

CANADA / JUDGMENT

## Portnov v. Alexander Holburn + Lang LLP

2025 BCSC 388

COURT

Supreme Court of British Columbia

DECIDED

5 February 2025

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2025 BCSC 388 Portnov v. Alexander Holburn + Lang LLP

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Portnov v. Alexander Holburn + Lang LLP,

2025 BCSC 388

Date: 20250205

Docket: S242103

Registry: Vancouver

Between:

Abraham Portnov

Plaintiff

And

Alexander Holburn + Lang LLP and Melody Cheung

Defendants

Before: The Honourable Justice J. Hughes

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

A. Portnov

Counsel for the Defendants:

K.A. Murray

Place and Dates of Hearing:

Vancouver, B.C.

February 4-5, 2025

Place and Date of Judgment:

Vancouver, B.C.

## February 5, 2025

- [1] THE COURT: The defendants in this action, a law firm, Alexander Holburn + Lang LLP, and a lawyer, Melody Cheung, apply for an order striking the plaintiff, Abraham Portnov's, notice of civil claim without leave to amend, pursuant to Rule 9-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules].
- [2] This action arises in the context of an incident in September 2021. Mr. Portnov was walking on a sidewalk in the District of West Vancouver when he tripped and fell over some large tree branches and suffered injuries to his face and tooth.
- [3] This is the third legal proceeding arising out of that incident. In January 2022, the plaintiff first filed a claim against the District in the Provincial Court of British Columbia, Small Claims Division. The District denied liability for the incident. The plaintiff settled the small claims action for \$1,000 at a settlement conference on May 27, 2022.
- [4] On July 12, 2022, the plaintiff filed a claim against the District in this Court seeking to, inter alia, recover damages for the same September 2021 trip-and-fall incident (the "S225565 Action"). That claim was struck without leave to amend, and the action was dismissed in its entirety in November 2023: *Portnov v. District of West Vancouver* (27 November 2023), Vancouver S225565 (B.C.S.C.), at para. 11 [Portnov 2023 BCSC].
- [5] As noted above, the defendants in this proceeding are the lawyer and the law firm who represented the District in the small claims action that was settled and in the S225565 Action in this Court that was dismissed. The defendants have, at all times, acted only for the District in defending claims brought against it by the plaintiff.

## Background

- [6] The thrust of the plaintiff's claim in this claim is that the lawyer and law firm defendants perpetrated a fraud on the court and cheated the Court to obtain dismissal of his claim by Justice McDonald.
- [7] A review of the notice of civil claim in the S225565 Action shows that in that proceeding, the plaintiff alleged that the District fabricated certain work orders and that counsel knew those work orders were fabricated, but nonetheless provided them to the Court to perpetrate a

fraud on the court. As noted above, the notice of civil claim in the S225565 Action was filed on July 12, 2022. Two days later, on July 14, 2022, the plaintiff filed an application for judgment in that action seeking an order for damages and alleging, among other things, that the settlement in the small claims action was "fraudulent".

[8] That application was heard and dismissed as res judicata and an abuse of process on August 12, 2022: Portnov v. District of West Vancouver, 2022 BCSC 2411, at para. 15. In dismissing the plaintiff's application for judgment, Justice McDonald concluded as follows:

[8] On July 14, 2022, Mr. Portnov filed an application. He confirmed to me during submissions that he is seeking an order requiring the District to pay him damages for the injuries he sustained in the fall on September 18, 2021, and for the District's subsequent deceit and deception in relation to failing to disclose information about his claim.

...

[12] I understand that Mr. Portnov is unhappy with the settlement. After the settlement conference in Provincial Court, he read the work order and noticed that it includes the wrong address for where the tree branches were located. He suspects the District cut the tree branches and left them on the sidewalk. He is unhappy that the District did not give him more information about how the branches came to be placed on the sidewalk. Mr. Portnov is also unhappy that he has not been able to fix his tooth, and he faces a large bill for dental work in circumstances where he believes the District has admitted it was at fault.

[13] However, I am unable to conclude that the settlement reached on May 27, 2022, was fraudulent, as Mr. Portnov alleges. Mr. Portnov had the work order from the District prior to the settlement conference but he submits that he did not read it carefully until after he settled.

[14] While I understand that Mr. Portnov may not wish he had settled his Provincial Court action, he failed to show that the settlement was obtained through fraudulent actions, such as fraudulent misrepresentations by the District.

