



In the Supreme Court of British Columbia

JESSICA SIMPSON

Plaintiff

and

REBEL NEWS NETWORK LTD.

Defendant

NOTICE OF APPLICATION

Names of applicant: Rebel News Network Ltd.

To: Jessica Simpson

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at the Law Courts, 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on January 21, 2022 at ~~10:00~~^{9:45} a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Order dismissing the within action pursuant to section 4 of the *Protection of Public Participation Act* (the "**Act**").
2. Costs of the application, assessed on a full indemnity basis, pursuant to section 7 of the *Act*.
3. Such further and other relief as this Honourable Court may allow.

Part 2: FACTUAL BASIS

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1. The facts supporting the within application are set out in considerable detail in the affidavits of Ezra Levant and Megan Yawney.

2. The plaintiff, who is also known as Jonathan Yaniv or Jessica Yaniv, is a self-described human rights and social justice activist. She maintains a large and active social media presence which she uses to threaten and intimidate individuals and businesses with litigation and human rights complaints, criticize minority groups, and denigrate people who do not share her particular world view.
3. In October, 2019 the plaintiff lost a high profile BC Human Rights Tribunal decision indexed as *Yaniv v. Various Waxing Salons* (No. 2), 2019 BCHRT 222 (the “**Waxing Decision**”).
4. In the Waxing Decision the BCHRT dismissed the plaintiff’s complaints against seven waxing service providers and made a costs order against the plaintiff on account of her inappropriate conduct. The decision maker, at various places in the Waxing Decision, is acutely critical of the actions and motives of the plaintiff.
5. The Waxing Decision attracted national and international mainstream news attention, and sparked controversy and public debate.
6. The applicant Rebel News is an independent news media outlet that reports on current events, particularly events of national interest on the topics of free speech, liberty, and constitutional freedoms. Rebel News tells “the other side of the story” which often includes information and commentary which has either been ignored by mainstream media or been presented from a singular point of view.
7. Since the reporting of the Waxing Decision the plaintiff has become a prolific litigant and BCHRT complainant. She has been charged criminally with assaulting Rebel News journalists and possessing a Taser.
8. In the notice of civil claim, filed April 23, 2021, the plaintiff complains, *inter alia*, of 15 YouTube Videos published by Rebel News between August 15, 2019 and September 7, 2020. Those videos feature reporting and commentary on the Waxing Decision and related BCHRT proceedings, the plaintiff’s public conduct, ongoing court proceedings, and criminality. The plaintiff says the YouTube Videos are defamatory.

9. On August 4, 2021 Rebel News filed a response to civil claim confirming that the YouTube Videos complained of are subject to the defences of responsible communication and fair comment, amongst other defences.
10. On August 23, 2021 the plaintiff prepared a list of documents. The list does not contain any documents that relate to any harm the plaintiff has allegedly suffered as a result of the YouTube Videos.
11. Rebel News says that the within action is a *strategic lawsuit against public participation* and ought to be dismissed on that basis. The relevant facts are as follows:
 - a) the plaintiff's demonstrated history, and current practice, of using litigation, or the threat of litigation, to silence critics;
 - b) the punitive and retributory purpose animating the plaintiff's bringing of the claim;
 - c) the complete absence of pleaded facts, or listed documents, that indicate or evidence any *actual harm* suffered as a result of the asserted defamation; and
 - d) the chilling effect this action will have on Rebel News and others when considering future expression on important issues of the day and matters of public controversy.
12. Rebel News says the within action is a classic *SLAPP* suit and must be dismissed forthwith on that basis.

Part 3: LEGAL BASIS

Legal Framework

1. The *Protection of Public Participation Act* protects defendants from strategic lawsuits against public participation ("SLAPPs").
2. When introducing the *Act* the Hon. David Ebby described its purpose as striking a balance between protecting an individual's reputation and:

...the value of a robust and rigorous debate that the courts have described as freewheeling, that can be heated, that can result in intemperate comments. But that's part of public debate, and it shouldn't be met with threats of litigation to stop people from talking about the issues of the day.

Neufeld v. Hansman, 2021 BCCA 222 at para. 3

3. At issue in this proceeding is the plaintiff's attempt to silence and punish the defendant Rebel News for engaging in and furthering the public debate over what was at the materials times, and remains an "issue of the day".
4. The test for dismissing an action under the *Act* is set out in section 4 which is as follows:

Application to court

4 (1) In a proceeding, a person against whom the proceeding has been brought may apply for a dismissal order under subsection (2) on the basis that

- (a) the proceeding arises from an expression made by the applicant, and
- (b) the expression relates to a matter of public interest.

