

CANADA / JUDGMENT

Skylite Building Maintenance Ltd. v. British Columbia (Workers' Compensation Board)

2025 BCSC 384

COURT

Supreme Court of British Columbia

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2025 BCSC 384 Skylite Building Maintenance Ltd. v. British Columbia (Workers' Compensation Board)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Skylite Building Maintenance Ltd. v. British Columbia (Workers' Compensation Board),

2025 BCSC 384

Date: 20250306

Docket: S212184

Registry: Vancouver

Between:

Skylite Building Maintenance Ltd., Mohini Lata Singh and

Shawn Singh

Plaintiffs

And:

Workers' Compensation Board of British Columbia

Defendant

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiffs:

C. Parfitt

Counsel for the Defendant:

J. Goosen

R. Warner

Place and Date of Hearing:

Vancouver, B.C.

November 25, 2024

Place and Date of Judgment:

Vancouver, B.C.

March 6, 2025

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Introduction

- [1] The Workers' Compensation Board of British Columbia (the "Board") seeks an order striking the plaintiffs' claim against it pursuant to R. 9-5 of the Supreme Court Civil Rules. Alternatively, the Board says that the action should be dismissed pursuant to R. 9-6(5).
- [2] The Board primarily argues that the action should be struck on the basis that civil actions are barred pursuant to s. 332 of the Workers Compensation Act, R.S.B.C. 2019, c. 1 [Act].
- [3] The plaintiffs oppose both orders. They argue that it is not plain and obvious that the notice of civil claim filed February 23, 2021 ("NOCC") fails to disclose a reasonable cause of action. As such, it cannot be struck under R. 9-5(1). They also say that the NOCC sets out genuine issues for trial and cannot be dismissed under R. 9-6(5).
- [4] For the reasons that follow, I grant the application. The plaintiffs' claim against the Board is dismissed.

Background

- [5] The parties have been involved in protracted litigation. I will summarize the relevant factual background and then review of procedural history.

The Board

- [6] The Board is a tribunal independent of both workers and employers of the Province of British Columbia. A creature of statute, it was created by the Workers Compensation Act, R.S.B.C. 1996, c. 492 [Former Act], the precursor to the current Act. The Act came into force on April 6, 2020 and, pursuant to s. 316, continued the Board as a corporation.
- [7] The Board is charged with the administration of the Act and the Occupational Health and Safety Regulation, B.C. Reg. 296/97 [OHS Regulation]. Its mandate is to create and enforce an occupational health and safety ("OHS") regime in British Columbia for the protection of all British Columbian workers. The Board has exclusive jurisdiction to determine all matters arising under the OHS provisions of the Act: ss. 14(1), 17, 19.
- [8] All workers and employers are required to adhere to the Act and the OHS Regulation. Asbestos control is covered by s. 6.7 of the OHS Regulation and provides as follows:

Control of asbestos fibre

6.7 (1) The employer must ensure that all friable asbestos-containing materials in the workplace are controlled by removal, enclosure or encapsulation so as to prevent the release of airborne asbestos fibre.

- (2) The employer must not allow any work that would disturb asbestos-containing material unless necessary precautions have been taken to protect workers.
- [9] The Act provides the Board with various enforcement tools to ensure compliance with the OHS provisions under the Act and the OHS Regulation. These tools include the ability to apply to this Court for an injunction under s. 97 of the Act.
- [10] Section 332 of the Act insulates the Board from civil suit in respect of matters within, or believed to be within, its jurisdiction:

Protection for Board, directors, officers and employees

322 An action may not be maintained or brought against the Board or a director, officer or employee of the Board in respect of any act, omission or decision

- (a) that was within the jurisdiction of the Board, or
- (b) that the Board, director, officer or employee believed was within the jurisdiction of the Board.

