COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Knight v. Sunshine Coast Campground Group Ltd.,* 2024 BCCA 121

Date: 20240404
Docket: CA48568

Between:

James Stephen Knight

Appellant
(Plaintiff)

And

Sunshine Coast Campground Group Ltd., Creekside Campground, and Jane Doe

Respondents
(Defendants)

Before: The Honourable Madam Justice Saunders
The Honourable Justice Griffin
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated September 12, 2022 (*Knight v. British Columbia*, 2022 BCSC 1644, Vancouver Docket S187255).

The Appellant, appearing in person (via videoconference):	J.S. Knight
Counsel for the Respondents:	T. MacLachlan
Counsel for the Ministry of Public Safety and Solicitor General of the Province of British Columbia:	A.W.T. Scarth J. Anderson, Articled Student
Place and Date of Hearing:	Vancouver, British Columbia December 11, 2023
Place and Date of Judgment:	Vancouver, British Columbia April 4, 2024

Written Reasons by:
The Honourable Madam Justice Saunders

Concurred in by:
The Honourable Justice Griffin
The Honourable Madam Justice Horsman

Summary:

The appellant appeals the summary trial order dismissing his claims against the respondents, with costs, pursuant to Supreme Court Civil Rule 9-7. The appellant resided in a school bus on a rented campsite in Sechelt for several years. In 2016, the respondents asked him to leave the premises based on alleged violations of campground rules. The appellant refused and took the position he was a tenant. The Residential Tenancy Branch ultimately declined jurisdiction on the basis that the appellant had a revocable licence to occupy, not a tenancy. Eventually, the campground had his bus removed from the site and held in storage. Some of the appellant's personal belongings remained on the campsite. The appellant did not collect all of his belongings, and they were eventually disposed of. Additionally, in October 2016, a member of the respondent's staff referred to the appellant by a term he says was defamatory. The appellant claimed damages for unlawful eviction, destruction of personal property, and defamation. Held: Appeal dismissed. The claim in respect of the appellant's occupancy of the site necessarily failed because his arrangement at the site was not a tenancy, but rather a licence to occupy. The property owner revoked the licence and gave the appellant a reasonable amount of time to collect his belongings: thus the appellant had no continuing right to remain on the property, or store his belongings there. On the claim in defamation by slander, there was no evidence the offensive statement was heard and understood by any person so as to establish publication.

Reasons for Judgment of the Honourable Madam Justice Saunders:

[1] This is an appeal from the order of Madam Justice Sharma made September 12, 2022, on a summary trial pursuant to R. 9-7 of the *Supreme Court Civil Rules*. By the order appealed, Justice Sharma dismissed the appellant's action, with costs to the respondents.

[2] The action had two main claims. One was for damages for the removal of the appellant Mr. Knight, and his personal property, from Creekside Campground by the campground's owner the respondent Sunshine Coast Campground Group Ltd. The second was a claim in defamation against the respondent Jane Doe, an employee of the Company. I shall continue to refer to her as Jane Doe, as the parties have done throughout these proceedings.

[3] Mr. Knight advances 42 grounds of appeal. Organizing them by subject matter, the appellant says first, broadly, that the judge erred in finding that he had resided at the campground on a license to occupy and not, as he contended, a

tenancy. He says that because the Residential Tenancy Branch found it did not have jurisdiction in respect of his residency at the campground, and did not have authority over a notice to vacate he had received from the Company, he was entitled to bring an action for damages for breach of a tenancy at common law. In the alternative, if he resided at the campground under a licence to occupy, as found by the Residential Tenancy Branch, then the appellant contended that the licence to occupy was, in fact, a form of tenancy that he could enforce in the courts. The appellant also contended that the Residential Tenancy Branch had previously accepted that he was a tenant when it first considered his residency, a finding that he says is determinative of his status for all subsequent proceedings.

[4] Second, Mr. Knight says that the judge erred in dismissing his claim in defamation on the basis of justification and unproven publication of the offensive statement.

[5] The factual background of the parties' dispute is set out in the reasons for judgment indexed as 2022 BCSC 1644. I will set out only the basic outline of the circumstances, sorting as best I can the essential details of the two broad issues: the nature of Mr. Knight's occupancy of the campground; and the statement said to be defamatory.

[6] I will discuss the appeal in two parts. The first part addresses Mr. Knight's occupancy status and the second his claim in defamation.

