

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ma v. Dai*,
2024 BCSC 2079

Date: 20241115
Docket: S232870
Registry: Vancouver

Between:

William Kuntang Ma
Plaintiff

And

Guo Qiang Dai, Chang Ying Xu and Hui Han
Defendants

Before: The Honourable Justice Whately

Reasons for Judgment In Chambers

Counsel for the Plaintiff:	C.R. Rubinstein
Counsel for the Defendants:	J. Zeljkovich
Place and Date of Hearing:	Vancouver, B.C. July 17, 2024
Place and Date of Judgment:	Vancouver, B.C. November 15, 2024

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Introduction

[1] This is an application by the defendants, Guo Quiang Dai, Chang Ying Xu, and Hui Han, to have the claims of William Kuntang Ma struck under R. 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. They also request that Mr. Ma be declared a vexatious litigant and barred from commencing further proceedings without leave of the court, under s. 18 of the *Supreme Court Act*, R.S.B.C 1996, c. 443 [SCA].

[2] Mr. Ma opposes the relief sought and brought a cross application seeking an order that the defendants attend examinations for discovery. He also seeks leave to file an amended notice of civil claim.

[3] For the reasons that follow, I grant the relief sought by the defendants, with some revisions to the terms, and dismiss Mr. Ma's cross application.

Background Facts

Origins

[4] On April 13, 2023, Mr. Ma filed a notice of civil claim against the defendants.

[5] This is one of many proceedings involving the same or similar allegations against one or more of the defendants filed by Mr. Ma, or parties related to him. These proceedings have been filed in several forums, including the Residential Tenancy Branch ("RTB"), the BC Provincial Court, the BC Supreme Court, and the BC Court of Appeal.

[6] The defendants allege that where proceedings have been brought by someone other than Mr. Ma, it is ultimately Mr. Ma who is behind the litigation.

[7] In addition to commencing multiple proceedings against the defendants, Mr. Ma has also commenced actions against the defendants' legal representatives, and against other legal professionals that Mr. Ma perceives as adverse to him.

[8] The core of the lawsuits against the defendants, and associated parties, appears to be the dissolution of the marriage relationship between Mr. Ma and Hui Han. The breakdown in their

relationship has led to protracted disputes over certain properties owned or claimed by the parties. Much of the litigation pertains to one particular property which is located at 4053 West 38th Avenue in Vancouver, BC, V6N 2Y8 (the “Property”).

[9] Like the litigation that has grown from it, Mr. Ma and Ms. Han’s relationship history is complex. Mr. Ma and Ms. Han were married in 1995 and have two adult children. Ms. Han says that they are divorced, and have been since 2003, but Mr. Ma states that they are neither legally separated nor divorced in any jurisdiction and that until 2020, they were a happy family. There is a separation agreement that dates back to 2005, but Mr. Ma disputes its legitimacy. In 2017, Ms. Han granted Mr. Ma a power of attorney over her affairs, but denies she did so knowingly.

[10] Regardless of the disputed history of their marriage, it is clear that Mr. Ma and Ms. Hui have not lived together in marriage-like relationship for at least four years, and possibly longer.

[11] Mr. Ma and Ms. Han first met the other defendants, Mr. Dai and Ms. Xo through the private school where their respective children attended. Ms. Xo and Mr. Dai were married to each other but are now divorced. At present, Mr. Dai and Ms. Han are common-law partners.

[12] Mr. Ma alleges that Mr. Dai and Ms. Xo have a personal vendetta against his family and have manipulated or brainwashed Ms. Han with the aim of depriving him of his properties and assets.

[13] Ms. Han is the registered owner of the Property. Mr. Ma says that this is only because he, his mother, and his sister often traveled to China for business, and so they arranged their family affairs such that properties purchased by his family were registered in Ms. Han’s name. Mr. Ma says that this was to allow Ms. Han to manage the properties for him and his family while they were travelling. He asserts she holds the Property in trust for them.

