

CANADA / JUDGMENT

Masjoody v. Pahlavi

2024 BCSC 2066

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2066 Masjoody v. Pahlavi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Masjoody v. Pahlavi,

2024 BCSC 2066

Date: 20241022

Docket: S240157

Registry: Vancouver

Between:

Masood Masjoody

Plaintiff

And

Reza Pahlavi, X Corporation, John Doe 1, John Doe 2, John Doe 3,

John Doe 4, John Doe 5, John Doe 6, John Doe 7, John Doe 8, John Doe 9, John Doe 10, John Doe 11, Arash Kamancheh, Maryam Lagertha,

Sedigheh Minachi, Azar Khorramshahi

Defendants

Before: The Honourable Justice J. Hughes

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

M. Masjoody

Counsel for the Defendants, Arash Kamancheh, Maryam Lagertha, and Sedigheh Minachi:

D. Reid

Counsel for the Defendant, Azar Khorramshahi:

R.N. Beckmann

No other appearances

Place and Date of Hearing:

Vancouver, B.C.

October 15, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 22, 2024

- [1] THE COURT: This is an application by the defendants, Arash Kamancheh, Maryam Lagertha, Sedigheh Minachi, and Azar Khorramshahi (the "applicant defendants"), seeking to have the plaintiff's amended notice of civil claim struck out in its entirety without leave to amend, pursuant to Rule 9-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules].
- [2] If leave to amend is granted, the applicant defendants seek, in the alternative, an order that the action be stayed pending the plaintiff posting security for costs, and orders that if he does not do so, the applicant defendants will be at liberty to apply for a dismissal of his claim against them.

Background

- [3] Dr. Masjoody holds a PhD in mathematics and was previously employed as a sessional instructor in the Department of Mathematics at Simon Fraser University ("SFU"). He describes himself as a "veteran pro-democracy activist and dissident of the Islamic regime ruling Iran". Since 2019, Dr. Masjoody has been principally focused on identifying and exposing agents and enablers of the Islamic regime acting in Canada.
- [4] In 2019, the plaintiff published a report that he says disclosed extensive engagement with the Iranian regime by SFU. He asserts that following publication of his report, SFU administration started a widespread campaign against him.

- [5] Dr. Masjoody's employment with SFU ended in April of 2020. Shortly thereafter, he brought an action against SFU and his former colleague, Amélie Trotignon, seeking significant damages for defamation and "conspiracy to defamation": see e.g. *Masjoody v. Trotignon*, 2021 BCSC 1502 at para. 3 [Trotignon].
- [6] Dr. Masjoody's action against SFU and Ms. Trotignon was dismissed on the basis that the Court lacked subject matter jurisdiction on account of the issues raised falling under a collective agreement: *Trotignon* at para. 90.
- [7] Dr. Masjoody's appeal of the decision striking his claim was unsuccessful: 2022 BCCA 1345. He also brought a further appeal which was dismissed as moot: 2023 BCCA 220.
- [8] Dr. Masjoody pursued further unsuccessful applications to have a justice of this Court recuse herself and for an order that multiple justices of the Court of Appeal be precluded from exercising their powers on the basis of bias: see *Masjoody v. Trotignon*, 2023 BCSC 2224 and *Masjoody v. Trotignon*, 2024 BCCA 22.
- [9] In September 2021, the Burnaby Beacon newspaper published an article about Dr. Masjoody. In response, in May of 2022, Dr. Masjoody sued the Burnaby Beacon in defamation. Those proceedings remain extant before this Court: see e.g. *Masjoody v. Burnaby Beacon*, 2022 BCSC 2485, and *Masjoody v. Burnaby Beacon*, 2023 BCSC 528.
- [10] Dr. Masjoody has also pursued complaints before the Canadian Judicial Council ("CJC") in relation to the proceedings that resulted in his claim against SFU and Ms. Trotignon being dismissed and the resulting appeals: see e.g. 2023 BCSC 2224 at paras. 17-19. The CJC ultimately determined his complaints did not warrant further consideration. Dr. Masjoody was unsuccessful on judicial review of the CJC's decision: *Masjoody v. Canada (Attorney General)*, 2024 FC 1349. He has since appealed that decision to the Federal Court of Appeal.
- [11] Turning to this proceeding, the allegations raised are similar in nature to those in *Trotignon* and the *Burnaby Beacon* matters, in that they involve allegations of defamation and conspiracy brought by Dr. Masjoody against the defendants, who he alleges have made defamatory publications about him. In short, Dr. Masjoody claims that the individual defendants conspired to carry out defamatory cyber attacks against him, accusing him of being an agent of the Iranian regime, among other things.
- [12] Dr. Masjoody pleads that the defendants have sustained a pattern of viciously designing and fabricating a vilification campaign against him, predominantly by way of posting and reposting on X, formerly Twitter.
- [13] The initial notice of civil claim in this action was filed in January of 2024, and advanced claims in defamation and conspiracy. The relief sought by the plaintiff is a permanent injunction restraining the defendants from publishing slanderous or libelous statements about him, and general, special, aggravated, and punitive damages totalling \$50 million.

