

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Wiss v. Khan*,
2025 BCSC 181

Date: 20250205
Docket: S04696
Registry: Abbotsford

Between:

Dr. Ray Wiss

Plaintiff

And

Zenab Khan and Sherry Khan

Defendant

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment

Counsel for the Plaintiff:

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Counsel for the Defendants

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Place and Date of Hearing:

Port Coquitlam, B.C.
October 31, 2024

Place and Date of Judgment:

Abbotsford, B.C.
February 5, 2025

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Background

[1] The plaintiff, Dr. Ray Wiss, seeks summary judgment under Rule 9-6 of the Supreme Court Civil Rules for a determination of liability for defamation against Dr. Zenab Khan and her daughter, Sherry Khan. Dr. Wiss claims that Sherry Khan publicly shared defamatory statements, told to her privately by Dr. Khan, on social media platforms, including TikTok. The plaintiff contends that these statements caused significant harm to his professional and personal reputation.

[2] The defendants oppose the application on the basis that material facts remain unresolved, particularly regarding the truth of Dr. Khan’s statements, her intent, and the extent of her involvement in the social media posts. They argue that credibility assessments are required, rendering the matter unsuitable for summary judgment.

[3] The central question on this application is whether there is a dispute as to facts or law which suggests a defence that deserves to be tried: *Pacific Quorum Properties Inc. v. Kovacic*, 2021 BCSC 1501 at para. 94.

Facts

[4] Dr. Wiss is a physician practicing in Abbotsford, British Columbia, and serves as a mentor in the Practice Ready Assessment Program (“PRAP”).

[5] From May 1 to May 12, 2023, Dr. Khan participated in the PRAP under Dr. Wiss’s supervision. Following this period, Dr. Wiss informed Dr. Khan he would not recommend her continuation in the program.

[6] On or around May 13, 2023, several negative Google reviews about Dr. Wiss appeared online. On June 15, 2023, Sherry Khan published two TikTok videos accusing Dr. Wiss of racism, sexual misconduct, and professional incompetence, allegedly based on her mother’s private statements. The posts identified Dr. Wiss by name, garnered over 300,000 views, and included inflammatory language labeling him “a racist and a rapist”. They also incited additional defamatory comments and Google reviews, many of which included threats of physical harm. In this decision, I

will be referring to these allegedly defamatory TikTok videos, their comments, and the Google reviews, as the “Defamatory Posts”.

[7] Dr. Khan alleges that she experienced controlling and inappropriate behavior from Dr. Wiss during PRAP training, including an incident of physical contact. She claims to have shared her concerns privately with Sherry Khan, but denies involvement in the TikTok posts, asserting that her statements to her daughter reflected her personal experience.

[8] A PRAP investigation into Dr. Khan’s allegations concluded that they did not constitute sexual harassment or professional misconduct. The defendants argue, however, that Dr. Khan’s subjective experience and psychological impact are relevant in assessing the truth and context of the statements.

Procedural History

[9] The plaintiff commenced this action on November 15, 2023.

[10] On November 30, 2023, the defendants’ counsel emailed plaintiff’s counsel, offering an apology.

[11] On December 13, 2023, the plaintiff informed the defendants that an application for default judgment would be made if a Response to Civil Claim was not filed and served by December 22, 2023.

[12] On December 19, 2023, the defendants filed their Response to Civil Claim.

[13] On January 24, 2024, the plaintiff requested that the defendants produce a list of documents and provide availability for examination for discovery.

[14] On May 15, 2024, the plaintiff notified the defendants that this application would be set for the week of June 3 to 7, 2024, and again requested document production and availability for discovery.

[15] The defendants filed responses denying defamation and conspiracy but have not provided additional evidence to support their defences. The plaintiff asserts that the defendants rely on bare assertions without substantiating their claims.

