

CITATION: Sommer v. Goldi, 2022 ONSC 3830
COURT FILE NO.: CV-19-612453, CV-14-498573
DATE: 20220627

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sommer v. Goldi and Goldi

COUNSEL: Jonathan Sommer self-represented (jsommer@sommers-law.ca)

No one appearing for the defendants

BEFORE: D.L. Corbett J.

JUDGMENT

[1] On October 1, 2021, I granted partial judgment in these proceedings and reserved on the issues of general, punitive and aggravated damages and the claims for costs. I also indicated that my reasons respecting the sufficiency of the pleadings would be addressed in subsequent reasons, as would issues in the ongoing contempt proceedings against the defendants. See *Sommer v. Goldi*, 2021 ONSC 6541.

[2] It is clear that the Goldis are aware of and refusing to participate in this process, to the point of defying court orders to present themselves before the court. The court has had two concerns related to this conduct. First, of course, it is defiant and may rise to contempt of court. There are contextual reasons why this court would prefer to take an indulgent approach to this conduct, and the first step in implementing a moderate response is getting the Goldis before the court. Second, although the Goldis have openly defied the court's process, and although the court can properly proceed to dispose of the outstanding civil matters without their participation as a result, the net result will now likely involve rearguard attempts by the Goldis to reopen matters decided by the court during the very lengthy period they have chosen to absent themselves from the process. This, in turn, will add stress, expense and delay to a process that has already been far too lengthy, costly and stressful for Mr Sommer.

[3] There is a subsidiary related issue. This court issued a bench warrant for arrest of the Goldis on December 3, 2021. In communications with police by court staff, it was made clear that this court required the warrant to be executed and the Goldis brought before the court, but that the court would support police using tact and discretion in enforcement. The Goldis are apparently both octogenarians, and our communities are still in the throes of challenges posed by COVID-19. It has been six months and, despite repeated inquiries and requests from the court, police have not brought the Goldis before the court. The court summarizes its understanding of the efforts that have been made, the results of those efforts, and gives further directions so that the warrant will be executed. The court also raises issues with how these issues are approached in Toronto. It is not acceptable that a Superior Court Justice has to be involved on an ongoing basis to see to enforcement of a bench warrant. It is also not acceptable that a bench warrant remains unexecuted,

for months on end, when the court has been clear that it needs to be enforced with reasonable dispatch so that ongoing proceedings may continue to their conclusion in a reasonable period of time. A better internal process is required to address these warrants.

[4] In respect to the substantive issues, I conclude as follows (and judgment shall issue accordingly):

- (a) I award general damages of \$300,000;
- (b) I award aggravated damages in the amount of \$100,000;
- (c) I award punitive damages of \$50,000; and
- (d) I award costs of the actions in the aggregate amount of \$24,119.64, inclusive.

Brief Procedural Background

(a) The Forgery Litigation

[5] These cases concern a campaign of internet defamation and harassment carried on by the Goldis against Mr Sommer. The context is unusual.

[6] Mr Sommer is a lawyer. One area in which he practiced was claims related to art forgeries. In one of his cases, Mr Sommer acted for Mr Hearn, who purchased a painting attributed to Norval Morisseau from a gallery. Mr Morisseau was a renowned Canadian artist, sometimes dubbed the "Picasso of the North." He founded the "Woodlands" school of art and was a member of the "Indian Group of Seven." From the time of an initial one-man show in Toronto in 1962, through to his death in 2007, at the age of 76, Mr Morisseau came to be recognized as one of Canada's greatest and most important artists.

[7] Mr Sommer's client purchased the painting attributed to Mr Morisseau from a gallery in Toronto in 2005.

[8] Some people believe that there are many forgeries of Mr Morisseau's works. Mr Morisseau, himself, apparently believed this, and in his later years took steps to remove illegitimate paintings from the marketplace, including establishing the Norval Morisseau Heritage Society to create a complete catalogue of works, and to act as an authority to authenticate paintings and their provenance.