- [14] In March 2024, the applicant defendants filed their responses to civil claim, taking the position that the notice of civil claim was non-compliant with the Rules, that it failed to provide sufficient particulars of the claim advanced and was prolix and confusing. The applicant defendants also advised the plaintiff that they would be applying to strike the claim and seeking an order for security for costs.
- [15] A few days later, the plaintiff filed a reply. The applicant defendants again wrote to him and reiterated their position that the notice of civil claim was deficient. They also noted that the plaintiff appeared to be posting his pleadings online and, among other things, that they may rely on his conduct in this regard in relation to costs.
- [16] The plaintiff filed an amended notice of civil claim which is the subject of this application, on March 22, 2024. The amended notice of civil claim attempts to address some of the deficiencies raised by the applicant defendants. Notably, it now purports to plead the precise words that are alleged to be defamatory. However, the manner in which this was done and the additional amendments made have, in the applicant defendants' submission, resulted in the pleading being prolix, confusing, and ultimately non-compliant with the Rules.

Issues

- [17] There are two issues raised by the application before me: first, should the amended notice of civil claim be struck with or without leave under Rule 9-5(1) of the Rules; and second, if leave to amend is granted, should the plaintiff be required to post security for costs?

Issue #1 - Should the amended notice of civil claim be struck under Rule 9-5(1)?

- [18] Pursuant to Rule 3-1(2), a notice of civil claim must, among other things, set out: (a) a concise statement of the material facts giving rise to the claim; (b) the relief sought by the plaintiff against each named defendant; and (c) a concise summary of the legal basis for the relief sought.
- [19] The requirement for pleadings promotes sufficiency and fairness, and enables the defendant to know the claim that must be met: that is *Sahyoun v. Ho*, 2013 BCSC 1143 at para. 18.
- [20] To properly serve their purpose of defining the issues of fact and law to be decided by the court, pleadings must contain a concise statement of material facts giving rise to the claim or defence. The requirement that the statement of material facts be concise means that it must include everything that is necessary, but nothing more: *Lu v. Shen*, 2020 BCSC 490 at para. 46, *aff'd* 2021 BCCA 95. Pleadings are not designed to tell a story and should not include unnecessary narrative: *Mercantile Office Systems Private Ltd. v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at para. 44.

- [21] A notice of civil claim must also comply with Rule 3-7: Rule 3-1(2)(g). Rule 3-7(1) provides that a pleading must not contain the evidence by which the facts alleged in it are to be proved. The rule against pleading evidence is aimed at avoiding the recital of a catalogue of evidence which tends to obfuscate the actual factual allegations being put forward: B.C. (Director of Civil Forfeiture) v. Lam, 2023 BCSC 159 at para. 55.
- [22] These requirements are necessary to ensure that a notice of civil claim serves the ultimate function of pleadings, which is to clearly define the issues of fact and law to be determined by the court, as set out above. In order to do so, the material facts relied on in support of each cause of action must be stated with certainty and precision, in their natural order, to disclose the causes of action being advanced: Sahyoun at para. 16.
- [23] A pleading may be struck under Rule 9-5(1), which provides as follows:

Scandalous, frivolous or vexatious matters

- (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,
 - (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.

