In the Court of Appeal of Alberta

Citation: DeCourcy v Korlak, 2025 ABCA 299

Date: 20250908
Docket: 2503-0033AC
Registry: Edmonton

Between:

Neal Korlak

Respondent

- and -

Andy DeCourcy, Braden Haigh, Alex Murray, Brent Ridge, Tyson Hampel, Joel Bunnell, Chance Hogelie, Christopher Haacke, Mitch Cook, and Taylor Davie

Appellants

The Court:

The Honourable Justice Jack Watson
The Honourable Justice Anne Kirker
The Honourable Justice Joshua B. Hawkes

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice C. Millsap
Filed on the 7th day of February, 2025
(Docket: 2404 00856)

Memorandum of Judgment

The Court:

[1] The appellants challenge an interlocutory injunctive order granted in the court below that barred them from making public statements alleging fraudulent conduct by the respondent, Mr Neal Korlak. For the following reasons, the appeal is dismissed.

[2] The respondent owned and operated a company in Ontario which was involved in a legal dispute with one of the appellants. The dispute was resolved by the Ontario Superior Court of Justice, Small Claims Court (Claim Number: SC 23-265. Written Reasons dated June 27, 2024). Notably, the Deputy Judge found that the respondent, as agent for the company, did not engage in fraud. That company is now dissolved.

[3] The respondent now owns and operates Kings 13 Manufacturing Inc. At some point following the establishment of the new company, a Facebook page was created that contained adverse comments about the respondent and his business. For present purposes it is unnecessary to detail with specificity in these reasons, which will be published, what was alleged against the respondent. Suffice it to say that the respondent initiated a claim for defamation due to this Facebook page and to other public posts on social media that alleged fraudulent conduct. The application for an interlocutory injunction arose out of this claim. The respondent is self-represented on appeal.

[4] The chambers justice granted the interlocutory injunction on February 5, 2025. The appellants were required to, within 14 days of the order, remove the Facebook page from that website and any similar platform under their control or influence and refrain from re-publishing the same. In addition, they were enjoined from publishing statements alleging that the respondent or Kings 13 Manufacturing Inc has committed or is committing fraud.

[5] The decision of the court below, which was delivered orally, reads in part:

> There will be an injunction granted. The injunction will prevent these parties from specifically alleging any fraud as having been committed or alleging that fraud is being committed by Kings 13 Manufacturing or Mr. Korlak. They are specifically prevented from targeting clients of Kings 13 Manufacturing through the Facebook page, through any Facebook page that alleges unproven fraud against Kings 13 Manufacturing.
>
> I will simply say this as an obiter comment, informing the public about the potential of losing money is one thing, making an unsubstantiated claim of fraud very different. Informing the public that you had previously provided a deposit to one of

> Mr. Korlak's companies and that Mr. Korlak did not come through and did not complete the contract is perfectly acceptable behaviour. Saying that a company operated by Mr. Korlak is committing fraud is very much different and that is not something that I am going to permit the defendants in this action to continue to do.

[6] The appellants claim that the chambers justice made an error of law by applying the incorrect test for granting an interlocutory injunction in the context of defamation. Whatever else one might say about the required elements that an applicant must show to support the grant of an interlocutory injunction pending trial and about the standard of proof relating to such elements, we are well satisfied that the chambers justice was aware of the analysis of Renke J in ***Peyrow v Kaklin***, 2022 ABKB 823 – which, incidentally, was followed (and taken a little further arguably) in ***Peterson v McNallie***, 2024 ABKB 127. We note that the chambers justice stated, "I am particularly aware of the author of that case Justice Renke, my colleague, who provides very good and sound reasoning in all of his decisions and I agree with his good and sound reasoning here...". We are entirely comfortable with taking the chambers justice at his word that he considered the analysis in ***Peyrow*** when reaching his decision. We discern no "subconscious subversion of his articulated thoughts": see ***R v O'Brien***, 2011 SCC 29 at para 18, [2011] 2 SCR 485.

[7] At the very least, from the pellucid oral reasons of the chambers justice and the record before him, we are satisfied that the exercise of discretion to grant the injunction here was not grounded on palpable and overriding error of fact or of misconception of law. Nor was the exercise of discretion by the chambers justice afflicted on the basis that he "clearly misdirected himself or herself on the facts or the law, proceeded arbitrarily, or if the decision is so clearly wrong as to amount to an injustice": ***Canada (Attorney General) v Fontaine***, 2017 SCC 47 at para 36, [2017] 2 SCR 205. Indeed, while this panel might have some reservations about the burden of proof analysis in ***Peterson***, that is not the subject of this appeal. In sum, we are not persuaded that the chambers justice 'lost the plot' as it were.

