

**CITATION:** *Diffusart International et al. v. Robinson et al.*, 2025 ONSC 2151  
**COURT FILE NO.:** CV-23-93046  
**DATE:** 2025-04-07

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Diffusart International and Marc Agostini, Plaintiffs

**AND**

Samantha Robinson c.o.b. Postering Ottawa and  
Erica Lackey, Defendants

**BEFORE:** The Honourable Mr. Justice Marc Smith

**COUNSEL:** Charles R. Daoust, Counsel for the Plaintiffs

Yavar Hameed, Counsel for the Defendant Samantha  
Robinson c.o.b. Postering Ottawa

**HEARD:** January 7, 2025

**REASONS FOR DECISION**

**M. SMITH J.**

**OVERVIEW**

[1] The Defendant, Samantha Robinson c.o.b. Postering Ottawa (“Ms. Robinson”), brings an anti-SLAPP motion pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“CJA”) to dismiss the action against her by the Plaintiffs, Diffusart International (“Diffusart”) and Marc Agostini (“Mr. Agostini”).

[2] Diffusart and Mr. Agostini oppose the motion.

[3] For reasons that follow, Ms. Robinson’s motion is dismissed, without costs.

**BRIEF FACTS**

[4] The Plaintiffs have been involved in the postering business in Ottawa for over three decades.

[5] Ms. Robinson has been involved in the postering business in Ottawa for approximately two decades. Her business includes taping posters on a limited number of specific postering poles or collars provided by the City of Ottawa for the public to use in accordance with local by-laws.

[6] The parties have been competing with one another for several years, without incident. However, in recent years, it is alleged that Mr. Agostini has been using inappropriate and escalating bullying tactics against Ms. Robinson for the sole purpose of sabotaging her business because she declined his invitation to join his business.

[7] Ms. Robinson alleges that she has been the target of the Plaintiffs' unfair, aggressive and unethical business practices since 2017, such as: they monitored her movements; they followed and took photos of her while postering; they slashed, covered, and tore down her posters; they created mock disparaging ads of her business to ridicule and attack her as well as her clients; they flooded poles with Diffusart's posters to cover her client's posters; and they contacted her clients to disparage her and her business. Ms. Robinson felt unsafe, threatened, and harassed in her daily life to the point that she relocated her primary residence from Ottawa to Toronto.

[8] Ms. Robinson responded to the Plaintiffs' tactics. To highlight and fight the perceived injustice of the Plaintiffs' actions, Ms. Robinson took the following steps: she created an Instagram account about Diffusart to allow people to send information regarding Diffusart's questionable business practices; she reposted some comments to the Instagram account; and she sent an email to the Mayor and the Ottawa Police Services ("OPS") outlining Mr. Agostini's tactics.

[9] The Plaintiffs allege that in addition to the foregoing steps taken by Ms. Robinson which they qualify as defamatory, Ms. Robinson further defamed the Plaintiffs by emailing their clients with disparaging remarks, as well as creating, posting, and distributing inappropriate posters about Mr. Agostini and his company.

[10] In response to Ms. Robinson's actions, Mr. Agostini and his company commenced a defamation claim on August 21, 2023, against Ms. Robinson and her employee, Ms. Erica Lackey. It was amended on October 2, 2023 ("Amended SOC").

## **LEGAL PRINCIPLES**

[11] The Supreme Court of Canada has provided governing interpretation of s. 137.1 of the *CJA* in two decisions: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587 and *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645.

[12] Section 137.1(3) of the *CJA* requires a two-part analysis, known as the threshold burden. The moving party must show that the proceeding arises from an expression made by the moving party and that the expression relates to a matter of public interest.

[13] If the threshold burden is met, the analysis moves to the merits-based hurdle under s. 137.1(4)(a) of the *CJA*, whereby the onus shifts to the responding party to satisfy the court that there are grounds to believe that the proceeding has substantial merit, and the defendant has no valid defence.

[14] If the merits-based hurdle is met, the analysis moves to the public interest hurdle under s. 137.1(4)(b) of the *CJA*, whereby the responding party must satisfy the court that “the harm likely to be or have been suffered by the responding party as a result of the moving party’s expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.”

