

CANADA / JUDGMENT

Malak v. Hanna

2023 BCSC 2036

COURT

Supreme Court of British Columbia

DECIDED

21 November 2023

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2023 BCSC 2036 Malak v. Hanna

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Malak v. Hanna,

2023 BCSC 2036

Date: 20231121

Docket: S133981

Registry: Vancouver

Between:

Raoul Malak, Ansan Traffic Group Ltd., Ansan Industries Ltd.

d.b.a. Ansan Traffic Control, Lanetec Traffic Control Inc.,

Western Traffic Ltd. d.b.a. Flaggirls Traffic Control, and

Island Traffic Services Ltd.

Plaintiffs

And

Remon Hanna, Philip Keith Jackman, Valley Traffic Systems Inc.,

John Doe, Jane Roe, Richard Roe, Chris Sloe,

and Trevor Paine

Defendants

Before: The Honourable Justice Mayer

Supplementary Reasons to Malak v. Hanna, 2023 BCSC 1337.

Reasons for Judgment

Counsel for the Plaintiffs:

A. McConchie

Counsel for the Defendants, Valley Traffic Systems Inc., Philip Keith Jackman and Trevor Paine:

J.R. Pollard

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 6, 2023

Place and Date of Judgment:

Vancouver, B.C.

November 21, 2023

Introduction

- [1] On August 2, 2023 this Court issued reasons for judgement (indexed as 2023 BCSC 1337) finding the defendants Remon Hanna, Philip Jackman, Trevor Paine and Valley Traffic Systems Inc. jointly and severally liable for damages arising from a campaign of defamation carried out in 2012 against the plaintiffs Raoul Malak and four companies he controlled, the Ansan Group. Mr. Malak was awarded general damages of \$500,000 and aggravated damages of \$200,000, the Ansan Group was awarded general damages of \$300,000 and the plaintiffs were awarded, collectively, punitive damages of \$500,000 - for a total award of \$1.5 million.
- [2] The plaintiffs and defendants have been unable to settle the terms of the order formalizing the findings of this Court set out in the August 2023 reasons for judgement. In particular, they disagree on the applicability of pre-judgment interest to the awards made for general and punitive damages.
- [3] As a result, the plaintiffs come back before this Court seeking an order that they receive pre-judgement interest, pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79 [COIA], on the amounts awarded to them for general damages and punitive damages, at the rates posted on this Court's website from the date the action was commenced, May 31, 2013, to August 2, 2023, the date of judgement.
- [4] The plaintiffs do not seek pre-judgement interest on the award for aggravated damages, which they concede is not payable pursuant to the COIA.

Statutory Basis - Payment of Pre-Judgement Interest

- [5] Section 1(1) of the COIA provides that a court must award pre-judgment interest on damages awards, at a rate the court considers appropriate, from the date on which a cause action arose to the date of the order - subject to certain exceptions.
- [6] The relevant exceptions are set out in s. 2 of the COIA. Subsection 2(a) provides that prejudgment interest must not be awarded "on that part of an order that represents pecuniary loss arising after the date of the order". Subsection 2(e) provides that pre-judgement interest must not be awarded "on that part of an order that represents nonpecuniary damages arising from personal injury".

Summary of the Positions of the Parties

- [7] In general, the defendants contend that the awards for general and punitive damages were made in "today's dollars" and therefore, there is no basis for an order significantly increasing the amount payable by the defendants.
- [8] Specifically, with respect to pre-judgment interest on general damages, the defendants contend that the general damages awarded in this defamation case constitute non-pecuniary damages arising from personal injury and therefore do not attract pre-judgment interest pursuant to the exception set out at s. 2(e) of the COIA.
- [9] In the alternative, the defendants submit that the general damages award includes damages incurred both before and after issuance of the August 2, 2023 judgement. As a result, the defendants submit that payment of pre-judgment interest on general damages, calculated from May 13, 2013, will result in overpayment. In this respect they point to the exception set out at s. 2(a) of the COIA and submit that if pre-judgment interest on the Ansan Group's general damages is awarded the rate of interest should be adjusted downward to avoid overpayment.
- [10] With respect to pre-judgment interest on punitive damages, the defendants submit that this award should be considered as complete at the time of judgement. For this reason, the defendants say that nominal pre-judgement interest should be applied to the award of punitive damages.
- [11] The plaintiffs contend that pursuant to s. 1(1) of the COIA payment of prejudgment interest is mandatory on the awards for general and punitive damages. They submit that the exception set out at s. 2(e) does not apply as the damages awarded by this Court do not constitute non-pecuniary damages arising from personal injury.

