

CITATION: James v. HSBC Bank of Canada, 2025 ONSC 1944
NEWMARKET COURT FILE NO.: CV-12-110665-00
DATE: 20250331

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
KENNETH JAMES)
)
Plaintiff) Nicholas Businger, for the Plaintiff
)
- and -)
)
HSBC BANK OF CANADA and HBSC)
SECURITIES CANADA INC.)
)
Defendants)
)
Mark Evans and Ara Basmadjian, for the
) Defendants
)
) **HEARD:** By videoconference on February
) 12, 2025

2025 ONSC 1944 (CanLII)

REASONS ON SUMMARY JUDGMENT MOTION

J.R. McCARTHY J.

The Motion

[1] The Defendants, HSBC Bank of Canada (“HSBC Bank”) and HSBC Securities Canada Inc. (“HSBC Securities”) (together “HSBC”), move for an order granting summary judgment and dismissing the claims made by the Plaintiff, Kenneth James.

Background to the Litigation

(i) The HSBC Accounts

[2] In February and March 2012, the Plaintiff, then a practicing lawyer, opened a series of personal and commercial accounts at HSBC Bank. His personal accounts were governed by the terms of an executed Personal Banking Agreement (“PBA”). For the purposes of this motion, the salient portions of the PBA are reproduced below:

2. Banking Services

Use of Account for personal banking: I agree to use my Accounts and Services for lawful personal banking purposes only.... I will not use my Accounts or Services for purposes inconsistent with generally accepted community standards of conduct or propriety, including matters engaged in or associated with illegal activities. Improper use of my Account or Service entitles you to close all or some of my Accounts or withdraw a Service without notice to me or to place a hold on some or all of my Accounts pending your investigation.

...

5. Cheques and other Instruments

Hold on funds: In addition to the hold on cheques described above, I further agree that you may place a “hold” on funds in any of my Accounts, restricting my right to make a withdrawal in the following situations: ... (b) if you become aware of suspicious or possible fraudulent or unauthorized Account activity that may give rise to a claim against or cause a loss to you, an identifiable third party or class, or me.

...

Indemnity for holds: ... If you place a hold in accordance with this Agreement, you will not be liable for any resulting loss consequential or otherwise.

...

18. Liability – Other Losses

General: I agree that you will NOT be held liable and are hereby released from all liabilities, claims and losses sustained in connection with this Agreement or any Account or Service unless the claim or loss was solely caused by your gross negligence or intentional misconduct. You will not, under any circumstances (even if you are negligent) be liable for any indirect, consequential, special, aggravated, punitive or exemplary damages whatsoever caused to me, regardless of the cause of action.

19. Refused Transactions

Compliance with laws: I acknowledge that you and other members of the HSBC Group who assist you in providing Services to me must comply with the laws of the countries in which you or they are located. These include laws related to the prevention of money laundering, terrorist financing and dealings with persons or entities

who are subject to sanctions. I agree that you and the HSBC Group may take any action which you or they, in your or their sole discretion, think is necessary to comply with the laws, including, but not limited to, refusing or reversing any of my Transactions and intercepting and investigating any information being sent as part of a Transaction. Notwithstanding anything else in this Agreement, I agree that neither you nor the HSBC Group will be liable for any direct or indirect losses or other damages of any kind that I suffer because you or other members of the HSBC Group have delayed or failed to execute my Transactions for the reasons above.

- [3] The Plaintiff's commercial accounts were similarly governed by the terms of a Commercial Account Opening Agreement ("CAA"), which provided, in part, as follows:

2. USE OF ACCOUNT/SERVICES

Customer agrees to use each Account in accordance with this Agreement and only for lawful commercial banking purposes and business consistent with generally accepted community standards of conduct or propriety. HSBC reserves the right to investigate illegal or improper use of any Account and may, without notice, close an Account, suspend Account activity or otherwise limit or cancel services to ensure compliance with these terms.

13. HOLD ON FUNDS

Customer agrees and authorizes HSBC to place a "hold" on funds in any Account: ... (b) if HSBC becomes aware of suspicious or possible fraudulent or unauthorized Account activity that may cause a loss to Customer, HSBC or an identifiable third party;

...

HSBC will not be liable for any loss for following or disregarding any Instructions to place or remove a hold.

