

CANADA / JUDGMENT

Durkin v. Marlan

2022 BCSC 193

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2022 BCSC 193 Durkin v. Marlan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Durkin v. Marlan,

2022 BCSC 193

Date: 20220207

Docket: S212770

Registry: Victoria

Between:

Timothy Durkin

Plaintiff

And

Tori Marlan, and Jimmy Thomson, and Capital Daily, and Overstory Media Group, and Farhan Mohamed, and Andrew Wilkinson

Defendants

Before: The Honourable Justice Thompson

Reasons for Judgment

The Plaintiff, appearing in person:

T. Durkin

Counsel for the Defendants:

G. Cameron

M. Rozee

Place and Date of Hearing:

(by videoconference)

Victoria, B.C.

January 20, 2022

Place and Date of Judgment:

Victoria, B.C.

February 7, 2022

- [1] The Capital Daily is a daily online newspaper that focuses on the City of Victoria and surrounding communities. On 22 April 2021, it published a long-form article authored by the defendant Tori Marlan under the headline, "The man who stole a hotel: How Timothy Durkin took control of Sooke Harbour House" (the "Article"). The Sooke Harbour House is an establishment of some renown -- in fact, the New York Times has twice featured articles on the hotel and its restaurant.
- [2] Mr. Durkin pleads defamation and privacy torts. Relying on the provisions of the Protection of Public Participation Act, S.B.C. 2019, c. 3 [PPPA], the defendants apply for a dismissal order. The defendants contend that the Article is an expression that relates to a matter of public interest and that Mr. Durkin has not established the three statutory conditions that permit the proceeding to continue: i.e., that (1) his allegations have substantial merit; (2) there are no valid defences; and (3) the harm to the plaintiff as a result of the expression is serious enough that the public interest in the action continuing outweighs the public interest in protecting what is communicated in the Article.
- [3] The Article covers much of the same ground as the reasons for judgment of this Court in *SHH Management Limited v. Philip*, 2020 BCSC 1411. The plaintiffs in the SHH Management action were two companies controlled by Timothy Durkin, the plaintiff in the instant action. Justice Basran dismissed the plaintiffs' claims, and granted judgment to the defendants on their counterclaim for approximately \$4 million. Mr. Durkin was found jointly and severally liable to pay \$1.36 million of the total damages award. The following excerpts from Basran J.'s overview provide useful background:
- [2] Over 35 years, Frederique and Sinclair Philip owned, operated and built the Sooke Harbour House Hotel and Restaurant into a world-class destination (the "Hotel"). In 2012, they decided to sell the Hotel and enjoy the fruits of their many years of hard work. Three separate deals to sell the Hotel to two different purchasers failed to complete. By 2014, the Philips were both anxious and eager to find a purchaser for the Hotel. In March 2014, they met Timothy Durkin and Rodger Gregory. They thought they had found honest and reputable business people who would comply with their contractual obligations and pay for

the Hotel. Unfortunately for the Philips, Mr. Durkin and Mr. Gregory had neither the means nor the intention of paying them for their valuable asset. Instead, the Philips suffered a six-year odyssey of lies, excuses, threats, intimidation and bullying by both of these individuals. In the end, the Philips' substantial equity in the Hotel was entirely dissipated because of the actions of Mr. Durkin and Mr. Gregory. The Philips' reasonable expectation of a comfortable and well-deserved retirement has been effectively stolen from them because they unknowingly put their future in the hands of these two fundamentally dishonest individuals.

...

[7] In the reasons that follow, I have concluded that Mr. Durkin has been deceitful and dishonest in virtually all of his dealings with the Philips and in the manner in which he conducted himself during the trial. He deliberately lengthened this matter by repeatedly failing to comply with court orders to disclose all relevant documents and not adequately preparing for the trial. Furthermore, I found that Mr. Durkin swore a false affidavit in order to obtain an injunction. This injunction removed the Philips from the Hotel after they attempted to take it back from Mr. Durkin, who had been operating it despite failing to comply with any of his obligations under the agreements.