- [24] The various subsections of Rule 9-5(1) may be applied together in the case of pleadings "so overwhelmed with difficulty that it is simply not possible to fully identify all of the specific inadequacies that exist, or to categorize those difficulties into the specific subparagraphs of R. 9-5(1)": Simon v. Canada (Attorney General), 2017 BCSC 1438 at para. 53, citing Sahyoun (Committee of) v. Ho, 2015 BCSC 392 at para. 64, aff'd 2017 BCCA 96.
- [25] The applicant defendants rely on Rule 9-5(1) generally, but emphasized subsections (a) through (c) in oral argument, taking issue with the pleadings of defamation and civil conspiracy, and asserting that the amended notice of civil claim is unnecessary, scandalous, frivolous, vexatious, and embarrassing.

Rule 9-5(1)(a) - Does the amended notice of civil claim disclose a reasonable claim?

- [26] Rule 9-5(1)(a) provides a pleading, petition, or other document may be struck on the ground that it discloses no reasonable claim or defence, as the case may be.

- [27] The purpose of Rule 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: *Gong v. O'Neill*, 2022 BCSC 2119 at para. 64.
- [28] On a motion to strike for not disclosing a reasonable cause of action under Rule 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, and *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465 at para. 21 [FORCOMP].
- [29] I am to read the amended notice of civil claim generously and to accommodate inadequacies in form that are merely the result of drafting deficiencies: FORCOMP at para. 22. 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: *Gong* at para. 63, citing *Young v. Borzoni et al*, 2007 BCCA 16, at paras. 25-31; *McDaniel v. McDaniel*, 2009 BCCA 53 at para. 22. I am not required to assume as true wide-sweeping inflammatory allegations of criminal conduct against defendants, and the court is entitled to subject such allegations to skeptical analysis and not to assume they are true: *Gong* at para. 65.
- [30] The applicant defendants assert that the amended notice of civil claim purported to plead claims unknown in law including, for example, inciting defamation, inciting hatred, and wilfully prompting hatred: see e.g. the amended notice of civil claim at para. 24. In response, the plaintiff clarified in oral submissions that he is not seeking to advance any such claims. The only claims he intends to advance are in defamation and civil conspiracy. The applicant defendants accept that there are "elements of" a defamation claim in the amended notice of civil claim.
- [31] Assuming the facts pleaded which are capable of proof--those which are not based purely on assumption or speculation--to be true, and construing the amended notice of civil claim generously as required, I am satisfied that the amended notice of civil claim discloses reasonable claims in defamation and civil conspiracy. Importantly, in this respect, the plaintiff has confirmed that he does not advance any other causes of action against the defendants in this action.
- [32] As to the various other assertions of unlawful conduct contained in the amended notice of civil claim--e.g. as set out in para. 76--the plaintiff asserts that these pleadings are intended to identify the unlawful means by which he asserts the defendants conspired against him. As he correctly notes, to claim unlawful means conspiracy at common law, he must plead that: (a), two or more parties acted in combination; (b), their conduct was unlawful; (c), their conduct was directed towards the plaintiff; (d), the parties should know that the injury to the

plaintiff was likely to result; and (e), their conduct caused injury to the plaintiff: *British Columbia v. McKinsey*, 2023 BCSC 1762 at para. 89.