The Plaintiffs

- [11] The Board has accepted the descriptions of the plaintiffs as described in the NOCC for the purposes of this application.
- [12] Skylite Building Maintenance Ltd. ("Skylite") is a closely held company duly incorporated pursuant to the Business Corporations Act, S.B.C. 2002, c. 57 [BCA]. Skylite was originally principally involved in building maintenance work. At some points in time, Skylite was also involved in the asbestos testing and abatement industry. Skylite was dissolved for failure to file on October 1, 2019.
- [13] The plaintiff, Mohini Lota Singh ("M.L. Singh"), is a businesswoman and a shareholder, director, and officer of Skylite. At some points in time, M.L. Singh was involved in the asbestos testing and abatement industry through Skylite, although she was not principally responsible for this work.
- [14] By a letter dated May 28, 2012, Skylite cancelled its account with the Board. Skylite informed the Board that it was bankrupt and had ceased operations. The plaintiffs assert that the letter was not signed by the plaintiff, M.L. Singh, nor authorized by her. Skylite did not apply for bankruptcy protection at any time.
- [15] The plaintiff, Shawn Singh ("S. Singh") is a hazardous materials inspector involved in the asbestos testing and abatement industry. At some points in time, he was employed as a hazardous materials inspector in the asbestos testing and abatement industry by Skylite. At other points he was engaged in the hazardous materials testing and abatement industry through another corporate entity, ESS Environmental Ltd., of which he is the principal.

Past Proceedings

- [16] On July 13, 2021, the Board filed a petition seeking orders under s. 198 of the Former Act (now s. 97 of the Act) against Skylite, M.L. Singh, and S. Singh, as well as a man named Manoj Singh ("M. Singh") and a company called Seattle Environmental Consulting Ltd. ("Seattle") (the "Petition Respondents"). I will refer to this petition as the "2012 Petition".
- [17] The 2012 Petition sought an order that each of the Petition Respondents:
- a. Shall not expose persons to asbestos or put persons at risk of exposure to asbestos, and be restrained from doing so; and,
 - b. Shall be restrained from breaching the provisions of the Workers Compensation Act and the provisions of the Occupational Health and Safety Regulations enacted under the Workers Compensation Act.
- [18] The 2012 Petition was supported by ten affidavits relating to sixteen worksites inspected over the previous three years.
- [19] The 2012 Petition alleged that the plaintiffs and others had been in consistent breach of the Former Act and the OHS Regulations. Specifically, it alleged that they had repeatedly exposed persons to asbestos or put persons at risk of exposure to asbestos despite numerous orders and penalties against them.
- [20] The 2012 Petition was set for hearing on September 14, 2012. At the hearing before Justice Russell, counsel for the Petition Respondents sought an adjournment. Based on its view of the gravity of the allegations set out in the 2012 Petition, the Court declined to grant an adjournment without making an interim order for all of the terms sought in the 2012 Petition.
- [21] The resulting order of Justice Russell forbid the Petition Respondents from:
- a) exposing persons to asbestos;
 - b) putting persons at risk of exposure to asbestos; and
 - c) breaching the provisions of the Former Act and the OHS Regulations.
- [22] The order was made on an interim basis without prejudice pending a further order of the court. I will refer to it as the "Interim Injunction".
- [23] After the Interim Injunction, the Board never brought the 2012 Petition on for hearing. The Board did, however, bring four applications for contempt against some of the Petition Respondents, namely S. Singh, Seattle, and M. Singh (the "Contempt Respondents"), on the basis of the Interim Injunction.

- [24] In April 2013, the Board brought an application against S. Singh and others for findings of contempt (the "First Contempt Application"). It was supported by the ten affidavits filed in support of the 2012 Petition, as well as eight additional affidavits.
- [25] The First Contempt Application proceeded for over six days in chambers and resulted in a preliminary ruling on procedural questions in a decision indexed at British Columbia (Workers' Compensation Board) v. Skylite Building Maintenance Ltd., 2013 BCSC 1666. It concluded with a consent order dated October 11, 2013, in which the Contempt Respondents agreed that they were in contempt of the 2012 Interim Order restraining them from breaching the Former Act and OHS Regulations.
- [26] To purge the contempt, S. Singh agreed to pay \$5,000 (the "Contempt Order"): see the unreported oral reasons of Justice Funt at Workers' Compensation Board v. Skylite et al., (October 11, 2013) Vancouver S125392 (B.C.S.C.). The sum was paid.
- [27] On September 29, 2015, the Board filed a second application against S. Singh that he and others were in contempt of court for disobeying the Interim Injunction (the "Second Contempt Application"). This application was brought before Justice Dley in chambers on November 4, 2015, who granted the Contempt Respondents application for an adjournment. A new hearing date was never set.
- [28] On November 23, 2015, the Board filed its third application for an order that the Contempt Respondents be found in contempt of disobeying the 2012 Interim Order (the "Third Contempt Application"). It was heard by Justice Macintosh in chambers from February 15 to 19, 2016.
- [29] On February 26, 2016, Macintosh J. dismissed the Third Contempt Application on the basis that the Board had not established beyond a reasonable doubt that the Interim Injunction had the required clarity to support a finding of contempt: see reasons indexed at Workers' Compensation Board v. Skylite Building Maintenance Ltd., 2016 BCSC 394 [Skylite #1].
- [30] On January 9, 2017, the Petition Respondents filed an amended response to the petition setting out their concerns about the proceedings to date in respect of the 2012 Petition.
- [31] In the meantime, the Board appealed Macintosh J.'s decision in the Third Contempt Application to the Court of Appeal.
- [32] On January 13, 2017, the Court of Appeal granted the appeal, finding that the Interim Injunction was not overbroad or unclear: see reasons indexed at Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd., 2017 BCCA 19 [Seattle #1]. The question of contempt was remitted back to this Court.
- [33] Eleven months later, on December 8, 2017, the Board filed its fourth application for orders that the Contempt Respondents be found in contempt of the Interim Injunction (the "Fourth Contempt Application"). This application asked the court to issue an injunction under s. 198(1)(e) of the Act against the Contempt Respondents. Section 198(1)(e) permits the court to