[4] Justice Basran also made the following findings on Mr. Durkin's credibility:

- "Mr. Durkin lied unabashedly throughout the trial and in virtually all of his dealings with the defendants" (para. 35);
- Mr. Durkin made "fraudulent misrepresentations intended to induce the Philips into extending the closing date in reliance on Mr. Durkin's assurances that [SSH Holdings Limited] would close the [share purchase agreement] imminently" (para. 116);
- "I infer from Mr. Durkin's reprehensible conduct and behaviour that he had no intention of paying the Philips \$1.5 million and completing the purchase of [Sooke Harbour House] Inc.'s shares" (para. 208);
- Mr. Durkin "ended the email [to Mrs. Philips] by referring to her as 'a menace and a coward and a despicable human being.' This last statement is particularly rich coming from Mr. Durkin because it accurately describes his own behaviour and conduct as opposed to that of anyone else involved in this litigation" (para. 216);
- "Mr. Durkin demonstrated his willingness to swear to different facts and different events depending upon which narrative best supports the position he is advancing. He was unconstrained and unbothered by the requirement to tell the truth when swearing an affidavit" (para. 233);

· "Mr. Durkin knowingly and deliberately swore a false affidavit in order to obtain the injunction. He concocted a narrative in which [SSH Holdings Limited] was not responsible for its failure to complete the [share purchase agreement], the Philips could not be trusted to operate the Hotel, and he was effectively and successfully managing it. None of these assertions are true" (para. 244); and

· "Mr. Durkin seemingly has no understanding of or regard for the truth. Notwithstanding the oath he swore, he did not comply with his obligation to speak truthfully. His view of the truth is whatever will serve his interests in the moment. He is entirely unencumbered by ordinary norms of morality, integrity and decency. He is a garden-variety bully who preys upon those whom he perceives to be weaker than himself and vulnerable to his mistruths and manipulation" (para. 254).

[5] Justice Basran's reasons for judgment, including some of his trenchant commentary on Mr. Durkin's character and credibility, have been widely reported, including by the CBC, the Victoria Times-Colonist, and the Sooke Daily Mirror.

[6] Mr. Durkin submits that in relying on the PPPA the defendants are "seeking a safe harbour" from responsibility for their "infraction laced publication" -- a schedule to his notice of civil claim lists 101 instances of alleged libel or privacy invasion. He further submits that the use of the summary dismissal provisions of the PPPA by the defendants is an example of unfair treatment of an in-person litigant, and an effort to deny him access to justice.

Research and Editing

[7] Ms. Marlan is an experienced professional journalist. Her work has been published by many media outlets. Her affidavit provides a detailed account of the investigative work behind the Article. The Article was published seven months after the reasons in SHH Management were released. It was the product of 29 weeks' work, including interviewing various sources and obtaining corporate, land title, and court documents.

[8] During her investigation, Ms. Marlan communicated with many sources including:

- Kate Saunders, the hotel's former director of IT and digital marketing, and her husband, Gary Saunders;
- Arlene Dickinson, a venture capitalist who declined an opportunity to invest in the hotel;
- Russell Chambers, one of the investors in SSH Holdings Limited, one of Mr. Durkin's companies;
- Rodger Gregory, Mr. Durkin's business partner and a plaintiff in the SHH Management action;
- Marion Cummings, who provided a loan to SSH Holdings Limited purportedly to finance the construction of a gallery at the hotel;
- Frederique and Sinclair Philip, the defendants and plaintiffs by counterclaim in the SHH Management action and the vendors of Sooke Harbour House Inc.;

- Josh Bloomenthal, counsel to the Philips in the SHH Management action;
- Dave Peterson, a former business partner of Mr. Durkin who was convicted in criminal wire fraud proceedings in the U.S.A. connected to the business he did with Mr. Durkin, and his wife, Lori Peterson;
- Dennis Knizley, Dave Petersen's lawyer in the U.S.A. criminal proceedings;
- Bill Abrams, an investor in one of the Mr. Durkin's previous businesses;
- Jimmy Davis, a spokesperson for the US Attorney's Office for the Southern District of Alabama; and
- Ian McLeod, a spokesperson for the Canadian Department of Justice.

[9] Notably, Ms. Marlan made approximately a dozen attempts to interview Mr. Durkin, including sending email messages, leaving telephone messages, and leaving messages with persons she had good reason to believe were in contact with Mr. Durkin. I am well-satisfied that Mr. Durkin knew that Ms. Marlan wanted an interview, but, as was his right, he chose not to contact her.