[14] Mr. Ma’s numerous legal proceedings against Ms. Han, Mr. Dai, and Ms. Xo began in December of 2020, when Mr. Ma filed actions against Mr. Dai and Ms. Xo. In these actions Mr. Ma alleged the following: “Defendants illegal occupy my house, and force plaintiff to leave own home 4053 w38th ave vancouver bc ,plaintiff lose hugh [sic] money ...”

[15] Since that initial action, Mr. Ma or his family members have launched many subsequent actions or proceedings against the defendants either individually or jointly. These actions form what another justice of this Court described as a “remarkable web of proceedings.”

[16] While some of these proceedings are limited in scope to residential tenancy, or matters related to a foreclosure on the Property, invariably there is a common thread running through the litigation, regardless of the forum or the type of claim. This thread involves allegations against the

defendants including theft, breaking and entering, illegal computer hacking, conspiracy, forging government documents, stalking, making threats, harassment, and witness intimidation or tampering.

[17] Mr. Ma accuses Mr. Dai and Ms. Xo of being “gangsters” and romance scam or cult leaders. Among other things, Mr. Ma has gone so far as to claim that Mr. Dai raped Ms. Han, and arranged for Mr. Dai and Ms. Xo’s children to bully Mr. Ma and Ms. Han’s children. Ultimately, Mr. Ma’s primary accusation is that the defendants seek to deprive him of his property through deceitful and criminal means.

[18] In the course of the various proceedings, Mr. Ma also developed a concerning pattern of filing claims against legal professionals who are either directly or tangentially involved with the defendants. Mr. Ma has sued John Zeljkovich, lawyer for the defendants, twice. Mr. Ma has also sued Mr. Kuntze, Ms. Han’s former counsel, Mark Thompson, a lawyer who commissioned an affidavit for Ms. Han, and the Lawyers Indemnity Fund’s lawyer who represented Mr. Thompson with respect to Mr. Ma’s claim.

[19] The defendants also allege that Mr. Ma has a pattern of discontinuing actions, and then rolling the same claims into subsequently filed actions. They say that Mr. Ma forces them to incur the cost of defending actions or filing responses, only to have him discontinue without penalty, then refile another action. The Defendants also say that Mr. Ma fails to pay costs when they are awarded against him.

Chronology of Legal Proceedings

[20] The number of actions, applications, rulings, orders, and appeals that have been undertaken between these parties since 2020 make the procedural history difficult to follow, let alone summarize in a coherent way.

[21] Below I attempt to provide an outline of the proceedings brought by Mr. Ma or his family members. However, because of the multiplicity of actions, proceedings, and filings, this list is likely not complete. When factoring in filings, applications, rulings, appeals, amendments, and other procedural matters associated with each proceeding, this list does not reflect the sheer volume of litigation activity.

- September 23, 2020, *Ma v. Kuntze*, Richmond Provincial Court, No. 29240. Mr. Ma brought a claim against Mr. Kuntze, a lawyer who had represented Ms. Han, as well as Mr. Kuntze’s legal assistant Dion Wu. Mr. Ma alleged: “andres kuntze //dion Wu, Violating the professional ethics of lawyers, they help Chinese gangster to threaten my safey, steal my family money and assements, brain wash and mislading my wife, encourage my wife to devoice me, so

they can steal money from my wife.”