issue an order permanently enjoining a part from continuing to operate in a specific industry. The application in relation to S. Singh was supported by numerous affidavits relating to ten worksites inspected from 2013 onward.

- [34] On February 5, 2018, the Fourth Contempt Application came on for hearing. The Contempt Respondents applied for cross-examination on affidavits, for production of documents, and for an adjournment of the application. The Court granted the adjournment and ordered some further cross-examination on affidavits.
- [35] The Court also found that the Board was required to make its request for a permanent injunction under s. 198(1)(e) of the Act by petition, not by application. The Board amended the 2012 Petition to remove all the grounds cited and replace them with the grounds and affidavits set out in the Fourth Contempt Application (the "Amended Petition"). The Board also agreed to remove M.L. Singh as a petition respondent.
- [36] On February 20, 2018 the Board filed an amended petition (the "Amended Petition"). Skylite remained a petition respondent, but no facts were asserted against it. Though the Board had agreed to discontinue the petition against M.L. Singh and no facts were set out against her in the Amended Petition, the Board did not remove her name from the style of cause.
- [37] The hearing of the Amended Petition and the Fourth Contempt Application was heard in chambers for 14 days between April and June 2018. In a decision rendered on February 22, 2019, the Court granted the requested injunction and contempt orders against several of the respondents (the "Final Petition Order"), but dismissed the Fourth Contempt Application against S. Singh in its entirety, and declined to grant an order against him under s. 198(1)(e) of the Act. The Court reserved its judgment on costs: see *Workers' Compensation Board of British Columbia v. Skylite Building Maintenance Ltd.*, 2019 BCSC 231.
- [38] The Court further ordered the style of cause be amended to remove M.L. Singh and the claim for injunctive relief against Skylite be dismissed.
- [39] By decision dated October 29, 2019, the Court declined to order costs in favour of S. Singh because the costs owing to him were offset by costs owed by the other respondents: see reasons indexed as *Workers' Compensation Board of British Columbia v. Skylite Building Maintenance Ltd.*, 2019 BCSC 1862 at paras. 49-54.
- [40] S. Singh and others appealed the Final Petition Order and the costs order. On December 17, 2020, the Court of Appeal allowed the appeal in part. It upheld the Final Petition Order but found that S. Singh's costs could not be offset against the costs of the other respondents: see *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365 at paras. 89-94.

Damages Suffered by the Plaintiffs

- [41] For the purpose of this application only, the Board accepts that:

- a) the facts alleged at paras. 34-66 of the NOCC are accurate;
- b) S. Singh suffered the damages alleged at Part 3, paras. 17(a)-(i) of the NOCC; and
- c) M.L. Singh and Skylite suffered the damages alleged at Part 3, paras. 18(a) to (g) of the NOCC.

[42] The thrust of the allegations of damages is that, as a result of the Interim Injunction, S. Singh suffered stress and his personal reputation was affected. In addition, his company, ESS Environmental Ltd., lost business. In having to respond to all of the contempt applications, S. Singh suffered anxiety and emotional as well as financial hardship. The amount of effort he could put into building and operating his company was also decreased.

[43] As a consequence of the Interim Injunction, M.L. Singh and Skylite did not continue in, or return to, the asbestos testing and abatement industry.

