

Citation: I.C.B.C. v. Hoang et al
2003 BCSC 85

Date: 20030116
Docket: S004632
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INSURANCE CORPORATION OF BRITISH COLUMBIA

PLAINTIFF

AND:

**THI DINH HOANG, QUANG THUONG NGUYEN,
HIEN GIA HOANG, HA THI VU, VAN HONG NGUYEN, PHI LONG DINH,
THI BAC HO, THI HIEN NGUYEN, TRONG DAI TRAN, THUY THI NGUYEN,
CHUNG MINH TRAN, THI LUYEN BUI, VAN QUYET NGUYEN, THEM THI TO, NGUYEN SON TRAN, VAN
QUANG VU, QUOC THAI DIEP, VAN HUY NGUYEN, XUAN TINH DONG, Y VAN LE, HAI TRONG LE,
THU QUYET DANG, KIM MY CHE, SON NHU NGUYEN, VAN CUONG NGUYEN, VAN THONG NGUYEN,
PHUNG SUNNY WONG, LOAN THI NGUYEN, QUOC THANH TU, MANH CONG TRAN, and HUONG THI
NGUYEN**

DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE BENNETT

Counsel for the Insurance Corporation of
British Columbia

Frank Potts
& Brad Martyniuk

The Defendant, Son Nhu Nguyen

Appeared on his own behalf

Date and Place of Hearing:

January 6, 2003
Vancouver, BC

[1] I have before me two related applications in two separate causes of action. The defendant, Mr. Son Nhu Nguyen, in action #S004632 is appealing a decision of Master Baker which struck out his counterclaim pursuant to Supreme Court Rule 19(24)(a). The plaintiff, the Insurance Corporation of British Columbia (I.C.B.C.) in #S004632 applies to strike a statement of claim the defendant has filed in action #S024789.

[2] On August 28, 2000, I.C.B.C. filed a writ and statement of claim against 35 defendants alleging fraud in relation to motor vehicle insurance claims. Mr. Son Nhu Nguyen and his son, Mr. Van Cuong Nguyen, are both named as defendants.

[3] On September 11, 2000, Mr. Son Nhu Nguyen filed his statement of defence and a counterclaim against I.C.B.C. His son also filed a statement of defence and a counterclaim on September 14, 2000.

[4] On May 1, 2001, I.C.B.C. brought an application to strike the counterclaim pursuant to Supreme Court Rule 19(24)(a), which reads as follows:

At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that

(a) it discloses no reasonable claim or defence as the case may be.

[5] Mr. Justice Lowry heard the application on May 18, 2001: See *I.C.B.C. v. Hoang*, Oral Reasons May 18, 2001. Mr. Justice Lowry granted the defendants 30 days within which to amend their counterclaim. In granting the adjournment, Lowry J. said at para. 6:

I encourage you to get some legal assistance and see if you cannot frame your action properly, failing which it will be struck out, I am sure.

[6] Mr. Son Nhu Nguyen and his son filed an amended counterclaim on June 14, 2001.

[7] On March 20, 2002, I.C.B.C. brought a motion to strike the amended counterclaims before Master Baker. Master Baker struck both of the counterclaims. His reasons for striking the counterclaims are found at paras. 3 - 4 of his Oral Reasons for Judgment:

[3] I have heard from both gentlemen, and I understand their concerns, but I agree with Mr. Martyniuk that the revised counterclaims do not meet the standards of the Rules of Court and the rules relating to pleadings. It is possible, reading their documents, to make certain conclusions, I suppose, or inferences - and I hope that that word can be translated - an inference of what their complaint is, but one cannot do that with enough reliability or understanding to properly meet their claim, and that, of course, is what pleadings are all about.

[4] It is possible that these men feel they were defamed by the reports of the investigation into this matter by ICBC. It is possible they feel that their privacy was violated or invaded, and, as one of the defendants says, it is possible that they feel that there is a kind of racist motivation in this issue. In fact, he has made that clear, but he has not grounded that or properly pleaded it. All of these things are possibilities and inference on my part, and they do not support a claim.

[8] The defendant (father) did not raise the issue regarding racism. His son raised that issue and he has not appealed.

[9] Mr. Son Nhu Nguyen filed a Notice of Appeal against the Master's decision on April 2, 2002. On August 27, 2002, he filed a new statement of claim, commencing a fresh action in terms similar to those which were struck out by Master Baker. This is the statement of claim I.C.B.C. applies to strike out based on Rule 19(24)(d), and submits that the filing of the new writ and statement of claim is an abuse of process.

[10] The appeal from the Master's decision and the application to strike the new statement of claim were heard together, although the litigation is not joined.

[11] Mr. Nguyen submits that the Master erred in considering the applications to strike the pleadings of he and his son together. Mr. Nguyen submits that the Master erred in considering the allegation of racism when this allegation was only raised by Mr. Nguyen's son and not him.

[12] However, the Master was alive to the fact that only one of the litigants raised racism in his pleadings. This, in itself, does not lead to an error. Further, I do not believe the Master was in error to hear the two applications together.

