

CANADA / JUDGMENT

Prandi v. Mamdani

2023 BCSC 967

COURT

Supreme Court of British Columbia

DECIDED

6 June 2023

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2023 BCSC 967 Prandi v. Mamdani

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Prandi v. Mamdani,

2023 BCSC 967

Date: 20230606

Docket: E211620

Registry: Vancouver

Between:

Jessica Andrea Taylor Prandi

Claimant

And

Hanif Mamdani

Respondent

Before: The Honourable Justice Duncan

Reasons for Judgment

Counsel for the Claimant:

M. Vesely, K.C.

K. Coady

Counsel for the Non-party, Zahra Salisbury:

A. Cocks

V. Tortora

Place and Date of Hearing:

Vancouver, B.C.

April 27, 2023

Place and Date of Decision:

Vancouver, B.C.

June 5, 2023

Place and Date of Judgment:

Vancouver, B.C.

June 6, 2023

- [1] These reasons were prepared to be delivered orally; however, due to technological difficulties and time constraints, I provided the result orally and advised counsel they would receive the ruling in writing.
- [2] The claimant, Jessica Prandi, is involved in family litigation with the respondent, Hanif Mamdani. This application engages a non-party, Zahra Salisbury. Ms. Salisbury is Mr. Mamdani's former wife.
- [3] Ms. Prandi seeks a "Norwich order", named after *Norwich Pharmacal Co. v. Customs and Excise Commissioners*, [1973] 2 All E.R. 943 (H.L.), or an order pursuant to Rule 9-1(15) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR], to compel Ms. Salisbury to disclose anonymous Instagram messages she received that allegedly concern Ms. Prandi. Ms. Salisbury is opposed to the order.

The Circumstances

- [4] Ms. Prandi and Mr. Mamdani were married in 2017 and separated in 2021. They have one child. Mr. Mamdani and Ms. Salisbury had three children together: R, A and J.
- [5] Ms. Prandi has been close with R. Ms. Prandi deposes that R told her, in the fall of 2022, that her mother had been contacted by an anonymous Instagram user about Ms. Prandi. The anonymous messenger gave details to Ms. Salisbury about Ms. Prandi's personal life, including her recently deceased's father's birth name.

- [6] Ms. Prandi's father had disclosed to her and Mr. Mamdani his former identity, which was his birth name, and the fact that he changed his name years earlier due to risk from dangerous third parties. Ms. Prandi keeps her father's birth name a secret as she is concerned for her safety.
- [7] Ms. Prandi says R disclosed to her that the anonymous messenger said Ms. Prandi's father was a murderer; intimated that this might be hereditary; disparaged Ms. Prandi's use of nannies; alleged that Ms. Prandi used men for money and was a "con" operating under a fake name; used R as a prop to appear to be a good stepmother; and was a man-hating lesbian. R also told Ms. Prandi that she saw text messages between her mother (Ms. Salisbury) and her father (Mr. Mamdani) to the effect that these messages could be used against Ms. Prandi in the matrimonial action.
- [8] Ms. Prandi deposes that Mr. Mamdani is one of a very few people who knows her father's former identity and the only one of those people who is connected to Ms. Salisbury and her children, Ms. Prandi's stepchildren.
- [9] Ms. Prandi confronted Mr. Mamdani about the messages. He denied any involvement, but said he "couldn't help it" if she had "secret enemies" who disclosed the information to Ms. Salisbury. He told Ms. Prandi the messages were from an anonymous Instagram account. He theorized that a former friend of Ms. Prandi, who he named, was the author of the messages, but Ms. Prandi maintains that individual does not know her father's birth name.
- [10] As for R's allegation that Ms. Salisbury and Mr. Mamdani discussed using the messages in the litigation, Mr. Mamdani said he was just doing what the law allowed him to do.
- [11] In January 2023, R told Ms. Prandi that her mother read out the contents of the anonymous messages to a group of family members at Christmas dinner. R said that the contents of the messages would be very embarrassing to Ms. Prandi.
- [12] Ms. Prandi contacted the Vancouver Police Department ("VPD") and the RCMP in January 2023 because she was concerned about the dissemination of her father's birth name, in connection with her. A member of the VPD confirmed to Ms. Prandi that her father had a former identity and that disclosure of it could potentially put her and her child at risk. The VPD and the RCMP are apparently working on a risk assessment and have flagged Ms. Prandi and her address as an elevated risk in order to enhance her safety and the efficiency of an emergency response, if needed.
- [13] Mr. Mamdani was examined for discovery in January 2023. He said that Ms. Salisbury had reached out to him with a question about Ms. Prandi's father's birth name, which surprised him; she told him she had been contacted by "addie_bee" via Instagram, who sent Ms. Salisbury "a bunch of materials" including police documents concerning Ms. Prandi's father. The contents of the emails were derogatory towards Ms. Prandi. Mr. Mamdani denied writing them and does not know who wrote them.

- [14] Counsel for Mr. Mamdani provided counsel for the claimant with emails between Ms. Salisbury and Mr. Mamdani. They included a link to a news article concerning criminal proceedings involving Ms. Prandi's father.
- [15] Ms. Prandi maintains the allegations against her in the anonymous messages and emails, as they have been related to her by R or otherwise provided to her in the litigation, are completely untrue and defamatory. The statements are to the effect that she is a lesbian who uses men for money; demonizes Ms. Salisbury's son; is "horrid"; divides people and uses them for money; has no soul; and is a "con" operating under a fake name who may have inherited the traits of a murderer from her father.
- [16] Mr. Mamdani denies any discussion or intention to use the messages in the family law litigation with Ms. Prandi.
- [17] Ms. Prandi obtained an order against Meta Platforms Inc. ("Meta"), the parent company of Instagram, to produce information about the "addie_bee" account. The order was served on Meta's offices in California but no response has yet been received.
- [18] Ms. Salisbury deposes that she does not know the identity of the individual behind the addie_bee Instagram account.

