



Court File No. **VIC-S-S-220409**

VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ANDREW ROGERS and BOWMAN RUTLEDGE

PLAINTIFFS

AND

NORSTAR ALLIANCE REAL ESTATE SERVICES LTD. dba
THE AGENCY

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiffs and on any new parties named in the counterclaim

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS**Part 1: STATEMENT OF FACTS**

1. The Plaintiff, Andrew Rogers, has an address for delivery for the purposes of this action only of 200-931 Fort Street, Victoria, BC, V8V 3K3.
2. The Plaintiff, Bowman Rutledge, has an address for delivery for the purposes of this action only of 200-931 Fort Street, Victoria, BC, V8V 3K3.
3. The Defendant, Norstar Alliance Real Estate Services Ltd. dba The Agency (“The Agency”), is a British Columbia company with a registered and records office at 163 First Street, Duncan, BC, V9L 1R1
4. At all material times, each of the Plaintiffs, as Independent Sales Representatives, and The Agency, as Brokerage, were parties to separate Independent Contractor Agreements. At all material times, the Plaintiffs operated as a “team” within the Agency.
5. Until March 25, 2021, Rutledge and Rogers were well-known and established young real estate agents in Victoria, BC, each beginning their careers in or about 2015 and transitioning to The Agency in 2019.

6. The Survivor Stories Project (“SSP”) is an anonymous public interest group which serves as a resource and through its website and Instagram page, a forum for the reporting of sexualized and intimate partner violence on Vancouver Island. SSP initially launched on Instagram as a *public* page, but was later converted to *private*, allowing members by request and acceptance only. The change, however, was semantic in nature, as almost any member of the public that requested to follow the page was granted admission.

The SSP Posts

7. On or about March 24, 2021, an anonymous online user authored and published, or caused to be authored and published, a first person account of an alleged sexual assault perpetrated against her by the Plaintiffs (the “First SSP Post”). The First SSP Post opened with the sentence “Andy Rogers and Bowman Rutledge are Victoria predators” and encompassed nine slides in a manner that was defamatory to the Plaintiffs.
8. The First SSP Post went above and beyond a report of alleged sexualized violence. It contained several instances of defamatory, slanderous, libelous and injurious commentary about the Plaintiffs.
9. On the morning of March 25, 2021, a second anonymous user authored and published, or caused to be authored and published, another online allegation of sexual misconduct regarding the Plaintiffs (the “Second SSP Post”). The Second SSP Post also contained several instances of defamatory, slanderous, libelous and injurious commentary about the Plaintiffs.
10. The Plaintiffs have denied the allegations contained in each of the First SSP Post and Second SSP Post.
11. At 12:25pm on March 25, 2021, the Managing Broker of The Agency wrote to the Plaintiffs to advise that The Agency would let the legal system determine the truth of the allegations against the Plaintiffs, but in the interim, The Agency would be suspending the Independent Contractor Agreements.
12. Given the widespread nature and expansive reach of both social media and the Internet, the First SSP Post and the Second SSP Post created damaging speculation regarding the Plaintiffs in their personal and professional lives.

13. Within hours of the First SSP Post and Second SSP Post, and given the social profile of the Plaintiffs in the Greater Victoria area, the amount of followers on the SSP Instagram page exploded to over ten thousand, and hundreds of followers both commented in support of the anonymous writers and some, with vitriol and contempt for the Plaintiffs. Prior to March 24, 2021, SSP had a few thousand followers. At the time of this pleading, SSP has nearly 28,000 followers and both the First SSP Post and the Second SSP Post remain visible, along with several hundred comments.
14. Less than one hour after advising the Plaintiffs of the suspension of the Independent Contractor Agreements, and in the midst of the damaging community speculation directed against the Plaintiffs, The Agency, issued its own Instagram post (the "Termination Post") stating as follows:

As previously stated, we are aware of the very serious social media allegations towards two agents working under our brokerage. We want to be perfectly clear; we are shocked and deeply disturbed by the accusations.

We have terminated our relationship with the agents, effective immediately.

