

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Matthews v. MacMillan, 2003NSSC185

Date: 20030911
Docket: 157074C
Registry: Halifax

Between:

Stephen Matthews

Plaintiff

v.

Wanda S. MacMillan

Defendant

DECISION

Before: The Honourable Justice Walter R.E. Goodfellow

Heard: September 2nd, 3rd and 4th, 2003 in Halifax

Counsel: David C. Perlmutter, on behalf of the Plaintiff
Wanda S. MacMillan, in person

By the Court:

BACKGROUND

[1] Stephen J. Matthews, through his solicitor, issued an originating notice and statement of claim on the 30th of June, 1999, pleading that he conveyed the contracts, and good will, of Elite Management Services (“Elite”) to his common law spouse Wanda S. MacMillan on November 17th, 1997 and that she made no contribution for this conveyance. The statement of claim alleges the equipment of Elite was not transferred and remained his property and that after he transferred the contracts, and good will, he became an employee of Ms. MacMillan until she shut him out in May of 1999.

[2] The statement of claim alleges wrongful conversion of the equipment by Ms. MacMillan. Mr. Matthews also claims that he remains the beneficial owner of Elite and seeks damages for wrongful dismissal and malicious defamation.

[3] A defence was filed on July 29th, 1999 by Ms. MacMillan’s then solicitor alleging that there was a written contract of sale of Elite to Ms. MacMillan for \$40,000.00 and that these funds were disbursed at the direction of Mr. Matthews. Ms. MacMillan acknowledged in her defence that the business equipment of Elite

was not part of this contract. With respect to the alleged contract of employment dated December 16th, 1998, Ms. MacMillan pleads that this was signed under duress because Mr. Matthews refused to sign cheques that he had certified thereby removing funds from Elite's bank account. Ms. MacMillan alleges she signed the agreement in order to secure the return of cheques in the amounts of \$200.00, \$500.00 and \$1,800.00. Ms. MacMillan also denies that a common law relationship existed or that MacMillan was an employee and states that he was in fact an independent contractor. Ms. MacMillan denies the allegations of defamation/malicious falsehood and says that any statements she made were made solely for the purpose of explaining Mr. Matthews' erratic, embarrassing and unprofessional behaviour as it affected either Ms. MacMillan or Elite. The defence, while it did not specifically have a heading of a counterclaim, did plead an offset of funds alleged to have been provided by Ms. MacMillan to Mr. Matthews.

[4] A notice of change of solicitor was filed the 18th of March, 2002 noting that Ms. MacMillan represented herself and she provided her address for service as the address of Elite.

PRE-TRIAL CONFERENCE

[5] After some difficulty, a pre-trial conference was held on Labour Day, September 1st, 2003 by telephone. The following agreements were reached which were subsequently confirmed at the opening of the trial:

1. By consent of both parties and, indeed, their expressed preference, this matter was to be held by judge alone and not a judge and jury;
2. The plaintiff anticipated calling four witnesses, one, a medical doctor scheduled for 2 o'clock p.m. on the opening day of the trial;
3. Ms. MacMillan was advised that she should be ready should she choose to call witnesses, to have them subpoenaed and available for Wednesday, the 3rd of September at 9:30 a.m.;
4. That the issues outstanding had been narrowed down. To begin with, there was an order of this court dated February 16th, 2000, ordering Ms. MacMillan to return a list of items of equipment to Mr. Matthews and this has been complied with. In addition, the claims with respect to wrongful

dismissal, etc., and the claim in the nature of a counter-claim were no longer being pursued;

5. General advice was given with respect to the presentation of documents and Mr. Matthews' solicitor agreed that he would not likely object to any documents in the list of documents being tendered;
6. Discussion determined that there was a discovery and, initially, it was thought that there would be a problem with respect to the tape. Ms. MacMillan wanted the discovery, as she indicated it contained an admission by Mr. Matthews of his association with cocaine, although, upon inquiry, she was not sure if that was time-related. As it turned out, Ms. MacMillan secured a transcript of the discovery for use at the trial.
7. The court advised Ms. MacMillan that if she was going to act as her own counsel that she should try and prepare, in advance, what questions she wished to ask without suggesting any limitation. She advised she was not able to afford counsel as she is now apparently employed and as this is a civil matter, Legal Aid is apparently not available to her.

