



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *Barnes v. Facebook Canada Ltd.*, 2025 NLSC 24

Date: February 19, 2025

Docket: 202201G5624

BETWEEN:

TOBY BARNES

PLAINTIFF

AND:

FACEBOOK CANADA LTD.

FIRST DEFENDANT

AND:

META PLATFORMS, INC.

SECOND DEFENDANT

Before: Justice Vikas Khaladkar

Place of Hearing:

St. John's, Newfoundland and Labrador

Date of Hearing:

January 29, 2025

Summary:

The Court held that the Respondent used his personal Facebook account for commercial purposes. As such, he is bound, pursuant to an agreement entered into by the parties, to commence and maintain his claim in the State of California and the courts of Newfoundland and Labrador have no jurisdiction to entertain the Respondent's claim. The Respondent has no claim against Facebook Canada because that Defendant did not provide any Facebook services to the Respondent.

Appearances:

Keri-Lynn Power	Appearing on behalf of the Plaintiff
Miranda Spence, Hannah Downard and J. Michael Collins	Appearing on behalf of the First and Second Defendants

Authorities Cited:

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

KHALADKAR J.:

INTRODUCTION

[1] This is an Application by Facebook Canada Ltd. (“Facebook Canada”) and Meta Platforms, Inc. (“Meta”), also referred to as the “Applicants/Defendant(s)”, to invite the Court to stay the within action pursuant to Rule 6.07(7) of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D, on the basis that it has no jurisdiction pursuant to an agreement between the parties or on the basis that the Province of Newfoundland and Labrador is not a convenient forum to hear the action. The Applicants also allege that the Respondent, in this Application is the Plaintiff Toby Barnes (“Barnes”), served the Statement of Claim *ex juris* without leave.

[2] The Applicants say that Meta provides a social utility application named Facebook for use by the general public in the Province of Newfoundland and Labrador and elsewhere. The Applicants say that Facebook Canada does not provide the Facebook application to the general Canadian public.

[3] Barnes resides in Mount Pearl, in the Province of Newfoundland and Labrador and he utilizes Facebook. Barnes maintained two Facebook accounts – one for personal use, the other for business use. It is the account that Barnes used for personal purposes that is the subject matter of this Application.

[4] On May 14, 2022, someone hacked Barnes’ personal Facebook account. As a result, the account was suspended and Barnes was unable to use it, in the ordinary course, in order to reinstate his account. He eventually received a notice from Facebook that it intended to delete his account on December 13, 2022 – at which point Barnes commenced an action, on December 12, 2022, in which he requested injunctive relief and damages.

[5] Shortly thereafter, Facebook reinstated Barnes’ personal Facebook account. Barnes was unable to access his personal Facebook account for about seven months.

[6] Prior to commencing the action, Barnes’ solicitor had engaged in email correspondence with various employees and officers of the Applicants and intimidated as follows:

Affidavit of Toby Barnes dated April 26, 2024

Exhibit “E”
July 8, 2022

Mr. Barnes also has a professional Facebook Account attached to his work email address which he uses for his online Advertising Company, Ignite Ad Technology. Although he has been a victim of hacking and lost his personal account it has impacted his business because he would share and promote things on his personal account relating to a number of his businesses. ...

[emphasis added]

The result is he has lost a social media account which has impacted him personally and professionally...

Exhibit “H”
December 6, 2022

... Despite this lock out causing considerable issue for Mr. Barnes who uses this Facebook Account to manage and promote other Facebook Pages for clients and he does not have access to these pages through any other Facebook account (he works in Online Advertising) ...

As you can see, aside from my client being unable to access his account, which is impacting access to other pages he manages and his clients and his business, he has identified glitches within Facebook and he has no way of reporting these bugs in the Facebook system, they are not being fixed and he is being denied the right for a review/appeal, as well as access to his account, pictures, postings etc.

[emphasis added]

Exhibit “K”
December 11, 2022

... We are the solicitors for Mr. Toby Barnes. In early May, 2022 his Facebook account, which he uses both personally, also relating to his Scout volunteerism and professionally for he works in online advertising, was hacked. ...

...

We have requested that Facebook not delete his account, fix their technological glitch as soon as possible and reinstate the account. We also indicated that if they could not confirm the account was not to be deleted we would have no choice but to pursue legal action.

That account is used to manage a number of accounts for clients...

[emphasis added]

[7] On December 12, 2022 Barnes commenced an action against the Applicants. In that Statement of Claim Barnes alleged the following facts:

5. At all material times hereto, the Plaintiff had an account with Defendants on their online social networking company, Facebook which he used personally, for his volunteer work and also to manage other Facebook Pages of clients for the Plaintiff works in online advertising. ...

[emphasis added]

8. The Plaintiff states that on November 30, 2022 he was informed that as of December 13, 2022 his account with all content will be permanently deleted. Once the same occurs then all of his property and content is lost forever and he will not be able to access his client's pages that he has been managed from this account. ...