- [33] That said, the amended notice of civil claim remains prolix and convoluted, and does not permit the defendants to have a clear understanding of the claims being advanced against them and the particular incidents of conduct on each of their parts that is alleged to give rise to those claims. Further rigour and particularity must be brought to the pleading in respect of the plaintiff's claims in both defamation and conspiracy.
- [34] First, where allegations of conspiracy are made, the plaintiff is required to plead with heightened precision and clarity, given that conspiracy is an intentional tort and a serious allegation. Lumping all of the defendants together into a general allegation of conspiracy, and bald or speculative conclusions are not sufficient to support a claim of conspiracy: *Gong* at para. 66. The amended notice of civil claim, as presently drafted, fails to meet this standard. Its prolixity, repetitiveness, and extensive pleading of the evidence rather than material facts renders it difficult to discern with any particularity which actions on the part of which defendants are alleged to constitute the conspiracy.
- [35] Second, I agree with the applicant defendants that the manner in which the plaintiff has attempted to plead his claim in defamation is also prolix and repetitive, to the point of being confusing, especially with respect to the significant amount of cross-referencing required to ascertain with precision what allegedly defamatory publications are alleged to have been made by which defendants, and what defamatory meaning is said to result from each publication.
- [36] In this respect, the amended notice of civil claim groups the allegedly defamatory publications into 16 different "sets", purports to provide "overviews" of each "set" (and in multiple instances, impermissibly pleads evidence rather than material facts in so doing). The specific contents of each "set"--i.e., the allegedly defamatory words--are then pleaded separately, as are approximately 108 different allegedly defamatory "stings", which the plaintiff says arise from the various permutations and combinations of the sets of publications.
- [37] Thus, while the amended notice of claim may well contain a viable pleading in defamation--something the applicant defendants appeared to concede in oral submissions--it does not do so in a manner that is compliant with the Rules. More importantly, I agree with the applicant defendants that the manner in which the amended notice of civil claim is currently framed does not enable them to know with the required precision the claims being advanced against each of them.

Rule 9-5(1)(b) and (c)

- [38] Rule 9-5(1)(b) provides that a pleading, petition, or other document may be struck on the ground that it is unnecessary, scandalous, frivolous, or vexatious.

- [39] 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 it would serve no useful purpose and would be a waste of the court's time and public resources: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 65 to 66; see also *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress* (1999), 36 C.P.C. (4th) 266, 1999 CanLII 5860 (B.C.S.C.) [Citizens].
- [40] Rule 9-5(1)(c) in turn provides for pleadings that may prejudice, embarrass, or delay the fair trial or hearing of the proceeding to be struck.
- [41] Embarrassing pleadings are those that are so irrelevant that to allow them to stand would involve useless expense and would prejudice the trial of the action by involving the parties in a dispute that is tangential to the main claim: *Dempsey v. Envision Credit Union*, 2006 BCSC 750 at para. 86, citing *Keddie v. Dumas Hotels Ltd.* (1985), 62 B.C.L.R. 145, 1985 CanLII 417 (C.A.); see also *Citizens* at para. 47.
- [42] Irrelevancy and embarrassment are both established when pleadings are so confusing that it is difficult to understand what is being pleaded. Put differently, an "embarrassing" and "scandalous" pleading is one that is so irrelevant that it will involve the parties in useless expense and will prejudice the trial of the action by involving them in a dispute apart from the issues: *Citizens* at para. 47.
- [43] The applicant defendants assert that, construed as a whole, the amended notice of civil claim is unnecessary, scandalous, frivolous, or vexatious, because the plaintiff pleads evidence, makes inappropriate commentary on the merits of the case, and casts aspersions on the character of the defendants and other non-parties. I agree.
- [44] The amended notice of civil claim is also prolix and confusing. It runs 38 pages of narrative, with some paragraphs occupying a page or more (see, e.g., paras. 34, 38, 39, and 51) and appends as "exhibits" 25 pages of social media postings, all of which appear to be in Persian. As noted above, this makes it difficult to discern with any particularity the specific allegations of allegedly defamatory publications and unlawful acts being advanced against the defendants.
- [45] In addition, many of the paragraphs of the amended notice of civil claim contain assertions that are so irrelevant to the matters in issue and which cannot--even on a generous interpretation--be construed as material facts pleaded in support of the plaintiff's causes of action in defamation or conspiracy. I set out by way of but a few examples.
- a) First, at para. 1, the plaintiff pleads that he has "exposed the past and ongoing engagements of the [Islamic Republic of Iran]'s top agent in Canada Akbar Manoussi, with the Federal Government, including several influential members of the Cabinet and Prime Minister Justin Trudeau, as amounting to foreign influence in favour of the [Islamic Republic of Iran] and Islamic terrorist groups such as Hamas (e.g., by Manoussi's influencing Canada's recent vote at the UN in favour of Hamas terrorists) and the IRGC, and election interference in

favour of the Liberal Party of Canada.";

