

Ontario Superior Court of Justice
Toronto Small Claims Court

Joseph Otavnik

and

Toronto Police Services Board
(incorrectly named as the Toronto Police Service),
Frank Olsen, Larry Sinclair, Brian Miller, Christine Montis

Reasons for Judgement: November 25, 2013

Kay, D.J.:

The plaintiff, Joseph Otavnik, made a claim for damages in the sum of \$25,000.00 as against the defendants, the Toronto Police Services Board, incorrectly named in the Title of Proceedings as "Toronto Police Services", Frank Olsen, Larry Sinclair, Brian Miller, and Christine Montis, all law enforcement officers engaged by the Toronto Police Services Board, for 'negligent investigation'.

The plaintiff's claim was based upon the actions of the defendants before and after the plaintiff's arrest and charges under the Criminal Code of Canada for the offences of Criminal Harassment and Assault as against one Ritchie Sinclair, hereinafter referred to as the Complainant.

The plaintiff has taken issue with many of the facts that were listed in reports by the investigating police officer about the plaintiff. A number of these accusations were supplied by the complainant, Sinclair.

It is the plaintiff's evidence that had the investigating police officer checked these accusations, he would have discovered that they were indeed false. The plaintiff has claimed that the Toronto Police did not exercise due diligence in their investigations by taking the word of the complainant.

It was further alleged by the plaintiff that the Police: (a) did no independent investigation, not even going to the complainant's web site; and (b) had no probable cause to charge the plaintiff.

He stated that if the police had done a thorough investigation, they would have uncovered the complainant's association in the practice of the production of fraudulent native art for the purpose of obtaining tax receipts of a fraudulently high value.

The plaintiff produced no evidence of damages in support of his claim.

The only defendant to testify was Police Detective Frank Olsen, Badge No. 3525. Detective Olsen has twenty-six years experience with the Police Service. He is a detective in the Criminal Investigation Branch and also trains Detective Constables.

Detective Olsen conducted his investigation following the initial report of a uniformed officer in September, 2009, until the plaintiffs arrest on April 9, 2010.

The complainant, Sinclair, gave a written statement to the police alleging threats and assault by the plaintiff, Otavnik.

Detective Olsen stated that the complainant appeared credible, was crying, and had made earlier complaints to the Toronto Police against the plaintiff.

Detective Olsen further gave evidence as follows: There were at the time, outstanding charges against the plaintiff, who was allegedly harassing a lawyer employed by the Ontario Securities Commission.

There was another report by the complainant's lawyer, of harassment by the plaintiff for which the plaintiff later apologized.

He thought that the complainant's accusations were reasonable. He thought that it was probable that criminal harassment took place.

The complainant feared the plaintiff. The complainant feared for his safety. The harassment was ongoing and seemed to be escalating.

Detective Olsen believed that he had reasonable and probable grounds for the charges laid against the plaintiff. He, Detective Olsen, offered the plaintiff the opportunity to tell his side of the story; however the plaintiff did not want to do so and exercised his legal right not to talk to the police about this matter. The plaintiff was released on a Form 10 with a promise to appear.

Detective Olsen gave evidence that he was aware of the practice of the trade in fraudulent native art accompanied by false appraisals used to produce high value tax receipts. He further stated that although he was aware of this practice, he was not involved with investigations in this area.

Detective Olsen stated that he did do computer checks and looked at the internet as it related to his investigation.

Detective Olsen did background checks on the complainant. He also did background checks on the plaintiff who had no criminal record but did have prior police contact.

Detective Olsen had no concerns about the validity of the complainant's information.

Detective Olsen did canvass for relevant witnesses.

Following the plaintiff's arrest, Detective Olsen stated that as is usual, the Crown attorney and the Attorney General then took charge of the case. The police provide all documentation regarding the charges and the investigation. The decision to proceed is solely that of the Crown.

At the plaintiff's criminal trial on the charges of Criminal Harassment and Assault of the complainant, following the complainant's evidence, the plaintiff asked the court for a directed verdict of acquittal. The judge refused this request.

At the conclusion of the plaintiff's criminal trial, he was acquitted of all charges. The judge found that there was 'reasonable doubt'.

Following the plaintiff's criminal trial, Detective Olsen stated in his uncontradicted evidence that the plaintiff stated to him: "I will be seeing you in court soon". The plaintiff hit Detective Olsen's arm and said "Fuck you."

