

25-Jul-18

REGISTRY

No. NEW-S-S-202460
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SEANN LYNCASER

PLAINTIFF

AND:

**METRO VANCOUVER KINK SOCIETY, ADRIAN ESTERGAARD, BEVERLY
GUNN, TERRA HUNTER, PAUL JONES, SARA KNAPPE, DAPHNE KOWALCZYK,
ERIN KYLE, VICKY MONTERROSA, ANDREA PAINTER, AND VICTOR SALMON**

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Metro Vancouver Kink Society, Adrian Estergaard, Beverly Gunn, Terra Hunter, Paul Jones, Sara Knappe, Daphne Kowalczyk, Erin Kyle, Vicky Monterrosa, Andrea Painter, And Victor Salmon (the "Defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 — Defendants' Response to Facts

- 1 The facts alleged in paragraphs 2-4, 9-11, 13, 14, 17, 30, and 33-37 of Part 1 of the notice of civil claim are admitted.

2. The facts alleged in paragraphs 7, 15, 16, 18-22, 24, 28, 29, 31, 38 and 39 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 1, 5, 6, 8, 12, 23, 25-27 and 32 of Part 1 of the notice of civil claim are outside the knowledge of the defendant(s).

Division 2 — Defendants' Version of Facts

1. The Defendant Metro Vancouver Kink Society ("MVK") is an incorporated, not-for-profit society. It is a community-based BDSM organization that holds play, social and educational events for kinky people. MVK is looked to for leadership in the kinky community by many community participants.
2. MVK does not consider itself to be in competition with the Plaintiff, as its mandate as a community-based non-profit with a large focus on education is much different than the Plaintiff's for-profit events.
3. The Defendant MVK, at all times, attempts to put the physical and psychological well-being of the kink community at the forefront of its actions. It does this by offering numerous by donation educational workshops, safe monitored play space at parties, and providing information about BDSM on its website, metrovanancouverkink.com. The individual Defendants, acting as the elected Board of MVK, attempt to do the same.
4. The Defendants were particularly concerned that a culture of silence existed within the Vancouver kink community when it came to conduct, or misconduct, that might be psychologically or physically harmful to members of the community, especially those who were just beginning their own explorations in the community.
5. The Plaintiff operated a for-profit rental space in which group events and parties related to BDSM were held. MVK had, in the past, utilized this space for some of its events and workshops.

6. Fetlife is an online website for the BDSM community. Many kink-focused groups, including MVK, maintain forum groups on the Fetlife website, in which they are able to post news and information about their respective organizations. Members of Fetlife are able to publicly post comments on the Fetlife website.
7. In December 2016, a person using the alias "RopeKittteh" posted a journal entry on Fetlife entitled "Not in my back yard, Fuck You." The journal entry generated considerable discussion including over 440 reply comments (the "Initial Post").
8. The Initial Post occurred on a Friday night when the Plaintiff was hosting a kink party in his home which was referred to as "Lord Braven's Manor" or "Braven's Manor." The Initial Post was a topic of discussion by attendees at the party that night.
9. The Initial Post while not identifying the Plaintiff, had sufficient detail that many people in the Vancouver kink community, including the Defendants, knew the person to whom the Initial Post referred. The Initial Post made a number of serious allegations against the Plaintiff, allegations that caused concern within the Vancouver kink community and among the Defendants.
10. MVK became aware of the Initial Post because on the weekend of the Initial Post, MVK and the Plaintiff were both hosting workshops using the same out-of-town presenters from an organization known as Masters And slaves Together International ("MAST").
11. The Plaintiff was providing the presenters with accommodation in his home. On that Saturday, a community member contacted the Defendant Knappe and advised that the two presenters should be relocated, given the contents of the Initial Post. Fortuitously, the two presenters had self-relocated to a hotel, but when advised of the Initial Post by the Defendant Knappe, they recommended a complaint be made to Mast if the allegations were true.
12. As MVK held and sponsored events and meetings that took place in the Plaintiff's rental space, and because MVK was viewed by many people, and

viewed itself, as having a leadership role in the local kink community, the Defendant Board Members began discussions on the best approach to deal with the issues raised in the Initial Post, including whether they should take on any such role.

