COURT OF APPEAL FOR ONTARIO

CITATION: Robson v. The Law Society of Upper Canada, 2018 ONCA 944
DATE: 20181123
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Hoy A.C.J.O., Feldman and Paciocco JJ.A.

BETWEEN

Paul Alexander Robson

Plaintiff (Appellant)

and

The Law Society of Upper Canada, Zeynep Onen, Mark Pujolas, Lisa Freeman and Jan Parnega-Welch

Defendants (Respondents)

Paul Robson, acting in person

Richard Watson, for the appellant (on one issue only)

Sean Dewart and Ian McKellar, for the respondents

Heard: November 13, 2018

On appeal from the order of Justice Patrick J. Monahan of the Superior Court of Justice, dated March 6, 2018, with reasons reported at 2018 ONSC 1507, [2018] O.J. No. 1183 (Sup. Ct.).

REASONS FOR DECISION

[1] The appellant appeals the order of the motion judge, striking his fresh as amended statement of claim, without leave to amend, and dismissing his action against the respondents. He also seeks leave to adduce fresh evidence on appeal.

[2] The respondents are what is now called the Law Society of Ontario and four individuals (Zeynep Onen, Mark Pujolas, Lisa Freeman and Jan Parnega-Welch) who are or were employed by the Law Society and involved in investigations and proceedings concerning the appellant over the past 15 years.

[3] On a prior motion by the respondents, Firestone J.: (1) struck the appellant's negligence claim, without leave to amend; and (2) struck the appellant's claims for malicious prosecution and misfeasance in public office, with leave to amend, on the basis that the appellant had failed to plead the full particulars required by r. 25.06(8) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194: *Robson v. Law Society of Upper Canada*, 2016 ONSC 5579, [2016] O.J. No. 4749 (Sup. Ct.).[1]

[4] The appellant amended his claims for malicious prosecution and misfeasance in public office in response to Firestone J.'s order. He also responded to the respondents' demand for particulars. The respondents then brought a second motion to strike the appellant's fresh as amended statement of claim, which was heard by the motion judge.

[5] The motion judge held that the appellant's fresh as amended claim did not respond to the directions set out in Firestone J.'s prior order. In his view, the appellant had failed to provide sufficient particulars of the improper purpose or

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[1] This court dismissed the appellant's appeal from the dismissal of his negligence claim: *Robson v. The Law Society of Upper Canada*, 2017 ONCA 468, 26 Admin L.R. (6th) 133 (Ont. C.A.).

ulterior motive necessary to ground a claim for malicious prosecution or misfeasance in public office, as required by r. 25.06(8) of the *Rules of Civil Procedure*.

[6] We agree with the motion judge that the appellant's claim against Ms. Parnega-Welch should be struck, without leave to amend. The appellant does not plead any particulars of his claim against her.

[7] However, we agree with the appellant that the motion judge erred in striking the remainder of the appellant's fresh as amended claim. In particular, the motion judge does not appear to have considered the appellant's response to the respondents' demand for particulars, which contained sufficient further particulars in relation to three of the four individual respondents. Further, in the case of the four respondents other than Ms. Parnega-Welch, the motion judge erred in law by requiring an unnecessarily high level of particularization.

Background

[8] Some context is required to understand the appellant's action against the respondents.

[9] In 2002, Lax J. presided over a trial on the issue of whether the appellant had acquired shares in certain companies while an undischarged bankrupt. If he had, then the shares vested in the bankruptcy trustee. In finding that the shares had vested in the bankruptcy trustee, Lax J. made a number of other factual

findings, including that the appellant had attempted to conceal assets, and the truth, from the trustee: *Robson (Re)*, 2002 CarswellOnt 5958 (Sup. Ct.), aff'd [2004] O.J. No. 4103 (C.A.).

[10] As a result of Lax J.'s findings, in 2002 the Law Society began to investigate the appellant's conduct in connection with his bankruptcy proceedings.

[11] Separately, the bankruptcy trustee brought a motion to set aside the appellant's discharge from bankruptcy. Relying primarily on Lax J.'s reasons, the trustee took the position that the appellant had obtained his discharge by fraud.

[12] Campbell J. dismissed the trustee's motion, holding that Lax J.'s decision did not necessarily amount to a finding of fraud: *Robson Estate (Trustee of) v. Robson*, 2005 CarswellOnt 9917 (Sup. Ct.).

[13] Campbell J.'s order dismissing the trustee's motion to set aside the appellant's discharge was upheld by this court on appeal. Doherty J.A., writing for the court, held that Lax J. had made a finding of fraud, but that the finding was not binding against the appellant in subsequent proceedings because it was not "necessary" to the determination of the issue before Lax J. – namely, whether the appellant had acquired the shares while an undischarged bankrupt. Further, since the appellant did not have notice that the trustee was seeking a determination that he acted fraudulently, and had not fully defended the action before Lax J., it would be unfair to preclude the appellant from re-litigating the issue in subsequent

proceedings: *Robson Estate (Trustee of) v. Robson* (2006), 22 C.B.R. (5th) 1 (C.A.).