- December 2, 2020, *Ma v. Dai*, Richmond Provincial Court No. 29286.
- December 4, 2020, *Ma v. Dai*, Richmond Provincial Court No. 29289.
- December 15, 2020, *Ma v. Dai*, BC Supreme Court Registry No. VLC S2013324. Mr. Ma alleged: “Defendants illegal occupy my house, and force plaintiff to leave own home 4053 w38th ave vancouver bc, plaintiff lose hugh [sic] money ...”
- December 22, 2020. *Ma v. Cheng*, Richmond Provincial Court, No. 29326. In this action, Mark Thompson, a lawyer who was not directly involved in the matter, affixed his stamp on a commissioned affidavit. Mr. Ma alleged: “Chinese gangster Guo Quiang Dai & his wife Ying Xu, work with Li Xin Cheng to create fake legal document, also ask Mark B Thompson to stamp on fake legal document to cheat my assessment [sic].”
- January 5, 2021, *Ma v. Panton*, Richmond Provincial Court File No. 29383. Mr. Ma brought a claim against Richard Panton, a staff lawyer working for the Lawyer’s Indemnity Fund, who represented Mark Thompson. Mr. Ma alleged “I sue Richard Panton ... as his Moral level is much lower and ordinary people, tramping and contempt of the law. Richard Panton ignore so many facts, still use fake and fraud info. Make up lies, threaten and intimidate, insult my personality and reputation ...”
- July 23, 2021, *Mou v. Han*, BC Supreme Court Action No. VLC S216814. Ping Mou, Mr. Ma’s mother, commenced an action against Ms. Han. Ms. Mou alleged that Ms. Han agreed to be registered on title to a property, located at 5680 Cornwall Place, as trustee for Ms. Mou.
- November 4, 2021, *Ma v. Zelkovich* [sic], BC Supreme Court Action No. VLC S219753. Mr. Ma commenced an action against the defendants’ current counsel, Mr. Zelkovich. This is one of two actions against Mr. Zelkovich. In this action, Mr. Ma filed a notice of application against Mr. Zelkovich, which sought the same relief listed in the notice of civil claim, but also adding the following claims:

11. Dai and Xu committed the following act:

[...]

(e) raped Hui Han and mentally controlled her;

(f) attempted to fraudulently sell properties registered in Hui Han’s name held in trust for Ping Mou

[...]

12. The Defendant John Zelkovich was deeply involved in the planning and implementation of Dai and Xu’s criminal acts listed above.

13. The Defendant John Zeljkovich engaged in many activities that he knows or ought to know assisted in or encouraged dishonesty crime and fraud.

[...]

21. The Defendant John Zeljkovich helped Dai and Xu to mentally control Hui Han. Control Han make various contradictory affidavits ,in order to help Dai& Xu to defraud Ma & Han's relation [sic] family private assessments.

- February 22, 2022, *Ma v. Han*, Richmond Provincial Court, File No. 2270692.
- February 24, 2022, *Ma v. Han*, BC Supreme Court Action No. VLC S221500.
- On March 22, 2022, Mr. Ma appeared at a RTB hearing on behalf of Ms. Mou and stated that Ms. Mou was entitled to live at the Property as a tenant. The RTB dismissed this application as Mr. Ma's testimony contradicted his own documentation.
- On April 13, 2022, Mr. Ma appeared at another RTB hearing on behalf of Ms. Mou. He claimed that he was entitled to reside at the Property as a tenant pursuant to a 600-month fixed term tenancy agreement at \$1 per month. He claimed that Ms. Han was the landlord. The RTB dismissed this application as they do not have jurisdiction to decide on tenancy agreements with a term longer than 20 months.
- On May 24, 2023, Mr. Ma appeared at another RTB hearing on behalf of his sister, Ms. Ma. Mr. Ma claimed that Ms. Ma was entitled to exclusive occupation of the property in according with an 18-year fixed term tenancy agreement at \$1 per month. Ms. Han was not served the originating proceeding and therefore did not attend. The matter was judicially reviewed, in favour of Ms. Han, and a new RTB hearing was ordered: *Han v Ma*, 2024 BCSC 281.
- May 4, 2022, *Mou v. Han*, BC Supreme Court Action VLC No. S-2236654. Mr. Ma and his mother, Ping Mou, commenced this action. This action has the same claims and relief sought in *Mou v. Han*, No. VLC S216814 and *Ma v. Han*, VLC No. S221500, above.
- May 4, 2022, *Hui 789 Development Ltd. v. Dai*, BC Supreme Court Action VLC No. S-223655. Mr. Ma and two number companies sought substantial damages against the defendants for alleged misconduct, including "Conspiracy mastermind, fraudster action in concert." Mr. Ma is the director of both the numbered companies.
- February 8, 2023, *Ma v. Han*, BC Supreme Court Action No. VLC S230954. Ms. Ma, Mr. Ma's sister, alleged that in August of 2019, on their mother's direction, Mr. Ma entered into a contract of purchase and sale on behalf of Ms. Han. He did so using the (disputed) power of attorney granted to him by Ms. Han in 2017. Mr. Ma argues that the contract is enforceable and that the Property was legally sold to her for \$1.