(2) If the applicant satisfies the court that the proceeding arises from an expression referred to in subsection (1), the court must make a dismissal order unless the respondent satisfies the court that

- (a) there are grounds to believe that
 - (i) the proceeding has substantial merit, and
 - (ii) the applicant has no valid defence in the proceeding, and
- (b) the harm likely to have been or to be suffered by the respondent as a result of the applicant's expression is serious enough that the public interest in continuing the proceeding outweighs the public interest in protecting that expression

Publications at issue relate to expressions on a matter of public interest

5. The onus the *Act* places on a defendant/applicant who applies to have a proceeding against it dismissed is limited to satisfying the court on a balance of probabilities that:

- a) the proceeding arises from an expression made by the applicant; and
- b) the expression relates to a matter of public interest;

704604 Ontario Ltd. v. Pointes Protection Association, 2020 SCC 22 at paras. 21-23

6. The words “relates to a matter of public interest” are to be given a broad, liberal interpretation.

Hobbs v. Warner, 2021 BCCA 290 at para. 11

7. At this stage it is not is not legally relevant whether the expression is desirable or deleterious, valuable or vexatious, or whether it helps or hampers the public interest — there is no qualitative assessment of the expression at this stage. The question is only whether the expression pertains to any matter of public interest, defined broadly. The legislative background confirms that this burden is purposefully not an onerous one.

Pointes at paras. 26-30

8. The expressions at issue in this proceeding are largely concerned with the plaintiff’s involvement with the BCHRT, especially the Waxing Decision, as well as her ongoing involvement in civil litigation, other administrative proceedings, and her criminal conduct.

9. There can be no dispute that:

- a) this proceeding arises from expressions made by the applicant Rebel News; and
- b) that the expressions relate to matters of public interest.

10. Having satisfied the initial burden, the *Act* shifts the onus to the respondent/plaintiff to show that the action should not be dismissed.

Warner at para. 12

PLAINTIFF'S ONUS

11. The *Act* requires that the court must dismiss the action unless the plaintiff can satisfy the court of the following:
- a) there are grounds to believe that the proceeding has substantial merit (the “**Merits-Based Hurdle**”) [s.4(2)(a)(i)];
 - b) there are grounds to believe that Rebel News has no valid defence to the proceeding (the “**No Valid Defence Hurdle**”) [s.4(2)(a)(ii)]; and
 - c) the harm the plaintiff has suffered by Rebel News’ expression is serious enough that the public interest favours the within action proceeding rather than protecting the expression (the “**Public Interest Hurdle**”) [s.4(2)(b)]

The Grounds to Believe Standard

12. The grounds to believe standard requires that the court look beyond the pleadings to find a basis in both the record (evidence) and the law that the underlying action has substantial merit and that there is no valid defence.

Pointes at paras. 36-41

13. The assessment is to be made with acute awareness of the limited record, the timing of the motion in the litigation process, and the potential of future evidence arising. The assessment is a subjective one made from the motion judge’s perspective.

Warner at para. 12

MERITS- BASED HURDLE

14. For a claim to have substantial merit, it must have a real prospect of success, meaning that the court is satisfied the claim is both legally tenable and supported by evidence that is reasonably capable of belief, and therefore the outcome tends to weigh more in favour of the plaintiff.

Pointes at para. 49

15. The substantial merit standard is more demanding than “*some* chances of success” or “*reasonable* process of success” tests employed by parties resisting a motion to strike.

Pointes at para. 50

16. Although the court should resist a “deep dive” into the evidence, the judge need not accept evidence at face value or treat bald allegations as sufficient to prove any element. To the contrary the judge “should engage in limited weighing and assessment of the evidence adduced.”

Pointes at para. 52

Pleading Deficiencies

17. The notice of civil claim suffers from significant pleading deficiencies that cannot be amended in order to avoid a dismissal order.

The Act at s.6

18. The particulars of the pleading deficiencies are set out in the response to civil claim.

NO VALID DEFENCE HURDLE

19. In the response to civil claim Rebel News has put the following defences “into play”:

- a) Fair comment;
- b) Qualified privilege and reportage;
- c) Justification (truth); and
- d) Responsible communication.

20. Having raised these defences the plaintiff has a statutory burden to show that there are grounds to believe that none of those defences have a real prospect of success.

Warner at para. 14

21. As Justice Cote explained in *Pointes*:

The word *no* is absolute, and the corollary is that if there is *any* defence that is valid, then the plaintiff has not met its burden and the underlying claim should be dismissed.

(italics in original)

Pointes at para. 58

22. Leaving aside the grave deficiencies in the notice of civil claim, even a cursory review of “Schedule A” and the “Defamatory Statements Made” confirms that the plaintiff elected to sue largely over statements that are patently fair comment.
23. The plaintiff’s claim is precisely the type that the *Act* was designed to winnow out at an early stage: she has cast her claim using the widest possible net, alleging as defamatory statements that are comment, and thus protected by a valid defence.

