

SUPREME COURT OF YUKON

Citation: *Simon v. Poirier*, 2019 YKSC 56

Date: 20191029
S.C. No. 18-A0029
Registry: Whitehorse

BETWEEN

MIREILLE RACHELLE SIMON

PLAINTIFF

AND

MICHAEL MARTIN POIRIER

DEFENDANT

Before Madam Justice E.M. Campbell

Appearances:
Gary W. Whittle

Counsel for the plaintiff
No One Appearing for the defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] The plaintiff and the defendant were in a romantic relationship. They married in September 2016, and separated in December 2017. Their separation was difficult and acrimonious. It is in that emotionally charged context that the plaintiff filed her civil claim against the defendant for conversion of her engagement ring and wedding band as well as for defamation. The Court authorized substituted service of the defendant by email. Although duly served, the defendant never entered an appearance in this matter. Default judgment was granted. This application is for the assessment of damages.

ISSUES

[2] The plaintiff seeks:

A. Damages for conversion:

- i. judgment for the value of one engagement ring and one wedding band as assessed;
- ii. damages for loss of amenities of the engagement ring and wedding band; and
- iii. an award of aggravated and exemplary (punitive) damages.

B. Damages for defamation:

- i. an award of general, aggravated and exemplary (punitive) damages.

C. Pre-judgment and post-judgment interests; and

D. Costs

A. Damages for conversion: the taking and pawning of the plaintiff's engagement ring and wedding band

[3] Liability is not at issue at this stage of the proceedings. However, I am of the view that a short description of the tort of conversion is useful to better understand how the facts of this matter impact the plaintiff's claim for damages:

The tort of conversion involves a wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession. The tort is one of strict liability, and accordingly, it is no defence that the wrongful act was committed in all innocence. ... (*Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727, at para. 31; see also: *Teva Canada Ltd. v. TD Canada Trust*, 2017 SCC 51, at para. 3.)

Facts

[4] The facts are uncontested in this matter. On August 28, 2015, the plaintiff, in the presence of the defendant, purchased her engagement ring for \$8,400 plus taxes (\$8,820) from a jewelry store in Moncton, New Brunswick. At the same time, the plaintiff ordered a custom-made wedding band that was made and delivered to her at no extra-cost. The Jewellers' Letter of Appraisal, dated September 3, 2015, indicates a replacement value for the engagement ring of \$14,500. The lifetime Diamond Guarantee provided by the jeweller for the engagement ring indicates a purchase price of \$8,400 and a retail price of \$13,000. At some point, the defendant told the plaintiff that the jewellers had told him the wedding band was worth \$1,500. However, the jeweller's receipt filed in support of this application shows a cost of \$624 plus taxes.

[5] After the separation, and while the plaintiff did not have access to the family home, the defendant took the plaintiff's engagement ring and wedding band, which the plaintiff had left in the family home, without the plaintiff's knowledge and consent. The defendant pawned the rings at a local pawnshop for \$500. On May 11, 2018, the plaintiff, who had been granted access to the family home to retrieve some of her belongings, realized the rings were missing. She contacted local pawnshops in an effort to locate her rings. On or about May 17, 2018, the owner of one of the local pawnshops informed her that the defendant had pawned the rings at his shop. He suggested she complain to the Royal Canadian Mounted Police ("RCMP"). He also indicated he would be prepared to cooperate with the police. The plaintiff testified that she complained to the RCMP but that the police decided not to intervene in this matter. On May 24, 2018, the owner of the pawn shop texted the plaintiff. He indicated to her that the defendant

had pawned her rings for \$500 for 30 days. He also indicated that she or the defendant had until May 26 to pay him \$600 (the amount of the loan plus \$100) to get the rings back. After that, he would put them out for sale. The plaintiff chose not to pay the requested amount by the stated deadline. She testified that she should not have had to pay to recover her rings. She also testified that she did not want to bail the defendant out again. Unfortunately, when the plaintiff later inquired about the status of her rings, the owner of the pawnshop told her they had been sold to a third party.