Occupancy Status

1. Background

[7] The appellant is a long-time resident of the campground. He lived in a former school bus parked on campground property. The events leading to the order appealed have caused him to lose his residence.

[8] The Company's position is that while Mr. Knight resided at the campground, he violated a number of campground rules, such as failing to keep his campsite tidy and building outdoor structures without approval. The company also alleged that

Mr. Knight exhibited aggressive behaviour towards other campground guests and employees.

[9] The respondent, Jane Doe, was employed as campground staff at relevant times.

[10] Mr. Knight contends that the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77, governs his occupancy at the campground. His residency at the campground has been the subject of several proceedings before the Residential Tenancy Branch, the administrative body with jurisdiction in respect of tenancy agreements under the *Act*. Three of those proceedings resulted in decisions significant to this appeal. They are: proceedings before Arbitrator Okada that produced a decision dated March 10, 2016; proceedings before Arbitrator Lee that produced a decision dated October 19, 2016; and proceedings before Arbitrator Howell that produced a decision dated November 17, 2016.

[11] Division 1 of the *Act* provides:

> What this Act applies to
>
> 2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, manufactured home sites and manufactured home parks.
>
> (2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.
>
> ...
>
> What this Act does not apply to
>
> 4 This Act does not apply with respect to any of the following:
>
> (a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;
>
> (b) prescribed tenancy agreements, manufactured home sites or manufactured home parks.
>
> This Act cannot be avoided
>
> 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
>
> (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

[12] The parameters of manufactured home, tenancy and tenancy agreement are defined in s. 1 of the *Act*:

> "manufactured home" means a structure, other than a float home, whether or not ordinarily equipped with wheels, that is
>
> (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
>
> (b) used or intended to be used as living accommodation;
>
> …
>
> "tenancy" means a tenant's right to possession of a manufactured home site under a tenancy agreement;
>
> "tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

[13] Section 23 of the *Act* provides that the "landlord" must not, for any purpose, enter a manufactured home site that is subject to a tenancy agreement, except for certain listed circumstances.

[14] The decision of March 10, 2016 addressed Mr. Knight's application for relief, including for an order requiring the Company to "comply with s. 23 of the *Act*". Mr. Knight attended the hearing of the application but the Company did not. On the basis of the materials available at the hearing, Arbitrator Okada, sitting as the Residential Tenancy Branch, ordered the Company to comply with s. 23 of the *Act* (the "Okada Order"), directing that it "not enter the rental site [of Mr. Knight] without permission or notice". In this decision Arbitrator Okada referred to the Company as the "landlord" and to Mr. Knight as the "tenant", saying "I accept the tenant's undisputed evidence that the landlord entered the tenant's site without permission or notice".

[15] On July 15, 2016, the Company asked Mr. Knight to vacate the campground, on the basis he had become increasingly aggressive toward staff and other campground residents, and had violated a number of rules. Mr. Knight refused to leave on the basis he was a tenant and the Company's attempt to evict him was unlawful under the *Act*.

[16] There then followed some unpleasantness, and police attended at the campground. The judge noted that the police expressed uncertainty as to Mr. Knight's status as a tenant and that, after further dealings, the Company delivered a notice to Mr. Knight on September 16, 2016, to end tenancy. Mr. Knight applied to the Residential Tenancy Branch to cancel that notice, and on October 18, 2016, the parties attended a hearing before Arbitrator Lee. At the hearing, the Company contended that Mr. Knight was not a tenant, but rather resided at the campground under a licence to occupy. Mr. Knight relied on the Okada Order as evidence that the Residential Tenancy Branch had earlier (March 2016) accepted jurisdiction over his arrangement at the campground. On October 19, 2016, Arbitrator Lee released his decision declining jurisdiction to hear the matter on the basis that Mr. Knight was not a tenant but rather resided at the campground under a licence to occupy (the "Lee Order"). In the decision. Arbitrator Lee said (referring on occasion to the sole applicant Mr. Knight in the plural "applicants"):