[14] In 2013 – some seven years after the decision of Doherty J.A. in the appellant's bankruptcy proceeding – a Law Society Hearing Panel held that the appellant had engaged in conduct unbecoming: *Law Society of Upper Canada v. Robson*, 2013 ONLSHP 49. Before the Hearing Panel, the Law Society relied exclusively on the findings made by Lax J. as to the appellant's fraudulent and dishonest conduct. The appellant was subsequently disbarred: *Law Society of Upper Canada v. Robson*, 2014 ONLSTH 68.

[15] In 2015, a Law Society Appeal Panel overturned the Hearing Panel's finding of professional misconduct: *Law Society of Upper Canada v. Robson*, 2015 ONLSTA 4. It held that the Hearing Panel had erred in law in precluding the appellant from leading evidence and from re-litigating the factual findings made by Lax J., as Doherty J.A.'s decision in the appellant's bankruptcy proceedings was controlling on this issue. As a result, the Appeal Panel set aside the appellant's disbarment.

[16] The Law Society took no further action against the appellant in respect of his conduct during the bankruptcy proceedings.

Applicable Legal Principles

[17] Before assessing the sufficiency of appellant's pleadings, it is helpful to review the elements of the torts of malicious prosecution and misfeasance in public office, as well as the requirements of r. 25.06(8) of the *Rules of Civil Procedure*.

[18] To succeed in an action for malicious prosecution, a plaintiff must prove that the prosecution was: (1) initiated by the defendant; (2) terminated in favour of the plaintiff; (3) undertaken without reasonable and probable cause; and (4) motivated by malice or a primary purpose other than that of carrying the law into effect: *Miazga v. Kvello Estate*, 2009 SCC 51, [2009] 3 S.C.R. 51, at para. 3. The tort targets the decision to initiate or continue with a prosecution: *Kvello*, at para. 6.

[19] The essence of the tort of misfeasance in public office is the deliberate and dishonest wrongful abuse of the powers given to a public officer, coupled with the knowledge that the misconduct is likely to injure the plaintiff. Bad faith or dishonesty is an essential ingredient of the tort: *Conway v. Law Society of Upper Canada*, 2016 ONCA 72, 395 D.L.R. (4th) 100, at para. 20.

[20] Rule 25.06(8) of the *Rules of Civil Procedure* applies where these torts are pleaded. It provides:

> Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances for which it is to be inferred.

Analysis

[21] Incorporating the demand for particulars, the essence of the appellant's fresh as amended claim appears to be as follows: the respondents knew that Lax J.'s judgment was not correct and that many of the facts relied upon by her were inaccurate; the Law Society and Onen deliberately acted contrary to the decision of Doherty J.A. in proceeding solely in reliance on the findings of Lax. J.; the Law Society, Onen and Pujolas deliberately precluded unfavourable witnesses (namely, the appellant, Megan McLellan and an individual identified as "Coutu" in the appellant's response to the demand for particulars) from being interviewed, despite pleas from the witnesses for the Law Society to do so; and that the Law Society, Freeman and Onen deliberately and formally precluded the intervention of McLellan, whom they knew had material unfavourable evidence to the Law Society's case, into the hearing process. He further pleads that the respondents engaged in this conduct to harass and harm him.

[22] In the appellant's oral submissions on this appeal, but not in his pleadings, he said that he is a thorn in the side of the Law Society and someone the Law Society wishes to silence.

[23] The respondents challenge the appellant's pleadings on the basis that the appellant did not plead, with sufficient particularity, facts from which the "improper purpose" element of malicious prosecution can be inferred. We understand the respondents to similarly argue that, with respect to the tort of misfeasance in public

office, the facts from which “the deliberate and dishonest wrongful abuse of the powers given to a public officer” might be inferred have also not been pleaded with sufficient particularity.

[24] In our view, the elements of both torts have been sufficiently pleaded. The improper purpose is to harass and harm the appellant. The facts pled, if true, support the inference of an improper purpose. If true, they may also point to a deliberate and dishonest wrongful abuse of the powers given to a public officer.

Disposition

[25] Accordingly, the appeal is allowed, except as it relates to Ms. Parnega-Welch. As we have said, the appellant provided no particulars as to her role in the Law Society’s investigation and prosecution of him. The references to Ms. Parnega-Welch shall be expunged from the fresh as amended statement of claim.

[26] The appellant’s motion to admit fresh evidence is dismissed. The material sought to be placed before the court was neither relevant nor cogent. The proposed fresh evidence also included a palpably untenable claim of bias made against the motion judge that we repudiate in the strongest terms. The attack was not only indiscrete, but scandalous.

[27] As a result of the foregoing, the costs order of the motion judge is vacated. The appellant is entitled to the costs of this appeal, fixed in the amount of $2000, inclusive of HST and disbursements. This is half of the amount that the parties

agreed the appellant would be entitled to, if fully successful. The reduction reflects both that the appellant was not fully successful on the appeal, and that we dismiss his motion to admit fresh evidence. If the parties are unable to agree on the costs of the motion below, they may make brief written submissions within fourteen days.

"Alexandra Hoy A.C.J.O."
"K. Feldman J.A."
"David M. Paciocco J.A."