

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gesner v. Jennings*,  
2025 BCSC 223

Date: 20250212  
Docket: S235587  
Registry: Vancouver

Between:

**Ashley Gesner**

Plaintiff

And

**Jacqueline Jennings**

Defendant

Before: The Honourable Justice A. Ross

## Reasons for Judgment

The Plaintiff, appearing in person:

A. Gesner

Counsel for the Defendant:

A. Greer

Place and Date of Hearing:

Vancouver, B.C.  
December 13, 2024

Place and Date of Judgment:

Vancouver, B.C.  
February 12, 2025

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[1] These reasons address cross-applications that came before me in chambers on December 13, 2024. For context, the plaintiff's underlying action is framed in defamation and breach of contract. The underlying facts relate to a dispute over a business relationship that included the design for a renovation to the defendant's home on the Sunshine Coast.

**The Defendant's Application**

[2] The defendant applied for the following orders (paraphrased):

- a) An order striking out the 4<sup>th</sup> amended notice of civil claim file October 11, 2024, without leave to amend, and order that the action be dismissed;
- b) A declaration that the plaintiff is a vexatious litigant;
- c) An order that the plaintiff not file any actions, petitions or applications against the defendant or her counsel without obtaining leave of the court;
- d) An order that any document filed in contravention to this order is a nullity and that no party need respond to it;
- e) Special costs.

[3] The plaintiff opposes all these forms of relief.

**The Plaintiff's Application**

[4] In her cross-application, the plaintiff sought a number of orders, primarily relating to her privacy. Those included a request for a sealing order over some documents and the anonymization of the plaintiff's name.

[5] I note that the defendant raised a preliminary objection to the plaintiff's notice of application, in part, because it is confusing and prolix. I accept those descriptions as accurate. The notice of application contains somewhere between eight and 10 paragraphs of relief which include the following sentence, "I also seek an order for

the redaction of privileges related to defamation”. To be frank, I do not know what that sentence means.

[6] However, I also note that defendant’s counsel, reasonably in my opinion, agreed to the sealing of certain information on the file. I was satisfied that the test in *Sherman Estate v. Donovan*, 2021 SCC 25, was met. So, to the extent that the defendant consented, the file materials were ordered to be sealed. Hence, the plaintiff obtained some of the relief she sought via consent.

[7] As to the part of the plaintiff’s application that sought to anonymize her name in the style of cause: I dismissed that portion of her application on the basis that a plaintiff suing in defamation is not entitled to proceed anonymously.

[8] The remainder of the plaintiff’s application was dismissed during the course of the hearing.

**The Defendant’s Application**

[9] The defendant takes two positions on striking the 4<sup>th</sup> amended notice of civil claim:

- a) It should be struck under Rule 9-5 of the *Supreme Court Civil Rules*;
- b) Alternatively, it should be ruled a nullity under Rule 6-1.

[10] The defendant’s application to strike under Rule 9-5 asserts that the 4<sup>th</sup> amended notice of civil claim:

- a) discloses no cause of action;
- b) is unnecessary, scandalous, frivolous or vexatious;
- c) is an abuse of process.

[11] The alternate ground (Rule 6.1) is based upon prior orders of this Court.

[12] I address each of these positions below.

**Factual and Procedural Background**

[13] I understand the factual background to be as follows (summarized):

- a) The parties met in or around April 2018.
- b) In or around February 2022, the defendant contracted with the plaintiff to prepare drawings and designs for a renovation of her home on the Sunshine Coast.
- c) The plaintiff prepared a set of drawings. There is a dispute over representations the plaintiff made regarding her qualifications.
- d) There was a falling-out between plaintiff and defendant in or about September 2022. The plaintiff alleges that she was defamed in some of the exchanges that ensued.
- e) The falling-out between the parties led to the plaintiff commencing two separate actions:
  - i. The first being a claim in breach of contract filed in the Provincial Court, Robson Square Registry under file number 2372566 (the “Provincial Court Action”);
  - ii. The second action in this court (being this action).
- f) The Provincial Court Action proceeded to trial on February 13–16, 2024, before Judge Bond.
- g) Judge Bond, in reasons released April 12, 2024 (indexed at 2024 BCPC 70), dismissed Ms. Gesner’s claim and granted damages to Ms. Jennings based upon the counterclaim. The concluding paragraph of Judge Bond’s reasons stated:

[47] In the result, Ms. Gesner must pay to Ms. Jennings the total amount of  $\$14,279.27 + \$3,500.00 = \$17,779.27$  plus filing fees of  $\$206.00$  for a total of  $\$17,985.27$ .