> The Applicants provided a document titled "campground rules guide" when [they] submitted their Application for Dispute resolution. The "campground rules guide" includes the following information:
>
> - Guests renting sites on a month to month basis have a licence to occupy that site for the time period paid. Rental charges are for the use of the assigned site and CSC facilities only. There is no lease and no tenancy agreement.
> - CSC does not require a damage deposit.
> - Non-compliance with CSC rules, the determination of which shall be at the sole discretion of CSC may result in the termination of the guests licence to occupy a site.
>
> …
>
> The applicant K.J. stated that there is no written tenancy agreement between the parties and that he did not pay a security deposit. He stated that he has not submitted any evidence to support his position that this is a tenancy: however; it is the evidence of the "campground rules guide" that the Applicant provided that raised the issue. I find that the "campground rules guide" states it is a licence to occupy situation and that there is no lease and no tenancy agreement.
>
> …
>
> I find that the testimony of the Respondent and the evidence of the "campground rules guide" support that this is a licence to occupy living arrangement. I find that the passage of time alone, eight years in this case, does not change the nature of the arrangement from licence to tenancy.

> The Applicant's provided insufficient evidence to establish that the living arrangement is a tenancy.
>
> Based on the above facts, I find I do not have jurisdiction to hear this application.

[17] Based on the submission that he was taken by surprise on October 18, 2016, by the Company's position that the Residential Tenancy Branch had no jurisdiction, Mr. Knight was permitted to apply for reconsideration of the Lee Order. The rehearing before Arbitrator Howell took place on November 17, 2016. In the decision released December 23, 2016, Arbitrator Howell reviewed new evidence submitted by both parties and held that the Company was correct in its position that the Residential Tenancy Branch lacked jurisdiction because Mr. Knight's arrangement with the Company was not a tenancy. Arbitrator Howell held:

> I have reviewed all the documents and evidence submitted by the parties. There is no tenancy agreement between the parties pursuant to the *Manufactured Home Park Tenancy Act*. The tenant pays rent monthly; his rent includes electricity and cable service. In the receipts recording his payments the tenant is described as a camper and a guest of the Creekside Campground. The receipt contains provisions for the guest's signature acknowledging that the guest has read and agrees: "to comply with all of the campground rules and regulations as posted in the office and/or on the grounds."
>
> The tenant does not occupy a manufactured home on the site and he is not living in a self-contained unit; he has effectively created a camp of sorts surrounding the school bus brought onto the property, with an outdoor kitchen, toilet and bathtub surrounded by tarpaulins. The tenant is free to move without notice. His rent includes GST and the respondent pays for the utilities including electricity and cable. The rental property is known, described and operated as a campground and RV park. I accept the landlord's evidence that is not zoned and not licenced to be operated as a manufactured home park. Based on the evidence and analysis presented, I find that the applicant has a licence to occupy the rental site and does not have a tenancy agreement under the *Manufactured Home Park Tenancy Act*. As a result I find that I do not have jurisdiction to hear the tenant's application.
>
> Conclusion
>
> The original decision dated October 18, 2016 is confirmed and the tenants' application is dismissed for want of prosecution.

[18] After reviewing this decision, the Company gave Mr. Knight notice to clean up the site by January 10, 2017. Mr. Knight did not comply. On January 25, 2017, the

RCMP attended the campsite and, following an altercation, Mr. Knight was arrested. The Company had his bus towed to storage.

[19] The Company next advised Mr. Knight he must remove his remaining belongings by April 30, 2017. When he did not do so, the Company cleared the site.

2. Summary Trial Reasons for Judgment

[20] Mr. Knight's notice of civil claim was complex, and the judge explained that by the time it reached her only three claims remained. In respect to his occupancy status affecting his residence and his personal possessions, the remaining issues were whether Mr. Knight's "forced removal from the campground was done without lawful authority", and whether "the removal and/or destruction of his personal property was unlawful". The third remaining claim was the issue of defamation which I address following these reasons relating to the status of occupancy issue.

