IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reynolds v. Deep Water Recovery Ltd.,* 2024 BCSC 1922

Date: 20240920
Docket: S224947
Registry: Vancouver

2024 BCSC 1922 (CanLII)

Between:

Mary Reynolds

Plaintiff

And:

Deep Water Recovery Ltd., Mark Jurisich, John Doe #1, John Doe #2, John Doe #3, and John Doe #4

Defendants

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(Damages Under Section 8 of the *Protection of Public Participation Act*)

(In Chambers)

Counsel for Mary Reynolds:	J. B. Gratl
Counsel for the Defendants Deep Water Recovery Ltd. and Mark Jurisich:	S. M. Gallagher
Place and Date of Hearing:	Vancouver, B.C. September 20, 2024
Place and Date of Judgment:	Vancouver, B.C. September 20, 2024

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[1] **THE COURT:** I do not need to hear from the defendant on s. 8 damages.

[2] These are oral reasons made in the midst of a chambers application, and as such, if a transcript of these parts of the reasons is ordered, I reserve the right to edit those for clarity, but the result will not change.

[3] What is before me here is an application by the plaintiff and defendant by way of counterclaim Mary Reynolds for orders under ss. 7 and 8 of the *Protection of Public Participation Act*, SBC 2019, c. 3 ("*PPPA*") after having part of the counterclaim dismissed under s. 4 of the *PPPA*: see *Reynolds v. Deep Water Recovery Ltd.*, 2024 BCSC 570.

[4] Section 7 provides for costs of *PPPA* applications and proceedings dismissed under the *PPPA*. I am not addressing that now.

[5] Section 8 allows a court hearing an application for dismissal under s. 4 of the *PPPA* to award "the damages it considers appropriate" against a respondent to a s. 4 application "if it finds that the respondent brought the proceeding in bad faith or for an improper purpose."

[6] I am going to summarily dismiss the application for damages under s. 8, without hearing from the respondent in the interests of time. In my view, there is no merit to a s. 8 application.

[7] In *Todsen v. Morse*, 2022 BCSC 1341, at para. 198, Justice Brongers summarized the principles that apply to an application for damages under s. 8 of the *PPPA*, as previously adopted by Justice Donegan in *Hobbs v. Warner,* 2019 BCSC (reversed on other grounds in 2021 BCCA 290) from *United Soils Management Ltd. v. Mohammed*, 2019 ONCA 128. Justice Brongers makes the following points:

a) Section 8 of the *PPPA* represents an effort to separate out a *subset* of SLAPP [strategic litigation against public participation] cases. A case in which s. 8 is appropriately applied must therefore be one in which bringing the proceeding "goes beyond" simply reflecting an effort to limit expression

and includes "active efforts to intimidate or to inflict harm on the defendant."

b) If the court is satisfied on the record before it that an action has been brought in bad faith or for an improper motive, such as punishing, silencing or intimidating the defendant rather than any legitimate pursuit of a legal remedy, an additional remedy should be available for this improper conduct.

c) While medical evidence is not necessary to establish damages under s. 8, an award must be compensatory. Damages will not arise in every case. The court cannot award punitive damages under s. 8.

d) Whether an award of damages is warranted should also take into account the presumption set out at s. 7 that costs will be awarded on a full indemnity basis.

[8] The first principle implies that the level of "bad faith" or "improper purpose" required is more than that found in a "standard" SLAPP case. *Simply* trying to limit expression on a matter of public interest is not enough.

[9] The second principle reflects the statutory language. The court must be satisfied on the record before it that the actions have been brought in bad faith or for an improper motive. Examples of such motives are punishing, silencing, or intimidating the defendant.

[10] Since the award has to be compensatory, there has to be evidence from which damage can be inferred. Since indemnity costs are available, the damage cannot simply be the requirement to participate in costly and stressful litigation.

[11] I am not satisfied, and I do not believe I could be satisfied on this record, that the proceeding was brought in bad faith or for an improper motive rather than any legitimate pursuit of a legal remedy. I have already found that *part* of the purpose of the counterclaim was to vindicate rights under trespass, nuisance, and potentially

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the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, that the corporate counter-claimant has in its property. These could be infringed upon by activities of drones. At most, therefore, the proceeding was brought for a mix of motives.

[12] I also add that the proceeding was a counterclaim. Deep Water Recovery's position was part of setting the context for its defence to the claim that Ms. Reynolds was making. I do not think this could be in the extraordinary subset of SLAPP cases which *go beyond* simply reflecting an effort to limit expression.

[13] While the fact that I have already found that the proceeding was not brought in bad faith or for an improper purpose is sufficient to dismiss the s. 8 damages application, I also conclude after hearing from Ms. Reynolds that there is no evidence for compensatory damages. The basis for Ms. Reynolds' claim for damages is harm to a reputation. I do not see any evidence that Ms. Reynolds' reputation was harmed by the counterclaim.

[14] I therefore dismiss the s. 8 application. That, of course, is without in any way adjudicating on whether it might be an appropriate case for costs under s. 7, which I am going to hear full argument on.

"J. G. Morley, J."

The Honourable Justice Morley