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Docket: CI 13-01-82216
(Winnipeg Centre)
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COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	**APPEARANCES:**
	)	
MARTIN GREEN,	)	Martin Green
	)	In person/self-represented
plaintiff,	)	
	)	Brian J. Meronek, Q.C. and
- and -	)	Mark D.J. Schulz
	)	for the defendants
HEATHER BUSH and GEORGE BUSH,	)	
	)	Judgment delivered:
defendants.	)	May 10, 2017

EDMOND J.

Introduction

[1] The defendants seek summary judgment dismissing the plaintiff's claim with costs.

[2] This is a defamation action in which the plaintiff alleges that he attended at the home of the defendants for the sole purpose of serving a statement of claim in another proceeding. The plaintiff alleges in his amended statement of claim, that the defendant, Heather Bush ("Heather") told her husband, the defendant, George Bush ("George"), that the plaintiff had attempted to force his way into her home. Further,

the plaintiff alleges that George then contacted representatives of the University of Winnipeg (the "University") repeating that the plaintiff had just "tried to force his way in" to the defendants' residence. The plaintiff says that George did maliciously with intent to harm the plaintiff and with knowledge of the falsity of his accusations, defame the plaintiff to Don Metz ("Metz") and Neil Besner ("Besner").

[3] The plaintiff commenced a separate defamation action against Metz, Besner and the University in Queen's Bench file number CI 14-01-88901 (the "Metz action"). A separate motion for summary judgment dismissing that action was also heard and will be addressed in separate reasons for decision. The primary issue for determination is whether there is a genuine issue for trial in both actions.

Facts

[4] The plaintiff was enrolled as a student in the faculty of education program at the University for the 2011/2012 academic year.

[5] George and Metz were instructors at the University during the 2011/2012 academic year. The plaintiff enrolled in their classes at the University.

[6] Heather is George's wife. They reside together in the City of Winnipeg. On January 11, 2012, the University advised the plaintiff, that he was barred from the University campus pending an investigation into alleged non-academic misconduct.

[7] On January 23, 2012, the plaintiff was advised in writing by the President of the University that he was suspended immediately from the University property pursuant to Section II (1) of the Student Non-Academic Conduct and Discipline Policy (the "Policy").

The plaintiff was suspended for a minimum period of one year and barred from the University property.

[8] The plaintiff appealed the decision of the University in accordance with the Policy. On March 23, 2012, a hearing was conducted by the Student Discipline Appeals Committee ("SDAC"). The plaintiff appeared, evidence was presented and the plaintiff's appeal was dismissed.

[9] On March 27, 2012, the chair of the SDAC wrote to the plaintiff advising him of SDAC's decision.

[10] On September 20, 2012, the plaintiff filed a statement of claim against a number of named defendants, including the University.

[11] On January 11, 2013, one year after the barring notice was issued, the plaintiff made a telephone call to George at his home. George stated in his affidavit sworn May 30, 2013 ("George's affidavit"), that the plaintiff identified himself and indicated that he had papers to provide to him. George asked how the plaintiff got his home phone number, as it is an unpublished phone number. George informed the plaintiff that it was inappropriate for him to be calling his home, advising that any communication should be directed through his legal counsel.

[12] Contrary to the instructions provided by George, the plaintiff attended at the defendants' residence and rang the doorbell. Heather described what transpired in her affidavit sworn May 30, 2013 ("Heather's affidavit"). Heather answered the door and asked the plaintiff to identify himself. The plaintiff identified himself and asked to see George. Heather answered that her husband did not wish to see him and the plaintiff

extended the documents towards Heather, telling her that he had some papers for her husband. Heather advised the plaintiff that any papers could be mailed.

