

CITATION: Avidar v. Block et al., 2025 ONSC 4885
COURT FILE NO.: CV-25-00740076-0000
DATE: 20250826

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: DR. DON SHACHAR AVIDAR
Plaintiff

AND:
AMY BLOCK and WEIRFOULDS LLP
Respondent/Plaintiff

BEFORE: Justice Papageorgiou

COUNSEL: Dr. Don Shahar Avidar, for the Plaintiff, self-represented
Corey Groper, for the Defendants

HEARD: August 25, 2025

ENDORSEMENT

[1] The defendants Amy Block and Weirfoulds LLP made a request of the registrar pursuant to r. 2.1.01 for an Order that this proceeding be dismissed on the basis that, on its face, it is frivolous, vexatious or an abuse of process. Amy Block is a partner at Weirfoulds.

[2] In this action the plaintiff sues these parties alleging that Ms. Block indicated that she would accept service of a Statement of Claim and then sent an email copied to a third party, Ms. Debra Hurst (“Ms. Hurst”), that said that the affidavit of service falsely indicated that she had accepted service. The plaintiff says that this impugned his integrity and honesty and was defamatory.

[3] He says he has suffered reputational harm, emotional distress, disruption of legal proceedings, strategic disadvantage, and public questioning of his honesty. He seeks general damages in the amount of \$125,000, aggravated damages in the amount of \$125,000 and a judicial determination affirming the truth of the plaintiff’s affidavit of service.

[4] The plaintiff says that Weirfoulds is vicariously liable.

[5] I did not dismiss this matter pursuant to r. 2.1.01(1) based upon the written materials before me.

[6] In my endorsement of May 10, 2025, I noted that an allegation that someone had not told the truth in an affidavit could impact a parties' reputation. While lawyers generally do not owe a duty of care or fiduciary duty to the opposing party in a legal proceeding, they can be held liable for defamation if they make false defamatory statements that harm the reputation of the opposing parties and these statements are not protected by privilege or other defences.

[7] However, I did express significant concerns about the merits of the claim. The plaintiff had not set out who Debra Hurst was in the claim. Depending on who she was, the defence of privilege could be available.

[8] Thus, I directed that the parties attend a case conference where they would provide information as to who Ms. Hurst was and any additional arguments. They provided fulsome submissions on many aspects of the case, much of which was admitted and which supports the conclusion that claim is frivolous and vexatious.

Decision

[9] For the reasons that follow, taking into account the new information before me I dismiss this action as frivolous and vexatious.

Analysis

The Defence of Justification Applies

[10] The first thing to note is that in the Statement of Claim the plaintiff selectively referenced only certain email communications the parties had, in particular a March 3, 2025 email, which is out of context when all the email communications are considered. (He also referenced the alleged defamatory email of March 17, 2025.)

[11] On February 26, 2025, the plaintiff wrote to Ms. Block by email asking whether Ms. Block was authorized to accept service on behalf of the Royal College of Dental Surgeons of Ontario ("RCDSO") and all named individuals affiliated with the RCDSO. Notably the plaintiff had also sued the Health Professions Appeal and Review Board and the Ministry of Health and the plaintiff did not ask Ms. Block if she could accept service on their behalf.

[12] On February 26, 2025 Ms. Block advised the plaintiff by email that she could accept service on behalf of the RCDSO and the individuals named who are Committee members only.

[13] On March 3, 2025 Ms. Block then wrote and advised that she accepted service on behalf of the defendants effective as of 5 pm that day. In my view, in view of the above emails, Ms. Block's March 3, 2025 email could only have been reasonably understood by the plaintiff to reference the defendants that Ms. Block represented and who she referenced in her February 26, 2025 email. Their earlier communications, prompted by the plaintiff, showed this.

[14] In any event on March 4, 2025, prior to the plaintiff filing his affidavit of service, Ms. Block clarified “as you know I have authority to accept service on behalf of the RCDSO, and its committee members. I do not have authority to accept service and do not accept service for the other defendants.”

[15] Later that day, also on March 4, 2025, Ms. Block’s legal assistant Ms. Hurst sent an email to the plaintiff to assist him for the purposes of the affidavit of service. In the email she listed the entities and individuals that the firm could accept service on behalf of.

[16] Then on March 17, 2025 Ms. Block discovered that notwithstanding her clarification, and their earlier communications, the plaintiff swore an affidavit filed on March 5, 2025 where he deposed that she had accepted service on behalf of all the defendants. I note here that it is the plaintiff’s own submission to the court in response to the r. 2.1.01 request that states that he filed the affidavit of service with the court on March 5, 2025.

[17] On March 17, 2025 Ms. Block sent the plaintiff the email, copied to Ms. Hurst where she stated:

“Your affidavit of service which you appear to have filed on March 5, 2025 falsely indicates that I have accepted service on behalf of all defendants. As is clear from our exchange, I represent only the RCDSO and Daniel Faulkner, Dr. Harinder Sandhu, Sarah Lyle Skinner, B. Smith, Dr. Erin Walker, Dr. M. DeAngelis, Dr. N. Greenwood. I do not represent the HPARB, Jane Doe, the Ontario Ministry of Health or John Doe.

If this was in any way unclear, it was expressly conveyed to you on two occasions before you swore and filed your affidavit of service.”

