

CITATION: Hearn v. Maslak-McLeod Gallery Inc., 2017 ONSC 7212
COURT FILE NO.: CV-12-455650
DATE: 20171201

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Kevin Hearn, Plaintiff

– AND –

Estate of Joseph Bertram McLeod, Deceased and Maslak-McLeod Gallery Inc.,
Defendants

– AND –

John Goldi a.k.a. Hans Werner Goldi, Joan Goldi, Joseph Otavnik and Ugo
Matulic, Non-party Respondents

BEFORE: Justice E.M. Morgan

COUNSEL: *Jonathan Sommer*, for the Plaintiff

John Goldi, in person

Joan Goldi, in person

Joseph Otavnik, in person

HEARD: December 1, 2017

PLAINTIFF'S MOTION FOR CONTEMPT

[1] Mr. Sommer, on behalf of the Plaintiff, Mr. Hearn, has brought a motion for contempt of court against four individuals: John Goldi and his spouse, Joan Goldi, Joseph Otavnik and Ugo Matulic. The first three have attended at court today. Mr. Matulic has not been found – apparently he lives in Texas – and has not attended at court today. I indicated to Mr. Sommer that Mr. Matulic must be served before any motion of this nature can proceed against him.

[2] Mr. Goldi and Mr. Otavnik both say that they were served on short notice and have not had a chance to file proper responding materials or to prepare a full response. They therefore seek an adjournment. Indeed, both of them indicate that they were not personally served with the materials, which is what is required under the Rules of Civil Procedure. They nevertheless have indicated that they have copies of the material and attended today at court with those copies in hand.

[3] Mr. Goldi further states that he is in ill health and has submitted a letter from a doctor supporting that contention. I note that the medical note was in fact from a dentist, for what that is worth. I also note that Mr. Goldi was willing to make submissions on his own behalf today, and that he did so with considerable vigour.

[4] The contempt motion has to do with various forms of harassment alleged by the Plaintiff against witnesses in the case. More specifically, the motion seeks a contempt order with respect to writings by Mr. Goldi and Mr. Otavnik aimed at the proposed expert witness for the Plaintiff in the upcoming trial, Dr. Carmen Robertson.

[5] Those writings take a number of forms. First, both Mr. Goldi and Mr. Otavnik have, at various times, written to the president of the University of Regina, where Dr. Robertson works. Second, Mr. Goldi is the author of an internet blog entitled “TheMorriseauHoaxExposedBlog.com” in which allegedly defamatory things are said about Dr. Robertson and on which court documents copied from the court file in this case are routinely reproduced and posted – including Dr. Robertson’s expert report filed in this case. Third, several emails have been sent to senior staff at Carleton University – an institution to which Dr. Robertson will either be moving or with which she is in negotiations for a faculty position – providing those Carleton University people with a link to Mr. Goldi’s Morriseau blog.

[6] I will deal with each of these in turn.

[7] The letter from Mr. Goldi to the president of the University of Regina is not new. It was produced the last time Mr. Goldi was in court – when he applied for intervenor status in this trial – and was the subject of part of my endorsement dismissing that application. In my endorsement of October 3, 2017, I described Mr. Goldi’s letter as “an angry and, in my view, inappropriate letter to [Dr. Robertson’s] employer”. I expected Mr. Goldi to refrain from any further correspondence with the University of Regina in this regard, and he appears to have so refrained. Nothing new has been written by him to Dr. Robertson’s current employer since that time.

[8] Mr. Otavnik has also written to the president of the University of Regina complaining about Dr. Robertson’s expert report and the position which she is taking in this case. Unlike Mr. Goldi’s letter, Mr. Otavnik’s is more civil in tone. He is apparently upset at learning that Dr. Robertson is taking the position as expert that several Norval Morriseau paintings donated to a museum by Mr. Otavnik’s family may be forgeries. He has indicated why he believes Dr. Robertson is wrong in holding this view, and has suggested that he might seek some kind of legal redress.

[9] In my view, Mr. Otavnik’s letter is not properly directed to the president of a university. As I explained to him at the hearing, university presidents in Canada are professionally obliged to respect the academic freedom of their faculty members, and it would be surprising if anyone in that position would intervene with a scholar and tell her what to write or what not to write in her own scholarly field. That is simply not how Canadian universities work. It was confirmed to me by Mr. Sommer that neither Mr. Otavnik’s letters nor Mr. Goldi’s letter before that were

effective in moving the president of the University of Regina to take any action against Dr. Robertson. That does not surprise me at all. This entire initiative is misdirected.

[10] I am certain that Dr. Robertson does not enjoy having the president of her university being corresponded with in that way, and I do not blame her for being upset. But nothing appears to have actually come of these three letters. Certainly, Mr. Otavnik's letters, misdirected and poorly conceived as they are, do not rise to the level of harassment and cannot be considered to be contemptuous of the court process. They simply state his view, albeit to someone who, from an academic and professional point of view, does not and should not care.