[44] Part 2 of the NOCC seeks the following relief:

1. An order for damages payable to each plaintiff in relation to the ongoing existence of the 2012 Interim Order which remained in place from September 2012 to February 2019, for which no foundation was ever proven.
2. Special damages to each plaintiff in relation to costs, expenses and lost income arising from the existence of the 2012 Interim Order until February 2019, including in relation to contempt proceedings in 2015/16 and 2017/18 in respect of the 2012 Interim Order.
3. Aggravated damages resulting from increased harm.
4. Punitive damages arising from conduct warranting punishment.
5. Interest under the Court Order Interest Act.
6. Costs.
7. Such further and other relief as to this Honourable Court may seem just.

Vexatious Litigant Order

[45] The Petition Respondents brought numerous proceedings against the Board in relation to the Board's actions in the 2012 Petition and in other OHS enforcement efforts. A summary of the proceedings is set out at para. 7 of Justice Choi's reasons in *Singh v. Nielsen*, 2017 BCSC 1876 [Vexatious Litigant Reasons], in which she considered a vexatious litigant order:

[7] The plaintiffs' history of litigation since 2013 involves over a dozen proceedings against the Workers' Compensation Board, its directors, officers, or employees in the British Columbia Human Rights Tribunal, the Provincial Court, this Court, and in the Court of Appeal. They are as follows:

- (a) two claims in the Provincial Court of British Columbia;

- (b) five civil claims in the Supreme Court of British Columbia;
 - (c) three appeals from decisions striking out or dismissing three of those civil claims;
 - (d) an appeal from an interim order in one civil claim;
 - (e) one complaint at the British Columbia Human Rights Tribunal;
 - (f) judicial review of the British Columbia Human Rights Tribunal decision;
 - (g) an appeal from that judicial review decision; and
 - (h) two judicial reviews of Board decisions.
- [8] Some of the decisions are indexed as: *Singh and another v. Workers' Compensation Board of B.C. and others*, 2014 BCHRT 259; *Singh v. Workers' Compensation Board of British Columbia* (29 January 2016), Vancouver S150011 (B.C.S.C.); *Workers' Compensation Board v. Skylite Building Maintenance Ltd.*, 2016 BCSC 394; *Seattle Environmental Consulting Ltd. v. Workers' Compensation Board of British Columbia*, 2016 BCSC 557; *Seattle Environmental Consulting Ltd. v. Pacific Sun Newspaper Group* (22 July 2016), Vancouver S144721 (B.C.S.C.); *Seattle Environmental Consulting Ltd. v. Pacific Sun Newspaper Group* (5 August 2016), Vancouver S144721 (B.C.S.C.); *Singh v. British Columbia Workers' Compensation Board* (1 November 2016), Vancouver S163313 (B.C.S.C.); *Singh v. Nielsen*, 2016 BCSC 2331; *Singh v. Nielsen*, 2016 BCSC 2420; *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2017 BCCA 19; *Singh v. Workers' Compensation Board of British Columbia*, 2017 BCSC 138; *Seattle Environmental Consulting Ltd. v. Workers' Compensation Board of British Columbia* (8 February 2017), Vancouver CA43844 (B.C.C.A.); and, *Seattle Environmental Consulting v. Workers' Compensation Board of British Columbia* (21 July 2017), Vancouver CA43844 (B.C.C.A.).
- [9] None of those proceedings concluded in favour of the plaintiffs.
- [46] Four of the above-referenced decisions are relevant to the application before me.
- [47] Of particular significance, in July 2013, the plaintiffs filed a notice of civil claim against the Board, Chad Born, Cary McComb and Steven Penner. The three personal defendants were all officers of the Board. The pleading alleged misfeasance in public office, discrimination, defamation, and intentional interference with contractual relations. In an amended notice of civil claim filed in April 2014, the plaintiffs withdrew their claim of defamation. In response, the Board and the personal defendants argued that the action was barred by s. 113 of the Former Act (now s. 332).
- [48] In *Seattle Environmental Consulting Ltd. v. Workers' Compensation Board of British Columbia*, 2016 BCSC 557 at paras. 32-37, Justice Masuhara struck the pleadings pursuant to Rule 9-5(1)(a) and (d) for several reasons, including because they were barred by s. 113.

