

ONTARIO
SUPERIOR COURT OF JUSTICE

BEEN:

SHIRLEY BROWNE

Plaintiff

- and -

TORONTO STAR NEWSPAPERS LIMITED, JAGODA PIKE,
DALE BRAZAO, DON BABICK, and CATHERINE MANUEL

Defendants

**AMENDED AMENDED STATEMENT OF DEFENCE OF THE DEFENDANTS
TORONTO STAR NEWSPAPERS LIMITED,
JAGODA PIKE, DALE BRAZAO AND DON BABICK**

1. The defendants, Toronto Star Newspapers Limited, Jagoda Pike, Dale Brazao and Don Babick (the "Star Defendants"), admit the allegations contained in paragraphs 1 ~~(and state that the plaintiff is also known as Shirley Brown and Shirley Bollers)~~ and 2 of the statement of claim (and state that the plaintiff is also known as Shirley Brown and Shirley Bollers).

2. Except as expressly admitted herein, the Star Defendants deny all other allegations contained in the statement of claim, and deny that the plaintiff is entitled to the relief claimed in paragraph 1 of the statement of claim.

2.1 As to paragraph 3 of the statement of claim, the defendants admit that Dale Brazao is the author of an article published on September 22, 2008 in the Toronto Star (the "Star"), headlined "Nanny sent to work as underpaid servant" (the "Article").

3. As to paragraph ~~3~~ 4 of the statement of claim, Toronto Star Newspapers Limited publishes the ~~Toronto Star newspaper (the "Star")~~. At the time of publication of the article ~~complained of, headlined "Nanny sent to work as underpaid servant" (the "Article")~~, Jagoda Pike held the position of Publisher of the Star, not Don Babick.

4. As to paragraph 5 of the statement of claim, the Star is distributed primarily in the Greater Toronto Area. The Star is also published on its website, www.thestar.com (the "Star's website").

5. As to paragraphs 5 and 6 of the statement of claim, the Star Defendants admit that the Article appeared below the fold on the front page of the Star on Monday, September 22, 2008 and continued on page A10, and that it was published on the Star's website.

6. Published along with the Article in the print edition of the Star were photographs of the defendant Catherine Manuel ("Ms. Manuel"), the plaintiff, Heron Lloyd Tait (the recruiter who brought Ms. Manuel to Canada) and the Whispering Pines inn operated by the plaintiff. These photographs were included to illustrate the Article and were not inflammatory or defamatory of the plaintiff. There were no photographs of the plaintiff published on the Star's website.

7. As to paragraphs 8 and 11 of the statement of claim, the Star Defendants deny that the words complained of are defamatory of the plaintiff.

8. In the alternative, in their plain and ordinary meaning, the words complained of are substantially true.

9. As to the allegations in paragraph 11 of the statement of claim that the words complained of also mean that the plaintiff behaved illegally or abusively to Ms. Manuel, the Star Defendants deny that the words bear, were intended to bear or are capable of bearing those meanings. However, the Star Defendants plead the defence of justification in relation to all statements of fact contained in the Article, and to the extent that the words do bear those meanings, and the meaning that Ms. Manuel was underpaid, and to the extent that they are statements of fact, they are substantially true (particulars of which are set out below at paragraphs 9.1, 9.2 and 9.3), and to the extent that they are expressions of opinion, they are opinions that a person could honestly hold based on the facts set out in the Article, and are fair comment on matters of public interest, including the vulnerability of women that come to Canada to be caregivers under the federal Live-In Caregiver Program.

9A. The defendants also plead the defence of fair comment in relation to all expressions of opinion contained in the Article. To the extent that the words bear the meanings that the plaintiff behaved illegally or abusively to Ms. Manuel, which is denied, and the meaning that Ms. Manuel was underpaid, and to the extent those are expressions of opinion, they are opinions that a person could honestly hold based on the true or responsibly communicated facts set out in the Article, and are fair comment on matters of public interest, including the vulnerability of women that come to Canada to be caregivers under the federal Live-In Caregiver Program. All expressions of opinion contained in the Article are opinions a person could honestly hold based on the true or responsibly communicated facts in the Article, and are fair comment on matters of public interest.