[6] The facts of this case fit squarely within the tort of conversion. The engagement ring and the wedding band were the lawful property of the plaintiff. She bought them for her own personal use, as a symbol of her upcoming marriage with the defendant. The defendant took the rings without the plaintiff's knowledge or consent and used them as collateral for money he borrowed from the pawnshop. The defendant did not pay back his loan within the specified timeline; therefore, the pawnshop sold the plaintiff's rings to a third party. As a result, the defendant deprived the plaintiff of her peaceful and lawful ownership of her rings.

[7] The plaintiff obtained default judgment against the defendant. The judgment orders the defendant to either deliver the rings to the plaintiff (being one engagement ring and one wedding band); or to pay to the plaintiff the value of the rings to be assessed. Interests and costs to be assessed were also awarded to the plaintiff.

Assessment of damages

[8] In *Ratych v. Bloomer*, [1990] 1 S.C.R. 940, at para. 94, McLachlin J., as she then was, wrote for the Supreme Court of Canada:

The general principles underlying our system of damages suggest that a plaintiff should receive full and fair

compensation, calculated to place him or her in the same position as he or she would have been had the tort not been committed, in so far as this can be achieved by a monetary award. This principle suggests that in calculating damages under the pecuniary heads, the measure of the damages should be the plaintiff's actual loss. ...

[9] Considering that the rings are no longer in the possession of the defendant, this Court must assess the plaintiff's damages as a result of her loss. The plaintiff submits that her damages should be assessed at the rings' highest market value. The plaintiff also seeks general, aggravated and exemplary damages against the defendant. The plaintiff submits she is entitled to damages for loss of amenities.

i. Judgment for the value of one engagement ring and one wedding band as assessed (special damages)

[10] The plaintiff relies on *Tom Hopkins International Inc. (c.o.b. Tom Hopkins Champions Unlimited) v. Wall & Redekop Realty Ltd.*, [1984] 5 W.W.R. 555 (B.C.S.C.), at para. 16; and *Craig v. North Shore Heli Logging Ltd.* (1997), 34 B.C.L.R. (3d) 330 (S.C.), at para. 66 ("*Graig*"), to submit that she is entitled to an award of damages that amounts to the highest market value for her rings at the date of the conversion, May 11, 2018. In *Craig*, at para. 66, Smith J. wrote:

The plaintiffs rely on the decision of *Alder v. Jackson*, [1988] B.C.J. No. 2756 (B.C. Co.Ct.) and the principle from *Salmond on Torts*, (1987) cited therein:

When there is a doubt about the value of a chattel which has been converted, the defendant must either produce it or account for its non-production. If he does not do so, it will be presumed against him that it was of the highest possible value. *Omnia praesumuntur contra spoliatorem.*

[11] Therefore, the plaintiff claims that she is entitled to receive \$14,500 (the replacement value as estimated by the jewellers) for her engagement ring and \$1,500 (the value as represented by the defendant) for her wedding band.

[12] The plaintiff paid \$8,820 for her engagement ring. However, the Jewellers' Letter of Appraisal for that ring indicates a replacement value of \$14,500. As an award of damages is meant to place the plaintiff in the same position she would have been had the defendant not unlawfully used her rings to borrow money, it is appropriate to award an amount that would allow her to replace these rings. Therefore, in principle, the plaintiff would be entitled to damages of \$14,500, which represents the assessed replacement value of her engagement ring. As for the wedding band, I find that the plaintiff would be entitled to damages of \$624, which is the only reliable figure provided by the plaintiff for the wedding band in support of her claim.

[13] However, I also find that the plaintiff was in a position to mitigate her damages.

[14] As stated by the Supreme Court of Canada in *Janiak v. Ippolito*, [1985] 1 S.C.R. 146, at para. 36:

... it is clear that the so-called "duty to mitigate" derives from the general proposition that a plaintiff cannot recover from the defendant damages which he himself could have avoided by the taking of reasonable steps. ...