[15] Very recently, in *Li v. Barber*, 2025 ONCA 169, at para. 19, the Court of Appeal for Ontario recalled the relevant principles to be applied in a s. 137.1 motion, as set out in the *Pointes* and *Bent* cases. They are summarized as follows:

- i. It is not a determinative adjudication motion.
- ii. It is nothing like a trial as it does not reach a determination adjudication on the merits of a claim or defence.
- iii. It falls somewhere between a motion to strike out a claim and a summary judgment motion.

- iv. It is used to screen out lawsuits that unduly limit expression on matters of public interest. It acts as a pre-trial screening mechanism.
- v. It is used to shut down plaintiffs who file abusive claims that have the effect of silencing opposing views, rather than vindicate apparently legitimate claims.
- vi. It is decided on a limited record and the judge should only engage in a limited weighing of the evidence. Assessments of credibility and other questions requiring a deeper dive into the evidence should be deferred to a later stage.
- vii. The judge must weigh competing interests and effects, namely the public interest in vindicating legitimate claims versus the resulting potential for quelling expression that relates to matters of public interest.

## **ANALYSIS**

### **Threshold burden**

[16] The Plaintiffs concede that Ms. Robinson has met the threshold burden in that her expressions relate to a matter of public interest.

[17] The burden now shifts to the Plaintiffs to satisfy the court that there are grounds to believe that their claim has substantial merit, and that Ms. Robinson has no valid defence.

### **Merits-based hurdle**

#### **Substantial merit**

[18] To prove a defamation claim, the Plaintiffs must establish the following: (a) the impugned words were defamatory, in that they would tend to lower their reputation in the eyes of a reasonable person; (b) the words referred to the Plaintiffs; and (c) Ms. Robinson published the words, in that she communicated the words to a third party: *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28.

[19] In the Amended SOC, the Plaintiffs raise five sets of alleged defamatory comments/acts against Ms. Robinson: (a) comments on the Instagram account; (b) email to the Mayor and OPS; (c) statements made to the Plaintiffs' clients from an email address called refusediffuse@gmail.com; (d) posting of a "Wanted!! Beware of this Man!" poster referencing Mr. Agostini; and (e) brochures distributed to the public relating to Mr. Agostini.

[20] Ms. Robinson acknowledges publishing the first two statements mentioned above: (a) she reposted screenshots of comments to the Instagram account and (b) she wrote an email to the Mayor and OPS. She denies publishing the three other statements.

[21] My analysis will focus on the Instagram account and the email written to the Mayor/OPS because they arise from acts undertaken by Ms. Robinson. There is insufficient documentary evidence before me to conclude that Ms. Robinson is the author of the alleged defamatory comments and/or acts in paragraph 19(c)-(e) above.

#### Instagram account

[22] Ms. Robinson admits creating the Instagram account. She wanted to provide a public space for people to connect and share concerns regarding their unpleasant experiences with Mr. Agostini and Diffusart.

[23] In creating the Instagram account, Ms. Robinson used the Diffusart logo, without the Plaintiffs' consent. She posted images and videos of Mr. Agostini and his company's employees. Also, in describing the Instagram bio, Ms. Robinson wrote the following: "*Community Submissions / Please DM us your videos; Diffusart Ottawa / This Behaviour is Unacceptable*".

[24] Through her work, Ms. Robinson became acquainted with other individuals that have dealt with Mr. Agostini and his company. These individuals posted comments on the Instagram account created by Ms. Robinson. Some examples are: "*They are the WORST company! Bullies... why anyone hires them is beyond me; The owner of this company Diffusart harasses other people for hanging posters for local businesses; It takes a special kind of asshole to put the hashtag "#ShopLocal613" on a poster that's covering up a poster for a local business; Ya I love how it is a poster promoting small business that he uses...to cover a poster by a small business. Goof; the*

*owner of Diffusart is a dangerous creep. he should be put out of business and charged for his threatening, harassing and shitty practices.”*

[25] The Plaintiffs argue that the comments posted on the Instagram account are defamatory. Ms. Robinson denies being the author of the defamatory comments because they were written by third parties. However, she admits copying and reposting some of the defamatory comments.