9.1 Particulars of the defence of justification in relation to the meaning that the plaintiff behaved illegally to Ms. Manuel or, in the alternative, that she behaved illegally in employing Ms. Manuel, including the facts contained in the Article and any other facts that may be discovered before or at trial, including the following:

- (a) Ms. Manuel did not have a Labour Market Opinion or a work permit allowing her to work for the plaintiff at Whispering Pines;
- (b) Under the terms of her work permit, Ms. Manuel was permitted to work only for Terra Holman;
- (c) Under the federal Live-In Caregiver Program, Ms. Manuel was permitted to work only as a nanny caring for children, the elderly or the infirm, and not as an employee or domestic servant at an inn or bed and breakfast;
- (d) Ms. Manuel had a contract to work for Terra Holman and came to Canada on the understanding that she was going to work for Terra Holman, caring for Terra's son Brent;

- (e) When Ms. Manuel arrived in Canada, Terra Holman was nowhere to be found, and has never surfaced;
- (f) Ms. Manuel was taken to Whispering Pines by a woman named Danya Scott, who is a friend of the plaintiff's daughter and a convicted criminal;
- (g) At Whispering Pines, Ms. Manuel was asked to perform and did perform numerous different tasks, none of which involved acting as a nanny; and
- (h) The plaintiff made a mistake in employing Ms. Manuel without asking any questions and could have looked into whether she was legally employing Ms. Manuel.;
- (i) the plaintiff knew that Ms. Manuel could only legally work as a caregiver;
- (j) At least up to and including the first trial of this matter, Ms. Browne never deducted employment insurance or Canada Pension Plan premiums from Ms. Manuel's pay, and never remitted any premiums on Ms. Manuel's behalf;
- (k) Ms. Browne did not issue a record of employment to Ms. Manuel when she left Whispering Pines, or thereafter; and
- (l) At least up to and including the first trial of this matter, Ms. Browne did not deduct and remit income tax on behalf of Ms. Manuel.

9.2 Particulars of the defence of justification in relation to the meaning that the plaintiff behaved abusively to Ms. Manuel including the facts contained in the Article and any other facts that may be discovered before or at trial, including the following:

- (a) The plaintiff abused the laws of Canada which permit foreign nationals to come to Canada to work as live-in caregivers and she abused her own authority over Ms. Manuel, a vulnerable individual, by having Ms. Manuel work for her for four months doing a type of work she was not permitted to do;

- (b) Ms. Manuel did not have a Labour Market Opinion or a work permit allowing her to work for the plaintiff at Whispering Pines;
- (c) Under the terms of her work permit, Ms. Manuel was permitted to work only for Terra Holman;
- (d) Under the federal Live-In Caregiver Program, Ms. Manuel was permitted to work only as a nanny caring for children, the elderly or the infirm, and not as an employee or domestic servant at an inn or bed and breakfast;
- (e) Ms. Manuel had a contract to work for Terra Holman and came to Canada on the understanding that she was going to work for Terra Holman, caring for Terra's son Brent;
- (f) When Ms. Manuel arrived in Canada, Terra Holman was nowhere to be found, and has never surfaced;
- (g) Ms. Manuel was taken to Whispering Pines by a woman named Danya Scott, who is a friend of the plaintiff's daughter and a convicted criminal;
- (h) At Whispering Pines, Ms. Manuel was asked to perform and did perform numerous different tasks, none of which involved acting as a nanny; and
- (h)(1) Ms. Manuel was not part of discussions between Ms. Browne and either Terra Holman or Heron Lloyd Tait, the recruiter who brought her to Canada, about her status; and
- (i) During an interview with the Defendant Brazao, the plaintiff told Mr. Brazao that "Terra is my sister. She's my half sister...we may not be blood relatives, but we say we're sisters".

9.3 Particulars of the defence of justification in relation to the meaning that the plaintiff underpaid Ms. Manuel include the facts contained in the Article and any other facts that may be discovered before or at trial, including that Ms. Manuel was underpaid in comparison to the nanny contract with Terra Holman that brought her to Canada. Based on that contract, for

a 45 hour work week she would have received approximately \$330 per week (net). While working for the plaintiff, Ms. Manuel received approximately \$250 per week (net), but worked many more hours with no overtime.

10. In addition, the Article is a piece of responsible journalism on matters of public interest. Among other things:

- (a) As in paragraph 9, above, the matters of public interest include the vulnerability of women that come to Canada to be caregivers under the federal Live-In Caregiver Program, including that these women may end up performing work in Canada that they did not come to Canada expecting to perform and that is not permitted, and that they may be subject to working long hours and to being underpaid;
- (b) The Star Defendants took all reasonable steps to verify the information published in the Article, including obtaining relevant documents and interviewing available sources;
- (c) The Star Defendants made several attempts to interview the plaintiff and her boyfriend, Peter Flaherty. Neither was willing to respond to the allegations in the Article. Mr. Flaherty refused to speak to the Star at all and the plaintiff abruptly terminated an interview after only a few minutes;
- (d) Contrary to the allegations in paragraph 14(n), the Article fairly reported on the circumstances of Ms. Manuel's employment at Whispering Pines. The tone of the Article was one appropriate to investigative reporting and was not sensational; ~~and~~
- (e) The inclusion of matters relating to the plaintiff and the pictures of the plaintiff and her inn were appropriately included as part of the story and based on editorial judgment; and
- (f) The Star Defendants had a reasonable belief in the truth of the statements of fact contained in the Article.