- b) At para. 2, with reference to separate litigation, he pleads that "Following the publication of my report, the SFU administration started a widespread conspiracy campaign against me and furthered that campaign by way of sexual harassment and defamation ";
 - c) At para. 3, he pleads that "In July 2021, the defendants in the SFU Action begged the Court in their application heard by [Justice] Fitzpatrick . . . of the Court to strike the claims against them because of the plaintiff's cultural and political views' being inconsistent with "left-wing politics", because the plaintiff's "professing admiration for [Dr.] Jordan Peterson, [President] Donald Trump, [Mr.] Tucker Carlson, [the late] Rush Limbaugh", and because of the plaintiff's "having difficulty with [L]iberalism, [F]eminism, and affiliates or supporters of the [Regime].";
 - d) At para. 24, where he pleads that " some examples of unlawful actions besides defamation include death threats, disseminating profanities, disseminating sexual and other slurs, and incitement to defamation and violence."; and
 - e) And para. 67, where he pleads that the defendant Sedigheh Minachi played a "pivotal role in devising the original narratives fueling the defendants' coordinated vilification campaign against the plaintiff" and that she was assigned this role "due to her inherently malevolent nature" and appears to be "consistently motivated by a pervasive sense of hatred across various social contexts."
- [46] Further examples of pleadings against the defendant Sedigheh Minachi that are not related to matters in issue in this proceeding are set out in paras. 68 to 70 of the amended notice of civil claim, where the plaintiff pleads that she
- a) "has demonstrated a troubling pattern of breaching the privacy and confidentiality of her Afghanistani patients" and "not only ridicules her Afghanistani clients' accents but also curses them for seemingly innocuous actions, such as having a religiously-themed ringtone on their phones.": at para. 68;
 - b) has a history of being involved in the kidnapping of a minor child and a vicious attack on a prominent Iranian freedom fighter, and has expressed pleasure on social media regarding that individual's subsequent murder: at para. 69; and
 - c) was disqualified from the Liberal Party of Canada because of her alleged "history of expressing hatred against Muslims" and that she "harbours disdain for anyone with whom she disagrees": at para. 70.
- [47] Considering the amended notice of civil claim as a whole, I find that it is both unnecessary and vexatious under subrule (b) and embarrassing under subrule (c), as those concepts are understood in the applicable jurisprudence outlined above.

Conclusion under Rule 9-5(1)

- [48] In the result, I find that the amended notice of civil claim in its present form does not comply with Rules 3-1(2) or 3-7(a), and also offends Rule 9-5(1)(b) and (c). I therefore conclude that it must be struck in its entirety.
- [49] However, given my conclusion that, on a generous construction, the amended notice of civil claim does advance causes of action in defamation and conspiracy, I find that it is appropriate in the circumstances to grant leave to further amend.
- [50] The plaintiff is granted leave to file a further amended notice of civil claim in accordance with these reasons and which complies with the requirements of the Rules. In particular, but without limitation, the amended pleading must:
- a) plead in a concise manner only those material facts necessary to prove the plaintiff's alleged claims in defamation against the defendants including, without limitation, which allegedly defamatory statements are alleged to have been made by each defendant;
 - b) plead in a concise manner only those material facts necessary to prove the plaintiff's alleged claims in conspiracy against the defendants including, without limitation, which unlawful acts are alleged to have been committed by each of the defendants in furtherance of the alleged civil conspiracy;
 - c) remove all duplication in respect of the claims pleaded so that they are pleaded in a clear and concise manner; and
 - d) remove all unnecessary background, narrative, commentary, argument, and allegations of fact that are irrelevant to the plaintiff's claim against these defendants in this action including, without limitation, those paragraphs specifically identified above.

Issue #2 - Is an order for security for costs warranted?

- [51] In the event that leave to amended is granted, the applicant defendants seek orders requiring the plaintiff to post security for costs prior to filing a further amended notice of civil claim. The defendants Sedigheh Minachi, Arash Kamancheh, and Maryam Lagertha seek \$5,000 in security, and the defendant Azar Khorramshahi seeks \$2,000.
- [52] Orders for security for costs are intended to protect the defendant from the likelihood that, in the event of its success, it will be unable to recover its costs from the plaintiff: *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 273 at para. 18. Such orders are discretionary and made pursuant to the court's inherent jurisdiction: *Gichuru v. Purewal*, 2018 BCSC 2288 at para. 17.
- [53] Orders for security for costs are treated differently depending on whether they are being sought against a corporate or individual defendant. The power to order security for costs against an individual is to be exercised cautiously, sparingly, and only under special circumstances, sometimes described as egregious circumstances. In this context, special circumstances could arise if an impecunious plaintiff also has a weak case, has failed to pay

costs before, or refused to follow an order for payment of maintenance: *Meade v. Armstrong (City)*, 2011 BCCA 63, and *Han v. Cho*, 2008 BCSC 1229 at para. 27.

