SUPREME COURT OF YUKON

Citation: *Ramirez v. Mooney*, 2017 YKSC 22

Date: 20170328
S.C. No. 16-A0103
Registry: Whitehorse

BETWEEN

EVANGELINE RAMIREZ

PLAINTIFF

AND

NORAH MOONEY, BENJAMIN SARMIENTO TOQUERO, TIMOTHY AND NOLIBETH NG, LACKOWICZ, SHIER & HOFFMAN (BARRISTERS AND SOLICITORS) AND BULL, HOUSSER & TUPPER (LLP).

DEFENDANTS

Before Mr. Justice R.S. Veale

Appearances:

Evangeline Ramirez	Appearing on her own behalf
Kember Handzic	Counsel for the Defendants Mooney, Lackowicz, Shier & Hoffman, and Bell Housser & Tupper
Karen Wenckebach	Counsel for the Attorney General of Yukon
Timothy and Nolibeth Ng	No one appearing

REASONS FOR JUDGMENT

INTRODUCTION

[1] Ms. Ramirez brings an action (the "2016 action") against her former spouse, various witnesses and lawyers, all of whom were involved in a family law dispute that commenced in 2010 and concluded in February 2014 (the "2010 action").

[2] In the 2016 action, Ms. Ramirez claims in excess of 25 causes of action arising out of facts and allegations in the 2010 action as well as a peace bond order granted on August 6, 2010 (the "2010 peace bond").

[3] Counsel for the defendants Mooney, Lackowicz, Shier & Hoffman, and Bull Housser & Tupper (the lawyers and law firms representing Mr. Toquero in the 2010 action) applies to dismiss Ms. Ramirez' claim in its entirety on the grounds that it discloses no reasonable claim, is an abuse of power or is vexatious. They seek to bar her from bringing further proceedings on behalf of herself or another person without prior leave of the court, pursuant to s. 7.1 of the *Supreme Court Act*, R.S.Y. 2002, c. 211, as amended by S.Y. 2013, c. 15, s. 19.

[4] Ms. Ramirez brings a mirror application on her own behalf to strike the Statement of Defence of the defendants Mooney, Lackowicz, Shier & Hoffman, and Bull, Housser & Tupper.

[5] The defendants Timothy and Nolibeth Ng, who were witnesses for Mr. Toquero in the 2010 action, have appeared and filed a Statement of Defence. Mr. Toquero, the former spouse of Ms. Ramirez, has been served but has neither appeared nor filed a Statement of Defence.

The 2010 Action

[6] Mr. Toquero was married in the Philippines in 1966 and had five children from that marriage. His wife is still alive. He moved by himself from the Philippines to Saudi Arabia in approximately 1987 to obtain employment.

[7] In the late 1980s, Mr. Toquero and Ms. Ramirez became pen pals. They met in person in Singapore in approximately 1990 and spent nine days together.

[8] Ms. Ramirez immigrated to Canada and arrived in the Yukon in 1991. Pursuant to a visa, she was permitted to work as a live-in caregiver (nanny) in Whitehorse. She

became a landed immigrant in 1993 and started a janitorial services business which she called “B & E Janitorial”.

[9] Ms. Ramirez sponsored Mr. Toquero to come to Canada as her fiancé. Pursuant to that sponsorship, Mr. Toquero arrived in the Yukon in September 1994, without any significant assets.

[10] Soon after his arrival, Mr. Toquero began working with Ms. Ramirez in B & E Janitorial (the “business”).

[11] On November 5, 1994, the parties went through a marriage ceremony in the Roman Catholic Church in Whitehorse.

[1] On or about June 18, 2010, the parties separated.

[12] Significantly, the 2010 action proceeded on the basis that Mr. Toquero and Ms. Ramirez were in a common law relationship, as their purported marriage on November 5, 1994 was void as a result of Mr. Toquero being previously married in the Philippines in 1966. That marriage was never dissolved.

[13] In *Toquero v. Ramirez*, 2011 YKSC 81, (the “first judgment”), it was conceded by Ms. Ramirez’ counsel and found by Gower J. that notwithstanding the void marriage between the parties, they should be treated as having lived in a common-law relationship of 16 years for the purpose of property division under the *Family Property and Support Act*, R.S.Y. 2002, c. 83.

[14] Gower J. addressed the following issues in the first judgment:

1. Is the evidence of each of the parties credible?
2. What findings of fact should be made on the conflicting evidence?
3. Was the marriage between the parties void?