8. A brief outline of the procedure to be followed was given to Ms. MacMillan and this was repeated in greater detail at the opening of the trial.

LAW OF DEFAMATION - GENERALLY

[6] A defamatory statement is a false statement about a person to that person's discredit. An important element in the definition of what is defamation is that the statement complained of must be false. However, in an action for defamation, once a statement is established as being capable of having a defamatory meaning, the falsity of this statement is presumed.

[7] The statement must, of course, be about the plaintiff. In order to maintain an action for defamation, it is essential that the words (complained of) should refer to an ascertained individual and the plaintiff must establish evidence that that individual is himself.

[8] Publication to a third person is an essential element of the torts of slander and libel. It is the act of publishing the libelous matter which constitutes the cause of action.

[9] There is the defence of justification, and here Ms. MacMillan has the onus of establishing, on a balance of probabilities, that the statements she made were truthful.

[10] The solicitor for Mr. Matthews cited a number of authorities including quotations from The Law of Defamation in Canada (1976), Jeremy S. Williams and The Law of Defamation in Canada, Second Edition, Brown, Raymond E. In addition, a number of cases have been cited and I have reviewed them plus the Nova Scotia Court of Appeal decision in *Campbell v. Jones et al* (2002), 209 N.S.R. (2d) 81. Counsel for Mr. Matthews, in argument, provided two additional cases: *Murphy v. Alexander*, [2001] O.T.C. 969 (SupCt) and *Powell v. Seeds* (1999), 223 N.B.R. (2d) 84 (TD). I accept the statements of law advanced in argument and, in particular, in *Powell v. Seeds, supra*, the reference to there being no shifting of onus in defamation. Truth justifies the defamation.

CREDIBILITY

[11] It would take virtually a reproduction of the evidence by way of transcript to address all of the real or perceived conflicts between these two parties and I propose only making a few comments and findings. I assure counsel that I have carefully considered the arguments advanced with respect to suggested conflicts in the evidence of the parties.

[12] Overall, on all matters of substance, without reservation, I prefer the evidence of Ms. MacMillan to that of Mr. Matthews.

[13] One example is the evidence given by the parties in relation to the change of ownership of Elite. Mr. Matthews is correct that much of what transpired is in the context of the fact that there was an intimate relationship between the parties. Based on my observation, and the manner in which they gave their evidence, I readily accept Ms. MacMillan's designation that it was not really a common law relationship. She shared his residence for a period running from the 4th of April, 1998 to June 1998, however, she spent much of the time by herself in the basement of his home. She initially moved in with him, not only because they had a romantic involvement and expressed love for each other, but also she was concerned about his suicidal tendencies which were expressed by him in a

telephone call from Mr. Matthews to Ms. MacMillan in March of 1998. As a result of this call, Ms. MacMillan went over to the home with Mr. Matthews' sister and, as indicated, moved in on April 4th, 1998. Mr. Matthews was suffering depression and anxiety and was taking a prescription drug call Paxil. During this period Ms. MacMillan found that her presence in the home did not curb Mr. Matthews use of cocaine. She described how he left home many evenings between 10 p.m. and 2 a.m. and was gone most of the night, and on one occasion for two or three days. There was some indication of a growing degree of violence by Matthews to MacMillan, and, clearly, he was under the influence of cocaine. Ms. MacMillan described one occasion when he was unconscious for a long period of time which she grew to understand was a by-product of cocaine use. She poured cold water on him to try and wake him up without success, and when he eventually did wake up he acted in retribution by throwing cold water on her. It was his utilization of cocaine and the consequences of such use in the relationship to Ms. MacMillan that prompted her to recognize their then personal and working relationship could not continue and she introduced a schedule whereby she would be in the office from 9 a.m. to 1 p.m. and he would take over from 1 p.m. to 5 p.m.