Email to the Mayor/OPS

[26] Ms. Robinson admits sending an email to the Mayor and the OPS outlining her concerns with Mr. Agostini and Diffusart. A copy of this email was also sent to the Ottawa Jazz Festival, Ms. Robinson’s former client, and now client of Diffusart.

[27] Ms. Robinson says that the email was written to two public authorities. She wrote the email as a form of protection because she lived in a state of insecurity. Mr. Agostini and Diffusart were continuously sending her unwelcoming messages and were monitoring her daily. She firmly believed that these public authorities would have the power to assist her against Mr. Agostini’s tactics. Ms. Robinson maintains that all information provided to the public authorities is true.

[28] The email to the Mayor, OPS and the third-party former client includes, amongst other things, the following allegations regarding Mr. Agostini and his company: *“unbelievable amounts of harassment, stalking, physical violence and threats; assaulting me on June 12 2021 in byward market square; I don’t know what to do and I’m honestly scared for my life, there is very clearly something wrong with this man, you can see it in his eyes.”*

Discussion

[29] The Plaintiffs need to demonstrate that there are grounds to believe that a proceeding has substantial merit. In other words, is the Plaintiffs’ claim legally tenable and supported by the evidence? The answer is yes. The evidentiary record before me does provide grounds to believe that the Plaintiffs’ defamation claim against Ms. Robinson has a real prospect of success.

[30] It is undisputed that Ms. Robinson created the Instagram account that hosts several defamatory comments against Mr. Agostini and his company. While the evidence suggests that

Ms. Robinson is not the author of those defamatory comments, she nonetheless participated in reposting some of these comments.

[31] Ms. Robinson's reposted comments refer to Mr. Agostini as a bully, creep, and harasser who engages in unethical business practices. A reposting of a defamatory comment is defamatory, and it is subject to liability in the same manner as the original post.

[32] Turning to Ms. Robinson's email to the Mayor, OPS, and the Ottawa Jazz Festival, the defamatory comments made in relation to Mr. Agostini and his company are similar to those posted on the Instagram account. He is described as a harasser, an aggressor, a stalker, and someone who is mentally unstable. Moreover, the email was sent to a third party, the Ottawa Jazz Festival, a company that now had dealings with Mr. Agostini and his company.

[33] The reposted comments on the Instagram account and the email to the Mayor, OPS, and the Ottawa Jazz Festival can easily be construed as defamatory. They attack Mr. Agostini's professionalism and integrity, as well as impute that he committed criminal offences. In addition, the comments disparage Diffusart's business reputation within the community.

[34] In my view, the defamatory comments published by Ms. Robinson are sufficient for the Plaintiffs to establish their claim in defamation.

#### No valid defences

[35] The Plaintiffs need to establish that there are grounds to believe that Ms. Robinson does not have valid defences. They do not need to establish that Ms. Robinson's defences would inevitably fail. Also, and importantly, the Plaintiffs only need to establish this on a standard that is less than the balance of probabilities.

[36] Ms. Robinson pleads that she has three valid defences: (a) qualified privilege; (b) justification; and (c) fair comment.

#### Qualified privilege

[37] “An occasion qualified privilege exists if a person making a communication has an interest or duty, legal, social, moral or personal, to publish the information in issue to the person to whom it is published and the recipient has a corresponding interest or duty to receive it”. The privilege can be defeated in two situations: “where the dominant motive behind the words was malice, such as where the speaker was reckless as to the truth of the words spoken; or where the scope of the occasion of privilege was exceeded.”: *Bent*, at para. 121.

[38] I agree with Ms. Robinson that the email of complaint sent to the Mayor and OPS is protected by qualified privilege.

[39] Given Mr. Agostini’s alleged escalating behaviour, Ms. Robinson had an interest and duty to send that email to the public authorities. The Mayor is a public official who has an interest in receiving information regarding alleged by-law infractions such as slashing posters. Similarly, the OPS has an interest in receiving complaints regarding harassment, for which police reports had previously been filed. Ms. Robinson’s statements were therefore made on an occasion of qualified privilege.