4. (a) Should the joint assets of the parties be divided equally, in some other proportions, or not at all?

   (b) Should an adverse inference be drawn against Ms. Ramirez due to her incomplete financial disclosure and her failure to abide by previous court orders?

   (c) Is the remedy of constructive trust applicable to the property issue?

5. Is Mr. Toquero entitled to spousal support?

6. Should there be a global order and, if so, what would that be?

[15] Gower J. found that the credibility problems of Ms. Ramirez far outweighed the credibility problems of Mr. Toquero, and largely preferred his evidence over hers. He as well drew an adverse inference against Ms. Ramirez based on her breaches of two court orders and her failure to provide complete financial disclosure.

[16] Gower J. made a global order as follows at para. 126:

> (1) The couples' jointly held homes … will be put up for sale immediately, or as soon as reasonably practicable.
>
> (2) Mr. Toquero will retain the 1996 Plymouth Breeze automobile, in his name alone, and Ms. Ramirez shall execute all necessary documents to transfer the joint ownership of the vehicle to Mr. Toquero.
>
> (3) Ms. Ramirez will retain in her name alone the 2006 Chevrolet Sierra truck, and Mr. Toquero shall execute all necessary documents to transfer the joint ownership of that vehicle to Ms. Ramirez.
>
> (4) The 2009 Chevrolet Malibu vehicle shall be retained in Ms. Ramirez' name alone, upon her providing proof satisfactory to Mr. Toquero that he is not jointly liable for any outstanding loan associated with that vehicle.

(5) All the remaining vehicles shall be put up for sale immediately, or as soon as reasonably practicable, including the ATV trailer.

(6) Through his counsel, Mr. Toquero will have conduct of the sale of all of the parties' joint property.

(7) The proceeds of sale from the houses and the vehicles shall be held in trust by the law firm of Mr. Toquero's counsel for the purpose of paying the parties' joint debts. If the parties are unable to agree on the total amount of the joint debts, or on any particular debts payable, either may return to this Court for further directions on two days notice. (Note: Each party shall be responsible for their own income tax payable for 2009.)

(8) The net amount remaining after the payment of the couple's joint debts will be divided equally between the parties, subject to the following. From Ms. Ramirez' 50% share of the net sale proceeds, the following debts shall be paid:

a. The amount owing to the Canada Revenue Agency for unpaid remittances, which as of May 12, 2011 was a sum of $7,906.84, subject to any interim payments or additional interest charged;

b. Total arrears of "spousal" support owing to Mr. Toquero, as of the time the net sale proceeds are divided; and

c. The total of any outstanding court costs payable to Mr. Toquero, as of the time the net sale proceeds are divided.

(9) One-half of the pension benefits available to Ms. Ramirez from her employment with the Yukon Government shall be paid to Mr. Toquero, subject to an accounting to ensure that Mr. Toquero receives 50% of the benefits already paid to Ms. Ramirez since June 2010.

(10) Ms. Ramirez shall forthwith return to Mr. Toquero the following:

a. Mr. Toquero's musical instruments, which she admitted to having in her possession, specifically:

1. piano
2. bass guitar
3. violin
4. banjo
5. mandolin
6. bandoria

b. Mr. Toquero's tools and toolboxes, which he testified are in the garage …. (emphases added)

[17] In a judgment cited as *Toquero v. Ramirez*, 2013 YKSC 7, (the "second judgment"), Gower J. addressed the application of Mr. Toquero with respect to paying the debts of the parties, a matter that he remained seized of in the first judgment. He specifically remained seized of the division of the remaining assets and debts.

[18] I note as well that on an application by Mr. Toquero on December 11, 2012, Gower J. made the following order as amended on February 11, 2014:

> The Defendant [Ms. Ramirez] shall not make any applications in this matter and shall not commence proceedings against the Plaintiff [Mr. Toquero] in Supreme Court of Yukon or Small Claims Court of Yukon unless represented by counsel, or with leave of a Judge. If the Defendant receives leave of a Judge, the Judge granting leave shall determine any appropriate security for costs.

[19] Ms. Ramirez filed a Notice of Appeal on December 9, 2011. Her appeal was dismissed as abandoned on June 7, 2013, pursuant to Rule 46(2) and (6) of the Court of Appeal Rules.

