IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Toban v. Columbia Capital Inc.,*
2024 BCSC 606

Date: 20240412
Docket: S173523
Registry: Vancouver

Between:

Stephen Brook Toban

Plaintiff

And

Columbia Capital Inc., Kbridge Energy Corp., Jai Woo Lee and John Doe

Defendants

Before: Associate Judge Robertson

Reasons for Judgment

Counsel for the Plaintiff:	B. Reedijk
Counsel for Defendant Jai Woo Lee	G.A. Cuttler, K.C. J. Lithwick
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. January 12, 2024
Place and Date of Judgment:	Vancouver, B.C. April 12, 2024

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[1] The plaintiff brings this application for leave to file a further amended notice of civil claim and amended response to counterclaim ("ARC"). No argument was made against the filing of the amended notice of civil claim, with the arguments of the parties being made solely as to the proposed ARC.

[2] In addition, given that the amendments to the proposed ARC are, in essence, a complete re-write of the pleadings, the plaintiff also seeks an order waiving the requirement under Rule 6-1(3) that the amendments be shown through the use of strike-outs and underlining, which is not opposed.

Nature of Claims

[3] The plaintiff brings this action for damages for breach of a June 1, 2015 consulting agreement (the "Consulting Agreement") between himself and the defendant, Columbia Capital Inc. ("CCI"), whereby the plaintiff was to provide consulting services for the purpose of locating, on behalf of CCI, a South Korean company that would benefit from being brought into the British Columbia market, and taken public. The defendant, Jai Woo Lee ("Jai Lee"), is the principal of CCI and negotiated the Consulting Agreement on its behalf.

[4] The plaintiff alleges that he identified such a company, Biocurepharm Corporation (the "Target Company") which was, at the time, a Korean biotechnology company. The plaintiff alleges that as a result of his services and pursuant to the Consulting Agreement, CCI and the Target Company were able to enter into an agreement (the "Listing Agreement") under which CCI was to assist the Target Company in obtaining public listing on the Canadian Securities Exchange (the "CSE") through a reverse takeover of an existing and listed shell company.

[5] The Target Company was ultimately listed on the CSE. However, the plaintiff alleges that he was unpaid for various services rendered in achieving that result, namely monthly fees (claimed to be $38,720.35), fees from investor relations work, and a commission of between 10% and 30%, depending on the year, of all amounts paid and/or invested through CCI into the Target Company, the amount of which is unknown by the plaintiff. As to why some of those amounts are unknown, the plaintiff

alleges that the Target Company and defendants entered into what are described as “secret agreements” (the “Secret Agreements”) to hide the investments received, so as to defeat his claims.

[6] By way of counterclaim, CCI and Jai Lee allege that they were defamed by the plaintiff, specifically by way of statements made to the principal of the Target Company, Dr. Sang-Mok Lee (“Dr. Lee”), during this time period.

[7] The counterclaim includes the following specific claims:

> 4. As stated in paragraphs 27 and 28 of the ARCC, the plaintiff emailed a third party, BCP's president, Dr. Sang-Mok Lee **("Dr. Lee"),** on or about December 31, 2016, on or about January 8, 2017 and on or about February 9, 2017 (collectively, the **"Defamatory Emails").** Particulars are as follows.
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> …
>
> *[the three emails were then specifically identified and reproduced]*
> *…*
>
> 8. The words set out in the Defamatory Emails referred to and were understood to refer to Mr. Lee, as the plaintiff identified by Mr. Lee by name ("Jay"), and when viewed by the intended audience, the words were made in a context that clearly identified Mr. Lee.
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> 9. In their natural and ordinary meaning, or alternatively by way of innuendo, the words in the Defamatory Emails, individually and collectively, meant and were understood to mean that:
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> a. Mr. Lee's business practices are unethical;
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> b. Mr. Lee is incompetent;
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> c. Mr. Lee does not know what he is doing;
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> d. Mr. Lee made repeated mistakes;
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> e. Mr. Lee's mistakes have led to delays and higher costs;
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> f. Mr. Lee made a positive outcome for [the Target Company] impossible;
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> g. Mr. Lee has no ability to raise money;
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> h. Persons in the business of public financing will not work with Mr. Lee;
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> i. Mr. Lee will destroy [the Target Company's] public listing;
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> j. The RTO will not go forward with Gravis;
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> k. [The Target Company] should not pay any more money to CCI;
>
> l. [The Target Company] should demand its money back immediately for the deposit paid for the Gravis shell.