[16] The plaintiff asserts that the defendants' procedural delays and failure to comply with disclosure obligations weaken their opposition to summary judgment. He argues that by relying on speculative future evidence rather than substantive submissions, the defendants have failed to meet their evidentiary burden, undermining their credibility and raising further doubts about the factual basis of their defences.

Filed Evidence

[17] The plaintiff's evidence included the following:

- a) Affidavit of Dr. Wiss:
 - i. He alleges that the TikTok posts accused him of racism and sexual misconduct, explicitly referencing his name;
 - ii. He claims the allegations included inappropriate touching during a training session; and
 - iii. He states that these accusations caused professional consequences, including loss of patient trust and reputational harm.
- b) PRAP Investigation Report: This report found no evidence of sexual harassment or hostile conduct by Dr. Wiss.
- c) Affidavit of Dr. Culkin: Dr. Culkin's evidence corroborates claims of reputational damage suffered by Dr. Wiss within the medical community.

[18] The defendants' filed evidence includes the following:

- a) Affidavit of Dr. Khan:

- i. She describes her subjective experiences of feeling controlled, demeaned, and triggered during her interactions with Dr. Wiss; and
 - ii. She denies any involvement in the publication of the TikTok videos or Google reviews.
- b) Affidavit of Sherry Khan:
- i. Sherry Khan acknowledges creating two TikTok videos based on her understanding of her mother's experiences; and
 - ii. She asserts that Dr. Khan was not involved in, and had no knowledge of, the videos.
- c) WhatsApp Communications: Private discussions between Dr. Khan and Sherry Khan concerning the alleged incidents.

Issues

[19] The following issues were examined in rendering a decision on this matter:

- a) Are there unresolved material facts that preclude summary judgment?
- b) If not, has the plaintiff established the elements of defamation?
- c) Have the defendants raised plausible defences requiring trial?

Positions of the Parties

[20] The plaintiff, Dr. Wiss, asserts that the Defamatory Posts are false and defamatory. He argues that, in their natural and ordinary meaning or by innuendo, they convey that he:

- a) Made false reports about Dr. Khan;
- b) Sabotaged Dr. Khan;
- c) Harassed Dr. Khan; and

d) Inappropriately touched and sexually assaulted Dr. Khan.

[21] The plaintiff claims that the Defamatory Posts have harmed his professional and business reputation and are likely to damage his reputation for honesty and integrity. He also alleges that the Defamatory Posts portray him in a false and misleading light, causing significant embarrassment and public humiliation.

[22] Dr. Wiss further contends that the false allegations have undermined the trust of existing and potential patients in the quality of his professional services, which is essential to his medical practice. Specifically, since publication of the Defamatory Posts, several patients inquired of Dr. Wiss about the allegations, and some transferred their files to other physicians.

[23] While Dr. Wiss's notice of civil claim also alleges that the defendants conspired with each other with intent to injure the plaintiff by entering into an agreement to defame him, his summary judgment application is limited to the claim of defamation.

[24] Both defendants deny that Dr. Khan participated in or encouraged the publication of the TikTok videos. Sherry Khan asserts that she acted independently to defend her mother, believing she was mistreated during the PRAP.

Legal Authority

[25] In his Notice of Application dated May 17, 2024, the plaintiff requests an order that judgment be granted against the defendants on the issue of liability for defamation, pursuant to Rule 9-6(2). He submits that the defendants' Response to Civil Claim raises no genuine issue for trial. The relevant provisions are as follows:

(2) In an action, a person who files an originating pleading in which a claim is made against a person may, after the person against whom the claim is made serves a responding pleading on the claiming party, apply under this rule for judgment against the answering party on all or part of the claim.

...

(5) On hearing an application under subrule (2) or (4), the court,

- (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
 - (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
 - (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
 - (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.
- [Emphasis added.]

