IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Sutherland v. Jones*, 2019 NSSM 44

Date: 20190903
Claim: No. SCP 475775
Registry: Pictou

Between:

Mark Andrew Sutherland

CLAIMANT

And

Natalie Cameron (Jones) and Brandon Jones

DEFENDANTS

Adjudicator: Raffi A. Balmanoukian, Adjudicator

Heard: August 22, 2019, in Pictou, Nova Scotia

Counsel: Dr. Mark Andrew Sutherland, for the Claimant, personally
Daniel J. MacIsaac, for the Defendants

Balmanoukian, Adjudicator:

[1] This case has had a tortured history.

[2] Dr. Mark Andrew Sutherland, the Claimant, owns a prestigious home at Chance Harbour, Nova Scotia. His castle hath a pleasant seat. And as with many such properties, Dr. Sutherland seeks to assist with its costs by letting it out on short-term rentals on VRBO and related websites. He is a conscientious and pernickety host.

[3] Dr. Sutherland's claim, at its core, is that one of these rentals – to the defendants (or at least to one of them, a point to which I will return) went dramatically and expensively wrong. For that, he seeks compensation, in an amount to which I will also return.

Procedural History

[4] Before even getting to the merits, however, Dr. Sutherland faced obstacles when this came before the Court in August 2018. At first instance, the learned Adjudicator found that this was a residential tenancies situation over which this Court has no original jurisdiction.

[5] Even Homer nods.

[6] Dr. Sutherland appealed the Small Claims decision and, apparently by consent, Justice Gabriel of the Supreme Court ordered the matter to be returned before a different adjudicator.

[7] That would be me.

[8] I note in passing that Dr. Sutherland also filed a claim to the Residential Tenancies Board, apparently in keeping with the original Small Claims decision on jurisdiction. He was told that it was not an RTB situation and to go to the Small Claims Court. One may understand his frustration and the material in the file indicates that he now seeks the associated costs.

[9] Even if I found liability and even if I had jurisdiction over such matters, Justice Gabriel's order explicitly provides that each party "shall bear their own costs of this application."

The application to amend

[10] When the matter returned to this Court, Dr. Sutherland faced further procedural wrangling.

[11] Dr. Sutherland's original claim was for $12,451.07, being an original repair estimate he obtained for the alleged damage which is the subject of this case. He

subsequently obtained a second estimate, for $34,152.16, and sought to amend his claim accordingly.

[12] That second sum is beyond the jurisdiction of this Court. At the commencement of the hearing before me, Dr. Sutherland confirmed that he was abandoning the excess over $25,000, so that the matter could proceed pursuant to s. 9(a) of the *Small Claims Court Act*, RSNS 1989 c. 430.

[13] Defence counsel objected, submitting that the amendment was statute-barred pursuant to Section 8 of the *Limitation of Actions Act*, SNS 2014 c. 35.

[14] I disagreed and allowed the amendment.

[15] The amendment did not seek to add a party against whom the limitation period had expired (*cf*. Civil Procedure Rule 83.04(2)). It also did not add a new cause of action, but merely added particulars and expanded (to this Court's limit) the quantum of the existing claim which was originally filed within the limitation period. At all stages, the defendants knew the case they had to meet and the factual allegations underpinning the claim. The only difference was the exposure they faced.

[16] This finding is consistent with cases binding upon me, including the very recent decision of Justice Bodurtha in *Altschuler v. Bayswater Construction*

Limited, 2019 NSSC 197 which in turn cited and applied the analyses of Chipman, J. in *Dyack v. Lincoln*, 2017 NSSC 187 and of Rosinski, J. *in Oldford v. Canadian Broadcasting Corporation*, 2011 NSSC 49.

The parties to the contract

[17] Before turning to the merits, a final wrinkle came out in evidence before me. Although both Ms. Cameron (now Jones) and Mr. Jones are named as defendants, only Ms. Jones (as I will refer to her in this decision) signed the rental contract. I do not believe this would be fatal to a claim against him in tort – namely, if his acts or omissions were negligent and caused the alleged damage in issue. I do believe it is fatal to any contractual claim against him. While this type of contact would not have to be in writing, there is no indication that Mr. Jones, by conduct or otherwise, considered himself bound by the extensive terms and conditions of Dr. Sutherland's specific contract. There is no evidence that he took part in any of the negotiations or email exchanges between Ms. Jones and Dr. Sutherland.

