

CANADA / JUDGMENT

Anderson v. Double M Construction Ltd.

2021 BCSC 1473

COURT

Supreme Court of British Columbia

DECIDED

29 July 2021

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2021 BCSC 1473 Anderson v. Double M Construction Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anderson v. Double M Construction Ltd.,

2021 BCSC 1473

Date: 20210729

Docket: S28640

Registry: Cranbrook

Between:

Cheryl Anderson

Plaintiff

And

Double M Construction Ltd. doing business as Owl's Nest RV Resort, Myles Murtack, Bill Powell
and Joan Powell

Defendants

Before: The Honourable Madam Justice Douglas

Reasons for Judgment

Plaintiff appearing on her own behalf:

Cheryl Anderson

Counsel for Defendants:

Jacobus H. Van Wyk

Place and Date of Hearing:

Cranbrook, B.C.

January 27-28, 2021

Place and Date of Judgment:

Cranbrook, B.C.

July 29, 2021

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INTRODUCTION

- [1] There are three applications before me: two filed by the self-represented plaintiff, Cheryl Anderson, and one by the defendants.
- [2] The plaintiff is a resident at Owl's Nest RV Resort ("Owl's Nest"). The defendant, Double M Construction Ltd. ("Double M"), doing business as Owl's Nest, is a company incorporated under the laws of British Columbia. Double M is the registered owner of the Owl's Nest campground. The defendant, Myles Murtack, is the Manager of Owl's Nest. Defendant, William Powell, is the Campground Operator at Owl's Nest. Defendant, Joan Powell, is his spouse and was a sales assistant at Owl's Nest until May 2019. The Powells are both former residents of Owl's Nest.
- [3] Owl's Nest is located close to Moyle Lake, about 15 minutes outside Cranbrook, BC. It is zoned pursuant to the municipal bylaws of Cranbrook as a privately owned campground. It consists of approximately 150 camping sites, which are used mainly for recreational purposes. Most are seasonal sites. Camping sites at Owl's Nest consist of both vacant sites and sites with existing improvements. Such improvements may include the placement of a motorhome, trailer, park home, or cabin. Owl's Nest also has common areas, including a public restroom facility and laundry area.
- [4] Campers can lease the sites at Owl's Nest by entering into an agreement with Double M.
- [5] On or about November 25, 2015, the plaintiff entered a License to Occupy and "Offer to Lease Hold" (collectively, the "Lease") with Double M. Pursuant to the Lease, she acquired a license to an improvement, more fully described as "Cabin 1" at Owl's Nest (the "Cabin"). The term of the Lease was ostensibly from April 1, 2016 to April 1, 2017.
- [6] The Lease price for the Cabin was \$65,000, payable by the plaintiff to Double M. On November 25, 2015, the plaintiff paid a deposit of \$5,000; on July 1, 2016, she paid a further \$25,000. The balance of \$35,000 remains due and payable by the plaintiff to Double M.
- [7] On or about January 25, 2017, Double M allegedly cancelled the Lease. The plaintiff has not paid the full Lease price for the Cabin or the Lease Premium arrears.
- [8] On or about July 5, 2017, the plaintiff made a Lease Premium payment in the amount of \$2,625.00. As of February 2020, Double M says she owes \$7,350.00 in outstanding Lease Premium payments.

- [9] The plaintiff continues to occupy the Cabin. The defendants have filed a counterclaim seeking rescission of the Lease, a declaration that Double M owns the Cabin, and an order for vacant possession of the Cabin. The defendants' request for this relief is not before me.

THE APPLICATIONS

- [10] On June 20, 2019, the plaintiff filed her first application. She sought wide-ranging relief including a restraining or protection order against the three personally named defendants, an order prohibiting them from slandering, defaming, and inciting hatred against her, orders for monetary payments, and an order compelling defendant, Myles Murtack, to move a water truck that was allegedly blocking her view.
- [11] The plaintiff purports to set out the legal basis for the relief she seeks in Part 3 of her notice of application as follows: "Breach of contract - tort; Deprivation of Human Rights; Harassment and Stalking; Sexual Harassment; Defamation of Character and Slander; Wilful destruction of private property and mischief; and Such further basis as the Applicant may advise and this Honourable Court deems just".
- [12] On February 6, 2020, the plaintiff filed a second notice of application, seeking similar relief and an order permitting her to serve written interrogatories on the defendants in lieu of conducting examinations for discovery. She set out the same "legal basis" for this relief in Part 3 of her notice of application.
- [13] The plaintiff's first and second applications were set for hearing on February 18, 2020, but were adjourned generally. They were re-set for hearing during the September 2020 assize, but adjourned again due to insufficient court time.
- [14] On October 19, 2020, the plaintiff filed a third application, again seeking restraining orders against the defendants, Mr. Powell and Mr. Murtack, and leave to question the defendants by written interrogatories or, alternatively, to conduct written examinations for discovery. She elected not to proceed with her third application; her first and second applications were before me in January 2021. The basis for the relief the plaintiff seeks in these two notices of application is unclear. At the hearing of her applications, she said she relies on Rules 9-6 and 7-3 of the Supreme Court Civil Rules.
- [15] On February 4, 2020, the defendants filed an application for an order striking the plaintiff's amended notice of civil claim (the "ANOC"), originally filed September 28, 2018, and amended August 22, 2019, in whole or in part. They rely on Rules 1-3, 3-7, and 9-5. They say the ANOC discloses no reasonable cause of action or, alternatively, is unnecessary, scandalous, frivolous, vexatious, and may prejudice, embarrass, or delay the fair trial or hearing of this proceeding, or is otherwise an abuse of process.

[16] In the alternative, the defendants seek summary judgment in their favour, dismissing the ANOCC pursuant to R. 9-6 on the basis there is no genuine issue for trial. They oppose the plaintiff's request to proceed with written interrogatories or, alternatively, to conduct her examinations for discovery in writing.

