
CANADA / JUDGMENT

Martin v. Tangerine Bank

2021 BCSC 2545

COURT

Supreme Court of British Columbia

DECIDED

14 December 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 2545 Martin v. Tangerine Bank

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Martin v. Tangerine Bank,

2021 BCSC 2545

Date: 20211214

Docket: S35184

Registry: Chilliwack

Between:

Maria Melanie Martin

Plaintiff

And

Tangerine Bank

Defendant

Before: The Honourable Mr. Justice Kirchner

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing on her own behalf:

M.M. Martin

Counsel for the Defendant:

B.J. Cabott

Place and Date of Trial/Hearing:

Chilliwack, B.C.

December 14, 2021

Place and Date of Judgment:

Chilliwack, B.C.

December 14, 2021

Introduction

- [1] The defendant, Tangerine Bank (the "Bank") applies under Rule 9-5(1) of the Supreme Court Civil Rules to strike the plaintiff's notice of civil claim on the basis that it fails to disclose a cause of action. Alternatively, the Bank applies for summary judgment under Rule 9-6(5)(a) to dismiss the claim on the basis that it discloses no genuine issue for trial.
- [2] The plaintiff has responded with her own application seeking judgment "in the defamation aspect of this claim" and damages in the amount of \$486,361. I understand those damages to be largely, but not entirely, related to losses she claims associated with her loss of employment.
- [3] While the plaintiff has not specified the rule she is proceeding under, I take it that this is an application under Rule 9-7 of the Supreme Court Civil Rules which is the summary trial rule and I will proceed on that basis.

Background

- [4] The plaintiff, Maria Martin, is a resident of Maple Ridge. At all material times, she had an account with the Bank.
- [5] The Bank is a federally chartered bank pursuant to the Bank Act, S.C. 1991, c. 46.
- [6] In her notice of civil claim, Ms. Martin alleges that on June 27, 2018, she became employed with a company called Global Capital Finance as an accounting clerk. A purported contract of employment, in the form of a signed job offer, is attached to Ms. Martin's second affidavit.
- [7] There is little evidence as to the existence of Global Capital Finance. In her examination for discovery, Ms. Martin stated she does not know where the company is located or who runs the company. She said she knows the first name of the person who was her boss and the name of the person who was apparently the human resources manager but she never met any of them face to face.
- [8] The notice of civil claim describes one of Ms. Martin's duties with Global Capital Finance as follows:

One of her duties is to do electronic bank transfers of funds that can be used to purchase Bitcoin and deposit them in the Bitcoin wallet that the company assigned to her.

- [9] In her examination for discovery, as well as in her oral submissions on these applications, Ms. Martin described this task generally as follows. She would receive an email from a person providing details of a transfer of money into her account at the Bank. She was then to withdraw that money from her account and use that money to purchase Bitcoin for others whom I understand are purportedly customers of Global Capital Finance. She would deposit the money into Bitcoin wallets pursuant to these duties she was tasked with.
- [10] The parties agree that on or about July 4, 2018, an employee of the Bank communicated with Ms. Martin by telephone and informed her that her account was being investigated due to suspicions that the transfers made into the account on or about July 3, 2018, were fraudulent. The allegedly fraudulent transfers were those relating to the work Ms. Martin said she was doing for Global Capital Finance.
- [11] Ms. Martin's claim is essentially that the Bank's statements that these transactions are fraudulent or are suspected to be fraudulent are defamatory. She claims that she was obliged to tell her employer, Global Capital Finance, that her Bank was making these accusations and she claims as a result of this, her employment was terminated. She claims to have suffered significant losses and damage as a result totalling, as I have mentioned, \$486,386.
- [12] She further alleges that her account was frozen because of the transactions. In an effort to access her account, she contacted the customer service employees at the Bank to discuss the matter. She claims that communicating these matters to Global Capital Finance and the customer service agents at the Bank constitutes publication of the alleged defamatory statements to third parties. She correctly points out that the term "publication" when used in the context of defamation does not refer to reducing the defamatory comments to writing but may be effected by verbal communication.
- [13] The claim as Ms. Martin has presented it before me is clearly based in defamation. There are a number of facts and allegations contained in the notice of civil claim, not all of which are discernible. However, it is clear from paragraph 1 of the notice of civil claim that the central foundation, though not the only foundation, of the claim is defamation. Paragraph 1 reads:

Libelous and defamatory claims of Tangerine Bank customer service employees that fraudulent transactions were made through the plaintiff's chequing account. They referred to the plaintiff's chequing account number. They referred to the plaintiffs checking account number [number]

These libelous or defamatory claims resulted in the loss of employment opportunity or loss of livelihood of the plaintiff.

- [14] Ms. Martin has brought several applications to this court seeking judgment on her claim. In each instance, the claim was framed as one in defamation. The first of these was on February 25, 2019, when Ms. Martin's application for judgment came before Mr. Justice Grist. Justice Grist dismissed the application on the basis that Ms. Martin had not followed

the proper procedure for summary determination of the issues. The transcript of the proceeding before Justice Grist was put in evidence before me and having perused that, I note that Ms. Martin framed her claim in defamation during that application.

- [15] On May 27, 2019, Ms. Martin brought essentially the same application, this time before Justice Jenkins. Justice Jenkins dismissed the application and made an order prohibiting Ms. Martin from bringing further applications for judgment without leave of the court. Again, that application was framed in terms of defamation.
- [16] Ms. Martin made some other attempts to have the matter brought before the court, each of which was dismissed. However, pursuant to a case plan order made on September 27, 2021, Master Robertson gave liberty to the Bank to apply for summary determination of this matter after November 5, 2021, or at the conclusion of examinations of discovery of the plaintiff and, if the Bank did so, Ms. Martin could then bring an application for summary determination in response. That is what has happened here.
- [17] Once again, Ms. Martin has framed her claim in this court before me as one in defamation. In her oral submissions she stated that she was relying on her notice of application to make her oral presentation because that document "summarizes my claim as best I could in this application." That notice of application is grounded solely in a claim for defamation.
- [18] On this basis, I am satisfied that the claim Ms. Martin seeks to advance in her notice of civil claim is in defamation and she has advanced no other legal basis for summary determination.
- [19] As noted, the Bank applies to strike the notice of civil claim under Rule 9-5(1)(a) as disclosing no reasonable cause of action against the Bank. The Bank argues that Ms. Martin has failed to plead any facts in her notice of civil claim that, if true, would establish a reasonable cause of action against the Bank.
- [20] In the alternative, the Bank seeks an order under Rule 9-6(4) to dismiss Ms. Martin's claim as failing to disclose a genuine issue for trial.
- [21] The two rules are different in that Rule 9-5 focuses on pleadings alone while Rule 9-6 examines the claim somewhat more broadly, including with evidence that may be tendered on the application. I find it convenient to deal with the two alternative applications together in this case.
- [22] Rule 9-5(1)(a) provides that at any stage of a proceeding the court may order that a claim be struck out or amended in full or in part on the ground that it discloses no reasonable claim. The question of whether the pleading discloses a reasonable claim is determined on the assumption that the facts as pleaded are true. Where it is plain and obvious that the claim as pleaded or as might be amended discloses no reasonable claim, the court may dismiss the claim: *H.M.B Holdings Limited v. Replay Resorts Inc.*, 2019 BCSC 1138 at para. 38.

