IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Brown v. Roy,*
2023 BCSC 1153

Date: 20230612
Docket: 220622
Registry: Victoria

Between:

Robin Andrew Brown, 0964919 B.C. Ltd.,
and Rob Brown and Associates Corp. (Now Dissolved)

Plaintiffs

And

Keith Roy and Keith Roy Personal Real Estate Corporation

Defendants

Before: The Honourable Mr. Justice A. Saunders

Oral Reasons for Judgment

Plaintiff Appearing on His Own Behalf:	Robin Andrew Brown
Counsel for the Defendants:	S. Cordell
Place and Date of Hearing:	Victoria, B.C. June 6-7, 2023
Place and Date of Judgment:	Victoria, B.C. June 12, 2023

[1] The defendants apply to dismiss this action as a vexatious abuse of process, and for an order preventing the plaintiff Robin Andrew Brown ("Mr. Brown") from bringing further actions against the defendants and others without leave of the Court. Alternatively, the defendants seek security for their costs, in the amount of $20,000.

[2] This action arises out of a failed real estate transaction and a subsequent suspension by the Real Estate Council of B.C. ("RECBC" or the "Council") of the licenses of Mr. Brown and the plaintiff Rob Brown and Associates Corp. ("BrownCo"). The plaintiffs allege that the failure of the transaction, and the suspensions, were caused by Mr. Brown having been defamed by the defendant Keith Roy ("Mr. Roy").

Background

[3] Some of the background facts are not in issue. The said failed transaction (the "Lucky Cat Transaction") was in respect of a February 1, 2018 contract of purchase and sale of certain real estate properties (the "CPS"). The vendor was the plaintiff, 0964919 B.C. Ltd. ("096"), a corporation solely owned by Mr. Brown, who acted as designated agent of 096. The defendant Keith Roy Personal Real Estate Corporation ("KRCo") acted as designated agent of the purchaser under the CPS, Lucky Cat Holdings Inc. ("Lucky Cat"); Mr. Roy is principal of KRCo.

[4] The CPS was unconditional. It provided for a purchase price of $3.5 million, supported by an appraisal provided to the vendor by the purchaser of $3.47 million; a deposit of only $5,000 (to be increased by $95,000, to a total deposit of $100,000 by March 31, 2018); and, a closing date of August 15, 2018, i.e. a 6 ½ month closing period.

[5] At the time the CPS was executed, the properties were in foreclosure, a fact known to the purchaser. It is, however, in issue in these proceedings whether Mr. Roy, in acting for the purchaser, had also been aware of the fact that a mortgagee had been granted conduct of sale.

[6] Within about two weeks of the CPS being executed, the mortgagee listed the properties for sale at an asking price of $2,995,000—$475,000 less than the appraised value.

[7] In communications between Mr. Brown and Mr. Roy around this time, the following positions were taken:

a) Mr. Roy advised that the foreclosing lender's asking price undermined Lucky Cat's appraised value.

b) Mr. Brown advised that the foreclosing lender did not support the purchase by Lucky Cat and, as Mr. Brown understood, were seeking a firm offer closing in only 14 days; he confirmed that he wished to proceed with the sale to Lucky Cat, on the terms agreed to.

c) Mr. Roy replied that Mr. Brown had assured him that he had control over the property, and that Mr. Brown, whether on purpose or by mistake, had sold a property he was not authorized to sell. Mr. Roy confirmed that Lucky Cat wished to pursue purchase with the party that had legal control over the sale, and said he expected his managing broker would be in touch to coordinate the mutual release of the deposit.

d) Mr. Brown stated that the sale required court approval. He reiterated that the lender had little faith in the CPS because of the small deposit and the long closing date. He confirmed that he was the actual owner and said his lawyer would work on ensuring that the purchase completed smoothly.

e) Mr. Roy replied that as the CPS did not state it was subject to court approval, there was no deal. Mr. Brown, he said, had misled the purchaser into believing Mr. Brown had control over the sale. He accused Mr. Brown of fraud.

[8] Lucky Cat did not pay the further deposit amount by the end of March 2018, and took no further steps towards completing the purchase.