- [49] In June 2014, the plaintiffs sued the Board, among others, for defamation. They alleged that the Board had intentionally and maliciously made false and inaccurate statements to others that the plaintiffs had been exposing employees to asbestos. The Board applied for a summary dismissal of the claim. On July 22, 2016, Macintosh J. granted the summary dismissal in reasons indexed at 2016 BCSC 1488. Justice Macintosh found that the "no action clause" found in s. 113(4) of the Former Act applied as a complete statutory defence and dismissed the action with costs.
- [50] On May 24, 2016, S. Singh and others filed a notice of civil claim making claims against Scott Nielson as counsel for the Board, Chad Born in his capacity as a hygiene officer with the Board, and Moses Kajoba, former counsel for the plaintiffs. The defendants, Nielson and Born, applied for an order to strike out and dismiss the claim and for a vexatious litigant order pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443.
- [51] On December 28, 2015, the action was struck by Justice Verhoeven in reasons indexed as *Singh v. Nielsen*, 2016 BCSC 2420 [Nielsen]. The claim against Nielsen was struck on the basis that the factual allegations were "patently without merit" and disclosed no reasonable cause of action: at paras. 12-13. The claim against Born was dismissed on the grounds that it was frivolous, vexatious, and an abuse of process. In addition, it was barred by s. 113(4) of the Former Act.
- [52] Justice Verhoeven adjourned the hearing of the vexatious litigant until after the court heard the two pending Supreme Court actions.
- [53] One of the two outstanding actions concerned a separate action brought by S. Singh and others against the Board, three of its lawyers, the President and CEO, and seven of its Directors. The pleading accused the "Board defendants" of various "statutory violations", including breaches of the Civil Rights Protection Act, R.S.B.C. 1996, c. 49 and the Canadian Charter of Rights and Freedoms. In *Singh v. Workers' Compensation Board of British Columbia*, 2017 BCSC 138 [Singh #1], Justice Kent described the claim as follows:
- [42] In short, the pleading is arrant nonsense.
- [43] The plaintiffs' claims in this case suffer from the same deficiencies identified in previous proceedings by Justices Masuhara, Macintosh and Verhoeven. Their analysis of the relevant law and their conclusions apply with equal force to this action.
- [44] In the previous actions, my judicial colleagues have determined that the plaintiffs' claims have no foundation, are plainly without merit, serve no useful purpose and have been launched as an improper collateral attack on the merits of the Board's administrative actions and the various judicial and quasi-judicial decisions that have impacted the plaintiffs' business. This is clearly also the case in the present proceeding, (perhaps even more so than in the past as the level of vituperative hyperbole appears to have increased), and the same result must ensue, i.e., striking the plaintiffs' pleading and dismissing the action.

[45] I agree with the defendants that:

- As a matter of law there cannot exist any cause of action against the lawyers for the matters alleged;
- Section 113(4) of the Act is also a complete defence to the claim for all defendants;
- The plaintiffs are attempting to re-litigate claims that have previously been struck out/dismissed by the Court, a classic example of abuse of process;
- The conduct of the plaintiffs and the present claim display all of the hallmarks commonly seen with vexatious litigants, including numerous technical deficiencies, causes of action unknown at law, and repeated improper and scandalous allegations that plainly have no merit.

Authority for these propositions can be found in the previous decisions involving these same plaintiffs, the legal analysis in which I adopt, as well as cases such as *Simon v. Canada (Attorney General)*, 2015 BCSC 924, aff'd, 2016 BCCA 52.

[46] I therefore order that the plaintiffs' Notice of Civil Claim be struck out and the action dismissed pursuant to Rule 9-5(1) of the Supreme Court Civil Rules.

[47] Where, as here, the plaintiffs ignore quasi-judicial and judicial rulings repeatedly dismissing their claims and stubbornly persist in pursuing vexatious actions based on scandalous and baseless allegations of wrongdoing, they are rightly punished by an award of special costs against them. The ill-advised and unmeritorious litigation campaign that these plaintiffs have been waging, and continue to wage, against the Workers' Compensation Board and its various representatives should come to an immediate end.

[48] Costs are awarded to the defendants against the plaintiffs jointly and severally, to be assessed as special costs.

[54] The Court of Appeal dismissed the plaintiffs' appeal noting that:

[6] In my view, all of the appellants' arguments are devoid of merit. With respect to the decision to strike the pleadings, I am in substantial agreement with the chamber judge's reasons and, therefore, need say no more in that regard.

See *Singh v. Workers' Compensation Board of British Columbia*, 2018 BCCA 49.

[55] On September 15, 2017, the Court issued a vexatious litigant order against S. Singh and others: see *Vexatious Litigant Reasons* at para. 12. There was no vexatious litigant order made against M.L. Singh nor Skylite.

Legal Principles

[56] Rules 9-5(1) and (2) provide 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.

