

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
BARRIE MUNICIPAL NOT-PROFIT) Riley Brooks, for the Plaintiff/Responding
HOUSING CORPORATION) Party
)
Plaintiff)
)
– and –)
)
LEAH DYCK) Leah Dyck, Self-Represented
) Defendant/Moving Party
Defendant)
)
)
)
) **HEARD:** April 17, 2025

2025 ONSC 4476 (CanLII)

RULING ON ANTI-SLAPP MOTION

S.E. FRASER J.

I. Nature of the Proceeding

- [1] In this defamation action, the Defendant, Leah Dyck, moves under s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. 43 (“CJA”) to dismiss the action. She claims that the defamation action is a strategic lawsuit intended to quell her advocacy on behalf of herself and low-income tenants living in Barrie Housing.
- [2] Defamation law is a constraint on free expression. That is because defamatory statements impact personal dignity and reputation. Some defamation lawsuits are launched to quell fruitful public discourse and public participation on matters of public interest. Section 137.1 of the *CJA* sets out a framework to separate the *bona fide* claim, which should continue, from one intended to limit expression on a matter of public interest, which shall be dismissed. See: *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA 171, at para. 22; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 SCR 587, at paras. 1, 2 and 33.
- [3] The Defendant argues that I should dismiss the claim under s. 137.1 of the *CJA* and the Plaintiff asserts that this is a *bona fide* claim which should be permitted to continue.

[4] On this motion, I reject that the expression is about a matter of public interest. Rather, I find that the expression is a personal attack on the Plaintiff cloaked under a guise of public concern. At its root, the impugned statements are intended to foster animosity towards Barrie Housing and its staff without concern for the truth.

[5] I therefore dismiss the motion and the action may continue.

A. Background

[6] The Plaintiff, Barrie Municipal Not-Profit Housing Corporation (“Barrie Housing”), is a housing provider in Simcoe County, Ontario which provides housing, including rent-gear-to-income tenancies, to low-income tenants under the *Social Housing Reform Act, 2000*, S.O. 2000 c.27.

[7] The Defendant, Leah Dyck, has been a tenant of Barrie Housing since 2009. She also operates a registered charity, The VanDyck Foundation, which operates Fresh Food Weekly, a charity dedicated to supplying fresh food to persons experiencing food insecurity.

[8] In September, 2021, Ms. Dyck learned that there was a credit on her account. She spoke to several managers about the credit and finally, in April 2022, Barrie Housing disclosed the amount of the credit to her. She asserts that this was only after she had a mental breakdown and threatened to go to the national media. She also claims that an employee stole from her in 2019, the amount of an eviction filing fee.

[9] On May 8, 2022, Barrie Housing refunded \$2,628.53 to Ms. Dyck.

[10] In 2022, Ms. Dyck began a social media campaign on Facebook with over 200 posts across 12 different Facebook groups. In her posts, she claimed that Barrie Housing was intentionally depriving tenants of funds by overcharging them. She extrapolated that by systemic overcharging, that tenants were deprived of food and other necessities of life. Ms. Dyck’s allegations include that criminal acts were being committed by Barrie Housing and its staff, the details of which are set out further below.

B. The Action

[11] Neither party placed the Statement of Claim in its materials but referred only to excerpts. As the pleading is the root of the analysis, I reviewed it.

[12] The Statement of Claim alleges that the Defendant believes the fact that she overpaid rent was the result of fraud, conspiracy, and other criminal acts. The Defendant receives benefits under the Ontario Disability Support Program (“ODSP”). ODSP pays directly to Barrie Housing a portion of Ms. Dyck’s rent. For a period, Ms. Dyck also paid her rent directly to Barrie Housing resulting in an overpayment.

[13] Ms. Dyck came to believe that this was intentional, and that Barrie Housing was stealing from her and from other tenants. Her social media posts described Barrie Housing staff as

“thieving witches”, compares them to Nazis, and asserts that they have committed major crimes.

[14] Barrie Housing and its staff have not been charged with a criminal offence. Simcoe County is not investigating Barrie Housing. Ms. Dyck has launched a human rights complaint before the Human Rights Tribunal of Ontario about Barrie Housing and has complained to the Ombudsman about Barrie Housing.

[15] On October 30, 2024, Justice Christie made an interlocutory order requiring Ms. Dyck to remove her Facebook posts and restraining her from making further statements. In her Endorsement, Justice Christie set out her reasons for granting the injunctive relief as follows:

a. The seriousness of the issue requires little more than a viable claim - a low threshold. The Defendant’s posts, which she does not deny, and which are most certainly publications, describe Barrie Housing and its employees as engaging in various forms of criminality and compares their conduct to that of the Nazi regime. The sole purpose of the Defendant's published posts is to portray the Plaintiff in a negative light, to negatively impact their reputation, to destroy them as an entity. Certainly the first branch of the test is met.

b. Irreparable harm is that which cannot be quantified or cured. Internet communication is far- reaching. Barrie Housing, as a not-for-profit entity, cannot be compensated for lost profit. Rather, they risk losing community partnerships, employees, and board members. Organizations such as the Plaintiff rely on community support and respect which will be lost by the ongoing posts. The second branch is satisfied.

c. As for whether the words are manifestly defamatory, it is unquestionable that the words would tend to lower the reputation of the Plaintiff in the eyes of a reasonable observer. That is the entire purpose. It is beyond doubt that any defence raised by the Defendant would not be successful. The allegations of criminality are simply not true - not based in fact, but rather are the subjective opinions of the Defendant. The defence of absolute or qualified privilege simply does not apply. Responsible communication would require that the Defendant show that she was diligent in trying to verify the allegations, which is not the case here at present.

d. Finally, there is no reason for this court to decline to exercise its discretion in favour of restraining the Defendant's speech pending trial. This is not an absolute ban on the Defendant speaking about Barrie Housing. The ban is only on defamatory comments which falsely allege criminality on the part of Barrie Housing and its employees.