> 10. Further, or in the alternative, the Defamatory Emails, individually and collectively, indicate that the plaintiff caused to be published additional libel of Mr. Lee to Dr. Lee, the content of which is unknown to Mr. Lee but is within the knowledge of the plaintiff.

[8] The proposed ARC raises the defences of justification, fair comments, consent and qualified privilege.

Litigation History

[9] The litigation history is described by the parties as “tortured”.

[10] The notice of civil claim was filed April 18, 2017, with pleadings being closed by July 27, 2017. A case plan order was entered into on July 28, 2017 which set schedules for discoveries and a 10-day trial to commence October 22, 2018.

[11] By order pronounced March 16, 2018, the notice of civil claim was amended to add Kbridge Energy Corp. and John Doe as defendants, in light of the allegations related to the Secret Agreements. The amended notice of civil claim was then filed on March 20, 2018, with amended responses filed thereafter. By the fall of 2018, there remained outstanding disclosure issues, prompting an application to be filed by the plaintiff for same.

[12] Ultimately, the 2018 trial date was adjourned and by notice of trial filed April 25, 2019, reset for 10 days commencing September 14, 2020.

[13] By order of July 29, 2020, the trial was adjourned to June 28, 2021, for 14 days on a peremptory basis against the defendants, except for COVID-19 reasons.

[14] On September 10, 2020 a number of outstanding procedural applications were heard with orders being made for the plaintiff to provide particulars, leave for the defendants to file a further amended response to civil claim, leave for Jai Lee to file a counterclaim, and an order that the plaintiff produce an amended list of documents.

[15] Jai Lee filed his counterclaim against the plaintiff on September 14, 2020, in which the defamation claims are made. Specifically, the allegations are that the

plaintiff emailed the Target Company's president Dr. Lee at various times between December 31, 2016 and February 9, 2017 and made defamatory comments therein.

[16] When the claim was originally filed, the plaintiff was represented by different counsel (the "Original Plaintiff's Counsel"). Regrettably, the Original Plaintiff's Counsel, at some point between the claim's filing to the fall of 2020, began experiencing depression and mental health issues and, as a result, was not responsive to either the plaintiff or opposing counsel.

[17] No response to the counterclaim was filed and on December 16, 2020 Jai Lee obtained default judgment against the plaintiff on the counterclaim, for damages to be assessed. Shortly thereafter, the plaintiff filed the notice of trial for the main claim in respect of the June 28, 2021 trial date.

[18] As the June 28, 2021 trial date approached and the lack of response from the Original Plaintiff's Counsel continued, other counsel at his firm became aware of his mental health issues and stepped in to assume carriage of this matter. However, it necessitated that the trial date be further adjourned, and that the default judgment be addressed.

[19] By application filed August 6, 2021, the plaintiff sought to have the default judgment set aside. As those issues were being discussed, the plaintiff retained counsel with a new firm to represent him, with the notice of change of solicitor being filed in that respect on November 25, 2021.

[20] That counsel, who remains as current counsel, obtained an order on December 22, 2021 to have the default judgment set aside, with the order providing that a response to counterclaim be filed, and a response to the demand for particulars be given by January 31, 2022 with any further issues regarding same to be resolved by further application.

[21] The response to counterclaim was then filed January 13, 2022.

