IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kumar v. McDonald,*
2025 BCSC 194

Date: 20250206
Docket: S58772
Registry: Vernon

Between:

Colton Kevin Kumar, 1304139 B.C. Ltd, and Kevin Anthony Kumar
Plaintiffs

And

John McDonald, Heidi Semkowich, and McDonald Paralegal Services Ltd.
Defendants

Before: The Honourable Justice Laurie

(In Chambers)

Reasons for Judgment

The Plaintiffs, appearing in person and as representative for 1304139 B.C. Ltd.	C. Kumar K. Kumar
The Defendants, appearing in person:	J. McDonald H. Semkowich
Representative for McDonald Paralegal services Ltd., appearing in person:	J. McDonald
Place and Date of Hearing:	Vernon, B.C. January 20, 2025
Place and Date of Judgment:	Vernon, B.C. February 6, 2025

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INTRODUCTION

[1] The defendants in this action, John McDonald, Heidi Semkowich, and McDonald Paralegal Services Ltd. apply for an order pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 *[CJPTA]* staying the action against them on the basis that this Court does not have territorial competence over the action against them.

[2] In the alternative, the defendants apply to strike the plaintiffs' claim pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 *[Rules]* on the basis that it is scandalous, frivolous, vexatious and an abuse of process.

[3] The defendants also seek an order declaring the plaintiffs Colton Kumar and Kevin Kumar to be vexatious litigants, as well as an order prohibiting the plaintiffs from bringing an action against the defendants without first obtaining leave of the Court.

[4] Although the Notice of Application also included an application for dismissal of the action pursuant to the *Protection of Public Participation Act*, S.B.C. 2019, c.3, the defendants abandoned that part of the application in oral submissions.

PLEADINGS AND EVIDENCE

[5] The plaintiffs, Kevin Kumar and Colton Kumar, are father and son respectively, who reside at least partially in British Columbia. The plaintiff 1304139 B.C. Ltd. is the plaintiffs' company incorporated in British Columbia (the "Company").

[6] The defendant John McDonald is a resident of Alberta. He is the sole director and shareholder of the defendant McDonald Paralegal Services, Ltd., a business that operates in Alberta.

[7] The defendant Heidi Semkowich is a resident of Alberta. She is the sole director and shareholder of HMS Paralegal Services, Inc., a business that operates in Alberta.

[8] On November 26, 2024, the plaintiffs filed a Notice of Civil Claim (the "NOCC") alleging that:

- In August 2024, the plaintiffs retained the defendants to provide paralegal services to Timothy Kohut and Terry Kerslake regarding their respective matters before the courts in Alberta;
- Messrs. Kohut and Kerslake were clients of the plaintiffs. Specifically, they were borrowers of specified monetary amounts with active promissory notes with the Company;
- In September 2024, the defendants filed a claim against the plaintiffs on behalf of Messrs. Kohut and Kerslake alleging unjust enrichment, fraudulent misrepresentation, and operating an Organized Pseudolegal Commercial Argument "OPCA" scam;
- The allegations contained in the claim are defamatory;
- Statements published on the defendants' website calling the plaintiffs Kevin and Colton Kumar "well known fraudsters" and "OPCA gurus" are slanderous;
- The defendants interfered with the contractual relationship between the plaintiffs and Messrs. Kohut and Kerslake;
- The defendants' actions constitute a conflict of interest and a breach of the *Legal Profession Act* and Alberta's *Code of Conduct*;
- The defendant's actions caused harm to the plaintiffs' reputation and business, and resulted in financial loss.

[9] On December 19, 2024, the defendants filed a response to the NOCC (the "Response"). In it, the defendants submit that this Court does not have territorial competence over the dispute as the plaintiffs' claim lacks a real and substantial connection to British Columbia. In any event, the defendants submit that Alberta is clearly the more appropriate forum as it is where the defendants reside and conduct their business. It is also where the witnesses are located. Further, there is a real risk of conflicting judgments as the related matters, which are the subject of the plaintiffs' complaints, are before the Alberta Court of Justice.

[10] In addition, the Response submits that the plaintiffs Kevin Kumar and Colton Kumar are subject to access restrictions in the Alberta Court of King's Bench and that by bringing this action in B.C., the plaintiffs are seeking to circumvent those court orders. The defendants assert that the action should be stayed for want of jurisdiction or struck as an abuse of process.