[15] In my view, when the parties entered into the settlement on May 27, 2022, the claim was settled by consent as if there had been a trial. As a result, Mr. Portnov's claim is res judicata. If I am incorrect to find that the claim is res judicata, then I find it is clearly an abuse of process since it raises the identical issues as those he raised in the Provincial Court action.

[emphasis added]

[9] No appeal of Justice McDonald's reasons was taken. However, the plaintiff continued to pursue the S225565 Action in this Court, including by seeking production of documents. His application in that respect was dismissed by Master Robertson (as she then was). The plaintiff appealed, and the District brought a cross-application for an order striking the claim. Those matters came on for hearing before Justice Tucker in November 2023, who struck the notice of civil claim without leave to amend and dismissed the action in its

entirety: Portnov 2023 BCSC, at para. 11.

- [10] The plaintiff sought leave to appeal Justice Tucker's decision. Leave was refused on the basis that the appeal had no merit and was bound to fail: Portnov v. West Vancouver (District), 2024 BCCA 79, at para. 41 [Portnov BCCA]. In refusing leave, the Court of Appeal found that "[i]t is clear that Mr. Portnov seeks to have this Court order the production of certain documents so that he can then re-litigate his claims against [the District] which would also include serious allegations of fraudulent conduct by it and its representatives, including its legal counsel": at para. 39.
- [11] It is clear that the plaintiff attempted to argue in the S225565 Action that the District perpetrated a fraud aided by counsel in obtaining judgment in its favour from Justice McDonald. Having been unsuccessful in that regard, he is now attempting to make largely the same allegations against the District's counsel in this action.
- [12] The notice of civil claim in this action comprises approximately 20 pages of single-spaced text that is replete with incomprehensible allegations of fraud and other improper conduct by the defendants in the representation of the District in prior proceedings. The plaintiff is also seeking to challenge Justice McDonald's decision in the S225565 Action. The first paragraph of the notice of civil claim is illustrative in this respect:

The complaint is against the Defendant's Law Firm Alexander Holburn+lang LLP and against the lawyer Mrs. Cheung for cheating the Supreme Court's Justice Mrs. McDonald to dismiss my claim. The Defendant's, West Vancouver District and the Law Firm's illegal actions managed to cheat the trusted Justice McDonald to make mistaken decision in my former case in this Court.

- [13] The plaintiff goes on to make broad allegations to the effect that a work order related to removal of the fallen branches was falsified by the District, and that the defendants, acting in their capacity as counsel for the District, perpetrated the fraud by attempting to hide the work order from the Court and "acted with bad faith, to write fraudulent, illegal and offensive allegations, and also to falsify other original documents": notice of civil claim at page 2. The plaintiff repeats bald assertions of fraud and other misconduct throughout the notice of civil claim, with the following excerpts being demonstrative:
- a) "Alexander Holburn + Lang LLP staff illegally twice managed to change the ordered by Court courtroom," with the result being that Justice McDonald did not have the plaintiff's binder and "had to copy some allegations from the Defendant's documents": at pages 2-3;
  - b) The defendants "managed to dupe the trusting Justice McDonald" and the lawyer "acted with bad faith, to write fraudulent, illegal and offensive allegations": at page 3;
  - c) In the absence of "useful way to defend", the "lawyer tries to attack, using illegal tricks, deception, forged documents, offensive and scandalous allegations": at page 8;
  - d) "[T]he defendants' greed used fraud and illegal actions to cheat the judges for making them mistaken opinions for dismissing the claims and for taking the profit": at page 9; and

e) "forged original document and filed them with the Court": at page 9.

[14] The relief sought in the notice of civil claim appears to sound in monetary damages. The plaintiff states in the "Relief Sought" section that:

... But for the dishonest defend, scandalous and offensive D's allegations, their illegal actions to get profit I then asked \$80K. As for my interest, not only for public interest, I have been asking for a jury trial, if any, the judges will be able to determine the sought, if any. Therefore I am leaving the sum unmarked.

[15] At its core, the notice of civil claim takes issue with alleged conduct of the defendants in the course of defending the District in the plaintiff's claims against it, raising many of the same allegations that were before the Court in the S225565 Action. As best as I can deduce from the notice of civil claim, the application record and the plaintiff's oral submissions on this application, the plaintiff blames the District's counsel in the S225565 Action, who are the defendants in this action, for Justice McDonald dismissing his application for judgment, because he believes that they forged documents and had the courtroom for the hearing changed by consequence of which his binder containing the "real" documents was not before the Court.