[9] On March 12, 2018, Christina Bates, a director of Lucky Cat, filed a complaint against Mr. Brown with RECBC (the "Lucky Cat Complaint"). It included the following statements:

> Before this contract was agreed to Rob Brown assured our agent, Keith Roy that he was in control of the sale.
>
> We asked this question because we knew there was a foreclosure and that the All Island Equity had control of the sale. Any sale contract would be subject to court approval unless he paid All Island Equity out. Our contract did not have any such clause, hard [sic] there been we would have walked away from this deal.
>
> Our working assumption was he was going to use our contract for 3 of the 4 properties under foreclosure to secure bridge financing and payout All Island Equity.
>
> This was the only justification for the deal as drafted and agreed to by both parties.

Ms. Bates referenced the lender's subsequent listing of the properties, and then continued:

> This listing is fully legal and Rob Brown was not in legal position to sign the contract he did. He has lied as a Realtor, Agency and Owner.
>
> - Since this problem was discovered, my realtor and his managing broker have been trying to contact Rob. He disappeared for 12 days. Then came back with fabrications about the contract we all signed.
> - This listing undermines our $3,470,000 appraisal for all 4 lots. This has a material impact on our development financing plans.
>
> We want our deposit released immediately and $5,000 for reparations. This kind of behaviour gives the Real Estate industry a very bad name.

[10] In April 2018, counsel for the mortgage lender demanded payment to his client of the $5,000 non-refundable deposit. Counsel stated that issues over whether the CPS was still operable, or had been repudiated, or was subject to some other negotiation, were between the registered owner and Lucky Cat and were not his client's concern.

The RECBC Investigations and Decision

[11] By way of an Order in Urgent Circumstances dated March 28, 2019 (the "Urgent Order"), made without notice to Mr. Brown pursuant to s. 45 of the *Real Estate Services Act*, S.B.C. 2004, c. 42 [*RESA*], a Discipline Committee of the

RECBC (the "Committee") ordered the suspension of the licenses of Mr. Brown and BrownCo. The written reasons (the "Suspension Reasons") of the Committee set out the background, which I summarize as follows:

a) RECBC had received three complaints against Mr. Brown:

   i. A November 26, 2017 complaint that Mr. Brown had paid a non-licensed individual to provide services for which a licence was required;

   ii. The Lucky Cat Complaint;

   iii. A July 23, 2018 complaint (the "Third Complaint") that Mr. Brown had misrepresented himself as an owner of residential property, and had wrongfully entered into a tenancy agreement with that property—a property with the same address as the licensed address for Mr. Brown and BrownCo.

b) In the time period in between the Lucky Cat Complaint and the Third Complaint, Mr. Brown had applied to RECBC for renewal of his individual licence. RECBC had however received information from the Real Estate Council of Ontario suggesting that Mr. Brown may have given misleading or untruthful information in his initial licensing application. The Council advised Mr. Brown of its concerns and renewed his licence pending a Qualification Hearing.

c) In the course of investigating the Third Complaint, the Council learned that the landlord of Mr. Brown's business premises (the "Dallas Rd. Address") had commenced eviction proceedings for non-payment of rent.

d) In December 2018 RECBC decided to move ahead with a Qualification Hearing. A notice to him sent by registered mail to the Dallas Rd. Address was returned unclaimed. Mr. Brown did, in January 2019, acknowledge receipt of an email message from the Council and stated he was under

medical care. The Suspension Reasons detail further difficulties the Council had in contacting Mr. Brown and in determining the nature of his medical issues.

e) Investigation by the RECBC's Compliance officers revealed that Mr. Brown had failed to pay rent at the Dallas Rd. Address, and had been escorted off the premises in October 2018. He had not notified the Council of any change of address. Of nine properties then listed for sale as Mr. Brown's listings, staff had visited eight, only one of which had signage referring to Mr. Brown or BrownCo, and that one had a different logo than used by Mr. Brown in his recent correspondence with the Council.

