

CITATION: Evangelisti v. Canadian Broadcasting Corporation, 2024 ONSC 2048
COURT FILE NO.: CV-24-00714565-0000
DATE: 20240408

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Gianni Evangelisti and Freedom Pools Inc, Applicants

-and-

Canadian Broadcasting Corporation (CBC), Viktorija Jocebicia, Rimas Jocebicia, Ayelet Kushnirsky, Michael Kurshnirsky, John Carusone, Paul Polyviout, Teresa Polyviout, Gary Jones and Brian Jewell, Respondents

BEFORE: Robert Centa J.

COUNSEL: Gianni Evangelisti, for the applicants

Ryder Gilliland and Michael Robinson, for the respondents

HEARD: April 8, 2024

ENDORSEMENT

- [1] Gianni Evangelisti is a contractor. Through his business, Freedom Pools Inc., he provides landscaping and pool services to residential and commercial customers. By his own admission, Mr. Evangelisti and Freedom pools have been sued in 11 separate actions by dissatisfied customers and suppliers including Reza Touri, Kubota Canada Ltd., Gordon Curtis, Job Depot Canada Inc., Robert Moro, Farzad Tooryani, Ayelet Kushnirsky, Beaver Valley Stone Ltd., Best Rental Services Inc., 77 Auto Parts, Viktorija Jocebicia and Rimas Jocebicia.
- [2] The Canadian Broadcasting Corporation learned of some of these disputes and began to work on a news story regarding the alleged breach of contracts. On February 7, 2024, the CBC contacted Mr. Evangelisti by email to request his response to the allegations that some clients were not happy with the work he and Freedom Pools performed. Mr. Evangelisti did not provide a substantive or timely response to the CBC’s request.
- [3] Instead, on February 12, 2024, Mr. Evangelisti commenced an application in the Superior Court of Justice seeking an interim, interlocutory, and permanent injunction to prevent the CBC from publishing “any news to the general public” regarding the applicants and damages “in relation to [the respondents’] oppression and malice conduct.” He also sought damages from some of his former customers who spoke to CBC reporters about this story.

- [4] This matter came before me in Civil Practice Court on March 27, 2024. Given the urgency of the matter to all parties, I scheduled the application to be returned before me today. For the reasons that follow, I dismiss the application.
- [5] The general test for injunctions from *RJR — MacDonald* has no application to injunctions in defamation proceedings.¹ Courts are very reluctant to issue an injunction to restrain a pending news publication because such an injunction profoundly interferes with the right to freedom of expression, which is protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*. The prior restraint of speech is anathema to the values that lie at the core of the right to free expression. An injunction preventing the publication of a news story could only be justified in the clearest of circumstances.
- [6] A court will only issue an injunction to restrain future speech where the court is satisfied that any reasonable trier of fact would find the words to be spoken so manifestly defamatory and impossible to justify that an action in defamation would almost certainly succeed. The applicants do not meet this test.
- [7] First, the applicants do not point to any particular words to be used by the CBC that are defamatory. The applicants' case, at its highest, is that CBC intends to report on customer complaints that the applicants believe to be frivolous and vexatious. There is no basis in the evidence to conclude that CBC's story will be defamatory at all, much less so manifestly defamatory as to justify an anticipatory injunction to prevent the CBC from running its story.
- [8] Second, courts will refuse to issue injunctions where the responding party states an intention to raise a defence of justification or fair comment, unless it is clear that such a defence will obviously fail.² Here, CBC intends to rely on the following defences:
- a. Justification: CBC submits that it will be able to prove the substantial truth of the sting of the impugned statements.³ CBC intends to report that the applicants' former customers have made complaints about the respondents and that the complaints have not yet been resolved to the customers' satisfaction. All CBC need demonstrate to succeed on this defence is that such complaints have been made.⁴ The applicants' own evidence, which includes the pleadings in the customers' lawsuits against them, suggests that CBC is very likely to succeed on this defence.
 - b. Absolute privilege: CBC submits that it is reporting on existing legal proceedings, has provided the applicants with the opportunity to respond to the allegations, and that it intends to publish a report that complies with and is protected by subsection

¹ *RJR — MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at paras. 48-49; Peter A. Downard, *The Law of Libel in Canada*, 5th ed. (Markham: LexisNexis Canada, 2022), at paras. 16.2.

² *Canadian Liberty Net*, at para. 49.

³ *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at para. 107.

⁴ *Bhaduria v. City-TV*, [1998] O.J. No. 5118 (C.A.).

4(1) of the *Libel and Slander Act*.⁵ Based on the evidence filed on this application, CBC seems very likely to succeed on this defence.