13. While the MVK Board was discussing and debating whether, or how, to weigh in on the allegations against the Plaintiff, and about issues surrounding consent generally, a number of other things occurred.
14. The Plaintiff held a meeting on December 4, 2016, at the Plaintiff's home which was attended by approximately 17 people including the Plaintiff, to discuss the aforementioned journal entry. One of the attendees at the meeting was a young woman who identified herself as the 16 year-old (19 at the time of the December 4, 2016 meeting) who had been mentioned in the Initial Post. She stated that she had attended at the Plaintiff's play space as a 16 year-old, but that she had done so with the approval of her foster parents as attending an event at the Plaintiff's play space with an adult member of the local BDSM scene was better than the street level sex work she had been doing.
15. During this meeting, one participant raised the issue of one of the attendees having her physical integrity violated at one of the Plaintiff's parties, while two other speakers raised concerns that the Plaintiff appeared to use his position as the host of play parties to message new people in the scene with offers of BDSM play with him.
16. Enough concerns were raised at this meeting about the Plaintiff, and some of the attendees of his parties, that the Defendants determined they could not simply ignore the overall issues surrounding consent and safety in the local kink community, but rather that MVK had a social responsibility to be proactive on these issues.
17. MVK's Board of Directors reached out to other BDSM related communities for guidance on how to best handle the situation, and then decided that a Town Hall style meeting was the most appropriate next step.

18. This meeting was held on December 14, 2016, and had over one hundred attendees. The issues surrounding consent violations were openly discussed, and MVK made it clear that the meeting was meant to be solutions-based and non-confrontational. Neither the Plaintiff nor the Initial Post were the focus of this meeting. It was instead focused on coming up with ways to make the local kink community a safer place, especially for newcomers.
19. However, before, during and after this meeting, numerous people began to reach out to MVK with their own stories about the Plaintiff. Many of these individuals requested anonymity in order to tell their stories, and MVK, in order to encourage these victims to come forward, agreed to keep their identity anonymous. Others approached MVK and agreed their names could be used.
20. The Defendant Knappe, as President of MVK, spoke to a number of these individuals and through those discussions she reached the conclusion that the allegations being put forward by people were credible and numerous. These allegations included claims that the Plaintiff had a) committed, or allowed to be committed on his premises a number of consent violations, b) had engaged in or allowed others to engage in a number of improper activities on his premises and c) violated a former partner's personal privacy, during the dissolution of their relationship by emailing her parents and friends with a detailed email setting out what he perceived to be her psychological issues, and sexual predilections.
21. The Plaintiff, at the time of the Initial Post, was the head of the Vancouver Chapter of MAsT.
22. On March 15, 2017, MVK wrote to MAsT setting out their concerns regarding the Plaintiff continuing in his position as head of the Local Chapter, and providing a history of the allegations the community had made against the Plaintiff and how he had responded. MAsT undertook its own investigation and decided to close down the existing chapter run by the Plaintiff. Subsequently, a new Chapter was formed. None of the Directors of MVK are in charge of the new Greater Vancouver Chapter.

23. On or about July 12, 2017, and subsequent to the investigation by MAsT and the revocation of the Plaintiff's leadership position in the Local Chapter by MAsT, MVK published, on its Facebook and Fetlife groups, an Open Letter to the Plaintiff. This letter set out, in detail, the steps MVK had taken once it was made aware of allegations against the Plaintiff, and why it was publishing an open letter to the Plaintiff.

24. Among the reasons given were that:

- a) MVK wanted to explain its decision making process to the community to which it is accountable;
- b) MVK's concerns about the Plaintiff's behavior was serious enough that they could not in good conscience keep them secret; and
- c) Transparency was seen as the best way to prevent harmful rumours from being spread.

25. The Open letter then set out the allegations, and whether the Plaintiff had agreed with each specific allegation. The Open Letter then also set out the steps MVK was going to take with regard to the Plaintiff and his "play parties."

26. This Open Letter was published some seven months after the Original Post. During this seven month period, attendance at the Plaintiff's parties and events dropped dramatically.

27. MVK held a follow-up community meeting on August 4, 2017, with over one hundred attendees. At that meeting, MVK advised its community about what steps it had taken since the December 14, 2016 meeting, namely the request to MAsT, and the open letter to the Plaintiff. As well, MVK set up two new support groups for members of the community – one entitled, "the right side of the slash", which is a support group for submissives, bottoms and switches, and the other entitled, "Elevate" which is a group geared to members of the kink community aged 35 and younger.