[21] The judge dismissed Mr. Knight's claims for damages on the occupancy issues. In respect of Mr. Knight's submissions that he occupied the site as a tenant and not as a licensee, the judge said:

> [64] The [Residential Tenancy Branch] has exclusive jurisdiction in B.C. regarding all disputes between landlords and tenants that arise out of a tenancy agreement, the *Residential Tenancy Act*, S.B.C. 2002, c. 78, or the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77, and their Regulations.
>
> [65] Mr. Knight submits that he had a tenancy agreement, but accepts that the [Residential Tenancy Branch] declined jurisdiction. He argues because of that, he was entitled to the "common law" procedures and remedies regarding evicting tenants. However, that is contrary to the plain wording of the Act. Either there is a tenancy agreement or there is not. If there is a tenancy agreement, and none of the exceptions in s. 4 of the Act apply (which they do not here), then the [Residential Tenancy Branch] has exclusive jurisdiction to determine all issues relating to it.
>
> [66] The [Residential Tenancy Branch] has ruled there was no tenancy agreement, and that decision was not overturned. Mr. Knight did file a petition for judicial review on October 31. In that petition, he sought only an interim stay of the [Residential Tenancy Branch's] October 18 decision. He also sought an order preventing the Campground Defendants from removing his bus or belongings pending the outcome of the judicial review. His application was heard and dismissed by the Chief Justice on October 31.

> [67] As noted earlier, Mr. Knight was successful in getting the [Residential Tenancy Branch] to review the October 18 decision, but it ultimately confirmed that decision. No judicial review has been filed challenging the December 2016 decision. Despite that, Mr. Knight argues that the [Residential Tenancy Branch's] decision was limited only to what was written under the heading "Conclusion", which was declining jurisdiction. Specifically, he asserts that the comments in other parts of the decision are not part of the conclusion. Therefore, he claims there is no legal conclusion that he merely enjoyed a licence to occupy, and that he had what he called a common law tenancy.
>
> [68] I disagree. The decision must be read as a whole. It is clear that the [Residential Tenancy Branch] declined jurisdiction because it found there was no tenancy agreement and, instead, Mr. Knight lived in the campground under a licence to occupy.
>
> [69] Mr. Knight further argues that the absence of the phrase "licence to occupy" from the legislation makes it an undefined term and incapable of forming the basis for the [Residential Tenancy Branch's] decision. That is not correct. "Licence to occupy" is a simple phrase that means his arrangement to live on the campsite was not governed by a tenancy agreement, and was not in any way akin to any kind of interest in land. A licence is merely permission given by the owner of the land for someone to occupy it.

[22] Citing *Beaumont v. More Than The Roof Housing Society*, 2020 BCSC 453, in turn citing *Janus v. The Central Park Citizen Society*, 2019 BCCA 173, the judge found that because the Residential Tenancy Branch had already determined that Mr. Knight was not a tenant, but rather was residing at the campground under a licence to occupy, Mr. Knight was precluded from asserting in court that he occupied the site by way of tenancy. The judge invoked the doctrine of *res judicata* to Mr. Knight's status at the campsite because the Residential Tenancy Branch was empowered with exclusive jurisdiction on issues of tenancy, and its decision had not been overturned on judicial review.

[23] Next, the judge addressed the claim that the removal and/or destruction of Mr. Knight's personal belongings was unlawful. Having already accepted that Mr. Knight resided at the campground under a licence to occupy, the judge found that Mr. Knight had no right to store his belongings there. The judge further concluded that the Campground had treated Mr. Knight fairly in the circumstances:

> [116] I will add that, based on the evidence, I am satisfied that the Campground Defendants afforded Mr. Knight fair process and treatment. As noted, even though there was no tenancy, I find that the Campground

> Defendants' actions via Ms. Doe did, in fact, provide Mr. Knight with some of the procedural protections he would have had under the *Act*. Therefore, I reject his claim that he was not provided with what he called "due process" before being removed and having his belongings removed from the campground. In my view, the Campground Defendants treated him fairly and in a reasonable manner.

3. Issues On Appeal in Respect of Occupancy

[24] Before turning to the main points advanced by Mr. Knight, I turn to two of his submissions on procedure. One concerns the judge's statement in para. 66 replicated above, in respect of an application by Mr. Knight for review, that "His application was heard and dismissed by the Chief Justice on October 31". In his factum, Mr. Knight contends that the judge was incorrect in this statement and that his application (for review) was "still very much alive" when he was evicted from the site in January 2017. He refers to this exchange with the Chief Justice on October 31, 2016:

> "JAMES KNIGHT: Oh. So in other words, that – okay, the application for review will happen but basically I get no protection in between?
>
> THE COURT: That's – that's the situation. That's correct."

[25] I take the references to "review" to refer to judicial review of the Lee Order that the Residential Tenancy Branch lacked jurisdiction over the dispute concerning Mr. Knight's continued residency at the campground. Whether there was an outstanding application for judicial review of the Lee Order matters, for it would go to the root of the occupancy issue and the question whether it had been finally determined that Mr. Knight was not a tenant.

