

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kepa v. Catlin*,
2024 BCSC 1293

Date: 20240718
Docket: S188142
Registry: Vancouver

Between:

Marty Kepa

Plaintiff

And

Rick Catlin; Christopher Cottrill; Sarah Almas; WVPD Officer 1; WVPD Officer 2; WVPD Officer 3; WVPD Officer 4; WVPD Officer 5; WVPD Officer 6; WVPD Officer 7; WVPD Officer 8; WVPD Officer 9; WVPD Officer 10; WVPD Associate 1; WVPD Associate 2; WVPD Associate 3; WVPD Associate 4; WVPD Associate 5; WVPD Associate 6; WVPD Associate 7; WVPD Associate 8; WVPD Associate 9; WVPD Associate 10; WVPD Associate 11; District of West Vancouver; and His Majesty the King in right of the Province of British Columbia

Defendants

Before: The Honourable Justice Iyer

Reasons for Judgment

In Chambers

The Plaintiff, appearing via audio:

M. Kepa

Counsel for Defendants, S. Almas, R. Catlin, C. Cottrill, Municipality of West Vancouver BC:

A. Srivastava

Counsel for Defendant BC Minister of Justice:

S. Dillman

Place and Date of Hearing:

Vancouver, B.C.
May 21, 2024

Place and Date of Judgment:

Vancouver, B.C.
July 18, 2024

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OVERVIEW

[1] The defendant, His Majesty the King in Right of the Province of British Columbia (“Province”) and the other defendants (collectively, “West Vancouver Defendants”) each apply to strike Mr. Kepa’s further amended notice of civil claim, filed September 29, 2022 (“FANOCC”) under Rule 9-5(1)(a) of the *Supreme Court Civil Rules* without further leave to amend. Each also seeks a lump sum costs award of \$1,000.

[2] I must decide whether it is plain and obvious that all or part of the FANOCC discloses no reasonable claim, applying the well-established principles governing such assessments: see, for example: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at paras. 17, 21-22; *Krist v. British Columbia*, 2017 BCCA 78 at paras. 22-23; *Sahyoun v. Ho*, 2015 BCSC 392 at paras. 58-63; *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362.

[3] If all or part of the FANOCC is capable of amendment, I must decide whether to grant Mr. Kepa further leave to amend, keeping in mind the object of the *Rules*, which is to secure the just, speedy and inexpensive determination of every proceeding on its merits.

BACKGROUND

[4] Mr. Kepa’s claim arises out of an incident on March 6, 2002, when he was walking his dog on Ambleside Beach in West Vancouver and entered a “No Dogs Allowed area”. He was approached by two West Vancouver by-law officers, Sarah Almas and Christopher Cotrill, and then by a West Vancouver police officer, Cst. Rick Catlin. Mr. Kepa was arrested and charged with assaulting a police officer. The charge was dismissed subsequently.

[5] Mr. Kepa alleges that the by-law officers and Cst. Catlin conspired to have Mr. Kepa charged criminally and that Cst. Catlin, together with other police officers and their associates, broke into, searched and placed surveillance devices in Mr. Kepa’s North Vancouver apartment and followed him. He further alleges that, in a

telephone call on March 15, 2002, Cst. Catlin threatened to kill Mr. Kepa and disclosed that actions of the West Vancouver Police Department had caused the death of a young man.

[6] Following March 15, 2002, Mr. Kepa alleges conspiracies of harassment, intimidation and defamation against him by multiple groups of conspirators, consisting of named and unnamed defendants. The conspiracies are alleged to have occurred in multiple locations in Canada and abroad until at least 2017.

[7] Mr. Kepa also alleges that various other bodies, including the Toronto police, the RCMP, and the BC, Ontario and federal governments failed to protect him when he sought their assistance.

[8] Mr. Kepa alleges that, because of the actions of the defendants, he was unable to discover his claim until the spring of 2017.

[9] In October 2017, Mr. Kepa applied under R. 20-5 for relief of court fees associated with filing a notice of civil claim. A Master (now Associate Judge) denied the application on the basis that Mr. Kepa's proposed action had no chance of success. Mr. Kepa appealed.