[14] The parties actually met each other in the early 1980's when the company Mr. Matthews was employed with was managing the Top of the Mountain apartment building and in 1992 she began to work for Mr. Matthews. On January 1, 1993, he started up Elite and he owned it until the transfer by written agreement prepared by Mr. Matthews' solicitor dated the 17th of November, 1997. This agreement clearly describes the parties as buyer and seller and sets the purchase price for the assets at \$40,000.00. Mr. Matthews acknowledged that he had previously made some efforts to sell the business and the amounts being considered were \$30,000.00 to \$40,000.00 depending upon the continuation of a management contract with respect to one of the major properties being managed. The transfer to Ms. MacMillan of Elite took place in November of 1997 and the consistent thread of Mr. Matthews' evidence is that he was hard-done-by and that she received, in essence, a gift and that she had breached the trust he had placed in her. Mr. Matthews' statement of claim advances that he remains the beneficial owner of Elite and he has certainly pressed that point in his evidence.

[15] The evidence that I accept is entirely to the contrary. To begin with, it is clear that prior to the sale of the business to Ms. MacMillan he was endeavouring to get out of the property management business because of his inability to handle

the stress and he had already entered into a business in relation to vending machines. I also accept the evidence of Ms. MacMillan that she helped him in the vendor business without remuneration. It is clear that the \$40,000.00 for the purchase of the business came from a bank loan at the Scotiabank, and a letter from the manager dated August 25th, 1999 set out clearly where those funds were disbursed. There was a payout of a loan of Elite in the amount of \$7,037.54, however, \$21,112.06 went to a separate business loan of Mr. Matthews in a totally unrelated business endeavour in which Ms. MacMillan had no interest whatsoever. This payout was entirely beneficial to Mr. Matthews. The remainder, \$11,850.40 was deposited to Mr. Matthews personal account and again totally beneficial to Mr. Matthews.

[16] The business continued to be managed by Ms. MacMillan and payments to the bank were made so that when Mr. Matthews was finally called upon on his guarantee of the loan to Elite for \$40,000.00, he was required to pay \$1,339.00.

[17] In cross-examination, Mr. Matthews acknowledges Ms. MacMillan, through Elite, paid the mortgage on his home through March, April, May and June of 1998. He also admitted that in late April 1998 he received cash in the amount of

\$1,340.00 from one of the companies being managed by Elite and that these funds were fees due to Elite and instead of turning them over, he took the money to a “crack house”. He acknowledged this conduct was unprofessional. There is no indication that Mr. Matthews ever reimbursed Ms. MacMillan, or Elite, for these funds which he misappropriated for the purposes of satisfying his drug habit.

[18] I now want to review some of the other evidence of the relationship of Mr. Matthews to crack cocaine before addressing specifically the alleged defamatory statements.

[19] There was much in the background that gave rise to the clear justified conclusion by Ms. MacMillan that Matthews was a cocaine addict. To begin with, he admits it and he indicated how dreadful a hold cocaine had upon him. There were unusual events that occurred such as on one occasion a rock being thrown through his window, which quite probably was from a cocaine addict person known by Mr. Matthews, and another occasion, despite promises to Ms. MacMillan, it appears that a particular cocaine addict friend of his entered his home and stole Ms. MacMillan’s ring, which I believe she acknowledged he knew

where to go, and I understand, by inference at least, that the ring was retrieved by Mr. Matthews.

[20] Mr. Matthews acknowledged his threat of suicide of March, 1998. He acknowledged that he did not feel inclined to take up her suggestion to go into “rehab” and expressed the view that “rehab” was probably the best source of drugs and he would not go to “rehab” because he was convinced that Dr. Whitby, his psychiatrist, was his best source of assistance. Frequently, Mr. Matthews indicated he had a memory problem. My observation of him was that he was not prepared to admit anything that would contradict his firm belief that he had been hard-done-by by Ms. MacMillan in relation to Elite. As I said, I find the credible evidence on that subject to be totally to the contrary. I see no need in reciting the numerous problems that resulted from Mr. Matthews’ being a cocaine addict, including his misappropriation of Ms. MacMillan’s Elite fees from Admiralty Place.

