SUPREME COURT OF NOVA SCOTIA
Citation: *Mehta v. Wolfville Animal Hospital*, 2021 NSSC 363

Date: 20211214
Docket SK No. 506242
Registry: Kentville

Between:

Rakesh (Rick) Mehta

Plaintiff/Respondent on Motion

v.

Wolfville Animal Hospital, Dr. Carrie Terry Family Dentistry Inc.

Defendants/Moving Parties on Motion

DECISION
SUMMARY JUDGMENT ON PLEADINGS

Judge: The Honourable Justice Jeffrey R. Hunt

Heard: December 14, 2021 in Kentville, Nova Scotia

Oral Decision: December 14, 2021

Written Release: February 15, 2022

Counsel: Rakesh Mehta, Self-Represented
Peter Nathanson, Solicitor for the Defendant, Dr. Carrie Terry
Jonathan Cuming, Solicitor for the Defendant,
Wolfville Animal Hospital

By the Court (orally):

Background

[1] Wolfville Animal Hospital and Dr. Carrie Terry Family Dentistry Inc. are Defendants in a proceeding advanced by Dr. Rick Mehta. They contend in this Motion that Dr. Mehta's claims against them are abusive, vexatious, and doomed to fail. For this reason, they seek summary judgment on the pleadings pursuant to Civil Procedure Rule 13.03.

[2] This decision will assess the pleading under challenge, consider the applicable law and conclude by applying the legal standard for dismissal of a proceeding at this stage.

The Pleading

[3] Before engaging in an analysis of the applicable Civil Procedure Rules and caselaw, I intend to review the pleading filed by Dr. Mehta. The Statement of Claim is largely comprised of assertions around the issues of government response to the global pandemic and government overreach on the question of pandemic response mandates.

[4] The pleading makes clear Dr. Mehta's view that, in fact, there is no global pandemic - his suggestion is that it exists only as part of a conspiracy.

[5] If one were to attempt to identify the underlying argument it appears to be that public health authorities have become corrupted by the desire to use the declared global pandemic to unjustifiably infringe on individual liberty. While a proper proceeding based around these issues may certainly be possible, this document is filled with abuse, personal attacks and references to memes and conspiracy theories. The moving parties here contend that the claim is bound to fail and is in violation of the Civil Procedure Rules.

[6] The document does not have a readily apparent structure. It is difficult to follow what Dr. Mehta may be attempting to set out in the pleading. It begins by quoting a number of bible passages and goes on to assert that Covid-19 is part of a "...global conspiracy against God and humanity." It quotes the 1960 *Canadian Bill of Rights* and the subsequent *Charter of Rights* before setting out his argument, as he touched on today in oral argument, that these two documents are, as he says, "…mutually incompatible with each other."

[7] The pleading moves on to refer at some length to an arbitration ruling apparently dealing with his dismissal from Acadia University. How these

issues relate to the issues addressed before or following these passages is not entirely clear.

[8] He later returns to a discussion of his view as to the failure of the labour arbitration and grievance system.

[9] The pleading moves on to a section headed "Facts of Mehta v. Wolfville Animal Hospital". The subsequent 13 paragraphs detail, from his perspective, his engagement with the Wolfville Animal Hospital over the issue of face masking and the wisdom of complying with the health recommendations of the Chief Medical Officer of Health. At least I assume his reference is to face masking. He employs the term "face diapers" which, based on his other submissions, I take to be his term for face masking.

[10] Dr. Mehta appears to indicate that he was unable to get service from the Animal Hospital because he would not comply with what he clearly believes is an unjust and overreaching pandemic response mandate.

[11] Dr. Mehta relies on what he describes as "tweets by constitutional lawyer Mr. Rocco Galuti" and "…three books by Dr. Judi Mikovits (the scientist who blew the whistle on Dr. Anthony Fauci…)" as the factual underpinning for his belief that mask mandates are not based in science.

