

COURT OF APPEAL FOR ONTARIO

CITATION: Tewari v. Sekhorn, 2024 ONCA 123

DATE: 20240216

DOCKET: M54866 (C70314)

van Rensburg, Roberts and Gomery JJ.A.

BETWEEN

Guarav Tewari

Plaintiff (Appellant)

and

Gagan Sekhorn and Sekhorn Law Office

Defendants (Respondents)

Guarav Tewari, acting in person¹

Peter A. Downard, for the respondents²

Heard: in writing

Determination pursuant to r. 2.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, with respect to the appeal from the order of Regional Senior Justice Mark L. Edwards of the Superior Court of Justice dated February 11, 2022, with reasons reported at 2022 ONSC 417.

REASONS FOR DECISION

[1] Guarav Tewari appeals the striking out of his statement of claim, which the motion judge held disclosed no reasonable cause of action. In advance of a

¹ In some materials filed with the court, Mr. Tewari's first name is spelt "Gaurav".

² In some materials filed with the court, the respondents are referred to as "Gagan Sekhon and Sekhon Law Office".

hearing on the merits of the appeal, the respondents ask this court to dismiss it under r. 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The Registrar of this court notified the parties that the court was considering a dismissal of the appeal. Having reviewed the materials, including the appellant's Appeal Book and Compendium and his submissions in response to the Registrar's notice, we conclude that the appeal should be dismissed as frivolous, vexatious and an abuse of process.

[2] After Mr. Tewari was dismissed from his employment on February 1, 2019, he sued his former employer, Marcatus QED, as well as three of its employees or directors (the "Marcatus defendants"). He later began this action against the respondents, the lawyer and law firm who represented the Marcatus defendants in Mr. Tewari's lawsuit. In his statement of claim, Mr. Tewari alleged that the respondents "used their legal profession and legal knowledge to illegally manipulate the legal system, and to illegally train their client [*sic*] to give falsified information to defame the Plaintiff and to damage the credibility of the Plaintiff." He claimed that, in representing the Marcatus defendants, the respondents engaged in an illegal conspiracy, defamed him, and breached their fiduciary duties to him.

[3] The motion judge granted the respondents' motion to strike the statement of claim, without leave to amend. Citing *Salasel v. Cuthbertson*, 2015 ONCA 115, 124 O.R. (3d) 401, at para. 35, he noted that "the conduct of the Defendants during the course of the litigation and any steps that were preparatory, preliminary,

intimately connected, necessary or incidental to the institution of that legal proceeding is absolutely privileged in law". As held in *1522491 Ontario Inc. v. Stewart, Esten Professional Corporation*, 2010 ONSC 727, 100 O.R. (3d) 596, at paras. 33-34, absolute privilege extends even to false or malicious statements made in pleadings and factums. As a result, reading the statement of claim generously and assuming all facts alleged in it were true, Mr. Tewari's action for conspiracy could not succeed. The motion judge further found Mr. Tewari's claim that the respondents breached their fiduciary duty was untenable, given that they represented parties whom Mr. Tewari was suing, and Mr. Tewari did not allege that he ever had any solicitor-client relationship with them.

[4] In his notice of appeal, Mr. Tewari asserts that his statement of claim should not have been struck. He raises two grounds. First, he says that absolute privilege does not apply to some of the Marcatus defendants' allegations. Second, the motion judge should have allowed for the possibility that the court could recognize a novel duty of care owed by a lawyer to an opposing party.

[5] As held in *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, at para. 9, leave to appeal refused, [2015] S.C.C.A. No. 488, there are generally two conditions required for r. 2.1 to apply. First, the frivolous, vexatious, or abusive nature of the proceeding should be apparent on the face of the pleading. Second, there should be a reason for the court to dismiss the action in the absence of a motion. As noted in *Scaduto*, r. 2.1 is not for close calls.

[6] This is not a close call. The grounds of appeal set out in the notice of appeal clearly have no merit and no possibility of success. Mr. Tewari is furthermore aware that the grounds have no merit, because they advance the same legal theories he has advanced unsuccessfully in other lawsuits against lawyers acting for parties he has sued.

[7] Mr. Tewari's statement of claim in *Tewari v. McHenry* was struck on June 23, 2021: 2021 ONSC 4523, aff'd 2022 ONCA 335 ("*Tewari v. McHenry (ONSC)*"). Based on the motion judge's summary of Mr. Tewari's allegations in the statement of claim in that action, they resemble Mr. Tewari's allegations against the respondents in this action: *Tewari v. McHenry (ONSC)*, at para. 5. Verner J. held that the statement of claim disclosed no reasonable cause of action based on the doctrine of absolute privilege: *Tewari v. McHenry (ONSC)*, at para. 23. Mr. Tewari's appeal was dismissed by this court. It held that Verner J. was right to strike the claim since the respondents had no duty to Mr. Tewari: *Tewari v. McHenry*, 2022 ONCA 335, at para. 5.

[8] Mr. Tewari's statement of claim in *Tewari v. Sachdeva and Miller Thomson LLP*, an action against another set of lawyers who represented opposing parties in further litigation arising from his dismissal, was similarly struck on December 9, 2020. A motion judge found that it too disclosed no reasonable cause of action. An appeal of that order was dismissed by this court pursuant to r. 2.1.01: *Tewari v. Sachdeva et al.*, (22 June 2021), Toronto, M52586 (C68984) (Ont. C.A.).

[9] In short, Mr. Tewari is seeking to relitigate claims that have been found untenable in law on five separate occasions by three judges of first instance and two panels of this court. This is an abuse of the courts' processes that justifies recourse to r. 2.1.

[10] Mr. Tewari's statement of claim and his submissions in response to the r. 2.1 notice furthermore bear many of the hallmarks of vexatious litigation mentioned in *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720, at paras. 19-20. He persistently pursues lawyers involved in earlier litigation. He cites foreign authorities irrelevant to the issues. He uses florid language. He makes inflammatory accusations, for example contending that the respondents have acted "worse than a prostitute" and calling on them to be "punished". He seeks relief that is unavailable to him, such as an order that the respondents be stripped of their right to practice.

[11] For all these reasons, we find that Mr. Tewari's appeal is frivolous, vexatious and an abuse of the court's process. The notice of appeal is accordingly struck and the appeal is dismissed, without costs.

"K. van Rensburg J.A."
"L.B. Roberts J.A."
"S. Gomery J.A."