[22] Upon his retainer, plaintiff's current counsel identified that significant work was needed to ready the matter for trial and, after discussions with counsel for the defendants, it was agreed that, rather than responding to the demand for particulars as originally contemplated, the notice of civil claim and response to counterclaim would be amended to provide those particulars.

[23] There is some disagreement as to nature and effect of these discussions, in that it is the plaintiff's view that an agreement was reached on those terms.

[24] Jai Lee's position is that plaintiff's current counsel indicated that the amended pleadings would be filed by the end of February 2022, which would include particulars. However, draft revised pleadings were not provided to opposing counsel until a year later, in February 2023, with the defendants taking the position that the revisions remained inadequate to properly address the requirement for particulars, and that given the time lapse there was no agreement in place.

[25] The delay since February 2023 in bringing the matter forward was the result of the usual issues of coordinating counsel schedules, and obtaining court time.

[26] A third trial date as scheduled in July 2023 was adjourned by consent.

[27] On July 5, 2023, plaintiff's counsel provided a response to the particulars and further revised draft pleadings. On July 6, 2023, the subject application was filed.

[28] The fourth set trial date has now been scheduled for January, 2025.

Legal Framework and Parties' Positions

[29] There is no dispute that, unless there is prejudice to a party, amendments are generously granted: *Tophay Leo Farms Ltd. v. Wu,* 2023 BCSC 1133, at para. 19, subject to the court's discretion.

[30] The relevant principles were described as follows in *British Columbia (Director of Civil Forfeiture) v. Violette,* 2015 BCSC 1372 ("*Violette*"):

> [39] In *Mayer v. Mayer*, 2012 BCCA 77 at para. 215, the Court of Appeal affirmed that the fundamental purpose of pleadings is to define the issues to be tried with clarity and precision, to give the opposing parties fair notice of the case to be met, and to enable all parties to take effective steps for pre-trial preparation.
>
> [40] Applications for leave to amend pleadings are considered on the same basis as applications to strike pleadings with the question being whether it is plain and obvious that the proposed amendments are bound to fail. In assessing that question, it is not determinative that the law has not yet recognized a particular claim. In its analysis, the court must be generous and err on the side of permitting an arguable claim to proceed to trial. See: *McMillan v. McMillan*, 2014 BCSC 546 at paras. 13-14, and cases cited therein.
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> [41] In *Peterson v. 446690 B.C. Ltd.*, 2014 BCSC 1531 at para.37, this Court summarized the general principles arising on an application to amend pleadings as follows:
>
> > [37] Finally, the general principles arising on an application to amend pleading can be summarized as follows:
> >
> > (a) Amendment to pleadings ought to be allowed unless pleadings fail to disclose a cause of action or defence: *McNaughton v. Baker*, [1988] 24 B.C.L.R. (2nd) 17 [(C.A.)].
> >
> > (b) Amendments are usually permitted to determine the issues between the parties and ought to be allowed unless it would cause prejudice to party's ability to defend an action: *Levi v. Petaquilla Minerals Ltd.*, 2012 BCSC 776.
> >
> > (c) The party resisting an amendment must prove prejudice to preclude an amendment, and mere, potential prejudice is insufficient to preclude an amendment: *Jones v. Lululemon Athletica Inc.,* 2008 BCSC 719.
> >
> > (d) Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy.
> >
> > (e) Courts should only disallow an amendment as a last resort: *Jones*, *McNaughton*, *Innoventure S & K Holdings Ltd. et al. v. Innoventure (Tri-Cities) Holdings Ltd. et al.*, 2006 BCSC 1567.

[31] While the filing of an ARC is not necessarily opposed, the proposed ARC, in its newly drafted form, contains allegations the inclusion of which are opposed by Jai Lee, on the basis that:

a) Specific identified amendments fail to comply with the established requirements for pleadings filed in defence of defamation claims, including in respect of the required particulars; and

b) If the amendments which are opposed are allowed, it would be prejudicial to the defendants, and specifically Jai Lee as the opposing party.