Issues

- [12] The first issue to be decided is whether the award of general damages falls within the exception set out in s. 2(e) of the COIA. That is, was this award made for non-pecuniary damages arising from personal injury?
- [13] The next issue to be decided is whether, in the alternative, any portion of the award of general damages falls within the exception set out in s. 2(a) of the COIA. That is, whether any part of the award of general damages constitutes an award for pecuniary loss arising after the date of the August 2, 2023 judgement?
- [14] The final issues to be decided are what rate of pre-judgement interest should be applied to the awards for general damages and punitive damages?

Application of s. 2(e) of the COIA

- [15] As was made clear in *Brown v. Cole* (1998), 61 B.C.L.R. (3d) 1, at para. 107 the objects of a general damages award include remedy for insult offered and pain given, vindication of reputation, social damage and possible economic damage.
- [16] In my view, there is no basis for an argument that the general damages award made to the Ansan Group constitutes an award for pecuniary loss arising from personal injury. As was made clear in the August 2, 2023 reasons, general damages were awarded to the Ansan Group to reflect the reputational impact and inferred business losses arising from the defendants' defamatory conduct: *Malak v. Hanna*, at para. 239. I find that the exception for payment of prejudgment interest at s. 2(e) of the COIA does not apply in respect of general damages payable to the Ansan Group.
- [17] With respect to Mr. Malak, the award of general damages in his favour was made to provide compensation for the impact to reputation, self-esteem and social life: *Malak v. Hanna*, at para. 237. The latter two elements are arguably non-pecuniary in nature but the first, damages for impact to reputation, can be fairly described as pecuniary in the case of a business man such as Mr. Malak.
- [18] Although an award of general damages to Mr. Malak has both non-pecuniary and pecuniary characteristics there is no principled way to determine what portion of this award relates to non-pecuniary damages or to pecuniary damages.
- [19] In other decisions this Court has determined that pre-judgment interest is payable on general damages for defamation. At paras. 212 and 213 of *Manno v. Henry*, 2008 BCSC 738, Grauer J., as he then was, stated that although general damages for defamation were non-pecuniary in nature, such an award constituted a pecuniary judgment attracting pre-judgment interest under s. 1(1) of the COIA. Justice Grauer specifically found that such damages did not arise from personal injury within the meaning of s. 2(e).

[20] In this case, I choose to follow the reasons of Justice Grauer. I find that the award of general damages to Mr. Malak for defamation constitutes a pecuniary judgment attracting pre-judgment interest under s. 1(1) of the COIA.

Application of s. 2(a) of the COIA

[21] I do not consider that the exception at s. 2(a) of the COIA can be applied in this case, as it is not possible to determine what part of the order for payment of general damages represents pecuniary losses to the plaintiffs arising after the date of the order made on August 2, 2023.

Rate of Interest

[22] The plaintiffs seek an order that the pre-judgment interest rates set out on this Court's website be applied for the relevant period to the awards for both general and punitive damages. These rates varied between approximately .5% and 5% between May 2013 and July 2013. I find these rates to be appropriate in respect of calculation of pre-judgment interest on the general damages awards to the plaintiffs.

[23] With respect to the applicability of pre-judgment interest on an award for punitive damages the British Columbia Court of Appeal has ruled that the COIA "is mandatory and that court order interest must be awarded on punitive damages": *Huff v. Price*, 1990 CarswellBC 267, at para. 65.

[24] In *Osborne v. Harper*, 2006 BCSC 51, at para. 3, Justice Sigurdson awarded nominal pre-judgment interest, at the rate of one-tenth of one percent per annum, on the basis that the award of punitive damages he made was in current dollars: *Osborne*, at para. 3, referring to *J.L.M. v. P.H.*, [1998] B.C.J. No. 1546 (C.A.), at paras. 18-19.

[25] In this case the award I made for punitive damages was made in current dollars. Accordingly, I make the same order as was made in *Osborne* and fix the rate of pre-judgment interest on punitive damages at one-tenth of one-percent per annum for the relevant period.

Conclusion

[26] The order made August 2, 2023 shall include pre-judgement interest for the period May 31, 2013 to August 2, 2023 as follows:

- a. In the amount of \$47,743 on the sum of \$500,000 awarded as general damages to the plaintiff Raoul Malak;
- b. In the amount of \$28,646 on the sum of \$300,000 awarded as general damages to the Ansan Group; and
- c. In an amount to be calculated, applying the rate of one-tenth of one-percent, on the sum of \$500,000 awarded as punitive damages to the plaintiffs.

[27] Given the divided success in this application the parties are to bear their own costs.

"Mayer, J."

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