



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 17-Aug-2018
Délivré par voie électronique : 17-Aug-2018
Toronto

MARC COHODES

Plaintiff

- and -

BELL MEDIA INC. c.o.b. as BNN BLOOMBERG, CATHERINE MURRAY,
JOHN O'CONNELL and DAVIS-REA LTD./DAVIS-REA LTEE.

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$3,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____ Issued by: _____
Local Registrar

Address of Court Office: 393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: Bell Media Inc. c.o.b. as BNN Bloomberg
299 Queen Street West
Toronto, ON M5V 2Z5

AND Catherine Murray
TO: 299 Queen Street West
Toronto, ON M5V 2Z5

AND John O'Connell
TO: 79 Wellington Street West
Suite 3535, P.O. Box 239
Toronto, ON M5K 1J3

AND Davis-Rea Ltd./Davis-Rea Ltee.
TO: 79 Wellington Street West
Suite 3535, P.O. Box 239
Toronto, ON M5K 1J3

CLAIM

1. The Plaintiffs claim:

- a) General damages for defamation in the amount of \$1,000,000.00;
- b) Special damages for defamation in the amount of \$5,000,000.00;
- c) Punitive, aggravated and exemplary damages in the amount of \$500,000.00;
- d) An interim, interlocutory and permanent order enjoining the defendants from publishing, disseminating or broadcasting the Defamatory Words (as defined below), or words of like or similar effect;
- e) Prejudgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43.
- f) Costs of this proceeding, including disbursements and all applicable taxes, on a substantial indemnity basis.
- g) Such further and other relief as counsel may advise, and this Honourable Court may permit.

2. The plaintiff is a resident of California, United States of America.

3. The defendant Bell Media Inc. c.o.b. as BNN Bloomberg (“BNN”) is a corporation incorporated in Canada. Bell Media Inc. is a mass media corporation, which creates, publishes and broadcasts various forms of media, including television, radio and digital media. Bell Media Inc. owns and operates a nationally broadcast television channel called BNN Bloomberg, which provides 24 hour commentary on business matters in Canada and the world at large. The BNN Bloomberg channel is the largest and most prominent business speciality television channel in Canada.

4. Catherine Murray (“Murray”) is an individual resident in Ontario. Murray is a television personality employed or otherwise engaged by BNN. Murray hosts a weekday program entitled “The Close” which is broadcast by BNN. In the course of her position with BNN, Murray represents herself as knowledgeable about business matters and the stock market, including representing herself as having worked on Wall Street prior to being employed by BNN.

5. BNN, in addition to being liable for its own actions, is also vicariously responsible for all actions undertaken by Murray during the course of her employment or association with BNN and specifically with respect to the broadcast of the Defamatory Words (as defined below).

6. John O’Connell (“O’Connell”) is the Chairman and CEO of the defendant, Davis-Rea Ltd./Davis-Rea Ltee. (“Davis Rea”). O’Connell holds himself out as a knowledgeable commenter regarding business and stock market matters.

7. Davis Rea is an Ontario corporation, which carries on business as an investment management company.

8. Davis Rea, in addition to being liable for its own actions, is also vicariously responsible for all actions undertaken by O'Connell in the course of his employment by or association with Davis Rea, and specifically with respect to the broadcast of the Defamatory Words (as defined below).

The Defamatory Broadcast

9. On August 9, 2018, on BNN's television program entitled "The Close", O'Connell was interviewed by Murray, and was represented in the broadcast as appearing on behalf of Davis Rea.

10. During the August 9, 2018 episode of "The Close", BNN and Murray broadcast a segment specifically devoted to discussing the plaintiff (the "Defamatory Broadcast"). More particularly, the segment purported to be related to an announcement by the staff of the Alberta Securities Commission that it was seeking an interim cease trade order against the plaintiff, which alleged that he had posted a false "tweet" on his Twitter account related to an Alberta company. The application by the Alberta Securities Commission staff was ultimately dismissed, after a hearing before a two member panel of the Alberta Securities Commission.

11. During the course of the approximately 10 minute segment, broadcast nationally by BNN and available worldwide on the website of BNN, O'Connell and Murray falsely and maliciously defamed the plaintiff, in his personal capacity and in connection with his business.