21. ***LIMITATION OF LIABILITY*** (a) Without limiting the effect of any other liability clauses in this Agreement, Customer agrees that HSBC will NOT be held liable and is hereby released from all liabilities, claims and losses sustained in connection with this Agreement or any Account unless the claim or loss was solely caused by the gross negligence or intentional misconduct of HSBC.

- [4] Finally, in May 2012, the Plaintiff opened separate investment accounts ("IAs") with HSBC Securities. These IAs were funded through the Plaintiff's other HSBC accounts. The IAs were governed by the "InvestDirect" terms and conditions, which provided, *inter alia*:

11. Rights of InvestDirect: InvestDirect may take any such steps as InvestDirect considers necessary, including steps to protect itself against loss. In addition to any other right or remedy to which InvestDirect is entitled, InvestDirect, may, at any time and from time to time without notice or demand to the Client:

...

(b) restrict or close the Account;

...

(d) take the Securities in payment or sell, contract to sell or otherwise dispose of any or all of the Securities held by InvestDirect for the Client and apply the net proceeds therefrom to eliminate or reduce indebtedness;

(e) purchase or borrow any Securities necessary to cover short sales or any other sales made on the Client's behalf in respect of which delivery of certificates in an acceptable delivery form has not been made; or

(f) cancel any outstanding orders.

...

5. Right to Exercise Discretion: InvestDirect will have sole discretion to determine whether or not to accept any order from the Client for a trade in an Option. Furthermore, InvestDirect may take any action with respect to an Option that InvestDirect in its sole discretion determines should be taken if the Client fails to give InvestDirect timely instructions, but InvestDirect has no obligation to take such action. Whenever InvestDirect deems it necessary or advisable for its protection to sell any securities in InvestDirect's possession or to buy in any securities of which the Client's account may be short, or to buy or sell short Options for the Client's account and risk, such sale or purchase may be made in InvestDirect's sole discretion without advertising the same and without prior notice, demand, tender or call to the Client.

...

17. Compliance with Laws: You acknowledge that InvestDirect and other members of the HSBC Group who assist InvestDirect in providing Services to you must comply with the laws of the countries in which InvestDirect or the HSBC Group members are located. These include laws related to the prevention of money laundering, terrorist financing and dealings with persons or entities who are

subject to sanctions. You agree that InvestDirect and the HSBC Group may take any action which they, in their sole discretion, think is necessary to comply with the law, including, but not limited to, refusing or reversing any of your Transactions and intercepting and investigating any information being sent as part of a Transaction. Notwithstanding anything else in this Agreement, you agree that neither InvestDirect nor the HSBC Group will be liable for any direct or indirect losses or other damages of any kind that you suffer because InvestDirect or other members of the HSBC Group have delayed or failed to execute your Transactions for the reasons set out in this Agreement.

(ii) The Plaintiff is investigated and charged

- [5] On May 31, 2012, Anna Iannacchino (“A.I.”), an HSBC employee, notified the HSBC anti-laundering team after she detected suspicious large cash deposits into the Plaintiff’s lawyer trust account.
- [6] On June 8, 2012, HSBC received an RCMP news release through the Bank Crime Prevention and Investigation Office (“BCPIO”) Grid Network. The news release advised that the RCMP’s Integrated Proceeds of Crime Unit had charged the Plaintiff and his employee, Cremer (“Cremer”), with possession of the proceeds of crime, money laundering, and fraud over \$5,000. The charges were also published in the online versions of the *Toronto Star* and *The Globe and Mail*.

(iii) HSBC responds

- [7] Acting on this information, HSBC Bank suspended any further activity on the Plaintiff’s personal and commercial accounts and placed a hold on those accounts. Because the IAs had been funded through the other accounts, HSBC Securities placed a prohibition on the Plaintiff purchasing securities.
- [8] HSBC then began its internal investigation into the Plaintiff’s accounts.
- [9] On June 14, 2012, HSBC received a copy of the bail order from the RCMP, which forbade the Plaintiff from moving or encumbering assets, including any accounts or investments over which he or Cremer had signing authority. An exception was allowed for the payment of business disbursements through the Plaintiff’s law firm’s general account.
- [10] In the following weeks, HSBC worked with the Plaintiff’s law office to facilitate the payment of these disbursements.
- [11] A bail variation was granted on June 26, 2012. It did not come to the attention of HSBC until October 18, 2012.
- [12] In April 2012, the Law Society of Ontario (“LSO”) had commenced an investigation into the Plaintiff’s law practice.

