2022 LSBC 33
Hearing File No.: HE20200093
Decision Issued: September 20, 2022
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THE LAW SOCIETY OF BRITISH COLUMBIA TRIBUNAL

HEARING DIVISION

BETWEEN:

THE LAW SOCIETY OF BRITISH COLUMBIA

AND:

HONG GUO

RESPONDENT

DECISION OF THE HEARING PANEL ON A NO EVIDENCE APPLICATION

Hearing date:	August 8, 2022
Panel:	Bruce LeRose, KC, Chair Lisa Dumbrell, Lawyer Karen Kesteloo, Public representative
Discipline Counsel:	Kyle E.H. Thompson
Counsel for the Respondent:	Craig E. Jones, KC
Written reasons of the Panel by:	Bruce LeRose, KC

[1] At the close of the Law Society's case, the Respondent, Hong Guo, made an application to the Hearing Panel to dismiss all or some of the allegations set out in the Amended Citation, which is Exhibit 1 in these proceedings.

[2] The Respondent submits that the evidence adduced by the Law Society in its case against the Respondent falls short of establishing a *prima facie* case against the Respondent or, in the alternative, the Law Society has not adduced sufficient evidence that, if believed by the Hearing Panel, could establish the transgressions set out in the Amended Citation.

[3] The Law Society's position is that the no evidence motion to dismiss all or some of the allegations in the Amended Citation should be dismissed.

[4] The Law Society submits that, for the purposes of this no evidence motion, there is ample evidence before the Hearing Panel that, if believed, could establish all of the allegations set out in the Amended Citation.

[5] The Hearing Panel has concluded that the Respondent's no evidence motion must fail and therefore is dismissed for the reasons that follow.

THE TEST FOR A NO EVIDENCE MOTION

[6] The Hearing Panel has determined that the appropriate test to be used to decide a no evidence motion is whether the hearing panel can conclude that a reasonable trier of fact could find in the Law Society's favour if it believed the evidence provided in the Law Society's case.

[7] The Hearing Panel adopts the reasoning of the British Columbia Court of Appeal in *Brule v. Rutledge*, 2015 BCCA 25, and in particular, the court's analysis at pages 10 and 11:

> [24] The defendants' application resulting in the order from which this appeal is brought was made pursuant to Rule 12-5(4) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, the most recent iteration of the former Rule 40(8) under the repealed *Supreme Court Rules*, B.C. Reg. 221/90. It provides that at the close of the plaintiff's case, the defendant may apply to have the action dismissed on the ground that there is no evidence to support the plaintiff's case.
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> [25] The application of Rule 40(8) was discussed by this Court in *Roberge v. Huberman*, 1999 BCCA 196. In that case, Huddart J.A. wrote:
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> > [31] J. Sopinka and S.N. Lederman articulated the function of a judge on a motion for non-suit when sitting with a jury in *The Law of Evidence in Civil Cases* (Toronto: Butterworths, 1974) at 521.

> If a plaintiff fails to lead sufficient material evidence, he may be faced at the close of his case by a motion for a non-suit by the defendant. If such a motion is launched, it is the judge's function to determine whether any facts have been established by the plaintiff from which liability, if it is in issue, *may* be inferred. It is the jury's duty to say whether, from those facts when submitted to it, liability ought to be inferred.
>
> …
>
> The judge does not decide whether the jury will accept the evidence, but whether the inference that the plaintiff seeks in his favour could be drawn from the evidence adduced, if the jury chose to accept it.

[32] In *317159 B.C. Ltd. v. C.A. Boom Engineering* (1985) Ltd. (5 December 1990), [1990] B.C.J. No. 2699, this court adopted that description of the judge's role on a no evidence motion in a trial by judge alone.

[33] On this formulation of the test for a no evidence motion, it might be argued the determination as to whether there is any evidence to support a claim is to be equated with an assessment of the quality of the plaintiff's case to determine whether she has made out a *prima facie* case on the law.

