
CANADA / JUDGMENT

Caron v. A.

2014 BCSC 1351

COURT

Supreme Court of British Columbia

DECIDED

18 July 2014

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2014 BCSC 1351 Caron v. A.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Caron v. A.,

2014 BCSC 1351

Date: 20140718

Docket: 1343032

Registry: Prince George

Between:

Simon Caron

Plaintiff

And

A, an Infant by her Litigation Guardian,

the Public Guardian and Trustee and Diane Reimer

Defendants

Before: The Honourable Mr. Justice R.S. Tindale

Reasons for Judgment

In Chambers

Appearing for the plaintiff:

Simon Caron, In Person

Counsel for the defendants:

D.W. Burnett, Q.C.

Place and Date of Hearing:

Prince George, B.C.

April 9, 2014

Place and Date of Judgment:

Prince George, B.C.

July 18, 2014

INTRODUCTION

[1] A, an Infant, by her Litigation Guardian, the Public Guardian and Trustee (the "applicant") seeks an order pursuant to Rule 9-7 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 dismissing the claim against her save and except for a portion of paragraph 4 of the Amended Notice of Civil Claim filed on February 21, 2014.

[2] The applicant also seeks costs of this application.

[3] The plaintiff (and respondent in this application) is opposed to the application.

BACKGROUND

[4] On May 27, 2013 the plaintiff filed a Notice of Civil Claim with the applicant as the sole defendant alleging claims in defamation of character and malicious prosecution.

[5] On June 19, 2013 the applicant filed a Response to Civil Claim denying that she published any defamatory statement about the plaintiff or, in the alternative, that any communications made by her to law enforcement officials regarding the plaintiff are protected by absolute privilege or, in the further alternative, that any communication made by her to law enforcement officials regarding the plaintiff are protected by qualified privilege.

[6] On February 21, 2014 the plaintiff filed an Amended Notice of Civil Claim in which the plaintiff, among other things, amended the style of cause to add a second defendant, Diane Reimer.

[7] On February 24, 2014 the Honourable Mr. Justice Funt ordered that Diane Reimer be added to the action as a defendant.

[8] The plaintiff's claim arises from a complaint of sexual assault that the applicant made to the Royal Canadian Mounted Police on November 10, 2012 against the plaintiff.

[9] The claims which directly relate to the applicant can be found in paragraphs 2 and 4 of the Amended Notice of Civil Claim. Those two paragraphs read as follows:

2. Youth A accompanied by Sherry Dupuis went to the RCMP where Youth A falsely accused me of rape. I then got proven innocent in light of the following reasons; I was working 1500 km in Alberta on the day the event was said to have occurred, (moreover, I was away for the for the [sic] whole month). It was proven by work records, credit card statements, credit card records, and courses I attended there.

...

4. Youth A circulated horrible rumors about a rape that never occurred, and even claimed that SHE had dropped the criminal charges, at that point my life was in danger and I left Vanderhoof to go in hiding in Prince George. My vehicle was sabotaged, a friend of mine was threatened to be hurt if he was to be seen in my presence. Youth A also told Hailey Gatacre who filed an affidavit to attest that Youth A directly told Hailey that I had raped her. The rumor including names is still circulating, so that my brother Adam heard of it in his welding class in Fort St. James in December 2013. Moreover, I received treatments for depression. I have foregone opportunities as a leasehand in Alberta for winter drilling and other opportunities.

[10] The applicant seeks to dismiss the plaintiff's claims against her on the following grounds:

- a) To the extent that the plaintiff's allegations relate to statements made by the applicant to the RCMP, the statements are protected by absolute privilege;
- b) The remainder of the pleadings fail to specify the words, recipients or dates of any further defamation, and therefore fail to disclose any cause of action, and the plaintiff has not proven any such statements.

ISSUES

[11] The issues on this application are as follows:

1. Are the applicant's statements to the police protected by absolute privilege? and
2. Do the pleadings fail to disclose any cause of action against the applicant because of their lack of specific details?

POSITIONS OF THE PARTIES

The Applicant

[12] The applicant argues that her statements to the RCMP are protected by absolute privilege.

