



No. S107065
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LOIS SAMPSON

PLAINTIFF

AND:

GUISEPPE SCALETTA, VANCOUVER ISLAND HEALTH
AUTHORITY, RALPH PALAMAREK, ROBERT
PALAMAREK, ERNEST PALAMAREK

DEFENDANTS

RESPONSE TO CIVIL CLAIM
FORM 2 (RULE 3-3(1))

FILED BY: RALPH PALAMAREK, ROBERT PALAMAREK and
ERNEST PALAMAREK

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendants' Response to Facts

1. The facts alleged in paragraphs 4, 5 and 6 of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 1, 7 to 36, and 42 to 51 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 2, 3 and 37 to 41 of Part 1 of the notice of civil claim are outside the knowledge of these defendants.

Division 2 - Defendants' Version of Facts

1. The plaintiff is the daughter of Kathleen Palamarek and the sister of the defendants, Ralph Palamarek, Robert Palamarek and Ernest Palamarek (the "Palamarek defendants").
2. Kathleen Palamarek is, and has been for many years, incapable of managing herself or her affairs by reason of mental infirmity.
3. In May, 1998, Kathleen Palamarek granted an Enduring Power of Attorney to Ralph Palamarek and Ernest Palamarek and thereafter, in December 2006, signed a

Representation Agreement appointing Ralph Palamarek as her representative and Ernest Palamarek as her monitor.

4. In late 2006, Kathleen Palamarek was hospitalized at Saanich Peninsula Hospital where she stayed until August 2007 when she was transferred to the Lodge at Broadmead (“Broadmead”).
5. In August 2007, Ralph Palamarek and Robert Palamarek applied, pursuant to the *Patient’s Property Act* to be appointed as joint-committees for their mother, Kathleen Palamarek.
6. In a written judgment dated November 19, 2008, Mr. Justice Johnston appointed Ralph Palamarek as interim-committee of both the person and estate of Kathleen Palamarek pending a full hearing of the application by Ralph Palamarek and Robert Palamarek to be appointed joint committees, and the cross-application by the plaintiff to be appointed sole committee of the person only. These applications proceeded to a hearing before Mr. Justice Harris in Victoria, on November 22, 2010.
7. In the course of the committee proceedings, the plaintiff obtained copies of various documents regarding Kathleen Palamarek from the Saanich Peninsula Hospital, Vancouver Island Health Authority (“VIHA”) Community Care, Broadmead, and the Saanich Police. The 18 allegations of defamation set out in the notice of civil claim find their genesis in these documents and are all related directly or indirectly to the efforts of the Palamarek defendants to ensure that their mother’s health and welfare was adequately protected and was not put at risk because of the actions of their sister, the plaintiff.
8. In answer to the allegations of slander in paragraphs 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, and 33 (the “Allegations of Slander”), Ralph Palamarek says that in furtherance of his obligations as his mother’s attorney, her representative and her interim-committee, he had a duty and interest to advise various individuals involved in the care of his mother at the Saanich Peninsula Hospital, VIHA and Broadmead that his sister had:
 - (a) in the past, told members of her immediate family that she had been diagnosed with schizophrenia;
 - (b) since 2006, been behaving in an increasingly erratic and aggressive manner towards her siblings, their spouses and her mother;
 - (c) expressed support for a holistic approach to healing, that all pills were poison and that she hated doctors, or words to that effect.
9. The individuals to whom Ralph Palamarek made the Allegations of Slander had a reciprocal duty and interest to receive the statements in that each of them were involved in the care and treatment of Kathleen Palamarek.
10. In answer to paragraph 35 of the notice of civil claim, the defendants Ralph Palamarek and Robert Palamarek say that on October 28, 2008, the plaintiff removed their mother, Kathleen Palamarek from Broadmead without any notice to the Palamarek defendants or their family and without medical advice. Both Ralph Palamarek and Robert Palamarek

were very concerned that as a result of their mother's removal from Broadmead and the possible interruption of her medication that Kathleen Palamarek's health may be at serious risk and that the plaintiff may abuse or neglect (as those are defined in the *Adult Guardianship Act*) their mother while she was in the care of and residing with the plaintiff. Given their concerns, they exercised their statutory right to report those concerns to VIHA and its employee, Jessica Celeste. In response to a request from Ms. Celeste that they provide background information concerning the plaintiff, so that VIHA had an understanding of the plaintiff's actions and behaviour, during the committee legal process, Ralph Palamarek and Robert Palamarek advised as follows:

- (a) they were concerned that their mother would not receive her prescribed medications;
 - (b) they were concerned that their mother would not receive adequate care having regard to her medical condition;
 - (c) that the plaintiff had previously stated to family members that she had been diagnosed with schizophrenia but had recently recanted her earlier statement;
 - (d) that the plaintiff did not believe in anti-psychotic drugs.
11. In further answer to paragraph 35 of the notice of civil claim, the defendants Ralph Palamarek and Robert Palamarek say that they had a duty and interest to convey their concerns as set out in paragraph 10 above to VIHA and its employee, Jessica Celeste, and that VIHA and its employee, Jessica Celeste, had a reciprocal duty and interest to receive and, if appropriate, act on their concerns.
 12. In answer to paragraph 42 of the notice of civil claim, the defendant Ralph Palamarek says that for no apparent reason the plaintiff physically accosted him at Broadmead on January 15, 2009. The defendant Ralph Palamarek orally advised the staff at Broadmead about the incident.
 13. In further answer to paragraph 42 of the notice of civil claim, the defendant Ralph Palamarek says that he had a duty and interest to orally advise the staff at Broadmead about the incident referred to in paragraph 12 above. The employee of Broadmead had a reciprocal duty and interest to receive the information conveyed to her.
 14. In answer to paragraphs 44 and 45 of the notice of civil claim, the defendant Ernest Palamarek admits that he provided a written statement to the Saanich Police in January 2009 to report what he reasonably believed to be a crime committed by the plaintiff. Ernest Palamarek had a duty and interest to make the report and the Saanich Police had a reciprocal duty and interest to receive the report.
 15. In answer to paragraphs 47 and 48 of the notice of civil claim the alleged "defamatory memorandum" was sent to Ralph Palamarek in September 2007. Ralph Palamarek, in turn, delivered it to his then solicitor as evidence in the committee proceedings.
 16. In further answer to paragraphs 47 and 48 of the notice of civil claim, the alleged "defamatory memorandum" was, in fact, a copy of a written statement to the Saanich

Police made in September 2007 by Ernest Palamarek to report what he reasonably believed to be a crime committed by the plaintiff. At the time Ernest Palamarek made the report, he had a duty and interest to make the report and the Saanich Police had a reciprocal duty and interest to receive the report. A copy of the report was provided to Ralph Palamarek in his capacity as Kathleen Palamarek's attorney and representative. Ernest Palamarek had a duty to provide a copy of the report in furtherance of his interest to protect a member of his family and to insure that Ralph Palamarek was aware of what had occurred. Ralph Palamarek had a reciprocal duty and interest to receive the witness statement in furtherance of his duties and obligations to protect his mother and her interests.

Division 3 - Additional Facts

1. In June of 2008, the plaintiff, without advising the defendant Ralph Palamarek, reported and requested an investigation be concluded of allegations of possible sexual abuse of Kathleen Palamarek.
2. The plaintiff has attempted to discredit Broadmead and its care through thinly disguised "interview articles" with local publications.
3. Similarly, the plaintiff has attempted to discredit the Palamarek defendants through thinly disguised "interview articles" with local publications and on the internet and has prepared and distributed a video entitled "Seniors at Risk" produced on August 22, 2010.
4. The plaintiff has filed a complaint against the Director of Care at Broadmead to the College of Registered Nurses of British Columbia.
5. The plaintiff has filed a complaint against Kathleen Palamarek's family physician with the College of Physicians and Surgeons of British Columbia.