[26] Under Rule 9-6(5)(a), the court must pronounce judgment or dismiss the claim if satisfied that no genuine issue for trial exists with respect to a claim or defence. The test is whether there is a *bona fide* triable issue, with the applicant bearing the burden of negating the existence of such an issue beyond a reasonable doubt: *Metro-Can Construction (HS) Ltd. v. Noel Developments Ltd.* (1996), 26 B.C.L.R. (3d) 26, 1996 CanLII 3329 (B.C.C.A.); *Armex Mining Corp. v. Huakan International Mining Inc.*, 2018 BCSC 1418 at paras. 6–7.

[27] On an application under Rule 9-6, the court must not weigh the evidence. If the evidence requires weighing or assessment, the test of “plain and obvious” or “beyond a doubt” is not satisfied, and the application must be dismissed: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at paras. 8–12. The Court of Appeal has further clarified that while evidence may be considered under Rule 9-6(5)(a), it must be undisputed: *Oh v. Coquitlam (City)*, 2018 BCCA 129 at para. 6. The court may draw inferences of fact from undisputed evidence, provided those inferences are strongly supported by the facts: *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at paras. 37–38.

[28] In *Watson Island Development Corp. v. Prince Rupert (City)*, 2015 BCSC 1474 [Watson], Justice Dley provided a helpful summary of the principles governing an application under this Rule:

- [21] The City applies under Rule 9-6 of the Supreme Court Civil Rules, B.C. Reg. 168/2009. Rule 9-6(5)(a) permits a court to dismiss a claim if it is satisfied that there is no genuine issue for trial. Summary judgment may be granted on all or part of a claim. The onus is on the applicant to prove beyond a reasonable doubt that there is no triable issue: *Metro-Can Construction (HS) Ltd. v. Noel Developments Ltd.* (1996), , 1996 CanLII 3329 (BC CA), 26 B.C.L.R. (3d) 26 at para. 4; *Wong v. Wilson*, 2013 BCSC 1465 at para. 40. Another way of stating the test is whether the plaintiff is "bound to lose": *Pitt v. Holt*, 2007 BCSC 1555 at para. 10.
- [22] The application under Rule 9-6 is based on the premise that the claim is factually without merit. It raises an issue of fact only or, at best, a question of mixed fact and law, unless the court determines under subrule (5)(c) that "the only genuine issue is an issue of law", in which case the court "may determine the question and pronounce judgment accordingly": *International Taoist Church of Canada v. Ching Chung Taoist Association of Hong Kong Limited*, 2011 BCCA 149 at para. 9.
- [23] On an application under Rule 9-6 the court is not to weigh the evidence. If the evidence needs to be weighed and assessed, then the test of "plain and obvious" or "beyond a doubt" has not been satisfied and the application is to be dismissed: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at paras. 8-12; *International Taoist Church of Canada* at para. 14.
- [24] An application to dismiss a claim that is bound to be unsuccessful weeds out unmeritorious claims and saves the heavy price of time and cost borne by the parties and the justice system: *4 Corners Properties Ltd. v. Boffo Developments (Smithe) Ltd.*, 2013 BCSC 1926 at para. 20.
- [25] Caution must be exercised in granting summary judgment on only a portion of a claim so as to guard against litigating in slices: *Westsea Construction Ltd v. 0759553 BC Ltd.*, 2012 BCSC 564 (CanLII) at para. 49. Judgment on only a portion of the claim risks multiple appeals being heard within the same action, findings being made in the absence of a full factual context, and inconsistent findings being made after further evidence has been adduced: *Century Services Inc. v. LeRoy*, 2014 BCSC 702 at para. 89, var'd on other grounds 2015 BCCA 120.
- [26] On the other hand, the resolution of an important part of the claim against a party may significantly impact the balance of the claim and provide for a timelier and cost effective approach: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 60.
- [29] Rule 9-6 serves an important purpose in civil litigation by preventing claims or defences with no chance of success from proceeding to trial. As the Supreme Court of Canada stated in *Canada (Attorney General) v. Lameman*, 2008 SCC 14 [*Lameman*], at para. 10, "[t]rying unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and the justice system." Claims

without any realistic prospect of success must be identified and dismissed at an early stage, as provided for under Rule 9-6.

