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No.C913510
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN: SARAH JANE BARBEAU PLAINTIFF AND: ATTORNEY GENERAL OF B.C. TONY ROWLEY, SUNSHINE COAST REGIONAL DISTRICT DEFENDANTS	REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE MEIKLEM

The Plaintiff appearing	In Person
Counsel for the Defendants Attorney General of B.C. and Tony Rowley	Lisa Mrozinski
Counsel for Sunshine Coast Regional District	Christopher S. Murdy
Place and date of trial	Vancouver, B.C. October 22,23, 1992

The events giving rise to this action started on April 27, 1990, when the plaintiff had a confrontation with Mr Stan Jones, the dutiful Dog Control Officer employed by Sunshine Coast Regional District (SCRD), while she was visiting the Roberts Creek Provincial Campsite with her loyal german shepherd "Sheba".

The plaintiff has brought action against the defendants SCRD and the Attorney General of B.C. (A.G.) and Tony Rowley (Rowley),Crown counsel in Sechelt, for damages for malicious prosecution or, alternatively, abuse of process, in respect of a stayed prosecution of the plaintiff under the SCRD's Animal Control Bylaw for failing to cause Sheba to wear a collar with a tag attached on April 27, 1990. The plaintiff also alleges breach of an oral agreement by the SCRD to pay her legal costs of defending the proceeding, and claims damages for defamation against SCRD.

The plaintiff had a tag and a collar for her dog, but Sheba was observed by Jones without its collar because the plaintiff had removed it to allow Sheba to go for a swim. If Sheba had been wearing the collar, she would still have been an outlaw because the plaintiff,who disagrees with attaching dog tags to a dog's collar, carried the tag in her purse.

The plaintiff and Jones differ in their rendition of events and of what was said by each of them at the campsite, and it is not really necessary to determine which account is the most accurate. Certainly there was a heated exchange and the plaintiff told Jones to leave. As he left, he noted her vehicle licence number and she noted that he was driving an SCRD truck. They had not previously met each other. Later that day, the plaintiff phoned SCRD to complain about the incident and the legality of the bylaw. That same day, Jones commenced his investigation of this infraction with

a visit to a Mr Byard, his predecessor as dog catcher, who gave him a tentative identification of the plaintiff as the offender and referred Jones to a police constable for more information. The police officer also opined that his description sounded like a description of Ms. Barbeau. Jones thereafter made several sorties past the plaintiff's house over the course of a week or so, turning around in her driveway.

Once satisfied of the plaintiff's identity, Jones wrote a report to Crown counsel Rowley advising him that he had observed a dog off a leash at the provincial campsite, that he had spoken to a woman who had told him her dog did not have to be on a leash or have a collar. She had said she had a licence in her purse, but refused to show it. Rowley had two reports from park officers from 1988 which he believed pertained to difficulties with the plaintiff and her dog in the same park. Jones had ascertained that the plaintiff did have a valid dog licence issued to her. Jones testified that he had not previously charged anyone with this infraction since becoming the Dog Control Officer in January of 1990. He also testified that his original intention was simply to speak to the plaintiff, and advise her that her dog should be on a leash. His usual practice is, in fact, to go to Crown counsel only after a second complaint when people have not corrected a matter he has spoken to them about.

The plaintiff was charged under the SCRD Animal Control Bylaw

and retained legal counsel. On the date set for trial,the Crown entered a stay of proceedings on its own initiative, having ascertained there might be an argument concerning the SCRD jurisdiction in provincial parks, and not being prepared to address that issue. Interestingly, this query apparently came from Jones and had not been raised by counsel.

On the date the charge was stayed, Ms. Barbeau wrote a letter to SCRD demanding the amount of $800.00 as estimated costs, and complaining of the "behaviour of that asshole you call a dogcatcher". The plaintiff actually incurred $827.00 in legal costs.

Rowley testified that the usual penalty for the bylaw infraction charged is $25.00.

The plaintiff's theory is that she was prosecuted by Rowley maliciously and for an improper private purpose. This theory was not fully articulated by the plaintiff, even in her lengthy written argument. She postulated that Rowley is a friend of a Corporal Waite, a defendant in a civil action brought by the plaintiff alleging negligence in failing to protect her adequately during the course of an apprehension she undertook during a tenure as an S.P.C.A. inspector. The plaintiff was injured in an assault upon her by a woman named Parker. Parker was charged with common assault and after a multitude of court appearances, pleaded guilty.