The 2010 Peace Bond

[20] In the 2010 peace bond, Barnable J., of the Territorial Court of Yukon, in a judgment cited as *R. v. Toquero*, 2013 YKTC 84[1], concluded that Mr. Toquero threatened to burn down the house that he and Ms. Ramirez resided in. Barnable J. was

[1] Although the citation is from 2013, the decision indicates that the reasons of Barnable J. were delivered orally on August 6, 2010.

satisfied that Ms. Ramirez had reasonable grounds for her fear. He ordered that Mr. Toquero enter into a recognizance of $1,000 with no deposit and no sureties for a period of 12 months. The conditions of the recognizance were:

> 1. That he keep the peace and be of good behaviour towards the complainant;
>
> 2. That he refrain from all contact and communication with the complainant, except through his lawyer;
>
> 3. That the defendant not attend at the complainant's residence or place of work;
>
> 4. The defendant is not to possess any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, prohibited ammunition, or explosive substances for the period of the recognizance;
>
> 5. If the defendant is in possession of any of the above, he is to surrender the same to the RCMP for safekeeping until the term of the recognizance is completed;
>
> 6. If he holds any authorization or licence for any of the above, he is to surrender the same to the RCMP for the period of the recognizance. [para. 20]

The 2012 Small Claims Actions

[21] Ms. Ramirez brought two Small Claims actions against Mr. Toquero under action numbers 12-S0039 and 12-S0070. In *Ramirez v. de Guzman*, 2012 YKSM 8, Cozens J. dismissed both claims on the grounds of *res judicata* based upon the decision of Gower J. in the 2010 action in this Court.

The 2016 Action

[22] On September 29, 2016, Ms. Ramirez filed a Statement of Claim against the defendants seeking general, aggravated and special damages for conspiracy in the amount of $2,000,000 and damages in the amount of $3,000,000 for the intentional

infliction of emotional mental suffering, among other claims for relief. She further claims that Mr. Toquero breached his recognizance. She sets out 35 allegations arising out of the 2010 action and claims including, among other things, breach of duty by Mr. Toquero and his lawyer, fraudulent misrepresentation, fraud, civil conspiracy, bad faith, bigamy, perjury, misfeasance in public office, reputational injury, malicious prosecution and *Charter* claims, intimidation, fraud on the court, champerty and maintenance, aiding and abetting, filing false documents, the doctrine of *functus officio*, abuse of process, judicial chicanery, and defamation, all of which arise out of the 2010 action and the 2010 peace bond.

[23] Ms. Ramirez concluded her Statement of Claim in the 2016 action requesting an order:

> 1. that all the defendants be brought to justice and serve their crime committed on the court; and
>
> 2. all the orders and judgment of the trial judge be vacated as without jurisdiction owing to its character as an exclusively immigration law matter.

ISSUES

[24] I will address the following issues:

1. Is the 2016 action commenced by Ms. Ramirez in breach of the December 11, 2012 Order (as amended on February 11, 2014), which prohibits Ms. Ramirez from making any applications or commencing any proceedings against Mr. Toquero in this court unless represented by counsel or with the leave of a judge?
2. Should the Statement of Claim be struck or dismissed for any of the following reasons under Rule 20(26):

(a) it discloses no reasonable claim or defence;

(b) it is unnecessary, scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or

(d) it is otherwise an abuse of process of this court?

3. Is the 2016 action "persistently vexatious" and, if so, should the Statement of Claim of Ms. Ramirez in the 2016 action be discontinued and should she be ordered not to institute a proceeding on her own behalf or another person except by leave of the court, pursuant to s. 7.1 of the *Supreme Court Act*?

4. Should the Statements of Defence by struck pursuant to Rule 20(26)?

ANALYSIS

Issue 1: Is the 2016 action commenced by Ms. Ramirez in breach of the December 11, 2012 Order (as amended on February 11, 2014), which prohibits Ms. Ramirez from making any applications or commencing any proceedings against Mr. Toquero in this court unless represented by counsel or with the leave of a judge?

[25] The answer to this question is yes. The 2016 action is in direct breach of Gower J.'s order of December 11, 2012 and I dismiss the 2016 action on that basis alone. This Order was based upon Ms. Ramirez vexatious conduct after the first judgment of Gower J. and has not been challenged.

Issue 2: Should the Statement of Claim be struck or dismissed for any of the following reasons under Rule 20(26):

(a) it discloses no reasonable claim or defence;

(b) it is unnecessary, scandalous, frivolous or vexatious;

> **(c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or**
>
> **(d) it is otherwise an abuse of process of this court?**

[26] Rule 20(26) and (29) states the following:

> (26) At any stage of a proceeding the court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of process of this court,
>
> and the court may grant judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.
>
> …
>
> (29) No evidence is admissible on an application under subrule (26)(a).