- [23] Rule 9-6(4) allows a defendant after, serving a response to a civil claim, to apply to dismiss a claim summarily on the basis that it does not disclose a genuine issue for trial. It is a challenge on a limited review of evidence. A defendant can succeed in that application by showing the case as pleaded is unsound. Unlike an application under Rule 9-5(1)(a), a defendant may adduce evidence that provides a complete answer to the case as pled. If the court is satisfied that the plaintiff is bound to lose or has no chance of success, the defendant's Rule 9-6(4) application must succeed.
- [24] However, if the defendant's evidence fails to meet all the causes of action raised in the notice of civil claim, the application itself must be dismissed: *Beach Estate v. Beach*, 2019 BCCA 277 at para. 48.
- [25] The court is not permitted to weigh evidence on a Rule 9-6(4) application beyond determining whether it is incontrovertible. The court must be satisfied "beyond a reasonable doubt" that there is no genuine issue for trial: *Beach Estates* at paras. 49 and 65.
- [26] The onus is on the defendant to prove the plaintiff's claim raises no genuine issue for trial. If the defendant meets this onus, the plaintiff must then refute or counter the defendant's evidence. Each party must "put its best foot forward" by presenting evidence that the other's claim is factually without merit: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 11.
- [27] Where the evidence conflicts, summary judgment is unlikely. However, uncorroborated "bald assertions" of fact will likely not prevent summary judgment, unless those facts are not within the asserting party's knowledge or control and there is a real possibility that they will be discoverable as the trial proceeds: *Balfour v. Tarasenko*, 2016 BCCA 438 at para. 43.
- [28] The court may make inferences of fact based on other undisputed facts, provided those inferences are strongly supported by the undisputed facts: *Lameman* at para. 11.
- [29] The Bank argues that the notice of civil claim fails to plead material facts necessary to make out the elements of a defamation claim. In its alternative position, the Bank argues the claim has no prospect of success because, on its face, and with reference to the evidence and Ms. Martin's examination for discovery, the elements of the tort of defamation are not present. Thus, it says the claim is bound to fail.
- [30] The elements of the tort of defamation were summarized by Chief Justice McLachlin in *Grant v. Torstar Corp.*, 2009 SCC 61 as follows starting at para. 28:

28 A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff.

29 If the plaintiff proves the required elements, the onus then shifts to the defendant to advance a defence in order to escape liability.

[31] Dealing with the first and second element of defamation, as described in *Torstar*, the Bank argues that the notice of civil claim fails to plead words that are said to be defamatory. As the Bank points out, the only facts in the notice of civil claim pleaded in respect of the first element of the tort of defamation are as follows:

Plaintiff was informed by Tangerine customer service employees that her bank account is frozen because they claim that the fund of transfers are fraudulent.

[32] The Bank argues that, whether on the face of the notice of civil claim or inferred terms suggested by Ms. Martin's affidavit, the notice of civil claim fails to plead the elements of a defamation claim.

[33] The first element, as I have said, is the impugned words must be defamatory in the sense that they lower the plaintiff's reputation in the eyes of reasonable persons. The Bank argues that alleged defamatory words cannot be interpreted to impugn Ms. Martin's reputation in the eyes of a reasonable person as the impugned words merely state that the transaction is being investigated for fraud, not that Ms. Martin is responsible for that fraud.

[34] I agree with the Bank that the notice of civil claim as drafted does not adequately plead the first and second elements of defamation. The statement inferred from the notice of civil claim does not accuse Ms. Martin of committing the fraud. Rather, all that is communicated is that the Bank suspects or believes the transactions to be fraudulent. These statements do not impugn the good name of Ms. Martin but rather question those who were depositing the money into her account. Those words, therefore, do not convey a defamatory meaning in respect of Ms. Martin.

[35] Similarly, I find that the words as inferred in the pleadings do not refer to Ms. Martin as required by the second branch of the *Torstar* case; they refer to the transactions. And as I have just noted, these are transactions made by persons other than Ms. Martin who deposited the money into her account. The statements do not allege that Ms. Martin is the one committing the fraud. In my view, a reasonable person understanding the accusation made by the Bank would not consider Ms. Martin to be the fraudster, but rather a potential victim of fraud perpetrated by others who deposit the funds into her account with the direction to convert them into Bitcoin.