[14] I understand Ms. Gesner has appealed Judge Bond’s decision to the Supreme Court.

[15] In the within action Ms. Gesner’s claim originally sought damages and breach of contract. Hence, there was significant overlap with the Provincial Court Action. That overlap, in part, has been the subject of multiple applications in this action.

**Chronology of This Action**

[16] As noted, the defendant seeks to strike the plaintiff’s fourth amended notice of civil claim.

[17] The chronology of the plaintiff’s prior notices of civil claim, and the orders respecting them, are relevant. This is the chronology:

- a) August 9, 2023: the plaintiff filed the original handwritten four-page notice of civil claim, seeking damages for defamation, slander, libel and breach of contract. The factual basis comprised three paragraphs. The claim also sought punitive damages of \$50,000.
- b) August 22, 2023: the plaintiff filed an amended notice of civil claim, which was essentially identical to the original.
- c) February 1, 2024: The defendant applied to strike the notice of civil claim. Justice Sharma ordered that paras. 2–3 of Part One of the amended notice of civil claim be struck out. For reference, paras. 2–3 asserted that the defendant made defamatory statements:
  - i. during a Provincial Court trial; and
  - ii. to the Architectural Institute of B.C. (“AIBC”).
- d) I understand that the basis for striking the paras. 2–3 was twofold:
  - i. statements made during the Provincial Court trial were covered by absolute privilege;

- ii. statements made in the complaint to the AIBC were covered by absolute, or qualified, privilege;
  - iii. the same order granted the plaintiff leave to file a second amended notice of civil claim.
- e) February 5, 2024: the plaintiff filed the document entitled “Amended Notice of Civil Claim”. The document is typed and adds further information (denoted by underlying) to the original notice of civil claim. The statement of facts again was comprised of four paragraphs.
- f) March 19, 2024: following the application of the defendant to strike the amended notice of civil claim, Justice Baker made the following orders:
- i. Paragraphs 1 and 3 of the amended notice of civil claim were struck with leave granted to apply to seek leave to amend those paragraphs;
  - ii. Paragraphs 2 and 4 of the amended notice of civil claim were struck without leave to amend. For reference:
    - (1) paragraph 2 alleged:

Defendant slandered the plaintiff wrongfully to authorities stating the Plaintiff “misrepresented herself” which is false. The defendant was paid to provide “business coaching” and abused privileges, Trust and confidentiality of Ms. Gesner. Defendant provided misleading business information to the plaintiff. Defendant Jacqueline Jennings performed as “business coach” in “Bad Faith” wilfully deceiving Authorities and intending to cause harm and damages to Ms. Gesner, her business and future opportunities to conduct business abusing “privileges”.
    - (2) paragraph 4 alleged, “The plaintiff suffered lengthy damaging investigation into her vocation due to the misreport of defendant by providing documents not in their entirety that were untrue, malicious and unsubstantiated.”

iii. in addition, the plaintiff was prohibited from bringing any claims that overlap with the claims that were brought in the Provincial Court Action.

g) March 21, 2024: the plaintiff filed a further document entitled “Amended March 21, 2024 Notice of Civil Claim”. In this document, the statement of facts expanded significantly. The facts comprise one and a half pages of typed, single-spaced allegations.

h) October 11, 2024: the plaintiff filed a further document entitled “Notice of Civil Claim” comprising of 40 single spaced paragraphs covering four and a half pages of text.

[18] I have reviewed the current version of the notice of civil claim (filed October 11, 2024), having in mind the prior orders of Justices Sharma and Baker. By my reading:

- a) paragraphs 1–7, 9, and 14 relate to the formation of the business relationship between the parties and do not allege any tortious conduct;
- b) paragraphs 11, 15, 17, 18(1)–(2), 19, 23–26, 29, 30, 35, and 38–40 address items directly related to the Provincial Court Action;
- c) paragraphs 13 and 16 address items directly related to the complaint to the AIBC;
- d) paragraphs 20–22, 27, 31–34, and 36–37 do not alleged any tortious conduct by the defendant.