[13] Heather then attempted to shut the door on the plaintiff and the plaintiff pushed back against the door and prevented it from being closed. Heather described the incident as follows:

> I then attempted to shut the front door. Martin pushed back against the door to prevent it from closing. During this pushing match, with the door between me and Martin, I had to forcefully keep Martin from entering the house by putting my entire weight against the door; I pushed with all my strength. I feared that I was not going to be able to close the door. I was very concerned of what Martin's intentions were since he was not listening to me. As I tried to close the front door, Martin's hand got stuck between the door and the doorjamb; Martin finally pulled his hand out. I immediately closed and locked the front door.
>
> (Heather's affidavit, para. 9)

[14] Heather immediately informed George of what had transpired and George contacted the Winnipeg Police to report the incident.

[15] George contacted Metz on the evening of January 11, 2013. Both Metz and George were involved in grade disputes with the plaintiff and George was concerned that the plaintiff had followed him to his home, so he contacted Metz as a cautionary measure in case the plaintiff attended at his home.

[16] George informed Metz of what occurred at the front door as described by Heather.

[17] George also called Besner, Provost and Vice-President Academic and International Professor of English at the University. George provided the same explanation to Besner. He describes the explanation in paragraph 14 of his affidavit as follows:

> … specifically that Martin had attended my home notwithstanding that I had previously asked him to direct any communications to my legal counsel; Martin attempted to give Heather papers; Heather shut the door on Martin.

[18] The incident was reported to the Winnipeg Police and was investigated by Constable Warren. The incident report is attached as Exhibit "A" to George's affidavit and confirms the discussion the constable had with George.

[19] Constable Warren asked whether the defendants wanted to pursue a criminal harassment charge against the plaintiff and they declined until they received legal advice.

[20] The plaintiff relies on e-mail messages sent by Metz and Besner following the report from George as evidence in support of the alleged defamation in this action and the Metz action.

[21] On January 11, 2013, Metz sent an e-mail to Besner at 5:18 p.m. stating as follows:

> George Bush just called me to report that Marty Green tried to break in his house. He has called police.
>
> (see exhibit F to the affidavit of the plaintiff sworn October 24, 2013)

[22] On January 11, 2013, Besner sent two e-mails to representatives of the University. The first one at 5:30 p.m. read as follows:

> I just spoke with George Bush. Marty Green tried to force his way into George's house minutes ago. The police are there taking a statement.
> Don Metz is aware of this (Bush called him, and Metz emailed me.) Bush is upset and agitated. He'll call me back when he is through with the police.
>
> We should discuss next steps.

[23] The second e-mail sent at 5:45 p.m. reads:

> The police have taken George Bush's statement. The statement # is C13-7371. Bush and his wife are, as you can imagine, upset. He called me a moment ago; Green (who had been to Bush's church 3 weeks ago) called Bush at home on his unlisted # and then appeared at his door two minutes later and tried to force his way in and deliver a document to Bush. Bush and his wife refused to let him in (apparently there was some struggle). Then Bush called police. Bush also apprised Metz of all this.
>
> (see exhibit E, supplementary affidavit of plaintiff sworn November 28, 2013)

[24] On January 15, 2013, the plaintiff was served by the University with a second barring notice effective January 11, 2013, by leaving a copy with his son at his place of residence. Following the service, the plaintiff was observed by University security services personnel, in violation of the barring notice.

[25] On or about January 18, 2013, the defendants sought a protection order against the plaintiff. The application for the protection order was not granted.

[26] In his supplementary affidavit of evidence sworn November 28, 2013, the plaintiff attached as exhibit A, e-mails he exchanged with representatives of the University regarding the barring notice and service of the claim upon George. Offers were made regarding the service of the documents which the plaintiff did not find satisfactory. A portion of his e-mail sent on January 25, 2013 at 5:12 a.m., reads as follows:

> Since January 11th, because of a complaint from Professor Bush about an alleged incident at his home. I have been barred from the University of Winnipeg campus under threat of being charged with trespassing. I believe the University is aware that Professor Bush's allegations against me are false and malicious, and yet they refuse to give me the opportunity to refute those allegations. Indeed, their implementation of the Petty Trespassing Act against me does nothing to protect the safety of Prof. Bush; it only serves to publicize and add credibility to his defamatory claims. I consider this to be a serious abuse of the University's powers under that Act.
>
> Having exhausted all other remedies available to me, I therefore find that I have no choice but to assert my rights by presenting myself in person on the