[15] The plaintiff does not deny that the duty to mitigate may apply when assessing damages in a case of conversion.

[16] The plaintiff testified that she had the opportunity to get her rings back by paying \$600 to the pawnshop, which is a fairly small amount in comparison to the purchase price and considering their assessed value. However, she chose not to pay that amount which resulted in the pawnshop selling her rings to a third party. While the pawnshop's

position and request for money was questionable in the circumstances of this case; and while I have sympathy for the plaintiff considering the situation in which she found herself, the law of damages is clear. It was incumbent upon her to take reasonable steps to mitigate her damages, which in this case translates to paying the money requested by the pawnshop within the stated timeline. The plaintiff could have regained possession of her rings and mitigated her damages by paying \$600 to the pawnshop by May 26, 2018. Consequently, the plaintiff's special damages for the engagement ring and the wedding band are set at \$600.

ii. Damages for lost of amenities (general damages)

[17] The plaintiff also seeks damages for loss of amenities of her engagement ring and wedding band.

[18] Again, the plaintiff relies on *Craig* for the proposition that she is entitled to damages for the loss of enjoyment of her rings.

[19] In *Craig*, Smith J. awarded \$25,000 to the plaintiffs for the significant emotional impact that unlawful logging of a large portion of their forested properties had on them, even though the plaintiffs no longer visited their properties on a regular basis. In doing so, Smith J. recognized that "such a loss is difficult to value" (para. 71).

[20] I recognize that by unlawfully and surreptitiously taking and pawning the plaintiff's rings, the defendant caused anger, anxiety and emotional pain to the plaintiff. However, it is doubtful that the plaintiff would have continued to wear those rings, at least without some form of alterations, as they represented her now defunct relationship/marriage with the defendant. On balance, in light of the circumstances of this case as compared to those in *Craig*, including the fact that the plaintiff would have been without her rings

only for a short period of time had she paid the amount requested by the pawnshop, I find that an award of \$500 for loss of amenities is appropriate.

iii. An award of aggravated and exemplary (punitive) damages

[21] In her written and oral submissions to the Court, the plaintiff submitted that the defendant's actions deserve an award of aggravated damages and/or exemplary (punitive) damages.

[22] Aggravated damages are compensatory in nature. They increase the award of damages to account for the additional harm caused to the plaintiff's feelings by the reprehensible conduct of the defendant (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, at para. 189, ("*Hill*").

[23] On the other hand, punitive damages (also referred to as exemplary damages) are not aimed at compensating the plaintiff. Their aim is to punish the conduct of the defendant. The principle objectives of punitive damages are retribution, denunciation and deterrence (*Whiten v. Pilot Insurance Co.*, 2002 SCC 18, at paras. 67-76). Punitive damages are awarded only in exceptional cases where the conduct of the defendant is such that it offends the Court's sense of decency. Punitive damages are akin to a fine (*Hill*, at para. 196).

[24] In *Craig*, Smith J. wrote, at para. 72, the following with respect to the defendants' conduct that warranted an award of punitive damages:

The actions of the defendants, Zilahi and Heli Logging, were deliberate, high handed, reckless and in complete disregard of the plaintiffs' right to the quiet enjoyment of their properties. Mr. Zilahi's claim that it was all just a mistake and that to this day he does not know how it happened, simply does not ring true. The documentary evidence, the evidence of Mr. Willing, and Mr. Zilahi's own evidence in cross-examination, reveals the true picture.

Consequently, Smith J. granted the plaintiffs' claim for \$50,000 in punitive damages.

[25] Proportionality is an important consideration in awarding punitive damages. As stated by the Supreme Court of Canada in *Hill*, at para. 196:

... It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence.

