

KING'S BENCH FOR SASKATCHEWAN

Citation: 2024 SKKB 209

Date: 2024 11 22
Docket: KBG-SA-00760-2024
Judicial Centre: Saskatoon

BETWEEN:

ZACHARY BROCK GRAHAM KLEBAUM

Plaintiff (Respondent)

- and -

DR. LUBA, DR. BRODIE, DR. CHONG, DR. WANSON,
DR. ROCCOMATTISI, DR. SHOKAR, DR. MASOOD,
DR. GILECKI, DR. LAU, DR. SHORT, DR. JOVANA
MILADINOVIC, DR. PAVLO ZEREBECKY, PATRICK
ENNIS, DONOVAN BALAS

Defendants

- and -

KIMBERLEY SOUZA and RONNA HILSENDAGER

Defendants (Applicants)

Counsel:

Zachary Klebaum

Chantelle C. Eisner and Alexandra L. Harrington

on his own behalf

for the defendants (applicants)

DECISION
November 22, 2024

DOVELL J.

A. Introduction

[1] The defendants (applicants), Kimberley Souza [Souza] and Ronna

Hilsendager [Hilsendager], seek an order striking the last version of the statement of claim of the plaintiff, Zachary Brock Graham Klebaum [Zachary Klebaum], filed with the Court on July 17, 2024, in its entirety as against them pursuant to:

- (a) Rule 7-9(2)(a) of *The King's Bench Rules*, as the claim discloses no reasonable cause of action;
- (b) Rule 7-9(2)(b), as the claim is scandalous, frivolous or vexatious; and/or
- (c) Rule 7-9(2)(e), as the claim is an abuse of process of the Court.

[2] It is the position of the applicants, Souza and Hilsendager, that no amendments can be made by the plaintiff, Zachary Klebaum, that would produce a viable cause of action against them.

B. Background of the claim of the plaintiff

[3] Concurrent with the release of this decision the Court is releasing another Decision in this action with regard to the application of two other defendants in this action, Patrick Ennis [Ennis] and Donovan Balas [Balas], to strike the claim of the plaintiff, Zachary Klebaum, as against them pursuant to Rules 7-9(1) and (2) (*Klebaum v Luba*, 2024 SKKB 208).

[4] Within the decision with regard to the striking of the claim as against the defendants Ennis and Balas, the Court outlined the background facts of the claim of the plaintiff which I intend to repeat within this decision as the background facts are also applicable to this application to strike Zachary Klebaum's claim by the defendants Souza and Hilsendager.

[5] Zachary Klebaum is a self-represented litigant who has brought a claim

against twelve doctors, two lawyers and two mental health nurses for \$5 trillion. His original statement of claim has been amended on two separate occasions and is currently in its third version. The parties named in each of the versions include:

- (a) the original June 21, 2024, claim named as a defendant Dr. Mark Luba;
- (b) the second July 11, 2024, amended claim added as defendants nine additional physicians, including Dr. Brodie, Dr. Chong, Dr. Wanson, Dr. Roccomattisi, Dr. Shokar, Dr. Masood, Dr. Gilecki, Dr. Lau and Dr. Short; two then medical students (now physicians), Dr. Jovana Miladinovic and Dr. Pavlo Zerebecky; and two lawyers, Patrick Ennis and Donovan Balas; and
- (c) the third July 17, 2024, amended claim added as defendants two mental health nurses, Kimberley Souza and Ronna Hilsendager.

[6] The Court confirmed at the time of argument of these applications that the version of the statement of claim being asked to be struck is in fact the amended statement of claim filed with the Court on July 17, 2024, adding at the time the two mental health nurses, Souza and Hilsendager.

[7] Accordingly, at this time, the plaintiff, Zachary Klebaum, is suing twelve doctors, two lawyers and two mental health nurses for \$5 trillion, making multiple muddled allegations against sixteen defendants concerning his claimed mistreatment with regard to community treatment orders he has been under since 2018 pursuant to *The Mental Health Services Act*, SS 1984-85-86, c M-13.1.

[8] Currently, Zachary Klebaum is residing in the community of Saskatoon under the provisions of the community treatment order which was issued on January 29,

2024, by Dr. Lee-Anne Gilecki in accordance with ss. 24.3 and 24.4 of *The Mental Health Services Act* and extended by Dr. Mark Luba on June 4, 2024, in accordance with ss. 24.3 and 24.4 of *The Mental Health Services Act*.