[16] The plaintiff articulated essentially the same position in an August 14, 2024 ex parte application that he brought in this action, seeking to have the defendants' application to strike--the application that is presently before me--dismissed. The factual basis asserted in his notice of application was:

The filed with the Supreme Court documents in the S-225565 showed that Defendants use for defend the fraudulent allegations and affidavits, forged some documents, avoided the factual documents, have not (wasn't able) filed the supported documents. From very beginning the Defendants managed that my binders with real documents were not be delivered to the heard judges. During the August 12, 2022 hearing the Defendants cheated the Justice for making the non-factual, controversial and illogical opinion.

[17] This interpretation of the notice of civil claim is consistent with the plaintiff's application response on this application in which he states that:

Plaintiff opposes the Defendants' Order Sought. The documents of proceeding clearly show that Defendants cheated Justice McDonald and after the hearing tried to strike out my claim, hiding the Defendants' fraud, misrepresentations, forged documents, false affidavits, illegal actions. Then Defendants explained to next Justice that Justice McDonald decided the facts and dismissed my claim for res judicata and abuse the process.

Havin the decisions, grounding on Defendants' this short explanation and on illegal actions, defendants claimed costs.

No one judge has time to read the documents in Defendants' binder, but my binder didn't transfer to Justice for Defendants' illegal actions. Thus, Justice, believing Defendants' documents, tricks and short explanation were also cheated.

[18] It is clear from both the notice of civil claim and the positions taken in various other documents filed with the Court that the basis for the plaintiff's claim in this action is the defendants' conduct as counsel for the District, predominantly in the S225565 Action, which conduct he believes "cheated" Justice McDonald into dismissing his claim for damages in that action. The bulk of the plaintiff's submissions on this application were aimed at attacking that judgment and attempting to prove that it was incorrect and obtained by fraud. The plaintiff was unsuccessful in pursuing those assertions of fraud against the District directly in the S225565 Action, and now is attempting to advance essentially the same allegations against counsel for the District in this action.

## Issue

[19] The sole issue before me on this application is whether the notice of civil claim should be struck out and dismissed under Rule 9-5(1) of the Rules.

## Law

- [20] Under 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. These requirements promote sufficiency and fairness and enable the defendant to know the claim that must be met: *Sahyoun v. Ho*, 2013 BCSC 1143, at para. 18.
- [21] 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 Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362, at para. 44.
- [22] A notice of civil claim must also comply with Rule 3-7, including Rule 3-7(1), which provides that pleadings must not contain the evidence by which the facts alleged in it are to be proved. This rule is aimed at avoiding the recital of a catalogue of evidence which tends to obfuscate the actual factual allegations being put forward: *British Columbia (Director of Civil Forfeiture) v. Lam*, 2023 BCSC 159, at para. 55.

[23] In addition, Rule 3-7(18) requires that full particulars, with dates and items if applicable, be stated where the pleading advances claims for misrepresentation, fraud, breach of trust, wilful default or undue influence. Mr. Portnov alleges that the defendants committed fraud. Accordingly, all material facts related to the fraud must be scrupulously pleaded in the notice of civil claim: *Owimar v. Stewart*, 2019 BCSC 1198, at para. 14, citing *Grewal v. Sandhu*, 2012 BCCA 26, at para. 19, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 120.

[24] The defendants apply to strike Mr. Portnov's claim under Rule 9-5(1), which provides that:

### **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.

[25] 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)": *Masjoody v Pahlavi*, 2024 BCSC 2066, at para. 24; *Simon v. Canada (Attorney General)*, 2017 BCSC 1438, at para. 53, citing *Sahyoun v. Ho*, at para. 64.

[26] Evidence is not admissible on an application under Rule 9-5(1)(a), but may be admissible in respect of an application under subrules 9-5(1)(b), (c) and (d): *Owimar* at para. 17.

### **Analysis**

[27] The defendants rely on Rule 9-5(1) as a whole and say that Mr. Portnov's claim can and ought to be struck under any and all of the subrules (a) through (d).

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

[28] Rule 9-5(1)(a) provides that 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.