[12] The Council submitted that Mr. Brown and BrownCo had committed professional misconduct through abandoning the brokerage, and that this dereliction was compounded through Mr. Brown's suppression of information about his circumstances. The Committee accepted these submissions, and found these facts established a *prima facie* case of conduct in respect of which a Discipline Committee could make an order under s. 43 of *RESA*. Specifically, the Committee found non-compliance by Mr. Brown of Rule 2-17, respecting him having no valid mailing address; of Bylaw s. 4-8(2)(a)(iii), respecting him failing to amend his licence by providing Council with his new office address; and Rule 2-20, respecting his failure to notify Council of BrownCo's unpaid rent.

[13] The Committee concluded:

> 62. The clients that Mr. Brown and the Brokerage have are entitled to service on an ongoing basis. The public interest requires that service be accompanied by supervision and active management from a managing broker. None of that appears to be happening.
>
> 63. The public interest requires that clients be protected. Matters cannot be put on hold while the investigation of the concerns identified in [the Compliance officer's] affidavit is completed. It would be contrary to the best interest of the public to allow this situation to continue. It would undermine public confidence in the real estate industry and its regulation. It would bring the real estate industry into disrepute.

> 64. In all of the circumstances presented to the Committee, it must fall to the Council to move to protect the public and the clients of Mr. Brown and the Brokerage.

[14] The Committee ordered the suspension of the licences of Mr. Brown and BrownCo, froze their brokerage business banking accounts, and ordered them to cease providing real estate services to any member of the public.

[15] Following that decision, several options were open to Mr. Brown. As the Urgent Order had been made without notice, he could have sought variation or rescission, under s. 45(4) of *RESA*. He could have sought a full discipline hearing, under ss. 45(7) and (8). He could have appealed directly to the Financial Services Tribunal, pursuant to s. 54(1)(d).

[16] He did none of these things. Instead, he petitioned in this Court for judicial review of the Committee's decision. In oral reasons pronounced April 17, 2019, under Docket No. 19-1348, Victoria Registry, Madam Justice Young dismissed the petition, ruling that Mr. Brown would first have to exhaust his statutory remedies. She stated,

> [43] …I find it would be appropriate for the petitioner to exercise his remedies under *RESA*. That will mean some delay, because the hearing has to be scheduled, witnesses have to be subpoenaed and documents have to be exchanged. The Council have committed to expedite the hearing, but it will give Mr. Brown a full opportunity to be heard, to review transcripts from the previous hearing, to know what the complaints are made against him because they were relevant to the decision of the panel. He will be able to bring his happy clients to the hearing to speak in support of his retaining his licence. Hopefully he will provide some medical evidence satisfying the Council that his is physically capable of being a real estate licensee, and some financial evidence to show that he is not insolvent… .

Other Actions commenced by Mr. Brown

Proceedings against the RECBC

[17] Rather than pursuing his statutory remedies to have his licenses reinstated, Mr. Brown then embarked on what can only be described as a campaign of litigation against the Council, including actions taken against its employees who are statutorily immune from civil liability. That campaign ultimately came to an end only when the

Council successfully petitioned this Court for a vexatious litigant order (the Order of Mr. Justice Thompson made April 16, 2021 in Action No. S210476, Victoria Registry (the "Vexatious Litigant Order")). The following is only a summary outline, not in chronological order, of various steps taken by Mr. Brown:

a) An action commenced in Provincial Court against RECBC and the Victoria Real Estate Board ("VREB"), alleging the VREB had cancelled his membership and that the VREB had "blamed" RECBC, which action Mr. Brown settled with VREB, and then withdrew;

b) An action commenced in Provincial Court against RECBC and Coast Capital, claiming damages for pain and suffering, and punitive damages, in respect of the freezing of his accounts, under the Urgent Order;

c) An action commenced in Provincial Court against RECBC and one of its investigators, in respect of their investigation of Mr. Brown's conduct;

d) An action commenced in Provincial Court against the Compliance officer whose affidavit had been before the Committee;

e) A complaint filed with RECBC concerning Mr. Roy's conduct during the Lucky Cat Transaction (the "Brown/Roy Complaint"), and, when that complaint was dismissed by RECBC,

    i. An action commenced in Provincial Court against an RECBC investigator, alleging professional negligence and bad faith in the investigation of the Brown/Roy Complaint;

    ii. A petition for judicial review of the dismissal of the Brown/Roy Complaint, commenced in Supreme Court, which was dismissed by order made by Mr. Justice Thompson on January 18, 2022;

f) An action commenced in Supreme Court alleging RECBC had committed the tort of invasion of privacy both in its investigation of Mr. Brown and its publication of the Committee's Suspension Reasons on its website.