[9] Zachary Klebaum appealed the extension of the community treatment order by filing a notice of appeal to the Review Panel on or about June 4, 2024, in accordance with s. 34 of *The Mental Health Services Act*.

[10] As a result of Zachary Klebaum commencing this claim, the appeal was forwarded to the Moose Jaw Mental Health Review Panel for adjudication. On July 19, 2024, the Moose Jaw Mental Health Review Panel denied Zachary Klebaum's appeal.

[11] The July 19, 2024, decision of the Moose Jaw Mental Health Review Panel expressly provided notice to Zachary Klebaum that he was entitled to appeal the Review Panel's decision to the Court of King's Bench pursuant to s. 36 of *The Mental Health Services Act* within 30 days of receiving the Review Panel's decision. No appeal was brought to the Court of King's Bench with regard to the July 19, 2024, decision of the Moose Jaw Mental Health Review Panel that the Court is aware of.

[12] Zachary Klebaum brought another appeal before the Moose Jaw Mental Health Review Panel on September 11, 2024. That appeal was also denied, and notice was once again provided to Zachary Klebaum of his right to appeal the decision to the Court of King's Bench within 30 days of receiving the Review Panel's decision pursuant to s. 36 of *The Mental Health Services Act*. No appeal was brought to the Court of King's Bench with regard to the September 11, 2024, decision of the Moose Jaw Mental Health Review Panel that the Court is aware of.

[13] To my knowledge Zachary Klebaum has never brought an appeal to the Court of King's Bench pursuant to s. 36 of *The Mental Health Services Act* from any of the multiple decisions of the Review Panels he has been before with regard to the

community treatment orders Zachary Klebaum has been and continues to be on.

[14] After the commencement of this action in June 2024, within this court file, however, Zachary Klebaum has brought multiple without notice and with notice applications to the Court.

[15] As at September 24, 2024, Zachary Klebaum confirmed with the Court that he wanted to rescind or cancel in his words all of the previous applications he had brought either with notice or without notice to date as it was his intention to bring a new application incorporating all of the specific interlocutory claims he still wants to bring with regard to his claim against the sixteen defendants concerning the community treatment orders he has been and continues to be on.

[16] For clarity, the Court made an interim fiat on September 25, 2024, confirming that no further applications were to be made until such time as the Court had rendered its decisions regarding the applications to strike the claim of Zachary Klebaum heard on September 24, 2024, unless an emergency arose, and in that event, any emergency application was to be made to myself. To date, no such emergency application has been brought.

[17] This matter was first before me in chambers on August 1, 2024. At that time, I expressed my grave concerns to Zachary Klebaum of his proceeding with this action as a self-represented litigant without the benefit of his receiving legal advice from a qualified lawyer experienced in this kind of action, which I classify loosely as a medical malpractice action of a sort. Counsel for the defendants, and in particular, counsel for the two lawyer defendants appearing in chambers that day, asked for an adjournment of the multiple confusing applications before the Court to facilitate discussions with Zachary Klebaum with regard to hopefully making arrangements for Zachary Klebaum to receive legal advice regarding his claim brought without the

benefit of receiving legal advice, it was assumed.

[18] I understand that after the chambers appearance on August 1, 2024, counsel for the doctors, nurses and lawyers named in the claim, collectively, with the instructions of their respective clients, took the unprecedented steps of providing Zachary Klebaum with the names of five experienced senior lawyers for the purpose of Zachary Klebaum receiving independent legal advice, including an in-depth consultation with one of those lawyers of his choice, at no cost to himself, regarding the claim. That offer, I am advised, was extended on at least one occasion. Unfortunately, Zachary Klebaum declined to accept the proposal made to him as a self-represented litigant for him to get professional legal advice regarding the claim he had commenced at no cost to himself.