[19] All of the paragraphs described above must be struck for reasons previously enunciated:

- a) They relate to the Provincial Court Action;

- b) They relate to the information provided by the defendant to the AIBC, which Justice Sharma ruled to be covered by privilege; or
- c) They do not allege tortious conduct by the defendant.

[20] I order that all the paragraphs listed above be struck.

[21] That leaves paras. 8, 10, 28, and 33, which address events not otherwise covered by (*i.e.*, dismissed by) prior orders. I will address each of these four paragraphs in order.

[22] Paragraph 8 states:

On or around September 29, 2022, after discussing the final invoice Ms. Gesner was verbally assaulted and racially discriminated against. Ms. Jacqueline stated the reason for partial payment is because Ms. Gesner is a “white settler”.

[23] This paragraph must be struck. It discloses no cause of action. While the plaintiff may have been insulted, that is not the basis of a cause of action.

[24] Paragraph 10 states:

Legal claim commenced for the outstanding invoice on January 18, 2023, and on February 14, 2023, a substitution order to serve electronically was granted after Ms. Gesner attempted several times, the defendant evaded service, and Plaintiff was verbally assaulted on-site by the solicited “builder” Silver Stoic with project engineer Guneet Singh as a witness.

[25] This paragraph must be struck. It makes no allegation against the defendant.

[26] Paragraph 28 states:

On November 27, 2023, the Plaintiff received threatening communication from Defendant displayed a private text, exchanged between parties confidentiality not intended for the general public, abusing trust and good faith between parties, defendant maliciously demonstrated her intentions to wilfully cause damage showing she would contact plaintiff’s mentor Mr. Robins, and cause further reputation damage in retaliation for plaintiff requesting fair labour standards according to the contract.

[27] This paragraph must be struck. It alleges that a text was sent by the defendant. The text was received by the plaintiff. At worst, it contains information about a proposed course of action by the defendant. It is not the basis of a cause of action.

[28] Paragraph 33 states:

On or around December 13th, 2023 Adrian Greer on behalf of Jacqueline Jenning[s] contacted the mentor of the plaintiff and made defamatory slanderous statements identifying Ashley Gesner intending to lower the reputation and credibility of the plaintiff. Mr. Robins politely asked for evidence and burden of proof regarding malicious vexatious false statements accusing the plaintiff of misrepresenting herself and their affiliation. Adrian Greer went so far as falsely alleging forgery and Mr. Robins testified in Court under oath that Ms. Gesner has never committed such heinous crimes. Greer is at fault and liable for Professional conduct for falsely making allegations without bearing any evidence and making biased, faulty judgments with the intent and foreseeable harm to Ms. Gesner.

[29] This paragraph makes no allegation against the plaintiff. It must be struck.

**Conclusion on Application to Strike**

[30] For the reasons set out above, I find that all of the paragraphs of the notice of civil claim are objectional and must be struck for the following reasons:

- a) The paragraphs that relate to events litigated in the Provincial Court Action constitute an abuse of process. They are a collateral attack on the decision of Judge Bond.
- b) The paragraphs that relate to the defendant reporting the plaintiff to the AIBC are struck for the same reason that they were struck by Justices Sharma and Baker. The statements were privileged, either absolute or qualified.
- c) The paragraphs that do not allege a cause of action must be struck for that reason.
- d) The remaining paras. 8, 10, 28, and 30 allege conduct that is either non-tortious, or that was not undertaken by the defendant.

[31] For all of those reasons, the entire notice of civil claim is struck.

**Is the current notice of civil claim also a nullity?**

[32] If I should be mistaken in the exercise of my discretion above, I note that the entirety of the current notice of civil claim is also a nullity. As noted at para. 17f) above, Justice Baker's order required the plaintiff to apply to seek leave to amend the notice of civil claim. The plaintiff did not take that step. Hence, the current notice of civil claim, in its entirety, is also a nullity.

**Should the plaintiff be granted liberty to amend?**

[33] The defendant submits that the plaintiff should not be given an opportunity to amend the notice of civil claim a fifth time. I agree.

[34] In her submissions, the plaintiff suggested that she understood that Justice Baker's order meant something other than what it says. To reprise, Baker J. granted leave to apply to seek leave to amend the struck paragraphs.