[34] However, I think that would be to misinterpret this court's understanding of the meaning of the quoted passage. In *Boom Engineering*, the court found the trial judge had "overlooked the distinction between considering whether there was no evidence and assessing whether there was sufficient evidence" to justify a finding of a duty to inspect the roof of a building the plaintiff was proposing to purchase. Legg J.A., speaking for the court, was clear that a trial judge may not evaluate the quality of the evidence on a no evidence motion. He may determine only whether there was any evidence capable of supporting the plaintiff's claim

[26] In *Maughan v. University of British Columbia*, 2009 BCCA 447, this Court held:

> [59] The trial judge carefully reviewed the law with respect to the test to be applied on a "no evidence" motion under Rule 40(8) of the *Rules of Court* at paras. 6-21 of his reasons for judgment. Apart from his reference to *Bingo City Games Inc. v. British Columbia Lottery Corporation*, 2004 BCSC 1496, suggesting that there is an "air of reality" aspect to the test to be applied under Rule 40(8) (a suggestion which we do not find helpful), we adopt the trial judge's analysis on this point. In the result, after reviewing several authorities in both the civil and criminal context, the trial judge stated his conclusion on the test to be applied at para. 21 of his reasons for judgment:
>
> > I conclude therefore that in considering the no evidence motion in this case, I am obliged in the case of elements of the torts being advanced which are supported by direct evidence, not to weigh the evidence, but only to consider whether it meets a threshold of reasonableness such that a properly instructed jury *could* make the requisite finding. In the case of elements supported solely by circumstantial evidence, on the other hand, I am obliged to engage in a limited weighing of the evidence to ensure that it is *reasonably capable* of bridging the inferential gap between the evidence proffered and the element to be proved.
> >
> > [emphasis in original.]

[27] In *Tran v. Kim Le Holdings Ltd.*, 2010 BCCA 156, this Court again described the test to be applied on a no evidence motion, at para. 2:

> … The test to be applied when a no evidence motion is brought has been described in Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 2d. ed. (Toronto: Butterworth's, 1999) at p. 139:
>
> > The trial judge, in performing this function, does not decide whether he or she believes the evidence. Rather the judge decides whether there is any evidence, if left uncontradicted, to satisfy a reasonable person. The judge must conclude whether a reasonable trier of fact *could* find in the plaintiffs [sic] favour if it believed the evidence given in the trial up to that point. The judge does not

> decide whether the trier of fact should accept the evidence, but whether the inference that the plaintiff seeks in his or her favour *could* be drawn from the evidence adduced, if the trier of fact chose to accept it.
>
> [emphasis added.]

[8] Before moving on to discuss the evidence that the Hearing Panel reviewed when making its decision to dismiss the Respondent's no evidence motion, there is one other matter raised in the parties' submissions that should be resolved.

[9] It appears that the Law Society's position on a failed no evidence motion is that the Respondent in these proceedings is now precluded from opening her own case and calling evidence.

[10] The Hearing Panel has determined that on an unsuccessful no evidence motion, the respondent is still entitled to call evidence to rebut the Law Society's case. In reaching this conclusion, the Hearing Panel adopts Rule 12-5(4), (5), (6) and (7) of the Supreme Court Civil Rules entitled "No Evidence and Insufficient Evidence Applications":

> **No evidence application**
>
> (4) At the close of the plaintiff's case, the defendant may apply to have the action dismissed on the ground that there is no evidence to support the plaintiff's case.
>
> **Defendant need not elect whether to call evidence**
>
> (5) A defendant is entitled to apply under subrule (4) without being called on to elect whether or not to call evidence.
>
> **Insufficient evidence application**
>
> (6) At the close of the plaintiff's case, the defendant may apply to have the action dismissed on the ground that the evidence is insufficient to make out the plaintiff's case.
>
> **Defendant must elect not to call evidence**
>
> (7) Unless the court otherwise orders, an application under subrule (6) may be made only after the defendant has elected not to call evidence.