[36] In her affidavit #3, Ms. Martin provided some additional particulars of the alleged defamatory words. She states as follows (quoted as it appears in the affidavit):

3. The defamatory actions and words of tangerine banks accusation that "the two EE-transfers in my account on July 3, 2018, were fraudulent", were communicated through a phone call through their customer service line on July 4, 2018. It is in this phone call that I spoke to a man who identified himself as an investigator. He said he is investigating the fraudulent E-transfer in my account. He accused me of allowing fraudulent EE-transfers. The ongoing investigation is the reason access was denied according to this investigator.
- [37] In this passage, Ms. Martin introduces a new element to the alleged defamatory words by suggesting that the person who identified himself as an investigator specifically accused her of allowing fraudulent e-transfers. Assuming this allegation is true, it still does not satisfy me that the elements of the defamation are met because the statement was allegedly made to Ms. Martin and not to a third party.
- [38] This brings up the third element of the tort of defamation which is that the alleged defamatory statements must be communicated to and received by third party to attract liability. As mentioned, this need not be done in print form. Verbal communication is sufficient for the purpose of slander.
- [39] There is no allegation in the notice of civil claim or in Ms. Martin's affidavit that the Bank communicated the alleged defamatory statements to anyone other than Ms. Martin. Ms. Martin specifically acknowledged this in her examination for discovery.
- [40] However, Ms. Martin argues that she felt compelled to communicate the Bank's accusation to Global Capital Finance, whom she claims was her employer. She claims that she was fired because Global Capital Finance learned from her that the Bank had accused her of committing fraud.
- [41] Relying on *Pinkerton v. Victoria Saanich Canadian Dressage Owners and Riders Society*, 2020 BCSC 1838 at para. 50, the Bank argues a defendant is generally not held liable if their communications are made only to the plaintiff and it is the plaintiff who publishes the statements to the third person. Since it was Ms. Martin who communicated the Bank's allegedly defamatory statements to Global Capital, the Bank, it says, cannot be held liable under the third element of defamation.
- [42] While this is a correct statement of the law, it is also true that the defendant may be liable where the defendant knew or reasonably believed that the defamatory words would be communicated to a third party: see *Pinkerton* at para. 54.
- [43] Ms. Martin's argument is that she was compelled to tell her employer about the accusations. I infer from this that she alleges this communication was foreseeable to the Bank. (This is not stated in the notice of civil claim but Ms. Martin made the point in her notice of application and it would be a relatively simple amendment to add it to the notice of civil claim.)

- [44] In my view, however, this would, at best, only permit the notice of civil claim to potentially survive an application to strike under Rule 9-5. In my view, the claim would still be bound to fail under Rule 9-6 because the only communication that the Bank might reasonably anticipate Ms. Martin making to Global Capital Finance is the statement that the Bank believes the transactions may be fraudulent. The Bank would not reasonably anticipate that Ms. Martin would communicate to her employer that the investigator had accused her of allowing fraudulent transactions to occur if in fact that statement had been made. In other words, it is not foreseeable that Ms. Martin would communicate those specific words to her alleged employer or anyone else.
- [45] Further, since the alleged defamatory statements relate to the nature of the transaction rather than to Ms. Martin herself, communicating those statements to others who were involved in the transactions only alerts those persons of the Bank's belief that the transactions are fraudulent. That implicates those persons involved in the transactions and not Ms. Martin. Global Capital Finance already knew Ms. Martin was involved in the transaction and knew the nature of them. There is nothing in the alleged defamatory statements that suggest Ms. Martin was doing something that Global Capital Finance was not already involved in or aware of.
- [46] Global Capital Finance's opinion of Ms. Martin would therefore be unchanged by learning that the Bank believed the transactions were fraudulent. Thus, even if it was foreseeable to the Bank that Ms. Martin would communicate to Global Capital Finance that it believed the transactions were fraudulent, this would have no effect on how the Global Capital Finance might view Ms. Martin. Receiving the information could not lower Ms. Martin's reputation in the mind of Global Capital Finance.
- [47] Therefore, I find Ms. Martin's claim to defamation in this respect is bound to fail. I find that there is no arguable case that communicating the Bank's opinion of the transactions to Global Capital Finance could have caused it to think any less of Ms. Martin or that Global Capital Finance would reasonably be expected to think any less of Ms. Martin by receiving this communication.
- [48] Ms. Martin also claims that her discussions about the alleged defamatory statement with the Bank's customer service representative constitutes a publication of the defamation that the Bank ought to have anticipated. However, communicating with the Bank's customer service representatives is simply discussing the statements with the representatives of the Bank itself. I find there is no arguable case that this would constitute a publication to a third party as contemplated by Torstar.
- [49] Regardless, there is no allegation that Ms. Martin suffered any loss as a result of the customer service representatives of the Bank learning of the statement from Ms. Martin. Her claim is focussed on the damages that flowed from Global Capital Finance made aware of the allegations.