[13] The applicant submits that the principles found in the decisions of *Hung v. Gardiner*, 2003 BCCA 257 and *Schut v. Magee*, 2003 BCCA 417, leave little doubt that absolute privilege applies to a statement made to a police officer on the occasion of giving a formal statement for the opening of a police file and potential criminal charges even if no charges are ultimately pursued.

- [14] In Hung at para. 6, reference was made to the decision of Smith J. in *Sussman v. Eales* (1985), 33 C.C.L.T. 156 (Ont. H.C.J.), appeal allowed in part (1986), 25 C.P.C. (2d) 7 (Ont. C.A.), which sets out (at 157-158) the following:

The issue is whether the defendants enjoy immunity. The general rule is clear. No action will lie for defamatory statements contained in a document properly used in the course of any proceedings before a court of justice or tribunal recognized by law. The rule is well enough settled. The need for citing jurisprudential support has virtually disappeared. However, the following passage in Fleming, *Law of Torts* 4th ed. (1971) p. 489, always bears repetition:

"Freedom of speech without fear of consequences is considered indispensable for the proper and effective administration of justice ... The privilege is incident to the proceedings of all courts of justice and, though analogically applied to other tribunals exercising equivalent functions, has not been extended to those wielding administrative rather than judicial powers ... Though it is perhaps not easy to justify the inclusion of military courts of inquiry, as distinct from courts martial, no one would cavil at the extension of the privilege to disciplinary proceedings by the Law Society ... The privilege is not confined to statements made in court, but extends to all preparatory steps taken with a view to judicial proceedings".

[Emphasis added in Hung.]

- [15] The applicant also submits that the public policy as summarized in Hung at paras. 31-32 is applicable to this application:
- [31] There are important public policy reasons for this finding. Absolute privilege allows a member of the public to raise a concern about the conduct of a professional person, without fear of reprisal. In this way, the immunity afforded by absolute privilege protects both professionals and the public.
- [32] The purpose of the immunity would be undermined if absolute privilege only applied where the complaint leads to proceedings, as contended by the appellant. Nor is the defence of absolute privilege affected by the fact that the Law Society and the CGA Association declined to pursue the matter further.
- [16] The applicant referred to the decision of *Baker v. Poser*, 2004 CarswellOnt 4983 (S.C.J.), a decision of the Ontario Superior Court of Justice which found that a witness statement given at the request of police officers investigating a criminal investigation which was already the subject of charges was held to be absolutely privileged.
- [17] The applicant also relies on the House of Lords' decision in *Taylor v. Serious Fraud Office*, [1998] 4 All E.R. 801. The House of Lords, at 814 said the following:

... At the time of the investigation it is often unclear whether any crime has been committed at all. Persons assisting the police with their inquiries may not be able to give any admissible evidence; for example, their information may be hearsay, but none the less valuable for the purposes of the investigation. But the proper administration of justice requires that such people should have the same inducement to speak freely as those whose information subsequently forms the basis of evidence at a trial.

[18] The applicant further advised the court as to the decisions of *Mullins v. Beneteau*, [1996] O.J. No. 2784 at para. 26 (C.J. Gen. Div.) and *Rajkhowa v. Watson*, [1998] N.S.J. No. 85 (S.C.), which found that statements to police were not protected by absolute privilege but rather qualified privilege.

[19] Finally, the applicant argues that because the plaintiff has failed to provide sufficient particulars of any further defamation, the entire claim against the applicant should be dismissed.

The Plaintiff

[20] The plaintiff argues that there is an abundance of evidence against the applicant demonstrating her direct involvement and active participation in the plaintiff's defamation.

DISCUSSION

[21] I agree with the applicant that, other than paragraphs 2 & 4 of the Amended Notice of Civil Claim, the remaining pleadings do not sufficiently particularize any claim in defamation. It is not possible from the remaining paragraphs to determine if the applicant made any defamatory statements.

[22] The issue to be addressed is - Is the statement made by the applicant to the RCMP subject to absolute privilege?

[23] There are a number of cases from various jurisdictions that have decided that issue both ways.

