

CANADA / JUDGMENT

## Grosz v. Jones

2020 BCSC 1123

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1123 Grosz v. Jones

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Grosz v. Jones,

2020 BCSC 1123

Date: 20200804

Docket: S1912718

Registry: Vancouver

Between:

Robert W.G. Grosz

Plaintiff

**And**

Craig E. Jones, QC; Bryant A. Mackey; Timothy C. Louman-Gardiner; Craig A. Munro, LIT; Colin D. Brousson; John I. Mclean, QC; Hong Guo also known as Hong Chen; and Guo Law Corporation

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

R. W.G. Grosz

Counsel for Craig E. Jones, Timothy C. Louman-Gardiner, Colin D. Brousson and John I. Mclean:

P. M.J. Arvisais

L. Seneviratne

Counsel for Craig A. Munro, Hong Guo and Guo Law Corporation:

S. Nelligan

The Defendant, Bryant A. Mackey, appearing in person:

B. A. Mackey

Place and Date of Hearing:

Vancouver, B.C.

February 26, 2020

Place and Date of Judgment:

Vancouver, B.C.

August 4, 2020

Table of Contents

Introduction. 3

Procedural Background. 3

Factual Background. 8

Nature of Allegations made. 10

Issue 1: Should the claim against the Lawyer defendants and Mr. Mackey be dismissed under R. 9-6(5)(a)? 12

Legal Principles. 12

Position of the Lawyer defendants. 13

Analysis. 13

Issue 2: Should the pleadings be struck and the proceeding dismissed pursuant to R. 9-5(1)(a), (b) and (d)? 15

Legal Principles. 15

Position of the Defendants. 18

Rule 9-5(1)(a): Do the pleadings fail to disclose a reasonable claim against the defendants? 18

Rule 9-5(1)(b) and (d): are the pleadings unnecessary, frivolous, vexatious or an abuse of process?. 19

Analysis. 20

Issue 3: Should Mr. Grosz be declared a vexatious litigant?. 23

Legal Principles. 23

Position of the defendants. 25

Analysis. 26

Issue 4: What terms should be imposed on any vexatious order granted?. 30

Legal Principles. 30

Position of the Defendants. 31

Analysis. 32

Conclusion. 33

## Introduction

- [1] The defendants, Craig E. Jones, Q.C., Timothy C. Louman-Gardiner, John I. McLean, Q.C., and Colin Brousson (the "Lawyer defendants"); the defendants, Hong Guo and Guo Law Corporation (the "Guo defendants"); and the defendant Craig A. Munro apply pursuant to Rule 9-5 of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules], to have the notice of civil claim struck as disclosing no reasonable cause of action; as being unnecessary, frivolous or vexatious; and as being an abuse of process. In addition, the Lawyer defendants apply pursuant to Rule 9-6(5)(a) to have the action dismissed as not raising a genuine issue for trial. The defendant Bryant Mackey appeared at the hearing acting on his own behalf. Mr. Mackey adopted the submissions made by counsel for the Lawyer defendants and Mr. Munro's counsel seeking to strike the notice of civil claim.
- [2] The Lawyer defendants further seek an order declaring Mr. Grosz a vexatious litigant pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, and that he be precluded from commencing any further actions without leave of the court, and other restrictive orders. This application was supported by all of the other defendants.
- [3] Mr. Grosz represented himself in this action, as he has in all of the actions he has brought to date.
- [4] I will first deal with the issues relating to the setting of the application and the request for an adjournment made by Mr. Grosz at the commencement of the hearing.

## Procedural Background

- [5] The notice of civil claim was filed on November 12, 2019, after Mr. Grosz obtained an order for indigent status to waive the filing fees. On the day that Mr. Grosz filed the notice of civil claim in this action, he sent in a Request to Appear seeking, among other things, a hearing date for the consolidation of this action with the Grosz v. Guo, Van. Reg. S178289, action (the "First Guo Action"). This was followed the next day with another Request to Appear seeking an appearance before me in this action and five other actions. As part of this request, he sought leave to apply to disqualify the following counsel: Paul Arvisais, Nicholas Safarik, Colin Brousson, and Timothy Louman-Gardiner, as being "conflicted" in two other actions, being Van. Reg. B170021 and Van. Reg. S199755.
- [6] On November 26, 2019, the Lawyer defendants filed a response to civil claim. On November 29, 2019, the Guo defendants and Mr. Mackey filed responses to civil claim. On December 4, 2019, Mr. Munro filed a response to civil claim. All of the responses allege that all or part of the claim is "frivolous, vexatious, and an abuse of the process of this Honourable Court".
- [7] On December 19, 2019, the case was assigned to me by the Chief Justice to case manage. At that time, I had already seized myself of or been assigned the following cases involving Mr. Grosz to case manage:
- a. Van. Reg. B170021 - In the Matter of the Bankruptcy of Guo Law Corporation (the "Insolvency Proceeding");
  - b. Van. Reg. S178289 - the First Guo Action;
  - c. Van. Reg. S145050 - Matryx Corporation v. Royal Trust Corporation (the "First Royal Trust Action"); and
  - d. Van. Reg. S199755 - Grosz v. Royal Trust Corporation (the "Second Royal Trust Action").
- [8] On December 19, 2019, counsel for the Lawyer defendants sent in a Request to Appear for dates in February for an application to strike and an application to have the plaintiff declared a vexatious litigant.
- [9] By January 23, 2020, the dates of February 26 to 28, 2020 were provided to hear the defendants' applications to strike and to have Mr. Grosz declared a vexatious litigant.
- [10] The applications of the various defendants were filed on:
- a. February 12, 2020 - application of the Guo defendants seeking to strike;
  - b. February 13, 2020 - application of Mr. Munro seeking to strike; and
  - c. February 13, 2020 - application of the Lawyer defendants seeking to strike and a vexatious litigant order.
- [11] Mr. Grosz did not file any application responses as required by the Rules.