[21] The most disputed evidence is the events of December, 1998, onward. In December, 1998, two of Mr. Matthews’ friends or acquaintances were brutally murdered, and apparently another friend was killed shortly thereafter. These had a severe impact on Mr. Matthews who incidentally did acknowledge his overall

stressed condition throughout the period of his relationship with Ms. MacMillan. Mr. Matthews is adamant that he had conquered his cocaine addiction prior to May of 1999 and, further, he repeatedly says that Ms. MacMillan knew that he had conquered it. I conclude the contrary and specifically accept the evidence of Ms. MacMillan as to the existence of a calendar and the comments by telephone made by Mr. Matthews to Ms. MacMillan in January and March of 1999. In one of the telephone calls he indicated to her the fact that he had gone back to cocaine and during the second telephone call he advised her that he had been free of cocaine for 16 days. It is Mr. Matthews view that the calendar in the kitchen was for the year 1998, however, Ms. MacMillan, who at least resided in that home for a period of time, said no such calendar marking the days he was clean existed in 1998 and that it was 1999 when she received these telephone calls. My finding in this regard is not essential to the ultimate conclusion of this case.

[22] Separate from these admissions by Mr. Matthews in 1999, the outline by Mr. Matthews himself of the strength of the hold on a human being of the addiction to cocaine and his clear admission of being a cocaine addict, coupled with what Ms. MacMillan attempted to tolerate and address in the totality of the evidence, clearly

indicates that on a balance probabilities Mr. Matthews remained a cocaine addict and is probably, correctly so-described even now.

[23] The ultimate determination of whether or not Mr. Matthews has established defamatory statements by Ms. MacMillan relates to allegations in a telephone call by her to Mr. Douglas Ellis of Embassy Towers Condominiums on May 4th, 1999, a meeting between Ms. MacMillan, Dr. Boudreau, Chairman of the Board of Embassy Towers Condominiums and Mr. Douglas Ellis on May 6th, 1999, the attendance of Ms. MacMillan at an Embassy Towers Condominiums' Board meeting on May 31st, 1999, and a letter she wrote December 6th, 1999 in response to the request from Dr. Angelopoulos who was Chairperson of the Embassy Towers Condominiums' Board of Directors.

[24] The evidence that bears directly upon the allegations advanced by Mr. Matthews is some parts of his own testimony, the evidence of Douglas Ellis, Ms MacMillan's evidence and the letter from Ms. MacMillan to Dr. Angelopoulos, December 6th, 1999.

[25] Douglas Ellis is a very fine elderly gentleman who met Mr. Matthews about 1983 and became relatively close in association from 1990. He was Secretary/Treasurer of the Board of Embassy Towers Condominiums starting when Mr. Matthews was the outside manager Roycom Reality. He is not sure of dates, but he recalls Mr. Matthews being with Alliance Property Group and that the Board moved in 1992 to Elite Management Services which was formed by Mr. Matthews and remained with Elite until (around) 2002.

[26] He thinks the Board probably called tenders as he recalls the Elite contract ending at the end of 2001.

[27] He found satisfaction with Elite and Mr. Matthews in particular. He found Mr. Matthews very well informed on the technical side of maintenance and Elite had a reliable representative for bookkeeping from 1992 to 1999. This representative moved to Truro in 1999 and that had a major impact on the contract with Elite.

[28] He recalls Ms. MacMillan coming with the management almost from the beginning. She was on the office side of the work, took notes and minutes, and he

thought that Ms. MacMillan and Mr. Matthews were a good and effective team. Mr. Matthews looked after the building problems but was a somewhat blunt and direct person while Ms. MacMillan was far better at personal skills and dealing with people.

[29] Mr. Ellis was asked when he first became aware that there was a problem and he said it was about May 4th in a telephone call from Ms. MacMillan. He says looking back there were slight problems before, there were difficulties with telephone contact with both parties, that was his impression. He thought that Ms. MacMillan was ill and he thought it was cancer, and she was not much available for some period and Mr. Matthews was less available than before. It was on May 4th, 1999 that he learned for the first time that Ms. MacMillan was the owner of Elite and in her evidence she described this as quite a shock to him. Mr. Ellis acknowledged that Ms. MacMillan told him that she was in charge and was the owner of Elite and he had said to her that Mr. Matthews was not carrying his load. Mr. Ellis spoke to Mr. Matthews the following day and received a somewhat different version of the difficulties. It was through Mr. Matthews that he learned that it was Mr. Matthews' view that he and Ms. MacMillan were living together and had separated and were not in the office together. That one of them was in

during the morning and one in the afternoon. Prior to that he was not aware that there had been any co-habitation between them.