Failure to Provide Sufficient Particulars

[32] As to the first point, counsel for Jai Lee relies upon the large body of law regarding particulars, whether in the context of applications to strike pleadings or for an application to provide particulars, in defamation matters.

[33] As set out in R. 3-7, particulars are necessary as follows:

> **When particulars necessary**
>
> (18) If the party pleading relies on misrepresentation, fraud, breach of trust, wilful default or undue influence, or if particulars may be necessary, full particulars, with dates and items if applicable, must be stated in the pleading.
>
> **…**
>
> **Particulars in libel or slander**
>
> (21) In an action for libel or slander,
>
> …
>
> (b) if the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and that insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant must give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.

[34] Jai Lee relies upon *Malak v. Hanna,* 2013 BCSC 2010 where, at para. 15, the principles relating to the need for such particulars in defamation claims was adopted from that set out in *Firestone v. Smith*, [1991] B.C.J. No. 2660 as follows:

> 1. More than in any other class of action pleadings are of the utmost importance in actions for defamation (Porter and Potts, Canadian Libel Practice, p.74).
>
> 2. A defendant who relies upon a plea of fair comment must provide particulars of the facts upon which the comment is based (Porter and Potts, Canadian Libel Practice, p. 68).
>
> 3. The purpose of particulars is to clarify and define the issues raised in the pleadings so that the other party may know what case he has to meet at trial, so that he can frame his answer properly and prepare for discovery and for trial without fear of surprise and without any unnecessary expense. (*Anglo-*

> *Canadian Timber Products Ltd. v. British Columbia Electric Company Limited* (1960) 1960 CanLII 282 (BC CA), 31 W.W.R. 604 (B.C.C.A.)).
>
> There must be particulars sufficient to apprise the court and the other party of the exact nature of the question to be raised (*Matthews and Lemon v. Cameron et al.* (1964) 1964 CanLII 336 (SK KB), 48 W.W.R. 162 (Sask. Q.B.) at p.165).
>
> 4. Examination for discovery and particulars serve different purposes and discovery is no substitute for particulars (*Int. Nickel Co. v. Travellers Ind. Co.* [1962] O.W.N. 109 (Ont. C.A.).
>
> 5. While, in some circumstances, the court has a discretion to order that particulars need not be provided until after examinations for discovery, in defamation actions particulars ought to be ordered in advance of discovery. A party is not entitled to proceed to discovery on the basis of vague or general allegations (*Wesson v. Campbell River and District (Pacific #317) Branch of the Royal Canadian Legion et al*., 1985 CanLII 479 (BC CA), 63 B.C.L.R. 327, CA002509, Taggert, J.A., Hutcheon, J.A. and Esson, J.A.,. April 23, 1985).
>
> 6.On the other hand the distinction exists between particulars of facts and the evidence by which those facts may be proved. The opposite party is entitled to know what the party intends to prove. But the manner in which the party intends to prove those facts is a matter of evidence. That is properly the subject matter of discovery, not of an order for particulars (*Matthews and Lemon v. Cameron et al*., (1964) 1964 CanLII 336 (SK KB), 48 W.W.R. 162 (Sask. Q.B.) at p. 167.

[35] In commenting specifically on the need for particulars in defending a defamation claim, the court in *Farallon Mining Ltd. v. St. Eloi,* 2012 BCSC 609 ("*Farallon*"), noted as follows:

> [18] There is no doubt that, as the plaintiffs submit, "defamation proceedings are technical in nature and 'pleading-dependent'." (*Meyer v. Chouhan*, 2001 BCSC 1446).
>
> [19] This is particularly important where the defences of justification and fair comment are raised. Before going to trial, the plaintiffs are entitled to know precisely what it is they are alleged to have done that justifies what was said about them; see, for instance, *International Brotherhood of Electrical Workers, Local No. 213 v. Pacific Newspaper Group Inc.*, 2004 BCSC 310.
>
> [20] A failure to provide appropriately specific particulars exposes the plaintiffs to unreasonably wide discovery of documents and examination for discovery while the defendant fishes for helpful evidence. It must be borne in mind that the particulars required relate to facts that were in the hands of the defendant at the time of the alleged libel. Justification cannot arise from after-acquired facts: *International Brotherhood of Electrical Workers*; *Fletcher-Gordon v. Southam Inc.* (1997), 1997 CanLII 3822 (BC SC), 28 B.C.L.R. (3d) 187 (S.C.), aff'd (1997), 1997 CanLII 3624 (BC CA), 29 B.C.L.R. (3d) 197 (C.A.).

> [21] Consequently, a defendant cannot rely upon particulars 'within the knowledge of the plaintiffs' or 'to be provided after discovery'. If a defendant is unable to particularize facts within his knowledge at the time of the alleged libel which justify what he said, then he ought not to be pleading justification.

[36] In ordering further particulars to be provided, the court noted as follows:

> [32] The defendant shall provide those particulars within 30 days of the date of this order. In relation to the allegations that Farallon stole the Campo Morado property and/or defrauded its rightful owner or participated in any such activity, that Farallon bribed Mexican judges or otherwise corrupted the judicial process or participated in any such activity, and that Farallon manipulated, lied to or deceived its shareholders, the particulars shall include not only details of the events and transactions in question, but also the identity of all persons involved, the dates on which the events occurred, and the places at which events occurred. They must relate to what Farallon is alleged to have done, not what others did that did not involve Farallon.
>
> [emphasis added, to mirror the emphasis made as per the submissions of Mr. Lee]

[37] Finally, Mr. Lee referred to the comments of our Court of Appeal in *Gosal v. Gill,* 2019 BCCA 147 as to the necessity of particulars when pleading the defence of justification, citing *International Brotherhood of Electrical Workers, Local 213 v. Pacific Newspaper Group Inc. (The Vancouver Sun),* 2005 BCCA 44 ("*Pacific Newspaper* Group") at paras. 9 and 14 as follows:

> [9] That principle must be borne in mind when considering some of the cases cited to us such as *Arnold & Butler v. Bottomley*, [1908] 2 K.B. 151 (C.A.) [*Bottomley*], and *Zierenberg and Wife v. Labouchere*, [1893] 2 Q.B. 183 [*Zierenberg*], which was referred to in *Bottomley*. In *Zierenberg*, an article published by the defendant newspaper proprietor alleged that the plaintiffs were charity swindlers and impostors and that a home that they ran for inebriates was a swindle. It was found that the defendant had not given sufficient particulars because he had only set out in very broad terms – as broad as the original libel – what the plaintiffs had done in order to justify his libel. The divisional court held that if he did not give further particulars with dates of individual thefts and the names of people who had been swindled, his justification plea would fail. The Court of Appeal confirmed the judgment of the divisional court requiring these further particulars in order for the defendant to successfully found a defence of justification. That case was referred to with approval in the British Columbia case *Bullen v. Templeman* (1896), 5 B.C.R. 43 (C.A.), a judgment of the Full Court.
>
> [Emphasis added.]
>
> …

> [14] Having regard to a long line of authorities stretching back beyond the middle of the nineteenth century, it seems to me that the special rule in defamation actions is well established and continues to be the applicable principle today. The rationale now, as in earlier times, seems to me to be that the law seeks generally to discourage defamatory statements. In early times, it might have been to prevent persons resorting to violence as a result of harsh words but in today's world of an omnipresent media, the rule seems equally justifiable because of the potential for harm to the reputation of those defamed by reason of a broad dissemination of defamatory matter. I cannot accede to the submission made on behalf of the appellant that somehow the enactment of provisions like Rule 26(1) have swept away this long-standing rule in the case of actions of defamation.