THE ISSUES

[17] The following issues arise on these applications:

- i. Is the plaintiff entitled to summary judgment pursuant to Rule 9-6?
- ii. Can the plaintiff serve written interrogatories in lieu of conducting examinations for discovery of the defendants pursuant to Rule 7-3?
- iii. Does the ANOCC disclose a reasonable cause of action, as contemplated by Rule 9-5(1)(a)?
- iv. Is the ANOCC unnecessary, scandalous, frivolous or vexatious, pursuant to Rule 9-5(1)(b)?
- v. Is it appropriate to strike the ANOCC, in whole or in part, on the basis it may prejudice, embarrass or delay the fair trial or the hearing of this proceeding, pursuant to Rule 9-5(1)(c)?
- vi. Is the ANOCC otherwise an abuse of the process of the court, pursuant to Rule 9-5(1)(d)?
- vii. In the alternative, are the defendants entitled to summary judgment, dismissing the ANOCC, in whole or in part, in accordance with Rule 9-6 on the basis it discloses no genuine issue for trial?

PLAINTIFF'S APPLICATIONS

Summary Judgment

[18] The plaintiff seeks summary judgment granting her the relief set out in her notices of application filed June 20, 2019 and February 6, 2020. She relies on R. 9-6 which provides, in part, as follows:

Application

- (2) In an action, a person who files an originating pleading in which a claim is made against a person may, after the person against whom the claim is made serves a responding pleading on the claiming party, apply under this rule for judgment against the answering party on all or part of the claim.

...

Power of court

- (5) On hearing an application under subrule (2) or (4), the court,
- (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,

- (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
- (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
- (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[19] The plaintiff seeks the following relief in Part 1 of her notice of application filed June 20, 2019:

1. A Restraining Order against the Respondents, Myles Murtack ("Murtack") and Bill Powell ("Powell") to specifically prohibit them from any further contact with the Applicant, Cheryl Anderson ("Applicant").
2. The Respondents be ordered to provide a cheque to the Applicant in the amount of \$10,631.25 as per the estimate from The Lawn Barbers dated October 23, 2019 for services to restore the front lawn and wood borders of the Applicant's property to its former condition prior to Murtack's intentional destruction of same while operating the company owned backhoe on April 4, 2018, and again on May 22, 2018.
3. The Respondents be ordered to provide a cheque to the Applicant in the amount of \$3,500 representing reimbursement for frozen/cold food products lost due to Murtack's intentional and illegal shut down of her electricity, disabling 2 large refrigerator/freezers, and a medium size freezer, all units completely full of food, most notably meat products including expensive organic items.
4. The Applicant be granted permission for leave of the Court to question the Respondents and their witnesses who have provided sworn testimony in this matter, by way of Interrogatories.

[20] She seeks comparable relief in her notice of application filed February 6, 2020.

[21] The defendants submit that the plaintiff's applications are not suitable for summary disposition pursuant to R. 9-6. They say the monetary relief she seeks involves disputed facts and demands an assessment of credibility at a conventional trial. They rely on *Sharrock v. Moneyflow Capital Corp.*, 2010 BCSC 1219. At para. 5 of *Sharrock*, Justice Griffin (as she then was) confirmed that "the summary judgment rule is not often used because the applicant must meet such a difficult threshold: the applicant must establish that there is no triable issue of fact". As noted by Savage J. in *Northwest Organics, Limited Partnership v. Maguire*, 2013 BCSC 1328, a respondent on a summary judgment application need only provide sufficient evidence to establish that there is a genuine issue for trial.

- [22] As noted by the Court of Appeal in *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500:
- [12] If sufficient material facts have been pleaded to support every element of a cause of action, but one or more of those pleaded material facts are contested, then the judge ruling on a Rule 18(6) application is not to weigh the evidence to determine the issue of fact for the purpose of the application. The judge's function is limited to a determination as to whether a bona fide triable issue arises on the material before the court in the context of the applicable law. If a judge ruling on a Rule 18(6) application must assess and weigh the evidence to arrive at a summary judgment, the "plain and obvious" or "beyond a doubt" test has not been met.
- [23] In *Northwest Organics, Limited Partnership v. MacGuire*, 2015 BCSC 1918, Justice Williams concluded the defendant had not met this "high threshold", stating as follows:
- [39] . . . There are triable issues of fact in the case at bar. Even if some weighing of evidence was permitted on an application under Rule 9-6 (e.g., *Pearlman v. Critchley*, 2012 BCSC 170, at para. 16), the plaintiffs have raised issues with the defendant's credibility and her motives, which would be nearly impossible to resolve on the basis of affidavit evidence: *Brar v. Kaur*, 2010 BCSC 1220, at para. 42. Although issues of credibility may not be fatal to an application for summary judgment, where the issues of credibility do not affect the central issues of the case (*Powell River Industrial Sheet Metal Contracting Inc. (P.R.I. S.M.) v. Kramchynski*, 2014 BCSC 1966, at para. 35), the plaintiffs in this action have raised issues of credibility that go to the core of this case and, in my opinion, cannot be resolved summarily. Even the defendant's primary focus in her written argument on the merits of the case suggests that there are bona fide issues for trial. It would therefore not be appropriate to allow the defendant's application for summary judgment under Rule 9-6.
- [24] The bar on an application for summary judgment is high: the applicant bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial" (*Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423 at para. 27 [*Guarantee Co.*]). Each side must "put its best foot forward" with respect to the existence or non-existence of material issues to be tried: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 11. A chambers judge may make inferences of fact based on the undisputed facts before the court, as long as they are strongly supported by the facts: *Guarantee Co.*, at para. 30.
- [25] A party cannot rely on mere allegations in pleadings to answer the opposing side's evidence: *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at para. 38. In *McLean*, Justice Saunders decided that case required an assessment of evidence against the R. 9-6 test, a matter she described as one inherently for the trial court: *McLean*, at para. 42.
- [26] I have considered the plaintiff's application for summary judgment in the context of this legal framework.

Protection or Restraining Orders

[27] The plaintiff provided no authority to support her request for protection or restraining orders against the individual defendants. I am aware of none outside the criminal or family law context. The plaintiff's pleading includes no request for injunctive relief. The defendants dispute her allegations of inappropriate conduct in their responding affidavits. Accordingly, I decline to grant this relief.