[30] A motion for summary judgment cannot be defeated by vague references to potential future evidence if the matter proceeds. The court's determination must rest on the pleadings as framed and the evidence currently before it, not on speculation about what might be proven at trial: *Lameman* at para. 19.

[31] However, justice requires that claims raising genuine issues for trial be allowed to proceed.

[32] To succeed on summary judgment under Rule 9-6, with respect to an allegation of defamation, the plaintiff must establish that there is no genuine issue for trial. The court must first determine:

- a) Whether the statements were defamatory;
- b) Whether they referred to the plaintiff; and
- c) Whether they were communicated to others.

[33] Summary judgment is inappropriate if there are unresolved material facts or conflicting evidence requiring credibility assessments. The question is not whether there is a dispute as to facts or law but rather whether there is a dispute as to facts or law which suggests that there is a defence that deserves to be tried: *Memphis Rogues Ltd. v. Skalbania*, [1982] B.C.J. No. 1489 (C.A.) at paras. 13-14 [*Memphis Rogues*].

[34] Once the elements of defamation are established, the burden shifts to the defendants to prove a defence, such as:

- a) Truth: The statements are substantially true;
- b) Fair Comment: The statements were an expression of honest opinion on a matter of public interest; or

- c) Qualified Privilege: The statements were made in a context where the speaker had a duty or interest to communicate them, and the recipient had a corresponding interest to receive them.

Analysis of Issues

[35] An application for summary judgment requires the Court to first assess whether the matter is appropriate for summary determination, guided by the principles outlined by Justice Dley in *Watson*.

[36] Dr. Wiss submits that the defendants' Response to Civil Claim merely denies the allegations without specifically addressing the facts or providing additional evidence to support their defences. He asserts that the defendants rely on bare assertions without substantiating their claims. The plaintiff says that a bald assertion in the defendants' respective affidavits should not suffice to defeat a summary judgment application.

[37] The plaintiff further emphasizes delays by the defendants, including missed deadlines and limited compliance with disclosure obligations. While the defendants complied with the June 3, 2024, order by providing a list of documents, they failed to produce the underlying materials referenced in the list or any additional evidence to support their defences. This partial compliance undermines the defendants' position, as they continue to rely on speculative future evidence rather than substantive submissions. The plaintiff argues that this pattern of delay and incomplete disclosure weakens the defendants' opposition to summary judgment and raises concerns about their ability to substantiate their defences at trial.

[38] In *Balfour v. StormCloud Network (Canada) Incorporated*, 2015 BCSC 1232, aff'd 2016 BCCA 438, Justice Betton discussed what defines a bald assertion:

[38] The respondents argue that since the parties have provided conflicting sworn evidence, this is a factual dispute that would require a trial to allow for the assessment of credibility. As noted above, this court's role on a summary judgment application is determining whether there is a triable issue, not weighing conflicting evidence: *International Taoist Church of Canada* at para. 14.

[39] However, the petitioner characterizes the respondents' evidence as "bald assertions" that are not sufficient to defeat its application. That phrase has been used in some decisions to describe assertions which are not corroborated in any way, and such assertions will not usually be sufficient to prevent summary judgment, especially when there is no evidence that corroborating facts might arise later in the proceedings. This was discussed in *Southeast Toyota Distributors Inc. v. Branch*, 1997 CanLII 2089 (BC SC), [1997] B.C.J. No. 1426 (S.C.), aff'd (1998) 1998 CanLII 4338 (BC CA), 47 B.C.L.R. (3d) 1 (C.A.) where Hood J. said at para. 62:

[62] Bald assertions in a given case may not be enough to resist the *order nisi*, and to justify the transfer of the proceedings to the trial list. This will depend to some extent on the state of the defendant's evidence or case at the time of the application. If he has basically presented his case, then assertion would probably not be enough. On the other hand if the evidence or facts upon which the defendant relies are not within his knowledge or control, and there is a real possibility of a factual base being developed as the trial proceeds, then assertion may be enough. Each case of course will stand alone on its particular circumstances. See *Memphis Rogues*.