[9] Mr Sommer's client, Mr Hearn, came to believe that the painting he had purchased as an original Morisseau might not be genuine, and that the provenance he had been provided on purchase was untrue. He sued the gallery and the owner of the gallery. By the time these proceedings went to trial, the gallery owner had died. The trial judge, Morgan J., heard motions from persons seeking to intervene in the proceedings to advocate for the authenticity of the impugned artwork. Mr Goldi was one of these proposed intervenors. Morgan J. permitted other

proposed intervenors to intervene (*Hearn v. Maslak-McLeod Gallery Inc.*, 2017 ONSC 7247), but denied Mr Goldi's request to do so (*Hearn v. Maslak-McLeod Gallery Inc.*, 2017 ONSC 6711).

[10] In his trial judgment, Morgan J. concluded that there was an equal chance the impugned painting was a forgery and that it was genuine (*Hearn v. Maslak-McLeod Gallery Inc.*, 2018 ONSC 2918, para. 155) and he dismissed the action. The Court of Appeal reversed this decision on the basis that provenance evidence provided by the defendants to Mr Hearn was false, and thus Mr Hearn did not get what he paid for – a Norval Morisseau painting with a documented provenance: 2019 ONCA 682.

(b) The Role of the Goldis

[11] As stated above, Mr Goldi sought to intervene in the forgery trial as a “friend of the court” to assist on the issue of the genuineness of the impugned painting. One reason Mr Goldi was not granted leave to intervene was his extra-courtroom conduct in respect to the case, which included sending letters designed to intimidate and harm the plaintiff's expert witness, and aggressive inappropriate conduct towards the plaintiff and his counsel, Mr Sommer. An application to hold Mr Goldi in contempt of court in relation to this conduct was dismissed by Morgan J. on the basis that it was sufficient to bring this conduct to an end. It is clear in Morgan J.'s findings that Mr Goldi acted inappropriately and in a manner inimical to the trial process and the due administration of justice.

[12] The Goldis have a longstanding interest in Mr Morisseau's oeuvre, and they disagree that there is a brusque market in forgeries. They are, of course, entitled to their opinions, and to advance those opinions. However, the conduct of the Goldis described by Morgan J., referenced above, went beyond an honest expression of opinion to the point of systematic campaigns of vilification and harassment, initially directed primarily at an academic who provided an expert opinion in the fraud litigation, and then extending to the plaintiff himself and his counsel, Mr Sommer.

[13] The claims before me concern conduct by the Goldis against Mr Sommer. He alleges that they pursued a lengthy campaign of unlawful defamation and harassment against him, using the internet, with the goal of destroying Mr Sommer's reputation and his ability to carry on business as counsel to clients seeking redress for alleged art forgeries.

(c) The Process of these Claims

[14] The history of these matters has been prolonged, to say the least. Only a very brief summary of the history is necessary for present purposes.

[15] Mr Sommer has brought a series of claims against the Goldis, starting in 2014, all concerning internet defamation and harassment. In his claims Mr Sommer has sought damages and interlocutory and permanent injunctions.

[16] The Goldis responded by moving to dismiss the proceedings under R.21 and under the anti-SLAPP provisions of the *Courts of Justice Act*. Ferguson J. undertook some initial case

management of these matters. Case management responsibility was transferred to me in the late summer of 2018. At that time the Goldis had an outstanding anti-SLAPP motion and Mr Sommer was seeking interim injunctive relief. The Goldis consistently evaded service of process and took no steps to advance their anti-SLAPP motion, and this court eventually granted an interim injunction, and made an order compelling the Goldis before the court to answer for alleged failure to comply with the interim injunction. A bench warrant had to be issued to get the Goldis before the court, by which time they were facing contempt proceedings for their failure to comply with the injunction issued by the court.