[30] Mr. Ellis, Dr. Boudreau, then Chairman of the Board and Mr. Matthews met the next day on May 5th, 1999 and then he and Dr. Boudreau met with Ms. MacMillan on either May 6th or 7th, 1999. He said that at the first meeting there was an explanation of the breakup and the second meeting with Ms. MacMillan, it seemed at that stage, that the relationship would not work. She denied that they were actually living together and that she was staying to look after Mr. Matthews because he was in bad shape. His evidence is that she said he was taking drugs, cocaine, possibly crack cocaine, and was depressed and not working well and that generally they were not getting along and Mr. Matthews was not in good shape to handle matters and not capable of handling matters. At that point Mr. Ellis thought that the building management was generally okay and when asked about the breakdown of the relationship he said that he understood drug use was one of the reasons they were not being able to and he said from his memory Ms. MacMillan used the terminology “using drugs”. He then said he was definite on that terminology and that his reaction was that he was upset, he was confused because he had not seen any problem with Mr. Matthews. He could not see how Mr.

Matthews could be using drugs extensively because he was in contact with him very frequently. Mr. Ellis' lack of awareness from observation of Mr. Matthews that he was, at times, utilizing cocaine is not too surprising when you bear in mind that Mr. Matthews' personal doctor, Dr. Davis, did not, by observation, detect any signs of cocaine use. In fairness to Dr. Davis, it is my recollection that he did not see Mr. Matthews from some time early in January 1999 until close to June of 1999 when Mr. Matthews commenced his campaign to distribute results of his then drug-free tests, etc.

[31] Mr. Ellis learned during the middle of the month, probably around the 17th of May, that Mr. Matthews had been fired.

[32] There was the Board meeting on May 31st, 1999 and Mr. Ellis indicated who was there. There is an area of conflict between his evidence and Ms. MacMillan's evidence as to what actually transpired at the May 31st, 1999 Board meeting. Mr. Ellis' recollection is that there was discussion, he did not know the details, and that Ms. MacMillan explained that she had fired Mr. Matthews. It is his evidence that she stated he was taking crack cocaine. There is no reference to this in the minutes, but he did note that Ms. MacMillan personally drafted the minutes. He

acknowledged at that stage that he knew Mr. Matthews had been fired. He knew also that there had been a number of letters to the Board from Mr. Matthews and also that Mr. Matthews had delivered letters to a few of the owners and previous Board members. He knew there had been an arrangement for random drug testing and gave reference to arranging a test at the Dixon Centre and, I believe, on another occasion as well. It was Mr. Matthews who asked him to participate. My notes indicate that he probably received something from Mr. Matthews doctor prior to the Board meeting on May 31st, 1999.

[33] Mr. Ellis returned, in his evidence, to the May 4th, 1999 telephone call and says that Ms. MacMillan explained the troubles at Elite and he said that the drug problem was mentioned. He does recall a problem with respect to Ms. Stoneman at the meeting and her threatening to resign and he recalls a discussion, a statement that Mr. Matthews was going to lose his home but he does not recall where it was stated. He confirmed that the drug test results were sent to the Board members. By the time the Board meeting of May 31st, 1999 took place, there was a concern with respect to security and the Board actually had a security guard present.

[34] Ms. MacMillan's evidence as it relates to the telephone conference of May 4th, 1999 with Mr. Ellis, the meeting of May 6th, 1999 with Mr. Ellis and Dr. Boudreau and the Board meeting of May 31st, 1999 conflicts, to a degree, with Mr. Ellis' recollections.

[35] Ms. MacMillan in her testimony outlined the drug addiction of Mr. Matthews which she learned of in 1996. She agreed to be as supportive as possible to him and she gave evidence, for example, that in September, 1996 he told her that he was off crack cocaine use, then one day she saw a list of debts to his drug dealers and he admitted after telling her that he was not on drugs that he was still using them. She spent Christmas at his home and tried to help and in 1997 found out that he was still using drugs although he asserted to her that he had stopped. One night she found him hiding in the dark using cocaine and it was in this background and the stress and depression that Mr. Matthews was feeling that brought forth the first evidence of his desire to get out of property management and to sell the business to her. Ms. MacMillan cited other occasions when he told her he was off of cocaine use for a number of days. She reviewed his suicidal tendencies and the telephone call in March and Ms. MacMillan, after making a valiant effort to assist him, concluded that he wasn't going to cease using drugs no

matter what, and I think that was a reasonably justifiable conclusion. I do not think it is necessary to review the pressures Mr. Matthews tried to put on Ms. MacMillan in relation to their business and personal relationship, cheques, etc., I have already made a determination that the so-called employment agreement prepared by Mr. Matthews solicitor was signed by Ms. MacMillan under duress and represented the only way she could get the funds he had certified into cheques in his possession back into the business. The cheques were really only returned by intervention of Mr. Matthews' solicitor and the agreement.