Monetary Relief

- [28] The plaintiff also seeks compensation for alleged damage to her lawn and the loss of frozen foods by way of summary judgment. However, the parties disagree about the nature of the Lease. The plaintiff says the Lease is, in effect, a tenancy. The defendants rely on the express wording of the Lease to argue that it is merely a licence to occupy.
- [29] In my view, the plaintiff's contractual damage claims are triable issues. They are inextricably linked to the existence of a valid contractual relationship between the parties after the ostensible termination of the Lease. This requires an assessment of whether the Lease is properly construed as a licence agreement or a tenancy; the date and method of termination are contingent on the proper classification of the contract and whether or not the Residential Tenancy Act, S.B.C. 2002, c. 78 applies. The law favours substance over the parties' classification of the agreement. The fact the parties said in the contract that the Lease is a licence, and not a tenancy, is not determinative. As Lord Denning held in *Errington v. Errington and Woods*, [1952] 1 K.B. 290 at 298, [1952] 1 All E.R. 149, parties cannot turn a tenancy into a licence merely by calling it one.
- [30] The proper characterization of the Lease, determination of whether the Lease term ended, and, if so, when, are questions for a conventional or summary trial. The parties did not address these issues in either their oral or written submissions. I decline to grant summary judgment on matters that are contingent on the existence of a valid contractual relationship and conclude this is a matter for the trial judge or potentially the Residential Tenancy Branch.

Written Interrogatories

- [31] In her notice of application filed February 6, 2020, the plaintiff seeks leave to question the respondents and their witnesses by way of written interrogatories. In her notice of application filed October 19, 2020, she repeats her request for restraining orders against Mr. Murtack and Mr. Powell and seeks an order granting her leave to question the defendants by way of written interrogatories or, in the alternative, "written examinations for discovery".
- [32] Rule 7-2(4) provides that an examination for discovery is an oral examination on oath.
- [33] Rule 7-3 governs written interrogatories and provides, in part, as follows:

Party may serve interrogatories by consent or with leave

- (1) A party of record to an action may serve interrogatories in Form 24 on any other party of record, or on a director, officer, partner, agent, employee or external auditor of a party of record, if
 - (a) the party of record to be examined consents, or
 - (b) the court grants leave.

...

Powers of court

- (3) In an order granting leave under subrule (1) (b) or (2), the court may set terms and conditions on the interrogatories, including terms and conditions respecting
 - (a) the number or length of the interrogatories,
 - (b) the matters the interrogatories are to cover,
 - (c) the timing of any response to the interrogatories, and
 - (d) the notification, if any, to be given to the other parties of record respecting the interrogatories.

...

If more than one person to answer interrogatories

- (5) If interrogatories are required to be answered by more than one officer, director, partner, agent or employee of a party, the interrogatories must state which of the interrogatories each person is required to answer.

Objection to answer interrogatory

- (6) If a person objects to answering an interrogatory on the grounds of privilege or on the grounds that it does not relate to a matter in question in the action, the person may make the objection in an affidavit in answer.

...

Application to strike out interrogatory

- (8) If a party of record objects to an interrogatory on the grounds that it will not further the object of these Supreme Court Civil Rules,
 - (a) the party may apply to the court to strike out the interrogatory, and

- (b) the court must take into account any offer by the party to make admissions, to produce documents or to give oral discovery.

[34] The proper use of interrogatories is canvassed in *Hou v. Wesbild Holdings Ltd.*, (1994), 98 B.C.L.R. (2d) 92 (S.C.) as follows:

14 Interrogatories are a pre-trial tool designed to narrow and focus the issues in the lawsuit, reduce the length and expense of trial and eliminate the element of surprise at trial. The Rule with respect to Interrogatories is to be interpreted in accordance with the general purpose of the Rules which is to secure the just, speedy and inexpensive determination of every proceeding on its merits. The leading decision in British Columbia on the purpose and scope of interrogatories is that of our Court of Appeal in *British Columbia Lightweight Aggregate Ltd. v. Canada Cement LaFarge Ltd. and others*, (1977) 4 B.C.L.R. 259. At page 265 of that case, Justice Taggart adopted this passage from *Kennedy v. Dodson*, [1895] 1 Ch. 334:

The legitimate use, and the only legitimate use, of interrogatories is to obtain from the party interrogated, admission of facts which it is necessary for the party interrogating to prove in order to establish his case; and if the party interrogating goes further, and seeks by his interrogatories to get from the other party matters which it is not incumbent on him to prove, although such matter may indirectly assist his case, the interrogatories ought not to be admitted.

15 Other British Columbia authorities have established these requirements for and limitations on interrogatories:

1. Interrogatories must be relevant to a matter in issue in the action.
2. Interrogatories are not to be in the nature of cross-examination.
3. Interrogatories should not include a demand for discovery of documents.
4. Interrogatories should not duplicate particulars.
5. Interrogatories should not be used to obtain the names of witnesses.
6. Interrogatories are narrower in scope than examinations for discovery.
7. The purpose of interrogatories is to enable the party delivering them to obtain admissions of fact in order to establish his case and to provide a foundation upon which cross-examination can proceed when examinations for discovery are held.
8. Interrogatories are only one means of discovery. The court may permit the party interrogated to defer its response until other discovery processes have been completed, including examinations for discovery.

[35] Questions that may be asked by way of interrogatories are much narrower in scope than those which may be asked on an examination for discovery: *Nicolay v. George* (1995), 16 C.P.C. (4th) 5 at para. 15 (B.C.S.C.), citing *BC Lightweight Aggregate Ltd. v. Canada Cement LaFarge Ltd.* (1977), 4 B.C.L.R. 259 (C.A.).

- [36] In *Credential Securities Inc. v. Qtrade Canada Inc.*, 2012 BCSC 1902 at paras. 100-101, Master Muir noted that orders regarding interrogatories must take into account the object of the Rules to secure the just, speedy and inexpensive determination of a proceeding on its merits in ways that are proportionate to the amount involved, the importance of the issues, and the complexity of the dispute. She considered whether the questions posed by written interrogatories in that case were overly broad, unduly burdensome, disproportionate to the issues sought to be clarified, required an analysis of extensive documents, or were more appropriately addressed on an examination for discovery.
- [37] Written interrogatories do not replace an examination for discovery. There are a number of options available to address the plaintiff's expressed concerns about the increased risk of conducting examinations for discovery due to COVID-19. They include proceeding by Zoom, Skype, MS Teams, or another remote platform. Doing so is quite common in the context of the ongoing pandemic.
- [38] I have reviewed the plaintiff's proposed written interrogatories. They comprise 19 pages and 220 questions. It is unclear whether she intended each of the defendants to respond to all of these questions.
- [39] Included in the plaintiff's written interrogatories are questions for Mr. Oviatt, who is not a party to this lawsuit. Those questions clearly extend beyond what is contemplated by R. 7-3.
- [40] The plaintiff's proposed written interrogatories are lengthy, argumentative, and often difficult to understand. Many appear to be in the nature of cross-examination. The relevance of several questions is unclear. Some examples include the following:
- i. Question 62: "Would this not be another admission of guilt by you through your actions?"
 - ii. Question 66: "Obviously, this is how you do business, but would you consider the above examples to be ethically improper?"
 - iii. Question 99: "Why did you refuse to submit to a polygraph examination which would have provided some degree of credibility to your testimony?"
 - iv. Question 122: "Do you understand this principal of Universal Law yet?"
 - v. Question 182 asks: "Was your son involved in illegal drugs at any time in his life?"
- [41] These examples are illustrative only and not exhaustive. Many other questions included in the plaintiff's 220 proposed written interrogatories are clearly improper, irrelevant, unintelligible, and/or incapable of a coherent response. The plaintiff makes inappropriate requests for "sworn testimony" to refute her own assertions.

