

CITATION: Supreme Auto Group Inc. v. Toronto (Police Services Board), 2010 ONSC 3803  
COURT FILE NO.: CV-09-382151  
DATE: 20100702

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SUPREME AUTO GROUP INC., CHARLES  
WILTSHIRE, LAMONT WILTSHIRE,  
JUSTIN WILTSHIRE AND AARON  
WILTSHIRE,

Plaintiffs

)  
)  
)  
) *Julian N. Falconer and Sanil S. Mathai,*  
) Counsel for the Plaintiffs  
)  
)

- and -

CHIEF WILLIAM BLAIR, DETECTIVE  
CONSTABLE DOUG BACKUS,  
DETECTIVE SERGEANT PATRICK  
PLUNKETT, TORONTO POLICE  
SERVICES BOARD, SUPERINTENDENT  
JIM DOUGLAS, INSPECTOR TOM  
CAMERON, DURHAM REGIONAL  
POLICE SERVICES BOARD, POLICE  
CONSTABLE JANE DOE, POLICE  
CONSTABLE JOHN DOE AND ROGERS  
COMMUNICATIONS INC.

Defendants

)  
)  
)  
) *Michael C. Smith and Graham MacLeod,*  
) Counsel for the Defendants, William Blair,  
) Doug Backus, Patrick Plunkett and Toronto  
) Police Services Board  
)  
) *Kirk F. Stevens and Josh Koziembrocki,*  
) Counsel for the Defendants, Superintendent  
) Jim Douglas, Inspector Tom Cameron and  
) Durham Regional Police Services Board  
)  
)  
)

) HEARD: May 10, 2010

S. CHAPNIK J.

ORDER

INTRODUCTION

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[1] On April 1, 2009 Chief William Blair (Chief Blair) of the Toronto Police Services (the TPS) hosted a press conference to announce to the public the results of a joint police investigation conducted by the TPS and the Durham Regional Police Service (the DRPS).

[2] The plaintiffs have commenced an action for damages for defamation or, in the alternative, negligence and negligent investigation arising from the investigation, the press conference and media reports based on it.

[3] The defendants initially moved for several orders pursuant to Rule 20 and Rule 25 of the *Rules of Civil Procedure*, dismissing the action against one or more of the defendants or, in the alternative, striking out certain paragraphs of the plaintiffs' pleading. Subsequently, the plaintiffs filed a Fresh As Amended Statement of Claim. Further, at the hearing, the parties were able to considerably narrow the issues in dispute.

#### THE ISSUES

[4] The defendants (and I will refer to them collectively unless stated otherwise) raised two main issues at the hearing.

[5] Firstly, they claim that the Libel Notices served on them, pursuant to s. 5(1) of the *Libel and Slander Act*, R.S.O. c.L.12 (the Act) were deficient. Specifically, they contend that since no notice was given on behalf of the plaintiff, Justin Wiltshire, his claims for defamation should be struck; moreover, the notices are deficient in their details and thus, no action lies in respect of any claims or words included in the plaintiffs' pleading that are not mentioned in the notices.

[6] Secondly, counsel on behalf of Chief Blair claims that the impugned utterances spoken by Chief Blair do not give rise to a defamatory meaning and therefore, the defamation claims made against him must fail. Further, there is no defamatory meaning that could encompass the individually named plaintiffs.

#### BACKGROUND

[7] On April 1, 2009, the TPS and DRPS organized number of "guns and gangs" searches throughout the GTA, pursuant to search warrants. The project, named Project Fusion, resulted in the arrest of 125 individuals.

[8] During the investigation, a search warrant was executed at the premises of the plaintiff, Supreme Auto Group Inc. (Supreme Auto). The warrant did not result in any charges being laid against Supreme Auto or its principals.

[9] On the afternoon of April 1, 2009, the TPS and DRPS held a joint press conference to announce to the public the results of Project Fusion. Chief Blair hosted the press conference with other chief officials at the TPS office. In the course of the press conference, Chief Blair stated, as follows:

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During the course of our initial investigation, a business premise in Durham Region was identified as a significant distribution point for firearms and for controlled substances.

[10] Chief Blair did not name the specific "business premise" that he was referring to except to say it was located in Durham Region. However, subsequently, in the same press conference, he introduced Superintendent Jim Douglas (Douglas) who identified the business premise as being Supreme Auto.

[11] The plaintiffs allege that the said statements were made in the absence of any evidence that would indicate Supreme Auto or any of its principals were involved in any form of illegal activity. Moreover, Douglas and Inspector Tom Cameron (Cameron) continued to make statements about Supreme Auto in subsequent comments to the media that were false and defamatory, or in the alternative, negligently made.

