

CANADA / JUDGMENT

Anderson v. Double M Construction Ltd.

2026 BCSC 53

COURT

Supreme Court of British Columbia

DECIDED

15 January 2026

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2026 BCSC 53 Anderson v. Double M Construction Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anderson v. Double M Construction Ltd.,

2026 BCSC 53

Date: 20260115

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 Justice MacNaughton

Reasons for Judgment

The Plaintiff, appearing in person:

C. Anderson

Counsel for the Defendants:

T. Pearkes

Place and Date of Hearing:

Cranbrook, B.C.

January 16-18, 2024

October 2-4, 2024

March 28, 2025

Place and Date of Judgment:

Cranbrook, B.C.

January 15, 2026

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Overview

- [1] The matter before me has a substantial procedural history. In brief, the plaintiff, Cheryl Anderson, resides in a leased cabin located on the property of the Owl's Nest RV Resort ("Owl's Nest" and the "Cabin" or "Cabin 1").
- [2] Owl's Nest is located about 15 minutes outside of Cranbrook, near Moyie Lake. Pursuant to Cranbrook's municipal bylaws, it is zoned as a privately-owned campground. It has about 150 campsites, most of which are occupied seasonally. Some of the campsites are vacant; other sites have improvements on them such as a motorhome, trailer, park home, or a cabin.
- [3] Between 2016, when Ms. Anderson started living at Owl's Nest, and the present day, the relationship between Ms. Anderson and the defendants, who are the company that operates Owl's Nest and its employees or former employees, has deteriorated. Ms. Anderson has also had difficult relationships with a number of other residents at Owl's Nest. The deterioration of the relationship between the parties has led to this fractious and protracted litigation.
- [4] Ms. Anderson, who is self-represented, asserts, among other things, that the defendants have damaged her personal property, trespassed, bullied, harassed, and defamed her. She asserts that some of the individual defendants deliberately damaged her personal property stored at Owl's Nest and interfered with her occupancy of the Cabin in an effort to make her life so untenable that she would leave.
- [5] The defendants assert, among other things, that Ms. Anderson is only entitled to reside in the Cabin at Owl's Nest by paying an annual license fee, which she did not pay in 2016 or between 2018 to present. They also assert that she has not paid the balance of the price for the lease of the Cabin. The defendants, therefore, claim that Ms. Anderson is not entitled to continue occupying the Cabin.
- [6] Two of the individual defendants seek damages for defamation arising from various publications by Ms. Anderson.
- [7] Ms. Anderson wishes to remain at Owl's Nest and asserts that she is entitled to damages. The defendants request that this Court order vacant possession of the Cabin and seek damages, including for defamation.

The Current Applications

The Defendants' Current Application

- [8] The defendants' October 6, 2023 notice of application seeks:
 - 1. a declaration that Ms. Anderson is a vexatious litigant;
 - 2. an order striking or summarily dismissing the Further Amended Claim pursuant to Rules 1-3, 3-7, 9-5, 9-7 and 22-7 of the Supreme Court Civil Rules;

3. an order prohibiting Ms. Anderson, without leave, from instituting a legal proceeding in any court against Double M Construction Ltd. ("Double M"), its shareholders, officers, employees or agents, or the defendants Mr. Murtack, Mr. Powell, or Ms. Powell pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443;
4. a declaration that Ms. Anderson's repudiation of her contracts with the defendant Double M was accepted and her contracts are at an end;
5. a declaration that Ms. Anderson forfeited her interest in the Cabin, and Double M is the owner of the Cabin;
6. an order that Ms. Anderson deliver up vacant possession of the Cabin and lot within 30 days of pronouncement of this order;
7. damages for defamation payable to Mr. Murtack;
8. damages for defamation payable to Mr. Powell;
9. punitive damages payable to Mr. Murtack;
10. punitive damages payable to Mr. Powell;
11. special costs;
12. any other or further relief that this Court deems just and equitable; and
13. an order dispensing with Ms. Anderson's signature on this order and stating that this Court will supervise entry of the order drafted by the defendants' lawyer.

[9] Ms. Anderson opposes the relief sought by the defendants.

[10] In these reasons, I will refer to the defendants' current application as the "DCA".

Ms. Anderson's Current Application

[11] Ms. Anderson's October 12, 2023, notice of application seeks:

1. an order pursuant to Rule 9-5(a) and (d) dismissing the defendants' proceedings and striking out their amended response to civil claim filed September 6, 2019, and amended counterclaim filed March 20, 2020, as an abuse of process without leave to amend;
2. an order, pursuant to Rule 9-5 (1)(b) and (c), that the defendants are vexatious litigants, and their pleadings are scandalous and frivolous, and that they may not file additional legal proceedings without leave of the court in accordance with the Rules and Rule of Law;
3. an order, pursuant to Rules 9-5(1), 9-7(18) and 14(1), in accordance with the last paragraph of Justice Douglas' reasons for judgment dated July 29, 2021, where she states, "Absent matters of which I am unaware that might alter this view", that Douglas J.'s award for costs to the defendants be set aside or varied to instead be awarded to Ms. Anderson due to the defendants' civil fraud, civil conspiracy, and misrepresentations included in their application submission and proceedings provided to Douglas J., with the intention to

influence court decisions in the defendants' favour;

4. an order, pursuant to Rule 9-5(1), Rule 9-6(5), and Rule 9-7(18), that Douglas J.'s reasons for judgment be set aside due to obstruction of justice by the defendants who intentionally submitted fraudulent and misleading application submissions and manufactured proceedings to Douglas J., including a perjurious sworn testimony and fabricated exhibits, with the intention to influence court decisions in the defendants' favour;
5. an order, pursuant to Rule 9-6(2) and (5), that the defendants pay to Ms. Anderson forthwith the partial relief sought in accordance with the extensive evidence supporting the granting of this order. The defendants' negligent and illegal behaviour has caused a significant monetary loss to Ms. Anderson since early 2017. Such partial relief is described under Part 2 of Ms. Anderson's amended notice of civil claim dated September 13, 2021, beginning on page 21 at paragraph 90(a), (b) i to x, for a total of \$178,723.33, less the outstanding balance on Cabin 1, namely \$35,000, at which time the Cabin 1 will be legally placed into Ms. Anderson's name;
6. An order, pursuant to Rule 9-7(2), (5) and (18), directing the balance of Ms. Anderson's claims proceed to summary trial to be heard in early 2024, to deal with all remaining issues included in her amended notice of civil claim filed September 13, 2021;
7. An order, pursuant to Rules 14-1(1), (3), (5), (12)-(15), that Ms. Anderson is entitled to costs for this application; and an award of lump sum special costs, jointly and severally, against the defendants as a punishment for their fraudulent behaviour and obstruction of justice perpetrated throughout this legal action; and
8. Any further relief this Honourable Court deems just and equitable.

[12] In these reasons, I will refer to Ms. Anderson's current application as the "ACA".

Background

- [13] Ms. Anderson is a resident at Owl's Nest. The defendant, Double M Construction Ltd. ("Double M"), doing business as Owl's Nest, is the registered owner of the campground. The defendant Myles Murtack is Owl's Nest's manager. The defendant Bill Powell is Owl's Nest's campground operator, and the defendant Joan Powell, his spouse, was a part-time sales representative and office assistant at Owl's Nest until May 2019. Bill and Joan Powell are both former Owl's Nest residents.
- [14] Owl's Nest sites are subject to license agreements which entitle the licensee to use the lot or site owned by Double M, the licensor. The sites are serviced, and licensees are entitled to use other Owl's Nest facilities

- [15] Ms. Anderson was familiar with Owl's Nest as she acknowledged at her examination for discovery that, for more than five years, she and her former common law spouse owned a trailer that was located on an Owl's Nest campsite. In resolution of their family dispute, Ms. Anderson became the owner of the trailer. She eventually sold it.

Ms. Anderson's Lease of Cabin 1

- [16] On November 25, 2015, Ms. Anderson and Double M entered into an undated "Offer to Lease Hold RV Lot" (the "Lease"). Mr. Murtack was involved in the initial negotiations with Ms. Anderson for the Lease, but Ms. Powell signed the Lease as Double M's authorized signatory.
- [17] Under the Lease, Ms. Anderson agreed to lease Cabin 1 at Owl's Nest for \$65,000 (the "Lease Price"). She paid a \$5,000 deposit. The Lease indicated that Ms. Anderson owed a remaining balance of \$60,000. At her examination for discovery on December 19, 2019, parts of which were read into the record during this hearing, Ms. Anderson acknowledged that the Lease she signed referred only to the Cabin and not to the land on which the Cabin was located, which was not transferred to her.
- [18] The Lease reflected that it was subject to an annual "Purchase Lot Lease" which, to avoid confusion and to reflect the difference between the Lease Price for the Cabin and the licence for use of the lot, I will refer to as the "Licence". In exchange for an annual fee (the "Licence fee"), the Licence allowed Ms. Anderson use of the lot and access to the services provided by Owl's Nest.
- [19] The Lease indicated that, at the time, the annual Licence fee was \$2,500 plus HST. As stated, the total amount owing from Ms. Anderson to Double M was \$65,000, the Lease Price, for the lease of the Cabin alone. The Licence fee was not included in that total.
- [20] The Lease did not include a start or end date, but the parties agree that it was to be from April 1, 2016, to April 1, 2017. Ms. Anderson was in the process of selling her property in Alberta and would move to Owl's Nest once that sale was finalized. Ms. Anderson was given the key to the Cabin when she paid the \$5,000 deposit.

Licence

- [21] Double M says that Ms. Anderson entered into an annual Licence agreement on or about the same day as the Lease. Double M says that the Licence was partly oral, partly in writing, and partly established by conduct as a result of the course of dealings between Ms. Anderson and Double M.
- [22] In her examination for discovery, Ms. Anderson acknowledged that she understood that there was an additional agreement, a Licence, that was required for the use of the land and the services. She said that she was aware of the Licence payment that had been required in the last year in which she owned the trailer that she kept at Owl's Nest. She said she was familiar with the requirement of a Licence and the associated fee, but she said she thought

the Licence fee was included in the \$65,000 Lease Price for the Cabin. She denied that the Licence fee was ever discussed with her. In that regard, her evidence differed from Ms. Powell's.

- [23] In Mr. Murtack's Affidavit #1, sworn June 26, 2019, he says that he first met Ms. Anderson in November 2015. He showed her the Cabin, answered her questions, and left her with Ms. Powell, who, at the time, was acting as Double M's sales representative.
- [24] In Ms. Powell's affidavit, sworn June 26, 2019, she says that she was present when Ms. Anderson signed the Lease and, at that time, she explained the terms and conditions of the Lease, the License, and Owl's Nest's rules and regulations to Ms. Anderson. Ms. Anderson acknowledges that the Owl's Nest rules and regulations were printed on the back of the Lease.
- [25] Ms. Anderson told Ms. Powell that a sale of her Alberta home was imminent and that she would pay the balance of the Lease Price within 14 days, or upon receipt of the sale proceeds from her Alberta Property. Ms. Powell says that she agreed to the arrangement on condition that the payment was made within a reasonable time. Ms. Anderson told Ms. Powell that she intended to take possession of the Cabin by the spring of 2016. As a result, Ms. Powell advised her that the first annual Licence fee would be payable for 2016-2017.
- [26] Ms. Powell did not require Ms. Anderson to sign the Licence. She says in her affidavit that "we could attend to this" once Ms. Anderson paid for the Cabin, payment for which she understood would be "forthcoming".
- [27] In approximately June 2016, Mr. Murtack says he noticed that the balance of the Lease Price for the Cabin was still outstanding. He spoke to Ms. Anderson. She explained the difficulty she was having in selling her Alberta property. He told her that she needed to make a payment, without delay, as she had already taken possession of the Cabin and was moving her belongings into it. On about July 1, 2016, Ms. Anderson paid a further \$25,000 towards the Lease Price. The balance of the Lease Price has never been paid.
- [28] Ms. Anderson asserts that she did not understand that a Licence fee was payable to Double M. Her evidence in that regard was not credible, and I do not accept it. She acknowledged that she was aware of the requirement of a Licence fee because of her previous ownership of the trailer. Her evidence is also contradicted by her discovery evidence at which she said that she thought the Licence fee was included in the Lease Price. Further, she acknowledged in her affidavit evidence, and in discovery, that she paid the Licence fee in July 2017 and has not paid it since. I elaborate on the July 2017 payment below.
- [29] Furthermore, it is highly unlikely that Ms. Powell would not have discussed the Licence fee with Ms. Anderson. As Owl's Nest's sales representative and signatory on the Lease, it would have been part of her job.

