

**CITATION:** Turmel v. CBC (Dragons' Den), 2010 ONSC 5318  
**COURT FILE NO.:** CV-10-48  
**DATE:** 2010-09-27

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

JOHN C. TURMEL

Plaintiff

- and -

CBC (DRAGONS' DEN)

Defendant

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)  
) Self-represented  
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)  
) Andrea Gonsalves, for the Defendant  
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) **HEARD:** in Brantford August 12, 2010  
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**LOFCHIK J.**

**REASONS FOR JUDGMENT**

[1] When someone in show business is about to go on stage, well wishers invite them to "break a leg". In the course of appearing on the CBC's television show "Dragons' Den" the plaintiff was invited to "burst into flames" and he is not happy.

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[2] The producers of the show decided, in their discretion, to include excerpts of Mr. Turmel's appearance on the show in a one minute segment that was broadcast on the January 13, 2010 episode of the Dragons' Den. In the segment broadcast, the panel of Dragons was, to say the least, not kind to Mr. Turmel, one member of the panel having told him she had no idea what he was talking about, another invited him to burst into flames, and a third told him he was "blowing air up a dead horse's ass".

[3] Mr. Turmel became aware of the broadcast on January 13, 2010. He commenced this action for defamation on January 20, 2010 without delivering a notice of his claim as required by the Libel and Slander Act. Upon examining the statement of claim, one might also glean the suggestion of a claim for breach of contract.

[4] The defendant brings this motion for summary judgment seeking dismissal of the plaintiff's action.

## **FACTS**

[5] The Dragons' Den is a CBC television program in which start-up entrepreneurs (the "Participants") pitch business proposals to a panel of Canadian business persons, known as the Dragons. The Dragons offer advice, endorsement and/or investment financing to Participants based on their assessments of the financial soundness and viability of the Proposals. The Dragons' Den is broadcast from the CBC broadcast centre in Toronto and distributed to CBC television stations across the country.

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[6] Producers of the Dragons Den select individuals to participate in tapings for the Program, based on their judgments as to which proposals and/or Participants might contribute to the Program's public interest, its entertainment value, or both.

[7] On May 27, 2009, Richard Maerov, a Dragons' Den producer, contacted Mr. Turmel and invited him to attend at a taping to pitch a business proposal to the Dragons. Mr. Maerov did not know what business projects Mr. Turmel might be working on, but he explained that Mr. Turmel had "a unique background in public speaking skill that might be interesting for the show".

[8] Mr. Turmel agreed to participate in a taping and advised Mr. Maerov that he would pitch "world-wide interest-free time-based banking". Mr. Turmel had never seen an episode of the Dragons' Den. Although Mr. Maerov suggested that he might find out about the show and watch past episodes over the internet, Mr. Turmel chose not to do so before his taping.

[9] Prior to his taping, Mr. Turmel received a copy of the Dragons' Den Contestant Guide, 2009. The Dragons' Den producers send the Contestant Guide to all Participants before they attend a taping. Mr. Turmel understood that he was to read the Contestant Guide carefully. He reviewed the Guide before attending his taping. The Contestant Guide advised Mr. Turmel of the following:

- (a) There is no guarantee that a Participant will appear in an episode of the Dragons' den;
- (b) Anything that is discussed on camera can be broadcast on the show;
- (c) Further details about the rules of the Dragons' Den can be found in the Consent and Release form, which Participants must read and sign;
- (d) Presenting to the Dragons does not guarantee that a Participant will receive an investment;

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- (e) Participants are responsible for understanding all the rules and regulations of the Dragons' Den;
- (f) Participants should convey information about their Proposals to the Dragons in an easy to understand manner; and
- (g) A pitch may take on a life of its own – anything goes.

[10] Mr. Turmel arrived at the CBC studio in Toronto around midday on May 31, 2009. A Dragons Den staff member handed Mr. Turmel a copy of the Consent and Release (the "Consent") and told him to read it carefully. Mr. Turmel was required to sign the Consent if he wanted to participate in the taping.