> University Campus. Unless the University can suggest any other legal avenue of redress for me, I intend to do so at the earliest possible opportunity. I will make use of any spaces and facilities which are normally available on campus to members of the general public, and I can assure the University that my presence will be peaceful and non-disruptive. If I am asked to leave I will do so peacefully, but not until I am officially charged with trespassing.
>
> A copy of this correspondence is being sent to the Winnipeg Police Services.
>
> Marty Green

[27] On January 29, 2013, security services took the plaintiff into custody for trespassing on University property. Security services personnel contacted the Winnipeg Police Service in relation to the plaintiff's violating the University's barring notice. (see affidavit of Martin Grainger ("Grainger") sworn August 28, 2014 at para. 10, of the Metz action)

[28] The Winnipeg Police Service subsequently charged the plaintiff with forcible entry, mischief and two charges under ***The Petty Trespasses Act***, C.C.S.M. c. P50 (the "***Act***"), for violating the University's barring notice.

[29] The charges against the plaintiff proceeded before Krahn P.J. commencing in September 2013 and concluding in June 2014 (***R. v. Green***, 2014 MBPC 42, 309 Man.R. (2d) 69 (QL)). Details of the charges against the plaintiff are not relevant in this proceeding. A number of the witnesses who have sworn affidavits in this action testified before Krahn P.J. Findings of fact were made by Krahn P.J. on the basis of the testimony that was received during the criminal trial. Both the plaintiff and the defendants made reference to the reasons for decision of Krahn P.J. The plaintiff's conviction under the ***Act*** was appealed by the plaintiff. The summary conviction appeal judge dismissed his appeal. The plaintiff sought leave to appeal the decision of the

summary conviction appeal judge and the court of appeal refused to grant leave (see ***R. v. Green***, 2015 MBCA 60, [2015] M.J. No. 164).

[30] More will be said in these reasons for decision regarding the relevance and applicability of the reasons for decision by the provincial court, the summary conviction appeal court and the court of appeal regarding the charge under the provisions of the ***Act***.

Law on Summary Judgment

[31] There is no dispute regarding the test to be applied on summary judgment motions. I refer to the decision of my colleague in ***Green v. Tram***, 2014 MBQB 118, 307 Man.R. (2d) 82 (QL), which is an excellent summary of the law applicable to summary judgment motions:

> **8** The Manitoba Court of Appeal has dealt with summary judgment on many occasions. A particularly helpful summary is set out in ***Blanco v. Canada Trust Co.***, 2003 MBCA 64, 173 Man.R. (2d) 247 at paras. 18-24. To paraphrase:
>
> (1) a motion for summary judgment is not decided on the assumption that the facts alleged in the pleadings are true. The motion is decided on evidence;
>
> (2) the moving party in a summary judgment application must begin by establishing with evidence a *prima facie* case for the entering of summary judgment, i.e. that the responding party's case must fail;
>
> (3) if the moving party meets this onus of proof, then the responding party has the burden of showing there is a genuine issue for trial;
>
> (4) the motions judge must take a "hard look at the merits of an action" and decide whether there is a "real chance" that the action will be successful, but before doing so, he or she must first be satisfied that the moving party has met the burden upon it;
>
> (5) the "real" chance of success means there is a triable issue which realistically could result in a judgment. The claim must have an "air of

> reality" to it and there must be, on the evidence, more than a theoretical possibility of success.

9 Of similar effect are Freedman J.A.'s comments at paras. 14-17 of ***Homestead Properties (Canada) Ltd. v. Robert***, 2007 MBCA 61, 214 Man.R. (2d) 148. More recently, see also ***Bodnarchuk v. RBC Life Insurance Corp.***, 2011 MBCA 18, 262 Man.R. 92d) 225.