[27] Rule 20(26)(c) is not applicable as there is no trial or proceeding to prejudice, embarrass or delay. However, in my view, Ms. Ramirez' 2016 action should properly be struck under subrules (a), (b) and (d).

No Reasonable Claim

[28] The test for striking a statement of claim on the basis that it discloses no reasonable claim is articulated in *R. v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true,

that the pleading discloses no reasonable cause of action, or that the claim has no reasonable prospect of success (see also *Ausiku v Hennigar,* 2011 YKCA 5).

[29] In *Berscheid v. Ensign,* [1999] B.C.J. No. 1172 (S.C.), Drossos J. stated at para. 54:

> … a plaintiff who commences a subsequent action against the same parties seeking relief which has already been sought, or could have already been sought, in an extant proceeding, will have the latter of the two actions struck out.

[30] Ms. Ramirez' 2016 action should be struck as the claims were all addressed or should have been addressed in the 2010 action. There is no reasonable prospect that the vast majority of this action can succeed.

Abuse of Process

[31] In addition to finding the bulk of the 2016 action discloses no reasonable cause of action, I also conclude that the entire proceeding is an abuse of the court's process. I agree with Rothstein J., as he then was, in *Hoffmann-La Roche Ltd. v. Canada (Minister of National Health and Welfare)* (1998), 158 F.T.R. 135 (T.D.), at para. 13:

> [13] … What is occurring is repetitious litigation on an issue which has been fully litigated and lost in prior proceedings. To allow the applicants to proceed to would be allow a clear abuse of the process. I adopt the dicta of Lyon J.A. in *Solomon v. Smith* (1987), 45 D.L.R. (4th) 266 (Man. C.A.), at page 275:
>
> > I find persuasive the common sense reasoning of the U.S. Supreme Court in abandoning the requirement of the mutuality principle in *Blonder-Tongue* [*Laboratories Inc. v. University of Illinoise Foundation*, 91 S. Ct. 1434 (1971) per White J.] at p. 1443:
> >
> > > In any lawsuit where a defendant, because of the mutuality principle, is forced to present a complete defence on the merits to a claim which the plaintiff has fully litigated and lost in a prior action, there is an arguable misallocation of resources... Permitting

> repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of the gaming table or "a lack of discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure.
>
> I agree with Philp J.A. that a plea of issue estoppel is not available. However, to permit the statement of claim to proceed would be an abuse of process and that is the principle applicable. …

[32] Similarly in *Toronto (City), v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, [2003] 3 S.C.R. 77, at para. 37, the Supreme Court of Canada held:

> … Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice. …

[33] To merit dismissal under Rule 20(26), the Court must find that it is plain and obvious that Ms. Ramirez' claim is an abuse of process. See *Shuswap Lake Utilities Ltd. v. British Columbia (Comptroller of Water Rights)*, 2008 BCCA 176. I so find. It is plain and obvious that Ms. Ramirez' claims against Mr. Toquero and his lawyers are an abuse of process. They offend the principles of finality and integrity of the administration of justice.

[34] There are a few discrete claims advanced by Ms. Ramirez that deserve specific consideration, although I as well find that these amount to an abuse of the Court's process. The first is her position that Gower J. continued to act in the 2010 action despite being *functus,* based upon my note on the file regarding Ms. Ramirez' further

inquiries after the first judgment of Gower J. This was clearly not the case and my note was in error. Gower J. properly retained jurisdiction to finalize his global order.

[35] The obvious remedy for Ms. Ramirez with respect to the complaints outlined above was an appeal of the decision of Gower J. in the Court of Appeal of Yukon. While filed, that appeal has been dismissed as abandoned.

[36] The second claim that arguably has not yet been litigated is the claim of fraud, however I am of the view that this is nevertheless an abuse of the Court's process. Even if there is a factual basis for such a claim, it is not founded on anything arising after the 2010 action and counsel for Ms. Ramirez had full opportunity to cross-examine and challenge the credibility of Mr. Toquero and his witnesses at trial on the conduct now alleged to be fraudulent. I also note that pursuant to Rule 20(12), fraud allegations require full particulars with dates and items stated. There are none in this claim of fraud.