Admissibility of evidence

- (2) No evidence is admissible on an application under subrule (1) (a).
- [57] The applicable test on an application to strike under R. 9-5(1)(a) is whether it is plain and obvious, assuming the facts pleaded are true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17.
- [58] A claim can be dismissed pursuant to R. 9-6(5) if the court is satisfied that there is no genuine issue for trial. Where a claim is statuted barred, there is no genuine issue for trial: *Manns v. Vancouver Island Health Authority*, 2021 BCSC 2418 at para. 41.

Rule 9-5(1)(a): Do the pleadings fail to disclose a reasonable claim against the defendant?

Consequences of Skylite being a Dissolved Company

- [59] With respect to Skylite, the Board argues that it did not exist at the time the action was filed on February 23, 2021 because it was dissolved on October 1, 2019.
- [60] Skylite argues that the facts underlying the advanced claim occurred while Skylite was still a registered company. Although Skylite was involuntary dissolved in October 2019, it can be restored as a company by application to the Registrar. That application to restore was made in March 2024 and, on April 25, 2024, a Certificate of Restoration was issued by the Registrar of Companies. The Certificate reads:

I Hereby Certify that SKYLITE BUILDING MAINTENANCE LTD., which was recognized on September 13, 1991 under certificate number BC0412320, and was dissolved on October 21, 2019 at 11:20 PM Pacific Time, has on April 25, 2024 at 02:00 PM Pacific Time been restored under the Business Corporations Act.

- [61] Skylite argues that it has now submitted all the funds to file a BC Annual report for September 2012 to 2023. Since it is now restored, Skylite submits that this Court cannot strike or dismiss the action on the basis that Skylite was a dissolved company at the time the notice of civil claim was filed.
- [62] Section 364(4) of the BCA expressly provides that a restored company is deemed to have continued in existence as if it had not been dissolved, and proceedings may be taken as might have been taken if the company had not dissolved. As such, while Skylite was dissolved at the time this action was commenced, that issue is remedied by the company's full restoration on April 25, 2024.
- [63] For these reasons, I am not prepared to find that the action commenced by Skylite should be struck on the basis it did not exist at the time the action was commenced.

Application of the Statutory Bar

- [64] The Board asserts that the action is barred by s. 332 of the Act. As set out in the defendant's notice of application, the NOCC relies on the following acts, omissions, or decisions of the Board:
- a) Obtaining the Interim Injunction;
 - b) Seeking findings of contempt in relation to the Interim Injunction;
 - c) Failing to set the Original Petition for hearing on a timeline acceptable to the plaintiffs; and
 - d) Generally conducting the Petition Proceedings in a manner unacceptable to the plaintiffs.
- [65] The Board argues that all of these acts, omissions, or decisions of the Board were within the Board's jurisdiction under the Act and the OHS Regulation. In particular, the Board had the right to bring the 2012 Petition under s. 198 of the Former Act (now s. 97 of the Act). As such, it submits that the plaintiffs' claims are barred as a matter of law.
- [66] The plaintiffs concede that the Board was authorized to bring a petition for an injunction under the Former Act and arguably had the necessary included jurisdiction to seek an interim injunction in response to the application respondents' request for an adjournment. However, the plaintiffs argue that:
16. The Board asked the court to require an interim injunction as a condition of granting an adjournment before the Board had proved its case for an injunction. In doing so, the Board told the court that it could prove the claims in its petition for an injunction. The Board exhorted the court to require the interim order as a condition of an adjournment as matter of public safety. In making claims it could not prove, and in fact never proved, and in saying that it could prove those claims, the Board acted unreasonably and acted outside its authority.

[67] The plaintiffs argue that s. 332 of the Act does not insulate the Board against a claim arising from unreasonable and improper actions taken to seek an injunction, or for proceedings in respect of an interim injunction that amount to an abuse of process. As such, the plaintiffs say that this section is not a basis to strike or dismiss their claims under Rules 9-5(1) or 9-6(5).

[68] It is not entirely clear to me what legal basis the plaintiffs rely on in the NOCC. On its face, the NOCC advances a claim respecting the Board's conduct during the 2012 Petition proceeding. If that is the nature of the claim, there were no authorities presented at the hearing of this application which support the existence of a cause of action for wrongful litigation conduct.

[69] From the allegations made, on a generous reading of the NOCC, it is possible that the plaintiffs may be advancing a claim for malicious prosecution. In order to succeed in an action for malicious prosecution, a plaintiff must prove that the prosecution was:

1. initiated by the defendant;
2. terminated in favour of the plaintiff;
3. undertaken without reasonable or just cause; and
4. motivated by malice or a primary purpose other than that of carrying the law into effect.