[10] In January 2018, Justice Steeves dismissed the appeal on the basis that the proposed claim had no reasonable prospect of success. The Court found that the essence of Mr. Kepa's claim was to advance a civil claim in order to obtain a criminal investigation, which is not permissible. However, the Court made it clear that denial of relief from fees did not prevent Mr. Kepa from filing a claim if he so chose.

[11] In July 2018, Mr. Kepa filed a notice of civil claim based on the allegations I have described, alleging multiple torts, *Charter* breaches and *Criminal Code* violations by multiple law enforcement officers and their associates. Mr. Kepa amended his claim on July 18, 2019 ("Amended Claim")

[12] In 2021, the defendants applied to strike the Amended Claim without leave to amend. On October 7, 2021 Master Elwood (now, Justice Elwood) granted the

applications and struck the Amended Claim in its entirety with leave to amend certain parts of it (“Elwood Decision”). His reasons (reported at 2021 BCSC 1960) provide clear and detailed direction about what amendments were necessary.

[13] Mr. Kepa did not appeal the Elwood Decision. As a result, the focus of the applications before me was on the extent to which the FANOCC complies with the Elwood Decision.

ANALYSIS

[14] There is no question that Mr. Kepa feels deeply wronged. As stated in the Elwood Decision (at para. 2), Mr. Kepa, “says he has been devastated, both emotionally and financially, by the actions of the defendants.” However, in deciding to seek redress from the courts by means of a civil action, Mr. Kepa must comply with the procedures governing such proceedings. My analysis in these applications is confined to those issues. It is not a determination of whether Mr. Kepa has suffered harm or whether the defendants bear moral responsibility for it.

[15] The Elwood Decision outlines the deficiencies in the Amended Claim, what is capable of amendment and what is not, as follows:

- Allegations relating to events from March 6-15, 2002, including the telephone call are not manifestly incapable of proof, but must be amended to eliminate unnecessary content such as “story-telling”, argument and statements about the defendants’ motives;
- Allegations relating to conduct after March 15, 2002, including multiple conspiracies by various groups of named and unnamed defendants in Canada and elsewhere, are manifestly incapable of proof and must be struck out;
- The allegations against the “West Vancouver Police Department” and unnamed “associates” must be removed; however, placeholder names for as-yet unidentified specific West Vancouver police officers are permitted;

- Allegations against other police and government entities between 2008 and 2017 are irrelevant and must be struck out; and
- Allegations of *Criminal Code* violations must be struck out.

[16] The Elwood Decision made the following findings with respect to the potential liability of the defendants:

- In light of s. 21 of the *Police Act*, R.S.B.C. 1996, c. 367, the allegations of dishonesty and malicious or wilful dishonesty against Cst. Catlin, the defendant by-law officers, and unidentified West Vancouver police officers are not bound to fail; and
- The allegations against the Province are restricted to s. 11(1)(b) of the *Police Act* and can only arise with respect to torts alleged to have been committed outside West Vancouver between March 6 and 15, 2002.

[17] In its concluding section, the Elwood Decision grants Mr. Kepa leave to amend his entire pleading, consistent with the directions given:

[68] Mr. Kepa is granted leave to amend the pleading on the following terms and conditions:

- a) The amended pleading must be prepared as a "Fresh Amended Notice of Civil Claim", without strikeout or underlining; it must include the new pleading only.
- b) Paragraphs 1 to 366 of Part 1, Statement of Facts, must be revised with the following objectives. They must:
 - i. set out a concise statement of the material facts giving rise to the plaintiff's claims;
 - ii. avoid unnecessary repetition, evidence or argument;
 - iii. identify as far as possible each of the defendants and their roles in the material events;
 - iv. set out the material facts in support of the plaintiff's claim of postponement or delayed discovery of the claims under the *Limitation Act*.
- c) Paragraphs 367 to 703 of Part 1, Statement of Facts, must be removed from the amended notice of civil claim and either left out of the amended pleading or else fundamentally rewritten with the objectives set out above.

d) The Legal Basis of the claim must be amended according to the changes in the Statement of Facts.