Proceedings against the Defendants

[18] Mr. Brown has also commenced three previous actions against one or both of the Defendants, and others, concerning the Lucky Cat Transaction.

a) On July 19, 2019, Mr. Brown and 096 commenced an action in Provincial Court against Lucky Cat, and Mr. Roy's brokerage, Remax Select Realty, claiming payment of the $5,000 deposit, which was being held in escrow, and $4,000 spent by Mr. Roy on legal fees to enforce the CPS. Mr. Brown was awarded the deposit amount by way of an order made August 14, 2019, and was further awarded costs in the amount of $250 by way of an order made September 15, 2019.

b) On January 16, 2020, Mr. Brown and 096 commenced an action in Provincial Court against Mr. Roy, KRCo, Re/Max, RECBC and Lucky Cat, claiming that the Lucky Cat Transaction had collapsed due to the breach of contract of Lucky Cat, and the negligence of the other defendants (the "Second Lucky Cat Action"), and seeking damages for his legal fees in the amount of approx. $21,000. In February 2020, Mr. Roy and 096 amended their notice of claim, to add as defendants three of Mr. Roy's team members, whom Mr. Roy had been required under RECBC Rules to list in the CPS as designated agents.

c) In March 2020, the defendants filed an application in the Second Lucky Cat Action to strike it as an abuse of process. While that application was pending, Mr. Brown and 096 commenced an action in Supreme Court against Lucky Cat, Lucky Cat's director Ms. Bates, KRCo, Re/Max, and the aforementioned team members, claiming breach of contract and negligence (the "Third Lucky Cat Action"). The defendants applied to strike the Third Lucky Cat Action as an abuse of process, and that order was granted by Madam Justice Jackson, on November 25, 2020.

d) On December 8, 2020, Mr. Brown and 096 amended their notice of claim in the Second Lucky Cat Action, to claim conspiracy and negligent misrepresentation.

e) On December 29, 2020, the Second Lucky Cat Action was dismissed by order of Judge Mrozinski. In respect of the claims against all defendants other than RECBC, the Court held:

> 30. …Additionally, I find the claims in breach of contract, negligence, negligent misrepresentation and the tort of conspiracy are *res judicata.* To relitigate the issue of legal fees in this claim based on these alleged causes of action after having litigated the [First Lucky Cat Action] constitutes as abuse of this Court's process.

[19] It also bears mention that in February and March 2020, Mr. Brown had submitted to the Scheduling office of this Court three separate requests to reappear before Justice Young, to have her reconsider her April 2019 dismissal of his judicial review petition. Each of those requests was denied.

Allegations against the Defendants

[20] The plaintiffs commenced this action by way of a notice of civil claim filed March 10, 2022 (the "NOCC"). The pleading is a prolix blend of assertions of fact, evidence, and argument. With respect to the Lucky Cat Transaction, the NOCC specifically references an April 5, 2018 email from his mortgage lender's lawyer as proof that he was legal able to accept offers on the properties; that email, which is in evidence, in fact only says that Mr. Brown was able to receive offers, not accept them. The NOCC then goes on to allege that:

a) Mr. Roy had encouraged Lucky Cat not to proceed with the Lucky Cat Transaction because Mr. Roy believed Mr. Brown and 096 were not lawfully allowed to sell the property, and that Mr. Brown was committing fraud;

b) The Defendants filed a defamatory and false complaint with the RECBC;

c) The defamatory and false complaint contributed to the RECBC's suspension of Mr. Brown's and BrownCo's licences;

d) The defamatory statements were made maliciously.

[21] The NOCC sets out the following claim for relief:

> The Plaintiff [sic] is seeking relief in the amount of $2,000,000.00 resulting from the effects of the Defamatory statements that contributed to lost Revenue, reputation and uncompleted sale of the Arden property. The Plaintiff had close to $40,000,000 in active real estate listings at the time of the suspension and stood to make $1,500,000.00 from the sale of the breached sale of the Arden property with Lucky Cat.