We stand in full support of women who have endured sexual abuse and we encourage anyone with information to please come forward.

(Emphasis added)

15. The public termination by social media was the only notice that The Agency provided to the Plaintiffs regarding the termination of the Independent Contractor Agreements, and no explanation or basis was given for the termination at that time or since.

Breach of Contract

16. Each of the parties owed the other a duty pursuant to the organizing principle of good faith and a separate duty of honest performance to fulfil their obligations under the Independent Contractor Agreements.
17. At all material times, the Plaintiffs acted honestly, in good faith, and in a manner that would not cause harm to the goodwill and reputation of The Agency. The Agency owed

to the Plaintiffs a reciprocal duty to act honestly, in good faith, and in a manner that would not cause harm to the goodwill and reputation of the Plaintiffs.

18. The Agency was contractually obligated to provide the Plaintiffs with access to the services and facilities of a designated office located within The Agency's office. The Agency has breached the Independent Contractor Agreement by refusing to provide same.
19. Additional contractual obligations of The Agency included the provision of brokerage resources for the performance of the Plaintiffs' obligations, and brokerage services to which the Plaintiffs could attach their real estate licenses. By arbitrarily terminating the Independent Contractor Agreements without reason or cause, The Agency breached its brokerage obligations to the Plaintiffs.
20. The anonymous social media allegations against the Plaintiffs are out of the control of the Plaintiffs and further, they are unproven. By callously terminating the Independent Contractor Agreements without reason and in the public manner that it did, The Agency has breached its duty to the Plaintiffs pursuant to the organizing principle of good faith and its duty of honest performance.
21. As a result of each of the breaches, the Plaintiffs have suffered, and continue to suffer, loss and damage.

Defamation

22. In their natural and ordinary meaning, or alternatively, by way of innuendo, the words spoken and/or published in the Termination Post were meant and were understood to mean that The Agency terminated its relationship with the Plaintiffs because the Plaintiffs committed the sexual assaults alleged in the First SSP Post and Second SSP Post.
23. Further, in asking anyone with information to come forward, The Agency's words, in their natural and ordinary meaning, or alternatively, by way of innuendo, were meant and were understood to mean that The Agency believed the allegations and encouraged anyone with information about the events to speak to authorities.

24. The Plaintiffs claim aggravated and punitive damages and rely upon the following facts and matters to support their claim:

- a. At all material times, the Plaintiffs have conducted themselves in a professional and integrous manner, particularly in respect of their roles as real estate agents and members of the community;
- b. The Agency was malicious or reckless in its intent with respect to writing and publishing the Termination Post, as it knew, or ought to have known, that publicly terminating the Independent Contractor Agreements on social media during a time when attention on the Plaintiffs was acute, would have the effect of further ostracizing and impugning the Plaintiffs in the community.

25. The Plaintiffs, having been branded in the community as sexual predators, or, in the alternative, sex offenders, and have suffered, and continue to suffer, damage to their personal and professional reputation in the community and the general public.

26. The breadth of the dissemination and/or publication of the Termination Post and the community's knowledge thereof has caused, and continues to cause, damage to the personal and professional reputations of the Plaintiffs.

27. The speed and instant impact of the publication of the Termination Post has created, and allowed for, the defamatory remarks to be believed by the public.

28. The Agency knew, or ought to have known, that in writing and publishing, or causing to be written and published, the Termination Post, the Plaintiffs would suffer financial and other harm.

29. Further particulars of the loss and damage include, but are not limited to:

- a. Being the subjects of a lengthy investigation by the Real Estate Council of British Columbia before being granted conditional re-instatement;
- b. Notwithstanding having been conditionally permitted to practice real estate, the actual inability to practice real estate due to the damage their personal and professional reputation as set out herein;

- c. Stress and mental anguish;
- d. Emotional distress;
- e. Invasion of privacy;
- f. Loss of enjoyment of life, including the fear of being seen in public, causing each to have retreated in both their personal and professional lives from the community, their families, and their clients;
- g. Threats of physical harm to each of them and members of their families;
- h. Being branded sexual predators, or alternatively, sex offenders, and the ensuing stigma that follows such branding and/or accusations; and
- i. Damage and harm, likely permanent, to their reputations and careers.