[26] Mr. Knight did file a petition in court on October 31, 2016, asserting a reviewable error on the part of Arbitrator Lee, and referred to the *Judicial Review Procedure Act*. However, the only relief sought in the petition was an "interim stay of Arbitrator Lee's decision" and an "Order to prevent Landlord from removing my home and my belongings from my site pending the outcome of the judicial review". Mr. Knight's petition did not seek an order that the decision of Arbitrator Lee be quashed.

[27] At the hearing of the application on October 31, 2016, the Chief Justice dismissed the application for the two-part relief just recited.

[28] It is true that the Chief Justice did not expressly dismiss the petition. However, he did dismiss all the claims for relief sought within the petition, with the practical effect of leaving Mr. Knight without a petition for further relief in respect of Arbitrator Lee's order.

[29] I conclude therefore, that while the petition as such was not dismissed, it advanced no further live claims. Moreover, a year passed with no further steps taken as required under R. 16-20, so in any event the petition had lapsed by the time of the hearing before the judge in September 2022.

[30] The result is that the substance of the Lee Order, the subject of the November 2016 hearing leading to the Howell Order, has not been the subject of judicial review. Unless a decision of the Residential Tenancy Branch has been quashed by judicial review, or has been overtaken by a further review of the Residential Tenancy Branch, it is final. The Residential Tenancy Branch is assigned exclusive jurisdiction to determine whether an occupancy is a tenancy over which it has jurisdiction, and it has jurisdiction in respect to residential tenancies and tenancies under the *Act*. There being no order quashing Arbitrator Howell's order, or order of the Residential Tenancy Branch reversing it, the Howell order must be taken as final on the issue of jurisdiction. Because that decision did not characterize Mr. Knight's occupancy as a tenancy, it is final on that issue.

[31] As a second procedural point, Mr. Knight says it was not open to either Arbitrator Lee or Arbitrator Howell to find there was no tenancy, for the reason that Arbitrator Okada made an order exercising jurisdiction by ordering the Company as the landlord to comply with s. 23 of the *Act*. He says that issue, therefore is *res judicata*. He also says the judge never addressed his argument that he had been found to be a tenant by Arbitrator Okada.

[32] In light of my conclusion that the Lee Order is final and binding, and there is no extant judicial review, it is not necessary for me to resolve this issue. I will say, however, that in my view, the mere resolution of Mr. Knight's application heard by Arbitrator Okada, in a hearing in which his application was unopposed, and was decided based on Mr. Knight's uncontroverted evidence, would not normally be seen as a decision on the point of jurisdiction because jurisdiction was not questioned at that hearing.

[33] Further, while it is true, as Mr. Knight notes, that the arbitrators all referred to him as "the tenant" in describing him in their decisions, I do not understand those references as a decision on his status, but rather, in the context of the work of the Residential Tenancy Board, a term of reference for administrative convenience. While it would have been more accurate to refer to him as the "applicant", use of the term "tenant" alone to locate him in the framework of the issue presented cannot be viewed as a binding conclusion on the character of his residency at the campground.

[34] I turn now to the nature of Mr. Knight's residency at the campground. The Residential Tenancy Branch had exclusive jurisdiction to decide at first instance whether Mr. Knight was a tenant: *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183; *Manufactured Homes Park Tenancy Act* ss. 51, 77.1. There being no decision overturning their conclusion, two questions arise: did the judge err in assessing his residence at the campground as coming under a licence to occupy; and was the owner bound to proceed by an action for ejectment? In my view the judge did not err in this fashion and an action for ejectment was not required.

[35] The applicable principles are explained in *Ball v. Bedwell Bay Construction Ltd.*, 2023 BCSC 1470:

> [63] The common law tort of ejectment (also known as an action for recovery of land) is an action to restore possession of land to a party lawfully entitled to it. Ejectment is distinct from trespass to land since in trespass, the plaintiff always maintains possession of the land at issue, whereas in an action for ejectment the plaintiff has lost possession of land that is lawfully theirs. See *Berscheid v. Ensign*, [1999] B.C.J. No. 1172, 1999 CanLII 6494 at paras. 66–67 (S.C.).