[18] It is true that he occupied the dwelling during the relevant time and was aware of the "rules of the house," but this in itself is inadequate to cloak him with contractual (as opposed to potential tortious) liability.

[19] It should go without saying that in our egalitarian age the days of a wife being able to "pledge her husband's credit" without his consent are long gone. Indeed, Ms. Jones was not – quite – Ms. Jones at the time of the agreement, but was still Ms. Cameron. She was in fact obtaining the property for the purpose of her (and Mr. Jones') nuptials. To that sequence of events, and the evidence presented by each party, I now turn.

Dr. Mark Sutherland

[20] Although Dr. Sutherland testified as his third and final witness, I begin with him as he is, predictably, central to the Claimant's narrative.

[21] Dr. Sutherland's seasonal/recreational home is the subject of this litigation. It is a spectacular home in which he takes obvious pride of ownership. It was custom-built to his exacting standards in 2012. He uses it himself but, as a busy professional resident elsewhere, the property has periods of vacancy. For that, as noted, he is willing to let it to qualifying VRBO applicants, at a premium price.

[22] Since 2012, he has rented the property some four to six times per year; about sixteen times in all prior to the Jones' rental, and about fourteen times since. He has also used the property for a couple large owner-hosted events, including a "pig roast" and a fundraiser.

[23] The property is comprised of a main level and a lower level which can be let separately or together with the main house. Apparently, the Joneses sought only the main level, which forms a small part of this story.

[24] Among the property's many attributes is a very expensive walnut floor, which takes up the kitchen and living area of the main level. It is specifically mentioned in Dr. Sutherland's contract, which states:

> 9. The walnut floor on main level cost $35,000.00 to install. It is beautiful but it is SOFT. Please be careful of the following:….high heel shoes are forbidden as they will leave indent marks.

[25] It became apparent that this is not Dr. Sutherland's only area of concern. He is very particular about his occupants, regardless of their financial wherewithal. Thus, when he was contacted by Ms. Jones to let the property for the purposes of a wedding, he initially declined.

[26] However, on being told that her family had a nexus to the Chance Harbour area – relatives live in the same cluster of homes – and that there would be a "small family wedding party" in the home following an outdoor ceremony, Dr. Sutherland relented. Eventually, an agreement was reached.

[27] The noted contract was signed, and funds exchanged. Only Dr. Sutherland and Ms. Jones signed. There is provision for a damage deposit and for a credit

card number as security for the deposit, but these were neither provided nor charged – through Dr. Sutherland's admitted omission. The contract was for a week's rental of the main floor only, and the price adjusted accordingly (along with a small adjustment for a VRBO transaction fee). There was also a cleaning fee, based on occupancy of the main floor only.

[28] The Joneses took possession on July 9, 2016, following a cleaning and review of the property with Dr. Sutherland. There was a discrepancy in the evidence on whether Dr. Sutherland assisted in moving furniture to clear an area of the main floor; he could not specifically recall. On cross-examination, he admitted that it was possible that he was present, but that re-arranging the furniture was "not for dancing."

[29] That night, Dr. Sutherland remained in the area of the cottage, having dinner with nearby friends. He testified that he saw lights flashing at his cottage and "arms in the air" indicative of dancing by the wedding party in Dr. Sutherland's living room.

[30] He didn't take any action at the time.

[31] The following day, he texted the Joneses that they would have to pay for cleaning the downstairs bathroom. There was some speculative evidence on how

this use came to his knowledge. Dr. Sutherland testified that he did not enter the premises, and there is no direct evidence to contradict this; however, as will appear the Jones have their doubts. He testified that Ms. Jones wrote to say that she would pay for this cleaning, not that he had asked for it. Ultimately, aside from any findings on credibility, who initiated the exchange is unimportant. When asked on cross-examination whether he entered the house the next day, he said, "not that I recall."

[32] The next development was on July 12 (the lease was to July 16) when Dr. Sutherland emailed the Joneses, asking to "come by Friday morning" (the 15th) as he was having a hot tub installed that day. The Joneses were not pleased, responding on July 14 that they "would prefer not to have workers around on our honeymoon during our rental period…" Instead, they elected to leave on the 15th and to be reimbursed the per diem. They promised to leave the extra cleaning fee in cash on the premises.