[26] I have already recognized that the conduct of the defendant caused anger, anxiety and emotional pain to the plaintiff. Additionally, considering the highly emotional context in which the conduct of the defendant took place and the targeted nature of the items he unlawfully took and pawned, I have no difficulty in finding that his conduct caused heightened emotional harm, anger and distress to the plaintiff thereby warranting an award of aggravated damages. Considering the overall circumstances of this case with respect to the tort of conversion, I find that an award of \$2,500 in aggravated damages is warranted.

[27] Also, on balance, I am of the view that the tortious conduct of the defendant is such that it deserves awarding punitive damages. I come to this conclusion based on:

- a) the highly emotional and difficult context in which the actions of the defendant took place;
- b) the deliberate and targeted actions of the defendant in that he chose two pieces of the plaintiff's jewellery, which he knew had sentimental value as they were directly connected to and represented his relationship with the plaintiff;

- c) the defendant taking the rings while he knew the plaintiff did not have access to the family home; and
- d) the defendant using the rings as collateral in exchange for a small loan which he never repaid; knowing all along the much higher value of those rings.

[28] Considering the deliberate and targeted nature of the defendant's actions and the context in which they took place, I find that his actions were, at least in part, aimed at causing anger, distress and emotional harm to the plaintiff.

[29] Therefore, I have no difficulty in finding that the defendant's actions were malicious, reprehensible, "deliberate, high handed, reckless and in complete disregard" of the plaintiff's right of quiet possession and enjoyment of her engagement ring and wedding band. Bearing in mind that an award of punitive damages is not meant to be compensatory; and that it has to be proportional, considering the award of special, general and aggravated damages that I have already made in favour of the plaintiff with respect to the tort of conversion, I find it appropriate to award punitive damages of \$10,000.

B. Damages for defamation

[30] "Defamation is the intentional publication of an injurious false statement" (*Hill*, at para. 170).

[31] Defamation is considered to be a serious tort: "To make false statements which are likely to injure the reputation of another has always been regarded as a serious offence" (*Hill*, at para.110).

[32] This is so because, for most people, their good reputation is something of importance and value. As stated by the Supreme court of Canada in *Hill*, at paras. 107-108:

[107] ... Although much has very properly been said and written about the importance of freedom of expression, little has been written of the importance of reputation. Yet, to most people, their good reputation is to be cherished above all. A good reputation is closely related to the innate worthiness and dignity of the individual. It is an attribute that must, just as much as freedom of expression, be protected by society's laws. In order to undertake the balancing required by this case, something must be said about the value of good reputation.

[108] Democracy has always recognized and cherished the fundamental importance of an individual. That importance must, in turn, be based upon the good repute of a person. It is that good repute which enhances an individual's sense of worth and value. False allegations can so very quickly and completely destroy a good reputation. A reputation tarnished by libel can seldom regain its former lustre. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect their good reputation so long as it is merited.

Facts

[33] On December 20, 2017, following the separation of the parties, the plaintiff filed a statement of claim (family law) seeking an unequal division of the family assets; a civil restraining order; interim sole possession of the family home; and costs.

[34] On May 22, 2018, the Supreme Court of Yukon ordered that the plaintiff be granted interim sole possession of the family home; the defendant be restrained from entering the family home; and the defendant be restrained from having any contact with the plaintiff. The plaintiff and the defendant were both in court that day. Of note, prior to the May 22, 2018 order, the plaintiff had obtained an Emergency Intervention Order

against the defendant (December 2017). On the other hand, the defendant had made criminal allegations against the plaintiff that led to a charge being laid against the plaintiff (April 2018). The Crown stayed that charge after the plaintiff agreed to enter into a six-month peace bond with a condition to have no contact with the defendant.

[35] The same day the order of the Supreme Court of Yukon was made, the defendant posted and allowed to be posted on his Facebook page, which was accessible to family and friends of both the plaintiff and the defendant, as well as others, defamatory words to the effect that:

- the plaintiff had lied in court;
- she had assaulted him and others;
- she was a social worker who was deceitful and unprofessional;
- she had a reputation of being “easy”;
- she was unfaithful.