[emphasis added]

13. The Plaintiff claims that Facebook denying him access to his account which is used to manage [Facebook] pages for other clients is also impacting his business and the Facebook has committed the tort of Interference with Economic Relations.

[emphasis added]

[8] In Barnes' Affidavit of April 26, 2024, filed in response to the Application brought by Facebook Canada and Meta pursuant to Rule 6.07(7) to stay the action, Barnes states that he has never used his personal Facebook account for commercial purposes.

[9] On May 15, 2024, the Applicants filed the Reply Affidavit of Jenny Pricer, a case manager relating to eDiscovery and Information Governance with Meta, in which she indicates that Barnes' personal Facebook account created and/or administered a number of pages on Facebook, which included:

- a. Hawkins Beverages – Wine, Spirits & Beers
- b. Neptune Lodge No. 22
- c. Paul Lane – Political Candidate
- d. Keep Bell's Yuletide Fireplace Running 365 days a year
- e. Toby DaBrit B
- f. Loyola Sullivan
- g. Steve Kent

[10] All Facebook users must agree to the terms of service – which may be amended unilaterally by the service provider from time to time.

[11] On November 15, 2024, the Applicants filed their Party’s Brief in this matter. In that brief, they alleged that Barnes was using his personal Facebook account for business purposes. As such, the Applicants say that the agreement between Barnes and Meta requires that any dispute must be resolved exclusively in the jurisdiction of California.

[12] Article 5 of the June 26, 2022 revision of the Terms of Use states, in part, as follows:

- **Commercial Terms:** These terms apply if you also access or use our Products for any commercial or business purpose, including advertising, operating an app on our Platform, using our measurement services, managing a group or a Page for a business, or selling goods or services.

[13] Under the Meta Commercial Terms, it is stated:

- ... Business or commercial purposes include using ads, selling products, developing apps, managing a Page, managing a Group for business purposes, or using our measurement services regardless of the entity.
- **Commercial Claims outside the United States:** If you reside outside the United States or your business is located outside the United States, you agree that:
 - i. Any Commercial Claim between you and Meta Platforms, Inc. must be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County, that you submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Commercial Terms and any such claim, without regard to the conflict of law provisions.

[14] On January 10, 2025, Barnes caused his Statement of Claim to be amended. As a result of the amendments, all references to his managing the Facebook pages of clients and his works with online advertising were removed and replaced by aversions to his personal use of his Facebook account.

[15] At paragraph 13 of the Statement of Claim, Barnes alleges that the Defendants' denial of access to his personal Facebook account impacted his access to Facebook Marketplace where he would sell personal items and, for that reason, the Defendants had committed the tort of interference with economic relations.

ISSUE

Does the Supreme Court of Newfoundland and Labrador have jurisdiction to entertain Barnes' actions against one or both of the Defendants?

ANALYSIS

[16] In order to determine whether Barnes has attorned to the jurisdiction of California, or can sustain his action in the Province of Newfoundland and Labrador, I must decide whether he was using his Facebook account solely for personal, private purposes or whether, as the Applicants allege, he was using his account to manage a page for a business.

[17] In accordance with the agreement between the parties, conflicts arising from private use are actionable in Canada. However, conflicts that arise when an account is being used for business purposes must be litigated under the jurisdiction of California.

[18] The issue as to whether the Province of Newfoundland and Labrador is a *forum non conveniens* only arises if I find that Barnes was not a commercial user.

[19] During the course of Barnes' counsel argument, I asked about the import of paragraph 5 of the original Statement of Claim – in which it was alleged that the Plaintiff had an account with the Defendants, that he used to manage other Facebook pages of clients because he worked in online advertising. Counsel advised that this was a mistake on her part and, in fact, that Barnes' personal account was not used for business purposes. Counsel stated that she erred in drafting the Statement of Claim.

[20] In contrast, for the preceding six months, counsel on behalf of Barnes, consistently took the position that he was being impacted in his business because of the loss of his personal account. This position was then advanced in the Statement of Claim issued on December 12, 2022 and, in that claim, damages were sought, *inter alia*, for the tort of interference with economic relations because the loss of the account was impacting Barnes' business and livelihood.

[21] Only upon discovering that the Applicants' position was that commercial users must attorn to the laws and courts of the jurisdiction of California did Barnes see fit to deny his commercial use of the application by amending his Statement of Claim and filing a Supplementary Affidavit denying that he used his personal Facebook account for commercial purposes.

[22] Paragraph 13 in the Statement of Claim initially alleged that Barnes had suffered damages because the Defendants had committed the tort of interference with economic relations due to the loss of his ability to conduct business through his Facebook account. It was amended to allege that the Defendants committed the tort because he was unable to access Facebook Marketplace – where he would sell his personal items.

[23] The Statement of Claim was not amended until January 10, 2025 and Barnes' Supplementary Affidavit was not sworn until January 28, 2025. The hearing in this matter took place on January 29, 2025.

[24] If Barnes' counsel repeatedly misstated his position in correspondence and in Court documents, then that is an issue between Barnes and his counsel. However, the repeated allegation that Barnes was using his personal account for business purposes lends credence to the Applicants' position.