[12] The pleading next moves into a personal attack. He writes that because a particular person's email signature contained both a land acknowledgement and a statement of the writer's preferred pronouns, he concludes she is "not of sound mind". Again, the reason for including these comments is unclear in the context of the pleading.

[13] The next paragraph moves into a side discussion of Dr. Mehta's view that the Duty of Fair Representation in the labour arbitration context "exists only on paper". He relates this to his own unsuccessful dispute with the Acadia University Faculty Union and subsequent dismissal.

[14] The next paragraph contains attacks on the Nova Scotia Board of Examiners in Psychology, Wolfville Town Council and a named individual who Dr. Mehta claims had a sexual relationship with her employer. I will refrain from naming this person, for obvious reasons. I make reference to this allegation only to note that this is a further example of what the moving parties here would point out as unwarranted personal attack that are found throughout the document.

[15] The document then moves to its next section headed "Facts of Mehta v. Dr. Carrie Terry Family Dentistry Inc." In this section of the pleading, Dr. Mehta touches on a number of the same elements commented upon in the earlier parts

of the pleading. Dr. Mehta appears to indicate that he was unable to get service from the dental clinic because he would not comply with what he clearly believes to be unjust public health recommendations applicable to that service provider.

[16] Additionally, the pleading equates those who fail to resist the enforcement of the mask mandate with those who failed to resist the Third Reich. The end of this section closes with reference to the JFK assassination and the dangers of communism.

[17] The pleading then continues with a number of paragraphs appearing to set out the remedies being claimed. Dr. Mehta claims the right to an injunction and declaratory relief based on his belief that Covid-19 is part of a "global conspiracy against God and humanity". The Statement of Claim ends with a concluding suggestion that Canada has been in a mess since the Diefenbaker era ended.

[18] In summary, the pleading is a somewhat confusing, rambling and hard to navigate set of mostly disjointed claims, assertions and attacks. It appears to claim Charter relief against private individuals and businesses. It contains abusive comments and strange references to apparent conspiracy theories. At

various points it appears to be, or could arguably be, an attempt to relitigate his dismissal from Acadia University.

[19] Dr. Mehta is obviously not a legal draftsperson. However, we do not strike pleadings because they do not read as if written by a legally trained person. We do strike them, however, if they are vexatious, abusive, and doomed to fail. We will return to these issues after reviewing the applicable Rules and caselaw.

Civil Procedure Rules

[20] Summary judgment on the pleadings is governed by Rule 13.03. This rule has been interpreted and applied many times by our courts. While the law respecting summary judgment on evidence has undergone a number of re-statements, this is not the case with respect to summary judgment on pleadings.

[21] Rule 13.03(1) requires the court to strike a statement of claim in three circumstances. These are as follows:

1. The statement of claim discloses no cause of action;

2. It makes a claim based on a cause of action in the exclusive jurisdiction of another court or tribunal; or

3. It seeks to advance a claim that is clearly unsustainable on its face.

[22] Rule 13.03(2) directs that a court may grant one of two types of summary judgment:

> 13.03(2) The judge must grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances:
>
> …
>
> (b) dismissal of the proceeding, when the statement of claim is set aside wholly;
>
> …
>
> (d) dismissal of a claim when all parts of the statement of claim that pertain to the claim are set aside.

[23] Rule 13.03(3) mandates that a motion such as this must be decided on the pleadings only:

> 13.03(3) A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion.

[24] The summary judgment rule must be read in conjunction with Rule 38, which pertains to pleadings. This provision mandates that pleadings must provide sufficient information to allow the other party to respond:

> 38.02(2) The pleading must be concise, but it must provide information sufficient to accomplish both of the following:
>
> (a) the other party will know the case the party has to meet when preparing for, and participating in, the trial or hearing;
>
> (b) the other party will not be surprised when the party signing the pleading seeks to prove a material fact.

Case Law

[25] Under Rule 13.03(1)(a) and Rule 13.03(1)(c), summary judgment on the pleadings must be granted if a statement of claim discloses no cause of action or makes a claim which is clearly unsustainable when the pleading is read on its own.