- [42] I conclude that ordering the defendants to answer these written interrogatories would be time-consuming, costly, and unduly onerous. I am not persuaded that making such an order would advance the goals of an orderly, efficient, cost-effective, and proportionate resolution of the parties' dispute on the merits, as contemplated by R. 1-3. I am not satisfied the plaintiff's written interrogatories would be effectively deployed as part of the discovery process in this case.
- [43] I decline to order the defendants to answer the plaintiff's written interrogatories. The Rules clearly contemplate oral examinations of parties. I see no reason to depart from that practice in this case.

DEFENDANTS' APPLICATION TO STRIKE ANOCC

Requirements of a Notice of Civil Claim

- [44] Rule 3-1 sets out the requirements for a notice of civil claim. Rule 3-1(2) provides as follows:

Contents of notice of civil claim

- (2) A notice of civil claim must do the following:
- (a) set out a concise statement of the material facts giving rise to the claim;
 - (b) set out the relief sought by the plaintiff against each named defendant;
 - (c) set out a concise summary of the legal basis for the relief sought;
 - (d) set out the proposed place of trial;
 - (e) if the plaintiff sues or a defendant is sued in a representative capacity, show in what capacity the plaintiff sues or the defendant is sued;
 - (f) provide the data collection information required in the appendix to the form;
 - (g) otherwise comply with Rule 3-7.
- [45] The ANOCC does not comply with Rule 3-1(2). It contains neither a concise statement of the material facts giving rise to specific causes of action nor a concise summary of the legal basis for the relief sought. It is unclear from a review of the ANOCC what relief the plaintiff seeks against each of the named defendants.
- [46] The ANOCC is lengthy, confusing, and prolix. It contains many irrelevant statements, unsupported assertions, and alleged claims with no factual or legal foundation. It is unclear how the defendants could respond coherently to the allegations contained in the ANOCC or prepare for trial based on this pleading.
- [47] The defendants argue that pleadings which are difficult to understand and involve the parties in useless expense are unnecessary, scandalous, frivolous, irrelevant, and embarrassing: *Chernen v. Robertson*, 2014 BCSC 1358 at paras. 25, 29, 33.

[48] The plaintiff concedes that the ANOCC is lengthy, saying someone told her to write it as a story. She requests a further opportunity to amend her pleading if it contains any deficiencies, suggesting such applications are to be granted liberally, citing *K-Brand Gourmet Foods Ltd. v. Butler*, 2018 BCSC 1682 at para. 34.

Application of Rule 9-5

[49] Rule 9-5 provides, in part, as follows:

Scandalous, frivolous or vexatious matters

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - (a) it discloses no reasonable claim or defence, as the case may be,
 - (b) it is unnecessary, scandalous, frivolous or vexatious,
 - (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
 - (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[am. B.C. Reg. 119/2010, Sch. A, s. 22.]

Admissibility of evidence

- (2) No evidence is admissible on an application under subrule (1) (a).

[50] In *Edgar v. British Columbia Institute of Technology*, 2015 BCSC 710, Justice Russell held as follows:

- [8] On an application to strike pleadings for disclosing no cause of action under Rule 9-5(1)(a), all the pleadings are assumed to be true, and no evidence is admissible. The analysis focuses on whether, as a matter of law, a claim or defence assumed to be true is capable of succeeding. If it is not, and the pleadings cannot be remedied by an amendment, the court has the discretion to strike the pleadings.

[51] The key test for striking pleadings is set out in *R v. Imperial Tobacco*, 2011 SCC 42 at para. 17:

The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r. 19(24)(a) of the B.C. Supreme Court Rules. This Court has reiterated the test on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3

S.C.R. 83; *Odhavji Estate; Hunt; Attorney General of Canada v. Inuit Tapirisat of Canada*, [1980] 2 S.C.R. 735.

- [52] However, the rule that material facts in a notice of civil claim must be taken as true on an application pursuant to R. 9-5 does not include allegations based on assumption and speculation: *McIvor v. British Columbia (Attorney General)*, 2015 BCSC 1050 at paras. 9-10. Similarly, speculative and sweeping allegations are not to be taken as true on an application under R. 9-5: *Young v. Borzoni*, 2007 BCCA 16 at paras. 30-32; *Cimaco International Sales Inc. v. British Columbia (Attorney General)*, 2009 BCSC 946 at para. 51, *aff'd* 2010 BCCA 342.
- [53] An exception to Rule 9-5(2) allows the court to reference those documents that are integrally linked to the claim being advanced. The authorities confirming this exception are set out in *Shoppers Drug Mart Inc. v. Mang*, 2021 BCSC 928:
- [14] The question of a reasonable claim or defence is addressed assuming the truth of the factual allegations in the pleading. As set out in subrule (2), no evidence is admissible in addressing this question. However, the court may refer to documents incorporated by reference in the pleading; *Bow Valley Resource Services Ltd. v. Kansa General Insurance Co.* (1990), 49 C.C.L.I. 230 (B.C.S.C.) at para. 7, leave to appeal refused (1991) 49 C.C.L.I. 247 (C.A. Chambers), *aff'd* (1991), 56 B.C.L.R. (2d) 337 (C.A.); *Pacific Shower Doors (1995) Ltd. v. Osler, Hoskin & Harcourt, LLP*, 2011 BCSC 1370 at para. 6; *Johnstone v. Gardiner*, 2011 BCSC 1843 at para. 14, *rev'd* but not on this point 2012 BCCA 184 at paras. 10-14; *Afi v. British Columbia (Minister of Jobs, Tourism and Skills Training)*, 2020 BCSC 1451 at para. 28.
- [54] The court must also consider the claim both as it is pleaded and as it could be pleaded with appropriate amendments: *The Owners, Strata Plan LMS2359 v. Sze Hang Holding Inc.*, 2009 BCSC 473 at paras. 40-41; *Strohmaier v. British Columbia (Attorney General)*, 2015 BCSC 1189 at para. 17; *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2015 BCCA 163 at para. 133.
- [55] Pleadings that are so prolix and confusing that it is difficult, if not impossible, to understand the case to be met, should be struck: *Gateway Building Management Limited v. Manjit Singh Randhawa*, 2013 BCSC 350 at para. 18, citing *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473 at para. 36