[33] On the Jones' departure, three nautical charts were blown off the wall; they reported this to Dr. Sutherland forthwith by email, blaming it on a wind gust.

[34] Dr. Sutherland testified that the hot tub installers worked on the 15th, having only external access (Exhibit 3) except for one interior access for electrical purposes (in a different part of the house than is relevant to this case).

[35] Dr. Sutherland stayed at the home that night; he testified that he "saw pockmarks" in his floor when he dropped his TV remote; on looking more closely, he ultimately found over 150 "dents or swirls" in the walnut floor. These were put in evidence before me, primarily as Exhibit 2.

[36] The following day, his cleaners returned; Dr. Sutherland testified that he did not mention the floor condition, but instead that his cleaners brought it up to him independently.

[37] On July 18, 2016, Dr. Sutherland wrote to the Joneses outlining his claim for damages; nothing appears to have happened by way of resolution for the following year, upon which he submitted his repair estimates; nothing came of that and this litigation ensued.

[38] He testified that there was only minor damage to the flooring prior to the Jones' tenancy, despite the prior use of the property. There was some small damage in the fridge area, chair scratches around the dining room table, and the

like, but nothing akin to what is at issue in this case. He had no pre-2016 close-up photos of the floor.

[39] Finally, Dr. Sutherland tendered two estimates – one for labour and materials of $12,451.07; and the latter from Big B Carpentry (the house's original builder) for over $34,000 (capped, as noted, at this Court's limit of $25,000).

[40] Dr. Sutherland explained the discrepancy as the extra cost of removing the existing flooring, replacing quarter round, etc. In other words, replacing is more expensive than a stand-alone initial job, particularly due to the in-floor heat.

[41] Finally, he explained that refinishing is not a practicable option; as engineered flooring, doing so would remove the micro-bevel that gives the planking an authentic look, and may not be adequate to remove the deeper dents and swirls.

[42] On questioning from the Court, Dr. Sutherland testified that the original floor had been represented to him as having a 20-30 year expected life span, with normal wear and tear. He admitted that, should his claim be successful, the replacement cost should be adjusted to reflect the associated betterment that a new floor has over a four (and now seven) year old floor.

[43] On cross-examination, Dr. Sutherland confirmed that the floors have not been repaired or replaced.

Catherine Jane McGee

[44] Ms. McGee was Dr. Sutherland's cleaner; she had done so since 2014 and remained until 2017 when she ceased this business for unrelated reasons.

[45] She tendered a copy of her notebook for 2014, 2015, and 2016 showing that she had cleaned the property some 16 times; she testified that she scrubbed the floors "on her hands and knees," and aside from the minor damage I have noted above, there was no material impact on the walnut floors prior to July 9, 2016.

[46] She testified that she would take photos of anything that came to her attention that was amiss; that on return on July 16, she noticed marks in front of the fireplace and where the chesterfield had been – there were "too many to count." The resultant photos were exhibit 2.

[47] Lastly, she noted some makeup-soiled towels and the fallen nautical charts.

[48] She confirmed on cross-examination that the hot tub installers were not in the house.

[49] She also testified that she "didn't think" there was any additional damage to the floors between July 2016 and when she finished working for Dr. Sutherland in 2017.

Margaret Ann MacLean

[50] Ms. MacLean is Ms. McGee's sister, and assisted her in cleaning Dr. Sutherland's house. She essentially corroborated Ms. McGee's testimony as to pre- and post-July 2016 flooring condition, and that aside from some crayon marks on a tub, there had been no other notable house damage from prior tenants.

[51] Again, she noted "holes and twist marks" in the fireplace area, of the type made from turning while in heels.

[52] She, too, had no pre-2016 floor photos. She confirmed on cross-examination that there was a sign saying "no high heels."

Brandon Jones

[53] The defence's first witness was Brandon Jones. As already noted, he is named on but did not sign the lease.

[54] He testified that the wedding party "took every precaution" with respect to the floors; that Ms. Jones and her sister were at the door and told people to read the

"no heels" sign and to change shoes. A basket of flip-flops, purchased by the Joneses, was made available.

[55] The Court was presented with a variety of photos, exhibit 8, showing various members of the wedding party in bare feet or flip flops. There were no shoes or high heels in them. Much was made about senior members of the wedding party who had to remove their skid-proof footwear to avoid making marks, which required them to have ambulatory assistance or to remain seated during the festivities.