[11] Along with the Response, the defendants also filed a Notice of Application with respect to the present proceedings, advancing the same jurisdictional arguments as those contained in the Response.

[12] The defendants do not dispute that they assisted Messrs. Kohut and Kerslake in filing their respective claims against the plaintiffs in the following actions in the Alberta Court of Justice: Court File P2490103259 (the "Kohut Action") and Court File P2490103260 (the "Kerslake Action"). However, the defendants deny having been retained by the plaintiffs at any time.

[13] In his affidavit, the defendant John McDonald deposed that the Alberta Court of King's Bench has previously described the plaintiffs, Kevin Kumar and Colton Kumar, as being involved in financial scams in the following decisions: *Royal Bank of Canada v. Courtoreille*, 2024 ABKB 302 and *Bonville v. President's Choice Financial*, 2024 ABKB 546 *[Bonville 3].*

[14] Mr. McDonald also deposed that in November 2024, McDonald Paralegal Services Inc. and HMS Paralegal Services Inc. issued a joint press release, which was published on the website of McDonald Paralegal Services Inc., that included a "recap" of *Bonville 3* "in the context of the Kohut Action and the Kerslake Action" (the "Press Release").

[15] Some of the statements alleged by the plaintiffs to be defamatory were contained in the Press Release.

LEGAL FRAMEWORK ON THE JURISDICTIONAL ISSUE

[16] The legal framework for determining whether a court should take jurisdiction over a dispute involves a two-stage analysis as outlined in *PKS v ANR*, 2024 BCSC 2110:

> [17] Thus, as noted in *DL v. MY*, 2019 BCSC 881, at paras 27 to 28, on an application such as the present, the court must ask, first, whether it may take jurisdiction and, second, whether it should take jurisdiction:
>
> > [27] When a court determines whether to take jurisdiction over a dispute, it engages in a two-step analysis. First, the court determines whether it has territorial competence (sometimes called *jurisdiction simpliciter*) over the dispute. The burden of establishing territorial competence rests with the party asserting its existence: *Aleong v. Aleong*, 2013 BCSC 1428 at para. 80.
> >
> > [28] Second, the court determines whether it ought to exercise that jurisdiction, or whether, instead, there is another forum that is "clearly more appropriate": *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 103 *[Van Breda].* This second step is sometimes referred to as a *forum non conveniens* analysis. The burden in this analysis rests with the party asserting that another forum is clearly more appropriate: *JTG Management Services Ltd. v. Bank of Nanjing Co. Ltd*., 2015 BCCA 200at para. 45.

[17] The usual starting point for determining jurisdiction is the *CJPTA*. Section 3 of the *CJPTA* sets out the circumstances in which a court has territorial competence in a proceeding brought against a person:

> **3.** A court has territorial competence in a proceeding that is brought against a person only if
>
> (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
>
> (b) during the course of the proceeding that person submits to the court's jurisdiction,
>
> (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
>
> (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
>
> (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[18] With respect to section 3(e), section 10 of the *CJPTA* provides a non-exhaustive list of facts that establish a rebuttable presumption of a "real and substantial connection":

> **10.** Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding
>
> (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,
>
> (b) concerns the administration of the estate of a deceased person in relation to
>
> (i) immovable property in British Columbia of the deceased person, or
>
> (ii) movable property anywhere of the deceased person if at the time of death the person was ordinarily resident in British Columbia,
>
> (c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to
>
> (i) property in British Columbia that is immovable or movable property, or
>
> (ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia,
>
> (d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:
>
> (i) the trust assets include property in British Columbia that is immovable or movable property and the relief claimed is only as to that property;
>
> (ii) that trustee is ordinarily resident in British Columbia;
>
> (iii) the administration of the trust is principally carried on in British Columbia;
>
> (iv) by the express terms of a trust document, the trust is governed by the law of British Columbia,
>
> (e) concerns contractual obligations, and
>
> (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,
>
> (ii) by its express terms, the contract is governed by the law of British Columbia, or

(iii) the contract

(A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

(B) resulted from a solicitation of business in British Columbia by or on behalf of the seller,

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia,

(g) concerns a tort committed in British Columbia,

(h) concerns a business carried on in British Columbia,

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in British Columbia, or

(ii) in relation to property in British Columbia that is immovable or movable property,

(j) is for a determination of the personal status or capacity of a person who is ordinarily resident in British Columbia,

(k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia, or

(l) is for the recovery of taxes or other indebtedness and is brought by the government of British Columbia or by a local authority in British Columbia.