[22] Mr. Brown concedes that his allegation that the complaint to RECBC was made by the Defendants was as a result of the identity of the complainant who filed the Lucky Cat Complaint having been redacted from the Committee's Suspension Reasons, and of those reasons mistakenly referring to that complainant as a licensee. Through disclosure of the Council's files, Mr. Brown has learned that the complaint was made by Lucky Cat's director, Ms. Bates. Nevertheless, Mr. Brown maintains that Mr. Roy was the original source of the defamatory comments alleged to have been made in the Lucky Cat Complaint, and that the Defendants are liable. The alleged defamatory statements are not particularized.

Abuse of Process

[23] The scope of the doctrine of abuse of process was explained in the majority decision of the SCC in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 [*C.U.P.E.]*:

> [37] In the context that interests us here, the doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would . . . bring the administration of justice into disrepute" (*Canam Enterprises Inc. v. Cole*s (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, per Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63)). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
> > The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of

> concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).
>
> One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added.]

> As Goudge J.A.'s comments indicate, Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice [citations omitted]… .

[24] Factors to be considered in determining whether allowing proceedings to continue would bring the administration of justice into disrepute include whether the court's process is being used dishonestly or unfairly, or for some ulterior or improper purpose, or whether there have been multiple or successive related proceedings, so that vexation or oppression will result: *Lawrence v. Sandilands*, 2003 BCSC 211 at para. 95; app'd, *Young v. Borzoni*, 2007 BCCA 16.

[25] In *Re Lang Michener and Fabian* (1987), 37 DLR (4th) 685 (Ont. H.C.J.) [*Lang Michener*], hallmarks of vexatious or otherwise abusive litigation were noted as including that "grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented". The Court further observed that in determining whether proceedings were vexatious, the whole history of the matter should be considered; and, that vexatious actions include those that could not possibly succeed, or those in which no reasonable person could expect to obtain relief. See also *Geyer v. Merritt* (1979), 16 BCLR 27 (BCSC); aff'd (1980), 26 BCLR 374 (BCCA).

[26] The Supreme Court of Canada, in *C.U.P.E.*, noted the close relationship between the doctrines of abuse of process and collateral attack. It described the latter through quoting the majority judgment in *Wilson v The Queen*, [1983] 2 SCR 594 at 599, where it was said that the rule against collateral attack,

> … has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the

> authorities that such an order may not be attacked collaterally—and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.

[27] In *C.U.P.E.*, the Supreme Court noted that in the case before it,

> … the union does not seek to overturn the sexual abuse conviction itself, but simply contest, for the purposes of a different claim with different legal consequences, whether the conviction was correct. It is an implicit attack on the correctness of the factual basis of the decision, not a contest about whether that decision has legal force, as clearly it does… .

[28] The majority further made reference to the decision of Lord Diplock in *Hunter v. Chief Constable of the West Midlands Police*, [1982] A.C. 529, aff'g *McIlkenny v. Chief Constable of the West Midlands*, [1980] 1 Q.B. 283, where it was said that,

> [t]he abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made.

Discussion

[29] In their notice of application, the defendants submit:

> [84] Here, it is clear the action is a vexatious abuse of process. It is yet another attempt by Mr. Brown to personally, and using impecunious or defunct corporations he controls or did control, obtain damages in respect of the collapsed sale, or to hold those involved, in any way, in his suspension—which he thinks is related to that collapse—accountable in some way, despite already receiving compensation for the former and never taking any proper steps to set aside the latter—rolling forward, supplementing, or adding new gloss to previously articulated grounds all arising from the same two events.

[30] Applying the considerations in the case law I have referred to, to the circumstances of the present case, I agree that the action is clearly an abuse of process, in several respects.