The ANOCC

- [56] The ANOCC is 27 pages and 137 paragraphs in length. It is poorly drafted and largely incomprehensible. In Part 1 of the ANOCC, on pages two to 22 inclusive, the plaintiff purports to set out the facts on which her claims are based.
- [57] The ANOCC does not accord with the Rules. It is so confusing that I conclude it must be struck in its entirety. I grant the plaintiff leave to amend her pleading on a limited basis to advance only the causes of action set out below.

- [58] I have attempted to group the plaintiff's claims by category. I begin by considering whether any of the pleaded claims have a reasonable prospect of success or are bound to fail. I grant the plaintiff leave to amend her pleading to advance only those claims that are not bound to fail.

Harassment

- [59] In para. 3 of the ANOCC, the plaintiff alleges "bullying and criminal harassment". In paras. 12-44 inclusive, on pp. 4-9 of the ANOCC, she makes further allegations of "harassment" by the defendants. At paras. 50-75, under the heading "Harassment", the plaintiff makes additional allegations of harassment against the defendants. At paras. 76-82, on p. 15 of the ANOCC, she alleges harassment by Mr. Powell specifically.
- [60] The defendants submit that the tort of statutory harassment is not a cause of action known to law. In *Edgar*, at para. 49, Russell J. confirmed there was no statutory tort of harassment in BC and dismissed the plaintiff's claim based on such a tort in that case.
- [61] There is also no common law tort of harassment in either British Columbia or Canada: *Stein v. Waddell*, 2020 BCSC 253 at paras. 30-35; *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289; *Merrifield v. Canada (Attorney General)*, 2019 ONCA 205.
- [62] Accordingly, I conclude the plaintiff's harassment claim, as set out in paras. 3-7, 12-44, and 50-82 inclusive of the ANOCC, is bound to fail and must be struck.

Discrimination

- [63] Paragraph 3 of the ANOCC alleges "gender-based discrimination".
- [64] There is no recognised tort of gender-based discrimination in BC: *Johnson v. Smith*, 2018 BCSC 836 at para. 27. If the plaintiff elects to pursue this kind of claim, she must do so through the Human Rights Tribunal.
- [65] I therefore conclude the plaintiff's discrimination claim, as set out in paras. 3-7, 12-44, and 50-82 inclusive of the ANOCC, is bound to fail.

Intentional Infliction of Mental Suffering

- [66] In para. 110 of the ANOCC, the plaintiff alleges the intentional infliction of mental suffering ("IIMS"). She references the "intentional conduct" of the defendants, Mr. Murtack, Mr. Powell, and Ms. Powell allegedly causing her "emotional distress" under the heading "Double M Negligence". Despite the plaintiff's blended approach in her pleading, negligence and IIMS are distinct causes of action.
- [67] The constituent elements of an IIMS claim require the plaintiff to prove, on a balance of probabilities, that the defendant's conduct was:
- i. flagrant or outrageous;

- ii. calculated to produce harm; and
- iii. resulted in the plaintiff manifesting a visible provable illness (*Universe v. Fraser Health Authority*, 2019 BCCA 234 at para. 23, citing *Young v. Borzoni*, 2007 BCCA 16).

[68] Assuming the conduct alleged in para. 110 of the ANOCC occurred, I accept that it could be construed as "flagrant or outrageous". However, the plaintiff does not plead a visible and provable illness arising from the alleged flagrant or outrageous conduct. Accordingly, I conclude her allegations of IIMS are bound to fail.

Criminal Activities

[69] In paras. 83-100, on pp. 16-18 of the ANOCC, under the heading "Further Alleged Criminal Activities by the Defendants Against Anderson", the plaintiff alleges the defendants engaged in various criminal acts.

[70] It is unclear on what basis the plaintiff would be entitled to seek damages in a civil action arising from alleged criminal activity. I conclude that paras. 83 to 100 of the ANOCC disclose no reasonable cause of action.

Defamation

[71] Throughout the ANOCC, the plaintiff references slander, defamation, and "incitement of hatred" against her by the defendants.

[72] In a defamation claim, the plaintiff has the onus of proving on a balance of probabilities that the impugned words: (a) are defamatory; (b) refer to the plaintiff; and (c) the words were published to at least one other person: *Grant v. Torstar Corp.*, 2009 SCC 61 at para. 28; *Level One Construction Ltd. v. Burnham*, 2019 BCCA 407 at para. 32.

[73] Rule 3-7(21)(b) provides as follows:

Particulars in libel or slander

(21) In an action for libel or slander,

(a) if the plaintiff alleges that the words or matter complained of were used in a derogatory sense other than their ordinary meaning, the plaintiff must give particulars of the facts and matters on which the plaintiff relies in support of that sense, and

(b) if the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and that insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant must give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.

[74] Specificity is required when pleading a claim in defamation. A plaintiff must plead the precise allegedly defamatory words: *Wilson v. British Columbia*, 2018 BCSC 2327 at para. 10.

