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Alberta Court Rejects Claim for Fraudulent Misrepresentation Inducing Marriage

A recent Alberta trial decision reads like something out of an antiquated law school casebook in which damages are claimed based on the disappointment of one spouse (usually the husband) about the past conduct or character of the other (usually the wife).

In *Sharma v Raval*, the court considered an alleged fraudulent misrepresentation in the context of just such a marital dispute. In the result, the court found that the alleged misrepresentations could not give rise to a cause of action, unless the validity of the marriage itself was at issue.

Although the case did not explicitly concern the extent to which the bride was as “chaste” as the husband claimed he had been led to believe, the facts of the case do have an antebellum flavour which would not have been out of place in a William Faulkner novella. The Plaintiff Mr. Sharma alleged that his wife, the Defendant Ms. Raval, made falsely misrepresented that she had never been married and had never had children and that, had he known this, he would not have married Ms. Raval. For her part, Ms. Raval’s position was that Mr. Sharma knew very well of her past marriage and children.

The Court concluded that it was not open to the Plaintiffs to plead fraudulent misrepresentation in the context of inducing marriage. Relying on existing case law, the trial judge held that such misrepresentations will only be allowed to form the basis for a cause of action in cases of bigamy or false identity where the very validity of the marriage is at issue. Thus the concealment of previous unchaste and immoral behavior cannot vitiate a marriage (*Brennen v Brennan*), nor can damages be awarded for misrepresentations as to one spouse’s fitness and health (*Christian v Gorgas*) or financial position (*Philips v Philips*) or failure to disclose the fact that they are religiously married (*Said v Said*).

The policy reasons for this conclusion are compelling. As Wilson J noted in *Frame v Smith*, such a tort would be tailor-made for abuse and function as a weapon for one angry spouse to use against the other. Moreover, in *Said*, MacFarlane JA expresses concern as to the competence of courts to inquire

into the quality of a marriage:

The courts cannot become involved in inquiries relating to the quality of a marriage, the motives and expectations of the parties, the reasons behind the marriage, matters of conscience, and the theological impact of the union upon the parties to a failed marriage. If the marriage is valid, all these concerns are collateral, not actionable. The parties to a valid marriage ought to be left alone to work out their differences with respect to such collateral questions. Third parties must live with their mistakes. The parties to a marriage have their remedies under the *Divorce Act*, the *Family Relations Act* [the British Columbia equivalent to Ontario's *Family Law Act*], and otherwise.

Sharma is also of interest because of the clear application of the rule in *Browne v Dunn*. That rule requires that, before leading evidence to contradict a witness on a specific point of their evidence, a litigant is required to confront the witness with that evidence (on cross-examination) so as to give the witness an opportunity to respond. Mr. Sharma argued at trial that the testimony of a witness called by his wife should not have been accepted the Court because the Plaintiffs did not have the opportunity to adduce sufficient evidence from their witnesses on issues later addressed in the witnesses' unhelpful evidence.

The Court's response to this position highlights that the rule in *Browne v Dunn* will not be applied inflexibly, particularly where, as here, the court concludes that the "objection [to the impugned witness' testimony] had everything to do with the Plaintiffs not wanting the court to hear the truth." In disposing of this argument, Justice McDonald held that the rule in *Browne* is not absolute and is grounded in common sense and fairness to the witnesses and parties. Instead of excluding the evidence, the trial judge permitted the Plaintiffs to recall two witnesses and further reply witnesses to contradict the impugned witness' evidence. Ultimately, the evidence of the witness in question was critical to the Defendants' case, and was key to Mr. Sharma's defeat at trial.