[18] Although the Elwood Decision set page and time limits, the former was increased to 60 pages and the latter is not in issue.

[19] The FANOCC is 57 pages long. Bearing in mind that Mr. Kepa is a self-represented litigant, I find that it is not plain and obvious that paras. 11-24, which concern Mr. Kepa's arrest on March 6, 2002 and the charges laid against him, are bound to fail.

[20] Paragraphs 25-58 relate to the telephone call on March 15, 2002, including its lead-up and aftermath. They comprise about 22 pages or one-third of the pleading. These paragraphs do not comply with the Elwood Decision. They are replete with evidence, argument and speculation about various defendants' motives and thought processes. They include vague allegations about the actions of "associates". In my view, they suffer from the same deficiencies described in the Elwood Decision. As pleaded, it is plain and obvious that they have no reasonable prospect of success.

[21] Paragraphs 69-118 advance claims relating to events after the March 15 telephone call in various locations in Canada and abroad. They include allegations of a surveillance conspiracy in Ontario, cruise line conspiracies on board certain cruise lines, a European conspiracy in Amsterdam, and a defamation conspiracy in Toronto. To paraphrase the Elwood Decision, these paragraphs violate virtually every rule of pleading and frustrate the objectives of pleading.

[22] The remaining paragraphs of Part 1 of the FANOCC set out the relief Mr. Kepa is seeking and the legal basis for his claims. These do not belong in this part of the FANOCC and duplicate what Mr. Kepa has set out in Parts 2 and 3.

[23] In argument, Mr. Kepa emphasized that he has improved his pleading since it was first filed in 2017, that he is willing to improve it further and that there is no prejudice to the defendants. He submitted that the claims can be proved and that he is entitled to the benefit of the doubt as a self-represented litigant.

[24] I agree that pleadings must be read generously and that consideration must be given to the situation of self-represented litigants. The Elwood Decision did just that. The present applications must be assessed in light of the fact that Mr. Kepa has had a chance to amend his pleadings with clear directions from the Court and has not succeeded in complying with them. Although the prejudice to the Province and other institutional defendants is less severe, they will have to meet a case that now dates back over 20 years. The prejudice to the named individual defendants is significant: the allegations against them, particularly Cst. Catlin, are extremely serious. Their interest in bringing the litigation to an end should not be minimized.

[25] Bearing all of this in mind, I find that the only aspect of the FANOCC that is capable of proof is the claim relating to false arrest. I would strike the remaining claims without leave to amend, on the basis that it is plain and obvious that they disclose no reasonable claim. They violate multiple rules of pleading and are so prolix and confusing that it is not possible for the defendants to know the case they have to meet.

CONCLUSION

[26] I grant the Province's application to strike. As set out in the Elwood Decision, its liability arises only under s. 11(1)(b) of the *Police Act*, which applies when a municipal constable, in the course of performance of their duties, acts outside their municipality. The section cannot apply to the defendants involved in the March 6 incident and the subsequent criminal charges because it occurred in West Vancouver.

[27] With respect to the West Vancouver Defendants' application to strike, I make the following orders:

- a) The FANOCC is struck in its entirety;
- b) Mr. Kepa is granted further leave to amend the pleading on the following terms and conditions:

- i. the amended pleading must be prepared as a “Fresh Amended Notice of Civil Claim”, without strikeouts or underlining; it must include the new pleading only; and
- ii. the defendants must be restricted to those involved in the March 6 incident and the subsequent criminal charges, as detailed in paras. 11-24 of the FANOCC;
- iii. the relief sought and legal basis parts of the pleading must be confined to the facts set out in paras. 11-24 of the FANOCC;
- iv. the amended pleading must be no more than 30 pages and must be filed and delivered to the properly named defendants within 90 days of this order.

[28] The defendants each seek lump sum costs of \$1,000. I award them costs of this application fixed at a lump sum of \$1,000 each in the cause.

“Iyer J.”