

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-17-076546-137

DATE : JUNE 20, 2014

BY THE HONOURABLE MR. JUSTICE Gary D.D. Morrison, J.S.C.

LOUIS G. BRUNET
Plaintiff

v.

GERALD SEGAL
and
GESTION GSA INC.
Defendants

JUDGMENT

[1] The Plaintiff, Louis Brunet, is a lawyer, member of the Quebec Bar since 1982.

[2] Brunet is suing his ex-client, Gerald Segal and the latter's Gestion GSA Inc., on the basis of defamation. He seeks damages in the amount of \$300,000, as well as an injunction to prevent further defamation.

1- FACTUAL AND PROCEDURAL CONTEXT

[3] From 2007 to 2011, Brunet provided professional services as a lawyer to Segal and GSA, a consulting firm of which Segal is the sole shareholder, officer and director¹.

[4] Segal was not satisfied with the services he received. In 2011, he filed a complaint with the Quebec Bar². Segal alleged that Brunet had failed to follow his instructions and had settled a case without his authorization, acting in fraudulent connivance with opposing counsel.

[5] The Quebec Bar did not file a disciplinary complaint against Brunet and, after completing its investigation, decided to simply close its file at the end of 2011³.

[6] Segal sought a revision⁴ of that decision. Subsequently, the Review Committee also concluded that there was no cause for the Syndic to lodge a disciplinary complaint⁵.

[7] Brunet's claim refers to, but is said not to be based on Segal's complaint to the Quebec Bar.

[8] Segal has not sued Brunet. However, the latter contends that Segal continued to harass him, and this through 2011 to 2013⁶.

[9] In March 2013, Brunet alleges that he learned for the first time that Segal had defamed him to third parties, including other lawyers, the police and an important client.

[10] In fact, on March 18, 2013, Marvin Rusk, Brunet's client, forwarded to him copies of Segal numerous emails⁷, including communications with the Société policière de la Ville de Montréal.

[11] From those emails, the proof demonstrates that on March 15, 2013, Segal wrote to Rusk, regarding a "*major fraud*" involving Brunet and the fact that the latter had "*lost on purpose*" his law suit, having "*had a cute deal*" with opposing counsel⁸. He provided Rusk with copies of various emails he had sent to Brunet, the police and the Quebec Bar.

¹ Exhibit P-1.

² Exhibit P-2.

³ Exhibit P-3.

⁴ Exhibits P-4 and P-6.

⁵ Exhibit P-5.

⁶ Exhibit P-6.

⁷ Exhibits P-7, p. 7-22.

⁸ Exhibits P-7, p. 14-15.

[12] Subsequent to the decision by the Quebec Bar not to act on his complaint, Segal also communicated with Bâtonnier of the Bar of Montreal and the Bâtonnier of the Barreau du Québec⁹.

[13] Having learned of Segal's activity from his client Rusk, Brunet instituted his legal proceedings in defamation against Segal within weeks, prior to the end of March 2013.

[14] Segal denies that he intended to cause any injury to Brunet. He claims that he was only seeking to know his rights and how to resolve the dispute resulting from Brunet's handling of his mandate.

[15] As for communicating with Rusk, Segal claims that he was only looking for assistance from a friend to convince Brunet to settle with him. He claims that it was Rusk who had originally put him in contact with Brunet.

[16] Moreover, not only does Segal claim that Brunet's legal action is not well-founded but he argues that it is prescribed at law.

2- QUESTIONS BEFORE THE COURT

[17] The principal questions to be decided by the Court are the following:

- a) Has Segal committed a fault through his alleged defamation of Brunet?
- b) In the affirmative, what, if any, damages should be awarded to Brunet? Is an injunction against the Defendants warranted?
- c) Is Brunet's action prescribed?