- [30] It is Ms. Anderson's position that the Licence fee was only agreed to and paid for on July 5, 2017, for the 12 months ending July 5, 2018. She takes that position because, although the Licence fee of \$2,500 was referred to in the Lease, the \$2,500 fee was not added to the total that she owed to Double M. In other words, the Lease indicated that she owed Double M a Lease Price of \$65,000, not \$67,500 which would have been the total of the Lease Price and the Licence fee. In all of the circumstances, I do not accept Ms. Anderson's evidence in that regard.
- [31] Ms. Anderson said in her discovery evidence that she stayed in the Cabin during the December 2015 holidays, when she was making repairs to it. She also said that she moved her furniture and belongings in the Cabin in the spring of 2016, but did not move in permanently until later. She said she did not pay the Licence fee for 2016 because she never received a bill and Mr. Murtack never said she had to pay it. Ms. Anderson did not refute Ms. Powell's evidence about their discussions. I find that the Licence fee was payable starting in the spring of 2016 and in every year thereafter.
- [32] On an unsigned Licence to Occupy agreement, which appears to be completed in the same handwriting as the Lease and is attached to Mr. Murtack's Affidavit #3 sworn March 8, 2022, the original date was changed from December 2015 to April 2016. On a balance of probabilities, I find that the Licence was reviewed with Ms. Anderson in December 2015. It was not signed pending payment of the Lease Price and a move-in date on which the Licence period would commence.
- [33] The first time Ms. Anderson paid the Licence fee was after she learned that at the July 1, 2017 Annual General Meeting ("AGM"), the Licence fee was going to increase by \$1,000. Four days later, on July 5, 2017, she attended the bookkeeper's office in Cranbrook and tendered a bank draft in the amount of \$2,625, the Licence fee that was set out in her original Lease, plus GST. The month of July had no connection to Ms. Anderson's purchase of the Cabin in December 2015 or her occupancy of it in April 2016. There is no evidence that she had an invoice for the Licence fee on hand when she paid it on July 5. On the evidence, I find on a balance of probabilities that she rushed to pay the Licence fee to the bookkeeper, and not anyone at Owl's Nest, because the Owl's Nest employees knew her Licence to occupy had been terminated and she wanted to avoid the increase for the next twelve months.
- [34] In any event, Ms. Anderson has not paid the Licence fee since then, without explanation.
- [35] Ms. Anderson does not allege that she did not know about the Licence to occupy prior to the July 1, 2017 AGM, nor does she say that she would not have contracted for the Lease of the Cabin if she had known she was required to enter in a Licence.
- [36] In Ms. Anderson's Affidavit #1, sworn June 20, 2019, she says that Mr. Murtack agreed that she would pay the balance of the Lease Price for the Cabin after she sold her Alberta property, which took much longer than she expected. She asserts that Mr. Murtack did not insist on paying it for some time. She says that, on several occasions, she offered to back out of the Lease, but Mr. Murtack declined as he was happy to wait for her to sell her Alberta

property to receive the balance of the Lease Price. Despite selling her Alberta property, Ms. Anderson has never paid the outstanding balance of the Lease Price, and she does not explain why.

- [37] I find, on a balance of probabilities, that Ms. Anderson and Ms. Powell discussed the Licence fee in November 2015 and agreed that it would not be payable until Ms. Anderson relocated to the Cabin in 2016. As a result, and as discussed later in these reasons, Ms. Anderson is in default of her obligations to pay the balance of the Lease Price for the Cabin, and under the Licence as a result of her failure to pay the Licence fee in all but one of the years during which she has lived at Owl's Nest.

Ms. Anderson's Relationship with Mr. Murtack

- [38] Initially, the relationship between Ms. Anderson and Mr. Murtack was friendly, or perhaps, more than friendly. According to Mr. Murtack's Affidavit #1, sworn June 26, 2019, they engaged in "sexting" and "on and off" sent intimate photographs to each other. Mr. Murtack said they agreed that all explicit content they exchanged would be deleted. He says that the last text he received from Ms. Anderson was in about October 2016 when she asked him where he was, if he was hiding, that she missed him and she sent him a picture of herself. Ms. Anderson says in her Affidavit #2, sworn July 4, 2019, that Mr. Murtack invited her to stay with him at his Alberta ranch, but she decided not to go. She acknowledged that they exchanged messages and that she sent him the picture. I need not decide the nature of their relationship.
- [39] Sexually explicit photographs of Mr. Murtack were attached to Ms. Anderson's Affidavit #11, sworn in February 2025. Apparently, they were attached to emails exchanged between them when their relationship was friendly. As Ms. Anderson's claims of sexual harassment by Mr. Murtack were struck by Douglas J. (discussed later in these reasons), I have not considered the intimate images sent to Ms. Anderson by Mr. Murtack. They are not admissible or probative of any issues I have to decide. They served to embarrass Mr. Murtack. I sealed the affidavit and will not refer to it further.
- [40] The relationship between Ms. Anderson, the management of Owl's Nest, and a number of other residents, became more fractious over time. On January 25, 2017, Roger Shannon, signing as the President of Double M, sent Ms. Anderson a letter at her home in Alberta, cancelling her right to occupy Cabin 1 as of that date (the "Cancellation Letter"). He wrote:

You have been causing conflict with our staff. You have also disrupted the rights of enjoyment of our other licensees, and average conscience [sic] of commonly accepted standards of society. As per our lease agreement in such case the license to occupy will be put up for sale and the licensee will no longer be allowed to occupy. A 29% selling fee will be charged. All outstanding balances owing will be deducted from the proceeds of sale.

[41] The Cancellation Letter has been the source of much dissension since then. Although there is no dispute that Ms. Anderson has not paid Double M for the balance of the Lease Price for the Cabin or the Licence fee for 2016/2017, and from 2018 onward, in the Cancellation Letter, Double M did not rely on Ms. Anderson's failure to pay as a basis for the termination of her right to occupy the Cabin.

[42] On January 27, 2017, Ms. Anderson responded to the Cancellation Letter. She wrote that Double M did not have sufficient grounds to cancel her "right to occupy lease" of the Cabin and threatened to sue the owners and Owl's Nest if they made further threats to do so. Specifically, she wrote:

As for any conflict I have been involved in with the unprofessional staff at Owl's, they initiated it themselves for being rude and/or ruthless. This would include verbal and sexual harassment, sexual assault, and inappropriate threats towards me.

If any unauthorized person(s) enter the property belonging to me at Cabin #1 without my permission, I will be immediately notified by my friends there, and will not hesitate to contact the RCMP for Break and Enter charges to be laid against the perpetrator(s).

I have witnessed, as have other residents, management personnel including yourself, driving around the park totally intoxicated. This is very unsafe, dangerous and against the law. Your management team also accepts cash bonuses for work they should do as part of their duties. They provide the rules of the park to others, but don't abide by them.

As I have always dealt with Myles Murtack since my initial Offer to Lease was signed and accepted under certain conditions, I would prefer from this point forward to correspond directly with him. He is aware of the agreement we made when I purchased the cabin, and cash monies have been paid directly to him toward the [Lease Price].

Perhaps the owners of Double M Construction should be more discerning when hiring staff who work around the grounds at Owl's, so residents can feel safe in their environment, and not be blindsided by the unethical and immoral intent perpetrated by some of your personnel who enter into private residences under the guise of professional contractors.

I will attend at my cabin whenever I please, and trust your staff will not do anything to prevent my enjoyment of same. Otherwise I will not hesitate to do whatever is necessary to make sure the responsible parties are held accountable for their role in the unfortunate set of events I have experienced at Owl's.

[43] Ms. Anderson's expressed wish to deal with Mr. Murtack indicates that at the end of January, their relationship continued to be friendly.

- [44] In Mr. Murtack's Affidavit #1, he says that on or about February 15, 2017, he went to see Ms. Anderson at the Cabin to inform her that the Licence/Lease was cancelled. He offered to refund what she had paid for the Cabin. He said that Ms. Anderson screamed and yelled at him and told him that she would phone the police to report him for harassment. He left because he was unable to have a rational discussion with her. He also says that up to that point, he had not had personal issues with Ms. Anderson.
- [45] Until this litigation ensued and the defendants filed a counterclaim, no further steps were taken by Double M to enforce Mr. Shannon's Cancellation Letter or remove Ms. Anderson from Owl's Nest.

Ms. Anderson's Relationships with Others

- [46] It is clear that Ms. Anderson had difficult relationships with a number of the residents at Owl's Nest. At her examination for discovery, she acknowledged that she had fallen out with Don [surname redacted]. She said that after he sent her a video and pictures of the "destruction of her property", suddenly he did not want to have anything to do with her. She said that, at the time, she did not know why but she does now. When she sent an email telling "everybody" what Mr. Murtack and Mr. Powell were doing to her, Don [surname redacted] emailed her saying he did not want to be involved in the "Peyton Place" around there. She then said at page 86, line 14 of the transcript:

My power and my water get shut off. After all I've done for the people in there, not even one person offered me a glass of water or an electrical cord. And he - I did a lot for those people.

- [47] She described that she had a fish fry at which she bought and paid for fish from Costco and everything to go with it and Don [surname redacted] collected the money. At line 24 she said:

Nobody asked him to; I didn't ask him to. He collected money that I had earmarked to go to a little puppy that has three broken legs that was found in the ditch nearly dead, I wanted to send the money. I never got the money.

- [48] Ms. Anderson said in her pleadings that her "so-called friends" all stabbed her in the back and named eight of those friends, all of whom were residents of Owl's Nest. She sent emails to three people accusing them of spying on her and accused one of the three of harassing her. Ms. Anderson threatened to get a restraining order. At her discovery, she acknowledged that she had fights with all these residents but only after "they all turned on her".
- [49] At her examination for discovery, counsel for the defendants put to Ms. Anderson that she blamed Ms. Powell for interfering with these friendships. Ms. Anderson denied that but said that Ms. Powell "gathered everybody together". When she was asked how she knew that had happened, she responded, "Because I know. I've been told." She was then asked who told her and responded, "I'm not giving the names". She said at page 70, line 17:

But I can tell you that I have been told by more than one person. And that letter that [name redacted] wrote to Owl's Nest, most of it is not true. She doesn't even know what she's talking about.

[Name redacted] is a former prostitute. She's a heroin addict and an alcoholic. She used to come to my house for spiritual counselling. I never ever invited her to my place. She would just show up at my place and she'd drink a case of my beer, and I'd spiritually counsel her.

[50] Ms. Anderson went on to allege that the woman to whom she gave spiritual counselling was sexually involved with a married man who lived in Owl's Nest while their respective spouses were nearby.

[51] Specifically with respect to Ms. Powell, Ms. Anderson agreed at her discovery that she sent ongoing emails to Ms. Powell saying to her, "You'd better declare your taxes. I hope you receive what you deserve from the universe", and that she sent Ms. Powell Humpty Dumpty rhymes. She said that she did not regard what she did as harassment because she was sitting in her backyard in the dark because she had no electricity, water, or food. She said that Ms. Powell takes the complaints "so that's where my complaints were going".

[52] Starting at page 74, line 364, and following, of the transcript of her examination for discovery, Ms. Anderson was asked:

Q. So you regard it as a complaint?

A. Yes. Of course.

Q. By sending a Humpty Dumpty rhyme?

A. Yes. How is that harassment? How is the Humpty Dumpty rhyme harassment? How is telling somebody that doesn't understand what the universal law of what you put out is going to come back to you?

Q. Ms. Anderson, I'll ask the questions and you can answer that. If you don't understand the question, please let me know and I'll try and rephrase the question. I'm putting a fact to you that she never, on an ongoing, continuous basis, sent correspondence to you. You, indeed, sent correspondence to her.

A. Correct.

Alleged Damage to Ms. Anderson's Property

[53] In her Affidavit #1, Ms. Anderson alleges that on or about February 12, 2017, while she was in Alberta, she came to believe that Mr. Powell and Mr. Murtack wilfully destroyed her personal property stored on a lot at Owl's Nest. She says that Mr. Powell assured her that her property would be safe, but that this was not the case. She alleges that Mr. Powell and Mr. Murtack intentionally used the shovel of a backhoe, used for snow clearing at Owl's Nest, to destroy her new garage shelter and damaged her rare collector Mercedes that was parked

inside the shelter. She estimated, without proof, that her Mercedes was worth approximately \$30,000.

- [54] Ms. Anderson's Affidavit #1 is entirely speculative. She was in Alberta when the damage to her property occurred. The photograph she attaches as Exhibit B to her affidavit is hearsay. She did not provide affidavit evidence from the photographer about when it was taken, or what, if anything, she/he saw when taking it. Exhibit B shows the collapsed shelter with a backhoe beside it, and the snow cleared around it. It does not show the backhoe damaging the shelter.
- [55] Attached to Ms. Anderson's Affidavit #5, as part of Exhibit Q, is a February 12, 2017 text message sent at 4:30 p.m. from "Janice and Don" to Ms. Anderson. The text reads, "This your collapsed shelter. Have not looked inside. Does not look bad." The text includes a photograph. There is no evidence about who took the photograph or when it was taken. It may be the same photograph that was attached to Affidavit #1, but that is not clear on the record. A February 11, 2017 photograph, on the following page of Exhibit Q, shows individuals with snow blowers clearing the snow in front of Ms. Anderson's cabin.
- [56] Ms. Anderson also says that she later found out that her motorboat, stored in the same lot at Owl's Nest, was severely damaged. She says that she had the boat professionally serviced and winterized in the late fall of 2016, and she blames Mr. Powell and Mr. Murtack for a "cracked block" in the motor. In Ms. Anderson's Affidavit #2, sworn July 4, 2019, she says that she believes that foul play was involved with respect to the damage to her motorboat and that Mr. Powell would be the "obvious person to consider having perpetrated said damage." On this summary trial, she provides no evidence in support of her claim that Mr. Powell "perpetrated" the damage.
- [57] Ms. Anderson's evidence is conjecture and speculation. It is equally likely, but equally speculative, that the mechanic who winterized the boat failed to do so properly causing the block to crack. There is no evidence of an act by Mr. Powell causing Ms. Anderson's property harm.
- [58] Mr. Murtack and Mr. Powell both deny that they destroyed Ms. Anderson's property. In Mr. Powell's Affidavit #1, he denies that he was involved in any wilful destruction of Ms. Anderson's property. He says that, due to the limited parking spaces at Owl's Nest, all residents were given the option of parking their excess vehicles, boats, or trailers in the compound area at Owl's Nest and that he did not provide Ms. Anderson any assurances about the safety of her property. Residents were responsible for erecting their own shelters.
- [59] Mr. Powell says that, during January and February 2017, snowfall in the area was particularly severe and several structures collapsed under the snowpack. When Mr. Powell heard that Ms. Anderson's shelter had collapsed, he took a photograph of it. Attached to his Affidavit #1, as Exhibit C, is a copy of the photograph. It depicts the collapsed shelter before any snow had been cleared around it. There is no sign of a backhoe. Mr. Powell described how Ms. Anderson's shelter had a "square-shaped roof", while the shelters that remained

standing all had "round-shaped roofs" to prevent the accumulation of snow. I would describe Ms. Anderson's shelter as having a flat roof while the others were domed.