- [12] The date of February 25, 2020, had been reserved for Mr. Grosz to bring a recusal application. He filed the application seeking to have me recuse myself on February 24, 2020 in *Minoru Stakeholders Society v. Minoru View Homes Ltd.*, Van. Reg. S200020 (the "Minoru Action"), another action brought by Mr. Grosz that I was assigned to case manage. He was not able to properly serve the defendants with the application materials in accordance with the Rules. At the hearing on February 25, 2020, Mr. Grosz was given an option of proceeding with the recusal application on the materials he had filed (the defendants agreed to this), or having his recusal application adjourned so as to give him more time to prepare materials. Mr. Grosz indicated his preference for an adjournment, and one was granted. It was made clear to him that the applications in this action scheduled for February 26 to 28, 2020 would proceed.
- [13] The recusal application was set down for May 19, 2020, with deadlines. This application was not heard since Mr. Grosz sought an adjournment due to issues relating to the COVID-19 crisis.
- [14] On the morning of February 26, 2020, Mr. Grosz handed up a binder titled "Jurisdictional Response" and his affidavit #3. These documents had not been previously served on the defendants. Mr. Grosz took the position that, since he was planning to start a claim in the Federal Court that involved many of the same defendants in this action and some of the same claims, the Supreme Court of British Columbia and Court of Appeal for British Columbia had lost jurisdiction and could not hear these applications. He sought an adjournment to allow him time to prepare his jurisdictional submissions.
- [15] The defendants opposed an adjournment of the applications. I agreed to hear the merits of the defendants' submissions and then consider the jurisdictional response and authorities that Mr. Grosz cited. I did so and I have addressed the merits of Mr. Grosz's jurisdictional argument in my reasons indexed at *Grosz v. Guo*, 2020 BCSC 997 at paras. 9-18 (the "Injunction Reasons"), which dealt with another application for which Mr. Grosz raised the same argument. I found there was no merit in his position since the proposed Federal Court claim involves different parties and different underlying conduct; the action before me did not involve any relief claimed against the Crown and none of the other provisions of the Federal Courts Act, R.S.C. 1985, c. F-7, conferring jurisdiction on the Federal Court appeared to apply; and the doctrine of paramountcy did not apply to give the Federal Court jurisdiction. All of these reasons apply equally to this application. I am not satisfied that this Court has been deprived of its jurisdiction over this matter.
- [16] At the end of the defendants' submissions, Mr. Grosz sought an adjournment so he could have time to prepare application responses and a written argument. In order to accommodate him, I agreed to this. He advised me that he was "too busy" to prepare anything until after March 13th. I made the following orders in respect to deadlines:
- a. Mr. Grosz had to file his application responses, limited to 10 pages each, and any responding affidavits by March 23, 2020 at 4 p.m.;

- b. Mr. Grosz had leave to file a written argument that was no longer than 70 pages; and
- c. the defendants had until April 3, 2020 at 4 p.m. to file any reply materials.

[17] I made the following interim order:

Mr. Grosz, in his own capacity, or as a director or officer of any corporation, or on behalf of any society, is prohibited from commencing any proceeding in the Supreme Court of British Columbia without first obtaining leave of this court. This interim order shall be in effect until reasons have been pronounced on the applications brought by the defendants in this action on February 26, 2020.

[18] At Mr. Grosz's request, I extended his March 23, 2020 deadline to May 15, 2020 at 4 p.m. The defendants' deadline for any reply materials was extended to June 1, 2020. On May 4, 2020, I provided a memorandum to address issues that Mr. Grosz had raised respecting filing materials. My memorandum stated, in part:

### **Grosz v. Jones (S1912718)**

On May 1, 2020, the Alberta Court of Appeal released reasons in *Jonsson v. Lymer*, 2020 ABCA 167 which dealt with the scope of a court's inherent jurisdiction to restrain vexatious litigation, the proper breadth of vexatious litigant orders, and related procedural issues. The reasons included some broader discussion of vexatious litigant orders. Some of the comments would only apply in Alberta but many of the comments have general application.

Since Mr. Grosz has until May 15, 2020 at 4 p.m., as provided in my memorandum of March 26, 2020, to file and serve his application responses, any responding materials, and written submissions he can consider whether he wishes to make reference to this case. The defendants can also consider whether they wish to comment on this case in their reply submissions. If Mr. Grosz does not submit any materials by the May 15, 2020 deadline the defendants have leave to provide reply submissions solely related to this case.

### **Submissions of materials**

In emails that Mr. Grosz sent on April 29, 2020 he raised concerns on how he could file application responses and have affidavits affirmed or sworn and filed during the current restrictions in the court's normal operations. For materials for the pending matters before me, and during this COVID-19 crisis, Mr. Grosz can provide his materials on the following basis:

- a. application responses can be signed and then emailed to counsel and to [sc.civil\\_va@bccourts.ca](mailto:sc.civil_va@bccourts.ca). When the registry has reopened and Mr. Grosz can personally attend, the signed application response can be filed by Mr. Grosz and a filed copy of the application response shall be served on counsel for the parties.

- b. affidavits can be signed by Mr. Grosz and then emailed to counsel and to sc.civil\_va@bccourts.ca. When the registry has reopened and Mr. Grosz can personally attend, he can have the affidavit properly affirmed or sworn and filed. The affidavit must be an exact duplicate of what he previously signed and emailed to counsel and the registry. The properly affirmed or sworn filed affidavit shall be served on counsel for the parties.
  - c. written submissions need only be signed and emailed to counsel and to sc.civil\_va@bccourts.ca. There is no need to file the written submissions.
  - d. I am authorizing these procedures to accommodate the requests made by Mr. Grosz and so there are no further delays in having the materials he needs to prepare delivered in accordance with the deadlines provided in the March 26, 2020 memorandum.
- [19] Mr. Grosz, again, requested to adjourn all deadlines. He was given a further deadline of May 19, 2020 at 9 a.m. to provide materials. He did not do so.
- [20] Mr. Munro provided supplemental written submissions respecting the decision in *Jonsson v. Lymer*, 2020 ABCA 167, on June 1, 2020, in compliance with my May 4, 2020 direction.
- [21] I turn now to the merits of the applications before me. I will first provide some background on who the parties are, what their roles were, and some relevant facts. I will then consider the applications to strike the action, followed by the vexatious litigant application of the Lawyer defendants.

## Factual Background

- [22] Mr. Grosz worked at the law firm of the Guo defendants from approximately October 2016 to August 2017. He was employed, according to Mr. Grosz, as a designated paralegal. Ms. Guo is a lawyer and principal of the defendant Guo Law Corporation ("GLC").
- [23] The defendant, Craig Elton Jones, first met Mr. Grosz when he was employed at GLC. Mr. Jones was counsel for Ms. Guo in some matters.
- [24] On January 6, 2017, GLC filed a Notice of Intention to File a Proposal pursuant to Part III, Division I of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 [BIA], referenced in these reasons as the Insolvency Proceeding.
- [25] On January 6, 2017, G. Powroznik Group Inc. was appointed as the proposal trustee (the "Initial Proposal Trustee").
- [26] By order of Justice Kent, on January 13, 2017, in the Insolvency Proceeding, the Initial Proposal Trustee was substituted by FTI Consulting Canada Inc. ("FTI" or the "Proposal Trustee"), who had consented to act as the proposal trustee. The defendant, Mr. Munro, is a licensed trustee in bankruptcy and a managing director of FTI.