- [54] The approach for determining whether I should exercise my discretion to issue an order for security for costs is set out in *Parmar v. Timothy J. Huntsman Law Corporation*, 2018 BCSC 1151:
- [17] The threshold issue is whether the applicant has established, on a *prima facie* basis, that it will be unable to recover costs in the event of success: *Equustek Solutions Inc. v. Jack*, 2013 BCSC 2135 at paras. 26-27. If the application establishes that, the court then considers whether a plaintiff will be precluded from proceeding with the case if the order for security for costs is made.
- [18] Special and egregious circumstances do not always come into play. However, they must be established where there is evidence that the order would preclude access to the court but the court is considering making the order nonetheless: *Huang* at para. 21, citing *Fraser*.

[Emphasis in original.]

- [55] There is no direct evidence before me establishing the plaintiff's financial circumstances, i.e., whether he is impecunious, and correspondingly, that the defendants will be unable to recover their costs in the event of success. There is no evidence from either party establishing what other means, if any, the plaintiff may have to satisfy an eventual costs order if made against him.
- [56] That said, neither party appears to dispute the point. Both rely on the plaintiff having obtained orders for waiver of fees under Rule 20-5(1) on the basis that he receives assistance under the Employment and Assistance Act, S.B.C. 2002, c. 40, both in this proceeding and in at least one other action before this Court, as establishing that he is impecunious. The applicant defendants say this means they have met the threshold burden of establishing, on a *prima facie* basis, that they will be unable to recover costs in the event of success. The plaintiff says it demonstrates that he is unable to pay an order for security for costs, and therefore would be precluded from proceeding with the case if such an order were made.
- [57] Given the parties' positions, I am prepared to consider the application for security for costs on the basis that the threshold test has been met. However, in so doing, I make no determination as to whether, standing alone, a party having obtained an order under Rule 20-5 on the basis that they receive benefits under the Employment and Assistance Act, or the Employment and Assistance for Persons with Disabilities Act, S.B.C. 2002, c. 41, standing alone, satisfies the threshold inquiry as outlined in *Parmar*.
- [58] The court's power to order security for costs against an individual is to be exercised cautiously, sparingly, and only under special circumstances, as set out in the jurisprudence cited above. Such orders ought not to follow as a matter of course based solely on a waiver of fees having been obtained, particularly as orders under Rule 20-5 are often made by way of desk order on a limited record and without the more fulsome picture of the responding

party's financial circumstances that an application for an order for security for costs requires.