[40] Indeed, there is nothing presented in the evidence that corroborates the assertion of a collateral contract. The respondents point to some e-mail communications, but, in my view, those emails of a very general nature. There is certainly no specific reference to the petitioner undertaking to attempt to get \$300,000 to the respondents, and any inference of such an undertaking would be a strained one.

[41] In short, there is nothing in the limited communications between the parties that supports the respondents' proposition. In the circumstances the evidence of a collateral contract consists of only bald assertions.

[39] The determination of whether bald assertions suffice depends on the circumstances of each case. Courts will assess whether there is a genuine prospect of further evidence emerging to substantiate the assertions, and whether the claims present a *bona fide* triable issue rather than mere speculation.

Are There Unresolved Material Facts That Preclude Summary Judgment?

[40] The defendants contend that critical facts remain unresolved, specifically:

- a) Whether Dr. Khan's statements to Sherry Khan were defamatory or reflected her genuine experiences;
- b) The extent of Dr. Khan's involvement in the creation and dissemination of the TikTok videos and other online content;

- c) Whether the subjective context of Dr. Khan's experiences could support a defence of truth or fair comment; and
- d) Whether Sherry Khan's actions were motivated by a qualified privilege to protect her mother.

[41] The defendants further argue that the absence of discovery limits the court's ability to assess credibility and weigh evidence. They assert that discovery may yield additional evidence regarding the origin and dissemination of the allegedly defamatory posts, which could impact the assessment of their defences.

[42] I find that the essential facts underlying the plaintiff's defamation claim are not in dispute, at least not with respect to Sherry Khan. The TikTok videos and related Google reviews explicitly refer to the plaintiff, were widely disseminated, and contain allegations of racism and sexual assault—statements. The defendants do not dispute the statements were made or their reference to the plaintiff, and the evidence of publication is uncontroverted.

[43] While the defendants argue that unresolved factual disputes preclude summary judgment, these disputes primarily pertain to their defences, not the *prima facie* elements of defamation. Consequently, I find that no genuine issue for trial arises regarding the plaintiff's *prima facie* case of defamation.

Has the Plaintiff Established the Elements of Defamation?

Were the Statements Defamatory?

[44] The plaintiff asserts that the statements contained in the TikTok videos are defamatory. These videos accused Dr. Wiss of racism, false reporting, sabotage, harassment, inappropriate touching, and sexual assault. In their natural and ordinary meaning, such statements would tend to lower the plaintiff's reputation in the eyes of reasonable members of society. Allegations of this nature, particularly when they involve serious accusations such as sexual assault and racism, are inherently damaging to personal and professional reputations.

[45] The plaintiff also refers to the PRAP Investigation Report, which found no evidence to support the allegations of sexual harassment or hostile conduct against him.

[46] Additionally, the plaintiff's affidavit describes the reputational harm he has experienced, including a loss of trust from patients, inquiries about the allegations, and the transfer of patient files to other physicians. Dr. Culkin's affidavit supports these claims, noting the negative impact on the plaintiff's professional standing within the medical community.

[47] As the BC Court of Appeal set out in *Kazakoff v. Taft*, 2018 BCCA 241:

[31] ... Much judicial ink has been spilt in articulating the test [for defamation], which may be summarized as follows in Raymond E. Brown's *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, loose-leaf (consulted on 22 April 2018), 2d ed (Toronto: Thompson Reuters Canada, 2017), ch 5.3(1)(a):

... "The question ... is whether the words in their ordinary signification are capable of being defamatory." It is whether the particular imputation is reasonably capable of being conveyed. Would a reasonable person to whom they were published understand them in a defamatory sense? Particular attention will be given to the time when the words are read or heard, to the mode or manner of the publication, and to the community in which they are published. The nature of the publication itself may be a material consideration; the reader of a sensational article may be permitted a certain amount of loose thinking, while the reader of a non-sensational article may be expected to apply a greater degree of analytical focus. If the defamatory meaning is latent and depends upon the existence of extrinsic facts to be understood in a defamatory sense, the plaintiff must prove that the persons to whom the words were published were aware of those facts.