[19] In chambers, I thanked counsel for what can only be seen as an unconventional proposal to a self-represented litigant to obtain quality legal advice at no cost to himself. Such a proposal, in my view, is not only generous but, in this case, is a sincere attempt by counsel for the sixteen defendants to provide Zachary Klebaum with some objective independent legal advice with regard to the content of his statement of claim. It is important to note that at no time did the defendants ever lie in the weeds so to speak about what their intentions were if Zachary Klebaum decided to proceed with his claim as is. I truly believe counsel for the defendants gave Zachary Klebaum every opportunity to avoid these applications to strike having to proceed. But Zachary Klebaum, however, chose to proceed with his claim as he had drafted it without the assistance of a lawyer.

[20] Zachary Klebaum confirmed with me in chambers, before the applications to strike his statement of claim proceeded, that he understood what I was encouraging him to do, that being to get legal advice at this juncture, but he had decided that he did not want to receive legal advice from any lawyer, including any of the five

proposed lawyers, “as he had on several occasions seen one of these proposed lawyers who lived across the street from him looking through the windows of his truck”. I do not accept for one moment that ever occurred, but Zachary Klebaum’s response to me was enough for me to allow him to proceed with arguing himself the applications to strike, as he advised, “to the best of his ability”.

[21] In response to the applications to strike, Zachary Klebaum read from a pre-prepared statement. He warned the Court about its duty to be fair to self-represented persons who appear before the Court. In his view, his *Charter* rights (*Canadian Charter of Rights and Freedoms*) pursuant to ss. 7, 8, 9, 12 and 15 had been violated by the defendants. In addition, the defendants had violated his human rights. It was necessary that his claim be allowed to proceed against all of the defendants to ensure that he had the access to justice he deserved that was guaranteed by the *Charter*.

[22] As an aside, I believe everything that could have possibly been done was done by counsel for the defendants and by the Court to encourage Zachary Klebaum to obtain legal advice. In the case of the lawyers for the defendants, that included actually providing Zachary Klebaum with the opportunity of obtaining in-depth independent legal advice at no cost to himself. The final straw apparently for counsel for the defendants was Zachary Klebaum recently providing them with his affidavit of documents attaching fifty photographs of vomit materials and over a hundred pictures of fecal materials. Hence, the applications to strike Zachary Klebaum’s statement of claim proceeded.

C. Analysis

[23] The defendants Souza and Hilsendager, have brought their notice of application pursuant to Rules 7-9(1) and 7-9(2) of *The King’s Bench Rules* to strike the statement of claim of the plaintiff, Zachary Klebaum, adding them as defendants, filed

with the Court on July 17, 2024.

[24] Rule 7-9 of *The King's Bench Rules* provides:

7-9 (1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

- (a) that all or any part of a pleading or other document be struck out;
- (b) that a pleading or other document be amended or set aside;
- (c) that a judgment or an order be entered;
- (d) that the proceeding be stayed or dismissed.

(2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:

- (a) discloses no reasonable claim or defence, as the case may be;
- (b) is scandalous, frivolous or vexatious;
- (c) is immaterial, redundant or unnecessarily lengthy;
- (d) may prejudice or delay the fair trial or hearing of the proceeding;
- (e) is otherwise an abuse of process of the Court.

[25] In particular, as previously outlined, the defendants Souza and Hilsendager are claiming within their notice of application that the claim does not disclose a reasonable claim within the meaning of Rule 7-9(2)(a); that the claim is scandalous, frivolous or vexatious within the meaning of Rule 7-9(2)(b); that the claim is an abuse of the process of the Court within the meaning of Rule 7-9(2)(e); and that the claim offends the Foundational Rule 1-3 which promotes the timely and cost effective resolution of claims.

[26] Both Souza and Hilsendager are registered psychiatric nurses employed by the Saskatchewan Health Authority. As part of their duties, both work as community mental health nurses. Within their position as community mental health nurses, each of

them is authorized, pursuant to *The Mental Health Services Act*, to ensure clients who are subject to community treatment orders under *The Mental Health Services Act*, such as Zachary Klebaum, receive the services and treatment the patient requires in order to be able to reside in the community. Neither Souza nor Hilsendager are psychiatrists, and neither have the authority to issue a community treatment order – their role is only to perform their duties as outlined within a community treatment order issued pursuant to *The Mental Health Services Act*.