[24] The issue in *Hung* is "whether a person who provides information to a professional disciplinary body about the conduct of one of its members is liable in an action brought by that member" (para. 1). The court found that the communication of the information is subject to absolute privilege and provides a defence to all claims. The court stated the test to be applied which reads as follows:

[29] The test is whether the Law Society and the CGA Association, exercising their disciplinary powers, have attributes similar to a court of justice or act in a manner similar to that in which such courts act. There is no real question that they do.

[25] In coming to this conclusion the British Columbia Court of Appeal reviewed a number of cases and said the following at paras. 22-24:

[22] Hood J., citing from Sussman, set out the test to determine whether the information was protected by absolute privilege (at para 36) :

The proper question to be asked in this case is that set out by Smith, J. in Sussman: "whether the body to which the complaint ... was sent is quasi-judicial or whether it is merely administrative in nature."

[23] Citing from *Boyachuk v. Dukes* [sic] (1982), 136 D.L.R. (3d) 28 (Alta. Q.B.), he applied the test as follows (at para. 46) :

If the question is asked: Do the police exercise quasi-judicial or administrative functions? to ask the question is to answer it. The police investigate, they do not adjudicate. Or to paraphrase Adams, J. in *Boyachuk*: they do not have the duty and authority to determine guilt or innocence nor the disciplinary powers to enforce sanctions. The police are therefore in a position similar to that of the Bar Council in the *Lincoln* case: they do not exercise judicial or quasi-judicial functions.

[24] It is noteworthy that in *Boyachuk* [sic], the court found that a complaint to the chief of police concerning the conduct of the police officer was subject to absolute privilege, because:

Unlike the commissioner in the *O'Connor* case and the bar council in the *Lincoln* case, the chief of police in the present case had not only the authority but the duty to determine the guilt or innocence of the plaintiff and the disciplinary powers to enforce sanctions.

[26] The complaint by the applicant was to the police in the first instance. There was not an ongoing investigation in progress. The RCMP do not have attributes similar to a court of justice or act in a manner similar to that in which such courts act. They do not have the duty and authority to determine guilt or innocence nor the disciplinary powers to enforce sanctions.

[27] The Nova Scotia Supreme Court, in dealing with a similar matter, in *Rajkhowa* stated the following:

45 In *Sussman*, the court found that the letter of complaint to the Royal College of Dental Surgeons was "the necessary first step in one entire process". That is in my view analogous to the laying of the Information in a criminal proceeding. That being the case, anything that happens before it is not protected as there is no court proceeding until that step is taken. I conclude that it goes too far back in the process to say that, when Dr. Watson gave the information to the police, the court proceeding started. A judicial or quasi-judicial proceeding does not commence each time the police commence an investigation. . . .

[28] Is then the giving of the statement to the police "the necessary first step in one entire process" or as found in John G. Fleming, *The Law of Torts*, 4th ed. (Toronto: The Carswell Company Ltd., 1971) at 490, one of the "preparatory steps taken with a view to judicial proceedings"?

[29] Hung makes it clear that absolute privilege applies to complaints to quasi-judicial organizations even if the complaint does not lead to proceedings being initiated. In my view, because the RCMP are not a quasi-judicial organization, absolute privilege can only apply to statements taken by them once a court proceeding has commenced. In that regard, I agree with the reasoning in Rajkhowa that absolute privilege would apply upon the laying of an "Information" in a criminal proceeding.

CONCLUSION

[30] The statements to the RCMP by the applicant are not protected by absolute privilege.

[31] It is not plain and obvious that paragraphs 2 & 4 of the Amended Notice of Civil Claim disclose no reasonable cause of action.

[32] The application for an order that the statements made by the applicant to the RCMP are protected by absolute privilege is dismissed.

[33] It is plain and obvious that no other reasonable cause of action against the applicant can be found in the remaining portions of the Amended Notice of Civil Claim.

[34] The application for an order that the remainder of the pleadings fail to disclose any cause of action against the applicant (except for paragraphs 2 & 4) is granted.

[35] As the parties have had divided success they will each bear their own costs of this application.

"R. S. Tindale, J."

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