his own behalf submitted an online appeal of the seizure on November 12, 2021.
8. The Plaintiff later retained counsel to provide further submissions on appeal to the Recourse Directorate. Further submissions were provided by counsel to the Recourse Directorate on January 11, 2022 and February 22, 2022.
9. The Minister responded to counsel’s January 11, 2022 submissions on February 7, 2022, and a Ministerial decision on March 15, 2022.

Primary examination and Plaintiff’s declaration Card (BSF235)

10. BSO Findlay was negligent in his examination at Primary.
11. The Plaintiff provided the BSO Findlay with two receipts for wine purchased in the United States. The receipts totalled 1487.50 USD.
12. The declaration card did not properly indicate anything being declared.
13. BSO Findlay gave contradictory and confusing guidance on the declaration card (information which is later relied on by the Secondary officer).

No Point of Finality reached

14. Evidence from the BSF235 indicates that BSO Findlay neglected to reach a point of finality at Primary.
15. CBSA operational guidelines and policies requires that officers must reach a point of

Not having done so, enforcement action should not be taken in most circumstances.

Secondary Examination

16. The Plaintiff was directed by BSO Findlay to go to Secondary and was examined by Secondary officer, Kimberly Scott (“BSO Scott”).
17. BSO Scott saw that the BSF235 did not indicate any monetary amount declared but failed to seek clarification from the Primary officer to ensure whether a point of finality was reached at Primary prior to conducting her examination of the Plaintiff in Secondary.
18. BSO Scott conducted a secondary examination of the Plaintiff without first explaining to the Plaintiff the reason for referral (as is required by CBSA operational guidelines and policies) and without going over each question on the BSF235 again with the Plaintiff to reach a point of finality since it was unclear whether a point of finality was reached at Primary.
19. BSO Scott herself added “\$1459.50 USD” in the line for “Goods declared” to the Plaintiff’s BSF235. BSO Scott claims in her report dated November 13, 2021 that the Plaintiff had told her this amount. However, the Plaintiff never provided the BSO with such an amount. This amount is equal to the total value of goods on the receipts minus the amount for shipping and insurance—\$28.00 USD.
20. Seizure action in this case was taken without compliance with CBSA operational guidelines and policies.

No indicators noted

21. Neither the Primary nor Secondary officer noted any indicators of suspiciousness or dishonesty coming from the Plaintiff during their examinations to support the seizure action taken in this case.
22. There is no indication of concealment by the Plaintiff of the wine that was seized. They were easily visible and discoverable in the trunk of the vehicle.

Plaintiff's wine seized in error

23. A point of finality was not reached at Primary or in Secondary prior to seizure action being taken in this case. Therefore, the seizure was made in error.
24. Section 117(2) of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) allows for the return of seized goods that were seized in error.

Damages

25. The Plaintiff is not seeking damages, but only seeking a return of the goods seized following payment of duties and taxes, the amount of which does not exceed \$50,000.00.

The plaintiff proposes that this action be tried at Vancouver, British Columbia.

DATED at Vancouver, British Columbia, Canada, this 13th day of June 2022.



Agnes Tong, Counsel for the Plaintiff

Acumen Law Corporation
140 - 5800 Cedarbridge Way
Richmond, BC
V6X 2A7

Tel: 604-370-3050
Fax: 604-370-2505

I HEREBY CERTIFY that the above document is a true copy of the original issued out of/filed in the Court on the _____ day of JUN 13 2022 A.D. 20____
Dated this _____ day of JUN 13 2022 20____



ERIN LIVINGSTONE
REGISTRY OFFICER
AGENT DU GREFFE