IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Masjoody v. Beacon,*
2024 BCSC 1983

Date: 20241029
Docket: S223793
Registry: Vancouver

Between:

Masood Masjoody

Plaintiff

And

Burnaby Beacon, Dustin Godfrey

Defendants

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

The Plaintiff, appeared in person:	M. Masjoody
Counsel for the Defendants:	D. Volpatti J.J. Weisman
Place and Dates of Hearing:	Vancouver, B.C. August 13-14, 2024
Place and Date of Judgment:	Vancouver, B.C. October 29, 2024

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Introduction

[1] These are reasons for judgment on an application by the defendants for an order dismissing this action pursuant to s. 4 of the *Protection of Public Participation Act,* S.B.C. 2019, c. 3 [*PPPA*]. The applicants also seek costs.

[2] This application is brought within an action in defamation brought by the plaintiff against a news outlet, the Burnaby Beacon ("the Beacon"), and a journalist, Dustin Godfrey (collectively, "the defendants"), for an article published in the Beacon (the "Article"). The Article reported on a decision of this court, *Masjoody v. Trotignon*, 2021 BCSC 1502, written by Justice Fitzpatrick and dated August 3, 2021 ("the Decision"). The Decision involved a previous action in defamation brought by Mr. Masjoody against his former colleague, Dr. Trotignon, and Simon Fraser University ("SFU").

Freedom of the Press and the Open Court Principle

[3] The defendants submit that it is only in the rarest of cases that the courts interfere with the free press.

[4] Section 2 of the *Canadian Charter of Rights and Freedoms* [*Charter*] provides the following:

> 2 Everyone has the following fundamental freedoms:
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

[5] Public access to the courts is not explicitly guaranteed in the *Charter*, however, such access is an integral part of the constitutional guarantees of freedom of opinion and expression, which includes freedom of the press. The so-called "open court principle" promotes public confidence in the integrity of the justice system and enhances an understanding of the administration of justice. (see *R. v. Southam Inc.* 146 D.L.R. (3d) 408 (Ont. CA), 1983 CanLII 1707 (ON CA)).

[6] The open court principle and the rights granted by s. 2(b) of the *Charter* encompass not only the rights of the media to publish or broadcast information about court proceedings, but also the right of listeners and observers to receive such information about court proceedings. (see *R. v. Canadian Broadcasting Corp.,* 2010 ONCA 726).

[7] Section 4 of the *PPPA* provides the following:

> 4(1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that
>
> (a) the proceeding arises from an expression made by the applicant, and
>
> (b) the expression relates to a matter of public interest.
>
> (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that
>
> (a) there are grounds to believe that
>
> (i) the proceeding has substantial merit, and
>
> (ii) the applicant has no valid defence in the proceeding, and
>
> (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting the expression.

Background

[8] The applicants apply on the basis that the Article is an expression in the public interest, that is, it reports on the contents of the Decision.

[9] There have been two unsuccessful attempts by Dr. Masjoody to appeal the Decision (see 2022 BCCA 135 and 2023 BCCA 220). The second appeal was dismissed on a summary basis by a division of the Court of Appeal pursuant to s. 21(1)(a) and (b) of the *Court of Appeal Act*, S.B.C. 2021, c. 6. The appeal was dismissed based on the doctrine of cause of action estoppel, whose object is to advance finality and fairness in litigation.

[10] Before proceeding to my analysis, I will first provide some context to the events and proceedings which precipitated this matter.

The SFU Action

[11] In late April of 2020, the plaintiff's employment with SFU was terminated after a conflict arose between the plaintiff and other employees at SFU. He immediately commenced litigation against SFU and another member of the SFU faculty claiming damages for defamation and "conspiracy to defamation". That action was before the Court from July 14 to 16, 2021 ("the SFU Action") and resulted in the Decision.

[12] The defendants in the SFU Action brought an application for an order striking the Amended Notice of Civil Claim on two bases: (1) that the Court did not have subject matter jurisdiction over issues of labour relations; and (2) in the alternative, as the labour relations issues had been resolved, the proceedings were an abuse of process.

[13] The history of the acquaintance of Dr. Masjoody and Dr. Trotignon was detailed in the Decision and I do not intend to repeat it here. It is sufficient to note that SFU has a Human Rights Policy designed to prevent discrimination, including in the form of harassment. The Human Rights Policy provides a procedure whereby a complaint of personal harassment may be made by a member of the university community against another member of the community to the Human Rights Office. This is an informal procedure whereby the complaint may be resolved confidentially. Dr. Trotignon submitted a complaint to the Human Rights Office under this Policy.

[14] In October 2019, Dr. Masjoody filed a grievance under the provisions of the Teaching Support Staff Union of Simon Fraser University Collective Agreement ("TSSU Collective Agreement") against a Dr. Kropinski, the Chair of SFU's Department of Mathematics. Eventually, in March 2021, Dr. Masjoody withdrew this grievance.