[8] Interlocutory injunctions in defamation cases are inevitably fact-sensitive and circumstance-sensitive. As this Court stated in ***Makis v Alberta Health Services***, 2020 ABCA 168 at para 58, they are "… only granted in exceptional circumstances." While the appellants argue that the chambers justice misconceived the evidence and that the respondent failed to lead sufficient evidence to justify granting the injunctive order, we are satisfied that there was sufficient evidence available to the chambers justice to grant the interlocutory injunction.

[9] The appellants accept that the impugned statements are defamatory. They argue the respondent's evidence falls short of establishing that their statements are impossible to justify or defend. This is despite the fact the allegation the respondent was using his company for fraudulent purposes was adjudicated and rejected by the Ontario court. In these exceptional circumstances, it was within the margin of appreciation for the grant of an injunction for the chambers justice to encapsulate this case in the following way, "my concern in this case is that this is not about freedom of speech. This is not about exposing Mr. Korlak or his prior business or doing so on the basis of

fair commentary. … [readers are] going to get a message and a link to a Facebook page that says Kings 13 Manufacturing is a scam. There is absolutely no evidence to support that."

[10] The chambers justice's reference to 'fair commentary' was clearly in relation to a central defence claimed by the appellants for which ***WIC Radio Ltd. v Simpson***, 2008 SCC 40 at para 28, [2008] 2 SCR 420 is the guiding authority. Following the ***Peyrow*** analysis, the chambers justice properly considered the defences being claimed and determined that there was no reasonable defence for the speech being enjoined, specifically the allegations of fraud. Relatedly, we note that the pleadings for the defendants essentially listed the alleged defences recognized by the law of defamation in a conclusory manner, and likewise generally denied malice. We are not persuaded that a chambers judge on an injunction motion must recite all elements of such generic pleadings and then specify in his reasons precisely why each of them has no support if the record does not provide such support.

[11] If this case were covered by the anti-SLAPP law in Ontario, which it is not, somewhat analogous arguments to those expressed in ***Peterson***, and in the submissions of the appellants, would be considered. On a motion for dismissal of a defamation action under s 137.1 of the Ontario *Courts of Justice Act,* RSO 1990, c C.43, the defamation plaintiff would face statutory burdens rather than common law assumptions. That said, the Ontario Court of Appeal has said it is not easy to determine questions in the context of 'public interest' with "empirical precision": ***Mondal v Evans-Bitten***, 2023 ONCA 523 at para 69, 485 DLR (4th) 90. Other cases under those provisions have recognized that the broader 'public interest' is not automatically reflected in commercial disputes: see ***Benchwood Builders Inc v Prescott***, 2025 ONCA 171 at paras 33-43; ***Sokoloff v Tru-Path Occupational Therapy Services Ltd***, 2020 ONCA 730 at paras 32-36.

[12] The chambers justice carefully balanced the freedom of expression of the appellants against the position of the respondent in this case. He focused the injunction on expressions of fraud, where the defamatory character of that expression was indisputable and there was no apparent defence to the specific defamatory language to be enjoined.

[13] Further, the existence of the injunction thus defined had no significant inhibitive effect on any activities of the appellants. The injunction does not bar the appellants from publicly discussing the business transactions that they have entered into with the respondent. The chambers justice astutely differentiates such speech from the unsubstantiated claims of fraud in this case, which in his view had "one purpose and that [was] to put Kings 13 Manufacturing out of business despite the fact that there is no evidence that Kings 13 Manufacturing has ever engaged in any of the alleged behaviour."

[14] It will be for a future court to decide if the plaintiff makes his case, or if the defendants make out a defence, or if the plaintiff can demonstrate malice to remove alleged defences. But in the meantime, the chambers justice was satisfied that the appellants should refrain from calling the respondent a fraudster. The ruling by the chambers justice, and by this Court, is not binding on

that future court on the merits of the matter. But in our view, it was reasonable for the chambers judge to find that the injunction was justified on the record. The appeal is dismissed.

[15] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting judgment.

Appeal heard on September 2, 2025

Memorandum filed at Edmonton, Alberta
this 8th day of September, 2025

Watson J.A.

Authorized to sign for: Kirker J.A.

Hawkes J.A.

Appearances:

D. Pearson
for the Appellants, DeCourcy, Haigh, Murray, Ridge, Bunnell, Haacke, and Davie

G.S. Watson
For the Appellants, Hampel, Hogelie, and Cook

Respondent N. Korlak