> [64] In *Terbasket v. Harmony Co-ordination Services Ltd.*, 2003 BCSC 17, leave to appeal ref'd 2003 BCCA 238, Justice Quijano explained that a claim for ejectment requires the plaintiff to demonstrate (at para. 16):
>
> 1. That the plaintiff has title to the property;
> 2. That the defendant currently possesses the property; and
> 3. That the plaintiff intends to regain possession of the property.
>
> ...
>
> [68] A tenancy relationship grants specific rights to a tenant, including an exclusive right to possession. Such a right could ground a defence to an ejectment claim. Indeed, an essential element of a tenancy relationship at common law is the transmission from landlord to tenant of some interests in land. By contrast, a licence to occupy conveys no interest in land. It merely represents permission provided by an owner to a person to occupy premises for some particular purpose. See e.g., *Jay v. The Owners Strata Plan NW 3353*, 2019 BCCA 102 at para. 42; *Semmler v. The Owners, Strata Plan NES3039*, 2018 BCSC 2064 at para. 38; *Knight v. British Columbia*, 2022 BCSC 1644 at para. 69; *Baraniski v. Youzwa*, 2017 SKQB 104 at para. 34.
>
> [69] Unless coupled with an interest in land, a licence to occupy is always revocable, because its holder has no interest or estate in the land entitling them to remain in possession or occupation of it: *Dhami v. Redekop*, 2020 BCSC 630 at para. 97. If a bare or gratuitous licence, the licensor need only provide the licensee time to vacate the premises and remove their personal property, upon revocation. Where such a licence is contractual, terms limiting the licensor's right to revoke (e.g., notice requirements) are a matter of construction. This includes a court's power, in some circumstances, to imply a term of reasonable notice. See *Simo Corporation v. Keldo Holdings Ltd.*, 2017 ABQB 245 at para. 103, citing Megarry & Wade, The Law of Real Property, 8th ed. (London: Sweet & Maxwell, 2012) at 1439–1440. See also *Saskatoon Sand & Gravel Ltd. v. Steve* (1973), 40 D.L.R. (3d) 248, 1973 CanLII 940 at para. 30 (S.K.Q.B.), aff'd 97 D.L.R. (3d) 685, 1979 CanLII 2402 (S.K.C.A.).
>
> [Emphasis added.]

[36] The arbitrators' (Lee and Howell) findings of fact preclude the existence of a tenancy. What is left is a licence to occupy, that is, permission by the owner to occupy the site. But that permission was revocable. In particular, a licence to occupy is not a form of common law tenancy as Mr. Knight would have it. The finding that Mr. Knight was on the campground under a licence to occupy is a complete answer to his submission that the Company could not revoke his right to be there until it obtained an order of ejectment.

[37] Mr. Knight relies on *McDonald v. Creekside Campgrounds and RV Park,* 2020 BCSC 2095, in which two other residents of the campground applied for judicial review of a Residential Tenancy Branch decision that declined jurisdiction over their complaint. Those residents had applied to have their status recognized as a tenancy under the *Manufactured Home Park Tenancy Act.* In *McDonald*, the court concluded that the decision of the Residential Tenancy Branch declining jurisdiction was patently unreasonable, and remitted the issue of jurisdiction to the Branch for fresh determination.

[38] Mr. Knight says that *McDonald* shows that the judge was wrong in treating him as a licensee under a licence to occupy. I do not agree.

[39] In *McDonald*, the court found that the decision of the Residential Tenancy Branch declining jurisdiction was patently unreasonable because it depended upon the use of the vehicle in question, not its design for accommodation. In contrast, the decisions in Mr. Knight's case depended on the bus's design – it was not a self-contained unit.

[40] Mr. Knight also points to four other Residential Tenancy Branch decisions rendered subsequent to his hearing before the judge that he says found other people at the campground to be tenants. These do not show that the judge erred in this case. Every case is decided on its own facts and findings of fact in one case do not apply in another.

[41] In conclusion, I see no error that would allow us to set aside the judge's order in respect to his occupancy status.

The Claim for Defamation

1. Background

[42] In his statement of claim, Mr. Knight alleged that Jane Doe called him a pedophile in October 2016, within earshot of another person. He agrees that he was convicted in April 1999 (more than 17 years previous) of an offence under s. 173(2) of the *Criminal Code*. In his submissions at the summary trial Mr. Knight referred to a

witness, unnamed, who had heard the allegedly defamatory statement. He advised the court that he thought the witness was dead. No statements from this witness were produced confirming the statement was heard. Jane Doe agreed she had made the statement.