- [27] On September 5, 2017, Mr. Grosz commenced proceedings against the Guo defendants in the First Guo Action. The action sought relief for unpaid wages, alleged sexual harassment, alleged wrongful dismissal, and punitive damages.
- [28] On or about September 5, 2017, Mr. Grosz filed an amended supplemental proof of claim in the Insolvency Proceeding claiming unpaid wages of \$20,199.04 and \$8,249.43, as well as damages totalling \$500,000 for the alleged sexual harassment.
- [29] The defendant, Timothy Louman-Gardiner, acted as counsel for GLC in the Insolvency Proceeding up until November 2018. He then became counsel for GLC again in the fall of 2019. The defendant, Colin Brousson, is counsel for FTI in the Insolvency Proceeding. Mr. McLean is a partner of Mr. Brousson who happened to be in chambers on October 2, 2007 when Mr. Grosz was applying for default judgment against the Guo defendants in the First Guo Action. Mr. McLean advised the Master hearing the application that his partner, Mr. Brousson, was counsel for the trustee.
- [30] On or about October 4, 2017, Mr. Grosz sought, with the consent of all parties, the lifting of the stay of proceedings imposed pursuant to the BIA so that he could proceed with the First Guo Action. On October 18, 2017, the Proposal Trustee consented to the lifting of the stay and an order was granted to that effect.
- [31] The defendant Bryant Mackey provided legal advice to the Guo defendants respecting the First Guo Action and filed the response to civil claim. On March 5, 2019, a notice of change of counsel was filed in the First Guo Action appointing Mr. Louman-Gardiner as counsel for the defendants.
- [32] Both Mr. Jones and Mr. Mackey were involved in negotiating the settlement of the First Guo Action with Mr. Grosz.
- [33] The First Guo Action was settled for the payment of \$5,000 to Mr. Grosz in exchange for a mutual release and a consent dismissal order. The mutual release was signed on January 18, 2018 and the consent dismissal order filed March 22, 2018 (the "CDO").
- [34] On February 26, 2019, Mr. Grosz applied to set aside the CDO. That application was heard on March 4 and 5, 2020 and was dismissed; see my reasons indexed at 2020 BCSC 1073 (the "CDO Reasons").
- [35] On June 3, 2019, the Guo defendants sought to have Mr. Grosz declared a vexatious litigant. That application was heard by Justice Mayer and was unsuccessful; see reasons indexed at 2019 BCSC 1545 (the "Mayer Reasons").

## Nature of Allegations made

- [36] In his notice of civil claim, Mr. Grosz attaches as Schedule "A" the notice of civil claim in the First Guo Action, and states, "its entire contents are hereby repleaded and incorporated herein." The notice of civil claim is difficult to follow but upon my reading of it, the following allegations are made:
- a. Mr. Jones filed a false statement to the Richmond RCMP on or about August 1, 2017, causing Mr. Grosz to be arrested;
  - b. On November 1, 2017, Mr. Jones attended in court in Vancouver, and Mr. Grosz, seeing him there, believed he was going to testify on his affidavit. This pressured Mr. Grosz into agreeing to a settlement of the First Guo Action;
  - c. Mr. Jones attached confidential documents to an affidavit which violated solicitor-client privilege;
  - d. Ms. Guo reported to the Richmond RCMP false accusations of criminal harassment, extortion, sexual assault, and uttering threats on or about July 23 and September 1, 2017;
  - e. Ms. Guo had her accountant sign and submit a false Record of Employment and assist her in embezzling \$4 million;
  - f. Mr. Mackey used his position as a lawyer to influence law enforcement;
  - g. Mr. McLean was in the public gallery on October 2, 2017 when Mr. Grosz was seeking a default judgment in the First Guo Action and Mr. McLean interrupted the proceedings from the gallery, making "false submissions" in order to assist in defeating Mr. Grosz's application;
  - h. Mr. Munro took the position that Mr. Grosz was no longer a creditor of GLC since a consent dismissal order had been filed in the First Guo Action; and
  - i. "GUO, JONES, MACKEY, LOUMAN, MUNRO, BROUSSON, and MCLEAN have conspired to damage GROSZ, and that their conspiracy is alive and well. In the course of their conspiracy each of them slandered, libelled and defamed GROSZ."
- [37] Mr. Grosz seeks the following relief in this action:
- a. consolidation of this action with the First Guo Action, as "they are essentially parallel";
  - b. consolidation of this action with the Insolvency Proceeding and "other related proceedings";
  - c. all the relief he sought in the First Guo Action;
  - d. damages against the Guo defendants resulting from public mischief, malicious prosecution, extortion, conspiracy to damage and conspiracy by unlawful means, defamation, and negligence;

- e. damages against Mr. Jones resulting from public mischief, malicious prosecution, extortion, conspiracy to damage and conspiracy by unlawful means, defamation, negligence, nonfeasance, misfeasance, and malfeasance;
  - f. damages against Mr. Mackey from public mischief, malicious prosecution, extortion, conspiracy to damage and conspiracy by unlawful means, defamation, negligence, nonfeasance, misfeasance, and malfeasance;
  - g. damages against Mr. Munro and Mr. Brousson resulting from conspiracy to damage and conspiracy by unlawful means, defamation, and negligence, nonfeasance, misfeasance, and malfeasance;
  - h. damages against Mr. McLean resulting from conspiracy to damage and conspiracy by unlawful means, defamation, and negligence; and
  - i. as against all of the defendants, damages for intentional infliction of mental suffering.
- [38] Mr. Grosz also seeks to hold each defendant jointly and severally liable for the torts of the others. Finally, he seeks "general, special and punitive damages, court order interest, court fees, and special costs."

Issue 1: Should the claim against the Lawyer defendants and Mr. Mackey be dismissed under R. 9-6(5)(a)?

## Legal Principles

- [39] Rule 9-6(5)(a) provides that the court must dismiss a claim or pronounce judgment if it is satisfied that it raises no genuine issue for trial.
- [40] Unlike an application under Rule 9-5(1)(a), which is based on the pleadings alone, an application under Rule 9-6 also involves the consideration of evidence. The judge should not weigh evidence, but "may draw inferences that are strongly supported by undisputed facts": *Kerfoot v. Richter*, 2018 BCCA 238 at para. 31. Where there are disputed facts, the applicant "bears the evidentiary burden of showing that there is no genuine issue to be tried": *Kerfoot* at para. 29.
- [41] The question is whether there is a bona fide issue to be tried based on the material before the court. If the judge is required to weigh the evidence to come to a conclusion, then the case is not appropriate to be decided under this Rule.

## Position of the Lawyer defendants

[42] The Lawyer defendants seek an order pursuant to R. 9-6(5)(a) that the action be dismissed as there is no genuine issue for trial. In their notice of application, they submit that the notice of civil claim contains little but speculation and unfounded suspicion. They argue that Mr. Jones' affidavit supports that there is simply no basis for any of the "scurrilous claims" made against him. The material facts in the notice of civil claim do not even purport to raise a triable issue as against the other lawyers.

## Analysis

[43] I will deal specifically with the allegations made against each of the lawyers.

[44] The claim against Mr. McLean appears to be limited to him advising a master in chambers that his law partner was counsel for the Proposal Trustee. There is no genuine issue that arises from this action.

[45] The claim being advanced against Mr. Brousson is not clear in the notice of civil claim. He is alleged to be part of some type of conspiracy, but there are no particulars of the claim for conspiracy or Mr. Brousson's role in it. I am satisfied that there is no genuine issue respecting Mr. Brousson contained in the notice of civil claim based on the materials before me.

