Date: 20130304
File No: C12240
Registry: Port Coquitlam

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Civil Division)

BETWEEN:

SAEED RAFIEYAN

CLAIMANT

AND:

THE CITY OF COQUITLAM AND LOUIS DESAUTELS

DEFENDANTS

ORAL REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE T.S. WOODS

COPY

McEachern & Associates
2390 Kensington Avenue
Burnaby, B.C. V5B 4E2
Phone: (604) 299-3595; Fax: (604) 299-3545
Toll-free: 1-866-366-2202

Citation: Rafieyan v. Coquitlam et al.

Date: 20130304
File No: C12240
Registry: Port Coquitlam

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Civil Division)

BETWEEN:

SAEED RAFIEYAN

CLAIMANT

AND:

THE CITY OF COQUITLAM AND LOUIS DESAUTELS

DEFENDANTS

ORAL REASONS FOR JUDGMENT OF THE HONOURABLE JUDGE T.S. WOODS

Appearing on his own behalf:	The Claimant: S. Rafieyan
Counsel for the Defendants:	E. Toews
Court Recorder:	S. Delmark
Transcriber:	S. Wilson
Place of Hearing:	Port Coquitlam, B.C.
Date of Hearing:	March 4, 2013
Date of Judgment:	March 4, 2013

[1] **THE COURT:** I find myself able with the remaining time available to rule on this application brought in Provincial Court Small Claims Action C12240 commenced by Saeed Rafieyan as claimant against the City of Coquitlam and Louis Desautels as defendants.

[2] We are convened today in a courtroom on the record although formally this court appearance constitutes the continuation of a settlement conference that began some months ago.

[3] The defendants have brought an application under Rule 7(14)(i) seeking that the Court dismiss Mr. Rafieyan's claim as being either without reasonable grounds or disclosing no triable issue or both. The Court in a settlement conference is clothed with jurisdiction by that Rule in a proper case to grant such dismissal orders when they are sought and justified.

[4] Mr. Rafieyan's claim is set out in a Further Amended Notice of Claim filed on July 12th, 2012. His claim has gone through four iterations. It was originally filed in September of 2011 and then amended three times after that.

[5] As the Further Amended Notice of Claim states, Mr. Rafieyan's claim arises out of an incident that occurred on June 22nd, 2011. Mr. Rafieyan was, at the time, a user of certain amenities or facilities operated by the City of Coquitlam, and at which Mr. Desautels served as a municipal employee. The facilities were sports facilities. Mr. Rafieyan

was a sometime player of volleyball at the facility. On the 22nd of June, 2011, Mr. Rafieyan came into conflict with another user of those facilities, one Tyler Knowlton (phonetic).

[6] The conflict seems to have its roots in a disagreement between Mr. Rafieyan and Mr. Knowlton about Mr. Rafieyan's skill level; that is, his appropriateness as a participant in the particular game at the particular level. Mr. Knowlton said some unpleasant, perhaps even demeaning, things to Mr. Rafieyan. The conflict became more heated. There was an intervention by Mr. Desautels -- the personal defendant and employee of the municipal defendant -- and the entire matter ended in a manner that Mr. Rafieyan finds not to his satisfaction.

[7] Mr. Rafieyan believes, and his Further Amended Notice of Claim shows, that he believes that the conflict could have been better managed by the municipal employee.

[8] Mr. Rafieyan left the incident of June 22nd, 2011 feeling aggrieved, distressed and upset. He took steps to bring the matter to the attention of the police. He later took steps to bring the matter to the attention formally of the Human Rights Tribunal.

[9] He contends in his Further Amended Notice of Claim that the police investigation produced no satisfactory outcome, saying that Mr. Desautels and perhaps other municipal employees lied to police about the circumstances surrounding the incident and

indeed went so far as to procure an unjust disposition of his police complaint. Although it is not expressly discussed in detail in the Further Amended Notice of Claim, Mr. Rafieyan's sense of having been the victim of an injustice extends to embrace his experience before the Human Rights Tribunal. The tribunal dismissed his application before it arising out of the same incident.

[10] In his Notice of Claim, Mr. Rafieyan states in his prayer for relief that he seeks damages in the amount of $25,000 for pain and suffering, psychological trauma, and all other ramifications of an alleged assault and discrimination. I pause to say that inasmuch as Mr. Rafieyan uses the word "assault", he makes no reference to a physical application of force to his person by any other person.