[36] A copy of the posts published on the defendant’s Facebook page and the specific wording of the defamatory remarks were attached as exhibits to one of the affidavits filed in support of the plaintiff’s application.

[37] Again, liability is not at issue at this stage of the proceedings. Default judgment was granted for defamation against the defendant with damages, interests and costs to the plaintiff to be assessed.

i. Assessment of general, aggravated and/or exemplary (punitive) damages

[38] The plaintiff seeks general, aggravated and exemplary (punitive) damages for defamation. The plaintiff did not quantify the award of damages she seeks. Counsel for the plaintiff simply stated at the hearing that the plaintiff is seeking substantial damages.

[39] Defamation is actionable *per se*, meaning that an action for damages is available and may be brought without alleging or proving special damages (s. 2, *Defamation Act*, R.S.Y. 2002, c. 52).

General damages

[40] General damages are presumed in defamation cases. They arise from the moment the false statement is published. General damages are awarded at large. Also, there is no cap placed on damages for defamation (*Hill*, at para. 164).

[41] Damages for defamation “are awarded primarily to compensate the plaintiff for the harm caused to his or her reputation, and secondarily for any hurt or injured feelings the publication may have caused.” (Brown, Raymond E, *The Law of Defamation in Canada*, 2nd ed. Scarborough, Ont.: Carswell, 1994 (loose-leaf) at p. 25-34).

[42] In *Best v. Weatherall*, 2010 BCCA 202, at para. 46, the British Columbia Court of Appeal stated that even though damages are difficult to assess in defamation cases, the court should make best efforts to “sensibly and rationally attempt to arrive at a monetary sum that will compensate the plaintiff appropriately, i.e., achieve *restitutio in integrum*. Such an award should provide “solatium, vindication and compensation”. see Brown, *The Law of Defamation*, vol. 3 at 25-7 – 25-11.”

[43] A number of factors are relevant in assessing general damages. They are:

- the conduct of the plaintiff;
- her position and standing;
- the nature of the libel;
- the mode and extent of publication;
- the absence or refusal of any retraction or apology;
- the conduct of the defendant from the time of the publication to the time of verdict;
- the conduct of the defendant before and after the action, and in court;
- evidence of aggravation or mitigation of damages (*Best v. Weatherall*, at para. 47 referring to *Hill*, at para. 182).

[44] A written apology may be considered by the court in mitigation of damages (s. 4 of the *Defamation Act*).

[45] In this case, there is no evidence that the defendant ever apologized for what he published and allowed to be published on his Facebook page, or that he retracted the words that he published or allowed to be published on Facebook.

[46] In her affidavit, the plaintiff states that the words and actions of the defendant have caused her stress, anxiety, humiliation and embarrassment.

[47] The plaintiff also testified in support of her application. She stated that, at the time the defendant posted the defamatory words, his Facebook page was accessible to family members (some who lived as far as New Brunswick), common friends, a number of the plaintiff's co-workers and some neighbours. It is a family member who alerted her to the defendant's posts.

[48] The plaintiff testified that she felt embarrassed and humiliated on a personal and professional level. She said the Facebook posts had an impact on her at work, so much so that she felt the need to discuss the situation with her supervisor. The plaintiff was assigned to administrative duties for a week or so. She added that she was concerned about her employment. At the time, the plaintiff had been a social worker for approximately 15 years and had held the position of family conference coordinator for seven years. I note that the defamatory post accusing the plaintiff of lying in court was quite damaging to the plaintiff considering her work and responsibilities. A good reputation is of utmost importance in her line of work, which is based on trust and integrity.

[49] As previously stated, the posts were published amidst the parties' acrimonious separation.