[11] Mr. Turmel did not indicate to anyone that he had concerns or questions about the Consent. He provided detailed information where he was requested on the form to do so, and he signed the Consent directly under a sentence that reads:

I AGREE TO THE CONDITIONS SET OUT ABOVE AND THAT ALL THE  
INFORMATION GIVEN IN THIS FORM MAY BE USED IN THE PROGRAM  
AT THE PRODUCER'S SOLE DISCRETION.

[12] The Consent contained the clauses set out in Exhibit "A" annexed to these reasons.

[13] Mr. Turmel pitched a business proposal seeking a \$100,000 investment from the Dragons to start up a local currency system for Brantford, Ontario, based on poker chips. As can be understood from reviewing the videotape, Mr. Turmel's fifteen minute pitch left the Dragons very confused. The Dragons did not give Mr. Turmel the investment he sought.

[14] Portions of Mr. Turmel's pitch aired on an episode of the Dragons' Den on January 13, 2010 (the "Broadcast"). The Broadcast was approximately one minute long. It conveyed to the viewers that Mr. Turmel's pitch was confusing and difficult to follow. It informed the public

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that if one is not clear in explaining a business proposal, one will not likely receive investment in it.

[15] As stated above, the treatment of Mr. Turmel by the Dragons in the broadcast segment was not kind.

[16] Mr. Turmel became aware of the Broadcast during the evening of January 13, 2010, or early in the morning of January 14<sup>th</sup>. On January 20, 2010, Mr. Turmel commenced this action against the CBC on a self-represented basis alleging that the Broadcast "damaged and defamed" him. He did not serve any notice of claim before commencing the action, or thereafter within six weeks of the Broadcast.

[17] The defendant brings this motion for summary judgment dismissing the plaintiff's action pursuant to Rule 20 of the Rules of Civil Procedure.

[18] Subrule 20.04(2)(a) of the Rules of Civil Procedure requires the court to grant summary judgement on motion where it is satisfied "there is no genuine issue requiring a trial with respect to a claim or defence".

[19] Subrule 20.04(2.1) specifically authorizes the court, in the exercise of its authority, to weigh the evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence when determining whether there is a genuine issue requiring trial "unless it is in the interest of justice for such powers to be exercised only at a trial".

[20] As the responding party, Mr. Turmel, may not simply restate mere allegations contained in his pleadings. He must set out in affidavit material coherent evidence of specific facts showing that there is a genuine issue regarding a trial. It is not sufficient to say that more and

better evidence will or might be available at trial. While there is an onus on the moving party to establish that there is no genuine issue requiring a trial, the case law also establishes that the respondent must "lead trump or risk losing".

[21] Where a plaintiff complains about a broadcast from a station in Ontario, s. 5(1) of the Libel and Slander Act applies and provides as follows:

No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to the plaintiff's knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant.

[22] Mr. Turmel knew about the Broadcast within hours of it airing on January 13, 2010. He has admitted that he did not give CBC notice in writing of the matter complained of within six weeks of that date, or at all.

[23] The notice prescribed in s. 5(1) is mandatory. Lack of notice in accordance with s. 5(1) is a complete bar to Mr. Turmel's action and justifies summary judgment in favour of CBC.

*Frisina v. Southam Press Ltd.* (1981), 33 O.R. (2d) 287 (C.A.) at p. 2 (QL),  
CBC's Book of Authorities, Tab 2

*Misir v. Toronto Star Newspapers Ltd.*, [1997] O.J. No. 4960 (C.A.) at para. 13,  
CBC's Book of Authorities, Tab 3

[24] It is settled in Ontario that the statement of claim does not constitute notice under s. 5(1) of the Libel and Slander Act. The purpose of the notice requirement is to call the attention of the publisher to the alleged defamatory matter and allow the publisher an opportunity, if it deems it appropriate, to apologize or issue a correction before the matter proceeds to litigation. The Court

of Appeal has held that “[i]t is not a reasonable view of what the legislation contemplates to say that the alleged wrongdoer has every opportunity to apologize in the midst of litigation after receipt of the statement of claim”.

