
CANADA / JUDGMENT

Johnstone v. Gardiner

2011 BCSC 1843

COURT

Supreme Court of British Columbia

DECIDED

26 September 2011

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2011 BCSC 1843 Johnstone v. Gardiner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Johnstone v. Gardiner,

2011 BCSC 1843

Date: 20110926

Docket: 11 2502

Registry: Victoria

Between:

John Johnstone

Plaintiff

And:

Thomas McPherson Gardiner

Defendant

Before: The Honourable Mr. Justice G.R.J. Gaul

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D. H. Christie

Counsel for the Defendant:

M. R. Scherr

Place and Date of Trial/Hearing:

Victoria, B.C.

September 21 and 26, 2011

Place and Date of Judgment:

Victoria, B.C.

September 26, 2011

- [1] THE COURT: The plaintiff, John Johnstone, is a retired member of the Victoria City Police. The defendant, Thomas Gardiner, is a retired member of the Royal Canadian Mounted Police (the "RCMP"). The defendant is also the author of a book published in 2010 entitled *In The Mind of a Mountie*.
- [2] In this action, the plaintiff seeks general damages for alleged defamatory statements contained within the defendant's book. The impugned passages are contained in Chapter 111, entitled "Victoria Joint Force Operations," and in particular the following paragraph at page 523:

The second was a Victoria City Police Sergeant, Johnnie Johnston, with a reputation for a blustery, strong-headed approach that bordered on being disruptive to the unit. He was a good investigator, a strong point in his favour but something he took advantage of. He had a major role in one investigation that necessitated some work in Cyprus. By every reason he warranted the assignment. ... Within a matter of days I was accurately informed this Sergeant was boasting about his previous military service in Cyprus and his carousing escapades there - something he planned to redo when on his forthcoming assignment. I promptly summoned him, gave him a direct and stern warning, solicited his absolute confirmation he would conduct himself in the correct manner. I accepted his apology for his earlier statements of bravado. Immediately he left my office I telephoned to his Chief, Jack Gregory. Jack fully supported my position - and possibly added a few words of his own. Sergeant Johnston completed his assignment admirably and for the remainder of his service in Joint Forces his work was excellent.

- [3] On this application, the defendant seeks an order pursuant to Rule 9-5(1)(a) of the Supreme Court Civil Rules (the "Rules") striking out the plaintiff's action as showing no reasonable claim.

Position of the Plaintiff/Respondent

- [4] In addressing the impugned passages from the defendant's book, the plaintiff asserts the following at paragraph 3 of his notice of civil claim:

... the foregoing paragraph, though stated as fact, is false, concocted, contrived, and maliciously conjoined with the rest of the book in chapter 111 in such a manner as to portray the Plaintiff in a false and deceptive manner, to reduce him in the esteem of right-thinking people in the community, and thereby defame him.

[5] The plaintiff further contends at paragraph 12 of the notice of civil claim that:

... the statements are a fabrication, a fictitious and imaginary event which did not occur, and falsely maliciously attributes to the Plaintiff the reputation as a carousing, boastful person who was not of good moral character and who admitted and acknowledged his boastful bad behaviour and carousing escapades, which did not in fact occur, and which leave the false and malicious impression that the Plaintiff is a man of diminished moral character and unsound judgement or unstable character.

[6] On the present application, counsel for the plaintiff argued that the book's account of this fictitious meeting and conversation between the defendant and the plaintiff would leave any reasonable reader with the clear impression that the plaintiff was a boastful carouser who intended to engage in drunken debauchery and dishonourable conduct while on duty and was therefore someone who was in need of discipline.

[7] Counsel further characterized the words of the defendant as suggesting that that plaintiff had a moral defect in his character that made him a disruptive and discreditable police officer.

Position of the Defendant/Applicant

[8] According to the defence, one of the premises of the defendant's book is that the RCMP has become lax with respect to self-discipline and that to maintain the standards expected of the organization, senior officers must be ready and able to provide corrective instruction to subordinates prior to any problems arising.

[9] Counsel for the defendant asserted in his submissions that the excerpt of the book that the plaintiff complains of is simply an example of an early corrective discussion between a new commanding officer, the defendant, and a subordinate, the plaintiff, before any improper conduct or problems arose.

[10] Counsel also argued that the impugned portion of the book must be read within the context of the entire work. In advancing this position, the defence drew my attention to two additional passages from Chapter 111. The first is found at page 521:

Coming up are descriptions of specific investigations to exemplify Joint Forces work, in particular those involving drug importation. The investigations described were the work of many astute, dedicated, self-motivated investigators.

[11] The second is at page 524:

At my retirement in 1983, I was feted at a farewell luncheon by the Joint Forces Unit . . . In my words of appreciation, I said how grateful and proud I was that never once had one member let the Unit or myself down -- at home or abroad, conduct was always at the highest level, all evidence accurately identified and presented at trial, never once a derogatory comment by Lawyers or the Courts.

[12] The defence maintains the tenor of Chapter 111 is a positive and complimentary one towards all members of the unit, including the plaintiff. In particular, when the impugned statements are read in their proper context, it becomes clear that the plaintiff's work performance was excellent and his conduct and behaviour was worthy of admiration. In that light, the defence asserts that it is not possible for the impugned words to be reasonably capable of the defamatory meanings advanced by the plaintiff.