- [59] Regardless, assuming the applicant defendants have established a prima facie case that they will be unable to recover costs in the event of success, I am not satisfied that I ought to exercise my discretion in favour of requiring the plaintiff to post security. Some of the factors to be considered in this respect are set out in *Parmar* at para. 20, namely:
- a) the merits of the claim and strength of the defence;
 - b) the location of the plaintiff's residence and assets, if known; and
 - c) whether there is evidence the plaintiff might avoid his obligation to pay costs, such as evidence that the plaintiff has disobeyed court orders or disregarded financial obligations in the past.
- [60] The merits issue is approached cautiously. The court should avoid going into detail unless success or failure appears obvious: *Parmar* at para. 21. While the strength of the plaintiff's claim is questionable, failure is not, in my view, obvious. As to the remaining factors, the plaintiff is located within the jurisdiction, and there is no evidence that he has disobeyed court orders or disregarded financial obligations in the past so as to suggest he may avoid the obligation to pay costs if awarded against him.
- [61] It is also unclear what relation the amounts that the applicant defendants seek to have posted bear to the expected costs of this action. None of the applicant defendants provided a draft bill of costs which would have assisted the Court in assessing the amount of security to be posted, if warranted, contrary to the customary practice: see e.g. *Parmar* at para. 42.
- [62] The application for security for costs is in large part predicated on the plaintiff's past and ongoing conduct in this and other proceedings before the court which the applicant defendants characterize as vexatious. The applicant defendants point in this respect to the plaintiff having pursued a multitude of proceedings--many of which remain extant--alleging substantially the same allegations as in this proceeding and the *Trotignon* matter, together with subsequent appeals, judicial review proceedings, and more recently, contempt applications. They assert that Dr. Masjoody's conduct in other proceedings before this and other courts constitutes exceptional circumstances warranting an order for costs.
- [63] In support of this submission, the applicant defendants rely on *Gichuru* where an order for security for costs was made against Mr. Gichuru based largely on his conduct in other proceedings and in the proceeding before the Court. Mr. Gichuru had a 13-year history as a repeat litigant in the courts and before administrative tribunals, often unsuccessfully. He also had a demonstrated history of complying with the Rules only when it suited him and failing to pay costs orders made against him. Both this Court and the Court of Appeal had commented negatively on Mr. Gichuru's conduct, and a vexatious-litigant-type order had been made against him. His conduct was found to "lie well beyond the norm for civil litigation".

- [64] In ordering security to be posted, the Court in Gichuru found its prior comments and those of the Court of Appeal in relation to the need for a vexatious- litigant-type order to control Mr. Gichuru's conduct to be germane in its analysis of the special circumstances found to be present in that case: at para. 37. Ultimately, the Court concluded that Mr. Gichuru's "approach to the conduct of the litigation" weighed heavily in favour of an order for security of costs being made: at para. 39, see also para. 54.
- [65] In my view, while there are some concerning aspects of this case that are similar to Gichuru, the circumstances do not, as they presently stand, rise to the same level. In so concluding, I do not intend to condone in any respect the plaintiff's approach to litigation and what appear to be efforts to litigate, both in the courts and online via his website and social media. His conduct in that respect has been previously commented on in two prior decisions of this Court: see e.g. Masjoody v. Trotignon, 2021 BCSC 1502 at para. 80, and Masjoody v. Burnaby Beacon, 2022 BCSC 2485 at paras. 30-32.
- [66] That said, key factors that militate in favour of an order for security for costs in Gichuru are not present here. Most notably, in this respect, Mr. Gichuru was already subject to a vexatious-litigant-type order, had failed to pay numerous prior costs orders made against him, and his pattern of conduct was significantly more extensive, as were the concerns raised by the courts, than presently appears to be the case with respect to Dr. Masjoody.
- [67] More importantly, the purpose of an order for security for costs is to protect the defendant from potential inability to recover costs if successful at the end of the day. Such orders, especially when being sought against an individual, are to be made cautiously, sparingly, and only under special circumstances. They are not to be used in the manner the applicant defendants seek to do here, namely to address conduct that spans multiple different proceedings in courts. There are other means provided for in the Rules to address conduct of this nature, including, by way of example, orders for special costs or vexatious litigant orders, as was the case in Gichuru.
- [68] In my view, the defendants have not established sufficient egregious or special circumstances to warrant an order that security be posted prior to the plaintiff being permitted to file a further amended notice of civil claim. My conclusion in this respect is without prejudice to the defendants' ability to bring a fresh application for security for costs of this action following receipt of the further amended notice of civil claim contemplated in these reasons.

Conclusion

- [69] In the result, I conclude that the amended notice of civil claim, in its present form, offends Rules 3-1(2) and 3-7, and is struck in its entirety pursuant to Rule 9-1(5).

[70] However, I grant leave to the plaintiff to file a further amended notice of civil claim in accordance with these reasons. In doing so, I note that causes of action in the nature of defamation and conspiracy can be difficult to plead and prove. The plaintiff is accordingly encouraged to seek the assistance of counsel going forward.

[71] The application for security for costs is dismissed.

[72] Success on this application is divided. The applicant defendants were successful in their application to strike, but were unsuccessful in obtaining an order for security for costs. Accordingly, I order that the parties shall each bear their own costs of this application.

[73] Those conclude my reasons for judgment.

"Hughes J."

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