- [75] In *Caron v. A.*, 2015 BCCA 47, the Court of Appeal confirmed the need for precision when pleading a defamation claim:
- [58] The appellant argues that there are particular rules with respect to pleadings in a defamation case. They must be precise and particular. She says pleadings that fail to specify the alleged defamatory words, or to whom the allegedly defamatory words were published, disclose no cause of action: see *Shannon v. King*, [1931] 4 D.L.R. 438 at 439, per Macdonald C.J.B.C. (B.C.C.A.); Alastair Mullis et al., eds., *Gatley on Libel and Slander*. 12th ed. (London, Eng.: Thomson Reuters, 2013) at 26.2-26.3. It is well-accepted that, in defamation claims, "the actual words complained of must be set out verbatim so that the defendant will know with certainty the words which are alleged to be defamatory": *Pootlass v. Pootlass* (1999), 63 B.C.L.R. (3d) 305 at 319 (S.C.). The person complaining must be able to say what the words were, failing which the pleading should generally be struck: see *Lawrence v. Wallace* (2002), 203 N.S.R. (2d) 197 at paras. 6--8 (C.A.), per Cromwell J.A. (as he then was).
- [59] I agree with the appellant that the language "circulated horrible rumours " discloses no cause of action. Some portions of paragraph 4 do not contain the specificity that is necessary for pleadings in defamation.
- [60] However, in these circumstances, noting in particular that the respondent is a self-represented, very young man, I would not at this time order that any part of paragraph 4 be struck. This Court has previously said that, when considering whether a portion of the pleadings should be struck, a court should consider whether it discloses some question fit to be tried "as it stands or as it may be amended": *Minnes v. Minnes* (1962), 39 W.W.R. 112 (B.C.C.A.), quoted with approval in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 978 [emphasis added]. The respondent should seek leave from the Supreme Court to amend his pleading as needed to state the required particularity.
- [76] The ANOCC fails this stringent test.
- [77] For a statement to be defamatory, it must lower the reputation of the plaintiff in the estimation of right-thinking members of society generally, or expose the plaintiff to hatred, contempt, or ridicule. A court must assess the allegedly defamatory words from the perspective of a person who is reasonably thoughtful and informed but not excessively sensitive or fragile: *Weaver v. Corcoran*, 2017 BCCA 160 at paras. 68-69.
- [78] The plaintiff must prove that the defendant has expressed the defamatory meaning to at least one third party: *Crooks v. Newton*, 2011 SCC 47 at paras. 16, 39-43. This is an indispensable element in an action for defamation and there can be no liability without it: Raymond E. Brown, *Brown on Defamation*, (Toronto: Thompson Reuters, 1999) (e-looseleaf updated 2019), at 7.2.

- [79] Reference in the ANOCC to defamation, slander, and incitement of hatred are set out under headings "Harassment by the Defendants", "Harassment", "Further Alleged Criminal Activities by the Defendants Against Anderson", and "Negligence". The ANOCC does not include a concise statement of the material facts required to support a claim in defamation.
- [80] In para. 86 of the ANOCC, under the heading "Further Alleged Criminal Activities by the Defendants Against Anderson", the plaintiff alleges that, on June 30, 2018, at the annual meeting of Owl's Nest residents, Mr. Murtack defamed her by stating, on behalf of Double M, that he was going to remove the plaintiff from Owl's Nest by legal action. On its face, the term of the Lease expired on April 1, 2017; thereafter, the defendants took the position that the plaintiff had no licence to occupy the Cabin. Double M is pursuing legal remedies against the plaintiff in this action. It is unclear how Mr. Murtack's alleged statement is defamatory. I conclude the alleged defamation claim in para. 86 is bound to fail. The necessary degree of specificity is not pleaded.
- [81] In response to the defendants' October 22, 2018 demand, the plaintiff provided particulars of her defamation claim. Under the heading "The specific words used to allegedly slander or defame the Plaintiff", she wrote: "TROUBLE!!!!!!!!!!!! Cheryl Anderson is Trouble!!!!!!". In her response to the defendants' demand for particulars, the plaintiff states further that she does not know all the words she alleges the defendants used to slander and defame her but presumes they "must have been pretty horrific" because former friends have allegedly "shunned" and "turned against [her]".
- [82] I am unable to conclude that reference to the plaintiff as "trouble" is defamatory. Generally speaking, mere words of abuse which injure a person's feelings, insult his or her pride, or cause annoyance or embarrassment are not actionable. The law does not provide redress solely for wounded sensibilities. Nor is there an action for insults which do not diminish a person's standing in the community; the law regards as innocuous language which is merely offensive and vituperative: 567893 B.C. Ltd. v. Aasen, 2007 BCSC 663 at para. 24.
- [83] I conclude the plaintiff's defamation claim, as particularised in her response to the defendants' demand for particulars, is bound to fail.

Negligence

- [84] In paras. 101-106 on pp. 18-20 of the ANOCC, under the heading "Double M's Negligence", the plaintiff purports to set out her claim against Double M in negligence. However, her allegations predominantly relate to "discrimination and harassment". For the reasons set out above, those allegations do not give rise to independent tort claims.
- [85] Under the same heading, at paragraph 102(d) of the ANOCC, the plaintiff alleges Double M both defamed and incited hatred against her. I have addressed those allegations.

[86] At para. 107-115 on pp. 20-22 of the ANOCC, under the heading "Double M Employee Negligence", the plaintiff purports to set out her alleged claim in negligence. The duty of care she alleges Double M employees owed to her relates to ensuring that she was able to reside in an environment "free of discrimination and harassment". The plaintiff appears to conflate two distinct concepts: a claim in negligence and the non-existent intentional tort of harassment. I see no basis in law for holding an employer vicariously liable for the non-tortious actions of its employees. This would be akin to holding a party liable in negligence for lawful conduct. Such a claim is not an incremental advancement of the common law and is thus bound to fail: *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para. 35.

Lease Agreement with Double M

- [87] In para. 2 of the ANOCC, the plaintiff alleges a breach of the Lease by Double M. In paras. 9-11 on p. 3 of the ANOCC, under the heading "Anderson's Purchase of Cabin #1 at Owl's Nest", the plaintiff purports to set out the facts on which she relies in support of this claim.
- [88] In para. 29 of the ANOCC, the plaintiff alleges Double M cancelled the Lease on inappropriate grounds. Specifically, she asserts that Double M accepted false allegations and innuendos and terminated the Lease based on a disagreement between her and Ms. Powell.
- [89] In paras. 45-49 on pp. 9-10 of the ANOCC, under the heading "Breach of Contract", the plaintiff alleges a breach of the Lease by the defendants. The plaintiff entered into the Lease with Double M. Based on the ANOCC, it is unclear on what basis she alleges the personally named defendants are liable for breach of contract.
- [90] In paras. 53 to 55 of the ANOCC (under the heading "Harassment"), the plaintiff alleges her dog suffered fatal injuries following an attack by a neighbour's dog in late March 2018. She alleges the defendants' failure to remove this dog from Owl's Nest was a breach of the Lease.
- [91] In para. 58 of the ANOCC, the plaintiff alleges that, on April 4, 2018, Mr. Murtack trespassed onto her front lawn with a backhoe, dug a hole down to the waterline, and intentionally and illegally turned off the water to the Cabin.
- [92] In para. 67 of the ANOCC, the plaintiff alleges that, on May 22, 2018, Mr. Murtack again trespassed onto her "leased lands", operated a backhoe, dug another hole, and illegally shut off her electricity.
- [93] In para. 105 of the ANOCC, the plaintiff alleges it was an express or implied term of the Lease that Double M would provide her with water and sewer services. She further alleges it was an express or implied term of the Lease that she would have use of the public washrooms, showers, and laundry facilities at Owl's Nest.