- [60] I agree with the defendants' counsel's submission that photographs of Ms. Anderson's collapsed shelter show that it was somewhat smaller and had a flat roof, than the intact shelters shown in the photograph that were larger, and had domed roofs. I find on a balance of probabilities that the shape and size of Ms. Anderson's shelter was the reason it collapsed under a heavy load of snow.
- [61] During the defendants' counsel's submissions about Mr. Powell's photograph, Ms. Anderson interrupted asking, "where is the date on that picture?" In response, Mr. Powell swore Affidavit #3, on October 11, 2024, exhibiting a time-stamped copy of the photograph from his photo library showing that it was taken at 11:13 am on February 12, 2017. Ms. Anderson objected to the filing of the affidavit. As Ms. Anderson was clearly questioning the date and authenticity of the photograph, I am prepared to admit Mr. Powell's Affidavit #3.
- [62] Given my finding regarding the reason Ms. Anderson's shelter collapsed, Mr. Powell's Affidavit #3 is unnecessary. However, I am prepared to consider it because of the importance of Ms. Anderson's property damage claim to the events that followed. I find that the time-stamped version of Mr. Powell's photograph definitively confirms that Ms. Anderson's shelter collapsed before a backhoe was anywhere near it.
- [63] I find, based on the evidence, and on a balance of probabilities, that Ms. Anderson has not established that Mr. Powell or Mr. Murtack wilfully destroyed her property.
- [64] At para. 7 of her first affidavit, Ms. Anderson says that, from the point of the damage to her property onwards, she has been "subject to horrific and inhumane on-going harassment", threats against her life, defamation of character, slander and incitement of hatred by the defendants, who have "gone to extremes to terrify and cause harm to me on a regular basis", referring to the events described in her notice of civil claim. At para. 8, Ms. Anderson says:

I have had to deal with ongoing defamation of character and slander perpetrated by Murtack, Powell and Joan Powell to all other residents in the park including those who I considered friends. The Defendants have turned everyone in the park against me with their lies.

- [65] Ms. Anderson steadfast belief in the deliberate destruction of her property, for which there is no supportive evidence, appears to have been at the root of her difficult relationship with management and staff at Owl's Nest, and with other residents, from that point forward. Her belief permeated her affidavit evidence and submissions. It also affected her belief that the defendants retaliated against her by cutting off her water, sewer, and electricity for over six months.

- [66] In contrast, Mr. Murtack clearly explains in his Affidavit #1, sworn June 26, 2019, that as part of routine maintenance at Owl's Nest, it is sometimes necessary to blow steam into the waterlines to repair those that are frozen or have become plugged during the winter. The process involves exposing the underground waterline and blowing steam through it. Apparently, in April 2017, he worked on the waterline situated along the road next to the Cabin.
- [67] In May, he returned to the site as Ms. Anderson had complained about not having water. He again opened a trench to attend to the apparent problem. When he returned from lunch, he found that Ms. Anderson had thrown all the road barriers, ribbons, and work tools into the trench that he had opened. He decided to leave the worksite as Ms. Anderson was preventing him from continuing and he did not want the RCMP called again. After an agreement was reached with Ms. Anderson, he returned, opened the waterline and found that the line was clogged preventing the water flow.
- [68] Mr. Murtack's evidence about these events was credible, and, as Ms. Anderson chose not to conduct examinations for discovery, or to cross-examine him on his affidavits, it was uncontradicted. Ms. Anderson has not provided any credible or reliable evidence to refute what Mr. Murtack swore to.
- [69] With respect to Ms. Anderson's electrical power, Mr. Murtack said that, after restoring her water line, Double M paid for an independent electrician to investigate her lack of power because the power trip switch was on, indicating power to the Cabin, which led him to believe that the power failure had something to do with the electrical grid in the Cabin. He opened the area where the power line was installed and discovered that it was installed about six inches under the waterline. He said this was highly unusual as they are normally separated. He replaced the power line. He denied that he intentionally cut off Ms. Anderson's power.
- [70] Mr. Murtack's evidence about the power was also credible and reliable and not refuted by any evidence from Ms. Anderson.

Commencement of Proceedings

- [71] On September 28, 2018, Ms. Anderson filed a notice of civil claim commencing this legal action. The defendants filed a response to civil claim and a counterclaim on October 25, 2018, seeking relief under Double M's contracts with Ms. Anderson, including rescission.
- [72] Ms. Anderson responded to the defendants' counterclaim on November 22, 2018. Ms. Anderson filed an amended notice of civil claim on August 6, 2019. It was defective, and the defendants consented to Ms. Anderson filing a further amended notice of civil claim, which she did on August 22, 2019 (the "Amended Claim").

Hearing Before Justice Douglas

[73] In reasons indexed at *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, Douglas J. dealt with applications filed by Ms. Anderson and an application filed by the three individual defendants (the "Douglas Reasons").

Ms. Anderson's Applications

First Application

[74] Ms. Anderson filed her first application on June 20, 2019.

[75] As Douglas J. explained in para. 10 of her reasons, Ms. Anderson's application sought wide-ranging relief including: a summary disposition; a restraining or protection order against three individual defendants; an order prohibiting three individual defendants from slandering, defaming, and inciting hatred against her; orders for monetary payments; and an order compelling Mr. Murtack to move a water truck that was allegedly blocking her view.

[76] As it related to monetary payments, Ms. Anderson sought an order that the defendants pay her \$10,631.25 to restore the front lawn and wood borders of the property on which Cabin 1 sits to the condition it was in before Mr. Murtack's "intentional destruction" of it while operating a backhoe owned by Double M on April 4 and May 22, 2018. She also sought reimbursement of \$3,500 for frozen/cold food products she said she lost as a result of Mr. Murtack's "intentional and illegal" shutdown of her electricity.

[77] In Part 3 of her first application, Ms. Anderson set out as the basis for the relief she sought: "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".

Second Application

[78] In Ms. Anderson's second application, filed February 6, 2020, in addition to repeating the relief sought in her first application, she sought an order permitting her to serve written interrogatories on the three individual defendants instead of examining them for discovery.

[79] Ms. Anderson's first and second applications were set to be heard on two dates in 2020 but were adjourned on both occasions.

Third Application

[80] In Ms. Anderson's third application, filed October 19, 2020, she sought restraining orders against Mr. Powell and Mr. Murtack, and repeated her application to serve written interrogatories or to conduct written examinations for discovery. According to the Douglas Reasons, Ms. Anderson did not proceed with her third application.

[81] The defendants opposed all relief sought by Ms. Anderson.

The Defendants' Application

[82] On February 4, 2020, the defendants applied to strike Ms. Anderson's Amended Claim in whole or in part, pursuant to R. 1-3 (Object of the Rules), R. 3-7 (Content of Pleadings) and R. 9-5 (Striking Pleadings) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, on the basis that it disclosed no reasonable cause of action or was unnecessary, scandalous, frivolous, vexatious, and may prejudice, embarrass, or delay the fair trial or hearing of this proceeding, or was otherwise an abuse of process.

[83] Alternatively, the defendants sought summary judgment in their favour, dismissing the Amended Claim, under R. 9-6, on the basis that there was no genuine issue for trial.

Ruling on Ms. Anderson's Applications

[84] All of the applications were heard by Douglas J. on January 27-28, 2021. In her reasons, Douglas J. said that the basis for the relief sought by Ms. Anderson was unclear from her notices of application but, during the hearing, she said she relied on R. 9-6 for her summary judgment claim and R. 7-3 as a basis for seeking interrogatories.

[85] Paragraph 17 of the Douglas Reasons sets out the issues that were before her, and, in subsequent paragraphs, she set out her conclusions as they related to Ms. Anderson's applications. In summary, her conclusions were as follows:

- a) At para. 27, she declined to grant protection or restraining orders against the individual defendants because Ms. Anderson had not provided any authority for granting such an order.
- b) At paras. 28-30, she concluded, as it related to Ms. Anderson's contractual damage claims, that they were triable issues "inextricably linked to the existence of a valid contractual relationship between the parties after the ostensible termination of the [Licence]". Accordingly, that determination required an assessment of whether the arrangement between the parties was properly constructed as a licence agreement or a tenancy.
- c) At paras. 31-43, with respect to Ms. Anderson's request for written interrogatories, she reviewed the 220 questions proposed by Ms. Anderson, some of which related to an individual who was not a party to the action. She described the written interrogatories as "lengthy, argumentative, and often difficult to understand". She said that many of the

questions appeared to be in the nature of cross-examination and the relevance of several questions was unclear. She described other questions as "clearly improper, irrelevant, unintelligible, and/or incapable of a coherent response". She said that Ms. Anderson made inappropriate requests for "sworn testimony" to refute her own assertions. She concluded that ordering the defendants to answer the written interrogatories would be "time consuming, costly, and unduly onerous" and would not "advance the goals of an orderly, efficient, cost effective, and proportionate resolution of the parties' dispute on the merits" under R. 1-3. Accordingly, she declined to make the order requiring the defendants to answer Ms. Anderson's interrogatories.

Ruling on the Defendants' Application to Strike

- [86] At para. 45 of her reasons, Douglas J. concluded that Ms. Anderson's Amended Claim did not comply with R. 3-1(2) as it did not contain a concise statement of the material facts giving rise to specific causes of action or a concise summary of the legal basis for the relief she sought. Justice Douglas found that after reviewing the Amended Claim, it remained unclear what relief Ms. Anderson sought from which of the defendants.
- [87] Justice Douglas described the Amended Claim as "lengthy, confusing, and prolix" and said it contained many "irrelevant statements, unsupported assertions, and alleged claims with no factual or legal foundation". Given this, she determined that it was unclear how the defendants could respond coherently to the allegations contained in the Amended Claim or prepare for trial based on it: para. 46.
- [88] After citing a number of cases which explain the test on an application to strike under R. 9-5(1), Douglas J. concluded that Ms. Anderson's claims were either bound to fail or were unnecessary, scandalous, frivolous, and/or vexatious. In the result, she granted the relief sought by the defendants and struck Ms. Anderson's Amended Claim in its entirety: at para. 57.
- [89] In doing so, Douglas J. categorized the plaintiff's claims and struck those categories that she found were bound to fail. Those included the following:
- a) bullying and criminal harassment;
 - b) gender-based discrimination;
 - c) intentional infliction of mental suffering and emotional distress;
 - d) civil damages for alleged criminal activities;
 - e) defamation; and
 - f) negligence.
- [90] Justice Douglas then struck the remainder of the Amended Claim as being unnecessary, scandalous, frivolous, and/or vexatious: at para. 119.

- [91] On a limited basis, Douglas J. granted Ms. Anderson leave to amend her pleadings to particularize the material facts upon which she relied for those claims that were not bound to fail, namely breach of contract, trespass, nuisance, breach of privacy, and destruction of property. At paras. 121-125 of her reasons, Douglas J. explained:
- [121] 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". [Myers] 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 v. Smith*, 2018 BCSC 836, 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 [Amended Claim].
- [123] On a generous reading, the [Amended Claim] discloses a possible cause of action for breach of the [Licence], trespass, nuisance, breach of privacy, and destruction of property. The [Amended Claim] 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 [Amended Claim], 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.
- [92] The defendants filed an amended counterclaim on March 20, 2020. This claim, among other things, alleged that Ms. Anderson defamed Mr. Murtack and Mr. Powell. Ms. Anderson filed an amended response to counterclaim on February 26, 2021.
- [93] On September 13, 2021, Ms. Anderson filed a further amended notice of civil claim ("Further Amended Claim") without the assistance of counsel.
- [94] On November 8, 2021, the defendants' counsel applied to strike the Further Amended Claim.

[95] On April 25, 2022, Ms. Anderson applied for a number of orders, including an order that Douglas J.'s decision or reasons for judgment be set aside "due to obstruction of justice by the Defendants who intentionally submitted fraudulent and misleading application submissions including perjurious sworn testimony and fabricated exhibits which influenced Madam Justice Douglas' decisions". Ms. Anderson sought similar relief in the application she filed on October 12, 2023, discussed below.

Hearing before Justice Morellato

[96] The parties' applications were set to be heard before Morellato J. on July 5-7, 2022.

[97] Before Morellato J., Ms. Anderson made a number of serious allegations against Jacobus Van Wyk, the defendants' legal counsel, and his law firm, Miles, Zimmer & Associates, later known as MZA Law ("MZA"), including suggesting Mr. Van Wyk and MZA had conspired with the defendants to create fraudulent evidence. This was a very serious allegation. Justice Morellato explained to Ms. Anderson:

Okay. So I just want to stop you there, because we've got a procedural problem here, because, you know, if you're not suing the solicitors then Mr. Van Wyk can continue to defend this action, but if he has to defend himself he needs his own lawyer ... If your focus is on the defendants, and if he has to get his own lawyer, this thing is going to be derailed, right? And I don't think anybody wants that.