[36] Turning directly to the crucial evidence, Ms. MacMillan says that she called Mr. Ellis back and told him that Mr. Matthews did have a drug problem. A meeting was set up between her and the President of the condominium, Dr. Boudreau and Mr. Ellis. Ms. MacMillan is clear that she told Mr. Ellis and Dr. Boudreau that Mr. Matthews had had a drug problem. She acknowledge that, to her knowledge, he may still have one. She indicated that she may have to terminate Mr. Matthews' association. Ms. MacMillan was the owner of Elite and the deception practised by Mr. Matthews with respect to conveying that he was the owner is something with which she went along. Ms. MacMillan was concerned about Mr. Matthews having a security card for the building. Very clearly, Ms.

MacMillan limited her advising Embassy Towers Condominium to the Chairman of the Board and Mr. Ellis. It was only as a result of the campaign of letter writing, etc., by Mr. Matthews that she became bombarded with questions from other homeowners, etc. Mr. Matthews, in fact, wrote widely, including to Ms. MacMillan's parents and widely published the fact that he had a drug problem but was producing evidence of drug tests. Ms. MacMillan acknowledged her letter of December 6th, 1999 to Dr. Angelopoulos and I will address the contents of that letter, alleged to be defamatory, separately.

[37] Ms. MacMillan's evidence is clear that she was endeavouring to limit the publication of the fact that Mr. Matthews was a drug addict and had had a drug problem, and her recollection of what transpired at the May 31st, 1999 Board meeting is consistent with that approach, I accept her evidence that she was not prepared to discuss the drug aspect with the Board and, that a Board member, Ms. Stoneman, influenced by Mr. Matthews' correspondence which created the impression that he was about to lose his home, indicated she would respond privately to Ms. Stoneman who apparently in the discussion indicated that she would resign from the Board. I am satisfied that the discussion that took place was in fact as to what was going to be said, how the Board meeting was to progress,

etc., and that Mr. Ellis has a faulty recollection. Mr. Ellis, as I said, is a very fine elderly gentleman who has a close and loyal relationship to Mr. Matthews, and obviously he has had extreme difficulty accepting what has transpired.

[38] Mr. Matthews asserts that Ms. MacMillan told Dr. Boudreau, Mr. Ellis, and the Board that he was a drug addict using drugs at that time. He further asserts that Ms. MacMillan knew that he was not using drugs in May of 1999. Mr. Matthews had failed to establish, on a balance of probabilities, that Ms. MacMillan stated and published that he was, at that time, using drugs; although, if it was necessary to find justification for such a statement, it clearly existed. I find that Ms. MacMillan did not make the statement as alleged by Mr. Matthews and there is absolutely no credible evidence to indicate, that Ms. MacMillan knew Mr. Matthews was not utilizing drugs in May of 1999.

[39] Turning now to the letter of December 6, 1999, the major allegations advanced by Matthews relate to certain sections, the first being her statement:

“Further, Mr. Matthews’ home is in no danger from this loan as it is not held as collateral on this note. This can be confirmed at the bank.”

[40] At the end of the case advanced by Mr. Matthews, I indicated that the only evidence then available was the existence of a guarantee by Mr. Matthews of the loan to Elite for \$40,000.00 when Elite had been transferred to Ms. MacMillan. Mr. Matthews' counsel was not aware whether or not there was a separate collateral mortgage. During the second day of trial on September 3, 2003, over the lunch hour, a copy of the collateral mortgage was located. The collateral mortgage was not signed by Ms. MacMillan and was entered into evidence on the clear understanding that there was no admission by Ms. MacMillan that she even knew such existed. There is no evidence whatsoever that she knew such existed and the statement referred to in her letter of December 6th, 1999 is not defamatory or false. Elite was, in practical terms, paying the loan and, in fact, also paid the mortgage on Mr. Matthews' home for a number of months.