[40] However, the defence of qualified privilege fails because it was exceeded by sending the email to Ms. Robinson’s former client, the Ottawa Jazz Festival.

[41] Ms. Robinson says that the Ottawa Jazz Festival is a federally registered charity that is required to manage its funds in a matter consistent with the public good. Ms. Robinson argues that she had a personal and professional interest in apprising her former client as to the actions of the Plaintiffs which are affecting the fair distribution of postering in Ottawa. Furthermore, she submits that the Ottawa Jazz Festival has a duty to review such information of public concern in the administration of its activities in Ottawa.

[42] I disagree with Ms. Robinson’s argument that the privilege extends to the Ottawa Jazz Festival. There was no duty required to communicate those statements to the Ottawa Jazz Festival, nor was there a duty to receive them. The Ottawa Jazz Festival’s corporate identity is irrelevant. They were a former client of Ms. Robinson’s and now a client of Mr. Agostini and Diffusart. Communicating with this client went beyond the scope of necessary reporting.

[43] There is no doubt that Ms. Robinson was deeply affected by Mr. Agostini's alleged conduct, especially when one considers that she feared for her safety and was forced to relocate her primary residence. It would be understandable that a victim of Mr. Agostini's alleged inappropriate behaviour may want to respond in kind. In my view, communicating the alleged defamatory and disparaging statements to Mr. Agostini's client could be described as reckless disregard rather than raising it as a public concern.

[44] I am satisfied that there are grounds to believe that the defence of qualified privilege does not have a prospect of success. Bounds were exceeded, and recklessness may defeat the privilege.

Justification

[45] The defence of justification will fail if the "sting" of the defamatory statements is untrue: *Bent*, at para. 107.

[46] In support of her submission that the defence of justification is valid, Ms. Robinson relies upon seven affidavits filed by members of the community. Some of these affiants depose to have observed Mr. Agostini slash and cover posters. Others, including Mr. Agostini's former employee (perhaps disgruntled because of unpaid wages), provide opinions that Mr. Agostini engaged in unethical business practices. There are also allegations that Mr. Agostini assaulted one of the affiants and publicly harassed another.

[47] Ms. Robinson argues that the statements made on the Instagram account and in the email sent to the Mayor/OPS are factually and logically defensible on the current record. Inferences are being made based on Mr. Agostini's alleged conduct. Moreover, Ms. Robinson submits that these statements have not been challenged by the Plaintiffs on this motion and as such, they stand for the truth of their contents.

[48] First, although I agree with Ms. Robinson that there may be some evidence to support the veracity of some statements made regarding Mr. Agostini and his company, there are many other statements that do not demonstrate the truth of them. Second, it is inaccurate to say that the statements have not been challenged by the Plaintiffs. Mr. Agostini's affidavit disputes Ms. Robinson's allegations as well as those allegations made by the various affiants. Third, it is to be

reminded that on a s. 137.1 motion, contested issues of fact and credibility as well as competing inferences drawn from contested facts cannot be resolved at this stage of the proceedings.

[49] Most importantly, I believe that there are grounds to believe that Ms. Robinson cannot defend the main thrust or sting of the defamation, namely that Mr. Agostini is a mentally unstable criminal. Ms. Robinson's evidence, including the evidence of the various affiants, is deficient. Although there are numerous observations and opinions in the record to show that Mr. Agostini's business practices may be unethical and that he conducts himself in a questionable manner, there are grounds to believe that those observations and opinions do not support Ms. Robinson's defence of justification with respect to the sting of the defamation, i.e. Mr. Agostini is a mentally unstable criminal. In my opinion, the sting of the defamatory comments goes beyond the evidence presented by Ms. Robinson.

[50] Therefore, there are grounds to believe that the defence of justification will fail because Ms. Robinson does not have a real prospect of demonstrating that the sting is true.

Fair comment

[51] There are five elements to the defence of fair comment: (a) the comment must be on a matter of public interest; (b) the comment must be based on fact; (c) the comment must be recognizable as comment; (d) the comment must satisfy the objective test; and (e) there must be a factual foundation for the impugned statement: *Hamer v. Jane Doe*, 2024 ONCA 721, at para. 65.