[98] After the two-day hearing, Morellato J. adjourned the applications generally. She did so, in part, to allow Ms. Anderson to consider whether she wanted to pursue a claim against Mr. Van Wyk and/or MZA.

Proceedings Against Mr. Van Wyk and MZA

[99] Following the adjournment, Ms. Anderson sent emails to Mr. Van Wyk accusing him of perpetrating fraud and demanding that he withdraw as counsel as he had been instructed to by Morellato J. Mr. Van Wyk had not been instructed to withdraw, and he did not do so.

[100] On July 12, 2022, Ms. Anderson filed a professional misconduct complaint against Mr. Van Wyk with the Law Society of British Columbia ("LSBC") .

[101] In late November 2022, at a judicial management conference ("JMC") before Morellato J., Ms. Anderson indicated that she remained uncertain about whether to commence an action against Mr. Van Wyk and MZA. Justice Morellato told Ms. Anderson that if she wished to proceed with such an action, she would have to do so by the end of February 2023.

[102] On February 27, 2023, Ms. Anderson filed an action against Mr. Van Wyk and MZA (the "Solicitor Action"). Broadly, Ms. Anderson alleged that, in collusion with Double M, Mr. Van Wyk intentionally created and relied on perjurious affidavits, fabricated evidence, and interfered with and influenced one of her witnesses in violation of the Criminal Code, R.S.C. 1985, c. C-46.

[103] As filed, the Solicitor Action was single-spaced, 26 pages long, and replete with argument and recitation of what she said happened during the JMC before Morellato J.

[104] In her claim in the Solicitor Action, Ms. Anderson asserted that at the JMC, Morellato J. ordered her to commence a claim against Mr. Van Wyk and MZA. A review of the transcript of the proceeding establishes that this was clearly not so. Ms. Anderson was not ordered to do anything other than decide whether she wished to proceed with such a claim and, if she decided to do so, to file it by a specific date.

[105] As a result of the Solicitor Action, Mr. Van Wyk resigned as the defendants' counsel. Mr. Van Wyk and MZA applied to have the Solicitor Action struck pursuant to R. 9-5(1).

Hearing before Justice Gaul

[106] Justice Gaul heard Mr. Van Wyk's and MZA's application to strike the Solicitor Action on November 22, 2023, and March 26, 2024.

[107] In oral reasons delivered on April 4, 2024, Gaul J. grouped Ms. Anderson's accusations into several categories. Specifically, he stated that Ms. Anderson alleged that Mr. Van Wyk and MZA were involved in:

- a) civil fraud or fraudulent misrepresentation;
- b) civil conspiracy and unlawful means conspiracy;
- c) negligence and professional negligence, including breach of duty of good faith and honesty in accordance with Law Society of BC Principles, Code of Conduct, and Regulations;
- d) obstructing or misleading justice;
- e) interfering with and influencing her witness;
- f) complicity in sexual harassment; and
- g) other unidentified Criminal Code violations.

[108] Justice Gaul struck Ms. Anderson's claim in its entirety. His oral reasons were transcribed. At para. 12, he set out a sample of the emails Ms. Anderson sent to Mr. Van Wyk:

- a) On August 10, 2022, she sent him an email stating:

As per Madam Justice Morellato's instructions to you on July 7th, 2022, please provide a ... copy of your Notice of Withdrawal as solicitors for the Defendants, together with their updated information for service.

- b) On October 7, 2022, she sent another email to him stating:

You must ask Chief Justice Hinkson for forgiveness, and request Justice Douglas' Judgment be set aside due to the fact that it was based and supported in large part, by your fraudulent submissions and evidence. The Reasons for Judgment cannot stand.

... If you refuse to take the above action, I will contact Chief Justice Hinkson myself to provide him [with] a detailed accounting of your criminal conduct. ...

c) On October 11, 2022, she sent another email to him stating:

As per my correspondence dated October 7th, 2022, what is your decision please? If you fail to respond today, I will move forward with my complaints against you to the Chief Justice, Attorney General and RCMP Deputy Commissioner of BC.

As per the LSBC Principles for Professionalism, I suggest you and your firm immediately withdraw as solicitors ... for the myriad of reasons I have previously conveyed to you, with evidence to back up everything I say.

d) The same day, she sent another email to him:

In accordance with the LSBC rules, you and your firm must resign immediately as solicitors for the defendants. You have absolutely failed to abide by the conduct mandated by the Rules of Professional Conduct as promulgated by the Law Society of BC.

...

Karma is a bitch, and you will all deserve everything coming your way.

[109] I reiterate that Morellato J. did not direct Mr. Van Wyk to resign as the defendant's counsel.

[110] I understand from Gaul J.'s reasons that the LSBC dismissed Ms. Anderson's complaint against Mr. Van Wyk and his firm, and closed their file.

[111] In his decision, Gaul J. concluded that many of the causes of action Ms. Anderson sought to advance against Mr. Van Wyk, and MZA, were unknown to law. In particular, Gaul J. found that:

- a) There is no independent tort of sexual harassment and, in any case, Mr. Van Wyk and MZA could not be vicariously liable or complicit for the alleged non-tortious actions of the defendants in her main action: para. 20.
- b) Ms. Anderson's claims of obstruction of justice and interference with potential witnesses were dismissed as they were not recognized as causes of action in civil proceedings. Her claims of unparticularized violations of the Criminal Code could not base a civil claim (at para. 21).
- c) Ms. Anderson's negligence claims against Mr. Van Wyk, and MZA, consisted of assertions that they owed her a duty to litigate in good faith. No such duty existed at law (at para. 22).
- d) Under the claims of fraud and conspiracy, Ms. Anderson alleged that Mr. Van Wyk, and MZA, colluded with the defendants in the main action to manufacture or fabricate evidence to put before the court, knowing it to be fraudulent. Justice Gaul concluded that even if proven, such actions do not create an actionable claim by an opposing party (at para. 24). Although acknowledging that fraudulent misrepresentation and unlawful means conspiracy

are recognized causes of action, Mr. Van Wyk's and/or MZA's conduct was not of the type that would be actionable (at para. 25).

- e) Justice Gaul also found that Ms. Anderson's pleadings were vexatious and constituted an abuse of the court's process (at para. 28).

[112] For those reasons, Gaul J. ordered that the claim against Mr. Van Wyk and MZA be struck. He also ordered Ms. Anderson to pay special costs. At the conclusion of his reasons, Gaul J. wrote:

- [30] Ms. Anderson is an intelligent, articulate, and energetic litigant. She has clearly put a significant amount of work in this matter. She is also clearly someone who has an agenda. She speaks of wanting to have her day in court and of not wanting the justice system, including judges of this court, to prohibit her from pursuing justice. Litigants, including those who appear before the court without the assistance of legal counsel, are entitled to be treated with respect. They are also entitled to a fair hearing.
- [31] Ms. Anderson submitted voluminous materials in support of her positions on this application. She has spoken eloquently and from the heart. However, she has also made very serious allegations against the defendants in the related action and the defendants in the present action. Words matter because they have consequences. ...
- [32] Ms. Anderson has embarked upon a Quixotic crusade based upon a desire to ensure that the justice system and its participants, including lawyers and judges, do not trample on the rights of litigants like herself. In response I would say respectfully to Ms. Anderson that she has been able to initiate legal proceedings. The first was the Related Action, where her first attempt at bringing her suit against the defendants failed because the court found her pleadings to be fatally deficient. She was given a second chance and she is now proceeding with that action. The third proceeding that she has launched is the one that is currently before me.
- [33] I am of the view that the pleadings of Ms. Anderson ought to be struck because they fail to disclose any reasonable cause of action and are vexatious and constitute an abuse of process. They are prolix and they are nebulous. They are difficult to comprehend. It would, in my view, result in an abuse of process if the pleadings are allowed to stand and the action to proceed. In my opinion, the pleadings are not only fatally flawed, but they are beyond redemption. That is, I see no good reason to give Ms. Anderson a second try at framing her action against Mr. Van Wyk and his former law firm so that it discloses some form of a cause of action known in law.

[113] Ms. Anderson filed a notice of appeal, but her appeal file has been closed.

Current Applications in this Action

- [114] On September 13, 2021, Ms. Anderson filed a Further Amended Claim. She asserts that the document complies with Douglas J.'s order granting her limited leave to amend.
- [115] The defendants dispute that the Further Amended Claim complies with Douglas J.'s order, and I agree. In many respects, Ms. Anderson's Further Amended Claim fails to comply with the order. In light of the non-compliance, the defendants wish me to dismiss Ms. Anderson's claim by way of a summary trial.
- [116] On October 6, 2023, the defendants filed the DCA seeking the relief as set out earlier in these reasons.
- [117] The defendants indicated that they were relying on Rules 1-3, 3-7, 9-5, 9-7, and 22-7 in support of their requested orders.
- [118] Those rules provide:

Rule 1-3 -- Object of Rules

Object

- (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
- (a) the amount involved in the proceeding,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the proceeding.

Rule 3-7 -- Pleadings Generally

Content of Pleadings

Pleading must not contain evidence

- (1) A pleading must not contain the evidence by which the facts alleged in it are to be proved.

Rule 9-5

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.

Rule 9-7 -- Summary Trial**Definition**

- (1) In this rule, "summary trial application" means an application referred to in subrule (2).

Application

- (2) A party may apply to the court for judgment under this rule, either on an issue or generally, in any of the following:
 - (a) an action in which a response to civil claim has been filed;
 - (b) a proceeding that has been transferred to the trial list under Rule 22-1 (7) (d);
 - (c) a third party proceeding in which a response to third party notice has been filed;
 - (d) an action by way of counterclaim in which a response to counterclaim has been filed.

When application must be heard

- (3) A summary trial application must be heard at least 42 days before the scheduled trial date.

Setting application for hearing

- (4) Unless the court otherwise orders, a summary trial application must be set for hearing in accordance with Rule 8-1.

Evidence on application

- (5) Unless the court otherwise orders, on a summary trial application, the applicant and each other party of record may tender evidence by any or all of the following:
 - (a) affidavit;
 - (b) an answer, or part of an answer, to interrogatories;

- (c) any part of the evidence taken on an examination for discovery;
- (d) an admission under Rule 7-7;
- (e) a report setting out the opinion of an expert, if
- (i) the report conforms with Rule 11-6 (1), or
- (ii) the court orders that the report is admissible even though it does not conform with Rule 11-6 (1).

Rule 22-1 -- Chambers Proceedings

Definition

- (1) In this rule, "chambers proceeding" includes the following:
 - (a) a petition proceeding;
 - (b) a requisition proceeding that has been set for hearing under Rule 17-1 (5) (b);
 - (c) an application, including, without limitation, the following:
 - (i) an application to change or set aside a judgment;
 - (ii) a matter that is ordered to be disposed of other than at trial;
 - (d) an appeal from, or an application to confirm, change or set aside, an order, a report, a certificate or a recommendation of an associate judge, registrar, special referee or other officer of the court;
 - (e) an action that has, or issues in an action that have, been ordered to be proceeded with by affidavit or on documents before the court, and stated cases, special cases and hearings on a point of law;
 - (f) an application for judgment under Rule 3-8, 7-7 (6), 9-6 or 9-7.

[119] The DCA was originally filed by Mr. Van Wyk before the defendants retained their current counsel, Mr. Pearkes.

[120] On October 12, 2023, Ms. Anderson filed an application response disputing the defendants' requests. At the same time, she filed the ACA seeking the relief set out earlier in these reasons. Of particular importance is her application that her claims be heard by way of a summary trial.

[121] In support of the ACA, and in response to the DCA, Ms. Anderson relies on all 10 of the affidavits she previously filed in this matter.

[122] The defendants, in support of the DCA and in response to the ACA, rely on an affidavit from counsel David Crossley, attaching: relevant excerpts from Ms. Anderson's December 9, 2019 examination for discovery; three affidavits from the defendant Mr. Murtack; a single affidavit from each of Mr. Powell and Ms. Powell; an affidavit from Roger Shannon, the sole

director and officer of Double M; and affidavits from Linda Davey, Joyce Delaire, and Lisa White, all of whom provided part-time or other services to Double M. Excerpts from Ms. Anderson's examination for discovery were read into the record by the defendant's counsel.

Is this Matter Appropriate for a Summary Trial?