Miazga v. Kvello Estate, 2009 SCC 51 at para. 3.

[70] As noted in *Bajwa v. Workers Compensation Board*, 2022 BCSC 1926, an essential element is malice. In the NOCC, there is no assertion of malice against the Board or any of their officers, directors, or employees. This is fatal to the plaintiffs' pleading.

[71] The Board was authorized to bring the 2012 Petition and, once it did so, it was entitled to take steps to enforce the Court's interim order. The decisions made by the Board to proceed with the various contempt applications were all within its jurisdiction.

[72] The plaintiffs argue that the statutory bar does not apply if the Board brought a claim arising from unreasonable and improper actions, specifically bad faith and misfeasance in public office. No case law was provided in support of this argument. Given the lack of express exception in s. 332 itself, and the lack of case law supporting the proposition that it is so limited, I am not persuaded that the statutory bar is so limited.

[73] The Board had a statutory mandate to seek an injunction: ss. 83-97 of the Act. The Court of Appeal confirmed that in its decision in *Seattle #1* at paras. 97-98. Once the 2012 Interim Order was granted, the Board was entitled to enforce it by taking legal steps authorized under the Rules, including filing of contempt applications pursuant to R. 22-8. Once the contempt applications were filed, it was up to this Court to make the necessary factual findings and discretionary decisions: *Seattle #1* at para. 105.

[74] The Rules provide cost consequences if parties act or omit to do an act improperly or unnecessarily. Rule 14-1(14) provides as follows:

Costs arising from improper act or omission

(14) If anything is done or omitted improperly or unnecessarily, by or on behalf of a party, the court or a registrar may order

- (a) that any costs arising from or associated with any matter related to the act or omission not be allowed to the party, or
- (b) that the party pay the costs incurred by any other party by reason of the act or omission.

[75] In essence, the plaintiffs are unhappy with how the Board conducted the 2012 Petition proceedings. In their view, the proceedings were conducted in an unacceptable manner. If the plaintiffs believed that the Board engaged in reprehensible litigation conduct, it ought to have made such arguments in support of an order for special costs in the relevant proceedings. I am unaware of authority for the proposition that there is a standalone cause of action for "bad" or "wrongful" litigation conduct.

[76] The Board and its counsel were entitled to take the steps they viewed as necessary to advance the 2012 Petition and enforce the Interim Injunction. Neither the Board nor its counsel owed any duties to the Petition Respondents. If there was a misrepresentation to the Court by the Board's counsel, as asserted at Part 1, para. 17 of the NOCC, this does not constitute an actionable breach as against the defendants: *Pearlman v. Critchley*, 2012 BCSC 1830 at para. 44; *Nielsen* at para. 20.

[77] The plaintiffs are seeking to sue the Board for the steps it took in bringing and enforcing the Interim Injunction. The statutory bar prevents them from doing so. I find that there is no genuine issue for trial because the Board is protected from civil suits by s. 332 of the Act.

[78] The Board raised two additional arguments. Generally, interim injunctions include an undertaking for damages. This is required to address the fact that an injunction may harm the defendant, and no cause of action arises from compliance with a court order. The Board says that the plaintiffs cannot allege, as they have done in the NOCC, that they are owed damages for a failure to include an undertaking for damages in the Interim Injunction because they had the right to apply to amend or overturn the Interim Injunction on that basis when it was issued. Any such claim is now barred by s. 6(1) of the Limitation Act, S.B.C. 2012, c. 13.

[79] The Board further asserts that, even if an undertaking for damages had been made, it would not have given rise to a cause of action or any genuine issue for trial. The Interim Injunction did not restrain the plaintiffs from doing anything that they had a right to do, as such, no actionable damages arise from it. If I am wrong that this action must be struck because it is barred by s. 332, then I agree with the Board. It is plain and obvious that the pleading discloses no reasonable cause of action in relation to these claims.

[80] Since the action is not maintainable, I will not address the plaintiffs' claims for aggravated and punitive damages.

Should the Plaintiffs be given leave to amend?

[81] The plaintiffs seek leave to amend their pleadings if needed. Since this action was struck on the basis of a statutory bar, I am not persuaded that the plaintiffs should be provided with an opportunity to amend. It is not clear to me what amendments could be made that would avoid the application of the statutory bar in the circumstances of this case. The appropriate remedy in this case is to strike the pleadings and dismiss the action against the Board.

What costs should be awarded to the Board?