Detective Olsen elected not to lay an assault charge against the plaintiff. The officer stated to the plaintiff that it was "one caution".

Under cross-examination, Detective Olsen stated that the internet had nothing to do with the criminal harassment and assault charges.

Further, Detective Olsen stated that the emails presented by the plaintiff to the police after the plaintiff was charged but prior to trial, did not change the Detective's opinion of the complainant.

Detective Olsen testified that other criminal cases involving the complainant were not directly relevant in the charges against the plaintiff in this matter. It was entirely up to the Crown as to whether to proceed to trial in the complainant's case.

Detective Olsen stated in evidence that that as a matter of course he must send all documentation and reports to the Crown from the complainant. He, Detective Olsen, did not filter the information nor did he investigate further.

Detective Olsen, while under cross-examination, stated that he did not look into alleged fraud possibly perpetrated by the complainant as it was not the Detective's function to do so in this case. Neither was it relevant that the complainant believed that the plaintiff orchestrated a sixteen million dollar law suit even if such information was publically available.

The plaintiff, during cross examination of Detective Olsen, asked him about emails which the complainant believed came from the plaintiff. Detective Olsen testified that he did not search the IP addresses. He did verify "... what I can". Detective Olsen repeated that the complainant appeared credible and reasonable.

Detective Olsen stated that he did not read anything that said the complainant was a liar. There was no prior history, no financial gain for the complainant. He appeared genuine. He was crying.

Detective Olsen also gave evidence that there was an RCMP investigation of fraud which ... fit in with the plaintiff's prior arrest. The plaintiff harassed unconnected persons at the Ontario Securities Commission.

Additionally, Detective Olsen stated in his evidence that the abusive manner in which that the plaintiff previously treated the Court, the Crown Attorney, and the witnesses, supported the information from the complainant to Detective Olsen.

I found Detective Olsen completely credible and accept it as factual. There were no other witnesses in support of the defence.

The duties of a police officer are outlined in the Police Services Act. Case law has added further details to the expectations and responsibilities of the police. It has thus been established that the police are not required to establish a prima facie case, but need only reasonable and probable grounds to make an arrest.

There is no requirement for the police to interview every possible witness prior to an arrest. After the arrest of the plaintiff, the police in this case did conduct further investigation.

The police need not decide guilt or innocence, but must conduct themselves reasonably.

A police officer sets out the required charge(s) and it is the Crown Attorney who then decides if there is likely success at trial. Evidence might later arise which may affect the outcome at trial; however, this does not invalidate the original arrest and charge.

The case in the Supreme Court of Canada, *Hill v. Hamilton-Wentworth Regional Police Services Board* [2007] S.C.J. No. 41, established that the tort of negligent investigation should only be allowed for pains and penalties that are wrongfully imposed. The police should not be penalized ... unless the treatment ... causes compensable damage....

The plaintiff in his own words has stated that he presented no evidence of damages in this matter.

Detective Olsen has given evidence that he believed that he had reasonable and probable grounds to charge the plaintiff with criminal offences. The Detective did state that he conducted an investigation and outlined details of those efforts. The Court accepts the officer's evidence in this regard.

The fact that the plaintiff believes that that Detective Olsen and his colleagues should have conducted a much more thorough and extensive additional investigation, including reading voluminous trial transcripts in other matters which involved the complainant, is simply not realistic nor is it required.

The plaintiff has presented no evidence of damages. The police have presented evidence that there was indeed an investigation carried out and believed that they had reasonable and probable grounds to charge the plaintiff.

There is little or no evidence before the Court supporting the plaintiff's claim against the other named defendants.

While the Court notes that the plaintiff made able argument in expressing his claim, and conducted himself at all times with proper respect and decorum, the Court finds that the plaintiff has not proven his claim of negligent investigation against any of the named defendants. Therefore, the plaintiff's claim is dismissed with costs as against all defendants.

This trial was carried on over two days. The plaintiff was self represented. Only one defendant appeared personally at trial. The five defendants had counsel who submitted an extensive and detailed Memorandum of Law.

The Court awards costs against the plaintiff in favour of the defendants in the total sum of one thousand dollars. Parties may speak to me if there is a significant issue as to the award of costs.