[13] On June 26, 2012, the LSO applied for an order suspending the Plaintiff's licence to practice law. On June 28, 2012, the LSO advised HSBC that the Plaintiff had authorized the LSO to close his trust account and to distribute the proceeds. HSBC duly closed the trust account and transferred all funds to another financial institution where they were to be monitored by the LSO.

(iv) HSBC Securities and the IAs (Affidavit of James Kuo ("J.K."))

[14] In June 2012, the Plaintiff held 400 put options on Google Inc. and 130 put options on Priceline.com (the "options") with an expiry date of June 16, 2012 in the IAs. Upon learning of the criminal charges against the Plaintiff, which confirmed the concerns that HSBC Bank had about his use of his personal and commercial accounts, HSBC Securities instituted a prohibition on the Plaintiff purchasing securities in the accounts. HSBC Securities also began an internal investigation into the Plaintiff's securities account.

[15] On June 12, 2012, HSBC Securities posted the following message (the "message") to that account:

A review of your in-the-money put options on Google and Priceline.com shows that the exercise value of the put positions would result in significant short positions in Google and Priceline.com and would represent a serious financial risk to your account as well as to our firm. As a result, we are requesting that you close these option positions no later than the close of business on Wednesday, June 13, 2012. Pursuant to our Client Terms and Conditions, should the option positions not be closed by the aforementioned deadline, we reserve the right to liquidate the put options on the marketplace commencing at the opening of the trading session on Thursday, June 14, 2012. You may place your transaction by calling an investment representative at 1-800-760-1180. Should you have any questions regarding this notice, please do not hesitate to contact Charles Loiselle at 1-800-760-1180.

[16] HSBC Securities' records confirm that the message was read by the account holder on June 13, 2012, at 9:11 p.m. The Plaintiff's HSBC IA log-on history also confirms regular online access by the account holder throughout June 2012, including on June 13, 2012, at 9:10 p.m. and on the days following.

[17] The Plaintiff did not respond to the message. He did not close out the options in the IAs as requested. He did not have sufficient funds in the IAs to cover the short position, which could have resulted had the options been exercised. Had the options been exercised, the IAs and HSBC Securities could have been exposed to millions of dollars of potential damages.

[18] HSBC Securities sold the options on June 15, 2012. This derived a profit for the Plaintiff of \$86,551.

(v) The Restraining Order

- [19] The statement of claim (the “claim”) was issued on August 9, 2012. HSBC duly defended the action on September 10, 2012. On August 14, 2012, the RCMP notified HSBC that it had grounds to believe that the Plaintiff was holding proceeds of crime in his HSBC accounts.
- [20] On October 22, 2012, the Plaintiff’s personal accounts at HSBC Bank became subject to a restraining order (the “restraining order”). In November 2012, HSBC Bank lifted the freeze on the Plaintiff’s commercial accounts, allowing him to withdraw all funds therein. On August 7, 2013, this court dismissed the Plaintiff’s application to have the restraining order vacated.

(vi) Acquittal and Refunding

- [21] The Plaintiff was acquitted of the fraud charges in 2016. The restraining order was vacated. In response, HSBC refunded the Plaintiff all the remaining funds in both his personal and securities accounts together with any accrued interest.

The Statement of Claim

- [22] The Plaintiff claims damages (including punitive damages) for the wrongful conversion of funds (including unaccounted-for funds withdrawn from an account that the Plaintiff held with HSBC Hong Kong), intentional interference with economic relations, damage to credit reputation, defamation, diminution in the value of his stock portfolio, and interest charges on his credit cards.

Admissions and Other Key Facts

- [23] The Plaintiff admitted the following facts at his discovery in this action:
- a) The parties were bound by the terms of the HSBC account agreements;
 - b) The HSBC account agreements governed the operation of those accounts;
 - c) On June 7, 2012, the Plaintiff and Cremer were charged with the criminal offences of possession of the proceeds of crime, money laundering, and fraud;
 - d) HSBC had the right to freeze the Plaintiff’s accounts under certain circumstances;
 - e) The Plaintiff had recovered all funds listed in Schedule “A” of the statement of claim;
 - f) The Plaintiff’s license to practice law has been revoked;
 - g) The Plaintiff is not seeking any damages related to his practice of law;
 - h) HSBC Hong Kong is not a party to this proceeding and is a separate legal entity from HSBC Bank of Canada and HSBC Securities Canada.