- [123] Both parties invoke Rule 9-7 in their current applications, and neither party argues that these matters are not suitable for a summary trial. That is not determinative, as it is for the Court to determine suitability,
- [124] Accordingly, both the defendants' and Ms. Anderson's current applications proceeded before me by way of summary trial over a number of days, and part days, in 2024 and 2025. The applications took much longer than the parties originally estimated.
- [125] Before turning to the balance of the relief sought by the parties, I will consider whether the matters before me are suitable for determination by way of a summary trial.
- [126] A summary trial is a trial in summary form governed by Rule 9-7 of the Supreme Court Civil Rules. Subrule (2) permits a party to an action, to which a response to civil claim has been filed, or in the case of a counterclaim, where a response to the counterclaim has been filed, to apply to the court for judgment, either on an issue or more generally.
- [127] In support of, or in response to, the application for a hearing by summary trial, subrule (5) provides that a party may tender evidence in a variety of forms, including: (i) affidavits; (ii) answers to interrogatories (if permitted); (iii) examination for discovery transcripts; (iv) admissions; and (v) expert reports. In this case, I have before me the parties' extensive affidavit evidence and portions of the transcript of Ms. Anderson's December 9, 2019 examination for discovery that were read into the record by the defendants' counsel. Ms. Anderson did not examine any of the defendants for discovery. No affiants were cross-examined on their affidavits.
- [128] The relief available upon summary trial is governed by Rule 9-7(15):
- (15) On the hearing of a summary trial application, the court may
- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
 - (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
 - (c) award costs.
- [129] It is uncontroversial that the purpose of the summary trial rule is the efficient resolution of disputes. In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.), the British Columbia Court of Appeal ("BCCA") confirmed that at

a summary trial, the court "tries the issues raised by the pleadings on affidavits": para. 41. The BCCA also indicated that "a triable issue or arguable defence will not always defeat a summary trial application", and that "cases will be decided summarily if the court is able to find the facts necessary for that purpose, even though there may be disputed issues of fact and law", provided that the judge does not find "it is unjust to do so": para. 41.

- [130] Because an application under Rule 9-7 is a trial, I must weigh the evidence, make findings of fact, and apply the law.
- [131] In *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31, the Court of Appeal discusses in detail the test for determining when it is appropriate to decide a case summarily. In determining whether a summary trial is appropriate, the court may consider: the amount involved; the complexity of the matter; the matter's urgency and any prejudice which may result from the delay; the cost of a full trial; whether credibility is an issue; whether a summary trial would complicate the resolution of the dispute; and whether approaching the matters via a summary trial would result in litigation in slices.
- [132] I will apply the *Gichuru* factors to determine whether the parties' disputes are suitable for summary determination. I also note that the BCCA reiterated that a party cannot simply insist on a full trial in the hopes that with the benefit of viva voce evidence, "something might turn up": *Gichuru* at para. 32, citing *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275 at para. 34. All parties must come to a summary trial hearing having taken every reasonable step to put themselves in the best position possible to prove their claim or defence and, in this case, also their counterclaim and defence.
- [133] As stated above, I accept Ms. Anderson's submission that her claims are suitable to be determined by way of a summary trial and find that it is appropriate to do so. Ms. Anderson acknowledges that the Court has her evidence and does not suggest that she has other evidence to add or that some other evidence will turn up. The case as presented by Ms. Anderson by way of her affidavits is as good as it is going to get. She does not suggest that there is other evidence that might be available to her.
- [134] I also accept the defendants' counsel's submission that the defendants' counterclaim is suitable to be determined by way of a summary trial and find that it is appropriate to do so.
- [135] In reaching my conclusions, I have considered each of the *Gichuru* factors as follows.

Amount Involved

- [136] The amounts involved in both Ms. Anderson's claim and in the defendants' counterclaim are relatively modest. For example, the balance owing on the Lease Price for the Cabin is \$35,000. The Licence fees owing to Owl's Nest for the years Ms. Anderson has not paid them (2016, 2018-date) would likely not exceed \$30,000. Mr. Murtack and Mr. Powell did not quantify the damages they sought in their defamation counterclaim but, at the hearing, sought \$10,000 each, a relatively modest sum. Similarly, the damages available to Ms.

Anderson, if successful in her claim, are modest. This is primarily because she has not filed evidence to support her damage claims.

[137] While I understood from her submissions that she replaced some appliances in the Cabin, Ms. Anderson has not filed admissible evidence about the costs of these, or any other improvements she has allegedly made to the Cabin.

[138] Nor has she filed any admissible evidence to support her other claims for damages. For example, and as discussed, she alleges that Mr. Powell and Mr. Murtack committed wilful acts that damaged her Mercedes, but she has not proven the value of the Mercedes or whether this value was reduced by the alleged damage. She has not proven that Mr. Powell deliberately damaged her boat. Ms. Anderson has also not proven the value of the landscaping that she says was destroyed by the excavation of a water pipe adjacent to the Cabin. I also note that she has not replaced the landscaping or provided receipts for doing so. There is nothing to suggest that the amount of damage involved is more than a relatively modest sum.

Legal and Factual Complexity

[139] There is nothing legally or factually complex about this matter. Any complexity that exists arises from the form of Ms. Anderson's pleadings and her approach to conducting this proceeding, including filing repetitive applications and affidavits which are replete with speculation, hearsay, and argument.

Urgency

[140] While this was not initially an urgent matter, it has now been in the court system for many years.

[141] The defendants are impacted by the fact that Ms. Anderson is living at Owl's Nest without having paid the balance of the Lease Price or the ongoing annual License fees. The defendants are impacted by this loss of revenue but are also impacted by Ms. Anderson's ongoing disruptive conduct.

[142] Further delays will only exacerbate the situation, and allowing this matter to be further prolonged is prejudicial to all parties. Accordingly, bringing this matter to an end has become a matter of urgency.

Cost of a Full Trial

[143] Ms. Anderson has already consumed a disproportionate amount of judicial resources. Her pleadings have already been struck once. Despite Douglas J.'s clear direction regarding potentially available causes of action for Ms. Anderson, her pleadings continue to be in breach of the Rules. The parties appeared over two days before Morellato J. Ms. Anderson's conduct over the six days on which these summary trial applications were heard has highlighted that a full-blown trial is likely to disproportionately consume further judicial

resources. Throughout this proceeding, Ms. Anderson has repeated arguments that she was told by me, and others, were not appropriately made. For example, I repeatedly told her that I could not alter conclusions made by Douglas J. Counsel for the defendants advised me that other presiders had also done so. Assuming that this conduct would continue, the time a conventional trial would take is wholly disproportionate to the amounts in dispute.

- [144] The situation is aggravated by the fact that Ms. Anderson has no probative evidence to support her allegations and no witnesses that support her version of events, which I discuss further below.

Credibility in Issue

- [145] While credibility is an issue in these proceedings, I have sufficient evidence before me to make the necessary credibility findings. I find that Ms. Anderson is not a credible or reliable witness. In coming to this determination, I am guided by the factors described by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296: the ability and opportunity to observe events, the firmness of memory, the ability to resist the influence of interest to modify his/her recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his/her testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally

- [146] I elaborate on my reasons for making this finding below.

Whether a Summary Trial Would Complicate the Issues

- [147] Throughout the proceedings, Ms. Anderson has been unable to confine her submissions to relevant issues. I find that proceeding to a trial, in addition to creating additional expense, is likely to complicate the issues as Ms. Anderson is likely to continue to attempt to expand the scope of her claims beyond what is relevant.
- [148] I, therefore, find that addressing the matter via a summary trial will not complicate the issues and will, in fact, simplify the matter in a way that will be more efficient for all parties involved.

Litigation in Slices

- [149] Based on the evidence before me, I am able to dispose of all of the issues raised by the parties. Ms. Anderson has had clear notice of the defendants' position and has been able to fully respond to it--both in writing and in oral submissions during the six hearing days.
- [150] Addressing the issues before me via a trial will not result in litigation in slices as my reasons dispose of all of the issues before the court.

Conclusion on Suitability

[151] Having considered all of the pleadings, the extensive affidavit material, the discovery transcript, and the arguments made over a number of days, I conclude that this litigation is suitable for determination by way of a summary trial. For the reasons that follow, I conclude that, on a summary trial basis, Ms. Anderson's claims should be dismissed in their entirety and that Mr. Murtack's and Mr. Powell's defamation claims should be allowed.

[152] In reaching this conclusion, I have considered all of Ms. Anderson's written documents as well as her oral submissions. The affidavits filed by Ms. Anderson are especially illuminative of the serious evidentiary deficits in her evidence. Her affidavits are replete with speculation and unattributable hearsay which are incapable of proof. They demonstrate that Ms. Anderson's testimony is not credible, as stated. Her testimonial evidence is self-serving and irrational when considered in the context of common sense and corroborative evidence. I will provide a few examples to demonstrate these difficulties.

[153] On June 20, 2019, Ms. Anderson applied for, among other relief, protection orders against the defendants Miles Murtack, Bill Powell, and Joan Powell. The defendants responded on June 27, 2019, and, on the same day, filed affidavits from Linda Davey, Joyce Delaire, and Mr. Murtack responding to Ms. Anderson's allegations.

[154] In response, on July 4, 2019, Ms. Anderson filed Affidavit #2. At para. 5, she referenced the Cancellation Letter sent to her by Mr. Shannon. Ms. Anderson swore the following about Mr. Shannon's letter:

5. Roger Shannon judged my ethics and morality on the hearsay of others without giving proper consideration to my side of the story. To implement such drastic action as to remove someone from their home should not be taken lightly. I believe from previous experiences I have witnessed, Mr. Shannon was visiting Bill and Joan Powell at their residence at Owl's Nest, and while consuming alcohol to excess, he signed the letter dated January 25, 2017. Joan Powell most likely prepared such letter for his signature which wrongfully described Mr. Shannon as President of Double M, which was not correct. He held the office of Secretary-Treasurer as evidenced on a Business Search I obtained. Myles Murtack's wife at the time was the President of the company.

[155] Ms. Anderson provides no objective evidentiary basis for her belief. She is clearly speculating about Mr. Shannon visiting the Powells, their consumption of alcohol, and that Ms. Powell prepared the letter for his signature. She does not set out what "previous experiences" she "witnessed" to support her conclusions. Rather, she strings together a factual, self-serving narrative without any proof.

[156] Another example of speculation is what Ms. Anderson says about her allegation of deliberate damage to her property:

43. Re Paragraph 18 of [Mr. Murtack's affidavit] Murtack was back at Owl's Nest during the time my garage shelter and car were destroyed. The only persons who operated the backhoe were Murtack and Bill Powell. I believe Mr. Powell was operating the backhoe using the scoop shovel to forcefully collapse the heavy roof frame of the shelter down on top of my convertible automobile. I am certain snow would not have caused heavy steel pipes to bend to the degree shown in the photograph as Exhibit B to my Affidavit dated June 20, 2019. I also believe Murtack was fully aware of the circumstances surrounding this destruction, therefore a willing participant.
59. Bill Powell had full access to my boat which had a locking hitch on the trailer. He insisted the hitch lock be left with him. At some point, Bill Powell removed my hitch lock from the boat trailer, and replaced it with another yellow coloured hitch lock he left inside the boat. My key did not work with the replaced hitch lock, so I emailed Joan and Bill Powell asking where my lock was. I never received a response. Attached as Exhibit "C" is a copy of my email sent to Bill and Joan Powell, together with supporting correspondence regarding my missing hitch lock.
60. I believe foul play was involved with respect to damage to my motorboat for the above reasons, and Bill Powell would be the obvious person to consider having perpetrated said damage.
- [157] Ms. Anderson gives no basis for her belief that Mr. Murtack and Mr. Powell destroyed her property. Her claims are purely speculative and unsupported by any facts or evidence. Ms. Anderson also purports to give expert evidence about her "certainty" that snow would not have caused the damage, which is not admissible. She provides no basis for her conclusion that Mr. Murtack "was fully aware" of the destruction and that he was, therefore, "a willing participant". As I have found, Ms. Anderson's shelter collapsed due to its flat roof and the weight of the snow. The evidence did not support that Mr. Murtack or Mr. Powell deliberately damaged it with a backhoe.
- [158] There is also no evidence to support that Mr. Powell damaged her motorboat. She does not provide the basis for her belief that "foul play" was involved in the damage to her motorboat or that Mr. Powell was the "obvious" person to have perpetrated the damage.
- [159] At other points in the same affidavit, she makes gratuitous, unsupported, and irrelevant allegations. For example, in para. 52, in response to Mr. Powell's description of his responsibilities at Owl's Nest, she attested:
52. Bill Powell states it is his job to ensure residents in the park follow the campground rules. Unfortunately, he and other Respondents do not follow their own rules which include driving motorized vehicles around the park while extremely intoxicated and having open liquor on board; speeding throughout the park roads on motorized vehicles well in excess of posted speed limit signs; allowing their dogs to incessantly bark at all hours and to walk around off leash in the park without any one cleaning up after them.

67. [Individual's name deleted] son, is a convicted criminal who served time in a federal prison for a number of "break and enters" he orchestrated. He has been in trouble with law enforcement on other occasions due to his bullying and belligerent nature. Because [individual's name deleted] is familiar with illegal drugs, it would not be a stretch of the imagination to assume he could easily purchase rape drugs such as Rohypnol. Therefore, it is my belief as well as my doctors, that [individual's name deleted] drugged and sexually assaulted me for several hours on July 2, 2016.
74. It was a common joke often spoken about by residents in the park that cash demanded by Murtack and Bill Powell for small jobs an[d] extra lot fee charges were likely never declared on their income tax returns. Linda Davey went out of her way to advise residents to make formal complaints about Murtack for the large cash payments he was demanding for occupants in the park and she provided the contact phone number and file number for Canada Revenue Agency and B.C. Consumer Complaints to report such instances.
76. As a responsible person I felt it necessary to make other residents aware of the extremely outrageous and dangerous attacks the Respondents were routinely perpetrating against me. Knowing that Murtack stalks around Owl's Nest at night looking for females to have casual sex with made me frightened for younger women and girls on site, especially in the summer when relatives and grandchildren of residents frequented the park. This was especially true after Murtack prowled around my cabin at 3:15 AM in July 2018, knowing my electricity was shut off by his hands.
- [160] Ms. Anderson relied on a slip of paper with what was apparently a Canada Revenue Agency (CRA) file number written on it in respect of the allegation that Mr. Murtack was being investigated for tax fraud. Whether Mr. Murtack was being investigated for CRA is irrelevant to her allegations. She did not present admissible or credible evidence to support the other claims, all of which were inflammatory and not relevant to any of the issues that Douglas J. permitted her to pursue in her amended claim.
- [161] Concerning unattributed hearsay, in this same affidavit, Ms. Anderson swore:
16. I was made aware by full-time residents at Owl's Nest of the spread of hatred towards me by Bill and Joan Powell, which usually occurred during frequent gatherings at their residence. Bill and Joan Powell also routinely slandered my reputation as they drove around the park to whomever they passed by, whether the people they spoke to knew me or not. I personally overheard Joan Powell speaking hatred about me to my neighbour, and people I had never met intentionally avoided contact with me.
66. Linda Davey, an employee of Double M, walks around Owl's Nest on a daily basis spreading gossip to whoever will listen to her. I was advised by friends in the park that Mrs. Davey was telling residents she had a restraining order against me. I texted Mrs. Davey asking her to retract the lies, which she never did.

