

CITATION: Lewis v. Chartrand 2024 ONSC 4043
COURT FILE NO.: CV-23-693037
MOTION HEARD: 20240715

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Oslyn Lewis, Plaintiff

AND:

Gabriel Chartrand, Boss Man Limited, Northwest Protection Services Ltd. and
Joey Fera, Defendants

BEFORE: Associate Justice Jolley

COUNSEL: Laurie Galway, counsel for the moving party defendants Gabriel Chartrand and
Boss Man Limited

Oslyn Lewis, self-represented responding plaintiff

Amanda McBride, counsel for the defendant Northwest Protection Services Ltd.

HEARD: 15 July 2024

REASONS FOR DECISION

- [1] The defendants Gabriel Chartrand and Boss Man Limited (“the moving defendants”) bring this motion for an order requiring the plaintiff to post security for costs.
- [2] The action has been set down for a five day trial commencing 10 March 2025 with dates set for the examinations for discovery (July 2024), answers to undertakings (15 September 2024), affidavits for use at trial (October 2024 to January 2025) and pretrial (14 January 2025).

Preliminary Issue

- [3] The plaintiff did not file any responding materials. At the outset of the hearing, he requested an adjournment on the basis that (a) he had not agreed to the motion date and (b) he had an important business call.
- [4] I refused the adjournment. It was clear from the correspondence that the plaintiff had agreed to this specific date for the motion in his correspondence of 28 June 2024 to counsel for the moving defendants and in her reply later that same day.
- [5] As to the business phone call, I permitted the plaintiff an adjournment to take the call and he was able to do so and return to court to argue the motion.

- [6] I also noted that if I allowed the adjournment, the moving defendants would not be able to obtain another motion date until May 2025, after the summary trial would have concluded.

Analysis

- [7] The moving defendants rely on subrules 56.01(1)(a), (b) and (e). They did not deliver a factum or brief of authorities.

Rule 56.01(1)(a)

- [8] A plaintiff may be required to post security for costs where it appears that he is ordinarily resident outside Ontario. The evidence before me suggests that 211-1460 Queensway, Toronto, the address the plaintiff has used on his statement of claim, is in fact not his residential address. It appears to be the address of Dymon Storage, which rents out storage lockers as well as shared office space and rental mailboxes. Dymon has confirmed that no one lives at that address.
- [9] While I am satisfied that the plaintiff does not live at the address provided, there is no evidence before me upon which I could conclude that he resides outside Ontario. The moving defendants cannot succeed on this ground.
- [10] The plaintiff refused to provide his address because the defendant and key witness, Joey Fera had “gone missing”, in the plaintiff’s words. There is nothing in the record that suggests anything untoward. Mr. Fera has simply left the employ of Northwest Protection Services Ltd. and it does not have a forwarding address for him. It has provided an email address, which the plaintiff has used to serve him with the statement of claim, per the endorsement of Koehnen, J. made 21 February 2024.
- [11] The defendants may continue to serve the plaintiff by mail at the address set out on his statement of claim. However, the plaintiff is ordered to provide his residential address to the defendants.

Rule 56.01(1)(b)

- [12] The moving defendants argue that the plaintiff has another proceeding for the same relief pending in Ontario. The plaintiff did commence an earlier action that included the moving defendants (CV-22-67604) but that action was discontinued by order of Koehnen, J. made 21 February 2024. As such, there is no duplicative proceeding and the moving defendants cannot succeed on this ground.

(3) Rule 56.01(1)(e)

- [13] The moving defendants argue that there is good reason to believe that the action is frivolous and vexatious and that the plaintiff has insufficient assets in Ontario to pay the costs of the moving defendants.

- [14] On the evidence before me, there is good reason to believe that the plaintiff has insufficient assets in Ontario to satisfy any costs award against him. The moving defendants estimated their costs up to and including trial to be in the order of \$75,000. The plaintiff advised that he expected to spend up to \$200,000.
- [15] The moving defendants found the plaintiff listed as associated with a number of businesses, none of which seem to have an address or website. The websites on the plaintiff's LinkedIn profile are not functional. A land registry search has not located any properties in his name.
- [16] However, I find that the moving defendants have not established that there is good reason to believe the plaintiff's action is frivolous and vexatious. The plaintiff alleges that Mr. Chartrand publicly made an allegation to Mr. Fera, a security guard working at a trade show where the moving defendants had a booth, that the plaintiff had stolen some merchandise from his booth.
- [17] The moving defendants brought a motion on 9 May 2022 to dismiss the earlier version of this claim on the basis that it disclosed no reasonable cause of action or, in the alternative, frivolous, vexatious and/or an abuse of the process of the court. The earlier claim made the same main allegation against the moving defendants.
- [18] Justice Black acknowledged that on a motion to strike, he was required to accept the facts alleged in the claim as proven unless they were patently ridiculous or incapable of proof. In dismissing the motion to strike the claim, His Honour stated:
- [21] It is not entirely clear based on the pleading and at this stage of the action whether Mr. Chartrand made the false allegation and then recanted it when confronted in the presence of Mr. Lewis, whether the allegation related to someone else and was not clearly communicated by Mr. Chartrand, or whether Mr. Fera misunderstood the allegation or the identity of its subject. This uncertainty is not the fault of Mr. Lewis, but rather a function of the way in which he was confronted with the false allegation.
- [22] Whichever of these factors led to the false accusation, any one could give rise to a finding of negligence, negligent misrepresentation, or even fraudulent misrepresentation on the part of Mr. Chartrand, Boss Man or Northwest.
- [23] Moreover, the way in which the accusation was initially conveyed to Mr. Lewis in a public setting, and in the presence of his partner/client and other members of the public, could also give rise to a claim in defamation. Paragraph seven of the statement of claim, in particular, provides the basis for this potential claim. (*Lewis v. Chartrand* 2022 ONSC 3055 at paragraphs 21-23)
- [19] While those reasons were premised on the facts in the statement of claim being true or capable of proof, the only difference between that motion and this is Mr. Chartrand's sworn affidavit of 4 July 2024 in which he denies making any such accusation against the plaintiff. However, he does state at paragraphs 3 and 4: "... [Mr. Chartrand's wife] returned and asked about the hats and toques as some were missing. The plaintiff was the only person

who had been near the area of those items... I went to the nearest security guard ... and reported that they should be aware of the man as he did cause a scene while I was trying to conduct business and that some of my items were missing....” Whether this amounts to an accusation of theft cannot be determined on a motion such as this. Nor can the issues of credibility between the plaintiff, Mr. Chartrand and, potentially, Mr. Fera. I cannot find on the evidence filed that the claim is frivolous and vexatious.

[20] For the reasons set out above, the moving defendants’ motion is dismissed.

Associate Justice Jolley

Date: 18 July 2024