[37] As well, the 2016 action against the two witnesses, Timothy and Nolibeth Ng, is an abuse of process for the reason that lay witnesses are immune from civil liability. See *Lower v. Stasiuk*, 2013 BCCA 389, at paras. 48 – 50. It is important to understand the policy reason for witness immunity. It is the same immunity granted to lawyers at para. 18 in *McDaniel v. McDaniel*, 2008 BCSC 653 (aff'd on this point by 2009 BCCA 53):

> [18] The bulk of the argument before me concerned the issue of whether the defendants enjoy absolute immunity for anything said in their conversations by virtue of what is usually called witness or litigation immunity. The immunity is well established in the common law. Witnesses are absolutely immune from civil liability for anything that they say in court, even if what is said is false and even if they harboured malicious motives for giving evidence. The immunity is expansive. It applies to evidence given before quasi-judicial administrative tribunals as well as courts. It

> also applies to out-of-court statements made in the course of preparing to give testimony and even to discussions with counsel for the purpose of determining whether or not the witness has relevant evidence to give. Where litigation is in contemplation, statements made by a potential witness on the subject matter of the litigation will fall within the immunity: *Monje-Alvarez v. Monje-Alvarez* (1992), 69 B.C.L.R. (2d) 99, 93 D.L.R. (4th) 659 (BCCA).

See also *Presley v. Canada (Royal Canadian Mounted Police),* [1999] Y.J. No. 20 (S.C.), per Maddison J.

[38] I conclude, therefore, that the entire 2016 action should be dismissed as an abuse of process.

Unnecessary, scandalous, frivolous or vexatious

[39] Counsel for the lawyers and law firms provided me with Alberta caselaw setting out the test for vexatious litigation. See *Chutskoff v. Bonora*, 2014 ABQB 389. However circumstances caught by Rule 20(26)(b) have also been considered by this Court.

[40] In *McDiarmid v. Yukon (Government of),* 2014 YKSC 31, Vertes J. stated that the test for an action being frivolous or vexatious requires the defendant to demonstrate "that the pleading is groundless or manifestly futile, or that it is not in an intelligible form, or that it was instituted without any reasonable grounds whatsoever for an ulterior purpose" (para. 15).

[41] For the reasons already articulated above, I find that Ms. Ramirez' pleading in this case is groundless and futile. Some of the claims cannot proceed as a matter of law, and others are a clear attempt to relitigate issues that have already been finally resolved after full and fair judicial proceeding.

Issue 3: Is the 2016 action "persistently vexatious" and, if so, should the Statement of Claim of Ms. Ramirez in the 2016 action not be continued and should she be ordered not to institute a proceeding on her own behalf or another person except by leave of the court, pursuant to s. 7.1 of the *Supreme Court Act*.

[42] Prior to the enactment of this section, Rule 20(30) of the Supreme Court Rules read:

> (30) At any stage of a proceeding, the court on its own motion or on application, if satisfied that a person has persistently and without reasonable grounds commenced vexatious proceedings or conducted proceedings in a vexatious manner, may order
>
> > (a) that the person may not commence a proceeding in the court without leave of a judge, or
> >
> > (b) that a proceeding previously commenced by the person in the court may not be continued without leave of a judge.

[43] This Rule has been superseded by a 2013 amendment to the *Supreme Court Act,* which added s. 7.1:

> 7.1(1) If on application or its own motion, the Court is satisfied that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may, after giving notice to the Attorney General of Yukon and giving the person the opportunity to be heard, order that except by leave of the Court
>
> > (a) the person must not institute a proceeding on behalf of themselves or another person; or
> >
> > (b) a proceeding previously instituted by the person must not be continued.
>
> (2) A person in respect of whom the Court has made an order under subsection (1) may apply to the Court
>
> > (a) for an order rescinding the order; or
> > (b) for leave to institute or continue a proceeding.
>
> (3) On receiving an application under subsection (2), the Court may

> (a) rescind the order; or
>
> (b) grant leave to institute or continue a proceeding if it is satisfied that
>
> (i) the proceeding is not an abuse of process, and
>
> (ii) there are reasonable grounds for the proceeding.
>
> (4) The Attorney General of Yukon is entitled
>
> (a) to receive notice of any application or motion under this section; and
>
> (b) to appear at the hearing of the application or motion.

[44] Because of the serious nature of limiting the right of a citizen to commence legal proceedings, s. 7.1(4) requires that notice of an application must be given to the Attorney General of Yukon who is also entitled to appear and make submissions at the hearing, as occurred in this case. As well, the legislation has added a requirement that vexatious conduct be "persistent" before this right is curtailed.