3- ANALYSIS

3.1 The issue of defamation

3.1.1. The applicable law

[18] Defamation has been described by the Quebec Court of Appeal¹⁰, a definition subscribed to by the Supreme Court of Canada¹¹, as follows:

⁹ See admissions signed by the parties on October 7, 2013. Given the agreement of the parties, there is no necessity for the Court to deal with the various objections made as regards Exhibits P-7 and P-13.

¹⁰ *Société Radio-Canada v. Radio Sept-Iles inc.*, [1994] R.J.Q. 1811 (CA.), p. 1818.

¹¹ *Prud'homme v. Prud'homme*, [2002] 4 S.C.R. 663, par. 33.

Génériquement, la diffamation consiste dans la communication de propos ou d'écrits qui font perdre l'estime ou la considération de quelqu'un ou qui, encore, suscitent à son égard des sentiments défavorables ou désagréables (...). Elle implique une atteinte injuste à la réputation d'une personne, par le mal que l'on dit d'elle ou la haine, le mépris ou le ridicule auxquels on l'expose (...).

[19] A person's right to his or her reputation is of such importance that it has been codified by the Quebec legislators.

[20] Article 3 of the Quebec Civil Code reads as follows:

3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy.

These rights are inalienable.

[21] Similarly, Article 35 C.C.Q. reads as follows:

35. Every person has a right to the respect of his reputation and privacy.

No one may invade the privacy of a person without the consent of the person unless authorized by law.

[22] As regards the Quebec Charter of Human Rights and Freedoms¹², Article 4 thereof reads as follows:

4. Every person has a right to the safeguard of his dignity, honour and reputation.

[23] Accordingly, in Quebec, one's right to the protection of reputation is a fundamental and inherent right.

[24] In order to succeed in a claim based on the violation of the right to the respect of one's reputation, the purported victim must establish by a preponderance of proof the existence of the essential elements of a quasi-delictual action, being fault, damages and a causal link¹³.

3.1.2. The alleged defamation

[25] The wording at issue involves Segal's use of the term "*major fraud*" relating to Brunet allegedly losing a law suit "*on purpose*" in order to benefit personally from a "*cute deal*" with opposing counsel.

¹² CQLR, c. C-12.

¹³ *Chenail v. Lavigne*, 2011 QCCA 862.

[26] As mentioned above, these words used by Segal at various times and in various forms, were communicated not only to Brunet and to the Quebec Bar, but ensuingly to third parties.

[27] Essentially, Segal is telling people that Brunet fraudulently made a deal to intentionally lose his client's case, thereby raising the obvious suggestion that Brunet received some advantage in return, whether in money or otherwise.

[28] To say that he only sought to know his rights is not a credible assertion by Segal. That might explain why he consulted certain other lawyers, the details of which do not require further discussion. But it fails to justify contacting the police, the leadership of the various Bar associations after the Quebec Bar had closed its file and, ultimately, an important client of Brunet.

[29] As regards contacting Rusk, Segal admits knowing of the lawyer-client relationship between them. Segal obviously sought, at the least, to influence Rusk sufficiently to intervene and to act favourably on his behalf against Brunet in relation to the so-called fraud. In so doing, Segal could not ignore the obvious potential damage that his actions could cause to that relationship.

[30] As well, whether the words used by Segal are true or not is of little particular relevance under Quebec law, since a defendant cannot succeed on the sole basis that what he has said is true.

[31] In any event, for the purpose of the present proceedings, the proof does not support the truthfulness of Brunet's fraudulent conduct as alleged by Segal.

[32] So why contact Rusk? The proof does not establish a close, long-standing and trusting relationship between he and Segal. Nor does it demonstrate that Rusk willingly intervened in the role of go-between or mediator. What the proof demonstrates is that Segal just sent him his communication with others and his defamatory remarks.

[33] Having communicated to Brunet's client his correspondence with others, including the police, and his description of Brunet acting in fraudulent concert with opposing counsel, the Court concludes that Segal sought primarily to create in Rusk an unfavourable attitude towards Brunet, his own lawyer, thereby unjustly attacking the latter's reputation. The same holds true as regards Segal's communications with two (2) Bâtonniers subsequent to the decision by the syndic of the Quebec Bar not to proceed against Brunet.