Part 2: RELIEF SOUGHT

- 1. General damages;
- 2. Special damages;
- 3. Punitive damages;
- 4. Aggravated damages;
- 5. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
- 6. Costs on a level and basis to be determined by this Honourable Court;
- 7. Such further relief as the Defendants may seek and this Honourable Court deems just.

Part 3: LEGAL BASIS

Breach of Contract

- 1. The Plaintiffs claim against The Agency in breach of contract pursuant to the facts as set out in Part 1 above.

2. Specifically, as party to the Independent Contractor Agreements, The Agency owed to the Plaintiffs a contractual duty pursuant to the organizing principle of good faith, a standard that parties must perform their contractual duties honestly and reasonably, and not capriciously or arbitrarily. Further, The Agency owed to the Plaintiffs a contractual duty of honest performance, a duty that requires parties to a contract to be honest with each other in relation to the performance of their contractual obligations.

Bhasin v. Hrynew, 2014 SCC 7

3. The Agency both breached each of the duty of good faith and the duty of honest performance, causing loss and damage to the Plaintiffs.

Defamation

4. A communication is defamatory if it tends to lower a person in the estimation of right-thinking members of society, expose a person to hatred, contempt, or ridicule, or otherwise deter third persons from associating or dealing with them.

Cherneskey v. Armadale Publishers Ltd. [1979] 1 S.C.R. 1067)

5. The material part of the cause of action in dispute is not the uttering, but the publication, of the language used.

McNichol v. Grandy [1931], Anglin C.J.C., referring to *Hebditch v. Macllwaince* [1894] 2 Q.B. 54, at 58, 61, 64, and *O'Keefe v. Walsh* [1903] 2 Ir. R. 681, at 706

6. A publication is defamatory if it lowers the reputation of the plaintiff in the estimation of right-thinking members of society, that is, if it has the tendency to or does injure, prejudice or disparage the plaintiff in the eyes of others, or lowers the good opinion, esteem or regard which others have for him, or causes him to be shunned and avoided, or exposes him to hatred, contempt or ridicule. The law of libel and slander protects persons from false statements which reflect adversely on their reputation in the community. It is not the reputation which he deserves or wishes he had, but the one which he actually has which is protected...Its purpose...is to protect the reputation which a person possess in the general community...

Creative Salmon Co. v. Staniford [2007] B.C.J. No. 73 at para. 23 (S.C.), reversed on other grounds 307 D.L.R. (4th) 518 (C.A.).

7. Proof of publication by the defendant to a third party is an essential element in an action for defamation and burden of proving this element rests on the Plaintiff.

Gaskin v. Retail Credit Co.[1965] S.C.R. 297 per Ritchie J.;
Arnott v. College of Physicians and Surgeons of Saskatchewan, [1954] S.C.R. 538 per Locke J. at 555; *Dickhoff v. Armadale Communications* (1993), 108 D.L.R. (4th) 464, per Lane J.A. at 469 (Sask. C.A.); *Pressler v. Lethbridge* (2000), 86 B.C.L.R. (3d) 257, per Southin J.A. at para. 53 (C.A.).

8. False attacks on the occupation, trade, or profession of an individual or a corporation are *prima facie* defamatory. Thus, it is defamatory for a defendant to make an untrue and harmful statement concerning the management, legality, competence, ethics, knowledge, skill, capacity, judgment, integrity, honesty, or efficiency of a businessperson or business.

M.D.A. Marine Design Associates Ltd. v. British Columbia Ferry Services Inc., 2008 BCSC 1432 at para. 18; *Kerr v. Conlogue*, (1992), 65 B.C.L.R. (2d) 70 (S.C.); *Hiltz and Seamone Co. v. Nova Scotia (Attorney General)* (1997), 164 N.S.R. (2d) 161 (S.C.), varied on another point (1999), 172 D.L.R. (4th) 488 (C.A.).