70. Joyce Delaire was not the innocent victim she portrays herself to be. I was told she refused to agree to sell a jointly owned property her ex-partner wanted his fair share of money from, so he could move on from her.
- [162] I note that Ms. Anderson did not provide the name of the neighbour or attest to what she heard Ms. Powell saying to the unnamed neighbour. Her comments about Ms. Delaire are irrelevant and inflammatory. Ms. Delaire is not a party to these proceedings. No other resident of Owl's Nest has filed an affidavit in support of Ms. Anderson's very serious allegations.
- [163] These issues about speculation, unattributed hearsay, and innuendo recurred throughout Ms. Anderson's affidavits, as she consistently asserted that third parties had information about these disputes but did not provide affidavits from them.
- [164] For example, despite her allegations that Mr. Powell and Mr. Murtack harassed and stalked other women at Owl's Nest, and that she had proof they have done so, no other witnesses filed an affidavit in support of this assertion and Ms. Anderson has not provided any other "proof". It is entirely unclear whether any such information would be relevant to the claims that Douglas J. allowed to proceed as Ms. Anderson's claims of harassment were struck without leave to amend.
- [165] In Affidavit #6 sworn April 25, 2022, Ms. Anderson said:
22. I believe the Defendants have outdoor surveillance cameras directed at my cabin, especially after an incident involving Powell last fall. Powell suddenly came running towards me in my front yard from the warehouse location which is hidden behind a high fence and hillside berm a good distance away. Powell arrived with the camera in his hand to take pictures almost immediately after I intentionally dropped a couple of plastic bags on the vacant lot siding my residence to invoke a reaction by the Defendants to prove they are spying on me, which it did.
23. Powell does everything he can to cause harm and anxiety to me during his working hours at Owl's Nest under the authority of, and in collusion with, Double M owners. He placed a dead bright red bird on top of my fence when he was working in close proximity to my property, which I took as a threat (Exhibit D). On two occasions Powell has thrown half eaten apples onto my front deck as he was passing by. Last year, Powell entered into my property after he watched me leave the park. I found evidence of the violation at my backdoor entry when I returned, where a white dental floss stick was on the ground which had not been present when I left that day. As my front gate is always locked and the neighbors across from me look directly into my front yard, Powell avoids being seen trespassing by jumping over my side fence, as does Murtack.

[166] I note that Exhibit D depicts an apparently dead bird lying on top of a fence but does not establish that Mr. Powell was involved in putting it there. There is no evidence to support that Mr. Powell threw half eaten apples onto her front deck and, as she had left the park, she has no evidence to support that he waited for her to leave and then entered her property, leaving a white dental floss stick on the ground. She has no support for her allegation that Mr. Powell and Mr. Murtack jumped over her side fence.

[167] In her Affidavit #8, sworn June 16, 2022, Ms. Anderson said:

3. Extensive civil and criminal fraud has been committed throughout this legal action by the defendants in a conspiracy with their former solicitor. The defendants have no defence for their maleficent behaviour routinely committed against me and my property, beginning January 2017. The defendants' former solicitor, Mr. van Wyk, attempted to have my matters struck out time and again through fraudulent means including submitting manufactured proceedings and fabricated evidence to the court, with the intention to sway decisions in his clients' favour.
5. I have since been made aware the defendants' former solicitors MZA Law, have closed their law office which had been operating for over 20 years, the office building was sold as of August 1, 2023, and all lawyers have gone their separate ways. This all occurred after I served my Notice of Civil Claim on MZA Law and Mr. van Wyk, which the Honorable Madam Justice Morellato had ordered be filed prior to the end of February 2023. Justice Morellato had been intimately involved in my decision to file a Notice of Civil Claim against the former solicitors after hearing my evidence.

[168] I reiterate that this Court did not order Ms. Anderson to file a claim against MZA and there is nothing to connect Ms. Anderson's filing a claim against MZA or Mr. Van Wyk to the firm's closure. In fact, in a newspaper announcement attached as Ex. D to Ms. Anderson's Affidavit #10, sworn October 12, 2023, MZA explained that the office building in which it operated had been sold and that the lawyers had decided to go their separate ways.

[169] In her submissions before me, Ms. Anderson made it clear that her case is dependent on her "EQ" or, otherwise stated, "her emotional intelligence". She stated that her EQ allows her to "connect the dots". In her view, the version of events created by the connection of these dots should be accepted by this Court. In practice, this resulted in Ms. Anderson making numerous unsubstantiated claims to the court. For example, during her submissions, she "connected the dots" and determined that it was her allegations against Mr. Van Wyk and MZA that led to the dissolution of the MZA. There is no evidence to support her conclusion in this regard. These evidentiary issues, which impact Ms. Anderson's credibility and reliability, reoccur throughout all of Ms. Anderson's affidavits.

[170] Based on the lengthy affidavits filed by Ms. Anderson, and based on the oral submissions she made before me, I have a full picture of the allegations that she makes against the defendants. I also have sufficient evidence before me to make determinations about the parties' credibility. Accordingly, I am satisfied that the issues in this case are suitable for determination via a summary trial.

Analysis

[171] Based on my review of the admissible content of Ms. Anderson's affidavits, the defendants' responding affidavits, and the read-ins from her examination for discovery, and having considered the parties' submissions, I conclude that Ms. Anderson has not proven her allegations on this summary trial and dismiss her claims against the defendants.

[172] It was telling that on January 18, 2023, Ms. Anderson said that her "whole case" was on the basis that "everything [the defendants] have done is fraudulent everything". Ms. Anderson has not established fraud. A similar claim against Mr. Van Wyk and MZA was dismissed by Gaul J., and, most importantly, Douglas J. did not give Ms. Anderson leave to proceed with a case in fraud.

[173] Ms. Anderson is neither a credible nor a reliable witness, for the reasons given above. Where her affidavit evidence is uncorroborated, I have placed little weight on her affidavits. She exaggerates and uses inflammatory language when describing things she alleges were "perpetrated" against her by Mr. Murtack and Mr. Powell. For example, in paras. 16-18 of her Affidavit #1, she says that because she is a "senior, disabled, single woman living alone", the defendants felt comfortable "bullying, harassing, spying and terrorizing" her. She says that they "maliciously" shut off her water, sewer, and electricity for over six months. Elsewhere, she alleges that they "illegally" shut off her power. She alleges that damage to the landscaping around her cabin was a direct result of the "abhorrent acts" perpetrated by Mr. Murtack while "vengefully" operating a backhoe as he shut off her water and electricity. As I explained with respect to other examples of allegations made by Ms. Anderson in her affidavits, these allegations are unsupported by any evidence. Mr. Murtack said that he was opening a trench to get to the waterline when the RCMP arrived and told him to stop working as Ms. Anderson phoned them and complained that he was harassing her. He said he decided to leave the worksite as, given his previous experiences with Ms. Anderson, he did not want to aggravate the situation.

[174] I note that as part of Ex. Q to Ms. Anderson's Affidavit #1, she attaches a document she created indicating that, between "February 2017 and May 2019", she made nine complaints to the Cranbrook RCMP detachment regarding harassment and damage to personal property. No police reports are in evidence.

[175] A review of the complaints she lists indicates that eight of them were between February 15, 2017, and July 18, 2018. At the end of the list, Ms. Anderson says:

In addition to the above, Ms. Anderson's extensive file of complaints has also been discussed with S/Sgt's Hector Lee and Barry Graham, as well as Cpl. Mitch Mercier regarding damage to personal property and ongoing harassment and threats by the Defendants.

Multiple attendance at the Cranbrook RCMP detachment were also involved to speak with an Assistant to RCMP member, Jesse, as well as on site Constable.

[176] During her submissions, Ms. Anderson spoke at length about Mr. Murtack's conduct in spying on her, entering her backyard, making unwanted sexual advances, and sending her pornographic materials. All those events were alleged to have occurred prior to the Cancellation Letter. It is inexplicable that, if these allegations were true, she would say in her response to the Cancellation Letter that, as she had always dealt with Mr. Murtack with respect to the Cabin, she would prefer to correspond with him going forward. She does not express any concern about his alleged earlier misconduct. Her actions are irreconcilable with the submissions she advanced during this hearing about Mr. Murtack's misconduct.

[177] I also find that the contemporaneous documents tend to be consistent with or to corroborate the defendants' version of events.

[178] I accept that Ms. Anderson believes, or has become convinced, that what she says in her affidavits is the truth, but she is unable to prove it, and her hyperbole renders it improbable. This is particularly apparent with respect to her evidence about the damage to her property. It is equally apparent with respect to her allegations that the defendants deliberately cut off her water and her power.

[179] I would also dismiss Ms. Anderson's claims that a trailer and a water truck located on adjacent lots to the one on which the Cabin was located "encroached" on her property or obstructed her view. The photographs, attached to her Affidavit #1, do not show encroachment, and Ms. Anderson has no legal basis for a claim that her view was obstructed. Her occupancy of the Cabin did not include a promise of an unobstructed view.

[180] There is a difference between alleging facts and proving them. A few further examples of the deficiencies in Ms. Anderson's claims in this respect will suffice, in addition to the examples of Ms. Anderson's unsupported allegations that I have already described in these reasons.

[181] Mr. Murtack deposed, based on his personal knowledge, about the unsigned Licence to occupy for the period April 2016-April 2017, which is attached as an Exhibit to his Affidavit #3. It appears to be written in the same hand and with the same pen as the Lease Ms. Anderson signed. It was corroborated by Ms. Powell's evidence. Ms. Anderson suggests that it is a recent fabrication but provided no evidence to support her suggestion.

[182] Photographs do not prove what Ms. Anderson says they do. For example, Ms. Anderson attaches a photograph as Ex. B to her Affidavit #1, and says:

Attached as Exhibit "B" is a photograph of my car and shelter, which were intentionally destroyed by what I believe was the shovel of a backhoe collapsing the roof frame of the garage shelter onto my car.

[183] The photograph does not prove the intentional destruction. As I have stated, it shows the collapsed shelter with a backhoe beside it, and the snow cleared around it. It does not show the backhoe damaging the shelter.

[184] As another example, Ms. Anderson attaches two photographs as Ex. N to her Affidavit # 5, sworn November 16, 2021, and says:

Attached as Exhibit "N", are two photographs taken from different angles evidencing the extensive damage to the front portion of the garage roof, which damage would have required a powerful mechanical force pounding down on top of the roof causing the heavy-duty steel pipe frame to snap and forcefully collapse on top of the vehicle inside.

[185] The photographs do not show the cause of the damage. The balance of her paragraph may purport to set out her belief, but it does not say so, and most of it would require expert evidence. In any event, as I have found, there was no deliberate destruction of Ms. Anderson's property.

[186] I find, on a balance of probabilities, that Ms. Anderson's firm but misguided belief that Mr. Murtack or any of the defendants deliberately interfered with her water and power, as repeated throughout her extensive affidavit evidence, is inaccurate and not proven on the evidence. As Ms. Anderson is not the owner of the property on which the Cabin is located, none of the defendants are liable for alleged damage to her landscaping as a result of the work performed on her water and power lines.

[187] As I have already stated and for the reasons given above, I also find on a balance of probabilities that Ms. Anderson has not established that Mr. Powell or Mr. Murtack wilfully destroyed her property.

[188] In general, the evidence is replete with examples of Ms. Anderson being aware of one fact, connecting it to another, and leaping to conclusions. As I have mentioned, she submits that her EQ allows her to "connect the dots". In my view, and as I have already stated, the connection of the dots constitutes speculation and is not supported by the evidence.

[189] Ms. Anderson's position with respect to the Licence is also troubling. In her original notice of civil claim, filed September 28, 2018, she pled with respect to what I have defined as the Licence and what she referred to as the Lease:

94. Double M entered into an annual Lease agreement in writing with Anderson which was dated July 5, 2017 after she provided a bank draft in the amount of \$2,625.