[10] After she completed a draft of the Article, Ms. Marlan called her key sources to read quotes back to them, to ensure that facts were within their personal knowledge, and to check that their perceptions or thoughts were accurately recorded. Mr. Thomson, the Capital Daily editor, engaged a freelance professional fact-checker who reviewed Ms. Marlan's notes, transcripts of interviews, and emails prior to publication to ensure that the Article was supported by the evidence that had been gathered. Mr. Thomson deposed that he and the fact-checker then worked with Ms. Marlan during the process of editing the Article.

Legislative Framework

[11] Following are provisions of the PPPA material to this application:

1 In this Act:

"expression" means any communication, whether it is made verbally or non-verbally, publicly or privately, and whether it is directed or not directed at a person or entity;

...

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

- (a) the proceeding arises from an expression made by the applicant, and
- (b) the expression relates to a matter of public interest.

- (2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that
 - (a) there are grounds to believe that
 - (i) the proceeding has substantial merit, and
 - (ii) the applicant has no valid defence in the proceeding, and
 - (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression.

...

7 (1) If the court makes a dismissal order under section 4, the applicant is entitled to costs on the application and in the proceeding, assessed as costs on a full indemnity basis unless the court considers that assessment inappropriate in the circumstances.

...

9 (1) Subject to this Act, an application for a dismissal order under section 4 must be made in accordance with the Supreme Court Civil Rules.

- (2) An application for a dismissal order under section 4 may be made at any time after the proceeding has commenced.
- (3) An application for a dismissal order under section 4 must be heard as soon as practicable.
- (4) Subject to subsections (5) and (6) of this section, on an application for a dismissal order under section 4, evidence must be given by affidavit.
- (5) An applicant or respondent may, before the hearing of the application,
 - (a) call, out of court before an official reporter, the witness who swore or affirmed the affidavit for cross-examination on the witness's affidavit, and
 - (b) cross-examine the witness on the witness's affidavit, provided that
 - (i) the total period of cross-examination of all applicants in the proceeding does not exceed 7 hours in duration, and
 - (ii) the total period of cross-examination of all respondents in the proceeding does not exceed 7 hours in duration.
- (6) The court may extend the period permitted for cross-examination under subsection (5) if the court considers it necessary in the interests of justice.

- [12] The legislation is intended to strike a balance between the value of protecting reputations and the public interest in supporting robust and rigorous public debate: British Columbia, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl., 4th Sess., No. 198 (14 February 2019) at 7018 (Hon. David Eby), quoted in *Neufeld v. Hansman*, 2021 BCCA 222 at para. 3.
- [13] Section 4 of the PPPA sets out the test to be applied on an application for a dismissal order. There are substantially similar provisions in Ontario legislation, and the Supreme Court of Canada has given those provisions detailed consideration in two recent cases: 1704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 [Pointes Protection], and *Bent v. Platnick*, 2020 SCC 23 [Bent].
- [14] The Pointes Protection and Bent judgments confirm that the process of determining a s. 4 dismissal application is a series of steps, with the onus of proof shifting along the way. The first step is to decide if the applicant has shown that the proceeding arises from an "expression" made by the applicant; "expression" is defined in s. 1. The second step is to decide if the applicant has shown that the expression relates to a matter of public interest. If the applicant clears both of these s. 4(1) hurdles, then the burden shifts to the application respondent to satisfy the court that there are grounds to believe that the proceeding has substantial merit and the applicant has no valid defence. If the respondent carries this s. 4(2) (a) burden, then the final step is the s. 4(2)(b) weighing exercise: to decide if the respondent has shown that the harm resulting from the expression is serious enough that the public interest in the continuation of the proceeding outweighs the public interest in protecting the expression.

The Defendant Applicants Meet the PPPA Threshold Requirements: the Article is an Expression that Relates to a Matter of Public Interest

- [15] Section 4(1)(a) of the PPPA requires that the action "arises from an expression made by the applicant." The Article is a form of communication and thus it clearly meets the expansive definition of "expression" in s. 1 of the PPPA. It is equally clear that the plaintiff's action arises from the Article: all claims advanced by the plaintiff are rooted in the Article.
- [16] Section 4(1)(b) requires that "the expression relates to a matter of public interest." The words "relate to a matter of public interest" should be given a broad, generous, and expansive interpretation: *Pointes Protection*, at paras. 26-30. The subject matters of the Article include the Sooke Harbour House, an establishment of international renown; the outcome of a trial that occupied 56 days of court time, and involved the earlier deception of a chambers judge, allegations of fraud, and a \$4 million damages award; the lack of a response from the RCMP to the Red Notice issued by Interpol for Mr. Durkin; and the under-prosecution of white-collar crime in Canada.