[46] The claims against Mr. Louman-Gardiner are also not clear, except the bald statement that he is a party of a conspiracy with the other defendants. Under Part 2 of the relief sought, Mr. Louman-Gardiner is not even referenced. The notice of civil claim makes references to times that this lawyer appeared in court, but this alone is not an actionable act. There is no genuine issue that has been pled against this lawyer.

[47] All of the claims against Mr. Mackey and Mr. Jones relating to their role as counsel for the Guo defendants, including the negotiation of the settlement, are ones that do not raise a genuine issue. These two lawyers, while acting as counsel for the Guo defendants, owed no duty to Mr. Grosz.

[48] Mr. Grosz's allegation that Mr. Mackey used his position as a lawyer to influence law enforcement is purely speculative and does not raise a genuine issue for trial.

[49] Mr. Jones states that he had worked with Mr. Grosz between early December 2016 and January 2017 when Mr. Grosz was a paralegal at GLC. At that time, Mr. Jones was providing legal services to Ms. Guo. Mr. Grosz alleges that Mr. Jones, on or about August 1, 2017, filed a false statement with the Richmond RCMP which caused him to be arrested and held for 13 days under the Mental Health Act, R.S.B.C. 1996, c. 288. Mr. Jones states that he was not in contact with the RCMP concerning Mr. Grosz prior to his detention in August 2017. Mr. Jones does explain what contact he did have with the RCMP, and he states:

13. In late August 2017 Mr. Grosz contacted me and a number of other people threatening a lawsuit against Ms. Guo. Initially his claim was for a few thousand dollars for alleged unpaid wages and overtime. Given that he and I had, until that point, enjoyed a good relationship, I attempted to discuss the possibility of settlement with Mr. Grosz. However by the time I contacted him his demands had changed. Mr. Grosz said that if Ms. Guo did not settle with him he would send to the RCMP, the Law Society and others allegations of impropriety against Ms. Guo. In particular, he threatened to distribute lurid and outrageous allegations, including photographs of a sexual device he implied was somehow connected with Ms. Guo. I forwarded this information to Cst. Wu of the Richmond RCMP, who I understood to be investigating complaints of harassment and extortion made by Ms. Guo arising from earlier incidents. Attached as Exhibit E to this my Affidavit is the email I sent to Cst Wu, which was later also forwarded to Cst. Bevan.
- [50] I am satisfied that Mr. Jones has met the onus of showing that there is no genuine issue with respect to the claim that he filed a false statement to the RCMP in August 2017.
- [51] Mr. Grosz further asserts that Mr. Jones was in the gallery on November 1, 2017, the date the defendants' application to set aside the default judgment in the First Guo Action was scheduled. Mr. Jones states that on November 1, 2017 he was not in Vancouver that day. He was in Kamloops where he was working as a professor. On that day, he taught his course and went for lunch on campus. I accept this evidence.
- [52] Mr. Grosz has provided no evidence to support either of the assertions made. In any event, attending court is not in itself actionable conduct, and Mr. Grosz has provided no pleadings or evidence to support his belief that Mr. Jones' alleged attendance in court involved conduct that was actionable.
- [53] The final allegation against Mr. Jones is that he attached to an affidavit in the First Guo Action a confidential document, being a medical report, which was in breach of "solicitor-client privilege". Mr. Jones explains the circumstances of his receipt of the medical report in his affidavit. He states that on July 9, 2017, he received an email from Mr. Grosz that "appeared plainly delusional". A copy of the email is attached to the affidavit. He replied to Mr. Grosz on July 10, 2017, expressing concern for his mental wellbeing and asking that he pursue treatment. Mr. Grosz responded to him the same day attaching a report from a psychiatrist. I do not see the need to set out the particulars of the report, but it provides a medical diagnosis for Mr. Grosz.
- [54] It is clear to me that the medical report was not provided by Mr. Grosz to Mr. Jones in the context of a solicitor-client relationship. Accordingly, I am satisfied that there is no genuine issue for trial and the claims against any of the Lawyer defendants and Mr. Mackey must be dismissed under R. 9-6(5)(a). I will go on to address the arguments raised by these defendants under R. 9-5(1) as well.

Issue 2: Should the pleadings be struck and the proceeding dismissed pursuant to R. 9-5(1)(a), (b) and (d)?

## Legal Principles

[55] Each of the defendants in this action apply to have the pleadings struck and the action dismissed pursuant to R. 9-5(1), which provides:

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.

[56] Each of the defendants relies on R. 9-5(1)(a), (b), and (d).

[57] I will reproduce my comments under this heading from my reasons in *Grosz v. Royal Trust*, 2020 BCSC 128 at paras. 58-65 (the "Second Royal Trust Reasons"), as the law in this area has not changed:

On a motion to strike for not disclosing a reasonable cause of action under R. 9-5(1)(a), the applicable test is whether it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17. However, where the facts pleaded are based purely on assumptions or wild speculations or are incapable of proof, they may be subject to scrutiny by the court, albeit with great caution: *Young v. Borzoni et al*, 2007 BCCA 16 at paras. 25-31; *McDaniel v. McDaniel*, 2009 BCCA 53 at para. 22.

The purpose of R. 9-5(1)(a) is to ensure the parties and the court have a clear understanding of the nature of the claims advanced. A party pleading a particular claim must plead assertions of fact which would establish the essential elements of a successful claim if proven. Prolix, convoluted, and incomprehensible pleadings do not lend themselves to permit the parties to have a clear understanding of the claims advanced: *Gill v. Canada*, 2013 BCSC 1703 at para. 7.

The Court is not required to assume as true wide-sweeping, inflammatory allegations of criminal conduct against the defendants. The court is entitled to subject them to "skeptical analysis" and not to assume they are true: *Stephen v. HMTQ*, 2008 BCSC 1656 at para. 60.

The case of *Ontario Consumers Home Services Inc. v. Enercare Inc.*, 2014 ONSC 4154 at paras. 24-29 [Ontario Consumers] provides a helpful summary of the applicable principles when a pleading of conspiracy is made. Such a pleading requires the facts to be stated with a heightened precision and clarity, being that conspiracy is an intentional tort and a serious allegation. It is insufficient to lump all of the defendants together into a general allegation of conspiracy, and bald or speculative conclusions are not sufficient to support a claim and must be struck.

In *Willow v. Chong*, 2013 BCSC 1083 at para. 20, Justice Fisher, as she then was, summarized the test for striking a pleading under R. 9-5(1)(b):

Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (S.C.); *Skender v Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious. An application under this sub-rule may be supported by evidence.