[27] Hilsendager provided treatment to Zachary Klebaum pursuant to a community treatment order dated August 30, 2023, issued by Dr. Gilecki. That community treatment order required Zachary Klebaum to attend appointments with the attending psychiatrist/physician and with Hilsendager and to submit to medical treatment and services prescribed by the attending psychiatrist/physician. As required under the community treatment order, Hilsendager met with Zachary Klebaum periodically to administer injections of his psychotropic medications. The last appointment Hilsendager had with Zachary Klebaum was on October 12, 2023.

[28] Souza also provided treatment to Zachary Klebaum pursuant to two community treatment orders: one issued on January 29, 2024, by Dr. Gilecki which required Zachary Klebaum to receive injectable psychotropic medication; and the extension of that order by Dr. Luba issued on June 4, 2024. As required under the community treatment orders, Souza met with Zachary Klebaum periodically to administer injections of his psychotropic medications. Within her affidavit sworn August 29, 2024, Souza outlines what occurred when Zachary Klebaum attended Royal University Hospital on June 26, 2024, for his injectable medication pursuant to the community treatment order. According to Souza, Zachary Klebaum was agitated, confrontational and refused his medication. Due to Zachary Klebaum's agitation, Souza elected to end the appointment and avoid further confrontation and/or escalation of the situation. As a result of Zachary Klebaum not submitting to medical treatment as

required within the community treatment order of January 29, 2024, Souza informed Dr. Luba, pursuant to s. 24.6 of *The Mental Health Services Act*, and a Form H.7 warrant was issued, all pursuant to the provisions of *The Mental Health Services Act*. Souza attempted to advise Zachary Klebaum of his rights as outlined within a Government of Saskatchewan patients' rights brochure, "Your Rights Fact Sheet"; however, Zachary Klebaum was not willing to discuss those rights with her. Subsequent to the appointment on June 26, 2024, Souza, by mistake, emailed the brochure to Zachary Klebaum's parents with whom she had previous communication about Zachary Klebaum's appointments.

[29] The only reference to Souza and Hilsendager within the last statement of claim of the plaintiff filed with the Court on July 17, 2024, adding Souza and Hilsendager as defendants is contained at the end of paragraph 3 as follows:

3. ... Kimberely Souza has told me I was free to go after I said I do not give informed consent at which point she tried to hand me a Gov. of Sask handout as to my rights. She has also been talking without my consent to my parents. Kimberely Souza and Dr. Luba both colluded to send the police to my house even tho I was told "you are free to leave". I find this to be abuse of power and harassment. Kimberely Souza also said she sent me my rights by email before the last injection which she did not. She sent them to my father without my consent. Ronna Hilsendager also forced the medications on me. ...

[30] Both Souza and Hilsendager were noted for default of defence on August 22, 2024, without notice being given by Zachary Klebaum to them personally or to their lawyer and without any proof of service of any statement of claim on them having been filed with the Saskatoon Local Registrar's Office. That improper noting for default was set aside by the Court on September 17, 2024.

[31] I have concluded that on the bare pleadings in this case, being the content of the end of paragraph 3 of the last statement of claim of Zachary Klebaum filed with the Court on July 17, 2024, adding Souza and Hilsendager, it is plain and obvious that

the sparse facts alleged in the claim neither disclose nor support any reasonable claim as against either Souza or Hilsendager.

[32] Zachary Klebaum's allegations with regard to Souza by mistake emailing a Government of Saskatchewan handout on patients' rights to his parents does not ground any reasonable cause of action against Souza. The handout as to patients' rights is not confidential medical information.

[33] Nor does Zachary Klebaum's claim against Souza and Hilsendager forcing medication on him have any reasonable prospect of success. The injection of medications as ordered under the community treatment order does not require the consent of the patient in Saskatchewan as the patient is deemed to lack capacity to consent. Souza and Hilsendager provided injections of medication to Zachary Klebaum pursuant to validly issued community treatment orders. Section 24.3(1)(a)(v) of *The Mental Health Services Act* uses the language "unable to fully understand and to make an informed decision..." As such, when the criteria for a community treatment order under *The Mental Health Services Act* in Saskatchewan are met, the patient lacks the capacity to consent to treatment. Souza and Hilsendager did not issue the community treatment orders. Souza and Hilsendager, as community mental health nurses, were only performing their duties as outlined within *The Mental Health Services Act* pursuant to validly issued community treatment orders. There was no potential medical battery on the part of either Souza or Hilsendager in this case.