[34] Had Segal truly been acting solely with a view to knowing his rights and to seeking a settlement of his perceived dispute, he could have chosen to seek redress through the Courts or to have his own legal counsel contact Brunet. But he did not choose those options. Instead, he sought to involve the police, to disrupt the

relationship between Brunet and his client Rusk and to create problems for Brunet with the Bâtonniers of the Quebec and Montreal Bars.

[35] Accordingly, Segal knowingly intended to attack and injure Brunet's reputation with a view to exposing him to the contempt of an important client, his peers and, through the involvement of the police, the public. He did so with temerity and malice.

[36] In this regard, the Courts have previously recognized the particular importance of a lawyer's reputation. In the matter of *Rourke c. La Perrière*¹⁴, Justice Charles G. Grenier described that importance in the following terms:

[105] Les défendeurs ne pouvaient ignorer qu'en soi des accusations de manoeuvre frauduleuse et d'intimidation portées contre un avocat constituent des accusations majeures en raison du statut professionnel particulier réservé par la société à l'avocat.

[106] Reprendre les mêmes accusations dans une plainte officielle au Barreau constituait de leur part un geste lourd de conséquences puisque, selon ce qu'a déterminé la Cour suprême dans Botiuk c. Toronto Free Press, « la moralité même et la réputation d'intégrité constituent la plus importante qualité de l'avocat » et que tel qu'exprimé par cette même Cour dans Hill c. Église de scientologie de Toronto, la réputation est particulièrement importante pour un avocat puisqu'elle est au cœur même de ce qui lui permet d'exercer sa profession.

[37] In light of the foregoing, Segal committed an actionable fault in his defamation of Brunet, giving rise to his civil liability towards the latter for damages.

[38] In this regard, it is important to draw a distinction between Segal personally and the co-Defendant Gestion GSA Inc. The Court is of the view that the proof is insufficient, if not totally non-existent, to permit a conclusion that the corporate entity defamed Brunet and committed a fault. The use of an email address appears far too limited on which to base a holding of fault.

3.2 The issue of damages

[39] Having established that Segal committed a fault, the burden is on Brunet to establish that such fault has caused him damages¹⁵.

[40] Brunet seeks payment of \$150,000 for moral damages and an additional \$150,000 as punitive damages.

¹⁴ 2008 QCCQ 2231.

¹⁵ *Chenail*, supra, note 13.

[41] As regards claims for moral damages, the case law has established eight (8) criteria to be considered by the courts. Those were identified by Justice Chevalier in the matter of *Fabien c. Dimanche-Matin Ltée*¹⁶ and read as follows:

- 1) *la gravité intrinsèque de l'acte diffamatoire;*
- 2) *sa portée particulière relativement à celui qui en a été la victime;*
- 3) *l'importance de la diffusion publique dont le libellé a été l'objet;*
- 4) *le genre de personne qui, présumément, en ont pris connaissance, et les conséquences que la diffamation a pu avoir sur leur esprit et sur leur opinion à l'égard de la victime;*
- 5) *le degré de la déchéance plus ou moins considérable à laquelle cette diffamation a réduit la victime par comparaison avec son statut antérieur;*
- 6) *la durée éventuelle et raisonnablement prévisible du dommage causé et de la déchéance subie;*
- 7) *la contribution possible de la victime, par sa propre attitude ou sa conduite particulière, à la survenance du préjudice dont elle se plaint;*
- 8) *les circonstances extérieures qui auraient, de toutes façons et indépendamment de l'acte fautif des (...) défendeurs, constitué des causes probables du préjudice allégué, ou, au moins, d'une partie de ce préjudice.*

[42] What damages has Brunet suffered as a result of Segal's fault?