A court must be guided by the test of reasonableness. It will not strain to give a particular meaning to published words, or stretch them beyond their fair meaning. It will avoid any unusual meaning, or a tortured, forced or unreasonable interpretation of the language, and the inferences drawn must not be far-fetched. Words will not be distorted to give them an unusual meaning. They should be judged by their general tenor. The language will not be tortured to make certain that which is not certain. It is not the ingeniously possible interpretation, but the plainly normal construction that is preferred.

[Footnotes omitted.]

Natural and Ordinary Meaning

[48] In assessing the natural and ordinary meaning of the statements, courts must consider the plain language used, the context of publication, and how a reasonable observer would interpret the allegations.

[49] The statements made in the Defamatory Posts are defamatory in their natural and ordinary meaning. A reasonable person, considering society's community standards, would interpret them as serious accusations of professional and misconduct. Indeed, accusations of racism and sexual assault are inherently damaging to personal and professional reputations, especially in the medical profession where trust and integrity are paramount. These statements would reasonably lead members of the public to question the plaintiff's morality, competence, and fitness to practice medicine.

[50] Specific use of the terms 'racist' and 'rapist' compounds the defamatory meaning. These words are inflammatory and unambiguous, leaving no doubt as to their damaging effect on the plaintiff's personal and professional reputations.

Did the Statements Refer to the Plaintiff?

[51] Dr. Wiss is explicitly identified by name in the Defamatory Posts; this specificity eliminates any ambiguity that the statements referred to the plaintiff.

Were the Statements Communicated to Others?

[52] The evidence demonstrates that the defamatory statements were widely disseminated through TikTok, garnering over 300,000 views and receiving more than 1,000 comments. The level of engagement with the videos establishes that the statements were communicated to others on a large scale.

Conclusion on the Elements of Defamation

[53] Based on the evidence before the court, I find that the plaintiff has satisfied the three elements necessary to establish a *prima facie* case of defamation. The statements in the Defamatory Posts are defamatory in nature, referring specifically

to the plaintiff by name, and were widely published to others. As a result, I find that the plaintiff has demonstrated the foundation of his claim.

[54] In fact, the evidence suggests the alleged defamatory comments in this case occurred through at least three distinct modes. First, there are the defamatory remarks made directly by Sherry Khan, which she published on her TikTok page. Second, there is the republication of Sherry Khan's remarks that spread to other platforms, including the Google reviews targeting both Dr. Wiss and the Abbotsford Medical Centre. Third, there are the defamatory remarks made by third parties in response to Sherry Khan's TikTok video post, which were incited or facilitated by her original publication and contributed to the overall harm caused.

[55] Having found that Dr. Wiss has established the necessary elements to establish a *prima facie* case of defamation, the burden now shifts to the defendants to prove an applicable defence, such as justification (truth), fair comment, qualified or absolute privilege, or responsible communication. Justification is an absolute defence, while the other defences, if established, can be defeated by evidence of malice: *Gatley on Libel and Slander*, 8th ed. (1981), at 10.

Defences Raised by the Defendants

[56] The defendants have raised several defences in response to the plaintiff's claims.

[57] First, the defendants rely on the defence of truth (justification), arguing that some of the alleged defamatory statements, particularly those concerning the incident involving physical contact, are true. Dr. Khan described feeling uncomfortable during an interaction in which the plaintiff allegedly grabbed her hand to demonstrate a medical technique. She characterized this conduct as controlling and demeaning. The defendants submit that if these statements are found to be true, they constitute an absolute defence to the plaintiff's claims.