[19] Even where the Court has territorial competence over a proceeding under section 3 of the *CJPTA*, it may decline to exercise that jurisdiction on the basis that a court of another jurisdiction is a more appropriate forum after considering the interests of the parties, the ends of justice, and the factors enumerated in section 11(2):

> **11.** (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
>
> (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
>
> (b) the law to be applied to issues in the proceeding,
>
> (c) the desirability of avoiding multiplicity of legal proceedings,
>
> (d) the desirability of avoiding conflicting decisions in different courts,
>
> (e) the enforcement of an eventual judgment, and
>
> (f) the fair and efficient working of the Canadian legal system as a whole.

[20] The Court's role on a jurisdictional application is not to determine whether the facts supporting a claim of territorial competence are true. Rather, the plaintiff is only required to show that there is an arguable case that those facts can be established: *Krahn Engineering Ltd. v. Bit*, 2024 BCSC 1069 at para. 23; *Canadian Olympic Committee v. VF Outdoor Canada Co*., 2016 BCSC 238 at para. 24.

DISCUSSION

Territorial Competence

[21] In the case at bar, the issue of territorial competence depends on whether there is a real and substantial connection between British Columbia and the facts on which the action against the defendants is based, pursuant to section 3(e) and section 10 of the *CJPTA*.

[22] The plaintiffs argue that they have established territorial competence because their Company was incorporated, and operates, in British Columbia, and the harm caused by the defendants' conduct occurred in this jurisdiction. They submit that the defamatory content in the Press Release was accessed by the plaintiffs' clients or potential clients in B.C. and that consequently, the plaintiffs suffered financial harm in B.C.

[23] I conclude that the plaintiffs have not established that the Court has territorial competence over the dispute. None of the section 10 *CJPTA* presumptive factors have been established. Further, neither the location of the plaintiffs' business nor the

jurisdiction in which damage was allegedly sustained create a presumption of territorial competence.

[24] The location of the Company or residency of the plaintiffs alone is not a sufficient connecting factor to establish territorial competence: *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 *[Van Breda]* at para. 86; *MicroCoal Inc. v Livneh*, 2014 BCSC 787 at para. 87; *HSS Helitech Support Services Ltd. v. Verrall Aviation Services Corp*., 2016 BCSC 512 at para. 22.

[25] In *Thumbnail Creative Group Inc. v. Blu Concept Inc*., 2009 BCSC 1833 [*Thumbnail*] at para. 18, the Court rejected a similar submission by the plaintiffs that territorial competence was established because the plaintiffs carried on business in B.C. In *Thumbnail*, the submission was based on the application of section 10(h) of the *CJPTA.* The Court held that the focus of the inquiry must be on whether the plaintiff's business in B.C. was, in fact, the subject matter of the action.

[26] In the case at bar, the subject matter of the plaintiffs' action relates to the defendants' alleged conduct in Alberta, i.e. in filing the Kohut and Kerslake Actions and in publishing the impugned statements in the Press Release. It has little to do with the business carried on by the plaintiffs in B.C. In my view, the connection to B.C. based on this factor is tenuous at best.

[27] Similarly, the connection to B.C. based on the alleged damage sustained in this jurisdiction is also weak and tenuous. The Supreme Court of Canada in *Van Breda* has made it clear that courts should be wary of assuming jurisdiction based on tenuous damages connections:

> [89] The use of damage sustained as a connecting factor may raise difficult issues. For torts like defamation, sustaining damage completes the commission of the tort and often tends to locate the tort in the jurisdiction where the damage is sustained. In other cases, the situation is less clear. *The problem with accepting unreservedly that if damage is sustained at a particular place, the claim presumptively falls within the jurisdiction of the courts of the place, is that this risks sweeping into that jurisdiction claims that have only a limited relationship with the forum. An injury may happen in one place, but the pain and inconvenience resulting from it might be felt in another*

> *country and later in a third one. As a result, presumptive effect cannot be accorded to this connecting factor*.
>
> (Emphasis added)

See also: *Danielson v. Janze*, 2017 BCSC 413 at para. 55.