Part 2: RESPONSE TO RELIEF SOUGHT

1. These defendants oppose all of the relief sought in the notice of civil claim in its entirety.

Part 3: LEGAL BASIS

1. The words complained of are not capable of any meaning defamatory of the plaintiff and are, in fact, not defamatory of the plaintiff.
2. The Allegations of Slander are not actionable because they were all published more than two years before the issuance of the notice of civil claim and as such are statute barred by s.3(2) of the *Limitation Act*.
3. In the alternative, the Allegations of Slander are bad in law in that the notice of civil claim fails to allege that the plaintiff has suffered special damages as a result of the publication of the Allegations of Slander.
4. In further alternative, the Allegations of Slander were all published on occasions of qualified privilege, the particulars of which are set out in Part I, Division 2 above.

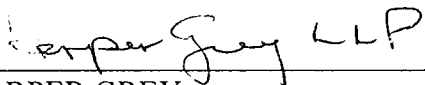
5. The words complained of in paragraphs 35 and 36 of the notice of civil claim are not actionable by reason of s. 46(1), (2) and (3) of the *Adult Guardianship Act* RSBC 1996 c. 6.
6. In the alternative, the words “complained of” in paragraphs 35 and 36 of the notice of civil claim were published on an occasion of qualified privilege, the particulars of which are set out in Part I, Division 2 above.
7. The words complained of in paragraph 42 and 43 of the notice of civil claim are bad in law in that the notice of civil claim fails to allege that the plaintiff has suffered special damages as a result of the alleged publication.
8. In the alternative, the words “complained of” in paragraphs 42 and 43 of the notice of civil claim were published on an occasion of qualified privilege, the particulars of which are set out in Part 1 - Division 2 above.
9. The allegations of libel in paragraphs 44 to 46 of the notice of civil claim are not actionable because the publication by Ernest Palamarek to Ralph Palamarek occurred more than two years before the issuance of the notice of civil claim and as such are statute barred by s.3(2) of the *Limitation Act*.
10. In the alternative, the words “complained of” in paragraphs 44 to 46 of the notice of civil claim were published on an occasion of qualified privilege, the particulars of which are set out in Part I, Division 2 above.
11. The words “complained of” in paragraphs 47 to 49 of the notice of civil claim are not actionable because they were published more than two years before issuance of the notice of civil claim and as such are statute barred by s.3(2) of the *Limitation Act*.
12. In the alternative, the words “complained of” in paragraphs 47 to 49 of the notice of civil claim were communications which took place during and incidental to, and in furtherance of judicial proceedings, and as such are absolutely privileged.
13. In the further alternative, the words “complained of” in paragraphs 47 to 49 of the notice of civil claim were published on an occasion of qualified privilege, the particulars of which are set out in Part I, Division 2 above.
14. Further and in the alternative, the “complained of” words are true in substance and in fact.
15. The facts alleged in the notice of civil claim do not give rise to a claim in negligence in that the Palamarek defendants did not owe a duty of care to the plaintiff.
16. If the Palamarek defendants did owe the plaintiff a duty of care, the notice of civil claim is bad in law in that it fails to allege any factual basis to support a finding of negligence and/or, the Palamarek defendants were not negligent.

17. The facts alleged in the notice of civil claim do not give rise to a claim for intentional infliction of mental distress or suffering, injurious falsehood or intentional infliction of economic loss and damage.
18. In further answer to the claims made for injurious falsehood, intentional infliction of mental distress or suffering, and intentional infliction of economic loss and damage the Palamarek defendants, at all material times, acted in good faith without malice, and without any intention to cause injury or loss to the plaintiff.
19. The Palamarek defendants deny the matters alleged in paragraph 3(a) to 3(i), inclusive, of Part 3 of the notice of civil claim.
20. The notice of civil claim in its entirety disclosed no reasonable claim, is unnecessary, scandalous and vexatious and is an abuse of process. The Palamarek defendants refer to and rely on Rule 9-5(1) of the *Supreme Court Civil Rules*.

(1) These defendants' address for service is:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Fax No: 604 669 9385
Attn: Bryan G. Baynham, Q.C.

Dated: 23 November 2010



HARPER GREY LLP
(Per Bryan G. Baynham, Q.C.)
Lawyer for Ralph Palamarek, Ernest
Palamarek and Robert Palamarek

Name and address of lawyer:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Fax: 604 669 9385
Attn: B.G. Baynham/122081

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.