The Defendants’ Position

- [24] The Defendants contend that there is no genuine issue requiring a trial.
- [25] The Defendants have refunded all the funds to which the Plaintiff claims conversion. They do not and have never had access to or control of any funds on deposit at HSBC Hong

Kong. The Plaintiff has admitted, and in any event, it is incontrovertible, that HSBC exercised its legal rights under the account agreements to freeze funds and to sell off investments. HSBC was legally obligated to comply with the bail and restraining orders obtained by third parties. There is no basis to find that HSBC unreasonably exercised its rights or erroneously or recklessly complied with the bail and restraining orders. HSBC Securities acted independently of its co-defendant in prohibiting activity on the IAs and in selling the options.

- [26] The conspiracy and collusion allegations now levelled against HSBC in the responding materials were never pleaded, and there is not a shred of independent evidence in support of that contention.
- [27] There is no basis and no evidence in support of the claims for conversion, intentional interference with economic interests, defamation, or punitive damages.
- [28] There is no evidence to support any claim for damages. The Plaintiff has confirmed that there is no claim for damages to his law practice.

The Plaintiff's Position

- [29] The Plaintiff asserts that the propriety of the Defendants freezing the Plaintiff's assets, the lack of transparency on HSBC Canada's involvement with the missing funds from HSBC Hong Kong, and the potential liability for HSBC's handling of the Plaintiff's securities all raise issues requiring a trial of the action on its merits. The Plaintiff also asserts that the court should be reluctant to grant partial summary judgment. This is not a case where the limited exception to this general rule should apply.

Test on Summary Judgment

- [30] Under rule 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim. There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination of the merits on a motion for summary judgment. This will be the case when the process: (a) allows the judge to make the necessary findings of fact; (b) allows the judge to apply the law to the facts; and (c) is a proportionate, more expeditious, and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49.
- [31] On a motion for summary judgment, the court assumes that the record before it is complete. The parties are obligated to put their best foot forward: see *Switzer v. Petrie*, 2024 ONCA 474, at para. 8. The court should not entertain any suggestions that new or better evidence will be available at trial.

Analysis

- [32] I would grant summary judgment. There is no genuine issue requiring a trial.

- [33] In *7572042 Canada Inc. v. The Bank of Nova Scotia*, 2023 ONSC 3405, at para. 20, my brother, Penny J. eloquently outlined the approach a motion judge should take to a motion under rule 20.04:

It is well settled that on a motion for summary judgment, the moving party bears the onus of establishing a *prima facie* case that there is no genuine issue requiring a trial. The onus then shifts to the responding party. It is not sufficient for the responding party to simply rely on allegations in their pleadings or claim that further evidence might be lead [led] at trial; they must set out, in affidavit material or other evidence, specific facts showing there is a genuine issue requiring a trial. The responding party must put their “best foot forward” and the court is entitled to assume that the record before the court is, in substance, the same as the record that would be presented at trial. The summary judgment analysis under Rule 20 involves two steps. First, the judge hearing the motion determines whether there is a genuine issue requiring a trial, based on the evidence before the court, without using the fact-finding powers. If there is no genuine issue requiring a trial, summary judgment must be granted. If there appears to be a genuine issue requiring a trial, the judge should then determine whether “the need for a trial can be avoided” by using the fact-finding powers granted under Rule 20 to weigh evidence, evaluate credibility, and draw inferences. A trial is not required when the summary judgment process “(1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a more proportionate, more expeditious and less expensive means to achieve a just result”.

- [34] In the case at bar, the evidentiary record, while dense, is not particularly daunting and contains almost nothing that is controversial or open to challenge. It allows me to make the necessary findings. I am as well placed to make findings on the record before me as any trial judge would be. This is not a case where credibility findings on *viva voce* evidence are necessary or desirable. Summary judgment is a more proportionate, expeditious, and less expensive means to achieve a just result.

i) Freezing the Accounts

- [35] The thrust of the Plaintiff’s case is that HSBC froze the Plaintiff’s accounts unreasonably and without foundation resulting in the Plaintiff suffering losses.

- [36] That is simply not the case, and no fair examination of the evidentiary record could yield that finding now or at trial.