[28] In my view, the fact that the defendants' statements published on a website were accessed in B.C. does not establish a sufficient connection with this forum.

[29] Based on the pleadings and evidence before me, I conclude that that the plaintiffs have not established that this Court has territorial competence over the action against the defendants.

Discretion to exercise territorial competence (*Forum non conveniens*)

[30] Even if this Court had territorial competence over the dispute, I would decline to exercise that jurisdiction on the basis that Alberta is clearly the more appropriate forum in which to hear the proceeding.

[31] In considering the relevant factors in section 11(2) of the *CJPTA*, given that there are related matters outstanding before the Alberta Court of Justice, i.e. the Kohut and Kerslake Actions, in my view, the desirability of avoiding multiplicity of legal proceedings and conflicting decisions in different courts strongly militate in favour of having this matter heard in Alberta.

[32] Since the facts upon which the action is based took place in Alberta, the witnesses who may be expected to testify are more likely to be located in that jurisdiction, including Mr. Kohut and Mr. Kerslake.

[33] Further, while I do not comment on the merits of the plaintiffs' claim, I note that the NOCC alleges that the defendants breached the *Legal Profession Act,* R.S.A. 2000, c. L-8 and the Law Society of Alberta's *Code of Professional Conduct*, which is an additional factor that points to Alberta as the more appropriate venue.

[34] Overall, after considering the relevant circumstances in section 11(2), the interests of the parties to the proceeding and the ends of justice, I am of the view

that even if this Court had territorial competence over the proceeding against the defendants, it would be appropriate to decline to exercise that territorial competence.

Conclusion on the Jurisdictional Issue

[35] In light of the foregoing reasons, the action must be stayed for want of jurisdiction. Given this conclusion, I do not consider it necessary to decide the defendant's alternative application to strike the NOCC under *Rule* 9-5.

Application for Declaration of Vexatious Litigant

[36] The defendants apply for an order declaring the plaintiffs Kevin Kumar and Colton Kumar to be vexatious litigants. The defendants submit that the individual plaintiffs are subject to court access restrictions in the province of Alberta and have brought this action in British Columbia in an attempt to circumvent those orders. As such, the action constitutes an abuse of process.

[37] The defendants rely on *Unrau v. National Dental Examining Board*, 2019 ABQB 283 in support of their position that where another court has already concluded that a person is an abusive litigant and has taken litigation management steps on that basis, that evidence can be considered by this Court in determining whether to impose similar court access restrictions on that individual.

[38] The defendants directed the Court's attention to the following Alberta court decisions to show that the plaintiffs Kevin Kumar and Colton Kumar are subject to court access restrictions:

- In *1158997 Alberta Inc. v. Maple Trust Company*, 2013 ABQB 483 at para. 106, the Court declared Ty Griffiths as a vexatious litigant pursuant to section 23.1(4) of the *Judicature Act*, R.S.A. 2000, c. J-2. The defendants allege that Ty Griffiths is a fictitious name previously used by Kevin Kumar.

- In *Royal Bank of Canada v. Patrick Courtoreille*, 2024 ABKB 302 at paras. 14-22, the Court described Kevin Kumar's history with the courts in Alberta and his involvement in OPCA activities, among other things. The Court ordered that:

1. Kevin Kumar shall only communicate with the Court of King's Bench of Alberta using the name "Kevin Kumar";

2. He is prohibited from providing legal advice and preparing documents intending to be filed in the Court of King's Bench of Alberta for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf;

3. He is prohibited from acting as an agent, next friend, "*McKenzie* friend", or any other form of representation in proceedings, before the Court of King's Bench of Alberta;

4. He is entirely prohibited from any further participation in certain Alberta Court of King's Bench cases including *Terry Kerslake v. Capital One Bank*, Action No. 230400761 and *Timothy Kohut v. Capital One Services (Canada) Inc.,* Action No. 240308261;

5. The Clerks of the Court of King's Bench of Alberta shall refuse to accept or file any documents or other materials from Kevin Kumar, unless Kevin Kumar is a named party in the action in question.