[50] The plaintiff admitted candidly on the stand that the defamatory posts were not the only reason she spoke to her supervisor and was assigned to administrative duties. The criminal charge laid against her, later stayed by the Crown, also factored into the situation. The plaintiff also acknowledged that her salary was in no way affected as a result of being assigned to administrative duties for a short period of time.

[51] There is no evidence regarding the degree to which the plaintiff's reputation has been diminished in the minds of those who have read the Facebook posts (*Best v. Weatherall*, at para. 48). However, knowing that some of her colleagues and others were aware of the defamatory posts had a negative impact on the plaintiff. As stated in her affidavit: "These words have raised for me the question of whether my reputation

with friends, neighbours, colleagues, clients and my employer has been lowered in their estimation.”

[52] Having regard to all the circumstances of this case, including that:

- the defamation consists of the publication of two Facebook posts containing a number of false statements with respect to the plaintiff, which were distributed instantly to a number of people;
- the posts were seen by family members, friends, neighbours and co-workers of the plaintiff, as well as other unknown individuals living in and outside the Yukon;
- Whitehorse is a relatively small community;
- the posts were published in the context of an acrimonious separation;
- the posts had a personal impact on the plaintiff;
- the plaintiff suffered some negative professional consequences due, at least in part, to the defendant’s posts on Facebook; and
- there is no evidence that the defendant apologized or retracted his defamatory words.

[53] On balance, I find that an award of general damages of \$20,000 is appropriate in the circumstances.

Aggravated damages

[54] As previously indicated, aggravated damages are compensatory in nature.

[55] As stated in *Hill*, at para. 188: “Aggravated damages may be awarded in circumstances where the defendants’ conduct has been particularly high-handed or

oppressive, thereby increasing the plaintiff's humiliation and anxiety arising from the libellous statement. ...”

[56] A finding of actual malice is required to award aggravated damages (*Hill*, at para 190).

[57] Malice may be established by: “the libellous statement itself and the circumstances of its publication, or by extrinsic evidence pertaining to the surrounding circumstances which demonstrate that the defendant was motivated by an unjustifiable intention to injure the plaintiff” (*Hill*, at para. 190).

[58] The defendant's defamatory words were posted on Facebook the same day the Supreme Court of Yukon granted the plaintiff's application in relation to their family matter. Clearly, the defendant was unhappy with the results of the application as he lashed out at the plaintiff, accusing her of having lied in Court, and attacked her personal and professional reputation on social media, knowing that other people would have access to and see his post almost immediately. He also allowed a defamatory response to his first post to be published on his Facebook page.

[59] In that particular context, I am of the view that the defendant acted with malice as he was motivated by an unjustifiable intention to injure the plaintiff. I am also of the view that as a result of taking their acrimonious separation and family matter onto the public stage, the defendant increased the plaintiff's humiliation and anxiety arising from the libellous statement.

[60] I therefore find that an award of \$10,000 for aggravated damages is warranted in the circumstances.

Punitive damages

[61] Keeping in mind that proportionality is an important consideration in awarding punitive damages, and considering the award of general and aggravated damages I made, I decline to award punitive damages.

C. Pre-judgment and post-judgment interests

[62] In this matter, default judgment awarded interests to the plaintiff to be assessed. The plaintiff seeks pre- and post-judgment interests.

[63] As indicated by Gower J. in *Kareway Homes Ltd. v. 37889 Yukon Inc.*, 2014 YKSC 35, at para. 26:

It is common ground between the parties that judgment interest is more appropriately used to compensate, rather than to punish, a party. This was expressly stated by the Supreme Court in *Bank of America Canada*, at para. 36:

“36 In *The Law of Interest in Canada* (1992), at pp. 127-28, M. A. Waldron explained that the initial theory underpinning an award of judgment interest was that the defendant's conduct was such that he or she deserved additional punishment. The modern theory is that judgment interest is more appropriately used to compensate rather than punish. At pp. 127-28, she wrote:

Compensation is one of the chief aims of the law of damages, but a plaintiff who is successful in his action and is awarded a sum for damages assessed perhaps years before but now payable in less valuable dollars finds it quite obvious that he has been shortchanged. Equally obviously, payment of interest on his damage award from some relevant date is one way of redressing this problem.

