



CLAIM BASED ON NEWSPAPER ARTICLES IS NOT DEFAMATION, COURT RULES

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PRECIS: The Ontario Superior Court of Justice has dismissed a motion to strike out a statement of claim regarding articles published in *The Globe and Mail*. Although the defendants argued that the statement of claim was a disguised defamation action, the court held that the plaintiffs’ claims based on the torts of deceit and invasion of privacy could stand alone.

In *Nitsopoulos v. Wong* , [2008 CanLII 45407 (ON S.C.)], the Superior Court of Justice of Ontario dismissed Defendants’ Motion to Strike Out Plaintiffs’ Statement of Claim.

Defendants, the journalist Jan Wong and the publisher CTV Globemedia Publishing Inc., presented this Motion on the basis that the Statement of Claim was a defamation action disguised as some other cause of action and was not revealing a reasonable cause of action.

What were the facts?

In April 2006, *The Globe and Mail* published a series of articles authored by Jan Wong called “Maid for a month”. Wong tells of her experience as a maid for a cleaning service in Toronto. The action arises from the publication of a second article which contains descriptions of a particular home. The portrayal was precise enough to identify plaintiffs’home.

Section 6 of the Ontario *Libel and Slander Act* provides that an action for libel in a newspaper is prescribed three months after the defamation has come to the knowledge of the victim. In the case at bar, Plaintiffs’ action was instituted 22 months after the impugned publication; therefore plaintiffs’ framed their cause of action as one for deceit and invasion of privacy.

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The issue of this Motion comes down to two questions:

- 1- Should the Statement of Claim be struck on the basis that it is a disguised defamation action?
- 2- Should the Statement of Claim be struck because it does not disclose a reasonable cause of action?

Defendants claims that the harm caused to Plaintiffs was only a result of the publication of the article. They also claim that there is no other possible cause of action because no damages originated from a deceit or an invasion of privacy. *The Globe and Mail* submitted that the harm caused to Plaintiffs should be characterised exclusively has a defamation, of which the defence fall under by Section 6 of *Libel and Slander Act*. They also alleged that defamation can cause prejudice only to their reputation.

Even if plaintiffs didn't mention the words "invasion of privacy", they did state in their letter of demand: "to Ms. Wong's knowledge, our client would not have permitted entry into his home by her had he been aware of the true nature and purpose of her attendance at his home. In the circumstances, Ms. Wong has committed acts of trespass and deceit as against our client."

Plaintiffs, taking the opposite position on this motion, alleged that *The Globe and Mail* is trying to "dress up" plaintiffs' legitimate tort claims as a defamation action.

In the Superior Court's view, plaintiffs' claims based on torts of deceit and invasion of privacy did stand alone. The damages alleged in Plaintiffs' Statement of Claim were not only damages to their reputation and were not solely caused by the publication of the article. The Court therefore rejected *The Globe and Mail* argument that damages claimed in this case only originated from defamation and should arise from *Libel and Slander Act*.

As for the reasonable cause of action, the Court decided that this action should not be dismissed. In fact, Plaintiffs' argument with respect to the tort of deceit makes it unlikely to conclude that those claims were doomed for failure, at least before hearing evidence (which was not permissible on such a motion). The Judge also observed that actions based on invasion of privacy are not prohibited under any Ontario laws.

Finally, the Court remarks that this case should be considered on a full evidentiary record, and it should not be dismissed on the basis of having no chance of success.

Result: Defendants' motion dismissed with costs.

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