In *Re Lang Michener and Fabian* (1987), 37 D.L.R. (4th) 685 (Ont. H.C.J.) at 691, the court outlined the following non-exhaustive list of principles to consider when determining whether an action is vexatious, which has been repeatedly endorsed by the B.C. Courts (see for example: *Simon v. Canada (Attorney General)*, 2015 BCSC 924 at para. 97, *aff'd* 2016 BCCA 52 [Simon]):

- (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; and

- (9) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

The doctrine of abuse of process allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality, and integrity of the administration of justice: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37. When determining whether the proceedings constitute an abuse of process, the court may consider whether its process is being used dishonestly or unfairly, or for some ulterior or improper purpose, and whether there have been multiple or successive related proceedings that are likely to cause vexation or oppression: *Young* at paras. 65-66. Bringing a series of successive related proceedings is an abuse of the court's process, even where the plaintiff sincerely believes that earlier decisions were wrong and that he has not been treated fairly: *Budgell v. Oppal*, 2007 BCSC 991 at para. 28, *aff'd* 2008 BCCA 349.

#### Position of the Defendants

Rule 9-5(1)(a): Do the pleadings fail to disclose a reasonable claim against the defendants?

- [58] The defendants all argue that the pleadings disclose no reasonable claim against them and the allegations of conspiracy and fraud are based on assumptions and unprovable wild speculation without foundation. They all argue that Mr. Grosz has failed to plead facts that support any link to any damages Mr. Grosz allegedly suffered. I will outline the arguments made by some of the defendants respecting specific issues raised against them.
- [59] Mr. Munro submits that the notice of civil claim fails to plead any material facts that support the elements of any of the causes of actions against him.
- [60] He further argues that Mr. Grosz never sought nor obtained leave of the Court to commence this action against him, and as a result of the operation of s. 215 of the BIA, this proceedings is a nullity. Section 215 of the BIA states:

Except by leave of the court, no action lies against the Superintendent, an official receiver, an interim receiver or a trustee with respect to any report made under, or any action taken pursuant to, this Act.

- [61] Mr. Munro submits that this requirement for leave to commence an action against a trustee is designed to protect the trustee against frivolous or vexatious actions or actions which have no basis in fact and which would otherwise interfere with the due administration of the insolvent estate by the trustee so that the purposes of the BIA will not be frustrated: *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, 2006 SCC 35 at paras. 55 and 58 [GMAC]; *Braich (Re)*, 2007 BCSC 1604 at para. 13.

- [62] The Lawyer defendants submit that the allegations on their face disclose no cause of action known to law. They argue that counsel owes no duty to an adverse party and allegations that the opposing party has misled or intentionally deceived the court resulting in decisions or rulings unfavourable to him do not find actionable breaches of any private duty owed to him: *Pearlman v. Critchley*, 2012 BCSC 1830 at para. 44; *Singh v. Nielsen*, 2016 BCSC 2420 at para. 20.
- [63] They further argue that any allegedly defamatory communications made by them in the course of or incidental to the litigation in the First Guo Action on behalf of their clients are protected by absolute privilege: *Hamouth v. Edwards & Angell*, 2005 BCCA 172 at paras. 2-3, 21-22, 29-40; *Lawrence v. Sandilands*, 2003 BCSC 211 at paras. 90-93.
- [64] Finally, they argue that the principle of witness immunity prevents claims against prospective witnesses in respect of their evidence whether in civil conspiracy, negligence, breach of confidentiality, or some other form: *Workum v. Olnick et al.*, 2005 BCSC 1262 at paras. 7, 19, dismissed without affirming 2006 BCCA 528; *Hung v. Gardiner*, 2003 BCCA 257 at paras. 33-37.

Rule 9-5(1)(b) and (d): are the pleadings unnecessary, frivolous, vexatious or an abuse of process?

- [65] The defendants argue that the notice of civil claim does not plead allegations that support any of the causes of action pleaded, provides no substance, and is designed to harass the defendants and put them through unnecessary trouble and expense.
- [66] The Lawyer defendants submit that this proceeding was brought for an improper purpose as an attempt by Mr. Grosz to disqualify or otherwise deprive opposing parties to the litigation of counsel, which is an abuse of process.
- [67] The defendants argue that this action was commenced in bad faith. It is another attempt by Mr. Grosz to advance his "animus" against Ms. Guo and all persons who Mr. Grosz perceives as being connected to Ms. Guo, including her former counsel. It is further an attempt to re-litigate and circumvent the release and CDO in the First Guo Action. They point out that this action is one of multiple successive proceedings commenced by Mr. Grosz and the indiscriminate allegations in the notice of civil claim are clearly vexatious and oppressive.

## Analysis

- [68] I will consider all of the arguments made under Rule 9-5(1)(a), (b) and (d) since, while they address different concerns, there is significant overlap between them.
- [69] I am satisfied that it is plain and obvious that the claims against the defendants offend R. 9-5(1)(a), (b) and (d). It is clear that this action is vexatious, frivolous, and an abuse of process.

- [70] The claim against Mr. Munro cannot be brought without leave, and no leave was granted. More fundamentally, there are no facts pled that support any claim against Mr. Munro. There is an allegation made that Mr. Munro took the position that Mr. Grosz was not a creditor of GLC since he had consented to the dismissal of the First Guo Action. Mr. Grosz has failed to explain why that position was in any way improper or incorrect, or why any claim against Mr. Munro should arise as a result.
- [71] It is clear to me that Mr. Grosz commenced this action to try to have counsel for the Guo defendants and FTI disqualified from acting.
- [72] In the notice of civil claim, Mr. Grosz does not advance any particulars of a claim against Mr. Brousson except to allege that some conspiracy existed. It is not clear to me what the allegations are against Mr. Louman-Gardiner except that he acted for the Guo defendants and also participated in some type of conspiracy, no particulars of which were provided.
- [73] The allegation against Mr. McLean is that he informed a master in chambers that his law partner was counsel for the Proposal Trustee. Mr. Grosz claims that this was a "false submission", but provided no details on why this was false or, even if it was, what basis Mr. Grosz had to sue him because of it.
- [74] There is an allegation against Mr. Jones that he attached to an affidavit a medical report that Mr. Grosz says was confidential and was received by Mr. Jones in the context of a solicitor-client relationship. The notice of civil claim alleges that Mr. Jones agreed to act for Mr. Grosz pro bono in December 2016 to approach the Credential Committee of the Law Society of British Columbia to make them aware of certain facts that Mr. Grosz would have to report. I have not assumed these allegations to be true since, in my view, this is the type of case that requires a "skeptical analysis" to be applied. Mr. Jones denies that he was ever retained by or that he ever provided legal advice to Mr. Grosz. He advises that he received the medical report in July 2017 when Mr. Grosz was sending him emails that raised a grave concern in Mr. Jones' mind over Mr. Grosz's mental health. At this time, Mr. Grosz was still employed at GLC. As I explained earlier in these reasons, there is also no basis for a claim against Mr. Jones with respect to his alleged attendance in chambers on November 1, 2017, or with respect to him filing a complaint with the RCMP. I find that the allegations against him in the notice of civil claim are frivolous and vexatious and brought as an attempt to harass or inconvenience lawyers who have acted for Ms. Guo.
- [75] With respect to the Guo defendants, I find that Mr. Grosz is attempting to circumvent the CDO that he agreed to, dismissing the First Guo Action. He is essentially attempting to rely on the same factual matrix as against her, as evidenced by his attaching the notice of civil claim in the First Guo Action as a Schedule. This is vexatious and an abuse of process.