[43] At the summary trial Mr. Knight maintained that in common parlance the phrase meant someone who has molested children. He contended that his offence in 1999 was not for such behaviour.

[44] The Company and Jane Doe together contended at the summary trial that Mr. Knight had not proven publication of the comment, and pleaded justification on the basis of the 1999 conviction.

2. Summary Trial Reasons for Judgment

[45] The judge dismissed the claim in defamation on the basis of justification, saying that the elements of the offence of 1999 established behaviour that fit within the words uttered. Accordingly, she held that the impugned statement was “substantially true” and the defence of justification was established.

[46] The judge declined to resolve the issue of publication. She said:

> [134] In my view, it is, therefore, not necessary to resolve what may have been an evidentiary dispute about whether the words spoken were heard by others.
>
> [135] Nevertheless, I find that there was a reasonable basis upon which the Campground Defendants took the position that there is no evidence before this Court on this application that anyone else did hear those words spoken. They rely on Mr. Knight's examination for discovery where he stated the only person who heard the comment was a woman whose name he refused to provide at that time.
>
> [136] I agree this is problematic for Mr. Knight. Asking for the name of that person was clearly a legitimate line of inquiry at the examination for discovery. His refusal to provide the name may have been a basis to infer that he knew there was no person who heard the words, but did not want to admit it at that time. Even though he put the name of that person in his response to the application, there is no sworn evidence about that.
>
> [137] Mr. Knight wanted to introduce a videotape that he claimed would show that the words were spoken loudly enough for others to hear. I did not allow an adjournment for that purpose. Mr. Knight was required to bring all

> evidence that he had to this hearing. His complaint that he was self-represented is tempered because this is the second summary trial he has faced. In her judgment, Justice Iyer set out that Mr. Knight had to be prepared to answer the case, and at that time Mr. Knight was represented by counsel.
>
> [138] Moreover, the words were spoken in 2016 and his claim was filed in 2018. He has been through an examination for discovery and other pretrial procedures. He has had ample time to gather and adduce evidence relevant to the claim.
>
> [139] For those reasons, I find the Campground Defendants' position that Mr. Knight has not proven the words were published and, therefore, defamation is not made out had considerable merit.
>
> [140] Nonetheless, my conclusion is that the defamation claim is dismissed based on my analysis that the evidence supports the defence of justification. Therefore, the defamation claim is dismissed.

3. Issues on Appeal In Respect of Defamation

[47] The test for defamation has three elements. To succeed, Mr. Knight had the burden of proving (1) that the impugned words were defamatory, in the sense that they would tend to lower his reputation in the eyes of a reasonable person; (2) that the words in fact referred to himself; and (3) that the words were published, meaning that they were communicated to at least one person other than himself: *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28. Further, because the defamation alleged is by spoken word, it comes within the tort of slander, as to which the plaintiff must plead and prove special damages.

[48] Although the judge did not dismiss the claim in defamation on the basis of lack of publication, it is clear in the record that publication was not proved on a balance of probabilities. While Mr. Knight said a third party had heard Jane Doe use the term in reference to him, he declined to say at the hearing who that third person was, and speculated that she was dead.

[49] There was, in my view, insufficient proof of publication. In Brown on Defamation Canada, United Kingdom, Australia, New Zealand, United States, 2nd ed. (Toronto: Thomson Reuters) Release No. 2023-5, December 2023) at §7:2, the author says:

> Publication is an essential element in an action for defamation and necessary for any recovery… In its absence there is no cause of action. It is not the

> unexpressed defamatory thought, no matter how uncharitable that may be, or even the setting of words to paper, or their oral utterance that counts… Nor is it sufficient merely to show that the defendant disseminated defamatory information; there must be evidence that a third person read or heard and understood it …
>
> [Emphasis added.]

[50] With this standard, the appellant's claim for defamation could not succeed.

[51] Although not raised by the parties or the judge, there is in my view an additional problem with Mr. Knight's pleadings that may pose a barrier. This is an action for slander, which, in British Columbia for the time-honoured reasons of public policy, requires the plaintiff to plead and prove special damages: *Grant,* at para. 28. In this case, Mr. Knight did not plead or prove special damages.