- [29] 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.
- [30] 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 v. British Columbia*, 2021 BCCA 465, at para. 21 [FORCOMP].
- [31] I am to read the 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 incapable of proof, they must 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.
- [32] The requirement to assume the facts pleaded to be true does not prevent skeptical analysis in the case of purely speculative allegations or assumptions: *Owimar* at para. 20. Indeed, such assertions may demonstrate that it is plain and obvious that no cause of action is disclosed in the pleading: *Owimar* at para. 20.
- [33] Having carefully reviewed the notice of civil claim and granting the plaintiff some latitude in respect of meeting the strict requirements for pleadings, I conclude that the notice of civil claim should be struck out pursuant to 9-5(1)(a).
- [34] First, the notice of civil claim does not comply in any meaningful respect with Rule 3-7. It does not contain a concise statement of material facts in support of a valid cause of action against the defendants. It fails to plead sufficient particulars for claims of misrepresentation or fraud as required by Rule 3-7(18), and pleads evidence to the point of excess.
- [35] Rather, the notice of civil claim is prolix, repetitive, lacking in coherence, and so fundamentally deficient that it is plain and obvious that it does not disclose a reasonable claim. The plaintiff's bald allegations of fraud and other misconduct are speculative allegations which lack the specificity and particularity required when fraud is alleged. The notice of civil claim is largely a stream of conscious narrative that is difficult to comprehend and fails to plead material facts that are capable of supporting a claim against the defendants.
- [36] Second, even construing the notice of civil claim generously and assuming the facts pleaded to be true, Mr. Portnov's claim is bound to fail because lawyers do not owe any duty of care to an opposing party in litigation. Allegations that counsel for an opposing party has misled or intentionally deceived the court, resulting in decisions or rulings unfavourable to the

plaintiff, do not found actionable breaches of any private duty owed to the plaintiff: ZF Farm Ltd. v. DLA Piper (Canada) LLP, 2024 BCSC 517, at para. 31, citing Pearlman v. Critchley, 2012 BCSC 1830, at para. 44. This is precisely the nature of the claim that the plaintiff seeks to advance against the defendants in this case.

- [37] Third, statements made by counsel in the course of judicial proceedings are made on an occasion of absolute privilege, which extends to pleadings, statements made in documents used in proceedings, and statements contained in affidavits: Wang v. Lee, 2021 BCSC 2028, at para. 43, citing Durkin v. Crease Harman LLP, 2020 BCSC 642, at para. 14. Yet again, to the extent the plaintiff's claim is predicated on allegations that counsel misled or "cheated" Justice McDonald in their role as counsel for the District in the S225565 Action, those statements are privileged and immune from suit.
- [38] As noted in Wang, a claim against an adverse party's lawyer based in communications or acts carried out by that lawyer in the course of fulfilling their duties as a zealous advocate for their client are protected, do not disclose a reasonable cause of action, and will be struck out as failing to disclose a cause of action: at para. 46.
- [39] In the result, I find it plain and obvious that the notice of civil claim does not disclose a reasonable claim against the defendants. Accordingly, the notice of civil claim is struck out under Rule 9-5(1)(a).

Rule 9-5(1)(b) and (c) - Is the notice of civil claim unnecessary, scandalous, frivolous or vexatious?

- [40] 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.
- [41] A claim which is so confusing that it is difficult to understand may be considered unnecessary, frivolous or vexatious: Owimar at para. 21. That is, in my view, an apt description of the notice of civil claim in this action.
- [42] The claim will also be unnecessary or vexatious if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: Grosz v. Jones, 2020 BCSC 1123, at para. 57. For the reasons set out above, the plaintiff's claim against the defendants for alleged conduct in defending their client, the District, in the small claims action and in the S225565 Action cannot succeed, and thus serves no useful purpose and will be a waste of judicial and the parties' resources.
- [43] Rule 9-5(1)(c) provides for pleadings that may prejudice, embarrass, or delay the fair trial or hearing of the proceeding to be struck. 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: Owimar at para. 22.

[44] The notice of civil claim in this case is so prolix, confusing and devoid of merit that I have no hesitation in concluding that it is unnecessary, scandalous, frivolous and vexatious as those terms are understood in the context of Rule 9-5(1)(b). Permitting the notice of civil claim to stand would also put the court and the parties, particularly the defendants, to useless time and expense such that it is also embarrassing under Rule 9-5(1)(c).