- [17] The public has substantial interest and concern in relation to these subjects: the welfare of citizens is engaged, and considerable public notoriety and controversy has attached to them. They are matters that the public has a genuine stake in knowing about; they are not matters engaging "mere curiosity or prurient interest." See *Grant v. Torstar Corp.*, 2009 SCC 61 at paras. 101-106; *Pointes Protection*, at para. 27.
- [18] I am satisfied on a balance of probabilities that the action arises from an expression relating to a matter of public interest. Section 4(2) of the PPPA mandates the dismissal of the action unless the plaintiff satisfies the three conditions set out in this subsection.

The Plaintiff Fails to Establish All Three Conditions Necessary to Allow the Action to Continue

Grounds to believe the action has substantial merit

- [19] I conclude that the defamation plea has substantial merit; the claims based on invasion of privacy do not. A valid cause of action in defamation merely requires that the words complained of were published, that the words refer to the plaintiff, and that the words would tend to lower the plaintiff's reputation in the eyes of a reasonable person: *Grant v. Torstar Corp.*, at para. 28. These bare-bones criteria are met in this case. In the next section of these reasons I explain why the defences relied upon by the defendants turn the tables on the plaintiff, but this does not alter my finding that the plaintiff is over the substantial-merit hurdle on his defamation plea.
- [20] Section 1(1) of the Privacy Act, R.S.B.C. 1996, c. 373, creates a statutory tort of violating the privacy of another:

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

By definition, however, a publication is not a violation of privacy if the matter published was of public interest: s. 2(3). The matters in the Article are of public interest and it follows that the Privacy Act claim is without substantial merit -- one of the fundamental requirements of establishing substantial merit is the need to show that the claim is legally tenable: *Pointes Protection*, at para. 54.

- [21] The plaintiff also pleads the novel false-light privacy tort. This cause of action has been recognized in Ontario in the context of the cyberbullying of an ex-spouse: *Yenovkian v. Gulian*, 2019 ONSC 7279. In British Columbia, Justice Lysyk expressed doubt in obiter dicta about whether the Privacy Act leaves room for the false-light doctrine: *Silber v. B.C.T.V. Broadcasting System Ltd.* (1985), 69 B.C.L.R. 34 at 43 (S.C.). While *Silber* was decided over 35 years ago, I take note of recent academic commentary questioning the need to adopt this tort in Canada and suggesting that doing so may unduly hamper the work of the media: Fraser Duncan, "Illuminating False Light: Assessing the Case for the False Light Tort in Canada" (2020) 43-2 Dal. L.J. 605.

- [22] There is real controversy over the reception of this false-light privacy tort. However, in the presence of recent Canadian authority favouring its reception, and only dated obiter to the contrary in British Columbia, I think Mr. Durkin's false-light case may be legally tenable. That said, the insurmountable difficulty for this false-light claim is that Mr. Durkin has the burden of showing that he has a "real prospect of success" in relation to this claim: *Pointes Protection*, at para. 54. He has failed to do so on key ingredients of this asserted tort: the requirement of proving that the plaintiff was placed before the public in a false light, and that the defendants knew or acted with reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.
- [23] Mr. Durkin alleges in his notice of civil claim that the Article places him in a misleading and false light because it portrays him as a thief. I think he is probably correct to say that the Article does portray him as a thief. But does Mr. Durkin have a real prospect of success of proving that in so portraying Mr. Durkin, the publication of the Article placed him before the public in a false light? I think not. After a 56-day trial, Justice Basran concluded that Mr. Durkin and his partner "effectively stole" a comfortable and well-deserved retirement from the Philips. Moreover, Basran J. concluded that Mr. Durkin was "deceitful and dishonest in virtually all of his dealings with the Philips," that his behaviour and conduct was cowardly and despicable, that he is "entirely unencumbered by ordinary norms of morality, integrity and decency," and that he is a bully who "preys upon those whom he perceives to be weaker than himself and vulnerable to his mistruths and manipulation."
- [24] I also conclude that Mr. Durkin has no prospect of showing that any of the defendants acted with knowledge or reckless disregard. I will address the care taken by the author of the Article and its editor when I address the issue of whether the plaintiff has shown that there is no valid defence to his defamation claims. For now, I will simply say that there appears to be no substance whatsoever to the plaintiff's allegations that the defendants published statements that they knew to be untrue or that they acted with reckless disregard.
- [25] In summary on this substantial-merit issue, the plaintiff has established grounds to believe that there is substantial merit with respect to his defamation claim, but not with respect to his claim based on the Privacy Act or his false-light privacy plea.