Fair Comment

24. The parallels between the within proceeding and *WIC Radio* are substantial.
WIC Radio Ltd. v. Simpson, 2008 SCC 40
25. The defendant Rebel News publishes news reporting and editorial-style commentaries in a sometimes controversial manner, not unlike “shock jock” Rafe Mair. The plaintiff, at the time of the publications at issue in this proceeding, was a widely-known activist, not unlike Kari Simpson.
26. The factual basis for much of the publications at issue in this proceeding was the Waxing Decision and the plaintiff’s subsequent and related conduct, analogous (and likely more accessible) than Simpson’s speech at issue in *WIC Radio*.
27. The factual basis for the comments made in the publications at issue, like Mair’s commentary in *WIC Radio*, was widely known to Rebel News’ viewers and readers.
28. Criticism is an expression of opinion on facts from which differences of opinion may reasonably arise. Criticism may be severe, hostile, rough, caustic, bitter, sarcastic and satirical.

PUBLIC INTEREST HURDLE

29. The section 4(2)(b) analysis allows the judge to scrutinize “what is really going on”. This is the “crux” or “core” of the analysis.

Warner at para. 16

30. The onus remains on the plaintiff/respondent to satisfy the court that the public interest in allowing the action to proceed outweighs the public interest in protecting Rebel News' expression.

Warner at para. 17

The Necessity of Harm

31. A prerequisite to this weighing exercise is the plaintiff/respondent establishing both:

- a) the existence of harm; and
- b) that the expressions at issue in the litigation caused the harm.

Warner at para. 19

32. Although general damages are presumed in defamation action, which alone constitutes harm, the magnitude of the harm must be assessed. General damages in the nominal sense will ordinarily not be sufficient for this purpose.

Bent v. Platnick, 2020 SCC 23 at para. 144

33. If the plaintiff can establish that she has suffered harm, she must demonstrate that the harm was suffered as a result of Rebel News' expression. Here the plaintiff is required to show that she has a legitimate justification for bringing the lawsuit rather than using litigation as a tool to chill expression and silence the defendant.

Platnick at para. 144

Warner at para. 22

Public Interest

34. When weighing the public interest in protecting the expression at issue, judges should be weary of "descending into moralistic taste tests" and instead focus on the core values underlying freedom of expression such as the search for truth, participation in political decision making; and diversity in forms of self-fulfilment and human flourishing. The closer the expression at issue is to any of these factors, the greater the public interest is in protecting it.

Pointes at paras. 75-77

Warner at para. 25-26

Indicia of a SLAPP Suit

35. In *Pointes* Justice Cote confirmed that the court may consider traditional indicia of SLAPP suits at this stage of the analysis. Three indicia that are acutely relevant to the within proceeding include:

- a) The plaintiff's history of using litigation, or the threat of litigation, to silence critics;
- b) a punitive or retributory purpose animating the plaintiff's bringing of the claim; and
- c) minimal or nominal damages suffered by the plaintiff

Pointes at paras. 78-79

36. Justice Cote set out additional factors that may bear on the judge's public interest weighing exercise. Those factors that are particularly relevant to this within proceeding include:

- a) broader or collateral effects on other expressions on matters of public interest;
- b) the potential chilling effect on future expression either by a party or by others; and
- c) the defendant's history of activism or advocacy in the public interest

Pointes at para. 80

37. The plaintiff's role as an activist is relevant here. In *WIC Radio* Justice Binnie described public controversy as a "rough trade" while stressing that that the law of fair comment accommodates debate and criticism on matters of public interest.

WIC Radio at para. 15

38. In *WIC Radio* the court adopted the following passage from an older Ontario Court of Appeal decision:

"[w]hoever seeks notoriety, or invites public attention, is said to challenge public criticism; and [s]he cannot resort to the law courts, if that criticism be less favorable than [s]he anticipated"

WIC Radio at para. 57

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Ezra Levant, made November 16, 2021.
2. Affidavit #1 of Megan Yawney, made November 17, 2021.

The applicant estimates that the application will take 2 hours. *M*

- This matter is within the jurisdiction of a master.
- This matter is not within the jurisdiction of a master.

Date: November 26, 2021



Signature of lawyer for applicant
Daniel H. Coles

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- a) file an application response in Form 33,
- b) file the original of every affidavit, and of every other document, that
 - i) you intend to refer to at the hearing of this application, and
 - ii) has not already been filed in the proceedings, and
- c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - i) a copy of the filed application response;
 - ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

- iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this notice of application

with the following variations and additional terms:

Date: _____

Signature of [] Judge [] Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above