EVIDENCE ADDUCED BY THE LAW SOCIETY

[11] The allegations in the Amended Citation are as follows:

1. Between approximately May 27 and 30, 2019, you withdrew $680,000 from a bank account held by M Inc. and deposited this money into a bank account held by you when you knew or ought to have known that:

   (a) As of approximately March 2018 you were, or may have been, removed from M Inc.'s Board of Directors; and/or

   (b) as of approximately March 2018 you were, or may have been, removed as a signing authority for M Inc.

   This conduct constitutes conduct unbecoming the profession, pursuant to s. 38(4) of the *Legal Profession Act.*

2. Between approximately October 2019 and August 2020, in the course of an investigation into your conduct, you made representations to the Law Society that you knew or ought to have known were false or inaccurate, or both, contrary to one or more of Rule 3-5(7) of the Law Society Rules and rules 2.2-1 and 7.1-1 of the *Code of Professional Conduct for British Columbia.* In particular, you made one or more of the following representations:

   (a) you did not know when you were removed as a director of M Inc.;

   (b) you did not know when you were removed as a signing authority on M Inc.'s bank account; and

   (c) you were never removed as a signing authority on M Inc.'s bank account.

   This conduct constitutes professional misconduct or a breach of the Act or rules, pursuant to s. 38(4) of the *Legal Profession Act.*

[12] The Law Society's case consists of three witnesses and 19 exhibits. The first witness was QH, who is the husband of YW and for all intents and purposes, her spokesperson in the enterprise known as M Inc.

[13] The second witness was Tadhg Egan, who was a lawyer in the Respondent's office and looked after much of the legal work required for M Inc.

[14] The third witness was the Respondent, who was called by the Law Society pursuant to an application under Rule 5-5 of the Rules. The Law Society was entitled to elicit the Respondent's evidence by way of cross-examination.

[15] As already mentioned, 19 exhibits were tendered during the Law Society's case and in particular, Exhibit 2A - Notice to Admit Volume 1 (with tabs 1 to 64) and Exhibit 2B - Notice to Admit Volume 2 (with tabs 69 to 94). Exhibit 3 in these proceedings is a Response to Notice to Admit and Exhibit 4 is a Supplementary Agreed Statement of Facts and Documents.

[16] Not all of the matters and documents set out in the Notice to Admit were admitted to by the Respondent, but for the purposes of determining the no evidence motion, the Hearing Panel will not have to rely or make any determination on those not admitted by the Respondent.

[17] During the course of the testimony of both QH and the Respondent, both Law Society counsel in direct and counsel for the Respondent in cross-examination spent a considerable amount of time discussing Exhibit 2B, tab 65, which is a notarized letter dated Wednesday, March 21, 2018 signed by the Respondent. It is addressed to M Inc. and YW as one of its directors.

[18] The Hearing Panel has concluded that the information referenced in this document provides some evidence, if believed, from which a reasonable trier of fact could conclude that all of the transgressions alleged in the Amended Citation have occurred.

[19] Furthermore, the Respondent has admitted to withdrawing the $680,000 referenced in paragraphs 1(a) and (b) of the Amended Citation on a date after signing the document that is Exhibit 2B, tab 65 referred to above. She has also admitted to the subsequent transfer of those funds and her subsequent use of those funds (See Exhibit 2A - Notice to Admit Volume 1, paragraphs 117 to 130, admitted by the Respondent by agreement during the Hearing.)

[20] With respect to Allegation 2 of the Amended Citation, the Respondent acknowledged in her evidence that she should have answered the Law Society's questions more accurately and that she should have retained counsel to assist her in doing so.

[21] The Hearing Panel confirms that, at this stage of the proceedings and for the purposes of determining the outcome of the no evidence motion, it did not weigh any of the evidence nor make any conclusions as to the quality of the evidence but merely looked to see if there was some evidence from which a reasonable trier of fact could conclude that the Law Society's case against the Respondent was made out. With respect to all of the allegations set out in the Amended Citation, the Hearing Panel has relied almost exclusively on facts admitted by the Respondent in reaching its conclusions.

[22] Accordingly, the no evidence motion is dismissed.