- March 8, 2023, Mr. Ma filed an application for exclusive occupation of the Property (VLC S221893). His affidavit in support included the following: “in or about late 2016, Hui and the children moved into West 38th with Ping ... Hui and I also entered into a long term lease agreement for West 38th at \$1 per month commencing November 15, 2016 and ending November 15, 2066.” (See *Han v. Ma*, 2024 BCSC 281 at para 21)
- April 13, 2023, *Ma v. Dai*, BC Supreme Court Action No. VCL S232870. This is the claim that commenced this application. Mr. Ma, among other things seeks an injunction “enjoining the defendants to: (a) ... stop use the fraud device agreement to cheating (b) ... remain 1000 metres away from Ma’s family properties.” Mr. Ma also seeks damages for intimidation, conspiracy, intentional infliction of mental suffering, conversion, and punitive damages.
- April 13, 2023, *Ma v. Zeljkovich*, Richmond Provincial Court Registry File No. 30140. This is the second claim Mr. Ma filed against Mr. Zeljkovich, counsel for the defendants. Mr. Ma alleges, among other things that:

john zeljkovich is a lawyer for Chinese romance scam group all of them control ma’s wife hui han, the scam break in ma home times, ma sue them in Richmond court ...

jz cheat judge and court, jz destroy his promise and undertaking. jz never order transcripts, his purpose is adjou the hearing. In same time, jz arrange scam group to force claimant’s daughter to use fraud info to call rcmp richmodn ...

[22] On May 9, 2023, Mr. Ma was declared to be a vexatious litigant by Judge D. Vandor of the BC Provincial Court. Judge Vandor also ordered that Mr. Ma cannot file further claims without leave as it relates to legal professions and law firms: *Ma v. Zeljkovich*, Richmond Provincial Court Registry File No. 30140.

[23] Some of the rulings and decisions arising from the above litigation reveal the challenges posed by Mr. Ma’s profligate filings:

- *Ma v. Zelkovich*, BC Supreme Court Action No. VLC S219753. Master Muir issued Oral Reasons for Judgement on June 24, 2022, in chambers. Master Muir found the following:

[6] Mr. Ma spent a great deal of time on this application going through his allegations against these parties and making very serious allegations of forgery, fraud, theft, and conspiracy against them and Mr. Zeljkovich. These are allegations that arise in the context of other actions ...

[7] I allowed Mr. Ma to review his affidavits in great detail, as he is self-represented, and English is not his first language, and I wanted to be sure that I was not misunderstanding the nature of his evidence or his application. His position is perhaps best summarized by paragraph 68 of his affidavit #1 sworn April 20, 2022, where he says:

Above facts totally proves on John Zeljkovich not only seriously conflict his lawyer position, but also deep involvement of planning forgery of government

documents, forgery of evidence, mental control of Ma's wife, Hui Han, conspiracy to snatch private assessments.

[8] Mr. Ma has brought at least ten actions in the Provincial Court and four actions in the Supreme Court involving these parties or related issues. In the Supreme Court actions, Mr. Zeljkovich represents Ms. Han in three actions commenced by Mr. Ma, in one of which Ms. Mou is also a plaintiff. Mr. Zeljkovich also represents Mr. Dia and Ms. Xu in a separate action commenced by Mr. Ma.