Insufficient grounds to believe there is no valid defence to the action

- [26] The only claim that survives to this point in the analysis is the defamation plea. The plaintiff must now show that the defamation defences put in play by the defendants "are not legally tenable or supported by evidence that is reasonably capable of belief such that they can be said to have no real prospect of success": *Pointes Protection*, at paras. 59-60.
- [27] There are two defences relied on by the defendants on this application: responsible journalism and fair comment. For the reasons that follow, I conclude that the plaintiff has not shown that there are grounds to believe that the responsible journalism defence has no real prospect of success. In fact, I conclude that this defence appears highly likely to succeed

and, thus, the plaintiff is far short of making it over the no-valid-defence hurdle. Given this conclusion, it is unnecessary to address the fair comment defence (which also appears to have real prospects of success).

- [28] The responsible journalism defence has two essential elements. The first requirement is that the publication must be on a matter of public interest -- for the reasons set out above, this element is met in the case at bar. The second requirement is that the publication was responsible in that there was diligence in all the circumstances in trying to verify the statements. See *Grant v. Torstar Corp.*, at paras. 98, 126. The Article could be expected to affect Mr. Durkin's reputation, notwithstanding the substantial blows that had been delivered to his reputation by the earlier reporting of the SHH Management reasons for judgment. The Article portrays Mr. Durkin as a rogue. In these circumstances, more thorough efforts at verification are required than if the Article carried less defamatory sting.
- [29] In his Reply pleading, Mr. Durkin deprecates the Article writer as "an internet blogger," and asserts that the Capital Daily has "traded truth for fiction and civility for clicks." To the contrary, I agree with the defendants' submission that there is a substantial body of evidence that the writer and editor were diligent in verifying the information in the Article. I conclude that the Article was carefully researched. It underwent a fact-checking process. It was based on multiple sources. And, Mr. Durkin was given every reasonable chance to be interviewed before publication of the article.
- [30] Mr. Durkin attacks the status and credibility of the key sources for the Article. I am not persuaded on the record before me that there was any reason for the Article's writer or editor to believe that the sources were other than credible. Indeed, some of the key sources were expressly accepted as credible witnesses by Basran J. in *SHH Management*, including the Philips and a former hotel employee, Kate Saunders.

The likely harm resulting from the Article is not serious enough to outweigh the public interest in protecting the expression

- [31] My finding that the privacy claims are without substantial merit together with my finding that the responsible journalism defence to the defamation plea has a very real prospect of success brings the analysis to an end -- these findings require the dismissal of the action: s. 4(2), PPPA. I will, however, briefly address the s. 4(2)(b) weighing exercise because it is particularly relevant to costs.
- [32] Section 4(2)(b) serves as "a robust backstop for motion judges to dismiss even technically meritorious claims if the public interest in protecting the expression that gives rise to the proceeding outweighs the public interest in allowing the proceeding to continue": *Pointes Protection Association*, at para. 62.
- [33] The Court of Appeal's reasons in *Neufeld v. Hansman* are particularly instructive in weighing harm in a defamation case for s. 4(2)(b) purposes. Mr. Durkin has not led evidence about monetary loss, but general damages are presumed in a defamation case (para. 55).

Citing para. 146 of the majority judgment in the Supreme Court of Canada's decision in *Bent*, Justice Fenlon emphasizes that reputational harm is relevant and weighty (para. 56). And, the fact that the defendant is not the sole cause of the reputational harm does not mitigate the recoverable damages (para. 59).