10 I also note ***Manitoba (Hydro Electric Board) v. John Inglis Co.***, 2000 MBQB 218, 101 A.C.W.S. (3d) 1103, for the proposition that a judge on a summary judgment motion is entitled to make credibility findings on affidavit evidence. MacInnes J. (as he then was) in ***Manitoba (Hydro Electric Board)***, quoted Monnin J.A., in an earlier case, ***Caisse Populaire de La Salle Credit Union Ltd. v. River Ridge Properties Ltd. et al*** (1997), 115 Man.R. (2d) 115 (C.A.) at para. 17, that:

> ... the matter of the conflicts in the affidavit materials and therefore the issue of credibility findings are but one of the matters that a motions court judge must address on a motion for summary judgment. I concede that a finding of credibility may be hard to arrive at on the basis of contrary affidavits alone, but in this case the motions court judge had more than contrary affidavits. He also had the benefit of the transcripts of the cross-examination, and it is when these transcripts are reviewed in conjunction with the affidavits themselves that the defendants' defences start falling apart and come to be seen for what they are, figments of one's imagination or simple stalling tactics. ...

11 MacInnes J. also considered two other principles: (1) that it is not sufficient for the responding plaintiff on a summary judgment application to say that more and better evidence will or may be available at trial because "the time is now" to lead it; and (2) the summary judgment rule is not intended to terminate actions and deprive litigants of the right to trial where there is a claim or defence which has some realistic prospect of success. He concluded, at para. 20, that he was to review all of the evidence before him, and:

> ... That includes considering credibility, where possible, not for the purpose of weighing the evidence to determine whether the plaintiff will or will not succeed in its litigation, that is, whether its case passes muster on a balance of probabilities, but rather to determine whether the case has a realistic chance of success. And, in this context, "real" is not intended to establish a level of probability. Rather, it is to denote a realistic rather than theoretical prospect of success; <u>in other words, the plaintiff's case, when held up to scrutiny in light of all of the evidence available for consideration on the motion, must have an air of reality to it and not be merely the product of wishful, fanciful or imaginative thinking on the part of the plaintiff.</u>
> (Emphasis added)

[32] In applying the law in Manitoba, I am also guided by the decision of ***Hryniak v. Mauldin***, 2014 SCC 7, [2014] 1 S.C.R. 87 (QL). Karakatsanis J., writing on behalf of a unanimous court in ***Hryniak*** had this to say regarding summary judgment motions:

> **1** Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.
>
> **2** Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.
>
> . . .
>
> **4** In interpreting these provisions, the Ontario Court of Appeal placed too high a premium on the "full appreciation" of evidence that can be gained at a conventional trial, given that such a trial is not a realistic alternative for most litigants. In my view, a trial is not required if a summary judgment motion can achieve a fair and just adjudication, if it provides a process that allows the judge to make the necessary findings of fact, apply the law to those facts, and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.
>
> **5** To that end, I conclude that summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims.
>
> . . . . .
>
> **47** Summary judgment motions must be granted whenever there is no genuine issue requiring a trial (Rule 20.04(2) (a)). In outlining how to determine whether there is such an issue, I focus on the goals and principles that underlie whether to grant motions for summary judgment. Such an approach allows the application of the rule to evolve organically, lest categories of cases be taken as rules or preconditions which may hinder the system's transformation by discouraging the use of summary judgment.
>
> . . .

> **49** There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.
>
> **50** These principles are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute.

[33] It is important to emphasize that the Manitoba Court of Appeal had this to say regarding the application of ***Hryniak*** in Manitoba, in ***Lenko v. Manitoba***, 2016 MBCA 52, 330 Man.R. (2d) 48 (QL):

> **71** *Hryniak* did not, however, change the test to be applied on a motion for summary judgment in Manitoba. The test remains whether the claim or defence raises a genuine issue for trial (r 20.03(1)). If there is a genuine issue for trial, it is not for the motion court to resolve that issue; rather, the motion should be dismissed and the matter should proceed to trial. The situation is different in Ontario, where the summary judgment rules have been substantially amended to expand the role of the court in resolving claims without a trial. This difference must be kept in mind when applying *Hryniak* to a motion for summary judgment under the Manitoba rules.