[43] Brunet claims that it was humiliating for him to have to explain to his client the entire situation involving Segal's accusations. Moreover, he states that he was bowled over by being accused of fraud and having to explain himself to the police.

[44] In fact, Segal has never retracted his accusations, nor has he apologized to Brunet. The proof would indicate that Segal will likely never do either.

[45] Yet, Brunet acknowledges that he is not claiming for the loss of business and, in fact, he is still acting for Rusk. He was never charged by the police nor reprimanded by the Barreau.

[46] From the proof, the Court concludes that the defamation by Segal was undoubtedly grave in nature. An allegation of fraud and connivance with opposing counsel is indeed a serious matter for a lawyer. Nor can Brunet be considered responsible for the situation, not based on the proof made for the purposes of these proceedings.

¹⁶ [1979] C.S. 928, p. 944.

[47] That said, the actionable defamation was limited to a relatively small number of people, was not made to the public or the legal community at large and, ultimately, had a rather limited impact on Brunet as regards his reputation as a lawyer.

[48] In light of the foregoing, the Court is of the view that although Brunet has suffered moral damages caused by Segal, the amount claimed is excessive. Instead, an amount of \$25,000 is more appropriate in the present circumstances, and the Court holds accordingly.

[49] As regards the claim for punitive damages, it is important to keep in mind that the unlawful interference with a Charter right gives rise to punitive damages only in cases where the interference is intentional¹⁷.

[50] In this regard, the author of the unlawful interference must have had the desire to cause the reasonable and probable immediate consequences of his act¹⁸.

[51] In the present case, as indicated above, the Court has already concluded that Segal intended to cause damage to Brunet's reputation. By so doing, he intentionally interfered with the latter's Charter rights.

[52] Another issue to be considered as regards the award of punitive damages is the dissuasive and preventative nature of such damages¹⁹.

[53] In the present case, Segal's conduct demonstrates that dissuasion is necessary.

[54] That said, Segal argues that, although the Court has broad discretion, it should take into consideration his financial situation when evaluating the award of punitive damages.

[55] In support of Segal's position, Article 1621 C.C.Q. does direct the Court when determining a punitive damage award to take into account the appropriate circumstances, including the debtor's "patrimonial situation".

[56] However, Segal has made very little proof as to his patrimonial situation. His proof is comprised of a few terse statements, without any collaborative proof. He informed the Court that he has lost his house because he did not have the money to pay his mortgage. He claims to now live in a two-bedroom apartment and to have no income, such that he has not filed an income tax return.

¹⁷ *Charter of Human Rights and Freedoms*, supra, note 12.

¹⁸ *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1976] S.C.R. 211, p. 262.

¹⁹ Art. 1621 C.C.Q.

[57] That short summary covers the extent of Segal's proof on his patrimonial situation. Has the corporate Defendant filed tax returns? Does Segal or his company, the co-Defendant, own any other assets? Did Segal divest himself of assets in the recent past? The proof does not enable the Court to respond to these questions or to any others that reasonably come to mind in such circumstances.

[58] However, that said, the Court also observed that Segal was not challenged during cross-examination on the issue of his patrimonial situation.

[59] In addition, Article 1621 C.C.Q., also directs the Court to take into consideration the extent of the reparation for which the debtor is already liable to the creditor, which the Court has fixed at \$25,000.

[60] Under the circumstances, the Court is of the view that an amount of \$10,000 in punitive damages is appropriate in the present case.

3.3 The issue of prescription

[61] During the argument phase of trial, Segal raised for the first time that Brunet's action is prescribed. Upon motion presented orally, the Court authorized the Defendants to amend their defence so as to plead prescription²⁰.

[62] Segal's position is that the defamation, if it exists, is essentially a continuum from his complaint filed with the Quebec Bar in 2011, such that Brunet's action at law, filed in March 2013, had already been prescribed by June 6, 2012, and this as a result of the one-year prescriptive period for defamation stipulated in Article 2929 C.C.Q.

