

CANADA / JUDGMENT

Krishan v. Gus

2025 BCSC 2693

COURT

Supreme Court of British Columbia

DECIDED

3 November 2025

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2025 BCSC 2693 Krishan v. Gus

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Krishan v. Gus,

2025 BCSC 2693

Date: 20251103

Docket: S21593

Registry: Port Alberni

Between:

Sukhdev Krishan

Plaintiff

And

Gail Peterson

Defendant

Before: Associate Judge Nielsen

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

S. Krishan

Counsel for the Defendant:

L. Casburn

Place and Date of Hearing:

Port Alberni, B.C.

November 3, 2025

Place and Date of Judgment:

Port Alberni, B.C.

November 3, 2025

- [1] THE COURT: This is an application brought by the defendant, Ms. Gus, formally Ms. Peterson, to strike the claim of the plaintiff, Mr. Krishan, who has brought an action in defamation.
- [2] There had been a prior application to strike, and the plaintiff was given an opportunity to amend his claim. I have a Further Amended Statement of Claim filed July 25, 2025, which is the subject matter of the application to dismiss. I also have a Third Amended Notice of Civil Claim that was drafted for the plaintiff, by a lawyer, in the hope that it will meet the necessary requirements of providing a sufficient basis for a claim in defamation.
- [3] The plaintiff identifies himself as a qualified arbitrator, mediator, and community leader, and works within the community of Port Alberni. It is within this context that the action has allegedly arisen.
- [4] There are a number of incidents identified in both the Further Amended Notice of Civil Claim and the Third Amended Notice of Civil Claim. In the Third Amended Notice of Civil Claim, the incidents are broken down into five distinct occurrences. The first is an alleged incident that occurred on September 20, 2023, where the defendant allegedly cautioned community members that they should be aware of the plaintiff. The second alleged incident is alleged to have taken place on September 30, 2024, where the defendant is alleged to have said, "What are you doing? Whatever you are up to, stop it. It is not welcome." The third incident is alleged to have occurred as well on September 30, 2024, where the defendant allegedly warned various community members about the plaintiff. The fourth incident occurred in December of 2024, where the defendant is alleged to have made reference to the plaintiff as a fraud, and engaged in scamming people. The final incident, which also occurred in December of 2024, is alleged to have included the defendant demanding that members of her family cease involvement in a group that was led by the plaintiff.
- [5] The application to strike is brought pursuant to Supreme Court Civil Rule 9-5(1)(a), which provides:
 - (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

(a) it discloses no reasonable claim or defence, as the case may be,

...

- [6] It is the submission of the defendant that it is plain and obvious that the claim of the plaintiff discloses no reasonable cause of action, has no prospect for success, or is certain to fail, and they rely on *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45 where the court states at paras. 17 and 22:
- [17] The parties agree on the test applicable on a motion to strike for not disclosing a reasonable cause of action under r. 19(24)(a) of the B.C. Supreme Court Rules. This Court has reiterated the test on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, at p. 980. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3 S.C.R. 83; *Odhavji Estate*; *Hunt*; *Attorney General of Canada v. Inuit Tapirisat of Canada*, 1980 CanLII 21 (SCC), [1980] 2 S.C.R. 735.
- [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the Supreme Court Rules (now r. 9-5(2) of the Supreme Court Civil Rules). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.
- [7] The defendants also rely upon *Union Road Properties Ltd. v. British Columbia (Agricultural Land Commission)*, 2018 BCSC 1349 where the court states at para. 3:
- [3] Although Rule 9-5(2) provides that no evidence is admissible on an application under Rule 9-5(1)(a), and the jurisprudence establishes that generally the allegations of fact in the ANOCC must be taken as true or capable of being proved, the case law also provides ample authority to the effect that this does not mean that allegations based on assumption and speculation must be taken as true. Bare allegations of wrongdoing supported only by assumptions and speculation do not qualify as material facts supporting a claim. In some cases the court may look behind the allegations, and subject the allegations in the pleadings to a skeptical analysis: *Young v. Borzoni*, 2007 BCCA 16 at paras. 30-32; *Stephen v. HMTQ*, 2008 BCSC 1656 at para. 49; *Willow v. Chong*, 2013 BCSC 1083 at para. 19; *Seattle*

Environmental Consulting Ltd. V. Workers' Compensation Board of British Columbia, at para. 31; and Green v. Proline Management Limited, 2017 BCSC 1656 at para. 35.

[8] The defendant further submits that the allegations of the plaintiff are vague, offer general conclusions of law or fact, and they are not sufficiently precise, clear, certain and specific. And although not technically the subject of this application to strike, the defendants have made submissions that the Third Amended Claim is also vague, imprecise, uncertain as to the alleged defamatory remarks, statements and/or written publications. They further submit that although the pleadings have provided the gist of the words spoken, they lack context and the specificity that is required pursuant the legal test to strike, particularly with respect to allegations of defamation.

[9] In Rooney v. Galloway, 2024 BCCA 8, at para. 202, the Court states:

Pleadings in defamation cases are "exceptionally important" and exacting. They face "enhanced judicial scrutiny" In Brown on Defamation, at § 19:2, the author states:

Pleadings in an action for defamation are of utmost importance. They play a disproportionate role in the conduct of the case, perhaps more so than in any other action. Traditionally, courts have required the utmost strictness and formality, more so than in any other cases. They are subject to a heightened pleading standard. This was especially true in the early development of the common law of libel and slander when the courts were particularly technical in examining the pleadings. It remains the case that defamation pleadings attract a more critical evaluation than pleadings in other actions, and require a more detailed outline of material facts. They are held to a higher standard with regard to the precision with which the material facts must be pleaded.

[10] At paragraph 204 in Rooney, the Court further states:

A proper pleading in a defamation case ultimately requires the plaintiff to plead the defamatory words uttered or published by the defendant as those words are material facts (Gatley, at 26.11, 26.13). The plaintiff is also required to identify the occasion when the words were spoken or published and to whom the words were published ... (Gatley, at 26.5; Brown on Defamation, at § 19:4; Hon. Mr. Justice Blair et al., eds., Bullen & Leake & Jacob's Precedents of Pleadings, 17th ed., ...

[11] The plaintiff is self-represented. His Further Amended Pleadings were drafted by him without assistance of a lawyer. They are far from perfect, but they do identify alleged defamatory words uttered; they do reference the occasion, however imprecisely, and I note in the Third Notice of Civil Claim, at para. 15 the plaintiff pleads:

In or around December 2024, Gus told various individuals, including members of the plaintiff's daughter's social circle, that the plaintiff is a "fraud" and "scamming people"

That is referred to as "Defamatory Statement 4". In my view, that does plead the defamatory words uttered or published by the defendant; they would constitute material facts, and the plaintiff has identified the occasion when the words were spoken and to whom the words were spoken. In my view, this meets the test in Rooney. I cannot say the pleadings disclose no reasonable cause of action, has no reasonable prospect of success, or is certain to fail.

[12] The application to strike is therefore dismissed.

[13] Counsel for the defendant has indicated that there are some technical difficulties in regards to the filing of the Third Amended Notice of Civil Claim. Apparently, notice requirements and service requirements have not been met. To be clear, I am only dismissing the application to dismiss your pleadings. I have not granted leave to file your Third Amended Notice of Civil claim.

[14] Finally, costs normally go to the successful party unless there are exceptional circumstances, and there are none here. The plaintiff will have the costs of the application in the cause.

[15] THE COURT: Thank you, we are adjourned.

"Nielsen A.J."

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