[41] The main allegation of defamation in the letter of December 6th, 1999 is contained in the following paragraph:

“My “allegations” of his drug use come from first hand knowledge of same, specifically his own admittance of this problem to me, my witnessing him using this substance, his period of complete depression when he became suicidal and needed someone to stay with him, his association with certain individuals who provided him with this substance and other circumstances that will come out in the court case.”

[42] I do not propose reviewing further any of the evidence. I have reached the clear conclusion, totally supported by the evidence, that everything contained in that statement was true.

[43] There was also reference in the December 6th, 1999 letter to the fact that Mr. Matthews was casting aspersions on Ms. MacMillan's mental stability. Certainly, Mr. Matthews was totally lacking in objectivity and emotionally driven in his crusade against Ms. MacMillan. He describes communications between them as "nasty-o-grams" and lashes out at her for having to get someone else to do some of the administrative clerical work. It is clear, and I accept, that Ms. MacMillan was ready and willing to carry out her end of the bargain, but Mr. Matthews simply would not and, apparently, could not conduct himself other than from a foundation that he believed he still was the real owner of Elite. He left a note on one occasion saying he would no longer do the work in relation to Waterfront place, etc. While this area is not at all in consideration in the determination that there was no defamatory made, and certainly no malice, nevertheless, I want to make clear my findings of what really took place.

RESULT

[44] The action of Mr. Matthews is dismissed. If I had not dismissed the action, then with respect to damages I would not have remotely considered damages having been established in the range sought by Mr. Matthews of \$100,000.00 - \$300,000.00. Most, if not all, of the damage done to Mr. Matthews was a result of his own association with cocaine and his anxiety and depression which existed from at least 1996. It is clear his inability to continue in the condominium property management field, and any damage to his reputation was self-inflicted and aggravated by wide publication committed by himself. At best, if I had found defamation existed, I would have given nominal damages of less than \$1,000.00.

COSTS

[45] It seems to me that a proper judicial exercise of discretion with respect to costs is to require both parties to bear their own costs of this action. The starting point is that costs follow the event and while Ms. MacMillan has been successful in having Mr. Matthews claim dismissed, nevertheless there are features that warrant a disposition of each party bearing their own costs. The statement of defence acknowledged that the equipment of Elite Management Services was not

part of the sale contract and yet Mr. Matthews was required to take an interlocutory application to secure an order for the return of that equipment. When Ms. MacMillan became solicitor of record for herself by the notice of change of solicitor filed on March 18th, 2002, she listed the address and telephone number of Elite Management Services. Subsequently, she advised her address to be one in Dartmouth and both the court and Mr. Matthews' counsel addressed correspondence from time to time to her at that address, all of which was returned "unknown address". She failed to provide, as is required of anyone who acts as their own solicitor, or of a solicitor, to provide an address for the purposes of service. Additionally, the cell telephone number she gave to the court some time ago was not continued in operation, making additional, unnecessary effort for Mr. Matthews solicitor in preparing for trial. To Ms. MacMillan's credit, she did respond once she learned that both Mr. Matthews's solicitor and the court were attempting to contact her. Her failure to provide the fundamental basic requirement of an address resulted in considerable additional work and a pre-trial conference was not able to be organized until Labour Day, the day before the commencement of the trial. The court required Mr. Matthews' solicitor to do the appropriate preparation for the trial, including, at that stage, sending the court draft questions to be sent to the jury. This being a defamation action, the *Judicature Act*

required it to be tried by jury, unless and until both parties consent to the contrary, and due to the inability to contact Ms. MacMillan, this issue could not be addressed until the eve of trial. The fact a person is self-represented does not, *per se*, impact on costs. It is the manner in which the self-represented conducts the carriage of the action. *Gilfoy et al v. Kelloway et al* (2000), 184 N.S.R. 2(d) 69.

[46] Additionally, this is very much an emotionally charged, personal, *quasi* domestic trial and in the totality of the circumstances, each party shall bear their own costs. The parties have gone through an extremely difficult, lengthy period of litigation, a long hearing before a Justice of the Peace, a criminal jury trial and now this civil litigation. Both parties are intelligent and each have their own strengths and I can only state the obvious that hopefully they can move on with their lives and close this chapter completely.

J.