[58] Second, the defendants assert fair comment, maintaining that the TikTok posts made by Sherry Khan were expressions of opinion on matters of public

interest, specifically the treatment of her mother by the plaintiff. The defendants argue that these posts reflect genuine commentary rather than factual assertions and, therefore, fall within the scope of lawful free expression.

[59] Third, the defendants invoke qualified privilege, arguing that Dr. Khan's communications with her daughter were private and made in circumstances where she had a duty or interest to share her experiences, and Sherry had a corresponding interest in receiving that information. They contend that such private communications should not expose Dr. Khan to liability for defamation.

[60] Fourth, the defendants rely on the defence of responsible communication on matters of public interest. They argue that Sherry Khan's posts, while critical, were intended to raise awareness of perceived issues within the medical profession. They submit that such communication, if responsibly made, is protected under Canadian defamation law.

[61] Fifth, Dr. Khan denies any involvement in the creation, encouragement, or dissemination of the TikTok posts. She maintains that her private communications with Sherry do not make her liable for Sherry's subsequent actions. The defendants argue that liability cannot extend to Dr. Khan based on these private interactions alone.

[62] Finally, the defendants argue that their actions were not motivated by malice, and an absence of malice preserves certain defences, such as qualified privilege and fair comment. These defences, however, would be defeated if malice is proven by the plaintiff.

[63] The plaintiff disputes the sufficiency of these defences, arguing that the defendants have failed to adduce substantiating evidence. The plaintiff further submits that the defences are speculative and insufficient to raise a genuine issue for trial.

[64] The plaintiff emphasized that under Rule 9-6, the defendants were obligated to put their "best foot forward" and present all available evidence to substantiate their

defences. Their failure to do so, in the plaintiff's view, justifies granting summary judgment.

Have the Defendants Raised Plausible Defences Requiring Trial?

[65] The question to examine at this stage is whether there is a dispute as to facts or law which suggests that there is a defence that deserves to be tried: *Pacific Quorum Properties Inc. v. Kovacic*, 2021 BCSC 1501 at para. 94, citing *Memphis Rogues* at paras. 13-14.

[66] Although the defendants have raised multiple defences, the court's analysis at this stage focussed on the defence of qualified privilege, because for the following reasons, I find it is dispositive of the application.

Qualified Privilege

[67] The qualified privilege defence shields individuals from defamation liability in certain contexts but can be lost if malice is proven or the speaker oversteps the boundaries of the privileged occasion. A valid defence hinges on the identification of a specific "occasion of qualified privilege."

[68] In *Bent v. Platnick*, 2020 SCC 23, the Supreme Court of Canada summarized the test for the defence of qualified privilege:

[121] An occasion of qualified privilege exists if a person making a communication has "an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published" and the recipient has "a corresponding interest or duty to receive it": Downard, at §9.6 (footnote omitted). Importantly, "[q]ualified privilege attaches to the occasion upon which the communication is made, and not to the communication itself": *Hill*, at para. 143; *Botiuk*, at para. 78. Where the occasion is shown to be privileged, "the defendant is free to publish, with impunity, remarks which may be defamatory and untrue about the plaintiff": *Hill*, at para. 144; *Botiuk*, at para. 79. However, the privilege is *qualified* in the sense that it can be defeated. This can occur particularly in two situations: where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the scope of the occasion of privilege was exceeded (Downard, at §1.9; see also *Hill*, at paras. 145-47; *Botiuk*, at paras. 79-80).

[Emphasis in original.]

[69] The defence of qualified privilege applies where a communication is made on an occasion where the speaker has a legal, social, moral, or personal duty to convey the information, and the recipient has a corresponding interest or duty to receive it: *Hill v. Church of Scientology of Toronto* at para. 143; *Bent* at para. 121. However, this defence is qualified and may be defeated if the dominant motive is malice or if the scope of the occasion is exceeded: *Hill* at paras. 145–147.