[15] Fitzpatrick, J. commencing at para. 47 of the Decision, reviewed the "essential character" of Dr. Masjoody's claim. The Court ultimately concluded that

the complaints advanced by Dr. Masjoody were “overwhelmingly inextricably bound up and related to his employment at SFU”: para. 54. For this reason, the dispute was governed by the TSSU Collective Agreement, and the Court had no jurisdiction to resolve the matter: para. 90.

The Present Action

[16] On May 10, 2022, the plaintiff filed a Notice of Civil Claim against the defendants alleging the Article defamed him. On July 17, 2023, the plaintiff filed an Amended Notice of Civil Claim, which included new allegations entangling the defendants in conspiracy theories advanced in the SFU Action. These new allegations changed the issues the defendants had to address, despite the defences to defamation being simple and straightforward.

[17] The applicant, the Beacon, is the tradename for a journal owned by Overstory Media Inc., which publishes articles on local news, events, food and people of interest to persons living in Burnaby.

[18] The applicant, Mr. Godfrey, was a journalist for the Beacon from March 2021 to December 2022. Mr. Godfrey authored numerous articles concerning topics of interest to Burnaby in his key areas of interest being local government and legal proceedings.

[19] On September 15, 2021, Mr. Godfrey discovered the decision on the CanLII legal decisions publication service. On September 17, 2021, the Beacon published the Article authored by Mr. Godfrey, summarizing and reporting on the Decision. It is acknowledged that prior to the publication aforesaid that Dr. Masjoody and Mr. Godfrey did not know one another and had never spoken to each other.

[20] The plaintiff repeatedly referred to conspiracies between parties and other persons not named as parties. None of these allegations were supported by any facts. When asked, the plaintiff failed to provide a basis for the allegations.

Analysis

[21] Defamation is a unique tort which often requires very little by way of proof from the plaintiff; it requires that the impugned words be published and that they be capable of lowering the reputation of the plaintiff in the view of society. Damages are presumed. It is for the defendant to then meet the burden of demonstrating that the words were true, privileged or justifiable on some other grounds.

[22] Strategic lawsuits against public participation, so-called “SLAPP lawsuits”, are noted as litigation designed to silence the defendant and supress debate on matters of public interest.

[23] In *Edmonton Journal v. Alberta Attorney General*, [1989] 2 S.C.R. 1326, the Supreme Court of Canada recognized that journalistic reports of legal proceedings should be protected under the “freedom of the press,” a protected right under s. 2(b) of the *Charter*: para. 10.

[24] One of the effects of SLAPP lawsuits was the enactment of s. 4 of the *PPPA* to rectify the imbalance between defamation suits and public-interest expression.

[25] Section 4 of the *PPPA* places an initial burden on the applicant to demonstrate that the expression relates to a matter of public interest. In *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22 [*Pointes*], the Supreme Court of Canada stated:

> [21] Fundamentally, this is a two-part analysis. The burden is on the moving party to show that (i) the proceeding arises from an expression made by the moving party and that (ii) the expression relates to a matter of public interest. This is a threshold burden, which means that it is necessary for the moving party to meet this burden in order to even proceed to s. 137.1(4) for the ultimate determination of whether the proceeding should be dismissed.
>
> [22] However, while the term “expression” is expressly defined in the statute, other terms are in need of elaboration in order to understand how the moving party can satisfy its threshold burden.
>
> [23] First, what does “satisfies” require? I am in agreement with Doherty J.A. of the Court of Appeal for Ontario that “satisfies” requires the moving party to meet its burden on a balance of probabilities (C.A. reasons, at para. 51). This is in accordance with the jurisprudence interpreting the word “satisfied” (*R. v. Topp*, 2011 SCC 43, [2011] 3 S.C.R. 119, at paras. 24-

> 25; *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at paras. 49 and 53; *Shannon v. 1610635 Alberta Inc.*, 2014 ABCA 393, 588 A.R. 76, at paras. 14-15; *R. v. Driscoll* (1987), 1987 ABCA 159 (CanLII), 79 A.R. 298 (C.A.), at paras. 17-18). Accordingly, the moving party must be able to demonstrate on a balance of probabilities that (i) the proceeding arises from an expression made by the moving party and that (ii) the expression relates to a matter of public interest.

[26] The law is clear that if a matter is reported, orally or in writing, in a judgment in open court, that matter is in the public interest: *Taylor-Wright v. CHBC-TV*, [1999] B.C.J. No. 334 at para. 39; *Hobbs v. Warner*, 2021 BCCA 290 at para. 11; *Pointes* at paras. 26-30.

[27] Once the applicant satisfies the initial burden, then the onus shifts to the respondent to show that the action should not be dismissed.