[56] Mr. Jones also testified that Dr. Sutherland helped re-arrange the furniture.

[57] Finally, Exhibit 8 showed upholstered chairs in the fireplace area, where he and other witnesses testified they remained throughout the evening; and that this placement would be inconsistent with dancing or other floor impacts in that area.

[58] On cross-examination, Mr. Jones was presented with a list of some 38 guests (although on my own review, one appears to be double-counted for a tally of 37), which Dr. Sutherland submits is inconsistent with the representation made to him that "about 30 adults" would be in attendance. He agreed that the list appeared to be accurate. It should be noted that several children were in attendance.

[59] Finally, Mr. Jones did not say directly that Dr. Sutherland had or had not been in the house following the Jones' occupancy, but that he had had a discussion with him the house the day after the wedding so "he was at least outside."

Natalie Jones (nee, Cameron)

[60] Ms. Jones' initial testimony is generally consistent with the narrative to date – that her sister (of whom more later) found the Sutherland property on VRBO; that Dr. Sutherland was originally unsure about renting but relented; that the "house rules" were discussed in exhaustive detail, including the floors; and that only she signed the lease.

[61] She further testified that, to accommodate the walnut floors, she had her wedding dress altered and replaced her wedding shoes with foot jewellery, and that her stepmother replaced her dress for the same reason; and that her 91 year old grandmother had to have the ambulatory assistance previously mentioned.

[62] Ms. Jones also testified that her sister, Kara Dort, was at the door throughout the evening (with the flip-flops) to tell guests to remove outside footwear.

[63] She also confirmed that the chairs in front of the fireplace did not change during the course of the evening, or indeed until they had vacated the property.

[64] For the rest of the week, the Jones and their guests wore “flip flops and bathing suits” in the house.

[65] She testified there was no noticeable damage to the floor from when they took occupancy.

[66] Notably, she testified that she and her stepmother cleaned the house both before the wedding and upon check-out. She testified that their check-out cleaning was approximately three hours’ worth each.

[67] What I found more interesting was her testimony that she had to clean upon taking occupancy, to reflect the need to clean the footprint areas where furniture had been, but had now been moved. I will discuss this in due course.

[68] With respect to the downstairs bathroom, Ms. Jones testified that she received the text “when we got back from the Pictou Lodge,” the day after the ceremony. Others testified that the text was during the luncheon; this may seem to be a minor inconsistency but in my analysis, as well, it will play its role.

[69] When Ms. Jones was asked about the role played by her sister, Kara Dort, her response was that she did “basically everything.” She was “basically on duty” at the door with respect to policing footwear.

[70] On cross-examination, Ms. Jones confirmed that she had "discussed having a family party" and did not believe that they had discussed having a DJ in the house with Dr. Sutherland. She also testified that Dr. Sutherland helped the Jones party move chairs, and specifically that a large massage chair would not be moved because of the potential for damage (such a chair appears in one of the Exhibit 2 photos). The items were replaced to their original positions before giving up occupancy on the 15th.

[71] Ms. Jones confirmed there was alcohol consumed during the reception; there was no evidence that any guests were unruly or that intemperance or excess came to the fore.

[72] There was some discussion on cross-examination on whether the Jones' dogs were in the home and if so, on what basis. Ms. Jones' testimony was that they were in the property once (carried in and out) for a photo, and not otherwise.

[73] Ms. Jones was presented with an email from another cottager to Dr. Sutherland asserting that the dogs had been in and out "and were kept in there during the wedding ceremony" (ex. 10).

[74] The author was not called upon to testify and indeed the author purports to relay what someone else, "Gloria," had said she had seen. Although this Court is

not bound by the strict rules of evidence, and it is quite acceptable to put such a statement to the witness, in the absence of evidence to the contrary this email alone is not adequate proof of the truth of its contents.

Kara Dort

[75] Kara Dort is Ms. Jones' sister. Her role has already been described. She corroborated Ms. Jones' testimony with respect to furniture movement and placement; the availability and insistence on alternate footwear; and the need to clean where the furniture had been (after being moved).

[76] She also testified that she made several announcements during the evening respecting the floors/footwear, including when there was a break in the music.

[77] She also testified that there were scratches on the floor on the 9th and she could verify this because she "had to request cleaning items" due to the furniture rearrangement.

