

SUPREME COURT OF YUKON

Citation: *Sidhu v. CBC North*, 2014 YKSC 32

Date: 20140515
S.C. No.: 13-A0141
Registry: Whitehorse

BETWEEN:

MANDEEP SINGH SIDHU

AND:

CBC NORTH

Before the Honourable Mr. Justice L.F. Gower

Appearances:

Mandeep Singh Sidhu
Matthew Woodley

Appearing on his own behalf
Counsel for the Defendant

REASONS FOR JUDGMENT

[1] GOWER J. (Oral): I have had a chance to review the materials and I have had a chance to review the *Carlick* decision and the *Lameman* decision, which I have handed to the parties, both of which involve limitation period defences very similar to the defence or the issue raised by the CBC in this case under Section 14 of the *Defamation Act*.

[2] And it may be helpful for Mr. Sidhu if I just quote from the *Lameman* case, which is from the Supreme Court of Canada, 2008, this being an application for summary judgment:

[10] This appeal is from an application for summary judgment. The summary judgment rule serves an important purpose in the civil litigation system. It prevents claims or defences that have no chance of success from proceeding to trial. Trying unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and on the justice system. It is essential to the proper operation of the justice system and beneficial to the parties that claims that have no chance of success be weeded out at an early stage. Conversely, it is essential to justice that claims disclosing real issues that may be successful proceed to trial.

[3] Now, in that case the Court continued at paragraph 12 in its conclusion:

We are of the view that, assuming that the claims disclosed triable issues and that standing could be established, the claims are barred by operation of the *Limitation of Actions Act*. There is "no genuine issue" for trial. Were the action allowed to proceed to trial, it would surely fail on this ground.

[4] In this case, we are dealing with an application under Rule 18(6), which states:

In an action in which an appearance has been entered, the defendant may, on the ground there is no merit in the whole or part of the claim, apply to the court for judgment on an affidavit setting out the facts verifying the defendant's contention that there is no merit in the whole or part of the claim and stating that the deponent knows of no facts which would substantiate the whole or part of the claim.

[5] Now, much of, if not almost entirely all of Mr. Sidhu's submissions deal with what he sees are the triable issues based on the alleged defamation and the problems that he has had with the two publications by CBC.

[6] But what that argument misses is the fact that he has not complied with Section 14(1) by his own concession in that he had not filed or provided the CBC, served them, with a notice of intention to bring an action within three months of the last date of the publication, which was September 17th, 2013.

[7] Now, Mr. Sidhu argues in response that the word "action" referred to in

Section 14(1) is not defined in the *Act* and can be interpreted as broadly as to include simple communication of his intention to take some action or bring some action in response to the publications. And he said that he did that by communicating via email --

[8] MR. SIDHU: Your Honour, may I ask one question?

[9] THE COURT: I am not -- I am giving my judgment, sir.

[10] MR. SIDHU: My apologies.

[11] THE COURT: It is not the time to be asking questions.

[12] He claims that he communicated by email with Mr. Archie McLean giving notice of his unhappiness with the initial publication and that that can be taken as adequate compliance with Section 14(1).

[13] I disagree. It is my view that the word "action" in Section 14(1) clearly refers to the commencement of a legal proceeding and not simply intention to take some other form of action which is not specified.

[14] So for those reasons, I am prepared to grant the CBC's application and I dismiss the statement of claim.

[15] Anything further?

[16] MR. WOODLEY: Costs to follow an event, sir.

[17] THE COURT: Yes.

[18] Do you understand what he is asking for in terms of costs?

[19] MR. SIDHU: Yes, he wants me to pay his costs.

[20] THE COURT: Okay.

[21] Costs are referred to in the rules. There is a tariff of costs where he can charge a certain specified sum for each step in the proceedings that he has taken so far on

behalf of his client.

[22] Ordinarily costs are awarded to the successful party on an application, but you have an opportunity to make submissions opposing that application if you think it is inappropriate.

[23] MR. SIDHU: Okay.

[24] THE COURT: Do you wish to make any further submissions?

[25] MR. SIDHU: One other submission was that the story is still being published and it is still available online. So even today, that story is published online. And every day the Internet is refreshing itself, so technically the story is published today again and it's still false. So in that sense, you can look at it and say that within 14 days I can still file an application saying that if you're -- the original story was filed -- was printed on September 22nd. That's fine. The issue is that right now they're republishing that story every day.

[26] So I can also -- I would also make judgment that -- or I would also forward the idea that this action does fall within 14 days. Although there was no notice given to the CBC, I would argue that because it's online it's still available and it's always current. This is one of the bad sides of the Internet is that the story is still available and every day it is being republished. So how would the Court deal with that?

[27] THE COURT: Okay, I am not here to give legal advice, sir.

[28] MR. SIDHU: That's not legal --

[29] THE COURT: If you think that the word publication has something to do with continuing publication *ad infinitum* then that is something that you are going to have to get legal advice on if you think you have another recourse following my ruling

dismissing the statement of claim.

[30] I have heard nothing from you on the issue of costs, so costs will be awarded in favour of the CBC.

GOWER J.