*Janssen-Ortho Inc. v. Amgen Canada Inc.*, [2005] O.J. No. 2265 (C.A.), at paras. 43-44, CBC’s Book of Authorities, Tab 4

*Stuarts Furniture & Appliances v. No. Frills Appliances & T.V. Ltd.* (1982), 40 O.R. (2d) 52 (C.A.) at p. 53, CBC’s Book of Authorities, Tab 5

*Grossman v. CFTO-TV Ltd.* (1982), 39 O.R. (2d) 498 (C.A.) at p. 5 (QL), CBC’s Book of Authorities, Tab 6

[25] Since Mr. Turmel has failed to comply with the mandatory notice provisions in the Act, his action for defamation cannot be maintained. There is no genuine issue requiring a trial in respect of any claim for defamation.

[26] Mr. Turmel has not pleaded breach of contract in his statement of claim. In response to CBC’s motion, Mr. Turmel gave evidence that he also intended to allege breach of contract by CBC. That pleading is not properly made out, but even if it were there would be no genuine issue for trial as the Consent executed by Mr. Turmel would be a bar to such a claim.

[27] When asked in cross-examination about the terms of the contract he alleges were breached by CBC, Mr. Turmel answered that CBC had an obligation to broadcast his pitch for “local cash buy-in banking”. However, he then agreed that CBC made no promise and had no obligation to broadcast his pitch at all, that the producers had full discretion to broadcast all, some or none of his pitch, and that they could edit, cut, alter, rearrange, adapt, dub or otherwise revise his pitch if they did decide to broadcast it.

[28] The only contract between Mr. Turmel and CBC is the Consent. Mr. Turmel has not tendered evidence that there was any other contract or agreement between the parties. The obligation which Mr. Turmel alleges CBC breached is not only not in fact a term of the Consent (or of any contract between CBC and Mr. Turmel), it is expressly contradicted by the Consent's written terms.

[29] During argument on the motion, Mr. Turmel attempted to argue that the Consent he signed was unconscionable as the edited version of his pitch shown misrepresents what he said.

[30] While Mr. Turmel may view the editing of the segment which was broadcast by the CBC as unconscionable, there is nothing unconscionable about the Consent which he signed. Its substantive terms are not unfair nor is the Consent improvident for Mr. Turmel. There was no special relationship between the parties, nor any inequality of bargaining power when it was signed. In assessing the circumstances in which the contract was made, the following facts are significant:

- (a) The Contestant Guide, which Mr. Turmel received before he attended for the taping, advised Mr. Turmel that the complete rules of the program were set out in the Consent;
- (b) Dragons' Den staff told Mr. Turmel to read the Consent carefully before signing it;
- (c) Mr. Turmel had adequate time to review the Consent before his taping;
- (d) He had opportunity to ask questions about the contract and to have it reviewed by a lawyer providing independent legal advice. He signed the Consent without asking any questions or raising any concerns;
- (f) He made a calculated decision to sign the contract in order to participate in a taping and receive the opportunity to ask the Dragons for a \$100,000 investment in his Proposal. He received what he expected.

[31] It is not open to Mr. Turmel to sue CBC on a bargain it never made. As such, even if he has pleaded breach of contract, it does not raise any genuine issue for trial.



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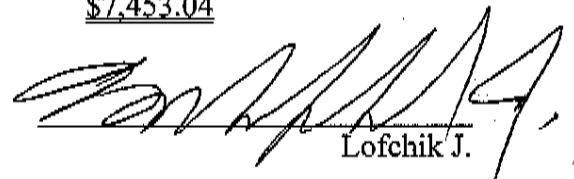
[32] As a result of Mr. Turnel's failure to deliver notice of his defamation claim as required by statute, and his failure to plead or establish a genuine issue requiring trial with respect to any other cause of action, the defendant is entitled to summary judgment dismissing Mr. Turnel's claim in its entirety. The action is therefore dismissed.