[28] As noted above, s. 4 of the *PPPA* dictates that the court must dismiss the action unless the plaintiff can show that (a) there are grounds to believe the proceeding has substantial merit and the applicants have no valid defence; and (b) the harm the plaintiff has suffered by the applicants' expression is serious enough that the public interest favours the within action proceeding rather than protecting the expression.

[29] In this proceeding, the applicants concede the plaintiff may succeed in showing that the impugned words were capable of a defamatory meaning. However, based on the facts of this case, the plaintiff will not be able to show that the applicants have "no" valid defence. The word "no" is significant, because if any defence is valid, then the underlying claim must be dismissed. The applicants submit that nothing in the evidence supports an argument for sufficiently strong case against any of the defences.

[30] The plaintiff must also succeed in overcoming a final weighing exercise by showing the harm suffered outweighs the potential impact to freedom of expression. Unlike in traditional defamation claims, under the *PPPA* the applicant must demonstrate the harm claimed is serious and causally connected to the expression. In the case at bar, the plaintiff has only put forward allegations of harm, without

particulars connecting these allegations to the Article, the Decision, or the events surrounding the Decision.

[31] In summary, the applicants have advanced four defences: (a) privilege; (b) fair comment; (c) justification; and (d) responsible communication. In their submissions, the applicants relied particularly on the defences of privilege, both statutory and qualified, and fair comment.

[32] It was submitted that the Article was a fair and accurate report of the Decision. I accept this submission. On this basis, the defences of justification, fair comment, and responsible communication clearly have merit. Further, the applicants submit that the Article is protected by statutory privilege under the *Libel and Slander Act*, R.S.B.C. 1996, c. 263 [*LSA*], or qualified privilege at common law. The privilege provided under the *LSA* is absolute and cannot be defeated. It is also noteworthy that Justice Brongers, in *Masjoody v Burnaby Beacon*, 2022 BCSC 2485, concluded that any of these defences could apply to defeat the plaintiff's claim. For instance, the Article reported the Decision in such a manner that much of the wording in the Article was identical to the wording in the Decision and in keeping with its meaning. Schedule "A" condenses and closely parallels the Decision, and even headlines attached to or contained within the Article fairly and accurately capture the thrust of the Decision. The submission that the Article was a fair and accurate report of the Decision is accepted.

[33] There is also evidence that the Decision, as noted, was released on August 3, 2021, and subsequently published on CanLII on September 15, 2021. Mr. Godfrey discovered the Decision on CanLII and published the Article in the Beacon that same day. The time period between the release of the Decision and the publication of the Article was 43 days, or approximately a month and a half. There was no delay whatsoever between the publication by CanLII and the publication of the Article. Based on this, the applicant has shown that the Article is sufficiently contemporaneous with the Decision for the purposes of privilege under s. 3(1) of the *LSA*. In any event, and if that finding is incorrect and the requirement of

contemporaneity is not met, the common law of privilege does not require contemporaneous publication.

[34] As Mr. Godfrey had no dealings with Dr. Masjoody prior to the publication of the Article, there is no basis to conclude malice was proven.

Conclusion

[35] Newspaper reports on judicial decisions are a matter of public interest protected by the *Charter*, in particular, s. 2(b). The Article is an example of that public interest, and the right of the public to know what happens in the court is a paramount consideration. The defences of (a) privilege; (b) fair comment; (c) justification; and (d) responsible communication, have been made out and not overcome by the plaintiff. The plaintiff's action is dismissed with costs as a matter of ordinary difficulty, payable forthwith after assessment.

At the close of proceedings

[36] At the outset of his submissions on August 13, 2024, the plaintiff advised the Court that his submissions would occupy approximately four hours. At approximately 2:30 pm on August 14, 2024, the plaintiff was continuing his submissions to the Court. The plaintiff had addressed the Court for about 3.5 hours at the time. The plaintiff then advised that his submissions would next be directed to demonstrate that the Court of Appeal had falsified its reasons to further the case against him. I inquired if the plaintiff intended to demonstrate that there had been a deliberate act of falsity by members of the Court of Appeal. He responded that he intended to show that members of the Court of Appeal had acted falsely.

[37] At that time, I told plaintiff that I would hear no more from him as I had no ability to hear or make the findings concerning members of the Court of Appeal that he wished this court to make. I directed him to sit down. Final submissions in reply by the counsel for the defendants followed. Then the parties were advised the court intended to reserve judgment pending delivery of written reasons.

[38] This application clearly verged on a vexatious application given the decision of the Court of Appeal in *Masjoody v. Trotignon*, 2024 BCCA 22 at para.7. If Mr. Masjoody continues to act in this manner, a motion to hear a vexatious litigant application may be in order.

[39] The above are the written reasons to which I referred at the close of proceedings.

[40] On September 22, 2024, the plaintiff also filed a Request to Appear seeking this Court to recuse itself based on the refusal to address the claims against members of the Court of Appeal. For the reasons given above, I decline to grant the Request of Appear.

"Ball J."