- [50] In my view, the plaintiff's claim does not disclose a genuine issue for trial. As I have just described, the three essential elements of the tort of defamation have not been pleaded and I find there is no arguable case that they can be made out in any event. In this respect, Ms. Martin's claim is bound to fail.
- [51] As I have noted earlier, when a defendant applies to dismiss an action under Rule 9-6(4), it is incumbent on each party to "put its best foot forward" by presenting evidence that the other party's claim is factually without merit: *Lameman* at para. 11. The evidence in this case, which includes the affidavit evidence of Ms. Martin and the examination for discovery transcripts, and the various arguments Ms. Martin has made in court (including before this Court) satisfy me that Ms. Martin's claim fails to meet the three elements of defamation as set out in *Torstar* and the claim is bound to fail.

Discretion to Amend

- [52] In view of this conclusion, I will now consider whether I should exercise my discretion to permit Ms. Martin to amend her notice of civil claim to plead a viable cause of action.
- [53] Whether to grant leave to amend in these circumstances is a discretionary decision. In *Kindylides v. Does*, 2020 BCCA 330 at para. 23, the Court of Appeal noted that this exercise of discretion may require consideration of factors such as the degree to which the pleadings are deficient, the extent to which the deficiencies may be addressed by an obvious straightforward amendment, the apparent merit of the claim that may be made out with an amendment, and the prejudice that may be incurred by dismissing the claim.
- [54] In my view, this is not a case where leave to amend the notice of civil claim should be granted or where it would otherwise save Ms. Martin's claim. The deficiency in her claim is not simply a matter of the pleadings and not one that is curable through an "obvious or straightforward amendment." The evidence in this application and Ms. Martin's submissions, taking them at their highest, satisfy me that the alleged statements do not have a defamatory meaning.
- [55] To the extent that they do, and here I refer specifically to the alleged statement of the investigator that he believed Ms. Martin permitted fraudulent transactions to occur in her account, the Bank would not reasonably anticipate Ms. Martin to communicate that with a third party.
- [56] In short, the evidence demonstrates that any allegedly defamatory words were not communicated to any third party by the Bank. Nor could the Bank have reasonably expected them to be so communicated. As I have said, the parties must put their best foot forward on the application for summary judgment and in my respectful view the best case Ms. Martin can put forward is bound to fail. An amendment to the pleadings cannot cure that defect.
- [57] I, therefore, exercise my discretion not to permit an amendment to the notice of civil claim.

Conclusion

[58] The plaintiff's claim fails to disclose a genuine issue for trial and is bound to fail. I, therefore, dismiss the plaintiff's claim pursuant to Rule 9-6.

[59] It follows from this that I would also dismiss Ms. Martin's application for a summary determination of her claim.

[60] The defendant Bank is entitled to its costs for this action at scale B.

"Kirchner J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/25/2021BCSC2545.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/martin-v-tangerine-bank-2021>

Prepared on 26 October 2026 · Esheria