[26] The Nova Scotia Court of Appeal and other courts have provided substantial guidance on the question of when summary judgment on the pleadings ought to be granted.

[27] The legal principles applicable to summary judgment on the pleadings have been well delineated in caselaw. They can be summarized as follows:

(1) A reviewing court must strike a claim that is absolutely unsustainable, discloses no cause of action, or is certain to be dismissed. Summary judgment on the pleadings clears the docket of claims or defences that are bound to fail: *Nova Scotia v. Carvery*, 2016 NSCA 21 at para. 23;

(2) It must be "plain and obvious" that the claims as pleaded cannot succeed because, for example, "the pleading, on its face, discloses no reasonable cause of action; or ...the claim is absolutely unsustainable; or ...it is certain to fail because of a radical defect": *Hunt v. T&N PLC*, [1990] 2 SCR 959, at paras 30-34; *Homburg Canada Inc. v. Halifax (Regional Municipality)*, 2013 NSCA 61, at para 7;

(3) In assessing the pleading, the facts contained in the challenged document must be taken as proved and true: *Homburg Canada Inc. v. Halifax (Regional Municipality)*, supra. at para 7;

(4) Although the pleaded facts are deemed to be true, the pleading party cannot simply stand on the mere possibility that the material facts necessary to sustain a cause of action might eventually turn up. A plaintiff "must plead facts material to the cause of action they assert": *Canada (Attorney General) v. Walsh Estate*, 2016 NSCA 60 at para 18;

(5) The power to strike out clams that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial: *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42;

(6) The power to strike should be used with care. The law evolves. The court should be generous and err on the side of permitting novel, but arguable, claims to proceed: *Canada (Attorney General) v. Walsh Estate, supra, at para. 18*.

[28] To these I would add the following principle drawn from *Smith v. Brothers*, 2015 NSSC 83, a decision of Justice Van den Eynden, J. (as she then was of the Trial Division), and applicable to cases such as this, where constitutional relief is claimed by an individual against another individual or private business, as opposed to a governmental actor:

> There are limits to what may be claimed as Charter relief between private citizens. A remedy in damages or injunctive relief based in a Charter violation is not available between two non-governmental actors. This limit on available relief may be considered in a claim for summary judgment: *Smith v. Brothers*, 2015 NSSC 83, at para 15.

Position of the Moving Parties

[29] Wolfville Animal Hospital and Dr. Carrie Terry Dentistry Inc. want this litigation to end. They say it is a misguided effort by Dr. Mehta to attack the mask or vaccine mandates through them. They did not create the mandates and they are merely complying with the law as applicable to them.

[30] They say the claims of Dr. Mehta are histrionic and illogically put. While there may well be legitimate arguments that can be advanced in challenge to various aspects of the governmental response to the global pandemic, the allegations put by Dr. Mehta in this pleading are confusing, unsupported and baseless in law.

Position of the Responding Party

[31] Dr. Mehta says that he is one of the victims of a vast governmental conspiracy. He points to what he says is clear evidence of ill intent on the part

of government to suppress personal liberty under the guise of protecting public health.

[32] He notes that he is a Ph.D with a history of having been recognized for academic achievement. It is a fact that he was a tenured Professor at Acadia University for a number of years. He was subsequently dismissed for cause.

Analysis

[33] I have carefully examined the pleading filed by Dr. Mehta. It is filled with invective, ad hominem attack and allegations the basis of which are not apparent.

[34] The law demands that I bring to an end a legal pleading that has no chance of success. As I noted in *MacCallum v. Langille (Estate of)*, 2021 NSSC 229:

> Where there is but one outcome based on the law and uncontested facts, summary judgment should follow: *HRM v. Annapolis Group Inc*, 2021 NSCA 3.

[35] I have taken seriously the direction from the caselaw I cited earlier, that novel claims should be examined to see if they can survive. It is also my view that the caselaw demands that any court considering summary judgment on pleadings has to assess the document to determine whether offending parts, or

parts that might not be in compliance with the rules can be excised and the balance of a document be allowed to survive.