[34] Summary judgment has been applied in defamation claims (see ***Weisenberger v. Johnson & Higgins Ltd.***, [1998] 131 Man.R. (2d) 274 (Man. C.A.); ***Hoeppner v. Linden***, 2002 MBQB 270, [2002] M.J. No. 461; ***Hall v. Puchniak***, [1997] 122 Man.R. (2d) 256 (Man. Q.B.)).

General Defamation Principles

[35] The law of defamation protects a person's reputation from defamatory statements. A publication is considered defamatory if it has the tendency to lower a person's reputation in the estimation of reasonable persons in the community (see Raymond E. Brown, *Brown on Defamation: Canada, United Kingdom, Australia, New Zealand, United States*, 2d ed, Vol 1 at 1-53 (Toronto: Thomson Reuters Canada Limited, 1999, 2016)). *Brown on Defamation* describes what is required to recover in an action for defamation as follows:

> ... the plaintiff must show by a balance of probabilities:
>
> 1. That the words about which the plaintiff complains are defamatory;
> 2. That they referred to the plaintiff; and
> 3. That they were published to a third person.

[36] The Manitoba Court of Appeal in ***Laufer v. Bucklaschuk***, [1999] 145 Man.R. (2d) 1, 181 D.L.R. (4th) 83, at para. 24, emphasized the importance of pleadings in defamation actions:

> Pleadings are of critical importance in a defamation action, and the technical rules which are featured in a defamation action must be complied with strictly. A party will be bound by his or her pleadings. When the allegation is a true innuendo, the plaintiff must plead the full particulars of all the material facts necessary to support the cause of action. When the allegation is an extended meaning or false innuendo, the plaintiff will be bound by the meanings pleaded. See Raymond E. Brown, The Law of Defamation in Canada, 2d ed. (Toronto: Carswell, 1994) vol. 1 at 19-26 to 19-30.3.

[37] One of the primary defences advanced in a defamation action is one of truth or justification. In this case, the defendants have provided affidavit evidence detailing their communications on the evening of January 11, 2013, in connection with the

plaintiff. The defendants submit that statements made by Heather to George that the plaintiff had pushed back against the door to prevent her from closing the door and that she was forcefully trying to keep the plaintiff from entering the house, were statements that were true or justified in the circumstances. Similarly, the defendants submit that the statements by George to Metz and Besner reported what had transpired and were true or justified in the circumstances.

[38] In *Brown on Defamation*, the defence of truth or justification is described as follows (at p. 1-58):

> A defendant may successfully defend an action for defamation if he or she can show that the defamatory publication is true. What is required is not the literal truth of each and every act in the publication, but only that the whole of the defamatory matter is substantially correct. The justification must meet the gist or sting of the charge.

(see ***Makow v. Winnipeg Sun***, 2003 MBQB 56, 172 Man.R. (2d) 213 at para. 59, aff'd 2004 MBCA 41, 194 Man.R. (2d) 97 (Man. C.A.)).

Position of the Parties

[39] The defendants submit that they have established on a *prima facie* basis that the plaintiff's claim in defamation must fail. The defendants filed four affidavits dealing with the circumstances of defamation alleged in the amended statement of claim and the plaintiff elected not to cross-examine any of the affiants. The defendants submit that the onus shifted to the plaintiff to show that his claim has a real chance of success and in taking a good hard look at the merits of the claim, the action in defamation should be dismissed.

[40] The defendants allege that the statement of claim is deficient as it does not specifically state the defamatory words and the statements made by the defendants are not defamatory as the defence of truth or justification applies.

[41] The plaintiff submits that the lack of particularity regarding the statements is not fatal to his claim. Further, he states that the defamatory statements made are that the plaintiff "tried to break in [the Bushs'] house or that he "tried to force his way into George's house."

[42] The plaintiff further submits that the evidence filed in the affidavits contains inconsistencies regarding what occurred at the defendants' residence and a trial is required to make findings regarding credibility issues and disputed facts.