[12] The plaintiffs, Charles Wiltshire, Lamont Wiltshire, Justin Wiltshire and Aaron Wiltshire are the principals of Supreme Auto. They claim that the statements made taken in context contain an innuendo that the principals of Supreme Auto were members of a criminal organization involved in the selling of illegal firearms and narcotics. The defendants deny that any statements made bear a defamatory meaning or that there is any innuendo implicating the individually named plaintiffs.

#### THE LAW

[13] The seminal case of *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 (S.C.C.) sets out the underlying principle in Rule 21 motions that, unless patently ridiculous or incapable of proof, the facts pleaded are to be taken as proven. Further, for the motion to succeed it must be "plain and obvious" that the pleading, or a portion of it, is unfounded or contains no reasonable cause of action. See also *1597203 Ontario Limited v. Ontario*, [2007] O.J. No. 2349 (Sup. Ct.) at para. 12.

[14] As for pleadings particular to defamation cases, the modern approach, as articulated by Raymond E. Brown in the *Law of Defamation in Canada*, 2<sup>nd</sup> ed. (updated 1999), Toronto: Carswell 1994, reiterates the test as being "whether the claim is sufficiently clear to enable the defendant to plead on it".

[15] An imputation or meaning pleaded in a statement of claim will only be struck where the defendant establishes that it is untenable or manifestly groundless. *Lysko v. Braley*, [2006] O.J. No. 1137 (C.A.) at para. 17.

[16] To be actionable, the words must be reasonably understood by others in a defamatory sense that tends to lower the plaintiff in the estimation of right-thinking members of society or to expose him to hatred, contempt or ridicule. *Laufer v. Bucklaschuck* (1999), 181 D.L.R. (4<sup>th</sup>) 83 (Man. C.A.) at para. 23.

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[17] Regarding Libel Notices, the notices must "identify the plaintiff and fairly bring home to the publisher the defamatory matter". *De Gasperis v Bell Globemedia Publishing Inc.*, [2004] O.J. No. 1222 (S.C.J.) at para. 4.

[18] In dealing with subsequent publications, Laskin J.A. in *Misir v. Toronto Star Newspapers Ltd.*, [1997] O.J. No. 4960 held that "if words in a publication are defamatory but do not expressly refer to the plaintiffs, the plaintiffs are entitled to introduce a subsequent publication to show that they are the persons referred to in the earlier publication".

#### THE LIBEL NOTICES

[19] There is no issue as to service pertaining to the TPS.

[20] The first Libel Notice was served on the DRPS on April 24, 2009 directed to its Chief, by leaving it with an adult person at DRPS Headquarters. The body of the notice indicates it was served on behalf of Supreme Auto and specifically includes excerpts of articles published in the Toronto Star on April 1, 2009 and in the Toronto Sun on April 2, 2009.

[21] A second notice was served on the DRPS on May 6, 2009 on behalf of Supreme Auto as well as the individually named plaintiffs with the exception of Justin Wiltshire. It asserts, among other things, that the defendants implied the owners of Supreme Auto were either engaged in criminal activity or had knowledge that criminal activity occurred at the premises of Supreme Auto, and they failed to prohibit that activity from occurring. The notice demanded a pre-set statement of retraction and apology.

[22] Section 5(1) of the *Libel and Slander Act* provides that:

No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

[23] No notice was given within the limitation period on behalf of Justin Wiltshire. Section 5(1) is rooted in an action by a plaintiff who has allegedly been defamed. The defamation laws in general protect defendants by imposing strict notice and limitation requirements on plaintiffs. The limitation period has passed. The defamation claims advanced by or on behalf of Justin Wiltshire must, therefore, be struck.

[24] A reading of s. 5(1) indicates that the law does not require a description of the defamatory meaning a plaintiff attributes to the uttered words. What is required is a written notice specifying "the matter complained of".

[25] The defendants point out that while the notices quote articles published in the Toronto Star and the Toronto Sun, they do not mention those in the National Post, Globe and Mail or

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reported by Rogers Communications Inc., although these publications, or excerpts from them, were later inserted into the plaintiffs' pleading. According to the defendants, to the extent that certain words or statements contained in the Statement of Claim are not quoted in the Libel Notices, no action lies.

[26] I disagree. Clearly, defendants served with a Libel Notice must know with clarity the essence of the case against them. The purpose of the notice is to allow for an appropriate response. As noted in the *De Gasperis* case, *supra*, a notice must identify the plaintiff and fairly bring home to the publisher the defamatory matter.

[27] This is not a situation as occurred in the case of *Siddiqui v. Canadian Broadcasting Corp.*, [2000] O.J. No. 3638 (C.A.). In that case, no words that formed the basis for the allegation of libel were quoted in the notice.