Rule 9-5(1)(d) - Is the notice of civil claim an abuse of process?

[45] The doctrine of abuse of process allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at para. 37. When determining whether the proceedings constitute an abuse of process, the court may consider whether its process is being used dishonestly or unfairly, or for some ulterior or improper purpose, and whether there have been multiple or successive related proceedings that are likely to cause vexation or oppression: *Young* at paras. 65-66.

[46] Bringing a series of successive related proceedings is an abuse of the court's process, even where the plaintiff sincerely believes that earlier decisions were wrong and that he has not been treated fairly: *Grosz* at para. 57, citing *Budgell v. British Columbia*, 2007 BCSC 991 at para. 28, *aff'd* 2008 BCCA 349.

[47] In my view, this action constitutes an abuse of process in multiple respects. First, even after affording the plaintiff some latitude in meeting requirements of a pleading due to the fact that he is self-represented, the notice of civil claim still fails to satisfy the function of pleadings at all and thus constitutes an abuse of process: *Owimar* at para. 23.

[48] Second, I find this action is an abuse of process because it seeks to relitigate issues that the plaintiff voluntarily settled in the small claims action and which were the subject of the S225565 Action that this Court has dismissed in its entirety. As the Court of Appeal noted in refusing leave to appeal Justice Tucker's order, the plaintiff made "allegations which included that the District was hiding documents and that its solicitor had engaged in fraudulent conduct including fraud on the Court" in the S225565 Action, and concluded that he was seeking to relitigate his claims against the District and advance "serious allegations of fraudulent conduct by it and its representatives, including its legal counsel" (emphasis added): *Portnov BCCA* at para. 12 and 39.

[49] Further, to the extent that the plaintiff now appears to be asking the Court to reconsider Justice McDonald's decision dismissing his application for judgment in the S225565 Action because he alleges that it was obtained by fraud, this also constitutes a collateral attack on that decision: *Toronto (City)* at para. 22; *Huang v. Silvercorp Metals Inc.*, 2016 BCSC 278, at para. 36. A judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it, yet that is expressly what the plaintiff is seeking to do by, in effect, seeking to have the Court reconsider Justice McDonald's decision in this proceeding despite having not appealed that decision in the S225565 Action.

- [50] Finally, I find that this proceeding is an abuse of process because the plaintiff is attempting to claim against opposing counsel in respect of their conduct in defending the District in the small claims action and the S225565 Action: ZF Farm Ltd. at para. 35. In *Holland v. Douglas*, 2010 BCSC 96, such conduct was described as "a wilful misuse or perversion of the court's process for a purpose extraneous or ulterior to that which the process was designed to serve": at para. 70.
- [51] Despite ample time and leeway afforded to the plaintiff in oral submissions on this application, the only reasonable inference to be drawn in the circumstances is that the plaintiff is making very serious allegations against officers of the court based on nothing more than speculation, potentially combined with a lack of understanding of the Rules and processes that govern proceedings before this Court. In this respect, Justice MacNaughton's comments in *ZF Farm Ltd.* are apposite:
- [46] As the Court of Appeal wrote in *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2015 BCCA 424 at para. 11, self-represented litigants have no licence to employ accusations of dishonesty as a feature of their rhetoric unless such accusations are firmly grounded in the evidence, are relevant to the proceedings, and are responsibly made. The court defined "responsibly" as meaning measured, careful, and faithful to the evidence. Self-represented litigants must understand that the court is not a free-fire zone where anything can be said regardless of the harm to others and their reputations.

## Conclusion

- [52] In conclusion, considering the notice of civil claim as a whole and applying the various subrules of Rule 9-5(1), both individually and collectively, I find that the notice of civil claim is and can be struck under each and all of those subsections. In this respect, it is akin to the circumstances contemplated in *Simon* where a pleading is so overwhelmed with difficulty that it is simply not possible to fully identify all of the specific inadequacies that exist or to categorize each of those difficulties into a specific subrule of Rule 9-5(1).
- [53] In the result, the notice of civil claim is struck under Rule 9-5(1) without leave to amend. Leave to amend is refused given the prolixity and speculative nature of the notice of civil claim and the complete lack of merit to the claim sought to be advanced against the defendants. The action is therefore dismissed.
- [54] The defendants are entitled to their costs of this application and of the action.

"Hughes J."

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