The Applicant's Argument

- [19] Ms. Vesely, counsel for Ms. Prandi on this application, advances two legal routes for the order sought: 1. the SCFR; and 2. the inherent jurisdiction of the Court to grant an equitable bill of discovery.
- [20] I will start with the SCFR basis.
- [21] Ms. Prandi seeks the information allegedly in Ms. Salisbury's possession to provide to Dr. Peggy Koopman, who is preparing a s. 211 report for the family law proceedings. There are three reasons why the disclosure is not necessary for the preparation of the report.
- [22] First, Mr. Mamdani denies the discussion with Ms. Salisbury about using the messages and in any event, he says he is not going to use them. Second, there is no evidence Dr. Koopman has asked for or requires the messages. And third, Justice K. Loo ruled that no other documents regarding the identity of a person who has been posting messages about Ms. Prandi on the internet, if and when obtained, shall be provided to Dr. Koopman by either party: *Prandi v. Mamdani* (March 14, 2023), Supreme Court Registry No. E211620 (unreported) at para. 26.
- [23] I turn now to the alternative basis for a production order against Ms. Salisbury.
- [24] In *Cooper Creek Cedar Ltd. v. Ogden*, 2023 BCSC 465, Madam Justice Lyster summarized the jurisprudence concerning Norwich orders:

[27] As described by Abrioux J., as he then was, in *Equustek Solutions Inc. v. Jack*, 2014 BCSC 454 [Equustek] at para. 8, a Norwich order is a form of an equitable bill of discovery, which may be granted where the normal discovery process will not suffice. As such, it arises from the court's inherent jurisdiction. Further, at para. 10, Abrioux J. stated, citing *GEA Group AG v. Ventra Group Co.*, 2009 ONCA 619 [GEA] at para. 76, that:

[10] The principle underlying such equitable discovery is that:

... where discovery is absolutely necessary in order to enable a party to proceed with a bona fide claim, it is the duty of the Court to assist with the administration of justice by granting an order for discovery, unless some well-founded objection exists against the exercise of such jurisdiction.

[28] In *Rogers* [*Rogers Communications Inc. v. Voltage Pictures, LLC*, 2018 SCC 38] at para. 18, the Supreme Court of Canada endorsed the five-part test for obtaining a Norwich order articulated in *Alberta (Treasury Branches) v. Leahy*, 2000 ABQB 575 [Alberta Treasury] at para. 106, aff'd 2002 ABCA 101, leave to appeal ref'd [2002] S.C.C.A. No. 235. As summarized at para. 18 of *Rogers*, to obtain a Norwich order an applicant must establish:

1. that they have a bona fide claim against the unknown alleged wrongdoer;
2. that the person from whom the discovery is sought is in some way involved in the matter under dispute, beyond being an innocent bystander;
3. that the person from whom discovery is sought is the only practical source of information available;
4. that the person from whom discovery is sought be indemnified for expenses arising out of compliance with the discovery order in addition to their legal costs; and
5. that the public interests in favour of disclosure outweigh the legitimate privacy concerns.

[29] *Rogers* was decided in the context of alleged copyright infringement. In other cases, the fifth factor has been described differently. For example, in *Procon Mining and Tunnelling Ltd. v. McNeil et al.*, 2007 BCSC 454 [Procon] at para. 28, Madam Justice Boyd stated it as "[w]hether the interests of justice favour the obtaining of that disclosure". See also *Equustek* at para. 13. This broader formulation seems most apt to the application before me, and I adopt it.

[25] Mr. Vesely submits that the order against Ms. Salisbury should be granted because the Instagram messages are defamatory. In oral submissions, Mr. Vesely also referred to a potential tort action based in privacy legislation, although this submission was not well developed.

[26] Ms. Cocks, counsel for Ms. Salisbury, maintains that the order should not be granted. Ms. Prandi has not established a bona fide claim because all of the underlying information is double hearsay through her stepdaughter, R, concerning what Ms. Salisbury told her she learned from an anonymous Instagram account.

- [27] Ms. Cocks further submits that Ms. Salisbury is not the only practical source of the information sought. Ms. Prandi can seek an order against Mr. Mamdani, if she has grounds to demonstrate that he is in possession of the messages. But in any event, there is an outstanding order against Meta for the same information that Ms. Prandi seeks from Ms. Salisbury. Ms. Salisbury maintains she does not know the identity of the Instagram user, so there is no utility in making the order except to compel her to produce information that could be used against her in a defamation action. Ms. Cocks points out that there is no litigation privilege between Ms. Prandi and Ms. Salisbury governing the use of the messages, if I order them to be produced.
- [28] As Lyster J. noted in *Cooper Creek*, the Norwich orders are "not a dime a dozen remedies; they are rare and precious remedies", citing *Bergmanis v. Diamond & Diamond*, 2012 ONSC 5762 at para. 50. I am not satisfied one should be granted in these circumstances. Ms. Prandi has an outstanding order against Meta. Ipso facto, Ms. Salisbury is not the only practical source of information available.
- [29] This application appears to be nothing more than a fishing expedition in the context of acrimonious family litigation. The application is dismissed. Ms. Salisbury is entitled to her costs. If the parties cannot agree on costs, they may deal with the issue in writing.

"Duncan J."

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