[52] Even if the above elements are present, the fair comment defence can be defeated if the plaintiff proves malice. Malice includes "reckless disregard for, or indifference to, the truth, by spite or ill-will, or by any indirect or ulterior motive": *Hamer*, at para. 66.

[53] While it could be argued that Mr. Agostini engaged in unethical business practices, and that he repeatedly harassed and stalked Ms. Robinson, I am not convinced that there is a factual foundation in the record for the sting of the defamation. In my view, the evidentiary record is insufficient to infer the truth of the crux of the posted comments that Mr. Agostini is a mentally unstable criminal. Therefore, there are grounds to believe that Ms. Robinson's defence of fair comment could be rejected.

[54] Then, there is the argument of malice or reckless disregard, which are further grounds to believe that the defence of fair comment does not have the prospect of success. The alleged actions perpetrated by Mr. Agostini and his company has had a profound impact on Ms. Robinson's life: she was monitored, harassed, and stalked daily; she was subjected to physical violence and threats from Mr. Agostini for a period of 10 years; she suffered from physical and psychological distress and harm for a decade; she lived in a constant state of insecurity; and because of Mr. Agostini's escalating tactics, she was forced to relocate her primary residence from Ottawa to Toronto.

[55] It is arguable that Ms. Robinson was actuated by malice or recklessness. According to Ms. Robinson's evidence, she was the victim of despicable and relentless conduct perpetrated by Mr. Agostini and his employees. In response to being abused for over a decade, and as a form of retaliation, Ms. Robinson created an Instagram account where third parties posted defamatory comments about Mr. Agostini and his company, for the purpose of harming Mr. Agostini and his business. Not only did she allow these comments to be posted, but she reposted some of those comments. She then went a step further and attempted to sabotage Mr. Agostini's relationship with his client, the Ottawa Jazz Festival, by sending a copy of an email that should have been limited to public authorities. Ms. Robinson incited, propagated, and maintained public hatred towards Mr. Agostini and his company.

[56] In my view, Ms. Robinson's actions amount to some form of recklessness, which lead me to conclude that there are grounds to believe that Ms. Robinson does not have a valid defence of fair comment. That is not to say that Mr. Agostini will ultimately succeed at trial in establishing recklessness, but for the purposes of a s. 137.1 motion, it is sufficient and reasonably capable of belief.

### **Public interest hurdle**

[57] The public interest hurdle is set out in two stages: (a) the harm analysis; and (b) the weighing analysis. The first question to be answered at the harm analysis stage is whether the harm caused by the expression is likely to be or has been suffered, either in a monetary or non-monetary fashion. Once the harm has been established, the second question to be answered is whether the harm outweighs the public interest in protecting the expression. The weighing exercise requires

the court to engage in a qualitative analysis of the expression and the motivation behind it: *Pointes*, at paras. 61-67.

Harm analysis

[58] The Plaintiffs' burden is that they only need provide evidence that is sufficient for the court to draw an inference of likelihood regarding the existence of harm and the relevant causal link: *Hamer*, at paras. 94-95.

[59] Mr. Agostini sets out in his affidavit material that he lost 14 clients because of Ms. Robinson's defamation campaign. He lists the clients that he lost and those that he was able to save. Although damages are presumed in defamation law, the Plaintiffs estimate their losses to be in the range of \$200,000.

[60] It is fair to say that the allegations of wrongdoing against Mr. Agostini and his company could be troublesome for many clients. Moreover, it is reasonable to expect that there aren't many clients who may wish to work with someone that is described as a mentally unstable criminal. In creating the Instagram account, Ms. Robinson facilitated and encouraged the community to post defamatory comments about Mr. Agostini and Diffusart. She reposted some of the comments and published an email alluding to the fact that Mr. Agostini was mentally unstable by stating "there is very clearly something wrong with this man, you can see it in his eyes". As such, I believe that there is sufficient evidence in the record to draw an inference of likelihood of monetary harm, caused by the published defamatory comments and statements.

[61] Non-monetary harm, such as reputational harm, can be significant. The Supreme Court of Canada reminds us that "reputation is one of the most valuable assets a person or business can possess": *Pointes*, at para. 69.