95. It was an express or implied term of the Lease that Double M would provide Anderson with services including water and sewer, and that electricity would be provided at Anderson's cost. Further, it was an express or implied term of the Lease that the use of public washrooms, showers and laundry facilities located in Owl's Nest were also included.
96. Double M breached the Lease agreement with Anderson by, among other things:
- (a) the intentional and malicious shut down of Anderson's services to her residence including water, sewer and access to electricity without notice even though her Lease for the services was current and fully paid;
 - (b) intentionally preventing Anderson from utilizing the public washrooms, showers and laundry facilities at Owl's Nest, when use of same formed a part of her Lease with Double M;
 - (c) failing or neglecting to exercise its authority to put an end to the conduct of discrimination, harassment and hatred against Anderson;
 - (d) failing to hold accountable those employees and agents of Double M found to be in breach of the applicable policies, procedures and guidelines; and
 - (e) failing to properly supervise its employees and agents.
- [190] As I have explained with respect to other allegations, there is no credible evidentiary basis for these allegations.
- [191] As the basis for Ms. Anderson's claims is ill-founded, and because I have found her not credible or reliable, I dismiss her claims in their entirety on her summary trial application. It is, therefore, unnecessary to consider the defendants' application to strike her pleadings under Rule 9-5(1).
- [192] Had I not reached this conclusion, I would have struck some or all of Ms. Anderson's pleadings under R. 9-5(1)(b) and (d) as being non-compliant with Douglas J.'s order, without further leave to amend.
- [193] The Further Amended Claim does not comply with Rule 3-1(2) as it does not concisely set out the material facts on which she relies in support of the amended claims. She extensively pleads evidence, not material facts. Her Further Amended Claim contains argument. In addition, Ms. Anderson added new causes of action against the defendants.
- [194] Some examples of the claims that were struck by Douglas J., without leave to amend, which reappear in the Further Amended Claim as follows:
- a. In para. 5, Ms. Anderson pleads civil conspiracy and alleges that fraud was committed during the course of litigation. Ms. Anderson was not granted leave to bring an action in civil conspiracy or fraud. Fraud committed during the course of litigation is not a cause of action but may be a basis for special costs.

- b. In paras. 6-7, Ms. Anderson pleads fraudulent statements in an affidavit and "manipulated evidence". She makes specific claims against Mr. Shannon, who is not a party to the action. She also alleges that Mr. Van Wyk, then the defendants' counsel, was involved in the creation of affidavits and manipulating information to "build a fraudulent defence". As I have said, Ms. Anderson was not granted leave to bring an action in fraud and, as will be discussed later in these reasons, a claim that she subsequently brought against Mr. Van Wyk and his firm, relying on many of the same allegations, and was struck by Gaul J. without leave to amend.
- c. In paras. 10-11, Ms. Anderson refers to fraudulent paragraphs in Mr. Shannon's affidavit. She was not granted leave to plead fraud or her claims of civil conspiracy, and intentional infliction of emotional suffering. She was also not given leave to amend pleadings of harassment, slander or defamation, or incitement of hatred.
- d. In paras. 11-13, Ms. Anderson was not given leave to amend pleadings in negligence, slander or defamation, as against any of the defendants.
- e. In para. 39, Ms. Anderson pleads actions by Mr. Murtack that are only relevant to a claim for sexual harassment that was struck without leave to amend.
- f. In paras. 40-41, Ms. Anderson refers to negligence and irresponsible behaviour, pleadings that were struck without leave to amend.
- g. In para. 67, Ms. Anderson pleads non-material facts and the allegations, in part, go to harassment, a claim that was struck without leave to amend.
- h. In paras. 68-71, 81-86, 88-89, Ms. Anderson pleads negligence and/or harassment, pleadings that were struck without leave to amend.
- i. In paras. 72-75, Ms. Anderson pleads libel and slander, a pleading that was struck without leave to amend.

[195] Examples of Ms. Anderson pleading evidence, not material facts, are found in paras. 30-32, 38, 40-41, 45-47.

[196] The Further Amended Claim continues to be prolix, replete with argument, hearsay, and evidence.

[197] In many respects, the Further Amended Claim repeats the claims struck by Douglas J.

Contract Repudiation

[198] As I found above, Ms. Anderson is in default of her obligations to pay the balance of the Lease Price for the Cabin, and under the Licence as a result of her failure to pay the Licence fee in all but one of the years during which she has lived at Owl's Nest.

- [199] Repudiation of contract occurs "by the words or conduct of one party to a contract that show an intention not to be bound by the contract", such as the breach of a fundamental term: *Kaur v. Bajwa*, 2020 BCCA 310, citing *Remedy Drug Store Co. Inc. v. Farnham*, 2015 ONCA 576. After repudiation, the other party can either accept the repudiation or affirm the contract: *Dosanjh v. Liang*, 2015 BCCA 18 at para. 33.
- [200] In this case, I find that Ms. Anderson's nonpayment of the License Fee and the balance of the Purchase Price resulted in the repudiation of her contracts with the defendant, Double M Construction Ltd., which was accepted, and the contracts came to an end. Ms. Anderson has forfeited her interest in the Cabin.

Cross-Applications for Orders under s. 18 of the Supreme Court Act

- [201] All parties have requested that the other[s] be declared a vexatious litigant. Ms. Anderson seeks that relief under R. 9-5(1). Such a declaration is available under s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443. which provides:

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

- [202] I note that while orders under s. 18 are often referred to as "vexatious litigant orders", the focus of the section is not on the litigant but on vexatious legal proceedings. An order under s. 18 order does not prevent access to the courts. Instead, it requires a person who has been instituted vexatious legal proceedings to seek the court's leave to institute another proceeding.

- [203] The focus of such an order is on the court's inherent jurisdiction to control its own processes and to prevent abuse of those processes.

- [204] As explained in *Holland v. Marshall*, 2010 BCSC 1560 at para. 7, an applicant must show:

- a) that proceedings were taken in the absence of objectively reasonable ground; and
- b) that proceedings have been brought habitually or persistently, such that the litigant has continued obstinately in the course of conduct, despite protests or criticism.

- [205] In *Johar v. College of Veterinarians of British Columbia*, 2020 BCSC 1085 at para. 276, Justice Harvey adopted the approach in *Re Lang Michener and Fabian*, 59 O.R. (2d) 353, 1987 CanLII 172 (S.C.), summarizing the factors to be considered in assessing whether proceedings are vexatious:

- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;

- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

Has Ms. Anderson filed vexatious proceedings?

- [206] Having considered the submissions, and applying the Lang Michener principles to Ms. Anderson's circumstances and pleadings, I am not prepared to find that Ms. Anderson has filed vexatious proceedings. In my view there is a difference between proceeding in a vexatious manner during litigation and filing vexatious proceedings in this Court.
- [207] The issues Ms. Anderson raises in this action have not already been determined. As I have said, although misguided, Ms. Anderson believes that the defendants have wronged her. That belief has coloured her approach to this litigation. I have no evidence that she has failed to pay the special costs that Gaul J. ordered against her in the proceedings she brought against Mr. Van Wyk and MZA.
- [208] I was not referred to any authority for the proposition that I could look at a litigant's conduct in commencing proceedings in another jurisdiction (Ms. Anderson's Alberta family proceedings), involving a different matter and different parties, to determine whether a litigant's proceeding in this Court is vexatious. I do not accept that it would be appropriate to do so.
- [209] That leaves for consideration of Ms. Anderson's filing of this proceeding and the Solicitor Action. Applying the Lang Michener principles, I do not conclude that the Solicitor Action would have determined the issues in this summary trial.

[210] In this proceeding, Douglas J. did not dismiss all of Ms. Anderson's claims; she permitted amendments to allege facts in support of the claims that she allowed to proceed. While some of the issues in the Solicitor Action tangentially overlapped with the issues before me, and while Ms. Anderson has been unable to establish a basis for either action, her conduct does not rise to the level warranting a s. 18 order.

[211] I dismiss the defendants' application under s. 18.

[212] Despite not finding making an order under s. 18, it is my view that the time spent on this case, which was wholly disproportionate to the issues and amount in dispute, and Ms. Anderson's behaviour during the proceedings, including threatening the scheduling manager, are validly considered in deciding an appropriate order for costs.

Have the defendants filed vexatious proceedings?

[213] With respect to Ms. Anderson's application under s. 18, she has not provided any authority for making such an order against a defendant to legal proceedings. Defendants do not "bring" proceedings; they respond to them. The defendants did not choose to be litigants. They were required to respond to claims made against them. The only proceeding they have brought is a counterclaim in Ms. Anderson's action, and it, clearly, does not meet the Lang Michener test.

[214] There is no basis for Ms. Anderson's s. 18 application against the defendants, and I dismiss it.

Mr. Murtack's and Mr. Powell's Defamation Claims

[215] In the leading case of *Grant v. Torstar Corp.*, 2009 SCC 61 [Torstar], the Supreme Court of Canada reviewed the law of defamation. Chief Justice McLachlin, writing for the Court, discussed the three things a plaintiff must prove to succeed in a claim for damages for defamation:

[28] A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

The Allegedly Defamatory Words

[216] In this case, some of the words written by Ms. Anderson were communicated to the residents of Owl's Nest on a community email distribution list containing more than 100 individuals. There is no dispute about what Ms. Anderson wrote or about whom she was writing. Her statements included the following, sent on April 4, 2018, by email to the Owl's Nest distribution list. Ms. Anderson wrote:

This is what I know for sure: I have been sexually harassed and assaulted by Myles Murtack since I agreed to purchase the cabin I live in. He crawls around through the campground in the dark stalking.

I have evidence and witnesses corroborating Myles Murtack regularly commits alleged fraud by making false claims about the ownership of Owl's and Double M.

Myles Murtack is allegedly under investigation by CRA for fraud including failure to report large lump sum payments he receives from residents of Owl's.

Everyone must stand together against Murtack's atrocities that he constantly brings into the park. His EGO is out of control and I believe he is a dangerous person.

Bill Powell has repeatedly harassed and stalked me since I first arrived at Owl's and there are witnesses.

[217] On April 9, 2018, Ms. Anderson sent an email to Karen Panchuk, a resident at Owl's Nest, stating the following:

Myles Murtack is a sleazebag that crawls through the campground at night looking for sex from wherever he can get it.

[218] On April 25, 2018, Ms. Anderson sent an email to Lisa White, who worked as a part-time bookkeeper for Double M, stating:

I would never consider having a shower in the Owl's Nest RV Park knowing first hand of the creepy predators that stalk women around the campground. There are probably voyeur cameras installed watching the women showering. I fear for the young female children playing around the grounds in the warmer months. These creeps seem to know no humanity.

[219] On May 22, 2018, Ms. Anderson sent an email to Lisa White and Joan and Bill Powell, stating:

I will be spray painting a huge sign on my cargo trailer in front to warn other residents in this park: Myles Murtack and Bill Powell are sexual predators and bullies. Please carefully watch over your children.

[220] At her discovery, Ms. Anderson agreed that in sending the email, she wanted to warn other people in the park about Mr. Murtack being a sexual predator and to watch especially children. She was asked whether she was saying he was a pedophile. She responded at page 256, line 1676:

I'm not saying he's a paedophile. I just said, "Watch you children with those two around," because who knows.

[221] When she was asked why she would warn people to watch over their children, she said that children are defenceless and there were kids all over the place in the summer. Starting at page 256, line 1678, and following, she was asked:

Q. Right. And so they're defenceless, and if Myles Murtack makes sexual advance to them, they should watch out for them?

A. Yes.

Q. Okay.

A. The parents should be watching out for them.

Q. Okay. Why did you sent this email to these people?

A. Because I told you. I thought they were going to kill me. I wanted everybody to know what they were doing. They were like crazed people. There was nothing they weren't going to do to get me out of that campground and I was scared for my life. And I thought as many people that know about them, the better.

[222] In the same email, Ms. Anderson said that Mr. Murtack is a psychopath. When she was asked about that at her examination for discovery, Ms. Anderson said that she knows what a psychopath is because she "studied them, I know what they are". At page 248, line 1637, and following, she was asked:

Q. Right. But also someone told you he has some mental health issues; right?

A. Yes.

Q. Okay. And that's how you know?

A. No. The way he acts. He acts like a psychopath.

Q. So the same way you self-diagnose, you diagnosed him with being a psychopath?

A. I did a lot of studying on psychopaths.

Q. Okay.

A. Dr. Hare out of the Kelowna, B.C., is one of the top world-renowned psychopathy doctors, and I've studied his work. I know what a psychopath is.

[223] At her examination for discovery, Ms. Anderson also agreed that she sent an email to the Owl's Nest distribution list on August 10, 2018, saying:

Myles Murtack is involved in alleged fraud where the ownership of the campground is concerned and will be facing charges with the appropriate authorities.

[224] When she was asked about what she meant, she responded at page 249, line 1643:

A. It means I did a search and everything that he had told everybody was a lie; that he owned the campground. It was his wife who had the shares in it, and she ran away to Florida to get as far away from him as she possibly could have.

[225] At page 249, line 1644, and following, Ms. Anderson was asked about the other content of her August 10, 2018 email:

Q. And you also say, then, in that same email, "If you people continue to spy on me" -is that the residents of Owl's Nest, "you people" or is -

A. That, the management, the defendants.

Q. "If you people"--

A. Well, those are who they had spying on me. The guy who lived - the people who are across from me, they had them watching my place, so as soon as I went to try to hook up some water a few lots down from my place, I'd hook a hose up and I'd have water bolles in the back of my truck, here come Bill, here come Joan. Soon as Larry or Karen come home and saw me, there would be Bill, there would be Joan out coming after me.

Q. Right. In any event, so what you say is, "If you people continue to spy on me for Bill Powell or Myles Murtack, I will name you as defendants in my multi-million dollar lawsuit against the predators."