12. The plaintiff relies on the entirety of the Defamatory Broadcast, a transcript of which is attached hereto as Schedule "A". In particular, during the Defamatory Broadcast, the defendants broadcast the following statements regarding the plaintiff (the "Defamatory Words"):

- a) That the plaintiff "has been associated with potentially illegal trading of securities, naked short selling";
- b) That the plaintiff is "potentially involved in illegal short selling, and driving stock prices down substantially";
- c) That, with respect to short selling in connection with companies such as Badger, "there was so much volume that was being shorted, there weren't enough shares out there to even be borrowed";
- d) That the plaintiff was not presently employed in a fiduciary role because "he was fired" from that role;
- e) That "it's good that the regulator is looking at this thing because there's no question in my mind that naked short selling takes place"; and

- f) That the reason short sellers, including the plaintiff by implication, trade in Canadian securities is because “this is a ripe opportunity here just because of the way the business model is set up”, that the Canadian market is “so ripe for manipulation” that Canadian regulators are “wise to look into these things because you could destroy a lot companies in Canada because if you’re engaged in this type of behaviour, you can destroy companies pretty quickly for a relatively simple ... in a relatively simple way”.
13. In their natural and ordinary meaning, and by innuendo, the Defamatory Words meant and were understood to mean, among other things, that:
- a) The plaintiff was committing the illegal act of “naked short selling” in connection with his stock trading practices;
 - b) The nature of the trading done in connection with Badger was such that the plaintiff must have been committing the illegal act of “naked short selling”;
 - c) The application brought by the Alberta Securities Commission was in connection with the illegal “naked short selling” practices of the plaintiff;
 - d) The conduct of the plaintiff was intended to use deceptive and illegal means to “create a panic” and “destroy” undeserving companies, solely for the financial benefit of the plaintiff;

- e) The plaintiffs' trading practices are not genuine trading practices, but instead are intentional manipulations of the Canadian capital markets which are not connected to the plaintiff's views as to the true worth of any companies; and
- f) The plaintiff's dishonesty or misconduct had resulted in him being "fired" from a previous position as a fiduciary, such that he was to be viewed as a dishonest and untrustworthy individual.

14. The Defamatory Words are, in their entirety and in their context, false and defamatory of the plaintiff.

The Rebroadcast and Dissemination of the Defamatory Broadcast

15. Contemporaneously to the Defamatory Broadcast being broadcast on television, it was broadcast live on the Internet. It was subsequently preserved and rebroadcast on the website owned and operated by BNN (www.bnnbloomberg.ca), in connection with an article regarding the plaintiff.¹ The wide republication of the Defamatory Broadcast and the Defamatory Words was a direct result of the conduct of the defendants, and was reasonably foreseeable and intended by the defendants.

16. In the article posted on the BNN website in conjunction with the rebroadcast of the Defamatory Broadcast, BNN made a further false and defamatory statement, stating

¹ <https://www.bnnbloomberg.ca/asc-seeks-interim-cease-trade-order-against-short-seller-marc-cohodes-1.1121629>

“[t]he Alberta Securities Commission has issued an interim cease trade order Thursday against notorious short seller Marc Cohodes...”. No such order was issued by the Alberta Securities Commission.

17. On the day following the Defamatory Broadcast, Davis Rea published a “tweet” on Twitter which linked to the BNN internet rebroadcast of the Defamatory Broadcast, stating, among other things, “We’re a fiduciary, but not everyone is.” The plaintiff pleads that the publishing of this broadcast was done with the knowledge and consent of O’Connell.

18. The publishing of the tweet by Davis Rea, and its linking to the Defamatory Broadcast, was done by Davis Rea and O’Connell for the purpose of casting aspersions on the character of the plaintiff for the purpose of promoting its own business in contrast to the plaintiff, by deliberately and falsely painting the plaintiff as an illegal and unscrupulous business person.

The Plaintiff has and will continue to Suffer Substantial Damage

19. In an effort to mitigate the damages caused to him by the Defamatory Words, the plaintiff delivered a notice to the defendants on or about August 10, 2018 (the “Libel Notice”). The plaintiff expressly notified the defendants that the Defamatory Words were false and defamatory.

20. Despite receiving the Libel Notice, the defendants have issued no apology or retraction as of the date of this pleading. Further, the Defamatory Broadcast continues to be rebroadcast by BNN on its website.

21. The Defamatory Words broadcast by the defendants, and the innuendo arising from them, are false and were maliciously published by the defendants knowing that they were false or with careless disregard as to whether they were true or not.

22. As a result of the broadcast of the Defamatory Words, as well as all repetitions, republications and rebroadcasts of them, the plaintiff has been subjected to ridicule, hatred and contempt. The plaintiff has suffered injury to his personal and professional character and reputation and to his business, and he has suffered personal embarrassment and humiliation.

23. As a result of the foregoing, the plaintiff has suffered and will continue to suffer damages for which the defendants are liable.