[18] WeirFoulds argues that as the plaintiff referenced some email communications in the claim, the court may consider the totality of them as part of its assessment of whether the claim is frivolous: *McCreight v. Canada*, 2013 ONCA 483, at para 32; *Gaur v. Data*, 2015 ONCA 151, at paras 5 and 19. The difficulty is that not all of the email communications are specifically referenced in the Claim and the cases cited reference specific documents in a Claim that are then incorporated by reference.

[19] Nevertheless, I admit and consider the totality of the email communications because I specifically asked the plaintiff at the case conference whether these emails took place and he agreed that they all had.

[20] In that regard, *Miller v. Ledra et al*, 2023 ONSC 4656 addressed the court’s powers at a case conference which include making procedural orders, giving directions or making an order for interlocutory relief and where a judge may convene a hearing. It provided a fulsome discussion of the court’s powers to make determinations because the justice system is increasingly burdened by its own procedures. These elaborate rules sometimes make justice elusory because parties must wait months or years to address matters that could easily be addressed in a fair and just manner expeditiously at a case conference.

[21] There would be no purpose served by forcing WeirFoulds to bring a motion pursuant to r. 21.01(3)(d) where the evidence of these emails could be admitted in the court's assessment of whether the claim is frivolous or vexatious when the parties already agree that these were the communications.

[22] This would also fly in the face of r. 1.04(1) which directs that the *Rules of Civil Procedure* are to be applied liberally to secure the just, most expeditious and least expensive determination of every proceeding on its merits, and r. 1.04(1.1) which directs that the court shall make orders and give directions proportionate to the importance and complexity of the issues and the amount involved in the proceeding.

[23] There is also no prejudice to the plaintiff because the plaintiff does not allege that any of the communications before me are not the communications the parties had, or that there are additional ones that are necessary.

[24] Therefore, taking into account all of the communications that the parties had, the email referenced by the plaintiff cannot be defamatory because it was true in that the plaintiff had only been told that WeirFoulds represented the RCDSO and committee members and yet he filed an affidavit of service that it had accepted service on behalf of all defendants including the Health Professions Appeal and Review Board and the Ministry of Health. To the plaintiff's knowledge, this was false based upon what he had been told.

[25] I reject the plaintiff's argument that r. 16.09(3) eviscerates the justification defence because it provides that where a lawyer admits service of a document on behalf of a party, the lawyer's written admission or acceptance of service is sufficient proof of service and need not be verified by any other proof of service. This does not apply because Ms. Block never told the plaintiff that she represented all of the defendants or had authority to accept service on behalf of all of them.

The email was not published to a third party

[26] WeirFoulds indicated that Ms. Hurst is Ms. Block's assistant and the plaintiff agreed that that was the case.

[27] The doctrine of defamation requires that statements be published to a third party other than the plaintiff. Where a communication is "kept within the group already acting in an authorship capacity" it cannot be said to be communicated to a third party: *Brown v. WeirFoulds LLP*, 2024 ONSC 3429 at para 22. Therefore, since all that happened was that the email was copied to Ms. Block's assistant, it was not published to a third party.

[28] The claim has no merit on that ground.

Privilege

[29] The email is also protected by absolute privilege which protects lawyers acting in their clients' interests: *Tewari v. Sekhorn*, 2024 ONCA 123 at para 3.

[30] Absolute privilege extends to “words spoken in the ordinary course of proceedings before any court or judicial tribunal recognized by law.” It also extends to “documents properly used and regularly prepared for use in the proceedings” and also extends to “preparatory steps taken with a view to judicial proceedings”: *Salasel v. Cuthbertson*, 2015 ONCA 115 at para 35.

[31] While there is no case on point before me, in my view, email communications about the service of documents are documents that are regularly exchanged during litigation and absolute privilege should extend to this communication. Otherwise, how could a lawyer ever take a position that someone made a false statement with respect to service and then advocate on behalf of their client in that regard? Counsel in this case had a duty to set the record straight and it was appropriate to do so before having to take the step of filing materials in court if the matter could not be resolved. It would be nonsensical and not in the interests of the administration of the justice system to require counsel to file a motion in court if the matter could be resolved through the exchange of email communications before having to take any judicial proceeding over the service issue.

[32] I note that the plaintiff argues that absolute privilege must be pleaded and it was not. I disagree that it was not pleaded. Paragraph 16 pleads that “Legal representatives are absolutely protected from claims made by their client’s adversary relating to or incidental to the conduct of litigation.” Read generously, particularly in the context of a defence to a defamation claim, this encapsulates the concept of absolute privilege. In any event all WeirFoulds would have to do is bring a motion to amend which would be granted.

[33] With respect to the remainder of the claim, I explained in my endorsement of March 10, 2025 that those claims are frivolous and vexatious for the reasons set out therein.

[34] Therefore, the Claim as a whole is frivolous and vexatious and I am dismissing it without leave to amend at the case conference as part of my powers as a case conference judge.

[35] With the new information (that the plaintiff failed to plead but which has now emerged and is admitted) it could be dismissed in a variety of ways but the court should strive to choose the least expensive and most efficient manner of weeding out claims such as this one. In this case, this was at a case conference where the parties submitted materials that they both agreed represented the true state of affairs in terms of their communications and Ms. Hurst’s identity and where they each submitted comprehensive written arguments which demonstrated their understanding that the court would be making a decision.

Papageorgiou J.

Date: August 26, 2025