[94] Taking these paragraphs as a whole, the plaintiff alleges the existence of a contract, a breach of the rules and regulations incorporated into the contract, and the provision of various services as a condition of the contract. I turn to the Lease, which is referenced in the ANOCC, to determine whether it is plain and obvious that the plaintiff has a cause of action for breach of contract.

[95] The Lease is a one-page document between Double M and the plaintiff. It provides as follows:

This agreement, made this 25 of November 2015, is between Owl's Nest RV Resort (hereinafter called the licensor) and Cheryl Anderson (hereinafter called the licensee). Stipulates that both parties hereto agree: that this contract shall be a "license to occupy" and under no circumstances shall be construed to be a tenancy. The licensor does agree to grant, and the licensee does hereby agree to take Lot number (Cabin 1) for the Season of April 1, 2016 to April 1, 2017. Each season shall consist of one year's time frame beginning from the date of signing to the ensuing year, that the fee for such license, which will allow the licensee to occupy and use said lot for his/her recreational vehicle and personal enjoyment to be paid in advance. NOTE: "Rights to Sell Lease Agreement" must be attached if transferring lease. The Licensee agrees to abide by all rules and regulations set out by the licensor.

[96] The Licence to Occupy is also a one-page document. It provides, in part, as follows:

- i. If the Lease is in default, the site becomes the property of Owl's Nest;
- ii. The licensor has the right to cancel the license on 30 days' written notice and cause for doing so includes a conflict with the rights of quiet enjoyment of the other licensees; and
- iii. If the licensee is involved in any legal conflict with Double M or its shareholders, the Lease will be cancelled, in which case the license to occupy will be put up for sale and the licensee will no longer be allowed to occupy.

[97] The General Rules and Regulations, incorporated into the Lease by reference, provide, in part, that all pets at Owl's Nest must be on a leash. They make no reference to the provision of any services.

[98] The Lease expressly provides that it is not to be construed as a tenancy. Rather, it is a "licence to occupy" for a specified one-year term from April 1, 2016 to April 1, 2017. For the reasons noted above, many of the plaintiff's claims both in contract and in tort depend on a valid right to possess the impugned property after the ostensible termination of the Lease. This depends on whether the Lease is a tenancy or licence and when, or if, the Lease was terminated. These are triable issues. In my view, it cannot be said that the plaintiff's contractual claims, if properly amended, are bound to fail.

Trespass

- [99] At common law, an action in trespass requires a plaintiff to prove the direct and intentional physical intrusion onto the land in the possession of another: *Gambling v. Dykes*, 2021 BCSC 938 at para. 50. Trespass is actionable per se (i.e., without proof of loss).
- [100] In para. 40 of the ANOCC, the plaintiff alleges that "shortly after" she deposited some garbage and recycling in the Owl's Nest bins on May 2, 2017, Mr. Powell illegally entered the Cabin.
- [101] In para. 44(o) of the ANOCC, the plaintiff asserts the defendants have "harassed and terrorised" her, in part, by trespassing and "prowling" around her residence in the middle of the night. There is also reference to "trespass and prowling around Anderson's residence in the middle of the night" in paragraph 44(f) of the ANOCC, under the heading "Harassment by the Defendants". The plaintiff does not particularise these claims with a concise statement of the material facts on which she relies.
- [102] In para. 58 of the ANOCC, the plaintiff alleges trespass by Mr. Murtack, when he operated a backhoe at Owl's Nest on April 4, 2018. This claim is entirely dependant on whether the plaintiff then had a contractual right of possession.
- [103] In paras. 81 and 82 of the ANOCC, the plaintiff alleges Mr. Powell trespassed "onto [her] residence" to "further harass her". Paras. 81 and 82 follow paras 76 - 80, where the plaintiff alleges harassing conduct by Mr. Powell in July 2018. This allegation also depends on the existence of valid right of possession of the property.
- [104] The plaintiff's allegations of trespass are contingent on whether or not the Lease expired on April 1, 2017. While it is unclear on what basis the plaintiff would have a claim in trespass after the expiry of the Lease, if and when the tenancy or licence terminated are triable issues.

Nuisance

- [105] The Court of Appeal recently reviewed the tort of private nuisance in *Baker v. Rendle*, 2017 BCCA 72, summarising the requirements in a private nuisance claim as follows:
- [41] In summary, the requirements for proof of private nuisance are two-fold. First, a plaintiff must prove a substantial, non-trivial interference with his use and enjoyment of his property. Second, he must establish that the interference is unreasonable. The focus is primarily on the effect on the complainant rather than on the alleged tortfeasor's conduct (Antrim at para. 28). Thus, contrary to the appellant's submission in this Court, a measure of subjectivity exists even at the stage of determining whether liability exists, and not merely when determining the extent of liability.

[106] In paragraph 44(o), the plaintiff alleges "nuisance". This statement is conclusory. The material facts required to establish a reasonable cause of action in nuisance are confused, as presented drafted. It appears in the ANOCC under the heading "Harassment by the Defendants". The plaintiff alleges the defendants' unlawful trespass into the Cabin caused a nuisance.

[107] The success of her alleged nuisance claim depends on a determination of whether the Lease was terminated and, if so, when. For the reasons set out above, I conclude these are triable issues. I cannot conclude that, if properly amended, this claim is bound to fail; some alleged actions, assuming they occurred, could potentially be construed as nuisance.