[9] Ms. Dai, Ms. Xu, and Ms. Han are not involved in this action. Mr. Ma seeks that I make very serious findings of fraud and conspiracy against them and seeks to deprive them of their counsel without any notice to them or any opportunity for them to respond. I note that he seeks that same relief, that Mr. Zeljkovich not be permitted to act in two of the other actions that he has brought against Ms. Han.

...

[15] In all the circumstances, I am going to order that Mr. Ma pay costs to Mr. Zeljkovich in a lump sum of \$2,000 payable forthwith in any event of the cause. I agree that the object of Mr. Ma on this application was improper and abusive, and absent my views on assessment, I would have ordered special costs.

- *Ma v. Zeljkovich*, Richmond Provincial Court Registry File No. 30140. Judge Vandor issued an oral ruling on May 9, 2023. Judge Vandor held the following at paras. 28–30 and 52:

Mr. Ma has brought repeated lawsuits against parties adverse to him with respect to the same subject matter, which involves a dispute with his spouse, Ms. Han, and her involvement with Dai and Xu.

Mr. Ma alleges in these many lawsuits that Dai and Xu are affiliated with Chinese gangsters and have seduced Han, forged divorce certificates and are illegally attempting to occupy and sell his real property out from underneath him. Mr. Ma identified two properties in Canada, which he values at approximately eight million dollars, as well as a Beijing property that he says was recently stolen from his mother and other money that was stolen from his sister's bank account, which together, he values at over 2.3 million, totalling over \$10 million.

There have been at least 15 lawsuits filed by Mr. Ma against various individuals in relation to the underlying dispute. During these lawsuits, Mr. Ma has repeatedly sued legal professionals who are in any way related to parties adverse to him in the underlying dispute.

...

I am satisfied that Mr. Ma has habitually, persistently, and without reasonable grounds instituted legal proceedings against the same person before the Provincial Court. Based on these considerations, I conclude that Mr. Ma has reached and exceeded the threshold at which a litigant should be declared vexatious and prevented from filing further claims without leave as it relates to legal professions and law firms.

- *Han v. Ma*, 2024 BCSC 281. Justice Loo made the following remarks:

[24] ... it is not at all difficult to conclude that this proceeding is only one piece in a much larger dispute between Mr. Ma on one hand, and Ms. Han on the other ...

[25] I also have little difficulty in concluding that I should have serious doubts about Mr. Ma's credibility and will treat his evidence with caution, given his conduct in the other proceedings and the inconsistencies among them.

...

[37] As indicated above, the multiplicity of proceedings that has been advanced, mostly by Mr. Ma, is troubling, and causes this Court to be deeply suspicious of Mr. Ma's motives and his evidence.

[24] Following the hearing, counsel for Mr. Ma wrote to me to advise that orders relating to Justice Loo's decision cited above are now the subject of an appeal brought by Mr. Ma on April 24, 2024. This submission was provided to me as "sur-reply", which the defendants argue was provided without leave and contrary to Practice Direction 27. Regardless, it is not clear to me what Mr. Ma asks me to make of this in terms of the application before me, aside from adding to the list of litigation between these parties.

[25] On October 16, 2023, the defendants commenced this application seeking that Mr. Ma be declared a vexatious litigant in the BC Supreme Court.

Analysis

Issue 1: Is Mr. Ma a vexatious litigant?

[26] Pursuant to s. 18 of the SCA, the court may order that a legal proceeding must not be instituted without leave of the court. Section 18 reads as follows:

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving the person an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[27] In order to succeed under a s. 18 application, the applicant must show that the plaintiff's proceedings are:

- a) vexatious and that they are brought in the absence of objectively reasonable grounds; and
- b) habitual and persistent and have continued obstinately in the face of protest or criticism.