[36] I have considered what would be left in the pleading, if all the personal invective and attack were removed. If this were read out – what would be left and could it stand alone?

[37] Even on this analysis, Dr. Mehta's pleading against the Defendants is fatally flawed. I invite anyone assessing the pleading to look at the claimed remedies. Most, if not all, are actually unrelated to the Plaintiffs. There is claimed relief against unnamed parties. It treats the Defendants here as mere straw men in a bigger fight he seeks to engage with the government.

[38] There may be individuals and organizations out there which have the capacity and resources to launch reasoned fights against various aspects of the governmental response to the declared global pandemic. This ruling makes no judgment on any of that. This document, framed as it is, is not that vehicle.

[39] In *Capital Market Technologies Inc. v. Prince Edward Island*, 2016 PESC 4, the Court stated that a pleading may be scandalous when it is a:

> 37 ... collateral attack asserting a cause of action against a non-party leaving the non-party no ability to answer the claim.

[40] I believe this issue is another of the flaws of this document.

[41] Moving through the other claimed remedies - there is a potential mandamus or injunctive relief claim in the sense that Dr. Mehta seeks an order that the Defendants be directed to break the law. However, because Dr. Mehta sees the law as unjust, he would not see it as truly breaking the law. Such a mandatory injunction is not permissible for public policy reasons.

[42] Again, I restate, there may be mechanisms to attack various parts of the governmental response to the pandemic, but this document, as framed, is not it.

[43] I am aware that the moving parties here also claim relief under the abuse of process provisions of the Rules. I am of the view however that the matter can be fully disposed of under the summary judgment rule. I do accept there are many aspects of the pleading that are liable to attack under abuse of process. However, I think the most complete challenge to the pleading is founded in the summary judgment on pleadings rule.

[44] Additionally, the pleading does not comply with Civil Procedure Rules direction around sufficiency of pleadings. I am satisfied that Rule 38.02(2), which I quoted above, has also been violated. The responding party must know the case they have to meet when preparing for or participating in a trial or

hearing. Based on this pleading, no responding party could truly understand what they had to prepare for or the case to meet.

Summary

[45] The claims as expressed in this pleading are bound to fail. It is a jumble of confusing assertions, conspiracy theory and personal attack. I have assessed whether there is any portion of the pleading that is non-objectionable and could be preserved and separated from the balance. I have determined this is not possible. There is no portion that could be saved which would be capable of standing on its own and complying with the Rules that I have previously cited. The pleading is fatally flawed and must be, in compliance with the Rules, dismissed in its entirety. That is the conclusion of the Court.

Costs

[46] The Defendants here are entitled to their costs of defence to date. There is no prospect of the parties meaningfully engaging on the issue of costs. Normally what I do is say I want the parties to go away and take 30 days and attempt to resolve the cost issue. There is no prospect of the parties here achieving settlement and I am not going to direct that they attempt to do so.

[47] Instead, it would be my preference and I think we can dispose of this aspect today after brief submissions.

[Oral submissions on costs omitted]

[48] Thank you for those submissions. The moving parties here, the Defendants in the underlying action, are entitled to costs. I think the moving parties have made a strong case that this could be one of those rare and exceptional cases for solicitor-client costs. I have heard them clearly. I have concluded, despite their very well put arguments, that I am going to deal with this under party and party costs. The lawyers here would be very well familiar with the caselaw around the rare and exceptional nature of solicitor-client awards.

[49] We are at the very early stage of this matter. I accept fully it has been troubling to the parties. It has not been a typical litigation, no question. But we have had one appearance in Court before Justice Arnold, and I have listened to that appearance in its entirety, and it was actually quite brief as well.

[50] The hearing today has also been quite short. Submissions were on point and brief. So, while I have heard and considered the request of the moving parties regarding solicitor-client costs, I am going to err on the side of the standard approach and assess party and party costs.

[51] In all the circumstances each Defendant is entitled to $2,400.00, all inclusive of disbursements. Counsel, who will draft the Order?

J.