[13] The real issue is whether the Master was correct in his conclusion that the pleading should be struck out pursuant to Supreme Court Rule 19(24)(a).

[14] Master Baker noted that it was possible to infer that Mr. Nguyen was raising defamation as his cause of action. No doubt Justice Lowry considered that possibility as well and thus gave Mr. Nguyen time to amend his pleadings to properly frame his action. His amended pleadings are less specific than his original pleadings. His amended pleadings do not comply with Supreme Court Rule 19(12) which states:

Particulars in libel or slander

(12) In an action for libel or slander,

- (a) where the plaintiff alleges that the words or matter complained of were used in a derogatory sense other than their ordinary meaning, the plaintiff shall give particulars of the facts and matters on which the plaintiff relies in support of that sense, and
- (b) where the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and that in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, the defendant shall give particulars stating which of the words complained of the defendant alleges are statements of fact and of the facts and matters relied on in support of the allegation that the words are true.

[15] Justice Lowry also advised Mr. Nguyen to obtain legal advice regarding his claim. His claim against I.C.B.C. is for a significant sum of compensation for their alleged wrong doings.

[16] The amended counterclaim of Mr. Nguyen is as follows:

1. During the time the Insurance Corporation of British Columbia investigated the suspected fraud accident (end of year 1998), employees of the ICBC (investigators) used my picture without my permission.
2. Investigator affixed my picture in an album, there are criminal person in that album. The album presented one group of persons defraud or conspired together to defraud the Plaintiff (ICBC). It instantly classified and labeled Me in the same group of persons, instantly prejudice.
3. The Plaintiff (ICBC) tip-off the media, pre-arranged and coordinated with the media by act in same time, at the same location. The media video tape the event of ICBC employees serving the court documents, it happen in my place of business, without my permission, without warning. Later, these video tape had been show on TV station across the Province of British Columbia, added with the comment of the Plaintiff (by the Plaintiff's spokesman).
4. Only Me (of the 35 Defendants) was show on the TV.
5. The Plaintiff allow the media (photographer) taking a picture of a damage car in the Plaintiff holding yard, with the participation of the Plaintiff's employee (adjuster Dave Beatty) posed as checking the damage the car. This picture later printed on the front page of the local newspaper, with the purpose to enhance the story, in which my name appeared. This picture given the public a false image of the damage car was belong to the Defendants, whom theirs name appeared in the story. Although it did not say the car belong to the Defendants in the story, but it did not clarified the car was not belong to the Defendants of the story. The fact is: the car was not belong to any of the Defendants in the story. This misleading picture with the permission and participation of the Plaintiff, combined with the story, contributed to destroy my reputation.
6. The circulation of the album and the propaganda of the delivery process of the Writ of Summon destroy my reputation. My emotion gravely affected. It created tremendous hardships to my business and my family. It caused me to close my plumbing business (start 1994 closed year end 1999), it caused me to close my pizza business (start 1995 closed April 2001).
7. The combination of the run-down emotion and financial hardship resulted in the separation of the family. Since June of 2000, I had to left the home and live with my friends and grown son, separated from the family.

I, Defendant Son Nhu Nguyen claims as follows:

- a) Emotion damages in the amount of \$250,000.00; and
- b) Reputation damages in the amount of \$500,000.00

Dated at the City of Nanaimo, in the Province of British Columbia this 14 day of June, 2001

[17] As mentioned, the fresh statement of claim is almost identical to the Counterclaim.

[18] The purpose of pleadings is set out by K. Smith J. (as he then was), in **Homalco Indian Band v British Columbia** [1998] B.C.J. No. 2703 (B.C.S.C.) at paras. 5-6:

[5] The ultimate function of pleadings is to clearly define the issues of fact and law to be determined by the court. The issues must be defined for each cause of action relied upon by the plaintiff. That process is begun by the plaintiff stating, for each cause, the material facts, that is, those facts necessary for the purpose of formulating a complete cause of action: **Troup v. McPherson** (1965), 53 W.W.R. 37 (B.C.S.C.) at 39. The defendant, upon seeing the case to be met, must then respond to the plaintiff's allegations in such a way that the court will understand from the pleadings what issues of fact and law it will be called upon to decide.

[6] A useful description of the proper structure of a plea of a cause of action is set out in J.H. Koffler and A. Reppy, *Handbook of Common Law Pleadings*, (St. Paul, Minn: West Publishing Co., 1969) at p. 85:

Of course the essential elements of any claim of relief or remedial right will vary from action to action. But, on analysis, the pleader will find that the facts prescribed by the substantive law as necessary to constitute a cause of action in a given case, may be classified under three heads: (1) The plaintiff's right or title; (2) The defendant's wrongful act violating that right or title; (3) The consequent damage, whether nominal or substantial. And, of course, the facts constituting the cause of action should be stated with certainty and precision, and in their natural order, so as to disclose the

three elements essential to every cause of action, to wit, the right, the wrongful act and the damage.