[78] She testified further that the "downstairs bathroom" text came in during the Pictou Lodge brunch, and that it was a topic of discussion at that brunch.

[79] She reiterated the evidence of Mr. Jones with respect to the impossibility of damage from dancing in front of the fireplace, due to the chair placement there.

[80] As a matter of record, I add to this decision a comment that I made following Ms. Dort's testimony. I had an initial impression that I had perhaps known of her from a matter unrelated to this case, but that it was inadequate to colour my assessment in any way. Specifically, I had in mind that I had perhaps notarized an unrelated document for a third party in the course of my private practice. On my return to the office after the hearing, I looked up the relevant matter and it did not involve Ms. Dort at all. I emailed Dr. Sutherland and Mr. MacIsaac to that effect. To the best of my knowledge, I have not met any witness in this case before.

Kaitlin Lasalle

[81] Ms. LaSalle's testimony may best be described as cumulative. Indeed, Dr. Sutherland did not cross-examine. Her evidence was that "everyone was aware" of the floor rules, and that there as a "big rule book" in the house. Enforcement was vigilant.

[82] She said that "I can't say I 'inspected' the floors, but I saw everything including general wear and tear."

Adele Cameron

[83] Adele Cameron is Ms. Jones' stepmother. She too was a brief witness and stated that "we treat homes with respect," and that the party "dwindled" as the night went on. Otherwise, her testimony is reflective and cumulative to the other defence witnesses.

Sheldon Cameron

[84] Mr. Cameron was the defence's last, and briefest, witness. His testimony was to "confirm what the girls have said." Dr. Sutherland declined the opportunity to cross-examine.

Analysis

[85] The passage of time will inevitably distort how a party perceives what happened.

[86] To listen to the defendants, the floors went from being a point of caution and attention, to becoming the be-all and end-all of the whole week and the central focus of all of their occupancy efforts. I put it to them that this was an exercise in "taking care of the floors with a side event of a wedding." Ms. Jones replied, "pretty much."

[87] I have my doubts that things were so askew in the excitement and triage of the Jones' nuptials. It would be incredulous to think that everyone's mind was dedicated to the singular purpose of "whatever you do, don't scratch the floors."

[88] That said, however, it is clearly in evidence that there were indeed efforts brought to bear – the footwear, the "guard duty," and the alteration of clothing. My finding that the defendants' and guests' testimony may be overenthusiastic and coloured by the acrimony of litigation does not change the fact that the thrust of the evidence is they knew they had to be careful, and took steps to do so.

[89] I find that this "distant mirror" distortion may be overblown, but ultimately and in corroboration it is not incredible.

[90] Similarly, although there are some discrepancies in testimony – the timing of the "downstairs bathroom" text message and whether or not the dogs were in the house – these are inadequate in themselves to discount the overall cumulative defence evidence.

[91] The burden, of course, is upon Dr. Sutherland to prove his case on a balance of probabilities. The nature of his case is this: there was no material damage beforehand; there was damage afterwards; the cleaners noticed this on their own; so it had to be the Joneses. As I put it in argument to Mr. MacIsaac during his

submissions, it is a type of *res ipsa loquitur*. I disagree with Mr. MacIsaac's response that I should "forget about it."

[92] I have no doubt that Dr. Sutherland truly believes the logic tree he presented. I found him a credible and balanced witness. He was calm and professional both in chief and on cross-examination. He is not the sort to try to "milk" a tenant for every perceived act or omission. It is also clear that he is not trying to parachute "some sort of damage done by someone sometime" onto the Joneses, or to go after what he sees as a deep pocket. Certainly, his pursuit of this litigation through to the Supreme Court and back speaks to his determination to see through what he perceives as his just claim. I have outlined my reservations with the defence "evidentiary overreach" already.

[93] Ultimately, I find that the two versions of events can be reconciled; unfortunately for Dr. Sutherland, that reconciliation means that he has not proven his case.

[94] What I find more likely than any other scenario is that there was wear and tear over time – including by the Joneses, but not unreasonably and definitely not to the extent claimed.

[95] The property had been rented before and since, and was used in at least a couple large functions. Although Dr. Sutherland (and his cleaners) had not noted prior damage (except as I have outlined), several matters stand out to me:

- First, despite the evidence that the cleaners scrubbed the floors "on their hands and knees," the evidence was that (as one would expect) further cleaning was needed when furniture was moved. The jobs may have been good, but they were not surgical. They were cleaners, not crime scene investigators; it was not their job to notice every ding over a period of months or years.