[28] In this case, the words alleged to be defamatory are identified in the Libel Notices. I find that the notices contained sufficient clear information of the matter complained of for the defendants to make an appropriate response. It is not plain and obvious that the notices were in any way insufficient. This allegation by the defendants must, therefore, fail.

#### A DEFAMATORY MEANING

[29] Did the words spoken give rise to a defamatory meaning? In the context of a relatively lengthy press conference, Chief Blair mentioned a business premise in Durham Region identified in the initial stages of the investigation. It was Douglas who, shortly thereafter in the broadcast, identified the business premise in question as Supreme Auto.

[30] It is argued that the words uttered by Chief Blair are not capable of bearing a defamatory meaning. The video of the press conference shows that Douglas spoke at the invitation of Chief Blair and in his immediate presence. Given the timing and location of Douglas' comments, the words spoken must be taken together with those of Chief Blair, as one "publication". Taking the words within the context of the entire press conference, I find it is not plain and obvious that the words complained of in respect of Supreme Auto, are not capable of bearing a defamatory meaning. Thus, this argument advanced by the TPS defendants must fail.

[31] Can the words complained of bear a defamatory meaning against the individually named plaintiffs? It is evident that none of the statements made at the press conference or following it directly refer to the named plaintiffs. Yet, the plaintiffs allege that the plain and ordinary meaning of Chief Blair's comments suggest that Supreme Auto's owners and operators were engaged in the distribution of firearms and controlled substances. They further claim that, in the context of the entire press conference, the clear implication is that the principals of the company were either engaged in criminal activities or had knowledge of this and failed to prohibit such activity from occurring. This, they say, constitutes a "true innuendo", as it is well known within the Durham Region that the named plaintiffs are the owners and operators of Supreme Auto.

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[32] The plaintiffs rely on the cases of *Misir v. Toronto Star Newspapers*, *supra* at para. 22 and *Rupic v. Toronto Star Newspapers Ltd.*, [2009] O.J. No. 101 (Sup. Ct.) at para. 28. However, both cases can be distinguished from this one on their facts. In *Misir*, while the first set of published articles could not reasonably be said to relate to the plaintiffs, the subsequent ones did, and when read together, it was not plain and obvious that the plaintiffs could not succeed. In *Rupic*, the alleged defamatory statement contained sufficient extrinsic facts to demonstrate the words complained of were capable of applying to the named plaintiffs.

[33] That does not reflect the circumstances in this case. Here the article published in the Toronto Star on April 1, 2009 initially refers to an attempted assassination of a Crown witness "last May" where gunmen opened fire on a car leaving Supreme Auto Group. The article goes on to state:

The dealership was raided by police yesterday, but Cameron said nothing was found. Police think guns and drugs were being dealt from there. He said "We believe that there were firearms available there *from people who frequented the place*. "Drugs as well", Cameron said. "It was a place that tended to *attract unsavoury characters, but we're not making any allegations against the owners of the place*. [emphasis added]

[34] In my view, the pleading contains no reasonable cause of action in defamation by the individual plaintiffs. Identifying the business location in this context does not, without more, defame the individual owners.

[35] Further, in light of the specific words of Cameron (even if stated a day later and by a different person reporting on the same incident) any such inference or innuendo would be negated. He specifically states that the police were not making any allegations against the owners of Supreme Auto. In light of this and the words complained of taken as a whole, reasonable people would not, in my view, infer that the owners were involved in illegal activity; nor would the impugned utterances be reasonably understood by others to lower the reputation of the individual plaintiffs in their estimation. The stated imputation is, in the circumstances, untenable in law. It is plain and obvious that the words complained of are not capable of having a defamatory meaning regarding the individually named plaintiffs, Charles Wiltshire, Lamont Wiltshire, Justin Wiltshire and Aaron Wiltshire. Their allegations framed in defamation as against the defendants, or any of them, are struck.

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## CONCLUSION

[36] In summary, the claims of the named plaintiffs, Charles Wiltshire, Lamont Wiltshire, Justin Wiltshire and Aaron Wiltshire, founded in defamation, are struck. I leave it to the parties to make the appropriate amendments to the Fresh As Amended Statement of Claim.

[37] The remainder of the defendants' motions are dismissed. Since each of the parties has been partially successful, there will be no order as to costs.

  
Sandra Chapnik J.

Released: 20100702

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CONSTABLE JOHN DOE AND ROGERS  
COMMUNICATIONS INC.**

**Defendants**

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**ORDER**

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**S. Chapnik J.**

**Released: 20100702**