[11] Mr. Rafieyan's Notice of Claim has scheduled to it two pages of text that are lengthy. I will not read them into the record but I will make reference to the fact that they conclude with references to four enumerated points regarding alleged breaches of duties of care on the part of the City and Mr. Desautels. The enumerated points are:

1. Failure to take reasonable care.
2. Intention to cause harm.
3. Discrimination based on various factors.
4. Interference with one's reputation.

[12] So that document, the Further Amended Notice of Claim, asserts what Mr. Rafieyan now argues is a sufficiently and properly articulated basis in his initial pleading to found the action that he wishes to pursue.

[13] For her part, Ms. Toews, counsel for the City and for Mr. Desautels, has challenged this pleading as not disclosing a cause of action known to law; that is to say not disclosing a triable issue that is justiciable before this Court. Secondarily, she challenges the pleading as not being predicated on reasonable grounds.

[14] There are nuances and additional features to Ms. Toews' argument, one aspect of which was particularized in her reply submissions today having to do with the aspect of the claimant relating to the conduct of the RCMP. I am going to return to that in due course. But first I am going to approach this matter in the round, beginning with a thoroughgoing assessment of what is alleged in the Notice of Claim and whether what is alleged can be said to articulate a claim that is classifiable according to the various causes of action that can be fairly and properly brought in this Court.

[15] Now I pause to say that the Provincial Court is a Court that entertains litigation frequently brought by unrepresented parties who appear without the benefit of legal training, legal expertise, legal experience, and without the benefit of legal counsel at their side. The Provincial Court accordingly does

not hold claimants like Mr. Rafieyan to the same standard as does, for example, the Supreme Court which -- although undoubtedly and increasingly is experienced in dealing with unrepresented litigants -- operates principally in an environment where counsel are involved in some fashion in the proceedings.

[16] In measuring Mr. Rafieyan's effort to bring his claim and express it in his Further Amended Notice of Claim, I am mindful of the distinction between Provincial Court proceedings and Supreme Court proceedings and I must and do make certain allowances for the fact that Mr. Rafieyan stands before me without either legal training or a legally trained advocate to assist him.

[17] That said, the Notice of Claim or in this case the Further Amended Notice of Claim is the foundational document for a lawsuit brought in the Small Claims Division of the Provincial Court. It is initiating process. It can only justly and properly set in motion all of the additional process that follows on the heels of the commencement of an action if it articulates a claim that is litigable and justiciable in this Court. While making allowance for Mr. Rafieyan's status as an unrepresented lay litigant unaccompanied by and unassisted by counsel, nevertheless, if I am propelled to the conclusion that his Further Amended Notice of Claim does not allege facts that even if proven true give rise to a cause of action known to law,

then it is my duty to unburden the defendants of the considerable expense and inconvenience of engaging Mr. Rafieyan in the litigation process.

[18] A great deal of material has been placed before me in the course of this application. I have been provided with written submissions of some considerable length, most recently a 16-page written submission that Mr. Rafieyan brought today on the continuation of this dismissal application.

[19] Mr. Rafieyan took me to the highlights so to speak of that written submission and during the time that we stood down I read the written submission end-to-end. That written submission supplements voluminous material that Mr. Rafieyan has placed before the Court earlier, all of which I have had occasion to review in the course of hearing and ultimately deciding this application.

[20] Similarly, although more economical in terms of sheer volume, I have been provided with substantial materials by Ms. Toews on behalf of the defendants.

[21] I can assure both parties that I have been attentive to all of that material: I have read it, I have considered it, and my decision is made against the background of that material.

[22] Some aspects of what Mr. Rafieyan seeks in his action against the City and Mr. Desautels, while not expressly stated as such, can be discerned through a careful reading of the

pleading to constitute an effort on his part to obtain relief of the kind one might obtain in an action for defamation. Mr. Rafieyan's most recently filed written submissions refer repeatedly to stigma and character assassination and injury to reputation. These are not express statements invoking the law of defamation but they raise the spectre of a claim for defamation by inference or by necessary implication.

[23] The ***Small Claims Act***, R.S.B.C. 1996 c. 430 gives precise definition to that which lies within and without the jurisdiction of the Provincial Court's Small Claims Division. Claims for defamation are expressly excluded from the Provincial Court's Small Claims Division jurisdiction and insofar as Mr. Rafieyan's Further Amended Notice of Claim can be read to include a claim that is in the nature of a claim for defamation, his claim is simply outside the scope of what this Court can hear and decide as a matter of statutory limits on the Court's statutorily defined jurisdiction.