- [37] In *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, [2021] 1 S.C.R. 32, at para. 63, the Supreme Court of Canada provided guidance on what is expected of HSBC in exercising its discretion under the account agreements:

Stated simply, the duty to exercise contractual discretion in good faith requires the parties to exercise their discretion in a manner consistent with the purposes for which it was granted in the contract, or, in the terminology of the organizing principle in *Bhasin*, to exercise their discretion reasonably.

- [38] HSBC was entirely within its rights to freeze the Plaintiff's accounts. The personal and commercial account agreements are straightforward and unambiguous. They are carefully worded and expressly authorize the bank to take the actions it did in the circumstances it was facing at the time: clear evidence of suspicious activities, suspected fraud, and illegal activities.
- [39] Moreover, HSBC was obliged by legally binding orders to freeze the accounts of the Plaintiff. In the case of the RCMP bail order condition #9 (which expressly forbade the Plaintiff and Cremer from moving or encumbering any assets or investments), HSBC was obliged to comply with this term. There is no evidence that HSBC received any revised bail conditions until well after all funds had been returned to the Plaintiff. It is also established by the evidence that HSBC worked with the Plaintiff's employees to issue cheques from the law firm for legitimate business expenses. There is no evidence that HSBC was remiss or uncooperative in assisting the Plaintiff with operating under this term of his bail.
- [40] Moreover, on August 14, 2012, HSBC was advised by the RCMP of the money laundering investigation and its intention to apply for a restraining order on all accounts belonging to the Plaintiff. This was followed by a Restraint and Management Order from this court dated October 22, 2012, which effectively froze all nine accounts held by the Plaintiff with HSBC.
- [41] None of this evidence was challenged or contradicted by the Plaintiff.
- [42] Upon learning of the acquittal on the criminal charges, HSBC Bank promptly refunded the remaining balance in the personal accounts to the Plaintiff with accrued interest. The freeze on the accounts was lifted, and some of the funds were returned to the Plaintiff by the end of November 2012. Following the acquittal, counsel for the Plaintiff acknowledged receipt of all funds held at HSBC on April 29, 2016. Indeed, under oath at his examination, the Plaintiff, in reference to funds held in his accounts at HSBC, stated unequivocally that "I have received all the money, except the money that was in Hong Kong."
- [43] As for the IAs, HSBC Securities acted in accordance with the account agreement to sell the options and even made a profit for the Plaintiff in doing so. Most importantly, it proceeded reasonably to avoid the risk of loss that would fall upon both HSBC and the Plaintiff if it had failed to act. Article 17 of the IA Agreement gave HSBC Securities sole discretion to act as it did without notice to the Plaintiff.
- [44] The evidence put forward by the Defendants detailing the facts and circumstances of the freezing of accounts and holding of funds has not been challenged or contradicted. The Plaintiff has chosen not to cross-examine either A.I. or J.K. on their respective affidavits.

ii) HSBC Hong Kong

- [45] There is not a shred of evidence that the Defendants ever accessed, transferred, controlled, or held the funds on deposit with HSBC Hong Kong. The affidavit evidence of A.I. is unchallenged and uncontradicted. At paragraphs 23 and 24 of her affidavit sworn on January 31, 2024, A.I. states:

As an employee of HSBC Bank, I can confirm that the Canadian entities does [do] not exercise any control over Hongkong and Shanghai Banking Corporation Limited (“HSBC Hong Kong”) nor do they have any access or authority over accounts held at HSBC Hong Kong, including those set out in Schedule “B” of the Statement of Claim.

...

I have reviewed the account statements from HSBC Hong Kong produced by James as well as made inquiries of HSBC Bank’s Payment Operations Manager and can confirm that HSBC never received the fund[s] held in those accounts.

- [46] Moreover, in his affidavit dated May 7, 2024, the Plaintiff reveals that by 2019, he learned that his funds had never left HSBC Hong Kong!!!
- [47] It is doubtful that there was ever a genuine issue requiring a trial surrounding the fate of the funds on deposit at HSBC Hong Kong. Considering the Plaintiff’s admission, there could not conceivably be one now.

iii) Conspiracy and Collusion

- [48] The allegations of conspiracy and collusion are set out for the first time in the responding affidavit. These allegations were not pleaded in the statement of claim. Moreover, in her reasons on the application to vary the bail order (2013 ONSC 5085), Fuerst J. already weighed in on the notion of HSBC acting as an agent for the “state” when she concluded at para. 110 of her reasons:

... the bank had a legitimate interest in taking steps to prevent the criminal misuse of its services and in voluntarily disclosing information to the police that would assist in investigating possible criminal misuse of its services. That did not make HSBC an agent of the state. I find that the bank acted independently of the police in deciding to freeze the accounts and in choosing to disclose the account information including the account balances.