- In *Bonville v. President's Choice Financial*, 2024 ABKB 483 at para. 90, the Court made similar orders as those stated in 1, 2, 3 and 5 above, in respect of Colton Kumar. In addition, the Court prohibited Colton Kumar from any further participation in certain Alberta Court of King's Bench cases including *Kohut v. Royal Bank of Canada*, Action No. 240305588 and *Royal Bank of Canada v. Kohut*, Action No. 240309627, with some exceptions.

Legal Principles

[39] The Court may prohibit a person from instituting legal proceedings without prior leave of the Court pursuant to section 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 *SCA):*

> **18.** If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[40] Section 18 confers a broad jurisdiction on the court to control its own processes. This is a power that must not be used lightly. The court must balance the important values underlying open court access against the need to prevent the abuse of that right: *Wu v. Canada (Attorney General)*, 2022 BCSC 2084 *[Wu]* at para. 34, citing *Semenoff Estate v. Semenoff*, 2018 BCCA 17 at para. 31.

[41] In *Rafique v. AWM-Alliance Real Estate Group Ltd*., 2019 BCSC 247 at para. 51, the Court discussed the key indicators of a vexatious proceeding:

> a. bringing one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;
>
> b. it is obvious that the action cannot succeed, would lead to no possible good, or no reasonable person can reasonably expect to obtain relief;
>
> c. the action is 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. the grounds and issues in the first proceeding have been 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. the person who instituted the proceedings has failed to pay the costs of the unsuccessful proceedings; and
>
> f. the person has persistently taken unsuccessful appeals.

See also: *Wu* at para. 36; *Carten v. Carten*, 2015 BCCA 201 at para. 32 citing *Lindsay v. Canada (Attorney-General),* 2005 BCCA 594.

Discussion

[42] After considering the Application Record, the submissions of the parties, and the applicable legal principles and case authority, I am not satisfied that an order pursuant to Section 18 of the *SCA* is warranted at this time. I say this mainly for the following reasons:

- The focus of the parties' submissions before me was on the issue of jurisdiction and there was not sufficient court time at the hearing date to fully canvass this secondary issue;

- While I do not ignore the plaintiffs' history in the Alberta courts, in my view, the nature of the allegations in this action, which is primarily grounded on defamation and conflict of interest, is different from the Alberta matters that I had been referred to, in which the plaintiffs had been involved. I appreciate that it is not entirely unrelated, however I am unable to conclude that the main issues in this action had been previously determined by the courts;

- Although it appears that the plaintiffs purposely avoided bringing this action in Alberta, I am unable to conclude that their conduct in instituting the proceedings in B.C. breached an order made by the Court of King's Bench of Alberta. The court orders that I had been referred to do not prohibit or restrict the individual plaintiffs from filing an action on their own behalf in their own names.

[43] In balancing the importance of open court access against the need to prevent the abuse of that right, based on the evidence before me, I find that the balance does not favour granting an order under section 18 of the *SCA* at this time.

Conclusion on Declaration of Vexatious Litigant

[44] In light of the foregoing reasons, I dismiss the defendants' application for an order under section 18 of the *SCA*.

Increased / Special Costs

[45] The defendants submit that increased costs and special costs are warranted in these circumstances because the plaintiffs who are subject to court access restrictions in Alberta have intentionally brought the action outside of that jurisdiction to frustrate the objectives of those access restrictions. Further, they submit that the plaintiffs have engaged in litigation misconduct deserving of sanction.

[46] As I had mentioned above, the court access restrictions that I had been referred to do not prohibit the individual plaintiffs from filing an action in which they are a named party. Therefore, in my view, it is not clear on the evidence that the plaintiffs' motivation for bringing the action in B.C. was to frustrate the objectives of the access restrictions imposed on them. With respect to the allegation of litigation misconduct, while I don't disagree that there has been reprehensible conduct, I am

not satisfied based on the evidence that it is sufficiently connected to the conduct of this litigation particularly in light of the brief procedural history of this matter.

[47] In the circumstances, I decline to order the requested increased costs and special costs.

DISPOSITION

[48] The action against the defendants is stayed for want of jurisdiction. The application for an order declaring the individual plaintiffs to be vexatious litigants and for court access restrictions is dismissed. The defendants are entitled to costs for this application at Scale B.

"Laurie J."