11. The Star Defendants deny that the plaintiff has suffered any damage as a result of the Article, or at all.

12. If the plaintiff has suffered any damage to her reputation or otherwise, which is not admitted but denied, the Star Defendants plead that the damages claimed are excessive, exaggerated, remote, unavailable at law, unmitigated, and unconnected with any alleged act or omission on their part, and put the plaintiff to strict proof thereof.

12A. Further, and in particular, any damages suffered by the plaintiff as a result of the Article were mitigated by a broadcast on a local Rogers television station within a few days of the publication of the Article, in which Ms. Browne agreed to be interviewed on camera, as well as by a letter to the editor about the Article from Mr. Flaherty, published in the Star.

13. The Star Defendants deny the allegations in paragraph 14 of the statement of claim. In particular, the Star Defendants deny that the plaintiff ever provided any information to the Star. Contrary to the allegation in paragraph 14(i) of the statement of claim, the Star published a letter to the editor about the Article from Mr. Flaherty's letter to the editor.

14. As to the allegations in paragraph 14(j) and (k) of the statement of claim, the plaintiff has not complained of user comments posted on the Star's website. The time for commencing an action in relation to any such comments has passed.

15. Contrary to the allegations in paragraph 14(l) of the statement of claim, the Star Defendants specifically deny that they subjected the plaintiff to "an abusive, attack interview".

16. Contrary to the allegations in paragraph 15 of the statement of claim, the Star Defendants specifically deny that the plaintiff is entitled to an award of aggravated, punitive or exemplary damages.

17. The Star Defendants plead and rely upon the provisions of the *Libel and Slander Act*, R.S.O. 1990, Chapter L.12 and s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

18. The Star Defendants ask that the plaintiff's claim be dismissed with costs on a substantial indemnity scale.

~~January 21, 2009 May . 2011~~

January 2016

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Shirley Browne
Plaintiff

Toronto Star Newspapers Limited, et al
and Defendants

Court File No: CV-08-368821

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**AMENDED AMENDED STATEMENT OF
DEFENCE OF THE DEFENDANTS**
**TORONTO STAR NEWSPAPERS LIMITED,
JAGODA PIKE, DALE BRAZAO AND DON
BABICK**

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AMENDED THIS Feb. 19, 2016 FURN
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☒ RULE/A RÈGLE 26.02 A

☐ THE ORDER OF
L'ORDONNANCE DU

DATED / FAIT LE

Court File No.: CV-08-368821

REGISTRAR
SUPERIOR COURT OF JUSTICE / JUDGES PEREURE DE JUSTICE

SUPERIOR COURT OF JUSTICE

SHIRLEY BROWNE

Plaintiff

-and-

TORONTO STAR NEWSPAPERS LIMITED, JAGODA PIKE, DALE BRAZAO
DON BABICK and CATHERINE MANUEL

Defendants

AMENDED AMENDED AMENDED REPLY

1. The Plaintiff admits the allegations contained in paragraphs 3, 4 and 5 of the statement of defence of Toronto Star Newspapers Limited, Jagoda Pike, Dale Brazao and Don Babick (the "Star Defendants").
2. ~~The plaintiff denies the allegations contained in paragraphs 6-18 of the statement of defence.~~
 - a.
 - i. The Plaintiff admits the facts contained in paragraph 9.1 sub-paragraphs (a) (b) (c) (d) and (e) and denies the facts set out in sub-paragraphs (e) and (h).
 - ii. Further the Plaintiff denies that any of these facts, or any combination of these facts, prove that the Plaintiff behaved illegally toward Ms. Manuel.
 - iii. Further and in the alternative, the Plaintiff asserts that she knew of no offence committed by herself, nor did she commit any offence and further and specifically she took reasonable steps in the circumstances regarding the temporary and then the new employment situation for Ms. Manuel that evolved.
 - b.
 - i. The Plaintiff admits the facts contained in paragraph 9.2 sub-paragraphs (b) (c) (d) (e) (g) and (h) and denies the assertions in sub-paragraphs (a) and (f).
 - ii. The Plaintiff admits that sub-paragraph (i) is true but denies that it has any relevance to the justification defence.
 - iii. The Plaintiff asserts that in all respects she assisted rather than abused Katherine Manuel whose predicament was dire when she arrived in Canada.