[62] The posts and re-posts on the Instagram account and the email sent by Ms. Robinson are expressions of opinions designed to impugn Mr. Agostini's character. The commercial postering business in Ottawa is competitive. The Plaintiffs started their business in 1988 and they appear to have succeeded in creating an impressive solid client base over the years. However, some of these clients have ended their relationship with Mr. Agostini and Diffusart because they have succumbed to the pressure of dealing with someone accused of being a mentally unstable criminal, including the National Arts Centre, National Gallery of Canada, and The Great Canadian Theatre Company, to name a few. There are therefore grounds to believe that the defamatory comments would lower

Mr. Agostini's reputation in the eyes of a reasonable person. I find that there is a likelihood of reputational harm suffered that is causally related to Ms. Robinson's actions.

### Weighing analysis

[63] The final phase of the analysis is the weighing exercise under s. 137.1(4)(b) of the *CJA*, requiring the court to balance two competing public interests: the public interest in allowing the claim to proceed because of the harm caused to a plaintiff versus the interest in promoting free expression on matters of public interest.

[64] The weighing analysis is known as the fundamental crux of the analysis because "it captures the overarching concern of the legislation, as evidenced by the legislative history" and it "should be given due importance by the motion judge" in his/her assessment: *Pointes*, at para. 82.

[65] The court is to scrutinize the expressions and determine whether they are worthy of protection. In trying to ascertain in what is really going on in the case at bar, the factors to consider include the following: (a) Ms. Robinson's motive for the expressions of opinions; (b) the vitriolic nature of Ms. Robinson's expressions of opinions; (c) the history of the Plaintiffs using litigation or threat of litigation to silence their critics; (d) the financial or power imbalance that strongly favours the Plaintiffs; (e) the punitive or retributory purpose animating the Plaintiffs' bringing of the claim; and (f) minimal or nominal damages suffered by the Plaintiffs.

[66] Ms. Robinson argues that the interests in promoting her expressions strongly outweigh the nominal harm to the Plaintiffs for several reasons: the nature of her publications were good faith efforts to draw attention to the Plaintiffs' harmful practices in curtailing the right of Ottawa residents to hang posters on municipally regulated posts; the nature of the harm alleged by Ms. Robinson is serious because the Plaintiffs harassed and targeted Ms. Robinson and her clients impacting them to promote their messages; Ms. Robinson's criticism of the Plaintiffs have the objective of promoting the accessibility of municipally administered collars, a right protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

*Motives of the expressions of interest*

[67] Ms. Robinson was tired of being harassed, threatened, and stalked by Mr. Agostini. He had been doing so for years. She complained to the Mayor and OPS, but nobody was willing to help. She was distressed and scared for her life. She was being targeted by a mentally unstable criminal. Writing to the Mayor/OPS was a last attempt at getting Mr. Agostini to stop his harassing behaviour. However, Ms. Robinson's personal attacks and defamatory statements against Mr. Agostini go beyond warning the public about his alleged unethical business practices. They contain statements that are deliberate misrepresentations regarding Mr. Agostini's mental stability and criminal behaviour, which reduces the public interest in protecting them.

[68] In my view, the postings and email to the Mayor/OPS and client were not only published to draw attention to the of the Plaintiffs who were trying to curtail the right of Ottawa residents to hang posters on municipally regulated posts, it was also a way of trying to end a private dispute between two competitors. Mr. Agostini had been trying for years to purchase Ms. Robinson's business without any success. When she refused, Mr. Agostini resorted to conduct that was unbecoming but not criminal, at least on the evidentiary record before me.

[69] Ms. Robinson needed to end this dispute because it was affecting her physical and mental health. Rightfully, she was concerned with her personal wellbeing and interest. However, I believe that this informs the personal motives that are behind her expressions of opinion as set out in the email to the Mayor/OPS and Mr. Agostini's client.

*The vitriolic nature of Ms. Robinson's expressions of opinions*

[70] While I understand Ms. Robinson's reasons for reposting and sending the email, it was not necessary to publicly attack Mr. Agostini's character and label him as a creep and as a mentally unstable criminal.