9. A reputation can be destroyed in the click of a mouse, an anonymous email or an ill-timed tweet.

Crookes v. Newton, [2011], S.C.J. No. 47, 2011 SCC 47, [2011] 3 S.C.R. 269 (S.C.C.) at para. 38 quoting from Bryan G. Baynham & Daniel J. Reid, "The Modern-Day Soapbox: Defamation in the Age of the Internet", in *Defamation Law: Materials prepared for the Continuing Legal Education seminar, Defamation Law 2010* (2010) at 3.1.1

10. A defamatory statement can seep into the crevasses of the subconscious and lurk there ever ready to spring forth and spread its cancerous evil. The unfortunate impression left by a libel may last a lifetime.

Hill v. Church of Scientology of Toronto [1995] 2 S.C.R. 1130 at para 166

11. This Honourable Court, in *Zall v. Zall*, 2016 BCSC 1730, summarized the factors to be considered in the assessment of general damages in a defamation case:

- (a) the seriousness of the defamatory statement;
- (b) the identity of the accuser;
- (c) the breadth of the distribution of the publication of the libel;
- (d) republication of the libel;
- (e) the failure to give the audience both sides of the picture and not presenting a balanced review;
- (f) the desire to increase ones professional reputation or increase ratings of a particular program;
- (g) the conduct of the defendant and defendant's counsel through to the end of trial;
- (h) the absence or refusal or any retraction or apology; and
- (i) the failure to establish a plea of justification.

The Tort of Injurious Falsehood

12. Claims for injurious falsehood and malicious falsehood protect an interest in one's property, products, or business if the plaintiffs can show that the defendants maliciously published words of disparagement that are false. Unlike defamation, which is actionable without proof of damage, the plaintiffs must show actual loss.

Manning v. Epp [2006] O.J. No. 2904 at para. 23 (S.C.J.), affd 229 O.A.C. 220 (C.A.);
Almas v. Spenceley (1972), 25 D.L.R. (Ed) 653 at 656 (Ont. C.A.).

13. The elements of the tort of injurious falsehood are:

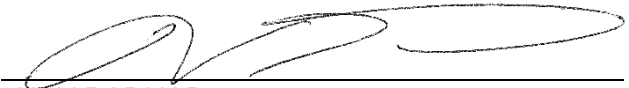
- i. a false statement disparaging a plaintiff's business, goods or property;
- ii. published to a third person;
- iii. maliciously and without just cause or excuse; and
- iv. resulting in special damages in the form of pecuniary loss.

Cobble Hill Holdings Ltd. v Cowichan Valley (Regional District) 2020 BCSC 1217
Bentley Aviation Ltd. v. Homelife Benchmark Realty Corp. 2017 BCSC 1332

14. The Plaintiffs have suffered actual economic loss due to The Agency's actions, including, but not limited to, indefinite or permanent loss of their career as real estate agents and the income derived therefrom.

15. The Plaintiffs plead that The Agency wrote, spoke and/or published, or caused to be written and published, the defamatory statements within the Termination Post maliciously and without just cause.
16. The Agency, in writing and publishing, or causing to be written and published the Termination Post, acted in a calculated manner in order to insulate itself from the allegations made against the Plaintiffs, while inducing others not to deal with, associate with, or relate with the Plaintiffs, personally or professionally.
17. The Agency sought to hurt the personal and professional reputations of the Plaintiffs.
18. The Agency has committed the tort of defamation and the tort of injurious falsehood, and the Plaintiffs have suffered loss and damage as a result.

DATE: 10/Feb/2022



NAV PARHAR
Lawyer for the Plaintiffs

Plaintiffs' address for service:

Infinity Law

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Fax number address for service: 250-385-6008

E-mail address for service: nparhar@infinity-law.com

Place of trial: Victoria

The address of the registry is: 2 – 850 Burdett Avenue
Victoria, BC V8W 1B4

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Breach of Contract, Defamation

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- Another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- The provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here.

Part 3: THIS CLAIM INVOLVES:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know