- Second, Dr. Sutherland clearly has a level of expectation that may exceed the "average owner." What is normal wear and tear for an average owner may not be what is acceptable to him as either owner or landlord.

- Third, Dr. Sutherland testified that although he had been in the home on July 15th, he only noticed damage when he dropped his remote control; it was on further examination that he found the litany of dings and dents that are at issue in this case. It is completely consistent with the evidence of some sixteen prior rentals and Dr. Sutherland's own sporadic cottage use that these only became "obvious when he looked for them." I say

this despite my comments respecting Dr. Sutherland's care and pride for his home; to put it another way, it is completely possible that these were "hidden in plain sight" until he looked at every board and corner, and then was taken aback at the extent of what he saw.

- Fourth, and with empathy, Dr. Sutherland's evidence was that he was undergoing legal and personal issues at the end of 2015 and in early 2016. It is fair to say that "his mind was elsewhere," quite aside from the demands of his profession. It is entirely conceivable without moving into speculation that it was only when he was able to get past these matters and proverbially "breathe" in the summer of 2016 that things such as the state of his home came to his attention.

- Fifth, and following on the above, it became apparent that once Dr. Sutherland agreed to this uncharacteristic rental and became concerned with the activity in the house, he became something of a "helicopter owner." I do not need to make any specific finding on whether he entered the house during the Jones' absence, or whether or not the Joneses had their dogs in the house other than for the supervised photo. It is human nature when on alert to notice things that otherwise would be unnoticeable or of no concern. I find it more likely than not that Dr.

> Sutherland was oversensitized to the potential for problems, and honestly came to believe that (virtually) every ding and dent over the cottage's life was for the account of the Joneses. Certainly the last-minute damage to the nautical charts, for which there was no other explanation than the "accident" described by the defendants, did not help this perception.

[96] I am therefore, despite my finding of Dr. Sutherland's sincerity and the defendants' hyperbole, compelled to conclude that the Claimant has not established his case to the required civil standard.

[97] Given the extensive history of this case, although I have dismissed it I consider it appropriate to make a provisional assessment of damages.

[98] Had I found liability, I would have deducted 50% of the cost of replacement to account for both betterment and post-2016 use of the floors. The evidence was that the floors would have a "normal" 20-30 year life. That may be the case with a normal residential occupancy. However, given the use of the property as a partial rental and Dr. Sutherland's own proclivities, I find a more realistic economic lifespan would be closer to half of the upper range, or 15 years. The floors are now seven years old. Although the alleged damage occurred at the four year mark, they have remained in use and apparently without impacting on either Dr. Sutherland's

personal use or his ability to rent the cottage. On a global and rounded basis, I would find a 50% reduction would be reasonable.

[99] I further find that the Big B estimate is the more realistic of the two estimates, and accordingly would provisionally have awarded $17,076.08; I do not believe the fact that the original estimate exceeds the Court's jurisdiction would require me to award "half of the cap" instead of "half of the cost," so long as the ultimate amount of the order is within the Court's jurisdiction.

[100] As the floors have not been replaced, I would not have awarded pre-judgment interest.

[101] Finally, although given my disposition of the case it is not necessary for me to decide, I do not agree with Mr. MacIsaac's submission to the effect that "if the work isn't done, you don't get the money." To the extent that the case cited by him, *Fairview Home Improvements Inc. v. Antonopooulos*, [2015] OJ 6434 stands for such a proposition, I would instead follow that which is binding upon me including *Margeson v. Provincial Flooring Ltd. and Ceratec* (1987), 78 NSR (2d) 431(SC, TD). While that was a contract case involving a defective floor, monetary damages were awarded despite there being no evidence that the floors had been repaired or replaced.

[102] I turn to costs. Normally, the successful defendants would be entitled to the minimal costs over which this Court has jurisdiction. However, in the exercise of my discretion, I believe Dr. Sutherland brought forward his claim honestly if misguidedly; and he has been through quite enough in getting it heard on its merits. The defendants also somewhat exacerbated the proceedings through affidavits and "demands for particulars" filed by their prior solicitor, both of which actions are, to put it mildly, unorthodox in this Court.

[103] I therefore decline to award costs.

Conclusion

[104] The claim is dismissed, without costs.

Balmanoukian, Adj.