[71] I believe that Ms. Robinson could have expressed her dissatisfaction with Mr. Agostini's business practices in a more measured and responsible manner. It was not necessary to resort to personal character attacks.

*History of the Plaintiffs using litigation*

[72] There is no evidence before me that the Plaintiffs have previously used litigation or threatened to use litigation to silence their critics.

*Financial or power imbalance*

[73] Although Ms. Robinson says that she is of modest means and that a judgment against her would force her into bankruptcy, there is insufficient evidence before me to conclude that there is a financial imbalance between both parties.

[74] In terms of power imbalance, Ms. Robinson has certainly demonstrated in this litigation that she will not succumb to the likes of Mr. Agostini or that she will be deterred by his bullying and unethical business practices.

*Punitive or retributory purpose animating the Plaintiffs' claim*

[75] In addition to the Plaintiffs' claim for defamation, they seek injunctive relief and damages for passing off, unlawful conspiracy and interference in economic relations because of the alleged publications.

[76] On the evidentiary record before me, there may be an element of punitive or retributory purpose regarding the claims for passing off, unlawful conspiracy and interference in economic relations. These may lack substantial merit. However, when it comes to the defamation claim, there are grounds to believe that the loss of clients may be related or partially related to Ms. Robinson's expressions of opinion.

*Damages suffered by the Plaintiffs*

[77] As noted earlier, general damages for defamation need not be proven. Also, one's reputation is the most valuable asset that a person can possess, and it needs to be protected from personal attacks of character.

[78] Based on the evidence presented, which I acknowledge has yet to be tested, I am of the view that the damages claimed are more than merely nominal.

## **DISPOSITION**

[79] For the foregoing reasons, this is not a case that should be summarily dismissed by way of an anti-SLAPP motion.

## **COSTS**

[80] Both parties filed costs outlines. Ms. Robinson's costs total approximately \$40,000 while Mr. Agostini and Diffusart's costs total approximately \$30,000.

[81] Costs are discretionary in accordance with s. 131 of the *CJA*.

[82] There is a presumption against the issuing of costs in favour of a party that succeeds in resisting an anti-SLAPP motion. Section 137.1(8) of the *CJA* provides that if the proceeding is not dismissed, then the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances.

[83] I recognize that in November 2024, the Plaintiffs strongly suggested to Ms. Robinson that she abandon her anti-SLAPP motion because the Plaintiffs' claim did not have any of the hallmarks of a SLAPP. The Plaintiffs were ultimately successful but that does not mean that they should be entitled to costs.

[84] This is not a case that should be viewed as having a low prospect of success. It is to be reminded that the Plaintiffs conceded that the impugned expressions relate to a matter of public interest. Also, despite being unsuccessful, I find that Ms. Robinson advanced some reasonable arguments worthy of consideration by the court. I conclude that her motion was not frivolous.

[85] Further, while I found that there were grounds to believe that Ms. Robinson's behaviour was reckless at times and that she should have behaved in a more responsible manner, I fully understand the reasons as to why she proceeded as such.

[86] On its face, Mr. Agostini's conduct was disturbing and some of his business practices are highly questionable and unsettling. Take for example his tactic of creating and distributing posters that mimicked the style and layout of Ms. Robinson's company, with a fake advertisement for a pornographic company, PornHub. It is disgraceful and this type of conduct is worthy of sanction.

[87] Furthermore, many of the claims brought by the Plaintiffs (i.e. passing off, unlawful conspiracy and interference in economic relations) appear to lack merit and are simply punitive in nature. I believe that these types of claims seem to have been added to the defamation claim for improper purposes.

[88] Considering the unique circumstances of this case and the importance of the issues, I am satisfied that there was some merit in bringing an anti-SLAPP motion. It was not ill-conceived, nor was it a foregone conclusion that the motion would fail. Notwithstanding Ms. Robinson's lack of success, she should not be subject to costs.

[89] I do not find that there are any reasons to depart from the presumption against the issuing of costs in favour of the successful party. I conclude that this is not an appropriate case to order costs.

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M. Smith J

Released: April 7, 2025

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**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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Plaintiffs

– and –

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Erica Lackey

Defendants

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**REASONS FOR DECISION**

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