Singh v. Nielsen, 2017 BCSC 1876 at para. 3, citing *Holland v. Marshall*, 2010 BCSC 1560 at para. 7, leave to appeal ref'd 2010 BCCA 579.

[28] The characteristics that a court may consider in deciding whether a litigant is vexatious litigant, include, but are not limited to:

- a) the bringing one or more action to decide an issue which has already been determined by a court of competent jurisdiction;
- b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;

- c) actions brought for an improper purpose, including the harassment or oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- d) grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- e) failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings;
- f) persistently taking unsuccessful appeals from judicial decisions; and
- g) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action.

Holland, at para. 8; *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91 at para. 29.

[29] The public policy underlying this section “gives the court the needed ability to control its own process. It enables the court to put into place an order to prevent a citizen or citizens from being subjected to an endless blizzard of litigation”: *Holland v. Marshall*, 2010 BCCA 579 at para. 17.

[30] Throughout his litigation history, Mr. Ma has both been represented by counsel and has represented himself. He was represented at the time of the application. Counsel for Mr. Ma argues that any proceedings filed by Mr. Ma, or by his family, while he was represented by counsel ought not to be considered vexatious as the pleadings authored by counsel do not contain the confusing, inflammatory allegations that are hallmarks of Mr. Ma’s own drafting.

[31] Counsel also submits that Mr. Ma has “learned his lesson” in terms of commencing actions against legal professionals since being declared vexatious in Provincial Court, and that further orders to that effect are not necessary. Further, Mr. Ma argues that if Judge Vandor had the transcript of earlier proceedings, in which Mr. Zeljkovich allegedly gave an undertaking to order transcripts and failed to do so, he may not have been declared a vexatious litigant at all.

[32] I do not agree with Mr. Ma’s submissions.

[33] In accordance with s. 18 of the SCA I find that the defendant’s have successfully proven that Mr. Ma’s pleadings are vexatious and often lack any cause of action or reasonable grounds. I also find that Mr. Ma has continued to bring these vexatious pleadings in the face of repeated warnings and criticism from the courts.

[34] Having considered the factors laid out in *R.D. Backhoe Services Inc*, and in particular, considering “the whole history of the matter” I find that a declaration that Mr. Ma is a vexatious litigant is required.

[35] I acknowledge that Mr. Ma feels genuinely aggrieved by the defendants. I also accept that buried in these proceedings and actions may be a valid dispute about division of property following the breakdown of his marriage, or the legal or beneficial ownership of the Property. Mr. Ma may believe in the many accusations he makes, and from his perspective, he may not be intentionally using the courts as a means to harass the defendants and those who are retained to assist them. However, this is the result of his conduct.

[36] I have no difficulty in finding that Mr. Ma is abusing the court processes to achieve his goals.

[37] The repeated filing of lengthy, convoluted proceedings in all levels of court must come to an end. The occasional assistance of legal counsel throughout Mr. Ma’s legal journey has not been an adequate prophylactic. Given the history of legal proceedings involving these parties, the hope that legal counsel will be involved going forward is insufficient to mitigate the risk of ongoing vexatious claims.

[38] I therefore find that Mr. Ma’s participation in legal proceedings at the BC Supreme Court must be supervised going forward. Mr. Ma will no longer be able to initiate a legal proceeding in the BCSC without leave of this Court.

[39] This order will not prevent Mr. Ma from continuing his existing proceedings. Nor is it a complete ban on his ability to commence new proceedings protect his rights. Mr. Ma will be required to seek the leave of this Court to file further actions, applications, and notices of appeal.

Issue 2: Should the pleadings be struck pursuant to R 9-5?