[31] First, the allegation that Mr. Roy defamed Mr. Brown to the RECBC, or is somehow responsible for defamatory comments that were made to the RECBC, and that this defamation was the cause of Mr. Brown's suspension, is a collateral attack

on the RECBC's disciplinary process. To succeed in that aspect of the claim, Mr. Brown would have to prove not only that Mr. Roy's alleged statements were false, but that the suspension of his licence would not have resulted had those statements not been made. The latter determination could only be made by the RECBC. It is not sufficient merely for Mr. Brown to plead that this alleged defamation "contributed" to the suspension; he must plead and prove causation at law, that is, that the suspension would not have occurred but for the alleged defamation having been made. If Mr. Brown considered the Lucky Cat Complaint to be without foundation, and if he had proceeded to have his suspension overturned on that basis, he could then have proceeded with a claim in this court to prove defamation and to obtain relief beyond the jurisdiction of RECBC: see *Bhullar v. British Columbia Veterinary Medical Association*, 2012 BCCA 443, para. 70. This Court is not the proper forum for determining the alleged causal connection between the Lucky Cat Complaint and the licence suspensions.

[32] Second, complaints made to administrative bodies empowered to investigate complaints and impose professional discipline, in the public interest, are cloaked with absolute privilege: see *Hung v. Gardiner*, 2003 BCCA 257; *Hamouth v. Edwards & Angell*, 2005 BCCA 172. Mr. Brown points to s. 123(2) of *RESA*, which excepts from the privilege over "all information supplied and all records and things produced to the superintendent" created in s. 123(1), information produced maliciously; he submits that this provision narrows the protection afforded to malicious complaints by the common law rule of absolute privilege, and that any privilege attaching to the Lucky Cat Complaint is thereby only a qualified privilege.

[33] Section 8 of the *Interpretation Act*, RSBC 1996 c. 238, provides:

> Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

I do not find that any public interest would be served by restricting to qualified privilege only the protection that the common law affords to complaints to disciplinary bodies. The remedial purpose of s. 123, rather, must be to extend some

measure of protection to all information and records provided to the superintendent, or its delegate, so that it is not just complaints that are protected. Information generally is therefore cloaked with at least qualified privilege; complaints, however, are still to be afforded the common law protection of absolute privilege.

[34] The claims in respect of alleged defamation made in the Lucky Cat Complaint are therefore destined to fail, and are a vexatious abuse of process.

[35] Third, I draw the same conclusion with respect to the merits of the allegation that defamatory comments caused Lucky Cat not to proceed with the purchase. I agree with the defendants that the suggestion that Mr. Roy said anything to Lucky Cat that contributed to the deal collapsing, is implausible. It can hardly have been a surprise that Lucky Cat walked away from the transaction, and its modest deposit of $5,000, when the mortgage lender's listing of the properties had undercut Lucky Cat's appraisal, and when Mr. Brown was advising that the lender was looking for a 14-day closing period, rather than the 6 ½ months set out in the CPS. Mr. Brown presents no evidence that the mortgage lender was willing to sell the properties on any terms that Lucky Cat would likely have been willing to offer. This aspect of the claim seems destined to fail.

[36] Fourth, Mr. Brown has in any event already sued Mr. Roy and RoyCo—multiple times—for losses arising out of the failure of the Lucky Cat Transaction, alleging negligence, misrepresentation, and conspiracy. He cannot bring a new claim arising out of the same injury, simply by alleging a new cause of action, in defamation. To allow this claim to proceed would bring the administration of justice into disrepute.

[37] The present action is an abuse of process. It is dismissed in its entirety.

[38] The defendants seek a vexatious litigant order. I have referred to the statement made in *Lang Michener*, that in vexatious litigation, "grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented". This pattern is evident in the manner in which Mr. Brown has

persisted in filing suit after suit. That there is a continuing risk of him doing so, notwithstanding the dismissal of the present action, was made plain when, in the course of submissions, Mr. Brown stated his intention to amend the NOCC to further allege that Mr. Roy had defamed him through Mr. Roy's response to the Brown/Roy complaint. That communication was obviously privileged, and no cause of action could arise therefrom.

[39] I therefore grant the order set out in Part 1, para. 3 of the NoA.

[40] The defendants will have their costs of the action, at Scale B.

[41] The requirement for the plaintiffs' endorsement of the draft Order before entry, is dispensed with.

"A. Saunders, J"