- [76] Many of the allegations advanced in this action surround the circumstances of Mr. Grosz agreeing to a settlement in the First Guo Action and his view that he was the subject of an "extortion". I heard the application to set aside the CDO and I found there was no support for any of Mr. Grosz's allegations; see my CDO Reasons at paras. 106-128.
- [77] Mr. Grosz makes highly inflammatory allegations of fraud, conspiracy, extortion, and criminal conduct against all of the defendants, without sufficiently particularizing the claims or providing any factual basis for such serious allegations. The claims are based on pure speculation. It is not sufficient to make a general allegation of conspiracy, and bald or speculative conclusions are not sufficient to support such a claim.
- [78] Mr. Grosz seems intent on suing or disqualifying every lawyer that acts for any opposing party. I note that he provided notice to the current counsel for the Lawyer defendants that he would seek to disqualify him from acting in this and other actions. It appeared to me that the purpose of this notice was to attempt to derail the hearing of the application scheduled on December 3 and 4, 2019 in the Second Royal Trust Action, in which Mr. Arvisais was acting for the Boughton defendants. I directed that no such application would be permitted prior to the hearing of the application to strike.
- [79] I reiterate my view stated in my reasons in the Second Royal Trust Reasons at paras. 105 and 106:
- [105] I am persuaded that Mr. Grosz is using the court process in an abusive manner. He continues to use the threat of a lawsuit as a means to achieve his personal goals, including to attempt to extract settlements from the applicant defendants in circumstances where it is obvious that the action cannot succeed and no reasonable person could expect a court to grant relief.
- [106] I am concerned by the use of judicial resources to fuel Mr. Grosz's speculative theories at an inordinate cost to the applicant defendants and to the detriment of other litigants awaiting hearings. To allow the Second Action to continue would be to allow the court's process to be misused and to allow an oppressive and vexatious action to continue against the applicant defendants.
- [80] My concerns are amplified by the actions Mr. Grosz has taken in suing six lawyers and the Proposal Trustee. I see little likelihood that Mr. Grosz will cease his oppressive and vexatious behavior.
- [81] Although Mr. Grosz provided no submissions, I will operate on the basis that one of his arguments would have been that he should have an opportunity to amend his pleadings. I have considered the nature of the pleadings, my knowledge as the case management judge on a number of actions Mr. Grosz has brought, and the extensive materials that I have been provided, and have concluded that it would not be fair in the circumstances to allow him an opportunity to amend.

- [82] In respect to Mr. Munro, Mr. Grosz needed to seek leave to sue him. Although the threshold for leave is quite low, it should not be granted where the claim is frivolous, vexatious, and does not disclose a cause of action against a trustee: GMAC at para. 57; Re Braich at para. 21. This aptly describes the action against Mr. Munro, as well as the other defendants.
- [83] Given the serious deficiencies in the pleadings, the vexatious nature of the allegations, and the improper purposes for which they were brought, it would not be appropriate to allow an amendment. In my view, the appropriate remedy is to strike the pleadings and dismiss the action against all of the defendants.

Issue 3: Should Mr. Grosz be declared a vexatious litigant?

## Legal Principles

- [84] Section 18 of the Supreme Court Act empowers the Court to prohibit a person from instituting legal proceedings without prior leave of the Court:

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.

- [85] Section 18 confers a broad jurisdiction on the court to control its own processes. This is a power that must not be used lightly. The court must balance the important values underlying open court access against the need to prevent the abuse of that right: *Semenoff Estate v. Semenoff*, 2017 BCCA 17 at para. 31, citing *S.(M.) v. S.(P.I.)* (1998), 60 B.C.L.R. (3d) 232 (C.A.), leave to appeal ref'd [1999] S.C.C.A. No. 11.
- [86] The court may consider proceedings before administrative tribunals in determining whether an order under s. 18 is appropriate: *Bajwa v. British Columbia Veterinary Medical Association.*, 2012 BCSC 878 at para. 211.
- [87] As helpfully summarized by Justice Iyer in *Rafique v. AWM-Alliance Real Estate Group Ltd.*, 2019 BCSC 247 at para. 51, citing *Carten v. Carten*, 2015 BCCA 201, key indicators of a vexatious proceeding include:
- bringing one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;
  - it is obvious that the action cannot succeed, would lead to no possible good, or no reasonable person can reasonably expect to obtain relief;
  - the action is 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) the grounds and issues in the first proceeding have been 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) the person who instituted the proceedings has failed to pay the costs of the unsuccessful proceedings; and
  - f) the person has persistently taken unsuccessful appeals.
- [88] The ultimate question is whether the litigant has taken himself over the line: *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594 at para. 26.

### Position of the defendants

- [89] The Lawyer defendants submit that Mr. Grosz's conduct fits squarely within each of the key indicators of a vexatious litigant, except in regard to persistently pursuing unsuccessful appeals.
- [90] They further submit that where a litigant has a large number of vexatious proceedings already underway, those proceedings may be stayed and leave required for any further steps, citing *Parchment v. British Columbia*, 2015 BCSC 1006 at paras. 29-37.
- [91] In support of the legal representation requirement, the Lawyer defendants rely on the decision of *Unrau v. National Dental Examining Board*, 2019 ABQB 283 at paras. 817-19, which sets out the types of factors that may be used to predict when an abusive litigant may extend their litigation misconduct to the court's leave process.
- [92] Finally, these defendants argue that the court has authority to require leave before instituting or continuing proceedings before a tribunal or other non-judicial decision maker when the litigant is an abusive litigant: *Unrau* at paras. 853-63.
- [93] Mr. Munro provided supplemental written submissions on the impact of the Alberta Court of Appeal decision in *Jonsson*. He relies on the following observations in that decision:
- a. Being "ill-informed or emotionally overwhelmed" does not excuse vexatious behaviour [at para. 8];
  - b. Vexatious litigant orders should only be used when other procedural techniques are ineffective [at para. 12];
  - c. Other procedural techniques listed by the Court include procedural orders, case management orders, and sanctions for failure to comply;
  - d. Citing *Trial Lawyers Association of British Columbia v British Columbia (Attorney General)*, 2014 SCC 59 at para. 47: "There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice";

- e. Resorting to any residual inherent jurisdiction to control vexatious litigation should only be made when the provisions of the statute [in that case, the Judicature Act] are inadequate to answer the problem and there are compelling reasons to step beyond what the statute provides for [at para. 33];
  - f. When conduct such as "hopeless proceedings", "collateral attacks", "making unsubstantiated allegations of misconduct", and "initiating 'busybody' lawsuits" is persistent, vexatious litigant orders may be justified. Individual occurrences should be dealt with via specific remedies such as striking pleadings or summary dismissal [at para. 40]; and
  - g. The response to problematic litigation must find the proper balance between maintaining reasonable access to the court, while preserving court resources and shielding other litigants from abusive behavior [at para. 16].
- [94] This defendant argues that a distinguishing factor of the Jonsson decision was that Mr. Jonsson was not the party commencing or continuing proceedings but defending them, albeit in an inappropriate manner. Mr. Grosz has been the instigator of proceedings. In addition, procedural techniques such as case-management orders and cost sanctions have done little to curb Mr. Grosz's abusive behaviors.