[25] I accept the evidence of Jenny Pricer – that Barnes created or administered at least eight accounts through his personal Facebook account and, as such, he attorned to the jurisdiction of the courts of California. The evidence of Jenny Pricer is consistent in every respect with all of the correspondence sent by Barnes' counsel to various parties on his behalf. Of the eight accounts listed in Jenny Pricer's Affidavit that Barnes created or managed, at least one is a business and three are politicians. I accept that Barnes either set up or managed one, or more, of these pages and, thereby, subjected himself to the commercial terms in the contract with Meta.

CONCLUSION

Jurisdiction

[26] I have no jurisdiction in this matter insofar as Meta is concerned. It has been ousted as a result of the forum chosen by the parties. The appropriate forum within which Barnes should seek his remedy is the U.S. District Court for the Northern District of California or a state court located in San Mateo County, in the State of California, one of the United States of America.

[27] Applicants' counsel submitted that there is no evidence that Barnes had any contractual relationship with Facebook Canada. The documentation comprising the

agreement between the parties makes no mention of Facebook Canada. The Affidavit of Michael Duffy filed in this proceeding indicates that Meta operates the Facebook service on the website www.facebook.com and, as well, applications for mobile phones and tablets. Michael Duffy also stated, and I accept, that Facebook Canada is a separate and distinct legal entity from Meta.

[28] I do not accept Barnes' submissions that the use of the name "Facebook" or the commonality of directors between the two Defendants' corporations gives rise to an inference that a legal relationship exists between Barnes and Facebook Canada or that Meta is vicariously liable for Facebook Canada.

[29] Facebook Canada can be a wholly owned subsidiary but, nevertheless, have an independent existence in law. The potential liability of the parent corporation does not automatically enjoin the liability of the subsidiary. I am not satisfied that this is an appropriate case for piercing the corporate veil.

[30] However, if Barnes' position that the agreement he entered into also binds Facebook Canada is correct, then he is bound by the same choice of forum clause in relation to Facebook Canada as he is with respect to Meta. Barnes must bring the action against both of the Defendants in the jurisdiction of California.

Forum non Conveniens

[31] Since I have decided that the laws of California govern the agreement between the parties, I need not consider whether California or the Province of Newfoundland and Labrador is the *forum non conveniens*.

Service *ex juris* Without Leave

[32] Barnes did not obtain the leave of the Court to serve Facebook Canada *ex juris* for the following reasons. My response to those reasons is bracketed:

1. Rule 6.07(1)(f) – that the claim concerns a contract allegedly made in the Province of Newfoundland and Labrador. [However, there is no evidence that Barnes entered into a contract of any kind with Facebook Canada. This is not an appropriate reason for service outside of the jurisdiction without leave of the Court.]
2. Rule 6.07(1)(g) – that the claim concerns an alleged breach of the contract that allegedly happened in the Province of Newfoundland and Labrador. [If there was no contract entered into between Barnes and Facebook Canada, then there could be no breach – in the Province of Newfoundland and Labrador or elsewhere as far as Facebook Canada is concerned. This is not an appropriate reason for service outside the jurisdiction without leave of the Court.]
3. Rule 6.07(1)(h) – that the claim concerns a tort allegedly committed in the Province of Newfoundland and Labrador. [If Facebook Canada was not supplying any services to Barnes, then they could not have committed a tort in relation to those services in the Province of Newfoundland and Labrador. This is not an appropriate reason for dispensing with the leave of the Court for service outside of the jurisdiction.]
4. Rule 6.07(1)(i) – that an injunction should issue ordering Facebook Canada to do, or refrain from doing, something in the Province of Newfoundland and Labrador – namely deleting Barnes’ content from Facebook. [Since Facebook Canada did not provide this service and was not in possession of any content belonging to Barnes, this is not an appropriate reason for dispensing with the Court’s leave for service *ex juris*.]

5. Rule 6.07(1)(o) – a statute allegedly permits the claim to be commenced in the Province of Newfoundland and Labrador. [No particulars are given in the claim as to what statute Barnes is relying upon to assert that leave of the Court is not required for service of the Statement of Claim upon Facebook Canada. An assertion that there is a statutory entitlement without particulars is insufficient, in my view, to dispense with the Court’s leave for service *ex juris*.]

[33] Barnes did not, in his Statement of Claim, set out the necessary facts in support of his rationale for serving Facebook Canada *ex juris* without leave of the Court.

[34] For all of the foregoing reasons, I order, as requested by the Applicants, pursuant to Rule 6.07(7)(b) that the action against Facebook Canada be stayed.

[35] I order, as well, that Barnes’ action against Meta be stayed on account of Barnes having used Facebook for business purposes – rendering the choice of forum clause in the contract applicable to him. The proper venue for this action is in the jurisdiction of California.

[36] The Applicants shall have their costs under Column 3 of the Schedule of Costs.

VIKAS KHALADKAR
Justice