[11] As for Mr. Goldi's blog, I will defer any overall consideration of it until such time that this motion returns for full argument. As I explained to Mr. Sommer at the outset, for a court to order the taking down of a website or an internet blog is akin to a court ordering the banning of a book. There are very serious freedom of expression issues to be considered before that can be done, and I would not purport to do so without a full hearing and without having the issues fully briefed by both sides. Mr. Goldi has indicated as a preliminary response that he would be raising the defenses of fair comment and responsible communication as described in the relevant case law, and I would want to hear that case law argued. It strikes me that a subject of considerable debate like the authenticity of Morrissette paintings – which, as I noted in my previous endorsement have been the subject of numerous law suits – would at least on first blush be candidates for the types of free speech defenses that Mr. Goldi mentions.

[12] Accordingly, to the extent that this motion seeks to remove Mr. Goldi's blog from the internet, it is adjourned to a future date. I leave it to Mr. Sommer to contemplate when and if he plans to bring this back, although it must be after the trial in this action that is set to start on Monday.

[13] That said, Mr. Goldi's blog is not only very harsh, it is in parts aimed at specific individuals – including Dr. Robertson. Among other things, Mr. Goldi writes that Dr. Robertson's report submitted in this case is an “unsubstantiated and fraudulent secret report...doing little more than fronting for a fraud”. He refers to it as a “so-called expert report”, and states that in publishing it he has exposed “countless acts of academic malfeasance, illustrative of Robertson's work as a so-called ‘researcher’”.

[14] Mr. Sommer characterizes these statements and others on the blog as defamatory. They are the type of statements that should not and cannot be made without attracting legal action. They certainly should never be made to a person's employer, as they could easily be construed as not only defamatory but an interference with the target person's economic and contractual relations. I will make no more comment on the strength of Mr. Sommer's submission in that regard since Dr. Robertson is not a plaintiff here. I will say, however, that if these allegations were repeatedly called to the attention of Dr. Robertson's employer it would look like an attempt was being made to intimidate or actively discourage her from testifying at trial as an expert witness.

[15] That brings me to the emails that have been sent to Carleton University. Mr. Sommers has produced in the record a copy of two emails that in recent weeks have been sent to officials at Carleton from an email account under the name Roxanne Spritzer (roxanne.spritzer@rogers.ca). These emails contain a link to Mr. Goldi's blog containing the damaging statements about Dr. Robertson. According to Dr. Robertson, she has been in negotiations to move from Regina to Carleton, but has kept those negotiations confidential. She states in her affidavit that only someone who managed to hack her email account would have known about her plans. She does not know who Roxanne Spritzer is, but says that it is very suspicious that the only communications she has seen from this email account are aimed at Carleton University personnel and provide them with a link to Mr. Goldi's blog about her work.

[16] Mr. Sommers has brought a motion against Rogers Communications, Inc. seeking disclosure of the name and address of the owner of the Roxanne Spritzer email account. Rogers did not oppose that motion. The Order was granted, and on receiving it Rogers has revealed that the person who registered this email address is Mr. Goldi's spouse, Joan Goldi. She has attended today in court as well, and asserts that she has never used that email address and has nothing to do with it.

[17] This statement by Ms. Goldi was followed by Mr. Goldi admitting that the roxanne.spritzer@rogers.ca address is one of several that are used by him when he wants to disguise his identity. He says that he does this for safety reasons, as he does not want anyone that he angers knowing who he is as they might break into his home or steal his art work.

[18] I do not know how Mr. and Ms. Goldi knew that Dr. Robertson was in communication with Carleton University. But however they got hold of this information, they should not have been communicating in this way with Carleton officials.

[19] Since I doubt that Mr. Goldi and Ms. Goldi feared a break-in or other such conduct from officials of Carleton University, the fact that these communications were done under pseudonym is itself revealing. I see no purpose in linking Carleton people to Mr. Goldi's website where he denigrates Dr. Robertson's work in what are arguably defamatory terms other than to discourage Dr. Robertson from continuing with that work. We are on the eve of a trial in which Dr. Robertson has filed an expert report, and she has deposed that this kind of invasion of her work life has made her rethink her participation in the trial several times.

[20] I understand that the matters in issue in this trial are up for debate. But that debate is to be carried on at trial, with competing experts being examined and cross-examined. It is not to be carried on by undermining one side's expert with her employer or prospective employer. That is an interference with the judicial process that must not go on.

[21] Mr. Goldi and/or Ms. Goldi are to stop any and all direct communications with the University of Regina and Carleton University about Dr. Robertson. This includes letters, emails from Roxanne Spritzer or any other name or pseudonym, and all other modes of correspondence or communication. As this is the first time this contempt motion has been in court I will not hold them in contempt, but rather will protect the processes of this court and the fairness of the

upcoming trial by ordering Mr. and/or Ms. Goldi to cease and desist their letter and email writing to Dr. Robertson's employers about her or that link to Mr. Goldi's website writing about her.

[22] Mr. and Ms. Goldi attended today to make their argument despite not having been properly served. The affidavit of service itself concedes that the process server simply left the documents at their doorstep. While their communications about Dr. Robertson to University of Regina and Carleton University must stop, they did respect the process of the court and spent all day in a hearing attempting to explain themselves.

[23] As for Mr. Otavnik, his conduct was misguided but not illegal. The motion against him is dismissed. That said, it is not surprising that his letters, which came shortly on the heels of Mr. Goldi's letter, prompted the Plaintiff to include him in this motion. There is a trial starting in two days, and the Plaintiff and his counsel are understandably concerned that the trial process be fully respected.

[24] There shall therefore be no costs for or against any party to this motion.

Morgan J.

Date: December 1, 2017