[38] Jai Lee argues that the proposed ARC fails to meet the requirements as established in the above line of authorities given that it fails to identify:

a) details of the alleged events and transactions in question;

b) the identity of all persons involved;

c) the dates on which each of the alleged events occurred;

d) the places at which each of the alleged events occurred; and

e) the particulars of the ‘consent’ plea as found at para. 22 therein.

[39] Further, Jai Lee argues that the defence of justification is improperly supported in the proposed ARC with reference to after acquired facts that could not have been in the knowledge of the plaintiff at the time of the alleged libel, referencing specifically:

a) Paragraphs 8(e)(iv) and 12 as to incidents occurring in October 2018 and continuing “to this day”;

b) Paragraphs 10-12 which, although vague as to dates, relate to alleged events that occurred after the emails that are alleged to have been defamatory were sent; and

c) Paragraphs 8(a), 8(e)(iv) and 9(d) which refer to incidents alleged to have occurred in “early 2017”, “in late 2016 or 2017”, “between 2010 and the

> present", "from 2015 to 2017" and "early-mid January 2017", respectively, to support emails sent December 31, 2016, January 8, 2017 and February 9, 2017.

[40] In para. 20 of *Farallon,* the court noted that a defence of justification cannot be made out through after acquired facts.

[41] While the plaintiff does not disagree with the above principles, or that particulars are required, especially in cases such as defamation, the plaintiff argues that the particulars as being sought by Jai Lee are beyond the scope contemplated, and would require the plaintiff to improperly plead evidence. The plaintiff submits that there must be a balance achieved between requiring a party to prove their defences to a counterclaim action by pleading evidence, and making such broad or vague statements that they cannot be tested or discovery properly narrowed. This is consistent with the comments in *Pacific Newspaper Group,* although such comments were made based on what document production was required based on the claim as particularized:

> [25] While these cases of defamation fall into a special category relative to discovery, some balancing exercise has to be undertaken by a court to protect the respective rights of plaintiffs and defendants. If sufficient particulars are furnished by a defendant to clearly identify, in appropriate detail, details concerning the allegations, then it seems appropriate to order discovery of relevant documents. Common sense and fairness have to be the touchstones in deciding what ought and what ought not to be ordered produced.

[42] In the plaintiff's view, its amendments achieve that balance.

[43] As argued by the plaintiff, Jai Lee alleges that the plaintiff said things to others, including Dr. Lee, that suggested that Jai Lee was unethical. As such, in order to plead justification as a defence, they need only plead the facts to support the plaintiff's belief that Jai Lee was unethical. In reading the whole of the proposed ARC, specific details are included, such as the allegation that in or around 2006 Jai Lee misused investor funds, in that he purported to be developing a mining property. The company is identified, a general time frame is identified and his involvement is

set out, namely that he deposited funds into both his own and his wife's personal bank accounts rather than for the purpose intended, as well as a secondary allegation that he would write cheques knowing that they were going to bounce to create a situation requiring further funds to be injected.

[44] The plaintiff admits that not all details of the allegations are particularized, as they are simply not yet known, however, the plaintiff argues that not all facts must be plead, rather sufficient facts to enable Jai Lee to know what transactions or events are being raised in defence so that he can answer to them, and, more practically, conduct sufficient discoveries in that respect.

[45] In short, the plaintiff argues that there can be no doubt that Jai Lee knows what transactions or incidents are being raised in defence of the claims brought by him, such that the mischief of a fishing expedition which the courts have cautioned against in developing the policy basis on which particulars are required in defamation matters is not in issue and that it is not necessary, nor is it possible to have every detail particularized at the outset.

[46] In this respect, he argues, the nature of the statements alleged to be defamatory also have to be considered. In this case, the allegation is that the plaintiff suggested that Jai Lee was unethical. The plaintiff may not, at this juncture, know all instances where Jai Lee may have been unethical, but may be aware of one or two. As such, he has plead that there was a "practice" of unethical behaviour and provided specifics of the instances that he is aware.