[24] Similarly, Mr. Rafieyan's Further Amended Notice of Claim frequently invokes the notion of discrimination as the foundation of the wrongs he alleges he suffered and the relief he seeks. There again, Mr. Rafieyan encounters an impediment that resides in the limitations that exist in this court's jurisdiction. Discrimination and claims of discrimination are not litigable in this Court. Discrimination is not a tort. Discrimination is addressed in tribunals external to the court

system, tribunals created and clothed with jurisdiction under human rights legislation.

[25] Mr. Rafieyan has indeed some understanding of the jurisdiction of the Human Rights Tribunal because he has brought this very dispute, or aspects of it, there and has been given an unsatisfactory determination. I cannot hear or decide a claim brought as a claim for discrimination because that is not a tort and hence is not justiciable in the Provincial Court.

[26] The residue of Mr. Rafieyan's claim, once one pares away those jurisdictionally invalid aspects, revolves around damages said to have been suffered that are in the nature of pain and suffering and psychological trauma.

[27] Taking those one at a time, I have learned in the course of this proceeding and while reviewing the materials that have been placed before me that Mr. Rafieyan has a complex medical history, and a complex medical status. He refers in his submissions to various features of his medical status and the beneficial and therapeutic role that volleyball, he believes, has played in his overall medical and health situation. He refers to the adverse implications of not playing volleyball any longer in the wake of the incident of June 22nd, 2011. He has placed before the Court a good deal of material in the nature of clinical notes and so on that speak to his overall condition, to his heart condition, to his difficulties with blood sugar, to his diabetes, and to various other complaints that are verified

and documented in his submissions and in his written materials. What is missing from that very extensive catalogue of material is any medical documentation, expert opinion, or anything of that nature that associates his physical suffering, his pain, his overall condition or worsening of it with the events of June 22nd, 2011 and the cessation (so to speak) of his involvement with the volleyball program at the facility that came in the wake of that incident.

[28] Mr. Rafieyan was candid in his submissions in acknowledging that he had no such material to place before me. He made reference to his belief that psychiatrists and other medical professionals knowing and understanding how the law works would simply not come to his assistance and provide him with the kind of expert opinion that he needs in order to draw that causal link between the events of June 22, 2011 and his current health condition. He also invokes his own impecunious condition and his inability to pay for such a report, even if someone were both qualified and willing to provide it (which he says they are not).

[29] I am not persuaded by Mr. Rafieyan's suggestion that, in a case involving a claim for pain and suffering, as a claimant he is simply incapable by reason of what might be colloquially described as a "circling of the wagons" mentality on the part of medical professionals that no medical professional would ever come to the assistance of someone in his situation. These

Courts and the Superior Courts of this Province routinely hear cases in which medical experts express admissible medical opinion that is then called upon by claimants to support claims that they have suffered in some fashion from the wrongful conduct of others.

[30] There is nothing before the Court on this application that draws that causal connection between the events of June 22nd and the conduct or the lapses in proper conduct on the part of the defendants (on the one hand) and Mr. Rafieyan's condition (on the other hand) that could possibly support a claim for personal injury insofar as it is physical in nature.

[31] Insofar as the claim involves notions of psychological injury -- "psychological trauma" in Mr. Rafieyan's words as they are found in the Further Amended Notice of Claim -- the law is clear that such psychological injury is only compensable when it is manifest in some physically verifiable fashion. Here, the psychological trauma of which Mr. Rafieyan complains is not objectified in any medical materials he has placed before the Court; neither is it linked causally to the conduct or lapses in proper conduct on the part of the defendants by anyone with the necessary constellation of skills and training to offer such an opinion.

[32] Having taken Mr. Rafieyan's Notice of Claim and analysed it in using the lenses that I have held up to it, I find that the Further Amended Notice of Claim does not, to use the words of

the Rule, disclose a triable issue. The claims lack reasonable grounds.

[33] The claims that Mr. Rafieyan have advanced for the various reasons I have given are not triable in the Provincial Court. They are not triable in some instances for reasons of want of jurisdiction. They are not triable in other instances by reason of an absence of allegations that raise a cause of action known to law inasmuch as they hint in some respects at causes of action in the personal injury/psychological injury domains.