## Analysis

- [95] When I apply the legal principles to the circumstances of this case, it is clear to me that the application should be granted. I agree with the defendants' submission that practically all of the key indicators of vexatious proceedings are present.
- [96] Mr. Grosz has consistently sought to bring actions or applications to determine issues that have already been decided, or to roll the grounds and issues in prior proceedings forward into subsequent actions with actions brought against the lawyers who have acted for the opposing parties. This is precisely what occurred in both this action and in the Royal Trust action. In both cases, Mr. Grosz expressly repleaded the allegations made in the first notices of civil claim in the second notices of civil claim, and attached the earlier notices of civil claim as schedules to the second ones. He repeated and supplemented the allegations, and also sued the lawyers acting for the other side, being the Boughton defendants in the Royal Trust action and the Lawyer defendants in this action.
- [97] Mr. Grosz has been clear that his purpose in suing the various lawyers he has sued is to have them disqualified or to punish them for acting for their clients. In order to achieve these goals, he has made very serious allegations of professional misconduct and conspiracy against these lawyers, without having any support for such allegations other than speculation. He has made these allegations in court, including in pleadings, submissions and affidavits, as well as to the police, the Law Society, and various third parties. His correspondence uses very offensive and demeaning language in describing these lawyers. Mr. Grosz's status as a self-represented litigant and any frustration he may have with the court process does not excuse him from this behaviour.

- [98] Mr. Grosz has threatened to apply to disqualify lawyers, to sue them, and to have them disciplined by the Law Society if they continue to act for their clients, and he has followed through on those threats. He has also threatened to bring further and more serious actions against opposing parties if they do not agree to settle his claims.
- [99] Mr. Grosz has also incorporated a society through which he brought another action, the Minoru Action, against the Guo defendants and over 20 other defendants. As there is a pending application to strike in that proceeding, I wish to be clear that I make no comment on the merits of that case. I raise it only to note that if one includes the action Mr. Grosz is attempting to start in the Federal Court against the Guo defendants and various other parties referenced earlier in these reasons, this is the fourth action that Mr. Grosz has brought against the Guo defendants. This does not include the two private informations of four counts each that Mr. Grosz swore against Ms. Guo in Provincial Court, or Mr. Grosz's application to add himself as a party or to be appointed the receiver in bankruptcy in the Insolvency Proceeding.
- [100] This decision is one of several in which I have found that Mr. Grosz brought the action or application for an improper purpose or for which no reasonable person could expect to obtain relief (see the Second Royal Trust Reasons at paras. 99 and 105, and the CDO Reasons at para. 123). I do not make this observation lightly, but it is fair to say that Mr. Grosz has used the process of the court and other tribunals and administrative bodies for the purpose of harassing these defendants and others.
- [101] To give some context to the scope of Mr. Grosz's activity, I note that, on the defendants' count, Mr. Grosz is a party to approximately 17 proceedings, and has sought to add himself as a party or amicus curiae in 19 other Supreme Court proceedings. He has brought or threatened to bring actions or complaints against many different lawyers and law firms, the university that Mr. Jones teaches at, the Law Society of BC, the Lawyers' Insurance Fund, certain benchers, certain individuals who were involved in the Insolvency Proceeding, the Richmond RCMP, Crown counsel, the Access Pro Bono Society of BC, the Director of Civil Forfeiture, the Superintendent of Bankruptcy, the director of CSIS, and the commissioner of the RCMP. He has also accused several judges of this Court of conspiring against him. In addition to his use of court proceedings at this Court, the Provincial Court, and the Federal Court, he has brought or threatened to bring about consequences to various individuals through complaining to the RCMP, the Vancouver Police, the Ministry of Citizen Services, the Law Society of BC, the Office of the Superintendent of Bankruptcy, the Information and Privacy Commissioner for BC, and the Human Rights Tribunal.
- [102] Mr. Grosz's actions have also impacted the court staff, including registry staff and judicial administrative assistants. I outlined some of my concerns in this regard in my memoranda of November 8 and 15, 2019, in which I explained to Mr. Grosz that it is inappropriate to attempt to communicate with me about cases before me without counsel present, to file notices to act in person or to make applications in actions in which he is not a party, to send emails or letters to the court registry staff or legal counsel asking them to forward the

communications or unfiled materials to a judge, or to overwhelm the court registry staff with phone calls and voicemail messages. I ordered that Mr. Grosz is only to communicate with court registry staff using the formal processes outlined in the applicable practice directions and that he is required to comply with the case management orders I made with respect to the filing of affidavits and bringing of applications in the manners of which I was seized.

- [103] Despite my instructions and orders, Mr. Grosz continued to email the court registry, the Court's legal counsel, the Chief Justice, and myself, frequently attaching voluminous materials and copying numerous third parties, sometimes without copying counsel or parties in the litigation. He also has issued "News Releases" about his cases to a large number of recipients, some of which have included confidential information and information covered by solicitor-client privilege (see my Injunction Reasons beginning at para. 35). While I am mindful of the fact that Mr. Grosz is self-represented, he has legal training and experience working as a paralegal and he has been informed on numerous occasions by myself, other judges, and legal counsel about the appropriate procedures to follow and why they are necessary. He has chosen to ignore these instructions.
- [104] Although Mr. Grosz has not persistently taken unsuccessful appeals, he has indicated that he intends to seek review of every order I make in the Court of Appeal. He appears to have taken the same approach with orders made by other judges.
- [105] I am satisfied that Mr. Grosz must be declared a vexatious litigant as other procedural techniques have been ineffective in incentivizing him to restrain his conduct. In my capacity as case management judge in various actions involving Mr. Grosz since August 2019, he has consistently disregarded the court's directions and orders. He has produced thousands of pages of materials in actions started for improper purposes, forcing the defendants to devote significant amounts of time and resources to respond to meritless claims. He has sent in numerous requests to appear, often seeking the same relief that has already been denied.
- [106] While I understand that he is frustrated and overwhelmed by the number of actions he is participating in, it is not fair to take this frustration out on opposing parties or court staff, nor is it a reason to disregard court orders or the Rules. There is no doubt the importance of all individuals having access to the court, but in balancing that principle against the need to prevent the abuse of that right, in the circumstances of this case, I am satisfied that an order under s. 18 of the Supreme Court Act is warranted. I am satisfied that Mr. Grosz has habitually, persistently, and without reasonable grounds, instituted vexatious legal proceedings in this Court against the Guo defendants and various other parties.

Issue 4: What terms should be imposed on any vexatious order granted?

