

Marc Ribeiro v. Dragons' Den

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Introduction

The modern phenomenon of reality television can be a tough business. What makes it interesting for viewers is what appears to be the spontaneous drama, the unpredictable turns and utterances and the raw, unscripted human confrontation. Television broadcasts the glorious performances of some and, equally, causes the embarrassments of others to be instantly publicized to the whole world. What serves up edge-of-the-seat interest, laughs and entertainment often come at the expense of someone in front of the cameras.



Recently we learned that Dr. Phil is being sued by the parents of a 15-year-old guest who appeared on his daytime talk show, accusing the show of “fraud, false imprisonment and breach of fiduciary duty.” This article describes a recent pitch on the CBC television show, *Dragons' Den* and the ensuing lawsuit, both of which did not go as planned. Another guest on the show criticized a mother for failing her daughter “by a country mile” and accusing the daughter of “total naiveté.” This might seem mild for reality TV, even if the teen was later sent to a treatment centre where she suffered more abuse.

The pull for people to voluntarily appear on reality television shows is often the goal of free publicity, fame and fortune. Before they get in front of the cameras, the broadcasters have them sign sweeping consents and releases of liability to negate any chance of the networks being sued for hurt feelings and more. Individuals who have suffered embarrassment as a result of their experience on reality television have attempted to sue those television networks. This article describes a recent pitch on the CBC television show, *Dragons' Den* and the ensuing lawsuit, both of which did not go as planned.

Dragons' Den Appearance

In 2011 Marc Ribeiro appeared on an episode of *Dragons' Den*. Ribeiro, a lawyer, signed a Consent and Release as a condition to getting on the show. In it he agreed not to sue the CBC. It further gave the network the right to edit the footage in any way, even to portray his appearance as “disparaging, defamatory, embarrassing or of an otherwise unfavourable nature which may expose me to public ridicule, humiliation or condemnation.” He also consented to CBC editing the segment at its “sole discretion.”

Ribeiro sought financing for a family-friendly board game called “Pick ‘N’ Choose.” In the broadcast, the investors were shown making lewd shapes out of play-dough and jokingly suggesting that it would only be worth investing in if it was turned into an “adult game.”

Ribeiro was unhappy with the voiceover at the end of his segment on the show that said, “Dragons never pull punches when they spot a money-losing venture. Unfortunately, these next few ideas hit the mat immediately.”

Ribeiro thought this voiceover, along with the way the clip was edited, created the impression that his idea was a “complete flop,” even though the panel of investors had expressed initial interest. Ribeiro claimed the aired segment was a “complete misrepresentation” of the original recording and that CBC had acted with “gross and reckless negligence, intentional misconduct, malice and bad faith.” He sued CBC for breach of contract, defamation, breach of duty of care, and injurious falsehood.

Ribeiro acknowledged that no express terms of the Consent and Release were violated, but argued CBC breached an “implied duty of good faith” by editing the clip in that way, and that it would be unconscionable or contrary to public policy for the court to uphold the contract.

Legal Outcome

The CBC moved to toss out the lawsuit right away, without a trial. The first judge decided that CBC's Consent and Release form protected it from all of Ribeiro's claims. This 2013 case was: [MHR Board Game Design Inc. v. Canadian Broadcasting Corporation, 2013 ONSC 4457](#).

On the unconscionability issue, the judge referenced the similar 2011 case of [Turmel v. CBC \(Dragons' Den\), 2011 ONCA 519](#). Ribeiro alleged CBC acted "maliciously" and "recklessly" in its editing of the *Dragons' Den* segment.

This, he claimed, hurt his reputation and was a gross misrepresentation of his actual interaction with the investors.

John Turmel attempted to sue CBC for portraying him and his idea in a defamatory way. The court had decided that Turmel voluntarily agreed to present his idea on the show and signed a release form in which he consented to being depicted in a way potentially "defamatory." Accordingly, the Consent and Release form was not unconscionable.

In order for a transaction judge to be set aside on the grounds that it is unconscionable, two things need to be shown: (1) an inequality of bargaining power or the incapacity of one party to protect their interests; and (2) grossly unfair improvidence or a gain at another's expense. Neither of these was present in Ribeiro's case. Ribeiro is a lawyer and the judge used this against him in his own claim of bargaining power, capacity and improvidence.

The judge did not think that enforcement of the Consent and Release was contrary to public policy. A court would rarely disregard an exclusion clause. Likewise, the duty of good faith and the tort of bad faith breach of contract are generally applied when there is a fiduciary duty present or where there are clear economic implications in commercial cases.

Ribeiro alleged CBC acted "maliciously" and "recklessly" in its editing of the *Dragons' Den* segment. This, he claimed, hurt his reputation and was a gross misrepresentation of his actual interaction with the investors. The judge ruled that, even assuming an implied duty of good faith operated here, there was no evidence to support these allegations. Although the investors on the show had fun at Ribeiro's expense, the judge did not consider it enough to override the signed Consent and Release.

The network does not have a fiduciary duty to entrepreneurs on the show to represent or carefully portray their interests when editing the footage. Much was made of the free publicity (positive or negative) entrepreneurs receive on *Dragons' Den*. They do not have input into the editing of their segment.

Appeals

Ribeiro's appeal to the Ontario Court of Appeal ([2013 ONCA 728](#)) was summarily dismissed because there were "no material facts in dispute." This Court agreed that all claims were barred by the Consent and Release, which was not unconscionable nor contrary to public policy to enforce. Even if an implied duty of good faith can be read into the contract, there were no material facts to support that such a duty was violated.

Last May, the Supreme Court of Canada refused to hear a further appeal ([2014 CanLII 25874 \(SCC\)](#)).

Conclusion

Ribeiro was not pleased by CBC's unflattering portrayal on *Dragons' Den*, but this is one of the risks of participating on a reality television show. The general principle that "if you sign it, you are bound by it" applied here, especially when the signing party was a lawyer.

Taking this case through three levels of court may not only have been time-consuming and expensive, but it ironically brought further attention to Ribeiro's embarrassment. His case serves as another example of how judges may be unsympathetic toward lawyers who use the courts to vindicate their own interests. Lawyers should not be penalized for their education when resorting to the legal system, but there may be a clear reality lesson in this case.

Voluntarily signed Consents and Releases where there is a free publicity “reality-value” to be enjoyed in return – especially when signed by lawyers – are likely to be enforced. Participants on reality television shows will be at the mercy of anonymous editors in how they or their ideas are depicted. The alternative is to give the reality show a pass and instead watch others take these risks.

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