A. Mm-hmm.

Q. So you're also saying that Myles Murtack is a predator; right?

A. Mm-hmm.

[226] Ms. Anderson does not dispute that she sent these messages to residents of Owl's Nest about the defendants. Her only defence is that her statements were true. Despite that, she has not provided any evidence of the truth of her statements.

[227] At para. 76 of her Affidavit #2, Ms. Anderson explained her reasons for sharing her perspective with other residents:

I felt it necessary to make other residents aware of the extremely outrageous and dangerous attacks the Respondents were routinely perpetrating against me. Knowing that Murtack stalks around Owl's Nest at night looking for females to have casual sex with made me frightened for younger women and girls on site, especially in the summer when relatives and grandchildren of residents frequent the park. This was especially true after Murtack prowled around my cabin at 3:15 AM in July 2018, knowing my electricity was shut off by his hands. He believed he could sneak around in the darkness undetected until my bright outdoor solar lights came on identifying him. Bill Powell has also displayed stalking behaviour which has been my own experience after I came to the park.

[228] There is no doubt about whom Ms. Anderson was referring to in her emails. Mr. Murtack and Mr. Powell are specifically named. There is also no doubt that the statements were published to at least one other person. With respect to the April 4, 2018 email and August 10, 2018 emails, they were published to a list of over a hundred people.

Are the words, in their ordinary meaning, capable of being defamatory?

[229] The question is whether the words in their ordinary meaning are capable of being defamatory, and whether a reasonable person would understand them in a defamatory sense, guided by the test of reasonableness. The statements outlined conveyed the following natural and ordinary meanings, and by innuendo meant, and were understood to include at least the following meanings:

- a) Mr. Murtack is a criminal and regularly commits fraud and crime;
- b) Mr. Murtack is a danger to other people;
- c) Mr. Murtack and Mr. Powell are sexual predators;
- d) Mr. Murtack and Mr. Powell represent a danger to the children at Owl's Nest. Combined with the statement that Mr. Murtack and Mr. Powell are sexual predators, this implies that Mr. Murtack and Mr. Powell are pedophiles; and
- e) Residents of Owl's Nest are unsafe due to the presence of Mr. Murtack and Mr. Powell.

[230] Each of the defamatory statements is false, malicious, and defamatory against Mr. Murtack and Mr. Powell, and I find that these words would objectively have the effect of lowering the opinion of them, and their reputation, in the minds of reasonable people. Ms. Anderson's dispute with Mr. Murtack and Mr. Powell, about her occupation of the Cabin, did not give her license to publish defamatory statements about them.

[231] As a result of Ms. Anderson's defamatory statements, repetitions, and publications to the wide audience of Owl's Nest residents, Mr. Murtack and Mr. Powell suffered personal embarrassment and humiliation including damage in their personal and business capacities.

[232] As a result, I conclude that Mr. Murtack and Mr. Powell have demonstrated the three requirements necessary to support a claim in defamation.

[233] However, that does not end the analysis. As McLachlin C.J. said at para. 29 of *Torstar*, once a plaintiff has proven the required elements, the onus shifts to the defendant to advance a defence in order to escape liability.

[234] There are a number of defences available to defamation generally, but in this case, Ms. Anderson advanced a defence that she was telling the truth about Mr. Murtack and Mr. Powell. The difficulty with her position is that Ms. Anderson has not provided any corroborative proof that the above statements were truthful. Given my credibility findings, I am unwilling to accept Ms. Anderson's bald assertions on these issues as proof of the same.

[235] Accordingly, I find that Ms. Anderson has not proven that the above comments are truthful and that Ms. Anderson defamed Mr. Murtack and Mr. Powell.

Damages

[236] The defendants seek both punitive damages and general damages based on defamation.

[237] Defamation is a strict liability tort, and damages are presumed. However, there is no presumption that the damages should be substantial: *Brown v. Cole*, 61 B.C.L.R. (3d) 1, 1998 CanLII 6471 (C.A.). An award for general damages also accounts for "social damage and possible economic damage which may result but which cannot be expressly proven" (*Brown* at para. 107).

[238] Indeed, harm flowing from the tort of defamation is notoriously difficult to quantify. In *Best v. Weatherall*, 2010 BCCA 202, the Court described these difficulties:

46. There are many different statements intended to capture the difficulty of assessing the quantum of damages in defamation cases. It has been said that the calculation of damages for defamation is speculative and an inexact science, that there is no objective measure, and that damages need not be calculated mathematically. Further, although damages for defamation are difficult to assess, courts should sensibly and rationally attempt to arrive at a monetary sum that will compensate the plaintiff appropriately, i.e., achieve *restitutio in integrum*.

[239] Citing *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, 1995 CanLII 59, the Court named the following factors as relevant to the assessment of general damages for defamation: the conduct of the plaintiff, his position and standing; the nature of the libel; the mode and extent of publication; the absence or refusal of any retraction or apology; the conduct of the defendant from the time of publication to the time of verdict; the conduct of the defendant before and after the action, and in court (including conduct of the defendant's counsel); and evidence of aggravation or mitigation of damages: para. 47.

[240] In all the circumstances, I award Mr. Murtack and Mr. Powell the sum of \$7,500 each. In reaching this figure, I consider the following factors: allegations of sexual predation and pedophilia are serious and inherently undermine one's reputation; the defamatory statements were made to a very tight-knit community of which Mr. Murtack and Mr. Powell are a part and in which they do business; and Ms. Anderson did not apologize nor does her conduct seem remorseful, and when asked, she justified her position by saying that she wanted to warn the other residents of the community. I also consider that I do not have evidence that Mr. Murtack and Mr. Powell either aggravated or mitigated their damages.

[241] I decline to award punitive damages.

[242] In *Hill*, the Court held that punitive damages are available in situations where "the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency" and "should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence." (para. 196). I am of the view that the award of general damages in this case achieves the goal of punishment and deterrence, and that Ms.

Anderson's conduct does not rise to the very high threshold of warranting punitive damages.

Final Issues

[243] Having ruled substantially in favour of the defendants, there are a few issues remaining in the ACA that need to be addressed.

Requested Order under Rule 9-5(1)(a) and (d)

[244] On the record before me, and in light of my findings on the summary trial applications, there is no basis for Ms. Anderson's application to dismiss the defendants' proceedings or striking out their amended response to civil claim and amended counterclaim as an abuse of process. Her application for those orders is dismissed.

Requested Orders Relating to Justice Douglas' Reasons

[245] In the course of the summary trial hearing, I advised Ms. Anderson, on more than one occasion, that I had no jurisdiction to grant the orders she sought at paras. 3-4 of her ACA, both of which ask this Court to set aside portions of the Douglas Reasons. I reiterate this fact here.

[246] In para. 3 of the ACA, she seeks an order that Douglas J.'s costs order be either set aside or varied to award her costs.

[247] Similarly, in Part 2 of her Further Amended Claim under the heading "Relief Sought", Ms. Anderson sought:

(d) a reversal of the application costs awarded to the Defendants by Justice J. Douglas, as ordered in her Reasons for Judgment dated July 29, 2021, at paragraph [127]

Justice failed to recognize the extensive conspiracy and fraud perpetrated by the Defendants, as was clearly evidenced by their own testimony in their Affidavits before her, which Affidavits formed a part of the Application Binders she was provided by both the Plaintiff and the Defendants' solicitor. The Plaintiff was not offered a reasonable opportunity to properly present her case, along with the extensive evidence she had to offer;

[248] Justice Douglas' costs order provided as follows:

[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.

[Emphasis added.]

- [249] I understand Ms. Anderson to be claiming that the circumstances of the defendants' alleged civil fraud, civil conspiracy, and misrepresentations constitute circumstances that Douglas J. was "unaware" of and that, accordingly, I can vary Douglas J.'s costs award based on this new information.
- [250] During the hearing, I explained to Ms. Anderson that Douglas J.'s use of the phrase "matters of which [she was] unaware" is a phrase commonly used by judges to allow for the possibility that a settlement offer had been made in advance of a trial because the existence of such an offer might result in a different costs order under R. 9-1.
- [251] Offers to settle must not be disclosed to the court, or referred to in any document in a proceeding, until all issues in the proceeding, other than costs, have been determined: R. 9-1(2).
- [252] However, under Rule 9-1(4), the court may consider an offer to settle when exercising its discretion concerning costs. Rules 9-1(5) and 9-1(6) discuss the possible impacts a settlement offer can have on a costs order. These rules also govern the considerations a judge may take into account in a proceeding in which a settlement offer had been made.
- [253] Justice Douglas' wording was not an invitation, nor does it permit me, to revisit her decision on costs. I have no jurisdiction to grant the relief sought by Ms. Anderson in para. 3 of the ACA. Such jurisdiction lies only with the Court of Appeal, and Ms. Anderson did not appeal.
- [254] In para. 4 of the ACA, Ms. Anderson seeks an order that Douglas J.'s reasons for judgment be set aside "due to obstruction of justice by the defendants".
- [255] At the hearing, I explained to Ms. Anderson that I do not have jurisdiction to set aside or vary a decision from another judge of this Court. Again, such jurisdiction lies only with the Court of Appeal. As Ms. Anderson has not appealed Douglas J.'s decision, it is binding on her. The obstruction of justice Ms. Anderson refers to formed part of her allegations in the Solicitor Action, arguing that Mr. Van Wyk and MZA participated with their clients in the obstruction. Those allegations were dismissed.
- [256] During submissions, counsel advised me that an Associate Judge, when settling the terms of Douglas J.'s order, advised Ms. Anderson that only the Court of Appeal could review Douglas J.'s order. Justice Morellato also advised Ms. Anderson of that fact during the appearance before her. I advised Ms. Anderson of the same fact during the hearing dates in January and, again, in October 2024.

Orders

- [257] Considering the above, I order and declare the following:
- a) Ms. Anderson's amended notice of civil claim filed September 13, 2021, is struck and her claims are dismissed pursuant to Rule 9-7;

- b) Ms. Anderson's repudiation of her contracts with the defendant, Double M Construction Ltd., was accepted, and the contracts are at an end;
- c) Ms. Anderson has forfeited her interest in the Cabin, and the defendant Double M. Construction Ltd. is its owner;
- d) The defendants' amended counterclaim is granted;
- e) Ms. Anderson shall deliver up vacant possession of the Cabin and the lot on which it sits within 60 days of pronouncement of this order;
- f) Damages for defamation are payable by Ms. Anderson to Myles Murtack in the sum of \$7,500;
- g) Damages for defamation are payable by Ms. Anderson to Bill Powell in the sum of \$7,500; and
- h) Ms. Anderson's signature on this order is dispensed with, and the Court will supervise entry of the order drafted by the defendants' lawyer.

Costs

[258] Both parties seek special costs against the other. As the defendants are the successful party, I need only deal with their application for special costs against Ms. Anderson.

[259] Ms. Anderson engaged in conduct worthy of an order for special costs. There are numerous examples of this. First, in the course of this proceeding, Ms. Anderson threatened the Supreme Court scheduling manager responsible for Cranbrook. When Ms. Anderson was insisting on appearing at a case management conference before me, and after Mr. Pearkes was canvassed for dates, Ms. Anderson wrote to the scheduling manager on June 17, 2024:

I do not care what Mr. Pearkes says, I require a CMC to speak with Madam Justice MacNaughton. If a CMC is not granted to be heard quickly, I shall make a formal complaint to the appropriate government officials.

Mr. Pearkes, who has been extremely dishonest and even lied in to Justice MacNaughton's face more than once on record, has lost credibility as far as I am concerned. Furthermore, Mr. Pearkes does not tell me what to do in my legal matter.

I insist on Truth and Justice, and I will accept nothing less.

[260] The tone of Ms. Anderson's email is highly inappropriate as is her insistence that if she did not get her way and have a CMC set quickly before me, she would file a formal complaint about the scheduling manager.

[261] Second, Ms. Anderson was belligerent and angry during her submissions before me and was overly critical of counsel for the defendants despite his respectful approach to his submissions.

- [262] Third, self-represented litigants regularly appear in BC Courts. They are entitled to do so. However, they are not entitled to inappropriately consume a disproportionate share of scarce resources and court time. As I have stated, the time spent on this case was disproportionate to the issues and amounts at stake.
- [263] Ms. Anderson contributed to this issue in several ways. She repeated arguments she made before Douglas J., Gaul J., and in her case against Mr. Van Wyk and MZA which was dismissed. Ms. Anderson did not take that dismissal to heart. She argued before me that having withdrawn, Mr. Van Wyk should not be present in the courtroom or discuss issues with Mr. Pearkes. Ms. Anderson did not comply with Douglas J.'s order regarding her pleadings. They continued to be prolix and replete with hearsay, speculation, and conclusions without evidentiary foundation. She repeated issues that Douglas J. dismissed.
- [264] Similarly, Ms. Anderson had been told on prior occasions that her criticisms of Douglas J.'s reasons were not appropriately argued except in an appeal but repeated them twice before me.
- [265] Ms. Anderson repeated that she was unfairly forced to file a lawsuit against Mr. Van Wyk by Morellato J. As I have set out, that was not the case.
- [266] Ms. Anderson's affidavits were lengthy, full of argument, hearsay, and unsupported conclusions, and when she was asked to provide a basis for her conclusions, she was aggressively confrontational. They were also unduly repetitive.
- [267] Finally, the hearing was unduly lengthened by Ms. Anderson's unwillingness to focus on her arguments.
- [268] I conclude that special costs against Ms. Anderson are appropriate.

"MacNaughton J."

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Prepared on 26 October 2026 · Esheria