[17] The Goldis took the position that no steps should have been taken in the litigation until the anti-SLAPP motion was disposed of (despite the fact that they had taken no steps to advance that motion). Mr Sommer served motions for summary judgment, and the case proceeded fitfully with three outstanding sets of issues: (i) the allegations of contempt of court; (ii) the status of the anti-SLAPP motion; and (iii) Mr Sommer's underlying claims in the litigation.

[18] As a result of the COVID-19 pandemic, the court cancelled a hearing to which the Goldis had been compelled and arrangements had to be made to reschedule. Since that time, the Goldis have refused to participate in the process, and have made it clear that they will not re-attend unless compelled to do so by force.

Transfer of Case Management

[19] The Toronto Region of the Ontario Superior Court of Justice is organized in "Teams", with different panels of judges assigned to different areas of the court's operations. Currently, team assignments are generally made annually, effective for the calendar year. Where a judge of the Civil Team with case management responsibility is transferred to a new team, it is a matter of administrative convenience and discretion as to whether the judge retains responsibility for case management or whether the responsibility is moved to another judge.

[20] I continued in my role as case management judge after being moved from the Civil Team to the Divisional Court Team. In the summer of 2019, I became administrative judge of the Divisional Court, but still continued with case management responsibility for these matters. However, as a result of COVID-19, the demands of my management role in the Divisional Court grew to such an extent that I could not continue to case manage this case, and, at my request, this responsibility was transferred to a judge on the Civil Team, Papageorgiou J. I retained jurisdiction over the outstanding contempt motion, since that motion had been commenced before me and, as a quasi-criminal matter, it should be heard and decided, from start to finish, by the same judge. It was left that the new case management judge could give such procedural directions as she considered appropriate to schedule completion of the contempt proceedings before me, and to case manage the underlying civil proceedings.

[21] By unreported decision dated May 3, 2021, Papageorgiou J. decided and directed as follows:

(a) motions brought by the Goldis pursuant to R. 21 and *Courts of Justice Act*, s.137.1(3) were struck out for failure of the Goldis to prosecute these motions as directed or at all (paras. 9 – 14);

(b) the Goldis' statements of defence were struck out for failure to communicate respecting a discovery plan, failure to deliver an affidavit of documents, failure to attend mandatory mediation, failure to comply with a court order of June 25, 2019 to deliver an affidavit of documents, failure to pay costs ordered against them in June and October 2019, totaling \$3,364.34, and bringing and then not proceeding with an anti-SLAPP motion and motion to dismiss, as described above (paras. 16 - 22):

Given the defendants' flagrant failure to respond in this case, take any steps to move it forward, and their failure to pay costs orders made as well as comply with Justice Corbett's order requiring they file affidavits of documents, I am satisfied that it is appropriate and in the interests of justice to strike out the defendants' statements of claim and note them in default. It is clear they have no intention to participate and it is manifestly unfair to the plaintiff to allow them to continue to evade the plaintiff's claim (para. 27)

(c) directed a damages hearing in respect to Mr Sommer's claims, and reserved to the judge deciding the damages hearing (i) whether the statement of claim adequately particularizes the allegedly defamatory statements; and (ii) determination of the "issue of liability" on the basis of the court's findings respecting the adequacy of the pleadings and the resulting deemed admissions flowing from the finding the defendants in default (paras. 28 – 32).

(d) ordered costs against the Goldis of \$4,716, payable within thirty days (para. 34).

[22] Pursuant to directions from Papageorgiou J., the contempt hearing was scheduled to continue before me on June 1, 2021.

[23] Papageorgiou J.'s decision of May 3, 2021 left two tasks for the court in the civil proceedings: (i) determination of the sufficiency of the pleadings to ground default judgment; and (ii) assessment of damages. By direction of the Toronto Regional Senior Justice, Papageorgiou J. was transferred from the Civil Team to the Family Team in Toronto, and she ceased her role as case management judge of these matters. To keep the case moving, Her Honour directed that the outstanding issues in the civil proceedings, and not just the contempt issues, be returned before me on June 1, 2021.