[52] In *Pootlass v. Pootlass,* 1999 CanLII 6665 (B.C.S.C.), Mr. Justice Burnyeat helpfully explained:

> [63] On the other hand, in an action for slander only, the plaintiff must show not only that the words are defamatory but also that they are actionable by alleging and proving special damages: *Gibson v. McDougal* (1919), 17 O.W.N. 157; *Merkoff v. Pawluk*, [1931] 1 W.W.R. 669 (Alta. S.C.); *Brockley v. Maxwell*, [1949] 1 W.W.R. 1039 (B.C.S.C.); *Mengarelli v. Forrest*, [1972] 3 O.R. 397; *Johnson v. Jolliffe* (1981), 26 B.C.L.R. 176 (B.C.S.C.); *Robertson v. Robertson* (1932), 45 B.C.R. 460 (B.C.S.C.). In *Wild v. Rarig*, supra, relied upon by the plaintiff, the court concludes that an action for slander only accrues only "... when special damage is suffered." (at p.794) In such cases, "the actual damage done is the very gist of the action" and "must be proved specially and with certainty": *Ratcliffe v. Evans* [1892] 2 Q.B. 531.
>
> [64] It is also clear that the special damages alleged must be specifically set out: Klein v. Kaip (1989), 37 C.P.C. (2d) 245 (Sask.Q.B.) affirmed (1989) 37 C.P.C. (2d) 245 (Sask.C.A.) leave to appeal to S.C.C. refused. This is the case no matter how certain it is that the words will injure the reputation of the plaintiff: *Jones v. Jones* [1916] 1 K.B. 351. Actual pecuniary damage or loss is not presumed, must be included in the Statement of Claim and set out specifically in order to be recovered: *Dom. Telegraph Co. v. Silver* (1882), 10 S.C.R. 238; Knox v. Spencer (1922), 50 N.B.R. 69 (N.B.C.A.). In *Knox v. Spencer*, White J. stated:
>
> > It is necessary that special damages should be alleged with as much particularity as is possible under the circumstances of the case, in order to give notice to the defendant of the nature and extent of the claim made against him, so that he may be prepared to meet it. But there is another and important reason for requiring special damages to be stated with particularity in all case where the special damages constitutes the gist of

> the action, that is to say, where, without special damages, no action would lie. That reason is, that it is essential that the pleadings should, upon their face, show a good cause of action. (at p.80)
>
> [Emphasis added.]

[53] In a claim for defamation, it is the plaintiff who bears the initial onus of proving the elements of the tort on a balance of probabilities. It is only once the plaintiff has met this burden that the onus shifts to the defendant to establish a positive defence: *Grant*, at para. 28. See also *Northwest Organics, Limited Partnership v. Fandrich*, 2019 BCCA 309 at para. 61.

[54] Here, it may be argued that Mr. Knight failed to meet his initial burden by failing to plead and prove special damages. This, too, would be a fatal factor to the action in defamation. It is sufficient, however, for me to rest my conclusion on the issue of defamation on the basis that Mr. Knight failed to prove publication on a balance of probabilities. As Mr. Knight failed to satisfy the elements of defamation, even absent consideration of special damages, the action was bound to be dismissed on this basis alone. Thus, there was no need for the judge to discuss the defence of justification – no need to label Mr. Knight on the basis of a single 17-year-old guilty plea in relation to circumstances unexplained to the court.

[55] Considering these features of the case and the absence of representation for Mr. Knight before us, it is sufficient for purposes of this appeal, in my view, to confirm the dismissal of the claim in defamation on the basis that Mr. Knight did not prove all of the elements of the tort.

Other

[56] Mr. Knight raises various challenges to the judge's reasons for judgment, for example whether Creekside Campground is a campground, and whether the Company is a legal entity. I have not addressed these submissions individually for, in my view, they do not provide a basis which could overcome the essential deficiencies in the case, addressed above, which call for dismissal of the action.

Conclusion

[57] I conclude that, for the reasons given, the dismissal of the claims for damages, both in respect to Mr. Knight's occupancy status and the claim in defamation, must be sustained.

[58] I would dismiss the appeal.

"The Honourable Madam Justice Saunders"

I agree:

"The Honourable Justice Griffin"

I agree:

"The Honourable Madam Justice Horsman"