

File Number: 132048

May 6, 2015

Cuelenaere, Kendall, Katzman & Watson
Barristers, Solicitors and Mediators
500, 128 - 4th Ave South
Saskatoon, SK S7K1M8

Attention: Tyler M. Dahl

Dear Sirs/Mesdames:

Re: Solo v. Finley et al

I write further to your letter of May 1, 2015, attaching a statement of claim naming my client, Sandra Finley, as a defendant. I set out my comments in respect of this statement of claim below.

Failure to plead necessary particulars

As we have discussed, it is my position that a proper claim in defamation or for a breach of privacy must include the allegedly defamatory words. The importance of pleadings in actions for defamation is well known. As described by Brown in *The Law of Defamation in Canada*, vol.2, Carswell, 1987:

Pleadings in an action for defamation are of utmost importance and play a disproportionate role in the conduct of the case, perhaps more so than in any other cause of action. Thus, it has been said that "actions of defamation are amongst those in which regularity of pleadings is insisted upon", and the "technical rules ... are applied with strictness." For this reason, adequate disclosure in those pleadings assumes a greater importance. The parties are entitled to plead all those facts they would be permitted to prove in support of their action or defence at trial. They should disclose all those facts essential to that cause of action.

at p. 844

Similarly, 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 libel 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.

The notice of civil claim does not meet these requirements. The statement of claim, as it is presently worded, contains such allegations as:

“Finley sent various emails to individuals defaming the plaintiff”.

“In or about 2014, Finley published many articles on her blog defaming the plaintiff.”

I am confident that, were an application brought to strike the claim, the claim would be struck with special costs awarded against your client. I note that on numerous occasions, both in writing and over the phone, I set out my position you that your client had failed to properly identify the statements he alleged were defamatory. While your client did provide a lengthy list of statements which he alleged were defamatory, that list had no legal analysis and failed to set out, with any specificity, the allegedly defamatory statements or why you took the position they were actionable.

With respect to the claim pursuant to *Privacy Act*, your client has alleged the following:

“The plaintiff claims Finley has published the plaintiff’s private information, including but not limited to the following: the names and contact information of the plaintiff’s family; the contact information of the plaintiff; and personal communications between the plaintiff and various third parties”.

Again, the statement of claim fails to specify the specific statements that allegedly violated your client’s privacy, or the “various third parties” whose communications my client is alleged to have published. It is simply not possible to respond to a statement of claim of this nature.

From my discussion with you, it is my understanding you intend to prepare and file an amended statement of claim that complies with the rules governing claims in defamation and privacy. I ask that you please do so and provide it to me for my consideration.

Please note, I reserve the right to bring this letter to the attention of the Court in the event the amended pleadings fail to comply with the strict requirements with a claim of this nature.

Service of Statement of Claim

Please be advised that I do not, at this time, have instructions to accept service of the statement of claim on behalf of Ms. Finley.

I do, however, have instructions to accept service of an amended statement of claim that addresses the concerns outlined above and pleads a claim in defamation and/breach of privacy with sufficient particularity.

Ongoing Publication of Ms. Finley’s Blog

Given that this matter is presently before the Courts, and without admitting any wrongdoing or legal liability, Ms. Finley has instructed me to advise you she is prepared to make her blog “password protected” so that the alleged lead defamatory statements your client takes issue with are not public.

She has instructed me to advise she will place password protection on the material on her blog until June 15, 2015, in anticipation of receiving an amended statement of claim that properly sets out the statements that are allegedly defamatory or comprise a violation of your client’s privacy. In the event no amended statement of claim is forthcoming identifying with specificity the statements your client alleges are defamatory, my client reserves the right to remove the password protection from her blog.

Counterclaim

Finally, there are numerous instances of your client publishing defamatory material concerning Ms. Finley, as well as deliberate attempts by him to interfere with contractual relations by contacting Ms. Finley’s internet service-providers and demanding that they cease to publish Ms. Finley’s blog in entirety.

In the event your client is insistent on proceeding with this claim, my instructions are to prepare and serve a counterclaim seeking relief for the damage caused by Mr. Solo's actions. I anticipate contacting you following the service of the amended statement of claim to confirm whether you do or do not have instructions to accept service on behalf of Mr. Solo.

I look forward to hearing from you in respect of the above. Should you wish to discuss this matter further, please do not hesitate to contact the undersigned at your convenience.

Yours truly,

HARPER GREY LLP

Per: Daniel J. Reid

DJR/csi