The overwhelming opinion today of Law Reform Commissions and the academic community is that interest on a claim prior to judgment is properly part of the compensatory process. [Citations omitted.]” (emphasis already added)

[64] Considering the circumstances of this case, I see no reason not to grant the plaintiff's request, pursuant to ss. 35 and 36 of the *Judicature Act*, R.S.Y. 2002, c. 128. I therefore award pre-judgment and post-judgment interest at prime rate of interest, as defined in the *Judicature Act*.

[65] Section 35(3) of the *Judicature Act* provides that pre-judgment interest shall be calculated from the date the cause of action arose to the date of the judgment. Pre-judgment interest will therefore be awarded from May 11, 2018, for the tort of conversion and May 22, 2018, for defamation.

D. Costs

[66] Costs in a proceeding are generally awarded to the successful party (*Cobalt Construction Inc. v Kluane First Nation*, 2014 YKSC 40, at para. 56). However, an award of costs remains discretionary.

[67] In this case, the default judgment the plaintiff obtained against the defendant awarded costs to the plaintiff to be assessed.

[68] Rule 60 of the *Rules of Court* of the Supreme Court of Yukon guides the Court in the exercise of its discretion.

[69] Rule 60(1) provides that where costs are payable to a party they shall be assessed as party and party costs under Appendix B, unless the Court orders that they be assessed at special costs.

[70] Counsel for the plaintiff requested the award of special costs in this matter.

[71] Special costs are only awarded in cases where it is found that one of the parties has acted in a reprehensible, scandalous or outrageous manner (*Golden Ventures*

Limited Partnership v. Ross Mining Limited and Norman Ross, 2012 YKSC 18 (“*Golden Ventures*”), at paras. 4 to 9).

[72] Also, as stated by Veale J. in *Golden Ventures*, at para. 10: “... special costs are not merely a punitive sanction based on misconduct but are also intended “to substantially indemnify a party for costs to which he or she has been put.”

See *Everywoman's Health Care Centre Society v. Bridges* (1991), 54 B.C.L.R. (2d) 294 (C.A.) at para. 16 and *Bradshaw v. Stenner*, 2012 BCSC 237, para. 9.”

[73] It should be noted that an award of special costs is to be used sparingly (*K.A.M. v. B.M.M.*, 2018 YKSC 14, at para. 96; *Fine Gold Resources Ltd. v. 46205 Yukon Inc.*, 2016 YKCA 15, at paras. 54 & 55).

[74] Plaintiff’s counsel referred the Court to a number of emails exchanged between his office and the defendant in the course of this matter. They show that the defendant avoided providing his new address, leading to the plaintiff having to make an unnecessary application for substituted service, which was granted. The emails also demonstrate that the defendant was aggressive, disrespectful and vindictive in his dealings with plaintiff’s counsel and his office, which unnecessarily complicated the exchanges between the parties in this proceeding. The emails also show that the defendant made unwarranted disparaging remarks and personal attacks towards the plaintiff’s counsel, Mr. Whittle, members of his law firm and of his family.

[75] Therefore, I find that the attitude and conduct of the defendant in this case, and more particularly in his dealings with the plaintiff’s counsel and his office, were reprehensible and deserve the award of special costs.

CONCLUSION

[76] In summary, I award:

For the tort of conversion:

- Special Damages: \$600;
- General Damages: \$500;
- Aggravated Damages: \$2,500;
- Punitive Damages: \$10,000.

For the tort of defamation:

- General Damages: \$20,000;
- Aggravated Damages: \$10,000.

[77] I also award pre-judgment and post-judgment interests, as per the *Judicature Act*, and special costs.

CAMPBELL J.