Position of the Parties

[82] The Board seeks an award of special costs due to S. Singh's history of bringing baseless claims against the Board and its employees in relation to the 2012 Petition and other enforcement activities. M.L. Singh was a plaintiff in one of the baseless claims against the Board and the Board employees. The Board submits that her bringing of another baseless claim is worthy of censure and should be deterred by an order of special costs.

[83] The plaintiffs argue that although S. Singh is subject to a vexatious litigant order that required him to obtain leave to bring this action, leave was granted. The claim advanced was not exaggerated or vexatious and relates to reasonable claims arising from the existence of the Interim Injunction, which existed for a period of years without any proper foundation for it ever to be proven. M.L. Singh and Skyline are not subject to any vexatious litigant order and they also did not advance any exaggerated or vexatious claims.

Legal Principles

[84] Special costs are awarded against an unsuccessful party as punishment for reprehensible litigation conduct. The test for special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.). Justice Lambert, writing for the Court, determined that the threshold for awarding special costs is "reprehensible" conduct during the course of litigation, which includes "scandalous or outrageous conduct as well as milder forms of misconduct deserving of reproof or rebuke": *Garcia* at para. 17. He further explained this standard as follows:

[23] the fact that an action or an appeal "has little merit" is not itself a reason for awarding special costs.... Something more is required, such as improper allegations of fraud, or an improper motive for bringing the proceedings, or improper conduct of the proceedings themselves, before the conduct becomes sufficiently reprehensible to require an award of special costs.

[85] Special costs have been awarded in a wide range of circumstances, including:

- (a) where a party pursues a meritless claim and is reckless with regard to the truth;
- (b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
- (c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
- (d) where a party made the resolution of an issue far more difficult than it should have been;
- (e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
- (f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;
- (g) where a party brings a proceeding for an improper motive;
- (h) where a party maintains unfounded allegations of fraud or dishonesty; and
- (i) where a party pursues claims frivolously or without foundation.

See *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at para. 11, citations omitted.

[86] As this list indicates, reprehensible conduct can include conduct by a litigant who abuses the court's process, misleads the court, and carries out persistent breaches of the Rules.

Analysis

[87] There have been a number of actions in which S. Singh has been a plaintiff and baseless allegations were advanced. There have been a corresponding number of comments made by various judges that are significant to whether special costs should be awarded against him, namely:

- Justice Macintosh's comment in *Skylite #1* of the Petition Respondents' defiance "as evidenced by their serial violations of the Act and Regulation, and by their repeated use of vexatious litigation". Justice Macintosh awarded special costs against the Respondents because of their "scandalous and baseless allegations against the Board, Board staff and Board counsel": at paras. 66, 69. The award of special costs was upheld by the Court of Appeal: *Seattle #1* at para. 125.

- Justice Verhoeven's comments in *Nielsen* that the claims brought against Nielsen are "so plainly without merit that, when set against the other meritless claims, proceedings, and allegations these same plaintiffs have made, it is clear they have no foundation, no useful purpose, and have been made to harass, vex and oppress Nielson and the Board": at para. 24. The claim against Born, as an employee of the Board, was struck because it disclosed no reasonable cause of action and was an abuse of process": at para. 33.

· Justice Kent's comments in Singh #1 that the plaintiffs have been engaged in "an ill-advised and hopeless litigation campaign" against the Board: at para. 1. The defendants were awarded special costs against the plaintiffs, jointly and severally: at para. 48.

[88] It appears that S. Singh has listened to some of the judicial commentary since the pleadings in this case do not contain the same "poorly drafted, prolix and difficult to understand" deficiencies characterizing earlier pleadings: Singh #1 at para. 25; Nielsen at para. 9. I assume this is because he retained counsel.

[89] However, I am persuaded that the claims advanced in this action are baseless. This plaintiff continue to bring actions that have no merit and I view this as a continuation of the "hopeless litigation campaign" against the Board. In light of the vexatious litigant order against S. Singh, an award of special costs against him is warranted.

[90] I am not persuaded that M.L. Singh and Skylite should be jointly responsible for the special costs award. Those parties are only obliged to pay costs at Scale B.

Conclusion

[91] For the reasons set out above, I order that:

1. The notice of civil claim filed February 23, 2021 is struck and the action against the defendant is dismissed.
2. The Board is entitled to special costs against S. Singh of this proceeding.
3. The Board is entitled to costs at Scale B against M.L. Singh and Skylite of this proceeding.

"Forth J."

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