If the statement of claim is to serve the ultimate purpose of pleadings, the material facts of each cause of action relied upon should be set out in the above manner. As well, they should be stated succinctly and the particulars should follow and should be identified as such: **Gittings v. Caneco Audio-Publishers Inc.** (1988), 26 B.C.L.R. (2d) 349 (C.A.) at 353.

[19] The test on whether to strike pleadings is found in **Hunt v. Carey Canada Inc.**, [1990] 2 S.C.R. 959 at para. 33:

[A]ssuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the plaintiff's statement of claim discloses no reasonable cause of action? As in England, if there is a chance that the plaintiff might succeed, then the plaintiff should not be "driven from the judgment seat". Neither the length and complexity of the issues, the novelty of the cause of action, nor the potential for the defendant to present a strong defence should prevent the plaintiff from proceeding with his or her case. Only if the action is certain to fail because it contains a radical defect ranking with the others listed in Rule 19(24) of the British Columbia Rules of Court should the relevant portions of a plaintiff's statement of claim be struck out under Rule 19(24)(a).

[20] The statements in the pleading are assumed to be true when determining whether the pleadings disclose a cause of action: See **McNaughton v. Baker** (1988), 25 B.C.L.R. (2d) 17 (C.A.) at p. 23.

[21] Mr. Nguyen's counterclaim, as framed, does not disclose a reasonable cause of action. Mr. Nguyen does not clearly state the right which he says that I.C.B.C. has violated. In an action for defamation (if that is what he is intending) the pleadings must be specific.

[22] In **Central Minera Corp. v. Lavarack**, [2001] B.C.J. No. 412, Drossos J. set out the requirements for a pleading alleging defamation. He said, at para. 12:

In defamation actions, the law requires "exact words" be pleaded unless these words can only become known, as counsel for the respondent has submitted, until after examinations for discovery. This was recently stated by Master Powers in **Benson v. Versa Services Ltd.** [1997] B.C.J. No. 2648 (B.C.S.C.) at para 19, the principles of which are set out in Brown, *The Law of Defamation in Canada* (2nd Edition, vol. 2).

The general rule is that the defamatory words about which the plaintiff complains must be set out fully and precisely in the statement of claim. The particular words that are claimed to be defamatory must be included in the claim. They should be set forth verbatim. It is preferable that the defamatory language as alleged in the form of a quotation or attached as an exhibit to the statement of claim. In an action for defamation, "it is essential to know the very words on which the plaintiff founds his claim" this is particularly true in an action for slander...

Ordinarily, it is not sufficient to give the tenor, substance or purport of the liable or slander, or an approximation of the words to a certain "effect", or any other words of a similar import. Nor can the plaintiff rely on some vague general statements of the defamatory words, or his or her interpretation of what they mean. Otherwise the defendant would be deprived of the right to have the court, rather than the plaintiff, determine whether they are capable of a defamatory imputation. The exact words must be set out with reasonable certainty, clarity, particularity and precision. Without the words, there is nothing to construe as defamatory.

Further, at para. 18:

In **Richardson v. Norton Lilly International (Canada) Ltd.** [1993] B.C.J. No. 1890 Madam Justice Allen referred to the requirements of particulars of pleadings in causes of defamation. At paragraph 17 her Ladyship stated that:

Clearly, the plaintiff who commences a suit without knowing whether he or she has a cause of action, and then seeks to determine that question by discovering the defendant, abuses the civil process.

...

This is not such a case. The plaintiff does not have a "suspicion" that he was slandered. In essence, the defendant... told him that he was going to defame him. Thus the plaintiff's allegation is based upon facts within his knowledge and not upon mere speculation.

At paragraph 19 Madam Justice Allen also referred to the case of *Paquette v. Cruji* (1979), 26 O.R. (2d) 294 (H.C.). In that decision, Grange J. at p. 296 expressed the following caveat to the requirement that allegations of defamation must be strictly pleaded:

There are, however, limitations to the strictness of pleadings. Our Courts have always refused to strike out a claim where the plaintiff has revealed all the particulars in his possession and has set forth a *prima facie* case in his pleadings.

Mr. Nguyen's claim does not approach these requirements.

[23] Mr. Nguyen is self-represented. English is his second language. I have taken these factors into account in order to give him some latitude when assessing whether his pleadings are sufficient.

[24] A trial is set to commence in two weeks. A further amendment would prejudice the plaintiff and would result in prolonged and unnecessary proceedings before the jury.

[25] Therefore, the appeal is dismissed.

[26] I will deal with the fresh statement of claim in related Reasons for Judgment.

[27] The dismissal of the counterclaim does not leave Mr. Nguyen without a remedy in the litigation. If I.C.B.C. is not successful in the litigation, he will have a claim for special costs. Such a claim will not, of course, approach the level of damages in his present claim, but it is a remedy that may be available to him, depending on the outcome of the litigation.

[28] The appeal is dismissed. Costs will be in the cause.

"E.A. Bennett, J."
The Honourable Madam Justice E.A. Bennett