24. By their conduct, the defendants have further aggravated the damages caused by them to the plaintiff, by, among other things, failing or refusing to retract or remove the Defamatory Broadcast from its website, and by drawing attention to the Defamatory Broadcast.

25. The malicious, high-handed, callous and arrogant conduct of the defendants displays a wanton and flagrant disregard for the plaintiff's rights. Such conduct warrants an award of punitive, aggravated and exemplary damages to ensure that the defendants are appropriately punished for their conduct and that they are deterred from such conduct in the future. Particulars of the malice include, but are not limited to:

- a) The defendants' continued rebroadcast of the Defamatory Broadcast following receipt of the Libel Notice;
- b) BNN's previous defamatory statements made regarding the plaintiff; and
- c) O'Connell and Davis Rea's subsequent tweets, seeking to specifically promote their business at the expense of the plaintiff.

Date: August 17, 2018

WIFFEN LITIGATION
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Lawyers for the Plaintiff

SCHEDULE "A"

Transcript of August 9, 2018 Segment of "The Close"

Catherine Murray ("CM"): All right. Some very interesting news coming across the tape right now in Canadian securities industry. This is the ASC, seeking an interim cease trade order against Marc Cohodes. They are seeking an interim order that he stop trading in Badger Daylighting stock. The details go on to say that Cohodes holds a short position in the securities of Badger and that he has misrepresented on social media a picture of Badger truck as supportive for his allegations of illegal toxic dumping and that these allegations that Marc Cohodes is talking about have not been proven. So again, the ASC is seeking an interim cease trade order against Marc Cohodes. Very interesting news here, particularly, I believe, for a Canadian securities exchange. To join me more on this conversation as well as much more is John O'Connell. He is a now joining us now for this conversation. John good to be with you, thank you.

John O'Connell ("JO"): Thanks for having me.

CM: So, let me ask you: What do you think of this right now?

JO: You know, it doesn't surprise me that Cohodes eventually ran afoul of the regulators. He has bad mouthed a lot of Canadian companies, calling into question management behaviours, accounting behaviours. He's been associated with potentially illegal trading of securities, naked short-selling. I don't know whether those things are true or not. But he is a no holds barred wrestler fighter and is not afraid to make pretty outrageous allegations. He has similarities to some other people that have been tweeting things recently about, you know, secure financing and whatnot, and uses social media to his skill-sets. Makes some pretty strong, oftentimes derogatory and ad hominem attacks against individual people which oftentimes have nothing to do with the actual facts.

CM: But causes stocks to move and causes investors like you and me and pension fund holders to lose a lot of money.

JO: Well, he hasn't necessarily caused – I mean, he's been bad-mouthing Badger Daylighting I believe for quite a while. He bad mouthed Home Capital Group. These guys go to extreme lengths to try to substantiate their story using information that may or may not true or may be taken out of context, and then he spread it. It's alleged that on top of that, they are potentially involved in illegal short selling and driving stock prices down substantially, dishearten investors who then eventually sell stocks, make the stocks fall, and it makes it impossible for these companies to re-engage or actually be able to engage in the capital markets whatsoever.

CM: Because at the end of the day, some of these companies, depending on their business model, like a Home Capital or like an acquisitive company, they use debt, they need debt. That's their business model. Those are almost the easies targets for short sellers to go after because they cause a lot of question marks and concerns in terms of the overall business model and it feeds off of itself. It's a negative feedback loop. What do you (a) do about that situation, number one as a country, Canada, that still does not have a national securities regulator. Some think it's important. Some don't. I do. I'll say that. And good for the ASC to come out and take a look at this within their own parameters.

JO: There has to be – this is taking place with Elon Musk right now. At what point are you disseminating material information or non-information? What's the proper source to be doing it. Cohodes hides behind the fact that he's not an investment advisor. I'm a private investigator. I'm a chicken farmer. So I can say anything I want. But in a day and age – people can go out there and say all kinds of things on social media and increasingly we're beginning to question as to whether that's a justifiable thing to say. People are taking hate groups off things. When you're making allegations against public securities and you're holding yourself to be a professional or informed, whether you're getting paid for that or not, you obviously have a vested interest. At what point the regulator say, you have to substantiate these kinds of claims? I think that's a really interesting question that regulators are ultimately going to have to grapple with. I don't know what the right answer is. I know if I say something about a company, I have to be able to substantiate it or else I could be in big trouble and I have to act in my clients' best interests. This guy is under no such obligations.

CM: Right, and that's because, John, you are an investment advisor or portfolio ...