[70] Based on the facts of this case, the actions of Dr. Khan and Sherry Khan must be analyzed separately to determine if qualified privilege is available and whether there is a genuine issue for trial.

Dr. Khan's Role and Potential Liability

[71] Dr. Khan's defence of qualified privilege hinges on whether her statements to her daughter were made in good faith or included reckless embellishments. This raises factual disputes regarding her credibility and the scope of the privilege. Dr. Khan denies any knowledge or approval of any of the Defamatory Posts, asserting that her role was confined to a private conversation with her daughter. Whether this claim is credible remains a material factual dispute requiring resolution at trial, particularly considering the alleged foreseeability of harm from her statements.

Sherry Khan's Role and Potential Liability

[72] I find that Sherry Khan's decision to post allegations about Dr. Wiss on TikTok fundamentally alters the analysis. By taking the private conversation and making it public, she created a new publication with a broader audience lacking any corresponding duty or interest to receive the communication. The dissemination on a public platform potentially exceeds the scope of any qualified privilege that may have existed in the original conversation.

[73] Moreover, the content of the TikTok post escalates the allegations significantly, as they suggest bullying, harassment, and even sexual assault. These claims, paired with the further defamatory and threatening comments, demonstrate

recklessness and a potential malicious intent to harm Dr. Wiss's reputation. Evidence of malice, if proven, would defeat the defence of qualified privilege entirely.

[74] Additionally, by failing to moderate or address the defamatory comments made by others on her post (some of which included threats of harm), notification of individuals making false Google reviews, and disparaging remarks about Dr. Wiss's family, the evidence suggests that Sherry Khan perpetuated and amplified the defamatory harm. Her refusal to remove the post after being contacted by the Abbotsford Medical Centre's clinic manager further suggests a finding of malice or, at the very least, reckless indifference to the harm caused.

[75] These factors indicate that the defence of qualified privilege is unlikely to succeed for Sherry Khan, as her actions exceeded the bounds of any privileged occasion and raise issues of malice. However, whether her motive in making the posts and her subsequent conduct were reckless or malicious remains a genuine issue for trial.

Genuine Issue for Trial

[76] Courts must refrain from weighing evidence or resolving factual disputes in summary judgment applications: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500. The onus rests on the party seeking summary judgment to meet the high threshold of demonstrating that no *bona fide* triable issue exists, as established in *Hryniak v. Mauldin*, 2014 SCC 7.

[77] Dr. Khan's defence relies heavily on her credibility, particularly her claim that her statements to her daughter were private, made in good faith, and not intended for public dissemination. While the defendants argue that Dr. Khan had no knowledge of or involvement in the TikTok posts, the evidence must still be tested to determine whether she had knowledge of or participation in the Google reviews. Similarly, Sherry Khan's actions raise questions about whether her TikTok posts were motivated by malice, particularly given her failure to moderate defamatory comments despite warnings. I find that these unresolved factual disputes, especially concerning intent and credibility, can only be resolved through trial.

Conclusion

[78] While the plaintiff has established a *prima facie* case of defamation, I find that significant unresolved factual disputes require trial. These include Dr. Khan's credibility regarding her alleged unawareness of the Defamatory Posts, the intent behind her private statements, and whether those statements exceeded the scope of qualified privilege. Similarly, factual questions about Sherry Khan's intent in publishing the TikTok posts, her failure to moderate harmful third-party comments, and the foreseeability of harm require resolution. These unresolved issues directly impact the availability of the defendants' defences and preclude summary judgment at this stage.

Disposition

[79] For these reasons, I make the following orders:

- a) The plaintiff's application for summary judgment is dismissed; and
- b) The costs of this application are reserved to the trial judge to be determined in the cause.

"Sukstorf J."