- iv. The Plaintiff asserts she had no authority over Ms. Manuel when she arrived and that Ms. Manuel voluntarily entered into the employment relationship with the Plaintiff and that she liked the job;
 - v. Ms. Browne's actions did not constitute an abuse of the laws of Canada. Leaving Ms. Manuel penniless at the airport would have been abusive. The Regulations which limited the ability of immigrant contract workers to change employment where their employer proved unsatisfactory, are themselves abusive to those workers. If the Defendants' pleading is taken to assert that Ms. Browne acted illegally the Plaintiff denies this and puts the Star Defendants to the strict proof of this.
 - c. The Plaintiff denied the facts set out in paragraph 9.3 and puts the Defendants to the strict proof thereof.
 - d. Further the Plaintiff denies that the Particulars set out in the Amended Statement of Defence paragraph 9.1 and 9.2 and 9.3 can justify the words complained regarding the Plaintiff and even if proved are not substantial justification of the defamations complained of.
 - e. With respect to amended paragraph in the Amended Amended Statement of Defence 9.2(b)(1), the Plaintiff admits that Ms. Manuel was not present during certain discussions between the Plaintiff and Mr. Tait but Mr. Tait was functioning as Ms. Manuel's Representative and further Ms. Manuel continued to lead the Plaintiff to believe Mr. Tait was taking step on her behalf.
3. The Plaintiff asserts that the Star Defendants acted with malice and relies on the following facts in support of same:
- a. The Star Defendants were reckless with respect to the truth of the assertions in the story regarding the pay and conditions of employment;
 - b. That recklessness is further supported by cavalier treatment of the Plaintiff's efforts to get the Star to correct the story;
 - c. That recklessness is further supported by the manner of investigation and interviewing the Plaintiff;
 - d. The Star Defendants purpose was not a proper purpose for a newspaper but rather sensationalism for its own sake;
 - e. The Star Defendants were motivated by spite to the Plaintiff indicated by their crusading presumption she was in the wrong, the photograph used, the attack interview methodology and the indifference to their errors;
 - f. The Plaintiff asserts that the article in question was not a piece of responsible journalism and relies on the facts set out in paragraph 14 of the Statement of Claim and further denies the factual assertions set out in paragraph 10 of the Statement of Defence.
 - g. With respect to paragraph 14 of the Statement of Defence, the Plaintiff asserts that the Reader's Comments noted in Paragraph 14 (j) and (k) of the

Statement of Claim, are not put forward as an originating basis of liability, but as evidence of malice.

- h. The unfair coverage of the first trial by the defendant the Toronto Star which ignored the Plaintiff's witnesses in support of her evidence and instead focused on irrelevant character assassination.
 - i. The fact the Defendants would spend \$1 million in legal fees rather than report the Plaintiff side of this dispute – contrary to their own declared ethics – constitutes reprehensible bullying of which the court should express its outrage by punitive damages.
 - j. Encouraging the witness Catherine Manuel to hide from the Plaintiff by telling her that contact with the Plaintiff put her at risk.
 - k. Claiming reporter privilege for supposed witnesses so that their evidence would not be disclosed prior to trial, itself proper under the case law, but then not calling those witnesses at trial; and
 - l. Giving Peter Flaherty false information what issues he should respond to address the reporter's concerns in the story.
4. The Plaintiff asserts that the publication was not an act of responsible journalism. The Plaintiff relies on the following:
- a. Responsible journalism is not indifferent to the facts;
 - b. Investigative journalism is not indifferent to the facts;
 - c. Responsible journalism corrects misstated facts;
 - d. The Star Defendants ignored a lengthy synopsis of the facts provided to it;
 - e. The Star Defendant deleted from a letter to the editor from Peter Flaherty any reference that such a rebuttal existed;
 - f. The Plaintiff further relies on the assertions in paragraph 14 of the Statement of Claim.
5. With respect to paragraph 12A of the Amended Amended Statement of Defence, the Plaintiff asserts that the broadcast did not address the issues and allegations in the original defamation and had negligible mitigating effect compared the effect of the Defendants' original publication and the perpetual republication on their web site. Similarly the Letter to the Editor published by the defendants was not permitted to address the issues raised in the original defamation and had negligible mitigating effect compared the effect of the Defendants' publication and the perpetual republication on their web site.
6. The Plaintiff asserts that Letter to the Editor referred to in Paragraph 13 of the Amended Amended Statement of Defence was submitted only when the Public Editor refused to tell the Plaintiff's side of the story as submitted to the Public Editor by Peter Flaherty.

The Plaintiff proposes that the trial be in Toronto.

June 11, 2012

January xx, 2016

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SHIRLEY BROWNE
(Plaintiff)

- and -

TORONTO STAR NEWSPAPERS LIMITED et al
(Defendants)

Court File No. cv-08-368821.

ONTARIO
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Proceeding commenced at Toronto

AMENDED AMENDED AMENDED REPLY

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