

SUPREME COURT OF YUKON

Citation: *Borud et al. v. Robulack*, 2009 YKSC 59

Date: 20090806
Docket S.C. No.: 09-A0001
Registry: Whitehorse

BETWEEN:

DAVID BORUD and STANLEY BORUD and BORUD ENTERPRISES INC.

Plaintiffs

AND:

ANDREW ROBULACK

Defendant

Before: Mr. Justice R. Wong

Appearances:
Stephanie Schorr
Andrew Robulack

Appearing for the Plaintiffs
Appearing on his own behalf

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] WONG J. (Oral): Even though this is a matter of first instance in this jurisdiction of a defamation claim, I have dealt with many in British Columbia over the last 28 years as a superior court judge. I have listened with care to the very helpful submissions of plaintiffs' counsel and I am in agreement that the authorities indicate the range that she has outlined. Many of the authorities basically have a range on similar instances, depending on the degree of aggravation, of \$25,000 to \$150,000 for general damages.

[2] This is a case in which there were publications in two local newspapers. Clearly they were defamatory, and they were directed against David Borud and his brother,

Stanley Borud, who were well-known businessmen in the community for almost 25 years. They operated a corporate development company called Borud Enterprises Inc. This rose out of a landlord tenant dispute where the Borud brothers were the landlords of a building of a daycare society of which the defendant, Andrew Robulack, who is a freelance journalist, was the executive director at the time. Apparently, the daycare society was experiencing some financial difficulties and quite likely involve a bankruptcy and, therefore, termination of their tenancy.

[3] The letters written by Mr. Robulack, who was under considerable stress to meet the payroll of employees and the financial problems of the society, wrote the articles to the *Yukon News* and *The Whitehorse Star*, basically the same articles, in what counsel has described as inflammatory and accusatory language towards the Borud brothers, where there was allegation of improper use of deposit funds, that the behaviour of the Borud brothers was immoral, illegal and fraudulent and that there was improper withdrawal of a deposit, which the society was relying upon to pay outstanding wages to its employees.

[4] In addition, aside from publication in the newspapers, Mr. Robulack also placed on his internet blog similar communication, with an invitation to third parties to write to the Borud brothers. He also gave out the Borud brothers' personal email addresses and invited them to respond to the website and also personally to the Borud brothers. There is evidence that the Borud brothers received approximately five or six responses to their email or by texting.

[5] The society itself, recognizing what had taken place, within eight days or so printed an apology in both newspapers. Mr. Robulack subsequently, sometime in February, issued an apology to the Borud brothers.

[6] One aspect that transpired with the leaving of the daycare society from the building owned by the Borud brothers and the corporate enterprise is the fact that this was a specially designed building to accommodate the daycare centre occupying three floors, for which there was total rent being paid by the daycare society of \$12,000 a month. There is an indication that after the daycare centre left, it took about six months before the building could be re-rented, and it is at this point unclear as to whether or not the publicity as a result of Mr. Robulack's publications was a major factor.

[7] The Court can take judicial notice that this building was specially designed to accommodate a specific tenant and no doubt there would have been difficulties that might not appeal to other businesses if certain aspects, such as the plumbing and toilets, which were specifically designed to accommodate young children, without major modifications undertaken. In addition, the Court can take judicial notice that there was a downturn in the economy, from last fall, which continued until recently. And these all may have been factors in part of difficulty before the premises were able to be re-rented.

[8] Counsel for the plaintiffs sought on behalf of her clients aggravated damages. In any small community, no doubt, three constituencies who read these publications and its effect upon them, there is probably a large segment of the community who know the Borud brothers by reputation and personal dealing and, except for questions posed to

them whenever they met, possibly socially, would have no effect because they know who the Borud brothers are and that they have enjoyed a good reputation as businessmen in the community of the Yukon for 25 years. There is likely a second constituency which do not know the Borud brothers personally but may recognize the name, for which the response may well be equivocal. And, quite likely, like any community, there is also a third segment that may have had some personal dealings with the Borud brothers and may have been unhappy, for whatever reason, in their dealings with them, and this may just reinforce their personal impressions of the past. But, viewed objectively, one has to take into account the content of the language and Mr. Robulack's motive at the time.

[9] As I mentioned, Mr. Robulack was under considerable stress, but he is also a trained journalist. He has lived in this territory for some ten years doing freelance duties and he knows, basically, what is or is not generally acceptable language, even though the trend of recent case authorities have been easing up considerably in aspects of fair comment.

[10] Nevertheless, what is aggravating in this case is the aspect of the internet and the specific invitation to others to communicate with the Borud brothers. Ostensibly, this was to persuade or exact some influence, perhaps for change of heart on the part of the landlord. Nevertheless it was also an invitation of potential harassment, and this was certainly an egregious factor. Also, one has to take into account the length of time before unconditional apology was proffered by Mr. Robulack to the Borud brothers.

[11] Accordingly, in assessment of damages, taking into account all of the factors that I have mentioned, the Borud brothers are each entitled to damages on general damages of \$25,000 each, plus an additional \$10,000 each for aggravated damages.

[12] With respect to Borud Enterprises Inc., which is the corporation from which the Borud brothers do business, in some ways that has been affected economically as to the time before the premises could be re-rented, namely, six months. I think the effect on their reputation as a business is really allied with the reputation of the Borud brothers; probably to the members of the general public they are one and the same. Accordingly, I am of the view that where counsel has requested similar damages, with the exception of aggravated damages, to be awarded to the corporation, primarily for the loss of rental income before it could be re-rented, I would assess damages for Borud Enterprises in the amount of \$10,000.

[13] This makes an aggregate damage claim for all plaintiffs in the amount of \$80,000. Of course, their costs will follow the result, and approval as to the form of the order is dispensed with.

“WONG J.”