

Court of Appeal File No: CA 43466
Supreme Court File No: VLC-S-S-121589
Vancouver Supreme Court Registry

COURT OF APPEAL

BETWEEN:

Taseko Mines Limited

Appellant
(Plaintiff)

AND:

Western Canada Wilderness Committee also known as
Wilderness Committee and Sven Biggs

Respondents
(Defendants)

APELLANT'S REPLY

Appellant/Plaintiff

Taseko Mines Limited

Respondents/Defendants

Western Canada Wilderness Committee
also known as Wilderness Committee and
Sven Biggs

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INDEX

PART	PAGE
PART 1 – STATEMENT OF FACTS	1
LIST OF AUTHORITIES	4

PART 1 – STATEMENT OF FACTS

1. In reply to paragraph 6 of the Respondents' Factum, there is no evidence that "[t]wo of the obvious reasons why 'Plan 2' was less environmentally responsible included the placement of the TSF [Tailings Storage Facility] uphill and upstream, where seepage was a much more serious issue and where a breach of the TSF would be an even greater catastrophe than in the original plan."
2. In reply to paragraph 7 of the Respondents' Factum, the New Prosperity Proposal is not simply Plan 2 of the Original Prosperity Proposal. However, Plan 2 did form the basis for the New Prosperity Proposal. [Exhibit 14, Tab 1, AB 484]
3. In reply to paragraph 10 of the Respondents' Factum, the quoted passage does not support the Respondents' position that "Taseko knew that there would be seepage that could not be collected and admitted this in its Project Description."
4. In reply to paragraph 11 of the Respondents' Factum, the seepage figures cited by the Respondents are inaccurate because they do not account for the mitigation measures proposed in the New Prosperity Proposal. [Jones p. 251 ll 47; p. 252 ll 1-36] There is no evidence "that there would be a significant loss of spawning habitat and loss of 10,000 spawning fish yearly."
5. In reply to paragraph 12 of the Respondents' Factum, it is unclear what the source is of the Respondents' position that "many observers [were claiming that]...'saving' Fish Lake was unrealistic given the seepage downstream from the TSF location upstream", and there is no evidence supporting that position.
6. In reply to subparagraph 16. b) of the Respondents' Factum, the findings quoted in that subparagraph were made by the 2010 review panel in the report issued in 2010, and not by the 2013 review panel in its report issued in 2013.
7. In reply to subparagraph 25.d) of the Respondents' Factum, Article 4 contained quotes from both Daniel W Burnett, Q.C., Barrister and Solicitor, of Owen Bird

Law Corporation, counsel for the Respondents, and from the Respondent Joy Foy alleging that the Appellant's action was a SLAPP.

8. In reply to paragraph 31 of the Respondents' Factum, there is no authority for the proposition "that a company who puts before the public for approval a proposal that will involve significant impact on the public's environment is in an analogous position to a public person whose policies and actions are under scrutiny. Their actions or statements may be criticized without any defamation of their character."
9. The decision in *Lund v. Black Press Group Ltd.*, 2009 BCSC 937, does not support this proposition. *Lund* is authority for the proposition that the law of defamation will not be applied as strictly to language attacking or criticizing the public conduct of those who occupy elected political office. [See paras. 110-126]
10. In reply to paragraph. 49 of the Respondents' Factum, the Appellant does not accept that the libellous stings "involving callous disregard for the environment" constitute comment. These stings are statements of bare inference without facts and therefore constitute statements of fact. *Myers v. Canadian Broadcasting Corp.* (1999), 103 O.T.C. 81 (S.C.), per Bellamy J. at para. 91, reversed in part on other grounds and affirmed (2001), 54 O.R. (3d) 626 (C.A.), application for leave to appeal dismissed [2001] S.C.C.A. No. 433.
11. In reply to paragraphs. 96, 97 and 98 of the Respondents' Factum, a finding that the Respondents published the words complained of: i) knowing they were false; or ii) with reckless indifference whether they were true or false; makes it unnecessary to also find that the Respondents' dominant motive in publishing the words complained of was improper. *Smith v. Cross*, 2009 BCCA 529 per Kirkpatrick J.A. at para. 40.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED: November 8, 2016

Roger D. McConchie
Solicitor for the Appellant

LIST OF AUTHORITIES

Case Law	Page(s)
<i>Myers v Canadian Broadcasting Corp.</i> , (1999) 47 C.C.L.T. (2d) 272 (H.C.), varied (2001), 54 O.R. (3d) 626 (C.A.), leave to appeal dismissed [2001] SCCA No. 433	2
<i>Smith v. Cross</i> , 2009 BCCA 529	2