[40] The defendants apply to have the pleadings in the current action (S232870) struck as vexatious and an abuse of process, and the Action dismissed pursuant to R. 9-5(1) of the *Supreme Court Civil Rules*, which provide:

At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[41] In *Sahyoun v. Ho*, 2015 BCSC 392, Justice Voith, as he then was, discussed R. 9-5(1)(c) and (d) and the interplay between the various subsections of R. 9-5:

[59] An “embarrassing” pleading, as contemplated by R. 9-5(1)(c), is one that is so irrelevant that to allow it to stand would involve useless expense and would also prejudice the trial of the action by involving the parties in a dispute apart from the issues; *Keddie v. Dumas Hotels Ltd.* (1985), 1985 CanLII 417 (BC CA), 62 B.C.L.R. 145 at 147 (C.A.).

[60] The abuse of process standard under R. 9-5(1)(d) derives from a flexible doctrine. It allows the court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 35-37.

[61] Though subsections (a)-(d) of R. 9-5(1) address different concerns and different wrongs, there is also some overlap between these subsections. Thus, for example, a pleading that discloses no cause of action, contrary to R. 9-5(1)(a), can also be unnecessary, frivolous or vexatious within the meaning of R. 9-5(1)(b); see e.g. *Virk v. Brar*, 2012 BCSC 1004 at paras. 69-70.

[62] A pleading can be embarrassing if it does not state the real issue in an intelligible form. It can also be embarrassing if it is prolix, includes irrelevant facts, argument or evidence. It can be prejudicial if it is designed to or has the effect of confusing the defendant, making it difficult, if not impossible, to answer; *Virk* at para. 75.

[63] These same concerns can constitute an abuse of the court if a litigant has been expressly told that there are aspects of its pleadings that are deficient or defective, and if that litigant persists, in its amended claim, to advance the same claims or issues in the same way.

[42] The defendants say Mr. Ma’s claim is vexatious and an abuse of process and should therefore be struck. The defendant cites the same facts and evidence that they used in support of their claim that Mr. Ma is a vexatious litigant. The defendants also question whether the present pleadings disclose a reasonable cause of action.

[43] In his notice of civil claim, Mr. Ma makes a number of outlandish claims, including the following:

2. The Defendant [...] is a full time romance scam group leader, “SON OF GOD” and part time is computer hacker ...

[...]

7. Dai&Xu as romance scam group leader, also ask their lawyer John Zelykvoich (JZ) to be William’s wife Han’s lawyer, so JZ can help Dai and Xu to control Hui more. Dai and Xu can know all William and Han’s family info through JZ. Dai & Xu & Han steal Ma’s family money also flow into John Zelykvoich’s account, JZ is serious conflict.

[...]

19. After The romance scam group cheating action successful and cheat 200000 away, Dai&Xu plan another big criminal plan, try to steal and robbery Ma’s family more assets during COVID, when Ma’s family stuck overseas.

20. In 2019, Dai & Xu & Han make a false device agreement between WILLIAM and HAN in Richmond, this false device agreement same as fraud ID for Han which they made before, but they make date in 2003 and make location as China on the false device agreement, as they know Ma’s family first home bought under Han’s name was in 2015.

[44] Mr. Ma seeks a number of remedies including, but not limited to: an injunction, a tracing order for funds allegedly taken from him, damages for stolen money, fraud, intimidation, conspiracy, trespassing, intentional infliction of mental suffering, punitive damages, and special costs.

[45] In situations where a plaintiff is making wide-sweeping, inflammatory, and unsupported allegations of criminal conduct, the court is entitled to subject the claims to “skeptical analysis” and not to assume they are true: *Stephen v. HMTQ*, 2008 BCSC 1656 at para. 60.

[46] The defendants state that Mr. Ma’s current claim reflects many of these principles, most particularly (a) (d) and (f). They also urge me to consider (e), in light of the convoluted and complex history of litigation between these parties.

[47] Counsel for Mr. Ma states that this application is premature, and that the defendants should be examined for discovery. He also says that these pleadings were filed when Mr. Ma was unrepresented, and now that he is represented, the pleadings can be amended by counsel, with a mind to fixing the obvious shortcomings.