[47] With respect to the after-acquired facts that are plead in respect of the justification defence, the plaintiff argues that it will be for the trial judge to determine when these facts were known by the plaintiff, such that it is appropriate that they be plead particularly where, as is the case here, they establish a method of practice or lack thereof employed by Jai Lee, for example, by pleading the fact that to date he still has not successfully brought a company public.

Prejudicial Effect of Amendments

[48] In taking the position that permitting a defence to a defamation claim that does not provide sufficient particulars results in actual prejudice, Jai Lee relies upon para. 20 of *Farallon,* where the court noted that "a failure to provide appropriately specific particulars exposes the plaintiffs to unreasonably wide discovery of documents and examination for discovery while the defendant fishes for helpful evidence."

[49] The plaintiff argues that since little has been done in terms of the counterclaim, including that discoveries have not yet been conducted, that there is no prejudice in making the amendments as sought. In this respect, as noted in *Jones v. Lululemon Athletica Inc.,* 2008 BCSC 719, the party resisting an amendment must prove prejudice to preclude an amendment, and mere, potential prejudice is insufficient to preclude an amendment. Further, costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy.

[50] The plaintiff argues that not only has actual prejudice not been established, costs would provide a sufficient remedy to be determined at trial, given that there was no indication that any step, for example discoveries, needed to be redone given the status of litigation.

Conclusion

[51] While amendments to pleadings are to be generously given, in light of the comments in *Violette* that such applications are also to be considered in a similar manner to applications to strike, I agree with Jai Lee that there must be sufficient particulars plead to meet the requirements of R. 3-7 and the objectives as commented upon by the Court of Appeal in the various decisions noted. In summary, the ARC must plead facts which:

a) In the case of the defence of justification and fair comments, includes particulars of the facts on which those comments were based, or justified;

b) Be sufficient to clarify and define the issues to enable the other party to know what case he has to meet at trial, so that he can frame his answer properly and prepare for discovery and for trial without fear of surprise and without any unnecessary expense; and

c) Be sufficient to apprise the court and the other party of the exact nature of the question to be raised

[52] However, the manner in which the plaintiff intends to prove those facts is a matter of evidence and need not be plead. In this respect, I agree with counsel for the plaintiff that the particulars must not be so detailed or to a standard so exacting that it places an unbalanced burden on the plaintiff, standing as a defendant in the defamation counterclaim, that prevents it from being able to present its defence at all.

[53] Having reviewed the proposed ARC, there are, not surprising, some amendments that fail to strike that balance on the basis that they are too vague, and some that are sufficient given the nature of the pleadings.

[54] During submissions I queried whether or not making the general plea that there was a “practice” of unethical practices, albeit with some examples, meant that the door would be open on discovery for the plaintiff to ask Jai Lee about his business transactions generally to determine if there were other unethical dealings, and whether that would entitle the plaintiff to test that theory by asking during discovery if it was such a “practice”, which Jai Lee argues is precisely the fishing expedition that the rules for particulars in claims such as this are meant to avoid. The plaintiff’s response was that it may.

[55] The proposed amendments are not provided in a blacklined document which, given the extent of amendments being made, is an appropriate way to proceed. However, it does mean that I am unclear what is and is not a new plea not in the originally filed response to counterclaim. However, on the assumption that paras. 6

to 12, 17 to 20, and 22 are all new content (as those were the paragraphs addressed during submissions), I will set out which paragraphs are and are not sufficient.

[56] In summary:

a) Paragraph 6(a)(i) to (iii) are not sufficiently particularized. While I agree with the plaintiff that the general introduction at para 6(a), and description as to how the alleged forgeries were carried out, is acceptable for the purpose of providing a broad descriptor of events to support the defence, each of the incidents described thereafter, i.e. in (i), (ii) and (iii) must be better particularized to show the source of the knowledge of each and, in the case of (i) and (iii) a narrower time frame than a 16 year period.

b) Similarly, para. 6(b) is a sufficient introduction, however (i), (ii) and (iii) must each provide the general dates that the alleged documents were pre-signed and the source of knowledge that these documents were pre-signed in blank forms.