[33] The defendant is entitled to the costs of the action and I have been requested to fix those costs.

[34] Counsel claims \$9,307 as counsel fee, the bulk in which is 50 hours in connection with the motion for summary judgment. This in my view is excessive given the nature of the case when considering what a party might reasonably expect to pay by way of costs.

[35] I fix the costs of the defendant payable by the plaintiff as follows:

Counsel fee - \$6,500 plus \$325 G.S.T.	\$6,825.00
Disbursements - \$605.04 plus \$23 G.S.T.	<u>\$ 628.04</u>
Total:	<u>\$7,453.04</u>



Lofchik J.

**Released:** September 27, 2010

## Exhibit "A"

14. The Consent includes the following clauses:

By signing this Consent and Release ... **I represent that I have read, understood and voluntarily agree to abide by its terms and conditions.** Producer requires me to enter into this Agreement in order to be considered as a contestant on the Program, and I deem it to be in my best interest to enter into this Agreement. **I acknowledge that by signing this Agreement, I will be giving up certain legal rights I may have against Producer, sponsors of the Program and others.**

2. I understand that ... even if I am selected as a participant, Producer has no obligation to produce the Program or exhibit it, even if it is produced.

3. ... I acknowledge and confirm that Producer does not guarantee that any transaction will be concluded with the Dragons, that the Dragons are free to negotiate the terms and conditions of their investment in the Business Proposal, if any, at their discretion, and that Producer will in no event be held liable for the acts or omissions of the Dragons.

5. I hereby irrevocably consent to Producer's filming, taping and/or recording of me, with or without my knowledge, for use in connection with the production and exploitation of the Program. I hereby grant to Producer, its assignees, licensees, agents and affiliates, **the right in any and all media now known or hereafter devised throughout the universe in perpetuity to use and reuse my appearance and the Business Proposal during all phases of production of the Program ... including but not limited to the right to use my name, voice, likeness, biographical information and the Business Proposal, in any manner, whatsoever at Producer's sole discretion.** I understand and agree that the telecast or other exploitation of the Program episode(s) in which I appear, if any, and any exploitation of my appearance, name, likeness, voice, conversation, sounds, biographical information and Business Proposal, **as the same may be edited, cut, altered, rearranged, adapted, dubbed or otherwise revised,** if applicable by Producer, will not entitle me to receive any wages, benefits, fees, compensation or other consideration whatsoever.

Exhibit "A"

6. ... I will accept any and all decisions of the Producer and/or Dragons ... as final and **acknowledge that the interests of the Program shall override those of any participant.**

7. I agree that my selection as a participant is within Producer's sole discretion and that Producer is not obligated to select me. If I am selected, I agree that Producer is not obligated to have me appear on, or to broadcast my appearance on, the Program ...

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, with 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 the 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, through 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<sup>(1)</sup> for any damage, loss or harm to me or my property howsoever caused, resulting or arising out of or in connection with ... my preparation for, participant and appearance in or elimination from the Program or activities associated with the Program.

33. I have been given ample opportunity to read, and I have carefully read, this entire Agreement. In addition, I have been given the opportunity to, and am hereby advised to, have this Agreement reviewed by legal counsel of my choice. I certify that I have made an investigation of the facts relevant to this Agreement and of all the matters pertaining thereto as I have deemed necessary, that I fully understand the contents of this Agreement, that I am of sound mind, and that I intend and agree to be legally bound by this Agreement. Each statement which I have made in this Agreement is true.

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**COURT FILE NO.:** CV-10-48  
**DATE:** 2010-09-27

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

JOHN C. TURMEL

Plaintiff

- and -

CBC (DRAGONS' DEN)

Defendant

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**BEFORE:** The Honourable Mr. Justice  
T.R. Lofchik

**COUNSEL:** John Turmel, Self-represented

Andrea Gonsalves, for the Defendant

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**REASONS FOR JUDGMENT**

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LOFCHIK J.

TRL:mg