[48] Bringing a series of successive related proceedings is an abuse of the court’s process, even where the plaintiff sincerely believes that earlier decisions were wrong and that he has not been treated fairly: *Budgell v. British Columbia*, 2007 BCSC 991 at para. 28, *aff’d Budgell v. Oppal*, 2008 BCCA 349.

[49] In all the circumstances, I consider the proceedings filed by Mr. Ma to be vexatious. Considering the history of this litigation and the repeated related proceedings, I also find them to be an abuse of the court’s process. Mr. Ma’s present claim will therefore be struck.

Issue 3: Should Mr. Ma be granted leave to amend his pleadings/should the defendants be required to attend for examinations for discovery?

[50] Mr. Ma requests leave to amend his pleadings. It was pointed out by counsel for both parties that despite the application seeking leave to amend, that Mr. Ma did not actually require leave to amend these pleadings. Counsel for Mr. Ma stated that the application was intended to “put on the record” that it was Mr. Ma’s intention to amend the pleadings.

[51] The defendants say that Mr. Ma could and should have amended the pleadings months ago and certainly after receiving notice of the application to strike. The defendants say that this cross-application is nothing more than a tacit effort to obtain an adjournment of the main application. Indeed, counsel for Mr. Ma did argue that the cross-application should be heard first, which, under the circumstances, I decided was neither appropriate nor procedurally efficient.

[52] Regardless of whether Mr. Ma’s cross application was necessary or properly brought, as I

have decided to strike the pleadings, I do not need to address whether Mr. Ma should have leave to amend.

[53] Mr. Ma has had well over a year to address the state of his pleadings. What's more, he had notice of this application since at least October of 2023. Considering the history of the litigation as a whole, allowing Mr. Ma's current counsel to clean up the latest version of the same allegations that have been featured in the many other proceedings would only prolong the pattern of wasting the time and resources of the court and the other litigants.

Conclusion

[54] For the reasons above, I grant the application to declare Mr. Ma a vexatious litigant and order that he be barred from commencing any legal proceedings in this Court without leave of a justice. I also strike Mr. Ma's notice of civil claim in S232870 as vexatious and an abuse of process. Mr. Ma's cross application is dismissed.

[55] I note that the defendants sought an order preventing Mr. Ma from filing legal proceedings in any BC court without leave of this Court. I decline to make the order this broad, given the declaration that is already in place with respect to Mr. Ma in the Provincial Court of BC.

[56] I am mindful that this Court often approaches vexatious litigant orders in a staged way, at first imposing some general restrictions in the hopes that the restrictions will modify the repetitive and duplicative proceedings filed by the litigant; and imposing more restrictive orders if the conduct is not modified. I accept that following the restrictions placed on Mr. Ma in Provincial Court there appeared to be a change, at least in that forum.

[57] The Defendants seek special costs against Mr. Ma.

[58] The standard for an award of special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 1994 CanLII 2570 (BC CA), 9 B.C.L.R. (3d) 242 (C.A.) at para. 17: the conduct in question must be "reprehensible". This can refer to behaviour that is "scandalous or outrageous" as well as to "milder forms of misconduct deserving of reproof or rebuke." Special costs are punitive, and aim to deter misconduct and express the court's disapproval of such behaviour: *Morriss v. British Columbia*, 2021 BCCA 451 at para. 22.

[59] If the entirety of the litigation is considered as a whole, Mr. Ma's conduct may meet the threshold described above. However, that is why I declared him a vexatious litigant, and struck his claim.

[60] I am not convinced that Mr. Ma's behaviour, specifically in relation to this application, requires an order of special costs on top of this outcome. More to the point, I did not hear sufficient

submissions on this point from either counsel. Accordingly, I decline to grant special costs for this application, but I warn Mr. Ma that the consequences in this and other courts will likely continue to mount if he does not make significant changes with respect to how he conducts his litigation.

[61] The defendants will have their costs of this application at scale B.

“J. Whately J.”