## Legal Principles

- [107] There is case authority in this province that supports that a litigant may be restricted to only filing documents or proceedings by a solicitor acting on their behalf: see *Household Trust Co. v. Golden Horse Farms Inc.*, 1992 CanLII 420 (B.C.C.A.); see also Unrau at paras. 817-819.
- [108] In the Jonsson case, the Court notes that vexatious litigant orders are "tolerable because they do not foreclose all access to the court, and merely perform a gatekeeping function. Insurmountable preconditions, however, effectively amount to a total barrier to court access": at para. 67.
- [109] The Alberta Court of Appeal further noted that most self-represented litigants are unrepresented because they cannot afford a lawyer. Requiring a vexatious litigant to obtain a lawyer presents a financial barrier that may be insurmountable: at para. 71.

## Position of the Defendants

- [110] In addition to the order that Mr. Grosz not initiate any new proceedings without leave of the Court, the Lawyer defendants sought the following additional terms:
- a) That the First Guo Action and the Minoru Action be stayed and that Mr. Grosz may not take any further steps in them without first obtaining leave of the Court, and that those actions will be dismissed if leave is not sought within two weeks of the order and, if leave is sought, if leave is not obtained within three months of the order;
  - b) Mr. Grosz may not initiate or continue any involvement in any existing proceeding in which he is not a party without first obtaining leave of the Court;
  - c) Subject to any statutory provision restricting the scope of the order, Mr. Grosz may not initiate any proceeding before any statutory tribunal or other official adjudicative body without first obtaining leave of the Court; and
  - d) That Mr. Grosz may not seek leave on any matter except either (a) through counsel authorized to practice law in the Province of British Columbia or (b) upon paying security for costs of the leave application.
- [111] The Guo defendants and Mr. Munro, in their application response, sought a further term to the vexatious litigant order, being:

Robert W.G. Grosz should not hereafter, without leave of this Court, file any documents or proceedings except by a member of the Law Society of British Columbia in good standing acting on his behalf.

- [112] These defendants, in oral submissions, submitted that this term would require Mr. Grosz to file any documents in ongoing proceedings through a lawyer, and to file any new proceedings for which leave has been granted through a lawyer, unless Mr. Grosz obtained leave of the court to act on his own behalf. Mr. Grosz would not be required to engage a lawyer in order to obtain leave to act on his own behalf.
- [113] In the Supplemental Submissions of Mr. Munro, his position was that the order should at least contain the following terms:
- a. Robert W.G. Grosz, either directly or indirectly, on his own behalf or on behalf of another, shall not hereafter without leave of this Court:
  - i. Commence any legal proceedings in any court;
  - ii. Initiate or continue any involvement, including the filing of documents or pleadings, in any existing proceeding in which he is not a party.

## Analysis

- [114] With respect to the stays in the First Guo Action and the Minoru Action, it is my view that the order should not be granted. The status of the First Guo Action is that it is dismissed. The application to set aside the CDO has been dismissed. The only further step Mr. Grosz could take is to appeal the dismissal decision. This will be a matter for the Court of Appeal. With respect to the Minoru Action, it is now being case managed by a different judge. There are pending applications by the majority of the defendants in that action to have the action dismissed. I am of the view that this is a matter for the case management judge in the Minoru Action to deal with and I will not make any orders in respect to that action.
- [115] Mr. Grosz has threatened to add himself as a party or amicus curiae in approximately 19 other actions. It is not clear to me on what possible basis Mr. Grosz would have the right to add himself as a party. I agree that if Mr. Grosz seeks to bring an application in any action in which he is not a party, he must seek leave to do so.
- [116] My view is that it is not appropriate to order a condition that Mr. Grosz have authorized counsel act for him on the leave application, nor in any current or future actions, since it would effectively deny Mr. Grosz's access to justice. I agree with the Alberta Court of Appeal's description that such requirements would create an "insurmountable barrier" for Mr. Grosz, who has consistently been granted indigent status. It is important to recognize that Mr. Grosz is not being denied his right to bring a claim; only to have a justice perform a gatekeeping role so that vexatious and frivolous actions and applications are not pursued.
- [117] Although it appears that Mr. Grosz may have commenced vexatious matters in various statutory tribunals, I am not convinced that I should be making an order barring him from commencing proceedings in any court or other adjudicative body. At this stage, I am of the view that the order should be restricted to the BC Supreme Court.

- [118] Mr. Grosz's activity in Provincial Court is limited to swearing two private criminal informations against Ms. Guo. Absent express language, an order restricting his right to commence proceedings in any court would not apply to a matter such as filing a private information under the provisions of the Criminal Code: Attorney General of B.C. v. Lindsay, 2007 BCCA 165 at para. 29. In any event, it is unclear whether this court has jurisdiction under s. 18 of the Supreme Court Act to make such an order: Parchment at paras. 38-49. I am not convinced that the extent of Mr. Grosz's activity in Provincial Court is such that he should be required to obtain leave before commencing proceedings in that court at this time.
- [119] I am also of the view that requiring Mr. Grosz to post security for costs of the leave applications is not appropriate. An individual who is declared a vexatious litigant is required to follow Administrative Notice 16. The potential defendants to the proposed actions are not given notice of the leave application. The time is spent by judges or masters who are assigned to review the leave applications. In such circumstances, it is not appropriate to require Mr. Grosz to post any security.

## Conclusion

- [120] I conclude that Mr. Grosz's claim against the Lawyer defendants and Mr. Mackey should be struck, pursuant to R. 9-6, as raising no genuine issue for trial.
- [121] I also conclude that the pleadings offend R. 9-5(1)(a), (b) and (d) as disclosing no reasonable cause of action and being vexatious, frivolous, and an abuse of process. As such, the pleadings are struck and the proceeding dismissed against all of the defendants.
- [122] Pursuant to s. 18 of the Supreme Court Act, Mr. Grosz, in his name, or as an officer or director of a company, or in the name of a society he has incorporated, on his own behalf or on behalf of another, is prohibited from directly or indirectly instituting any legal proceeding in this Court, without prior leave of the Court.
- [123] Mr. Grosz must seek leave of the Court to file an application or materials in any existing proceeding in which he is not a party.
- [124] In the notices of application, the defendants have sought special costs, in some cases payable on a lump sum basis. The defendants are entitled to special costs. Mr. Grosz's conduct has been reprehensible on many levels. His actions have clearly been abusive towards the court system, the litigants, and their counsel. He continuously makes, without foundation, serious accusations of fraud, conspiracy, and criminal conduct against many of the parties. He has maintained proceedings which are vexatious and without any reasonable grounds. His actions are deserving of rebuke.
- [125] I am not prepared to order lump sum special costs for the same reasons set out in my costs reasons in the Second Royal Trust Action, indexed at 2020 BCSC 1083. I am not satisfied that I have a sufficient evidentiary basis to make such an order.

[126] The signature of Mr. Grosz on the form of the order is dispensed with.

"Forth J."

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