[34] The content of paragraph 3 of the claim as it relates to Souza and Hilsendager does not disclose any reasonable cause of action. Although Zachary Klebaum has generally claimed within paragraph 4 of his claim "assault, battery, emotional and psychological abuse, economic abuse, fraud in the sense they get paid by the patient, coercion, kidnapping, false imprisonment, harassment, exploitation, institutional abuse, medical battery, and genocide", there is no factual basis supporting

any of these alleged torts.

[35] Zachary Klebaum has used the bald allegation of “collusion” within paragraph 3 of his claim as it relates to Souza and Dr. Luba without stating any particulars whatsoever. A bald assertion of “collusion” does not equate to “bad faith” or, for that matter, a feasible cause of action without particulars.

[36] I also have concluded that this \$5 trillion lawsuit as against Souza and Hilsendager is scandalous, frivolous and/or vexatious. The claim is “scandalous” as it improperly casts Souza and Hilsendager in a derogatory light; it is “frivolous” as the claim is groundless and pursued for the purpose of delay and embarrassment; and it is “vexatious” as the claim is intended to annoy or embarrass them and is not calculated to lead to any practical result.

[37] In addition, I have concluded Zachary Klebaum’s claim is an abuse of process. I am confident Zachary Klebaum knows his legal rights pursuant to *The Mental Health Services Act* as it relates to appealing a decision of the Review Panel to the Court of King’s Bench. He certainly has had his share of appearances before the Review Panel. Instead of appealing any of the decisions of the Review Panel, he has chosen to commence this \$5 trillion lawsuit against sixteen defendants that have been involved in his mental health care. This is indeed a collateral attack on the legislation and an abuse of process.

[38] I have concluded primarily, however, that Zachary Klebaum’s claim should be struck as a result of the application of the immunity clause as contained within *The Mental Health Services Act*. As community mental health nurses performing their duties in good faith pursuant to validly issued community treatment orders, both Souza and Hilsendager are entitled to the protection of the statutory immunity clause as contained within s. 39 of *The Mental Health Services Act*.

[39] Section 39 of *The Mental Health Services Act* provides:

39 No action lies or shall be instituted against any person who performs a duty, exercises a power or carries out a responsibility pursuant to this Act or the regulations for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by that person, in the performance or supposed performance of that duty, the exercise or supposed exercise of that power or the carrying out or supposed carrying out of that responsibility.

[40] Zachary Klebaum has not claimed explicitly or implicitly within his statement of claim bad faith on the part of either Souza or Hilsendager or made any claim that in any way resembles a claim of bad faith on the part of either Souza or Hilsendager. Thus, on the basis alone of the statutory immunity clause within *The Mental Health Services Act* alone, this claim should be struck against Souza and Hilsendager.

[41] Souza and Hilsendager, as community health nurses, were only doing their jobs as mandated within the community treatment orders validly issued pursuant to *The Mental Health Services Act*.

[42] As individuals merely doing their jobs in good faith, they are entitled to the protection of s. 39 of *The Mental Health Services Act*. Where would we, as a community, be at if individuals such as Souza and Hilsendager were not protected by such immunity clauses? Wrong and unfair situations would result such as what Souza and Hilsendager now find themselves in as a result of this action being commenced against them by Zachary Klebaum. Such unjust situations are exactly what the legislation was intended to address and correct that potential injustice to individuals just doing their jobs within the system.

D. Conclusion

[43] For all of the reasons as set out within this decision, the statement of claim

of Zachary Brock Graham Klebaum filed with this Court on July 17, 2024, shall be struck in its entirety as against the defendants Kimberley Souza and Ronna Hilsendager in its entirety.

[44] Although Souza and Hilsendager have requested solicitor-client costs, I fix their costs of this application and the action to date at \$2,500.00, primarily for parity reasons as I allowed \$2,500.00 costs on the other striking application I heard in this action at the same time as this striking action, both applications being primarily allowed on the basis of the immunity clause as contained within s. 39 of *The Mental Health Services Act*.

[45] Rule 10-4 of *The King's Bench Rules* is waived.

"M.L. Dovell" J.

M.L. DOVELL