28. Additionally, MVK reached out to the Vancouver Police Department to establish a liaison who would be available as a resource to the local BDSM

community. MVK also organized for a group called "Consent Rocks" to come and offer consent training to MVK's members and supporters.

29. The Defendants spent a considerable amount of time discussing among themselves, and with others, the best approach to take with regard to the numerous allegations they had been made aware of with regard to the Plaintiff and the play parties at the Plaintiff's home.

30. In all of its deliberations and actions the Defendants have acted in such a way as to put the safety of the local kink community at the forefront. This is evidenced by the public meetings it held, and the measured response it took in publishing the Open Letter to the Plaintiff.

31. The Plaintiff, prior to filing the Notice of Civil Claim, emailed a number of people in the Vancouver kink community, in an attempt to pressure the prospective Defendants into issuing an apology. The Plaintiff's post stated, in part:

Each and every board member will be a co-defendent [sic] in this libel suit. What will be the ramifications for thier [sic] kids, family, friends and careers? Do they realize that for the rest of their lives a Google search will show that they were defendents in a libel suit with very distasteful aspects. Will future employers be ok with that? What about child custody issues? If they lose, how will damages affect their credit, their savings or homes, their income?

32. The Plaintiff then repeated the alleged defamatory statements in these emails, thus further disseminating these statements to a wider audience.

Part 2: RESPONSE TO RELIEF SOUGHT

- 1 The defendants consent to the granting of NONE of the relief sought in Part 2 of the notice of civil claim.
- 2 The defendants oppose the granting of the relief sought in ALL of the paragraphs of Part 2 of the notice of civil claim.

- 3 The defendants take no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

1. The alleged defamatory expressions pleaded in the Notice of Civil Claim were published in a context of qualified privilege.
2. Specifically, the alleged defamatory expressions fall within the scope of the protection provided for in the *Libel and Slander Act*, RSBC 1996, c. 263, generally, and s.4 of that Act specifically.
3. Further, the alleged defamatory expressions pleaded in the Notice of Civil Claim fall within the protection of the common law for expressions of opinion, deductions, inferences, conclusions, criticisms, remarks, fair comment or observations. In particular:
 - (a) comments on the conduct of the Plaintiff and conduct of guests attending play parties in the Plaintiff's home relate to a matter in the public interest;
 - (b) any comments on the conduct of the Plaintiff, or on the conduct of guests attending play parties in the Plaintiff's home were based on facts which were true; and
 - (c) the comments were fair.
4. The alleged defamatory expressions pleaded in the Notice of Civil Claim also fall within the protection of the common law of qualified privilege as the Defendants were performing a public duty and the alleged defamatory statements were only made to people with a corresponding interest in receiving those statements.
5. The alleged defamatory expressions pleaded in the Notice of Civil Claim also fall within the protection of responsible communication on a matter of public interest.

6. The Defendants specifically deny that any comments made with regard to the Plaintiff, or with regard to activities that took place at the Plaintiff's home were made with malice. The allegations of express malice against the Defendants in paragraphs 24, 38 and 39 of the Notice of Civil Claim are advanced by the Plaintiff recklessly, without any basis in fact or evidence.
7. The Plaintiff has not suffered any loss or damage as a result of any act or omission of the Defendants, or in the alternative, if the Plaintiff has suffered any loss or damage, that loss or damage has been caused or exacerbated by the Plaintiff's own actions.
8. In the further alternative, if the Plaintiff has suffered any loss or damage, which is specifically denied, then such loss or damage was caused by the Initial Post, and its author, who goes by the pseudonym "Ropekitteh" on Fetlife, and not by any subsequent efforts by the Defendants to both be transparent and proactively work to improve the consent culture in the Vancouver kink community.

Defendants' address for service:

c/o Main Street Law Group
501 – 2050 Scotia Street
Vancouver BC V5T 4T1
Att: Derrill Thompson

Tel: 604.626.1504

Email address for service: dthompson@labourlawyer.ca

Dated: July 25, 2018



Derrill Thompson, counsel for the
Defendants

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.