

COURT OF APPEAL FOR ONTARIO

CITATION: MHR Board Game Design Inc. v. Canadian Broadcasting Corporation, 2013 ONCA 728

DATE: 20131203  
DOCKET: C57441

Rosenberg, Rouleau and Pardu JJ.A.

BETWEEN

MHR Board Game Design Inc. and  
Marc Ribeiro

Plaintiffs (Appellants)

and

Canadian Broadcasting Corporation

Defendant (Respondent)

Marc Ribeiro, acting in person and for the appellant MHR Board Game Design Inc.

Andrea Gonsalves, for the respondent

Heard: November 25, 2013

On appeal from the order of Justice David Aston of the Superior Court of Justice, dated June 28, 2013, with reasons reported at 2013 ONSC 4457.

ENDORSEMENT

[1] The appellants appeal from the dismissal of their action against the CBC on a motion for summary judgment brought by the respondent. The appellant Marc Ribeiro made a business proposal to a panel on the reality show “Dragon’s Den”. He alleges that the version of his proposal that was broadcast had been edited in such a fashion as to completely misrepresent the merits of his business

plan. He alleged that the respondent's conduct amounted to "gross and reckless negligence, intentional misconduct, malice and bad faith". In particular, while the appellants failed to attract any investment from the stars of the show (the "Dragons") on terms acceptable to them, they take issue with the voiceover that introduced the segment: "[t]he Dragons never pull punches when they spot a money-losing venture. Unfortunately, these next few ideas hit the mat immediately". They allege that the broadcast, as a whole, falsely conveyed the idea that their business proposal was a "complete flop". They sued the respondent for breach of contract, defamation, negligence and injurious falsehood.

[2] The motion judge concluded that the appellant Ribeiro had signed a comprehensive release which amounted to an "express and unambiguous" release of all claims advanced in the Statement of Claim, and found that there was no reason not to give effect to the release.

[3] The release and the circumstances in which it was executed are indistinguishable from the same release and circumstances considered in *Turmel v. CBC*, 2011 ONCA 519.

[4] The release executed by the appellant Ribeiro before the audition provided as follows:

9. I understand that I may reveal, and other parties may reveal, information about me that is of a personal,

private, embarrassing or unfavourable nature, which information may be factual and/or fictional. I further understand that my appearance, depiction and/or portrayal in the Program may be disparaging, defamatory, embarrassing or of an otherwise unfavourable nature which may expose me to public ridicule, humiliation or condemnation. I acknowledge and agree that Producer shall have the right to (a) include any or all such information and any or all such appearances, depictions or portrayals in the Program as edited by Producer in its sole discretion, and (b) to broadcast and otherwise exploit the Program containing any or all such information and any or all such appearances, depictions or portrayals in any manner whatsoever in any and all media now known or hereafter devised, or for any other purpose, throughout the universe in perpetuity...

27. I hereby irrevocably agree that I will not sue or claim against any of the other participants in the Program or the Released Parties for any damage, loss or harm to me or my property howsoever caused, resulting or arising out of or in connection with ... participation and appearance in or elimination from the Program or activities associated with the Program. I acknowledge that there is a possibility that after my execution of this Consent and Release, I will discover facts or incur or suffer claims where were unknown or unsuspected at the time this Consent and Release was executed and which, if known by me at that time, may have materially affected my decision to execute this Consent and Release. I acknowledge and agree that by reason of this Consent and Release, and the release contained in the preceding paragraph, I am assuming any risk of such unknown facts and such unknown and unsuspected claims.

[5] The appellants argue that the respondent was under a duty to edit the presentation in good faith. However, as observed in *Transamerica Life Canada Inc. v. ING Canada Inc.* (2003), 68 O.R. (3d) 457 (C.A.) at paragraph 53:

...Canadian courts have not recognized a stand-alone duty of good faith that is independent from the terms expressed in a contract or from the objectives that emerge from those provisions. The implication of a duty of good faith has not gone so far as to create new, unbargained-for, rights and obligations. Nor has it been used to alter the express terms of the contract reached by the parties. Rather, courts have implied a duty of good faith with a view to securing the performance and enforcement of the contract made by the parties, or as it is sometimes put, to ensure that the parties do not act in a way that eviscerates or defeats the objectives of the agreement that they have entered into.

[6] The motion judge was correct to conclude that no trial was required to assess the effect of the release on the appellants' claims. The action was brought by way of simplified procedure. There were no material facts in dispute. The release gave the CBC sole discretion to edit the recording as it saw fit and to portray a factual, fictional or defamatory image of the appellants. Under these circumstances, there could be no contractual duty to edit the broadcast in a favourable manner as alleged. The misconduct complained of is in no way extraneous to the contract or outside the scope of the release and exclusion clause. It falls squarely within the terms of the release. Giving effect to the consent and release does not defeat the objectives of the agreement between the parties. A trial would not enlarge the full factual context which was before the motion judge, and which constitutes the background for interpretation of this contract.

[7] For these reasons the appeal is dismissed. Costs of the appeal awarded to the respondent, fixed at \$5,000.00 inclusive of disbursements and H.S.T.

“M. Rosenberg J.A.”

“Paul Rouleau J.A.”

“G. Pardu J.A.”