[34] When challenged, Mr. Rafieyan has not come forward and identified and placed before the Court for its consideration material that would substantiate a causal connection between conduct or lapses of required conduct on the part of the defendants, and objectively verifiable physical manifestations of psychological injury on his part. As such the claims lack reasonable grounds.

[35] Mr. Rafieyan's Further Amended Notice of Claim is accordingly vulnerable to the application that has been brought by the City of Coquitlam and Mr. Desautels. It is vulnerable to being dismissed as not disclosing any triable issues or reasonable grounds, and that being so I am bound to accede to the application brought by the City of Coquitlam and Mr. Desautels as defendants to have the claims that Mr. Rafieyan has brought against them dismissed.

[36] The jurisdiction to dismiss is there in Rule 7(14)(i). It is exercised in conjunction with the provision of the ***Small Claims Act*** that requires the Court to deal in a just and fair and reasonable and speedy and economical way with all matters that come before it (and I am not reading from the section but simply paraphrasing).

[37] When defendants like the City of Coquitlam and Mr. Desautels are called upon to invest the considerable time and effort and money in defending a claim brought against them and they identify a flaw in the claim that renders the claim non-litigable or non-justiciable in this Court, fairness and justice and all of the things that the ***Small Claims Act*** says about overriding policy imperatives in dealing with matters in this Court require the defendants to be unburdened of that considerable expense and inconvenience.

[38] Before closing I am going to say again to you, Mr. Rafieyan, some things I said earlier or at least things that I began to say earlier about you having had a distressing experience on the 22nd of June of 2011.

[39] The fact that your Further Amended Notice of Claim is being dismissed at this hearing in response to the application brought by Ms. Toews on behalf of her clients does not mean that you did not have a distressing and upsetting experience on the 22nd of June, 2011. But not all upsets, not all sources of distress, not all wrongs perceived or real or both, are susceptible of

vindication in the court system. What you have sought to have vindicated in the court system is not susceptible of vindication in the court system. That does not mean that you did not leave that encounter with Mr. Tyler Knowlton with a bad feeling. It does not mean that you were not disappointed at what was done and was not done by City employees. It does not mean that you were not left with a feeling of disappointment and of having been let down. But that does not add up to something that you are able to pursue in a legal claim brought in the Provincial Court.

[40] It is obvious that this incident on June 22nd of 2011 has become something of a preoccupation for you. It has been a matter that has claimed a lot of your time and a lot of your attention.

[41] Undoubtedly, it is disappointing to you -- having invested that time and that attention -- to find that the claim does not survive the kind of scrutiny that it receives on an application like this. The fact of the matter is that it has not survived that scrutiny. It is not maintainable in this Court and so this proceeding now comes to an end.

[42] I am hopeful that, inasmuch as you have been looking for redress of some kind in the court system, you are able to accept that outcome and move on and place your energies and your talents and your hard work in some new places to do the things that you will need to do in order to get your health where you

want it to be and re-focus without the distraction of court proceedings that have now been conclusively determined to be non-maintainable.

[43] I think it is clear, but if it needs to be said again, the application brought by the City of Coquitlam and Louis Desautels as defendants to have Mr. Rafieyan's claims against them as articulated in the Further Amended Notice of Claim in Port Coquitlam civil proceeding No. C12240 is allowed. The claims of Mr. Rafieyan in that proceeding are dismissed pursuant to Rule 7(14) (i) as disclosing no triable issue or reasonable grounds.

[44] Ms. Toews, inasmuch as your client is the represented party, I am going to ask you to draw the order and submit it for entry. I will make an order dispensing with the requirement that you circulate the order to Mr. Rafieyan for his approval in draft.

[45] Mr. Rafieyan, this is going to be a very simple order that has to be drawn. I will not sign it unless Ms. Toews accurately captures the disposition that I have given today and so you need not fear that not having a draft circulated to you before it comes to Court will in some way potentially put you in jeopardy. I will not sign it unless it is right. Where there is a lawyer on one side and not on the other, the dispensing with the signature on the draft is a routine practice of the Court just to achieve efficiency.

[46] I trust that I have answered all the questions that have been placed before me. Is there anything that anyone thinks I need to say beyond what I have said?

[47] **MR. RAFIEYAN:** I think it's clear.

[48] **THE COURT:** All right.

(ORAL REASONS FOR JUDGMENT CONCLUDED)