Breach of Privacy

[108] The test for a statutory breach of privacy is set out in s. 1 of the Privacy Act, R.S.B.C. 1996, c. 373 as follows:

Violation of privacy actionable

1 (1) It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

[109] In paragraph 44(o) of the ANOCC, the plaintiff makes allegations of the defendants "disrupting her privacy" by trespassing into her home and causing a nuisance. This assertion appears in the ANOCC under the heading "Harassment by the Defendants".

[110] In para. 97 of the ANOCC, the plaintiff alleges the defendants breached her privacy in the spring 2019, by allowing an RV to encroach on her fence line. This claim depends entirely on the existence of a valid licence or tenancy in 2019.

[111] It is not plain and obvious that the plaintiff's breach of privacy claim is destined to fail. An assessment of her reasonable expectation of privacy in the Cabin depends on a determination of whether she had a valid right of possession at the material time(s).

Destruction of Personal Property

[112] In para. 32 of the ANOCC, the plaintiff asserts that the defendants, Mr. Powell and/or Mr. Murtack, intentionally damaged her garage shelter, vehicle, and boat in February 2017. The defendants deny these allegations.

[113] In his Affidavit #1, sworn June 26, 2019, Mr. Murtack disputes the plaintiff's allegation that he was involved in the wilful destruction of her assets. In his Affidavit #1, sworn June 26, 2019, Mr. Powell responds to the plaintiff's allegations against him and denies that he was involved in the wilful destruction of her property. He deposes as follows:

- i. Due to limited parking spaces at Owl's Nest, residents are given the option to park vehicles, boats, or trailers in the Owl's Nest compound area;
- ii. He denies providing the plaintiff with any assurance such property would be safe;
- iii. Owl's Nest park rules provide that Double M is not responsible or liable for damage to property;
- iv. Owl's Nest residents are responsible for the construction of their own garage shelters; and
- v. When he learned the plaintiff's garage shelter had collapsed in 2017, he took a photo of it, noting it had a square roof, unlike other shelters that had round rooves (to prevent the accumulation of snow) and did not collapse.

[114] I am unable to resolve the evidentiary conflicts relating to this claim and conclude they raise triable issues.

Damages

[115] Paragraphs 111 to 115 on pages 21 to 22 summarise the relief the plaintiff seeks in the form of compensatory, aggravated, and punitive damages. In paragraph 116 on pages 22 to 25, under the heading "Relief Sought" in Part 2 of the ANOCC, she seeks additional relief including the "imposition of a monetary penalty", a protection order against Mr. Murtack, Mr. Powell, and Ms. Powell, general, punitive, and aggravated damages, and costs.

[116] These requests for relief are dependant on the ANOCC disclosing a reasonable cause of action. Given the causes of action in the ANOCC that I have struck, as set out above, I grant the plaintiff limited leave to amend the relief sought, as set out below.

Can the remaining defects in the ANOCC be corrected?

[117] A claim ought not to be struck where, if amended, it could disclose a reasonable cause of action: *Carhoun & Sons Enterprises Ltd. V. Canada (Attorney General)*, 2015 BCCA 163 at para. 133. This is particularly true for cases involving self-represented litigants: *Beach v. Beach Estate*, 2019 BCCA 277 at para. 68.

- [118] The ANOCC is confused, prolix, and incapable of a coherent response. I conclude the defendants would be unable to prepare for trial based on this pleading. Attempting to make sense of the ANOCC for the purpose of addressing the applications before me was a challenge.
- [119] After striking the causes of action in the ANOCC that I have found are bound to fail (as set out above), in accordance with Rule 9-5(1)(a), I conclude all other paragraphs in the ANOCC are properly described as unnecessary, scandalous, frivolous, and/or vexatious. I am persuaded that allowing them to remain in the ANOCC might prejudice, embarrass or delay the fair trial or hearing of this proceeding, as contemplated by Rule 9-5(1)(c). Remedying the multiple deficiencies in the ANOCC would require a wholesale redrafting of this pleading. Notably, the plaintiff has already amended her pleading once.
- [120] I grant the plaintiff limited leave to amend her pleadings, in strict accordance with my disposition, as set out below.
- [121] I appreciate that the plaintiff is a self-represented litigant. However, all litigants are required to follow the Rules regarding the drafting of pleadings. The defendants are entitled to know the case they have to meet and to be in a position to prepare for trial. As noted by Myers J. in *Williams v. Simon Fraser University*, 2018 BCSC 1787 at para. 18, "[w]hile some flexibility may be given to a self-represented party, this only goes so far". Williams J. found the need to accommodate a self-represented litigant did not extend to acceding to the plaintiff's suggestion that the matter be left to a 19-day trial without applying the legal analysis that the defendants' applications entailed. The same could be said here.
- [122] In *Johnson, Butler J.* (as he then was) struck the self-represented litigant's claim in its entirety, describing it as confusing, difficult to understand, and partly unintelligible. That description applies equally to the ANOCC.
- [123] On a generous reading, the ANOCC discloses a possible cause of action for breach of the Lease, trespass, nuisance, breach of privacy, and destruction of property. The ANOCC does not clearly set out the factual foundation for this claim in a concise, coherent, and comprehensible manner.
- [124] I grant the plaintiff leave to amend the ANOCC, on a limited basis, to plead, in a concise manner, as contemplated by Rule 3-1(2)(a) and (b), the material facts on which she relies for her breach of contract, trespass, nuisance, breach of privacy, and destruction of property claims, and the precise nature of the relief she seeks against each named defendant.
- [125] This order does not contemplate the plaintiff simply repeating in her further amended pleading the sweeping allegations that I have struck. The plaintiff might find it useful to seek the assistance of a lawyer in preparing her further amended pleading to ensure it complies with the Rules.

DISPOSITION

[126] I make the following orders:

- i. The plaintiff's applications filed June 20, 2019 and February 6, 2020 are dismissed;
- ii. The ANOCC is struck in its entirety pursuant to R. 9-5(1)(a), (b), and (c);
- iii. The plaintiff has 45 days within which to amend the ANOCC to state concisely the material facts, including reference to specific dates, on which she relies for her alleged claims for breach of contract and the contingent claims of trespass, nuisance, breach of privacy and the destruction of personal property, and the precise nature of the relief she seeks against each named defendant, in accordance with Rule 3-2(1)(a) and (b).

[127] The defendants have been largely successful on the applications before me. Absent matters of which I am unaware that might alter this view, they are entitled to the costs of all applications before me, as agreed upon or assessed, on Scale B.

"Douglas J."

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