JO: I'm a fiduciary.

CM: You're a fiduciary, you have a fiduciary responsibility. He has chosen not to have that role. He used to have that role in managing money.

JO: He was fired.

CM: Marc Cohodes, he was fired? That I don't know.

JO: I believe so, yeah.

CM: So he has chosen not to have that role, but yet still acts as though he's in that role. It's a difficult question to answer because as well when I talk to a lot of my former colleagues and clients on Wall Street, they say "look, Catherine, you should be able to go long the market, you should be able to go short the market, and it's up to the market to figure out who is right and who is wrong". So, in other words, eventually the market figures it out.

JO: Absolutely. You're absolutely right. There's nothing wrong with being a short seller. I don't have any quarrels with short sellers. I've shorted stocks in my life too. The issue is, are you disseminating information truthfully? That's one. You're allowed to be wrong, but you have to be truthful with dissemination of information. And secondly, are you related to other people that may actually be taking advantage of that information and doing other illegal behaviours like, for example, some people allege that these people, like Marc Cohodes – and I don't have any proof of this – are engaged in illegal naked short selling or they're selling stocks they don't actually own. But they're shorting stocks and they can't actually borrow.

CM: That's what you mean by naked short selling.

JO: If you want to short a stock, you have to borrow it from somebody. And there's a lot of allegations – and there seems to be some pretty strong proof and there's been some court cases in the states with some expert witnesses that have been able to demonstrate that there's no way in the world that all that volume that's been shorted was actually possibly borrowed legally and legitimately.

CM: And the reason why, John – because this is really important – there was so much volume that was being shorted, there weren't enough shares out there to even be borrowed. That's why these cases I believe have been won or why those expert witnesses have been allowed into the conversation. We're getting into the weeds here. But it's very very, interesting, because of what goes on with the naked short selling. People are shorting things, that there's just not even ... they're almost called phantom shares, I believe.

JO: Yeah.

CM: And therefore they can put undue pressure on. If there's enough shares out there to be shorted and you're truly able to borrow them, that's one thing. But if you're essentially shorting and you can't get the shares, that's called naked short selling and it's illegal.

JO: Yeah. So they can make the impression that an investor is dumping a stock based on somebody's allegations about something impropriety that may or may not be true. They can look at this massive selling and they can create a panic and that can actually destroy the company. I don't think that's capital markets' intention.

CM: Right. It's not the integrity of the capital markets that we want here in Canada.

JO: No. And I think it's good that the regulator is looking at this thing because there's no question in my mind that naked short selling takes place and....

CM: There's no question in your mind that this happens?

JO: None.

CM: In Canada and the United States?

JO: Yes, none.

CM: That's interesting.

JO: No, the interesting thing is, I have talked to some people – you see, a lot of this trading is going through machines.

CM: Right.

JO: And so when you ask the brokers, well, who is all that selling from – well, it just comes from the machines. Do you actually know that they own those securities? No. The broker is saying we have no idea, it's anonymous through computers, so we don't know. Everybody sort of throws up their hands and say we don't really know. Well, that's pretty significant. When you actually brokers are acknowledging that they don't know whether their clients that are selling securities actually own those securities and the brokers have an obligation to actually make sure that the people selling those securities either have them or are declaring it to be a short position. If they have a short position, it's their obligation to make sure they can actually find to borrow those shares and the brokers do not have the capability.

CM: Do they not have the capability or have they not gone down the path?

JO: Well, you'll have to ask them.

CM: People are asking those questions.

JO: They're clearly being paid a lot of commissions to trade stock.

CM: This broke just as you came up. Of course, I want to get your investment outlook. There's a lot going on in the world, that is for sure. In light of what we're talking about with respect to Badger and selling and naked short selling, it can make it difficult – that's another element you have to think about when you go and buy a stock today as to whether or not some short seller is going to look at this and say, this is ripe opportunity here just because of the way the business model is set up. Do you think of that at all? I would. I do.

JO: I think you have to look at the depth of the capital markets that you're involved in, and I think that people can prey on capital markets that are not deep and not liquid. And you could argue that Canada is not a liquid market, and it's so ripe for manipulation, and that's why I think that if the regulators care about maintaining capital markets in Canada, they're wise to look into these things because you could destroy a lot of companies in Canada because if you're engaged in this kind of behaviour, you can destroy companies pretty quickly for a relatively simple ... in a relatively simple way.

CM: Yeah.

Court File No.

MARC COHODES
Plaintiff

- and -

BELL MEDIA INC. et al
Defendant

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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