- c. Qualified privilege: CBC submits that it is entitled to rely on a defence of qualified privilege because it is reporting on allegations made in court proceedings and members of the public have a right to information before the courts. This defence is well-established and certainly seems to be available to the CBC on the facts of this case.⁶ There is no evidence that what the CBC intends to say is clearly malicious, such that it might lose the protections offered by the defence of qualified privilege.
- d. Responsible communication: CBC submits that it will be able to establish the defence of responsible communication because the publication is on a matter of public interest and the publication is responsible because CBC diligently tried to verify the allegations by giving the applicants several opportunities to respond to the story.⁷ The evidence filed by CBC on this application demonstrates that the CBC diligently tried to verify the allegations, offered the applicants several opportunities to respond, and twice extended the deadline for a response. CBC seems very likely to succeed on this defence.

[9] Moreover, I see no reason why the applicants would not be adequately compensated by damages, if a court were ultimately to conclude that CBC defamed the applicants. In this case, damages would certainly seem to be an adequate remedy for the applicants. Where damages would be an adequate remedy, the court should be reluctant to issue an injunction to restrain speech.⁸

[10] In their factum, the applicants rely on s. 12 of the *Charter*. Section 12 of the Charter provides that “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.” Section 12 will be infringed where:

- a. there is a state action that constitutes treatment or punishment; and
- b. that treatment or punishment is cruel or unusual.

[11] Section 12 of the Charter has no application to the circumstances of this case. Assuming without deciding that a published news story by the CBC could amount to state action constituting treatment, there is no evidence to suggest that the intended news story could amount to cruel or unusual treatment.

⁵ R.S.O. 1990, c. L.12, s. 4(1).

⁶ *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130.

⁷ *Grant v. Torstar*, 2009 SCC 61, [2009] 3 S.C.R. 640, at paras. 116-117.

⁸ *Rapp et al. v. McClelland & Stewart Ltd. et al.*, (1981), 34 O.R. (2d) 452 (H.C.J.).

- [12] The applicants also rely on s. 15(1) of the *Charter*.⁹ The applicants filed no evidence to suggest that s. 15 has any application to the facts of this case.
- [13] Finally, the applicants suggest that the CBC’s affidavit did not disclose “all of the relevant facts pertaining to all of the witness statements and statements of claim.” Even if this were true, and I do not think it is, that would not justify the relief sought by the applicants. This is not a case where CBC moved for an *ex parte* injunction, so the requirement to make full and fair disclosure set out in rule 39.01(6) does not apply.¹⁰ In any event, such an error would not justify the extraordinary relief sought by the applicants.
- [14] In conclusion, the applicants have not met the test for an interlocutory or permanent injunction in a defamation case. They have not even met the traditional test for an injunction. There is no serious question to be tried, much less a strong *prima facie* case. There is no irreparable harm, as damages would be an adequate remedy. The balance of convenience strongly favours the CBC given the constitutional protection of freedom of expression.
- [15] For these reasons, I dismiss the application in its entirety.

Costs

- [16] CBC seeks costs of \$10,445 on a full indemnity basis.
- [17] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194. These factors include but are not limited to: (i) the result in the proceeding; (ii) the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (iii) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider “any other matter relevant to the question of costs.”
- [18] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding and balance the compensation of the successful party with the goal of fostering access to justice.¹¹

⁹ Section 15(1) of the *Charter* provides that: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

¹⁰ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 39.01(6); *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131.

¹¹ *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 26 and 37.

- [19] In my view, it is appropriate to award costs on a full indemnity scale for two reasons.
- [20] First, the applicants' application was little more than an attempt to muzzle journalists attempting to report on a story of significant public interest on a matter of consumer protection. The courts must dissuade these applicants, and all persons, from such brazen attempts to interfere with the constitutionally protected right of journalists to write and publish news stories.
- [21] Second, the applicants also named Viktorija Jocebicia, Rimas Jocebicia, Ayelet Kushnirsky, Michael Kurshnirsky, John Carusone, Paul Polyviout, Teresa Polyviout, Gary Jones and Brian Jewell, as respondents to this proceeding. These individuals did nothing more than speak to the CBC and tell their stories. It was entirely unacceptable to name them as respondents. The applicants' decision to name them appears to be an attempt to intimidate and silence those who would speak to the media about their concerns with applicants' business practices. Litigation tactics that are improper and vexatious may be sanctioned through an award of costs.¹²
- [22] The amount sought by CBC is reasonable given the urgency of the application. I find that it is fair and reasonable for the applicants to pay that amount in costs of this proceeding. An award of \$10,445 properly balances the compensation of the respondents with the goal of maintaining the goal of access to justice, and sanctioning litigation misconduct.
- [23] For these reasons, I order the applicants to pay costs of the application to the CBC on a full indemnity basis, fixed in the amount of \$10,445 inclusive of disbursements and Harmonized Sales Tax, payable within 30 days of the date of this order. I order that the applicants are jointly and severally liable to pay the costs order.

Robert Centa J.

Date: April 8, 2024

¹² *Rules*, r. 57.01(f)(i); *NDrive, Navigation Systems v. Zhou*, 2021 ONSC 7772.