

COURT OF APPEAL FOR ONTARIO

CITATION: Miguna v. Sitel Operating Corporation, 2024 ONCA 779

DATE: 20241023

DOCKET: COA-24-CV-0192

Hourigan, Madsen and Pomerance JJ.A.

BETWEEN

Miguna Miguna

Plaintiff (Appellant)

and

Sitel Operating Corporation and Refinitiv Limited

Defendants (Respondents)

Miguna Miguna, acting in person

Mary Paterson, Marleigh Dick and Sierra Farr, for the respondent, Refinitiv Limited

Chenyang Li, for the respondent, Sitel Operating Corporation

Heard: October 21, 2024

On appeal from the order of Justice Jasmine T. Akbarali of the Superior Court of Justice, dated January 30, 2024.

REASONS FOR DECISION

[1] The respondent, Refinitiv Limited (“Refinitiv”) operates a database known as the “World-Check Database” available to its subscribers who are financial institutions obliged to conduct due diligence on certain categories of people before facilitating transactions. One category of people is politically exposed persons

(“PEPs”). Many senior and mid-level participants in every government in the world are included in the database as PEPs.

[2] The appellant is a lawyer qualified in Ontario and in Kenya. Between 2009-2011, he was a senior advisor to the prime minister of Kenya. He was included in the database as a PEP. In October 2021, the appellant was expecting \$1,500 in funds from a client for legal services in Ontario. The client sent a money transfer through Moneygram, but Moneygram refused to release the transfer to the appellant pending verification of additional information. This led to several telephone calls between the client and Moneygram’s customer service line, and between the appellant and the customer service line. Sitel Operating Corporation (“Sitel”) was contracted to operate Moneygram’s customer service line. The appellant alleged that defamatory statements were made by the customer service agent during these calls, and he started an action against Moneygram on November 1, 2021, for damages for defamation in the amount of \$900,000.

[3] Moneygram and the appellant reached a settlement of the litigation and as part of the settlement, Moneygram obtained contribution from Refinitiv and Sitel. On April 5, 2022, the appellant signed a release in favour of Moneygram, Refinitiv, and Sitel. The appellant then delivered notices under the *Libel and Slander Act*, R.S.O. 1990, c. L. 12, to Refinitiv on May 27, 2022, and to Sitel on June 9, 2022. On June 16, 2022, the appellant commenced this action for defamation and breach of privacy.

[4] On a motion for summary judgment, the motion judge dismissed the appellant's action in its entirety. She found that the appellant was properly considered a PEP, given the global nature of the database and the appellant's self-described role as an advisor to the Prime Minister of Kenya. In regard to Refinitiv, she held that the statements in the database were true based on sources available at the time or sources that arose after the date of the entry. The motion judge also found that there was no breach of privacy in the appellant's inclusion in the database because all of the information was gleaned from public sources. Accordingly, the appellant's inclusion in the database was appropriate.

[5] Regarding the claim against Sitel, the motion judge found that any statements made by Sitel during the calls with the appellant and his client were subject to the Moneygram release. In the alternative, she found that there was no evidence of any defamatory statements being made by Sitel during these calls. Further, even if Sitel did publish words from the database, the motion judge held that she had already found these entries to be true.

[6] The motion judge ordered costs to Refinitiv of \$200,000 and costs to Sitel of \$65,000, both on a substantial indemnity scale. Substantial indemnity costs were awarded because the appellant was a qualified lawyer and litigated the action unreasonably against both respondents with a view to increasing costs to them.

[7] On appeal, the appellant attempts to reargue the summary judgment motion, essentially submitting that the motion judge reached the wrong result. However, he fails to identify any specific factual or legal errors. In any event, we agree with the motion judge's analysis and see no error in her decision to dismiss what is plainly a meritless claim. Nor are we prepared to interfere with the motion judge's discretionary decision regarding costs, which was free of error and entirely reasonable in the circumstances of this case. The appellant, as a lawyer qualified to practice in this province, should have anticipated that this action, which alleged bad faith and consumed considerable resources, had no prospect of success. As found by the motions judge, the appellant litigated "unreasonably against both defendants, in a manner designed to increase costs to them ... for no good reason". He must be taken to have known that his conduct could result in a substantial costs award.

[8] The appeal is dismissed. The appellant shall pay all-inclusive costs of the appeal to Refinitiv in the amount of \$11,000 and to Sitel in the amount of \$11,000.

"C.W. Hourigan J.A."

"L. Madsen J.A."

"R. Pomerance J.A."