[43] The plaintiff submits that the evidence establishes that the plaintiff was simply attempting to serve legal papers and the statements made by Heather to George and then by George to others at the University were defamatory and made with malice. The plaintiff submits that he should be permitted to proceed forward with his claim to examinations for discovery and amend his pleadings in accordance with evidence disclosed on the examinations.

Analysis and Decision

[44] The starting point for analysis in a defamation action is to identify the words about which the plaintiff complains are defamatory. The alleged defamatory words attributable to Heather are identified in paragraph 11a. of the amended statement of claim as follows:

> Mrs. Bush then told her husband, the defendant GEORGE BUSH, in words unknown to the Plaintiff pending discovery, that the Plaintiff had just attempted to force his way into her home. (underline original)

[45] The words attributed to George are alleged in paragraphs 11c. of the amended statement of claim as follows:

> 11c. ~~On the same evening,~~ Immediately thereafter, the defendant George BUSH telephoned his colleague Don Metz, also a former instructor of the Plaintiff at the University of Winnipeg, and told him that the Plaintiff had "tried to force his way into" the Bush Residence.
>
> 11c. Shortly thereafter, Mr. Bush spoke on the phone w[i]th Neil Besner, vice president of the University, and repeated his accusations; namely, that Marty Green had just "tried to force his way in" to the Bush residence.
>
> (underline and strike-through original)

[46] The plaintiff also alleges in paragraph 15 as follows:

> While he was in custody, the plaintiff asked Martin Grainger, the chief of security for the University, the reason for the trespassing order and was informed by Grainger that Professor Bush's wife had reported that the plaintiff had attempted to force his way into her home.

[47] In essence, the plaintiff submits that the report regarding the incident by Heather to George and the complaint by George to representatives at the University, was a false complaint which in its plain and ordinary meaning meant, or was understood to mean, that the plaintiff had displayed behaviour that was angry, vindictive, irrational and violent, as alleged in paragraph 19 of the amended statement of claim.

[48] As pointed out in *Brown on Defamation*, the threshold inquiry in every action for defamation is whether there has been a defamatory statement. There must be a false

statement of defamatory fact in order for the action to succeed (see *Brown on Defamation* at p. 4-14).

[49] The court must first decide what the words about which the plaintiff complains mean and then decide whether the meaning is defamatory. Very important to this determination is that in order for a defamation action to succeed, the words must be a false statement to a person's discredit (see *Brown on Defamation* at p. 4-15).

[50] Since the alleged defamatory statements made by Heather and George may be different, they should be analyzed separately.

[51] The plaintiff alleges that Heather told George and Grainger that the plaintiff had just attempted to force his way into their home. The unchallenged evidence of Heather is set forth in her affidavit. She described exactly what occurred during the incident at the front door of their home and that she advised George of what transpired.

[52] Even if I accept the allegations made in the amended statement of claim were made by Heather to George and Grainger, which has not been established by the evidence filed, I am not satisfied the words complained of have a defamatory meaning. I say that because there must be evidence to support that the statement made was false to the plaintiff's discredit. A defendant may successfully defend an action for defamation if he or she can show that the defamatory publication is true (see ***Makow***). In my view, the words complained of are not a false statement as based on the evidence filed, it is reasonable to conclude that the plaintiff prevented the door at the defendants' home from being closed and that Heather had to forcibly keep the plaintiff

from entering their home by putting her entire weight against the door. She also had a genuine fear that she was not going to be able to close the door.

[53] As regards the claim against George, his unchallenged testimony is that he advised both Metz and Besner that the plaintiff disregarded his instructions, attended at the defendants' front door, attempted to give the papers to Heather and then Heather shut the door on the plaintiff.

[54] The e-mails referenced above from Metz and Besner support the plaintiff's allegation that George reported to Metz that "Marty Green tried to break in his house" and George reported to Besner that "Marty Green tried to force his way into George's house". If I accept for the purposes of this motion that the statements made by Metz and Besner were made by George and they were just repeating what they were told, which is not necessarily supported by the unchallenged testimony, I am not satisfied these words are defamatory. The evidence is that the plaintiff prevented Heather from shutting the door and that the plaintiff pushed back with his hand inside the door to serve the papers. In my view, a reasonable person would interpret what occurred as the plaintiff trying to force his way into their home.