[24] Thus it was that these matters returned before me on June 1, 2021, by direction of Papageorgiou J., for decision on the following issues:

- a. To decide whether the allegations of defamation were pleaded with sufficient particularity given the requirements for pleadings in defamation actions;

- b. If the answer to (a) was yes, to consider granting judgment against the Goldis for the defamation claims based on my finding and the findings made previously by Papageorgiou J.;
- c. If the answer to (b) was yes, to conduct a damages hearing; and
- d. To conclude the outstanding contempt proceedings before me.

[25] The Goldis did not attend the hearing on June 1, 2021. I reserved and granted partial judgment on October 1, 2021 (2021 ONSC 6541), in which I adjourned the contempt proceedings to December 3, 2021 and issued a bench warrant with discretion to compel the Goldis' attendance at the hearing on December 3rd. In respect to the other issues before me, I decided the case as follows:

- a. The allegations of defamation are pleaded properly;
- b. Judgment is granted for the plaintiff against the Goldis for the allegations of defamation;
- c. Special damages are proved of \$41,600. Judgment issued immediately for this amount. General, punitive and aggravated damages and claims for costs were argued before me and remained under reserve.

In respect to the contempt hearing rescheduled for December 3, 2021, I cautioned the Goldis as follows:

The Goldis are cautioned that if they fail to attend the hearing on December 3, 2021, as directed, the court will issue a warrant for their arrest, they will be arrested and held in custody until they can be brought before this court. They have been warned about this before and are warned again: they do not have the option of ignoring a court order without potentially serious consequences.

The Allegations of Defamation Are Pleaded Properly

[26] As did Papageorgiou J., I start from the premise that the allegations in the statements of claim are deemed true by reason of the defendants' default. These pleadings, deemed to be true, establish as follows:

- (1) The defendants have published on the internet allegations of the existence of an unlawful conspiracy of persons falsely claiming that works of art by Norval Morisseau are fraudulent when, in fact, these works are genuine.
- (2) As part of these efforts, the defendants have published statements on the internet of and about the plaintiff, saying that he is a key member of the conspiracy described above, is a liar and a fraud, has perpetrated a massive hoax, intentionally deceives his clients and the court, and is incompetent (among other things). These allegations are

particularized by reference to extracts from internet publications, with portions highlighted to identify the portions that relate to the plaintiff, and the alleged defamatory meanings of these statements are particularized in detail in the pleadings.

(3) The campaign of vilification by way of defamatory statements on the internet was also pursued as a campaign of harassment, including harassing clients of Mr Sommer's (to the point that one client decided not to pursue matters with Mr Sommer to avoid the misery of being targeted by the defendants), expert witnesses became reluctant to accept retainers to provide testimony in cases involving Mr Sommer, for fear of being targeted for abuse and harassment by the defendants.

[27] The claim was initiated in 2014 (CV-14-498573). The campaign continued, notwithstanding the civil proceedings, and a further claim was brought in 2017, asserting claims in respect to the additional defamatory publications and harassment (CV-17-578608). These claims were eventually consolidated into one proceeding under court file CV-14-498573. The pleadings comprehensively particularize the alleged defamatory statements, so that the precise words are referenced, their context is described and pleaded, and the ordinary and plain meaning of the defamatory statements is set out in full detail. A third proceeding was commenced in 2019 (CV-19-612453), adding claims respecting the ongoing campaign of defamation and harassment since commencement of the second proceeding in 2017.

[28] I see no other liability issue arising from the deemed facts. The deemed facts meet the test for defamation. The words are "of and about" the plaintiff. They were published on the internet by the defendants. They are, on their face, obviously defamatory. Liability is established. No defence is offered for them, since the Goldis' statements of defence have been struck out.

Damages

[29] I awarded special damages of \$41,600 in respect to lost fee income established on the evidence at the damages hearing. This amount was included in the partial judgment granted October 1, 2021.