[63] Segal pleads that Brunet, both in his proceedings and during his testimony, referred to the complaint filed with the Quebec Bar. As well, he argues that even Brunet admits that the events are one continuous actionable cause, a campaign of defamation, as opposed to a series of distinct individual causes of action.

[64] The Court concurs with the case law cited by Segal to the effect that, pursuant to Articles 2929 and 2880 C.C.Q., the extinctive prescription of one year commences when the victim acquires knowledge of the defamation.

[65] The Court would also concur that if Brunet waited until March 2013 to institute proceedings in relation to Segal's defamatory statements to the Quebec Bar in 2011, his action may well have been prescribed by then, given that he was made aware thereof by June 2011. But that does not respond to the actual question before the Court. Nor does Brunet's use of the word "campaign" to describe Segal's conduct constitute an

²⁰ The parties were provided an additional delay within which to file authorities on the issue of prescription.

admission, as pleaded by Segal, that he is suing for the complaint to the Quebec Bar or that in fact the defamation is but a single continuing act.

[66] Brunet testified that he is not suing for the defamation made to the Quebec Bar in 2011. He refers to it as part of the overall context of what has transpired between he and Segal. He is suing for what was said to Rusk, the police and the two (2) Bâtonniers in 2012-2013, of which the proof establishes he only learned in March 2013.

[67] The Court is of the view that to give life to Segal's contention would be tantamount to establishing a principle that once an action at law as regards an initial defamation is prescribed, then the author of the defamation is free to defame anew with impunity. Certainly none of the case law cited by Segal stands for such a principle.

[68] No doubt, each case must be analyzed on its individual facts. In the present case, the various defamations by Segal constitute separate events, and each separate event is a separate prejudice subject to a distinct prescription²¹.

[69] The events on which Brunet bases his action are those of which he became aware in March 2013. His action at law regarding same were not prescribed by the time he instituted his proceedings only weeks later.

3.4 The injunction

[70] Given the circumstances of the present case, and for the reasons described above, the Court is of the view that the permanent injunction sought by Brunet against Segal is justified and warranted so as to limit the risks of further instances of defamation.

[71] Not so, however, for the corporate Defendant. As mentioned above, the proof does not establish that it has defamed Brunet. An injunction against it would accordingly be inappropriate.

[72] However, given that Segal is the sole shareholder, officer and director of GSA, and further that no separate counsel was retained for GSA, no award of costs will be made in favour of the latter. To do so would be to provide a benefit to Segal, which would be inappropriate in the present case.

²¹ *Creighton v. Immeubles Trans Québec Inc.*, 1988 R.J.Q. 27 (C.A.), p. 29; *Painchaud c. Côté*, J.E. 2005-1794 (C.S.).

FOR THESE REASONS, THE COURT:

[73] **GRANTS** Plaintiff's action against Gerald Segal;

[74] **DISMISSES** Plaintiff's action against Gestion GSA Inc., without costs;

[75] **CONDEMNS** Gerald Segal to pay to Louis Brunet the amount of \$35,000 plus interest and the additional indemnity provided by Article 1619 C.C.Q., as from the date of service;

[76] **ORDERS** Gerald Segal not to publish, broadcast or otherwise communicate, personally or through Gestion GSA Inc. or any other entity, or under any other name than his own, either orally or in writing, including electronically or otherwise, any information, commentary, affirmation or remark relating to Louis G. Brunet, other than through the intermediary of a lawyer, in legal proceedings, or with the permission of this Court.

[77] **THE WHOLE**, with costs against Gerald Segal.

Gary D.D. Morrison, J.S.C.

Me Michel Rocheleau
CAIN LAMARRE CASGRAIN WELLS
Attorneys for Plaintiff

Me Pierre François McNicolls
MERCADANTE DI PACE
Attorneys for Defendants

Date of Hearing : October 21, 2013