[45] Section 7.1(1) creates two circumstances that may be considered vexatious:

(a) when the Court is satisfied that a person has "persistently instituted vexatious proceedings", or

(b) the Court is satisfied that a person has conducted "a proceeding in a vexatious manner".

[46] I am satisfied that Ms. Ramirez has "persistently instituted vexatious proceedings" and the 2016 action should not be continued. There is no application to find that Ms. Ramirez has conducted the 2016 action in a vexatious manner but I note that this is an alternative to a finding that a litigant is "persistently vexatious".

[47] The non-exhaustive list of factors, in *Dawson v. Dawson*, 2014 BCCA 44, at para. 16, that should be considered in an application to declare a person a vexatious litigant, is helpful and regularly averted to:

> (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
>
> (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
>
> (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
>
> (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
>
> (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
>
> (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
>
> (g) the respondent's conduct in persistently taking unsuccessful appeals [from] judicial decisions can be considered vexatious conduct of legal proceedings.

[48] A more detailed list of factors can be found in *Chutskoff* at para. 2.

[49] In my view, Ms. Ramirez has instituted three vexatious proceedings; namely, the 2016 claim in this Court and the two 2012 Small Claims actions, to which factors (a) – (f) apply.

[50] Section 7.1(1) does not define "persistently", but counsel for the Attorney General of Yukon submits that that the commencement of two claims is not sufficient to be considered "persistent". In support of this position, she cites *Canadian National Railway v. Benson*, 2004 MBQB 210, at paras. 43 – 44 ("*Benson*"), which interprets similar wording in the Manitoba legislation. In the *Benson* case, Mr. Benson brought two claims against CNR. The first claim was struck as disclosing no reasonable cause of action, being an abuse of process and vexatious. The second claim essentially repeated many of the allegations contained in the first claim. Although the *Benson* case describes Mr. Benson as having brought "only" two actions, the court clearly concluded that the second claim was a sufficiently persistent to be vexatious:

> [45] This second action is certainly vexatious: the bringing of one or more actions to determine an issue which has already been determined constitutes a vexatious proceeding.
>
> [46] Where it is obvious that the action cannot succeed, it is vexatious and Mr. Benson's position is really quite hopeless.

[51] While it is clear that Mr. Benson was repeatedly harassing the defendant outside the court proceeding, I do not find that the case turned on this, nor does s. 7.1 require additional vexatious acts outside a proceeding.

[52] Counsel for the Attorney General has submitted that the test in *Extra Gift Exchange Inc. v. Ernest & Twins Ventures (PP) Ltd.*, 2014 BCCA 228, should be applied. Garson J.A. applied the test in the British Columbia Court of Appeal that "the applicant for an order under s. 29 must show a pattern of persistent vexatious

proceedings in the Court of Appeal". However, that test is based on the wording of s. 29 of the *Court of Appeal Act* that "a justice is satisfied that a person has habitually, persistently and without reasonable cause commenced vexatious proceedings in the court …" In my view that is a more onerous test than the test of "persistently instituted vexatious proceedings" in s. 7.1(1) of the *Supreme Court Act*.

[53] I interpret the words "persistently instituted vexatious proceedings" as requiring that there must be at least two proceedings. There is no requirement that the proceedings must all originate in the same court in Yukon.

[54] Thus, the two proceedings in Small Claims Court instituted by Ms. Ramirez addressing the 2010 action decided by Gower J. brings the number of vexatious proceedings to three and I find her conduct falls squarely within s. 7.1 of the *Supreme Court Act*.

[55] I am satisfied that Ms. Ramirez has persistently instituted vexatious proceedings and I therefore order that she is prohibited from instituting a proceeding in this Court or continuing the 2016 action, subject to s. 7.1(2) which permits Ms. Ramirez to apply to rescind this Order or apply for leave to continue or institute a proceeding.

ISSUE 4: Should the Statements of Defence by struck pursuant to Rule 20(26)?

[56] There is no basis in law to strike Statements of Defence which plead that the Statement of Claim discloses no reasonable claim, is an abuse of process and vexatious, all of which have been established.

CONCLUSION

[57] I order that Ms. Ramirez' Statement of Claim be struck and the proceeding dismissed on the grounds that her pleading discloses no reasonable claim and is an abuse of process of the Court.

[58] I also find that she has persistently instituted vexatious proceedings and order that she must not institute a proceeding on behalf of herself or another person except as permitted by s. 7.1(2) of the *Supreme Court Act*.

[59] Counsel may speak to the issue of costs to be paid as special costs.

_____
VEALE J.