- [49] I find the issue to have been previously determined and subject to *res judicata*. There is, in any event, nothing other than a bald allegation put forward by the Plaintiff in a responding affidavit. This is woefully inadequate to support a finding here or at trial. There is no genuine issue for trial on conspiracy or collusion.

iv) Wrongful Interference with Economic Interest

- [50] There is not a shred of evidence to ground a finding that HSBC committed the tort of intentional interference with economic interest. As stated above, the decision to freeze the commercial and personal accounts and to close the IAs was fully justified by the governing agreements, the circumstances, and the information of which HSBC was in receipt. There is no evidence of “intention to interfere or injure”, which is a necessary element of the tort, nor is there anything upon which a reasonable inference could be drawn to establish it.
- [51] Moreover, the Supreme Court of Canada has limited the application of this tort to instances of “parasitic” liability, wherein a plaintiff’s economic loss results from a defendant’s unlawful act against a third party: see *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, [2014] 1 S.C.R. 177, at para. 23. No actionable third-party claim exists. The evidence is clear that HSBC Securities made its own decision to suspend activity in the IAs and liquidate the options. That evidence was never challenged or contradicted.

v) Conversion

- [52] Conversion is not made out on the evidentiary record. This tort requires “a wrongful interference with the goods of another, such as taking, using, or destroying these goods in a manner inconsistent with the owner’s right of possession”: see *Kayani v. Toronto-Dominion Bank*, 2014 ONCA 862, 378 D.L.R. (4th) 729, at para. 27. HSBC acted entirely within its contractual right to freeze and restrict the accounts. There was nothing wrong with this. It certainly did not *take, use, or destroy* the funds. There can be no actionable conversion in the absence of these elements.

vi) Defamation

- [53] Defamation is not a genuine issue for trial, as it is not made out on the evidence. In order to meet the three-part test for defamation, the Plaintiff must establish: 1) the “words” used (in this case, “funds frozen”) are defamatory in that they tend to lower the reputation of the Plaintiff viewed by a reasonable person; 2) the words refer to the Plaintiff; and 3) the words were published, that is came to the attention of persons beyond the Plaintiff.
- [54] The dishonouring of a cheque is not in and of itself defamatory: see Alastair Mullis *et al.*, *Gatley on Libel and Slander*, 13th ed. (London: Sweet & Maxwell, 2022), at para. 2-030. The words “funds frozen” do not meet the test for defamation: the words state the truth of what resulted from HSBC exercising its discretion under its account agreements.
- [55] Also, by the time the accounts were frozen, the BCPIO grid warning had been issued and the charges against the Plaintiff had been laid. Those charges were already notorious, having been published in two prominent newspapers.
- [56] Meanwhile, the LSO investigation was well underway and the Plaintiff’s licence to practice was already suspended. Nothing “published” or “stated” by HSBC in these circumstances could be viewed by a reasonable person as degrading the Plaintiff’s already sullied reputation.

[57] Moreover, the words do not refer to the Plaintiff – they pertain to an account at a bank, which is inanimate and shrouded in privacy. There is nothing describing an aspect of the Plaintiff or his person. There is nothing disparaging or degrading about those words, which could mean any number of things; for example, the freeze could have been in place to protect the Plaintiff or at his request.

[58] Finally, in the circumstances, the freezing of the accounts was justified. Therefore, the words themselves, if they even amount to a communication, were simply conveying a wholly justified reality.

vii) Punitive Damages

[59] Finally, there is no basis for a claim for punitive damages. No underlying tort claim against HSBC can succeed. Nothing on the face of the evidentiary record even hints at callous or high-handed conduct on the part of anyone at HSBC. If anything, the evidence points to HSBC being proactive and fairly treating the Plaintiff by preserving his assets and working with his law office to ensure that it could meet its daily business obligations.

Disposition and Order

[60] For the foregoing reasons, there are no genuine issues requiring a trial.

[61] The motion for summary judgment is therefore allowed.

[62] The Plaintiff's claim is dismissed.

[63] Should the parties be unable to settle the issues of costs, they may take out an appointment before me through the Trial Coordinator at Newmarket to address this and any other outstanding issues.

McCarthy J.

Released: March 31, 2025