General Damages

[30] This is a case of a serious prolonged campaign of defamation, intended to malign Mr Sommer in his capacity as a lawyer generally, and in his chosen area of specialization in particular. It has had the effect of driving him out of one of his chosen fields of work. The defamatory statements are extreme in their expression. The Goldis state that they, themselves, are sophisticated persons, credentialled academically, with established professional reputations of their own. These statements – about their own standing and credibility – were designed to add credence to their defamatory statements to do further damage to Mr Sommer. The defendants stated themselves that their intent was to cause Mr Sommer professional and financial loss and to drive him out of business. The malice with which this campaign has been pursued is obvious: it was intended to, and did, cause harm to Mr Sommer.

[31] The language used in the defamatory posts is intemperate. This is no dispassionate disagreement on a matter of public interest and debate, but a wholesale personal attack on Mr Sommer – likening him to a murderer, a member of the mafia, a leader of an international conspiracy bent on controlling the Morisseau market, a liar, a cheat, a fraudster, and a con man.

[32] General damages are presumed from the publication of a libel: *Hill v. Church of Scientology*, [1995] 2 SCR 1130, para. 164. *Murphy v. Alexander* (2004), 236 DLR (4th) 302 at 311 (Ont. CA).

[33] The purposes of an award of general damages include compensating for the loss of reputation, compensating for injury to the plaintiff's feelings, consoling the plaintiff, and vindicating the plaintiff to re-establish their reputation: *Walker v. CFTO Ltd.* (1987), 59 OR (2d) 104 at 111 (Ont. CA).

[34] Defamation of professionals in their professional capacity often leads to higher awards of general damages, since a professional reputation is understood to be a critical component of a professional's career standing and success: *Rutman v. Rabinowitz*, 2018 ONCA 80, para. 66.

[35] Internet defamation is not some lesser form of defamation. Often awards related to internet defamation have been higher than awards related to publication in other ways, since publications on the internet have continued presence and effect for many months, often years, and these publications are notoriously difficult to remove from the internet entirely. See *Barrick Gold Corp. v. Lopehandia* (2004), 71 OR (#d) 416, paras. 31 and 34 (Ont. CA).

[36] A review of awards in cases similar to the case at bar place the range of \$100,000 to \$400,000, with the lower awards tending to be in the first decade of this century. Current awards seem to range generally between \$200,000 and \$400,000. See *Hill v. Scientology, supra.* (\$300,000) [1995].; *Rutman, supra.* (\$200,000) [2018]; *Nazareli v. Mithcell*, 2018 BCCA 104 (\$400,000) [2018]; *Myers v. Canadian Broadcasting Corporation* (2001), 54 OR (3d) 626 (\$200,000) [2001]; *Magnito v. Balita*, 2018 ONSC 3230 (\$300,000) [2018].

[37] In the instant case, the impugned statements were not made by an established trusted source, such as the CBC, and they were made on the internet. One can infer that they were less likely to be believed than, for example, the statements that were the subject of the decision in *Myers, supra.* However, this was a very long campaign, stretching for six years, or longer, and the defendants relied on their own professional and academic standing as a basis to persuade readers to believe their statements. This was a systematic and ongoing campaign, and the wearing personal and reputational effect of such a campaign cannot be discounted. Taking all the circumstances into account, and the very serious nature of the defamatory statements, I fix the general damages at \$300,000.

Aggravated Damages

[38] This case cries out for an award of aggravated damages. When put on notice of the plaintiff's claims, the defendants did not remove the defamatory posts from the internet. They left them up. And they continued their campaign. Then they conducted themselves in the litigation in

a manner designed to prolong delay in the litigation. They evaded service and continued to do so after they had been compelled before the court by a bench warrant. Mr Sommer's legal proceedings did not give the defendants pause, and their conduct as litigants has shown them to be essentially ungovernable. The net result, for the plaintiff, has been a feeling of frustration and impotence in the face of an obvious and ongoing civil wrong committed against him.