[35] In answer to that submission, counsel for the defendant pointed to correspondence that he sent to the plaintiff:

- a) advising her of the obligation to make application to amend the notice of civil claim; and
- b) After the filing of the notice of civil claim, counsel offered her the opportunity to repair the notice of civil claim by applying to court for an *ex post facto* approval of the pleading.

[36] The plaintiff heeded neither of these suggestions.

[37] In my opinion, the chronology of pleadings and this Court's orders make it clear that the plaintiff has pursued her pleadings:

- a) without consideration to the *Rules* that apply to such pleadings; and
- b) in disregard of this Court's orders.

[38] I see no reason to allow the plaintiff to amend her pleadings.

[39] It follows that I strike the plaintiff's notice of civil claim in its entirety, and I do not allow any leave to amend it.

[40] It follows that the plaintiff's action is dismissed.

**Vexatious Litigant**

[41] The defendant also seeks an order pursuant to s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, declaring the plaintiff a vexatious litigant and providing that she cannot institute any proceeding without leave of the court. Section 18 provides:

**18** If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving the person an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[42] The defendant relies on the test enunciated in *Singh v. Nielsen*, 2017 BCSC 1876 at para. 3. The onus is on the applicant to show that the proceedings and conduct of the litigant are:

- a) vexatious in that they are brought in the absence of objectively reasonable grounds; and
- b) habitual and persistent, in that they have been continued obstinately in the face of protest or criticism.

[43] The defendant points to the several objective characteristics typical of vexatious proceeding. I address each one below.

**Bringing One or More Actions to Decide an Issue Which is Already been Determined by a Court of Competent Jurisdiction**

[44] The defendant submits the plaintiff has persistently raised allegations already completed before the Provincial Court and the AIBC, including after determinations were made against her in those proceedings.

**Whether it is Obvious that an Action Cannot Succeed, or If the Action would Lead to No Possible Good, or If No Reasonable Person Can Reasonably Expect to Obtain Relief**

[45] The defendant submits that the plaintiff repeatedly raised the allegations relating to the defendant's complaint about the plaintiff to the AIBC. The defendant notes that those claims were subject to the defence of absolute privilege, were statute barred and had no reasonable prospect of success.

**Actions are Brought for an Improper Purpose including the Harassment or Oppression of other Parties by Multifarious Proceedings Brought for Purposes other than the Assertion of Legitimate Rights**

[46] The defendant submits that the plaintiff's repeated pleadings constitute a clear abuse of process in that they repeated issues already decided by the Provincial Court and later dismissed by this Court.

**Grounds and Issues Raised Tend to be Rolled forward into Subsequent Actions and Repeated and Supplemented, often with Actions Brought Against the Lawyers who have Acted for or Against the Litigants in Earlier Proceedings**

[47] Again, the defendant submits that issues decided in the Provincial Court have been rolled forward into the notice of civil claim in this action.

**Failure of the Person Instituting the Proceedings to Pay Costs of Unsuccessful Proceeding**

[48] The defendant concedes that no court has yet ordered costs payable forthwith. Hence, the plaintiff has not breached any such order. She has, however, failed to pay the award made in the Provincial Court Action.

### Persistently Taking Unsuccessful Appeals from Judicial Decisions

[49] The defendant notes that the plaintiff has taken an appeal from the Provincial Court judgement and from other judgments obtained by other defendants, none of which have been hurt or determined.

[50] The defendant submits that if I consider the six objective indicia (above), four of them strongly support a finding that the plaintiff is a vexatious litigant. The defendant concedes that the last two items are neutral.

### Discussion

[51] I have considered all of the submissions of the defendants. In my opinion, there is insufficient evidence at this time to make a declaration that the plaintiff is vexatious or any under order under *Supreme Court Act*, s. 18.

[52] With that said, I will leave on the record my comment that if there is reason for a further application in this vein (*i.e.*, a further vexatious litigant application), my hope would be that the court will look at the circumstances of that other action, along with the whole history of this matter including the facts I have outlined above. Put another way, my decision was a very close one and could have gone the other way. Any further improper steps taken by the plaintiff could well lead to a finding under s. 18 of the *Supreme Court Act*.

[53] In ordinary circumstances, I would remain seized of this application. However, because the action is dismissed, I believe I am functus.

### Costs

[54] The plaintiff's case has been dismissed in full. The defendant is entitled to her cost of the entire proceeding.

"A. Ross J."