- [34] However, the damning reasons for judgment of Basran J., published on the Court's website and reported by other media outlets are not concurrent defamations committed by multiple sources. If Mr. Durkin were able to overcome what seem to be the sound defences to his defamation claim, any compensatory damages awarded would seek to return him to his original position -- a reputational position heavily impaired by the publication of the Court's reasons in *SHH Management*. In other words, Mr. Durkin may be over the causation hurdle in s. 4 of the *PPPA*, but there is little prospect of proof of more than nominal damages. In these circumstances, I would describe the magnitude of harm from publication of the Article as quite modest.
- [35] On the other side of the public interest weighing exercise, an assessment of the quality of the Article and the motivation behind it are relevant to weighing the public interest in protecting this particular "expression": *Pointes Protection Association*, at para. 74. Other factors may be relevant, including "disproportion between the resources being used in the lawsuit and the harm caused or the expected damages award," and the potential chilling effect on expressions by the defendants or others (para. 80). The open-ended nature of s. 4(2) (b) allows the Court to "scrutinize what is really going on in the particular case" (para. 81).
- [36] The Article is the product of much research and consultation with a variety of sources. Mr. Durkin was given every reasonable opportunity to participate in the investigation leading to the publication of the Article. I find that the motivation behind writing and publishing the Article was to provide an accurate and thoroughly investigated report on matters of public interest. My impression is that the Article is a high quality piece of long form journalism.
- [37] I also find that the resources being used in this lawsuit -- including resources of the parties and the public -- are out of all proportion to the harm caused and the expected damages award. And, I am concerned that the continuation of the action will have a chilling effect on expressions by this media outlet and others on matters that continue to be of considerable public interest.
- [38] I think there is very substantial public interest in protecting this particular "expression," and it heavily outweighs the modest seriousness of the harm suffered by Article's publication.

Order and Costs

- [39] The defendants' application for a dismissal order is granted. Section 7(1) of the *PPPA* provides that if a dismissal order is made, the applicant is entitled to costs on a full-indemnity basis unless it would be inappropriate in the circumstances.

- [40] In *Hobbs v. Warner*, 2021 BCCA 290 at para. 104, the Court of Appeal recently addressed the circumstances that might result in less than full-indemnity costs under s. 7(1):
- [104] Section 4 applications will fall along a continuum ranging from lawsuits that have strong indicia of a true SLAPP to those where the competing interests of reputation and public expression are finely balanced. In those cases where there are strong indicia of a SLAPP, a full indemnity award may well be appropriate. The full indemnity starting point is clearly intended to disincentivize such litigation. On the other hand, when the proceeding bears little resemblance to a SLAPP but the public interest in protecting the expression leads to a dismissal of the action, it might well not be fair and reasonable to award full indemnity costs.
- [41] The first point is that it is not the public interest in protecting the expression that has led to the dismissal of Mr. Durkin's action. He failed in responding to this application at an earlier stage of the analysis: his privacy claims are without substantial merit, and his defamation claim is met with a very strong responsible journalism defence.
- [42] In any event, this is not a case where the competing public interests are finely balanced. The interest in public expression swamps the seriousness of the harm suffered by Mr. Durkin by publication of the Article. Without going further, I would order full indemnity costs.
- [43] However, there are strong indicia of a SLAPP in this case. A history of using litigation or the threat of litigation to silence critics, and the presence of nominal damages are among the indicia of SLAPP: *Pointes Protection*, at para. 78. I have already discussed the prospect of nominal damages, but if that were the only indicia, I would not conclude that Mr. Durkin's case is a SLAPP. Mr. Durkin was one of the plaintiffs in the defamation action brought against, inter alia, the lawyers on the other side of his SHH Management case. Mr. Durkin's notice of civil claim was struck without leave to amend on the basis that it disclosed no reasonable claim: *Durkin v. Crease Harman LLP*, 2020 BCSC 642.
- [44] And, I take notice of Mr. Durkin's abusive use of litigation and threats of litigation in the SHH Management case. That proceeding was used as a vehicle to fraudulently obtain an injunction on short notice (paras. 7, 244-248, 309), with disastrous consequences. Justice Basran also details other illegitimate uses and threats of litigation. Mr. Durkin threatened to file a \$1.7 million CPL to encumber the assets of the Philips' company, Sooke Harbour House Inc., and thus prevent the Philips from finding a new buyer (para. 144). Consistent with this threat, he caused the filing of a lien against the hotel properties (para. 145). His communications with the Philips included bullying threats of applying for judicial intervention (paras. 201, 204, 207). He purported to "formally charge" the Philips' solicitor with reckless endangerment of hotel staff (para. 211).
- [45] The defendants are entitled to their costs of this application, to be assessed on a full-indemnity basis.

"Thompson J."

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