Ms. Barbeau believed that Rowley had reduced the charge against Parker from assault causing bodily harm to common assault in order to somehow assist Corporal Waite's defence to her civil action, and the prosecution of herself on the SCRD Animal Control Bylaw was part of the same effort.

The evidence fails to support any of the plaintiff's presumptions. Apart from her bare assertions, the plaintiff adduced no evidence of a friendship, or, indeed any association between Rowley and Corporal Waite, and Rowley denied any existed. Rowley testified that no charges against were reduced, and that the original information charged Parker with common assault. It is clear that the more serious charge was recommended to Rowley, but he decided, prior to preparing the information, to proceed only with common assault. Although his stated reasons seem less than compelling, there was no support in the evidence of the circumstances surrounding that decision for the plaintiff's theory that this was an earlier instance of Rowley assisting Waite.

I am satisfied that Jones investigated Ms. Barbeau's identity and pursued her prosecution with extraordinary tenacity, more out of vengeance for her treatment of him than out of altruistic fervour for bylaw enforcement. It is also apparent that Rowley bears ill will toward Ms. Barbeau, who has been a thorn in his side since she moved to the Sechelt area under a witness protection program. Rowley demonstrated this ill-will when, during his

testimony at trial, he gratuitously divulged her "real" name to the open court for no apparent legitimate purpose. Ms. Barbeau has stimulated this prosecutorial vigour by her attitude and behaviour toward authority generally, and these two specific individuals.

This was a prosecution that undoubtedly would never have proceeded at all if Ms. Barbeau had not been verbally abusive to Jones. The circumstances indicated de minimus infractions, and Jones initially intervened to warn her about a leash infraction, which was considered by Rowley to be too minimal to justify charging.

It is trite law that to succeed in an action for malicious prosecution, a plaintiff must prove a negative: the absence of reasonable and probable cause. I think in the clearest of cases, the existence of a de minimus defence might well satisfy the plaintiff's burden on that element. This case might well have been one of those cases if Ms. Barbeau had not taken the offensive in respect of her dealings with Jones and in her conversation with the SCRD, which both had the effect of elevating the seriousness of the infraction from the perspective of those responsible for enforcement.

The plaintiff has clearly failed to prove the absence of reasonable and probable cause. It is not necessary for me to examine the more difficult issue of malice or improper purpose to

rule that the plaintiff cannot succeed on her claim for malicious prosecution.

The alternative pleading of abuse of process can succeed, even in the face of reasonable and probable cause, if the plaintiff can prove that any defendant proceeded with this prosecution for any purpose other than to enforce the bylaws. The collateral purpose postulated by the plaintiff is not supported by any evidence, and in my view is not even rational as a theory. Spite or vengeance might be found to have motivated Jones or Rowley, but even if these were not engendered by the plaintiff, these alone would not establish the cause of action, as they are not in themselves purposes . There must be some additional overt act or threat other than the process itself in furtherance of the improper purpose: Atland Containers Ltd. v. Macs Corp. Ltd. (1974) 54 D.L.R. (3d) 363. The plaintiff has also not proven any additional act or threat in furtherance of the alleged purpose, and cannot succeed on this claim.

The claim for damages for defamation cannot succeed. The alleged libel is contained in a letter addressed to the plaintiff informing her of the Board's determination of matters she brought to their meeting. This letter reports the Board's opinion that the plaintiff's dog was in contravention of the bylaws by running at large. Although that opinion was somewhat irrelevant, since that was not in issue in the proceedings, the letter was not shown to be

anything other than factual. In any event, there is no evidence of publication to anyone other than the copies noted as being sent to the plaintiff's solicitor and Jones.

The plaintiff alleges an oral agreement on the part of SCRD to pay her legal costs as demanded in her demand letter of June 12, 1990. The evidence relied on is that Mr. Jardine, the administrator, told her to send her demand to SCRD's lawyer, Mr. Murdy. This evidence falls far short of establishing any contractual obligation on the part of SCRD.

The plaintiff has failed to prove any of her claims, and the action is dismissed.

The defendants A.G. and Rowley asked for special costs. I do not feel special costs are appropriate. In my view, on the basis of the criteria set out in Section 2 of Appendix B this was a matter of less than ordinary difficulty and costs should be assessed on Scale 2.

"Ian C. Meiklem, J."
Ian C. Meiklem, J.

Prince George, B.C.
December 8, 1992