[55] The words, "tried to break in his house" have a meaning that may be capable of being reasonably understood by others in a defamatory sense. The words "break in" have a connotation in the criminal context as a break and enter. However, in examining the defence of truth or justification, it is not the literal truth of each and every act in the publication, but only that the whole of the defamatory matter is substantially correct (see ***Makow*** para. 59).

[56] In reviewing all of the evidence, I am satisfied that the defendants have established a *prima facie* case for dismissing the defamation action on the basis that the words complained of were not defamatory or put another way, the words used were true or justified because the words alleged to be used by Heather and George describing the incident are substantially correct.

[57] In this case, the onus shifted to the plaintiff as the responding party to this motion for summary judgment to show that there is a genuine issue for trial which has a real chance of success. In taking a "hard look at the merits of an action", I must decide whether there is a "real chance" that the action will be successful.

[58] As pointed out in numerous cases, it is not sufficient to say or allege that full particulars will be provided pending examinations for discovery. The time is now to lead evidence or in this case to have cross-examined the affiants on the affidavits filed.

[59] On the basis of the evidence filed, I am satisfied that Heather feared that the plaintiff was trying to force his way into their home and that she attempted with all her strength to shut the door. The words attributed to Heather and to George do not amount to defamatory statements primarily because the plaintiff's actions they described are not false but substantially correct.

[60] During the course of submissions, reference was made to the decision of Krahn P.J. in ***R. v. Green***. The reasons for decision delivered by Krahn P.J. dealt with criminal charges and specifically whether the plaintiff was guilty of mischief and trespass pursuant to the ***Act***.

[61] The defendants submit that Krahn P.J. made a number of factual findings which, when applied to the facts in this case, establish why the defamation claim does not raise a genuine issue for trial.

[62] Krahn P.J. heard evidence from the defendants, Besner, Metz, Grainger and others. Clearly Krahn P.J. was applying different legal principles in the context of a criminal trial, so care must be taken in applying findings made by the court in that case. This court is not bound by the findings of Krahn P.J.

[63] The defendants specifically relied upon the findings of Krahn P.J. regarding the defendants, which they argued was material to this motion (at paras. 97 and 103):

> I am satisfied that it was and is highly unusual for a student to go to the personal residence of an instructor. I am satisfied that given the history of Mr. Green's involvement with the university, his attending at the Bush residence was not welcome and that Professor Bush clearly communicated this to Mr. Green. I am satisfied that when Mr. Green began to push against the door, preventing Mrs. Bush from closing it, that would have been a very frightening event for Mrs. Bush. I am satisfied that the pushing at the door by Mr. Green was not momentary and but lasted long enough to engender this legitimate and honest fear in Mrs. Bush. I am satisfied that this incident, given the context of the reasons for the first barring notice which I have accepted, provided a reasonable, not arbitrary or malicious foundation for the second barring notice.
>
> . . . . .
>
> … However, I am satisfied that when Mr. Green attended the Bush's personal residence, it caused a real fear in them.

[64] Contrary to the submission of the defendants, I am not satisfied that the findings made by Krahn P.J. should apply in this case, even though the findings are reasonable. The role of the court on a motion for summary judgment is to consider the evidence that has been filed in this action and make a determination as to whether there is a genuine issue for trial based on that evidence and that evidence alone.

[65] In my view, applying the principles outlined by the Supreme Court of Canada in ***Hryniak***, and by the Manitoba Court of Appeal in ***Lenko***, I am satisfied that there is no genuine issue for a trial, because I am able to reach a fair and just determination on the merits of the plaintiff's alleged defamation action. I am satisfied that the plaintiff has failed to establish that there is a genuine issue for trial and in my view, the dismissal of this claim is a proportionate, more expeditious and a less expensive means to achieve a just result.

[66] In the result, the plaintiff's claim is dismissed with costs to the defendants in accordance with the Court of Queen's Bench Tariff on a Class 1 basis.

_____ J.