The Law

[13] Rule 9-5(1) of the Rules read, in part:

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 . . .

[14] An application under Rule 9-5(1)(a) is to proceed on the pleadings filed. While Rule 9-5(2) prohibits the introduction of evidence on the application, in cases such as this one, the publication in question is incorporated by reference into the plaintiff's notice of civil claim and can properly be examined and considered in determining whether the claim should be struck out (see: *Gauthier v. Toronto Star Daily Newspapers Ltd.* (2003), 228 D.L.R (4th) 748 (ONSC); affirmed (2004) 245 D.L.R (4th) 169. (C.A.); and *Sturdy v. A.G. Canada*; (16 March 2005), Victoria 04-3552 (BCSC)).

[15] To succeed on an application of this nature, the defendant must satisfy the court that it is "plain and obvious" that the plaintiff's notice of civil claim discloses no reasonable cause of action in defamation (see: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at paragraph 33).

[16] The test to determine if an impugned statement is capable of bearing its alleged defamatory meaning is an objective one. That is, the impugned words are to be read through the eyes of a reasonable right-thinking person and are to be given their natural and ordinary meaning. Once that is accomplished, the next step is to decide whether the statement tends to lower the plaintiff in the estimation of reasonable persons or expose the plaintiff to hatred, contempt or ridicule (see: *Mantini v. Smith Lyons LLP* (No. 2) (2003), 64 O.R. (3d) 516 (C.A.) and *Sturdy v. Canada (Department of National Defence) et al.*, 2005 BCSC 519, 138 A.C.W.S (3d) 970).

Analysis

[17] The alleged meeting and conversation that gives rise to the present action, apparently occurred approximately 35 years ago. The question is whether the impugned words are capable of their defamatory meaning today.

[18] My analysis begins with the assumption that the facts stated in the notice of civil claim can be proved. Moreover, the onus lies on the defendant to satisfy the court that it is "plain and obvious" that the plaintiff does not have a cause of action in defamation (see: Hunt, *supra*).

[19] Chapter 111 of the defendant's book explains how and why, in the mid to late 1970s, he took command of a Joint Forces Operation ("JFO") that incorporated members from the RCMP and the Victoria City Police.

[20] It would be an error, in my opinion, to consider the excerpts that are said to be defamatory, without reference to the entire chapter.

[21] The impugned words need to be read along with the paragraph that precedes them. That paragraph reads:

The constant threat with Joint Operations is the presence of the "glory seeker". Nothing is more harmful than to have one person attempt to take credit for a group's success. When anything like that surfaces immediate action is essential. I took over a most compatible group. But two items needed attention.

[22] The defendant's second "item" related to the plaintiff. I have already reproduced that excerpt at paragraph 2 of these reasons.

[23] Counsel for the plaintiff places great emphasis on the word carouse and argues that its use in relation to the plaintiff seriously harms his character and reputation. I disagree.

[24] In my opinion, plaintiff's counsel stretches the definition of the word carouse beyond its natural and ordinary meaning. The Concise Oxford English Dictionary defines "carouse" as:

. . . to drink alcohol and enjoy oneself with others in a noisy, lively way; a noisy, lively drinking party.

[25] In other words, in its ordinary, everyday use, the term carouse means to party or to have fun, generally in conjunction with the consumption of alcohol. It does not, in my view, bring to mind the morally repugnant behaviour that plaintiff's counsel attributes to it.

[26] In my opinion, a reasonable person who reads Chapter 111 of the defendant's book and who employs the natural and ordinary meaning of the words in the impugned passages would not reach the negative conclusions plaintiff's counsel suggests.

[27] I find, having read Chapter 111, that the defendant's words are complimentary, and not derogatory, of the plaintiff, even if they do relate, as the plaintiff contends, to completely fictitious events.

- [28] In my view, the situation is simply this: the defendant says he became aware of the plaintiff's boasting of his intention to have fun and enjoy himself in a lively manner while overseas on assignment. The defendant explains that as the plaintiff's supervisor, he spoke with the plaintiff and warned him against any improper behaviour. The defendant says the plaintiff apologized for any suggestion that he would misbehave himself while on duty. The defendant says that ended the matter and for the balance of the plaintiff's time with the JFO his conduct and work performance was exemplary.
- [29] In my opinion, a right-thinking member of the community who reads Chapter 111 of the defendant's book would not reasonably attribute a defamatory meaning to the words the plaintiff complains about. Moreover, the impugned portion of the defendant's book would not, when taken in its proper context, lower the plaintiff in the estimation of reasonable persons or expose him to hatred, contempt or ridicule.

Decision

- [30] It is plain and obvious to me that the plaintiff has no reasonable cause of action in defamation against the defendant. I am therefore granting the defendant's application.

Order

- [31] The plaintiff's notice of claim filed 13 June 2011 is struck out.
- [32] As the defendant has been successful on this application, he is entitled to his ordinary costs. If there are issues that I am not aware of that relate to costs, then counsel have leave to make additional oral submissions at a time to be arranged through the court registry.

"G.R.J. Gaul, J."

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