c) Although para. 6(c) is generally vague, given the context of the allegation that there would be repeated requests to fill out pre-signed documents to effect securities transfers which the plaintiff refused to use, particulars as to each incident are not necessary.

d) Paragraphs 6(d), 6(e), 7 and 9 are sufficiently particularized. While the source of the information is not necessarily particularized in all cases, the description of events, which are generally ones which would be widely known, are sufficiently particularized to enable Jai Lee to answer the allegation and know what is being raised in defence.

e) To the extent para. 8 concerns after acquired facts, those ought not be included, as these are not facts known by the plaintiff at the time of the alleged defamation, such that they constitute a valid defence. As such the words “both before and after” such be restricted to “before” the emails were sent, as set out in the beginning of the paragraph. Further,

i. Subparagraph (a) must provide particulars of Jai Lee's indication that he would not be honoring the Consulting Agreement including as to when, and how that was done, including the dates of when it is alleged that Mr. Lee attempted to have an amended agreement signed

ii. Subparagraphs (b), (c), (d), (f), (h), (i), (j), and (k) are entirely too vague, lacking all required particulars, specifically source of knowledge and dates of any type.

iii. Subparagraph (e)(i), (ii) and (iv), and (g) are sufficiently particularized. However, the date in (e)(iii) is too broad, covering a 14 year time period, and must be narrowed with the source of information provided.

f) Paragraphs 10 to 12 are sufficiently particularized given their overall context in the whole of the ARC.

g) Paragraphs 17 to 20 are sufficient. Although they are general statements raising the defences of justification and fair comment, I agree that they must be read in the context of the whole of the ARC itself, and with each other. I do not go so far as suggested by Mr. Lee that the proposed ARC must dissect the contents of each email and mirror that to each plea as set out in paras. 6 to 9. That would be requiring a party to meet a style or form imposed by the opposing party. In its current form, these paragraphs, when read with paras. 6 to 9, are sufficient to enable Jai Lee to know the case he is to meet without any unfair surprise.

h) Paragraph 22 is entirely too vague, lacking all required particulars, specifically who and when Jai Lee allegedly consented to the publication of the emails in issue.

[57] I am not satisfied that, given the status of the pleadings, there is any prejudice in granting these amendments which cannot be addressed through costs at trial. While trial is scheduled for January 2025, and discoveries must be scheduled before then with some anticipated difficulties for coordinating them given that some parties

are not all within Canada, there is sufficient time to allow for revisions to be made without impairing discovery in any way.

[58] As such, and to hopefully avoid the necessity of a further application, in allowing the amendments as set out above, I grant leave to the plaintiff to make such further amendments to paras. 6(a) and (b), 8(a), (b), (c), (d), (e)(iii), (f), (h), (i), (j) and (k) as necessary to provide the particulars which I reference above as being missing, provided they are done within 21 days of this order, and counsel for Jai Lee is satisfied that they are then properly particularized in keeping with my reasons.

[59] If Jai Lee is not satisfied, and an agreement as to such corrections cannot be reached, the parties have liberty to either seek a further attendance before me, or to each submit written submissions as to those corrected paragraphs, provided that such submissions do not exceed 5 pages each (excluding the ARC itself), and provided that those submissions are made within 30 days for my final review and further order to allow the amendments to be included when the ARC is filed.

[60] Otherwise, the ARC is to be filed with paras. 6(a) and (b), 8(a), (b), (c), (d), (e)(iii), (f), (h), (i), (j) and (k) excluded.

[61] In summary, the order is granted as sought in paras. 1 and 2 of the notice of application, with the schedules to be attached to the order itself, and schedule “B” to be amended as set out above. I waive the requirement under Rule 6-1(3) that the amendments be shown on the schedules through the use of strike-outs and underlining.

[62] As there has been divided success, each party shall bear their own costs.

“Associate Judge Robertson”