[39] The defamatory words, themselves, are so intemperate to make it clear that this was a campaign intended at Mr Sommer's professional destruction, and not to raise legitimate concerns about controversies that exist respecting the genuineness of Morisseau artworks.

[40] In my view the conduct of the defendants is so egregious that an award of aggravated damages is appropriate. I fix the amount of that award at \$100,000.

Punitive Damages

[41] Punitive damages are also in order in this case. Whether the Goldis conduct constitutes contempt of court is a matter to be decided on another day. However it has been, at the very least, an ongoing abuse of the court's process bringing and not pursuing motions, refusing to comply with court directions to move forward with the case, willfully refusing to open packages containing court documents served on them in a myriad of ways. All of this was designed to enable the Goldis to continue unchecked in their prolonged campaign of defamation and harassment. I fix the amount of punitive damages at \$50,000.

Costs

[42] Mr Sommer seeks costs of the actions (exclusive of the costs of the contempt proceedings) fixed at \$24,119.64, inclusive of disbursements of \$7,499.64. The disbursements are relatively high because of the extraordinary lengths to which Mr Sommer had to go to try to serve documents on the Goldis, costs incurred because of their studied efforts to evade process and these proceedings. The overall claim for costs is very reasonable, in all the circumstances, and is allowed as requested.

Outstanding Contempt Allegations

[43] The motion to hold the Goldis in contempt of court is still outstanding. The court requires that the Goldis be brought before the court to answer the contempt allegations. This requirement has been known to the Goldis since initial appearances were compelled by the court back in August 27, 2019.

[44] In this court's partial judgment on October 3 2021, the Goldis were ordered to appear before the court on December 3, 2021, failing which the court could issue a bench warrant to compel their attendance. Court staff sent the decision to the Goldis by mail and by email and telephoned the Goldis to advise them of the requirement to attend. The Goldis told court staff that they would not attend.

[45] The Goldis did not attend the hearing on December 3, 2021 and did not communicate with the court seeking an adjournment. The court issued a bench warrant for arrest of the Goldis and

arranged for staff to provide it to Toronto police. Multiple communications ensued between court staff and Toronto police seeking status reports on attempts to execute the warrant. Initially the warrant appears to have been in a queue, ready for execution when officers were available to perform the task. Eventually police reported to court staff that officers had gone to the Goldis house, explained the warrant to the Goldis, but that the Goldis had refused to cooperate with police or respect the warrant, and would not come out of their house to enable police to execute the warrant.

[46] No formal report has been made back to the court respecting efforts to execute the warrant.

[47] Thus it is that over seven months after this court issued a bench warrant that the warrant has not been executed, and nor report has been made to the court formally so that the court can provide further directions or a further warrant to have the Goldis brought before the court.

[48] The court should not have to be actively involved in enforcement of a bench warrant. Once a court issues a bench warrant, the matter ceases to be a "merely civil" matter. Police have been directed to arrest and bring a person before the court. Police have discretion about the timing and manner of execution of such a warrant, but they do not have discretion to decide not to execute the warrant. Where the court has been clear with police that the court requires the warrant to be executed, if police are unable to do so it is incumbent on police to report back to the court, so that the court may issue any additional directions that may be required for the due administration of justice.

[49] In all the circumstances, this court requests that the Toronto Chief of Police, by their designate, attend before this court by ZOOM on July 8, 2022, at 10 am, to explain the status of the bench warrant and the steps still required so that it may be executed. This request may be satisfied by (a) provision to the court, prior to the return date of July 8, 2022, of an affidavit from a police officer reporting on efforts to enforce the bench warrant, sufficient to enable the court to consider and decide what further order should be made to bring the Goldis before the court; (b) execution of the bench warrant; or (c) a designate of the Chief attending before the court by ZOOM on July 8, 2022.



D.L. Corbett J.

Date: June 27, 2022