[16] One of Ms. Dyck’s posts states that she has no proof of criminal wrongdoing as that can only come through an investigation, yet she alleges major fraud and corruption.

- [17] In oral submissions, she claimed that no reasonable member of the public would conclude from her statements, that Barrie Housing employees are in fact practising witchcraft or actually are Nazis. She does not believe that they practice witchcraft or that they have guns and gas chambers. She believes however, that their actions are rooted in evil because in her view, why would they overcharge tenants who are starving? She acknowledges that she offers no evidence from any other tenant to support her claims.
- [18] In oral submissions, she argues that her charity feeds persons who are starving because Barrie Housing is defrauding them and that she posts for the thousands of tenants of Barrie Housing who are impacted by something nobody wants to stand up against. She also posts because it is therapeutic.
- [19] At the same time, she claims her dominant purpose is to trigger an investigation into Barrie Housing.

II. Issues

- [20] The single issue on this motion is whether the Defendant, Ms. Dyck, has met the burden on a balance of probabilities that the action should be dismissed under s. 137.1 of the *CJA*.

III. Analysis

- [21] I first briefly set out the governing principles.

A. Governing Principles

- [22] There are several steps to the analysis under s. 137.1. I will deal with them briefly here and then in more detail as I address the facts of this case.

- [23] Section 137.1 provides:

- (1) The purposes of this section and sections 137.2 to 137.5 are,
 - (a) to encourage individuals to express themselves on matters of public interest;
 - (b) to promote broad participation in debates on matters of public interest;
 - (c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and
 - (d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action.
- (2) In this section,

“expression” means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity.

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

(ii) the moving party has no valid defence in the proceeding; and

(b) 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.

(5) Once a motion under this section is made, no further steps may be taken in the proceeding by any party until the motion, including any appeal of the motion, has been finally disposed of.

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding.

(7) If a judge dismisses a proceeding under this section, the moving party is entitled to costs on the motion and in the proceeding on a full indemnity basis, unless the judge determines that such an award is not appropriate in the circumstances.

(8) If a judge does not dismiss a proceeding under this section, the responding party is not entitled to costs on the motion, unless the judge determines that such an award is appropriate in the circumstances.

(9) If, in dismissing a proceeding under this section, the judge finds that the responding party brought the proceeding in bad faith or for an improper

purpose, the judge may award the moving party such damages as the judge considers appropriate.

- [24] The first step requires the moving party to establish that the proceeding arises out of expression that relates to a matter of public interest. If established, the second step shifts the burden to the responding party, here Barrie Housing, to satisfy that there are grounds to believe that the action has substantial merit, that the moving party has no valid defence and that the public interest in allowing the action to continue outweighs the public interest in protecting expression. This is assessed as a whole, considering whether a segment of the community would have a genuine interest in receiving the information. The focus is on what the expression is about. See: *Pointes Protection, supra*, at paras. 20-21, 28-33; *Benchwood Builders, supra*, at paras. 24-31.

B. Step One – Does the Expression Relate to a Matter of Public Interest?

- [25] The first step requires me to examine whether the moving party has proven on a balance of probabilities that the expression, i.e. any communication made privately or publicly, relates to a matter in the public interests. See: *Pointes Protection, supra*, at paras. 24-26.
- [26] In *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 106, an approach applied in *Pointes Protection*, the Supreme Court of Canada set out that to be of public interest, the subject matter must be one which either invites public attention or about which the public has some substantial concern because it affects the welfare of citizens or one to which considerable public notoriety or controversy has attached. See also: *Benchwood Builders*, at paras. 35-43.
- [27] As set out in *Pointes Protection, supra*, at paras. 28-31, the inquiry is contextual and one that is fundamentally about what the expression is really about. There is no qualitative assessment of the expression at this stage. Whether an expression relates to a matter of public interest is to be distinguished from expression that simply refers to a matter of public interest or a matter about which the public is curious.
- [28] Ms. Dyck asserts that the dispute concerns a delegated government actor (Barrie Housing) and thousands of vulnerable citizens to whom Barrie Housing owes a fiduciary duty. She alleges that the misuse of government administered funds and discrimination, torture, harassment against a group of vulnerable citizens is a matter of public interest.
- [29] I accept that that systemic issues relating to how a social housing provider treats its tenants could be a matter of public interest. I also accept that poverty is an issue about which there is great public concern.
- [30] However, that is not what the impugned expression is about. This expression is intended to manufacture a concern about an issue about which there is no public interest. There had been no public debate about systemic overcharging, no controversy or public notoriety. Ms. Dyck has failed to prove that this is a matter of public concern. No other tenants have come forward. She asserts that tenants may be afraid. However, she must prove on a balance of probabilities that that the expression relates to a matter public interest.

[31] I observe that Ms. Dyck set out to stoke controversy against Barrie Housing. Barrie Housing is not a government actor although it serves a public function by providing housing to low-income tenants. However, the root of the concern seems to start and finish with Ms. Dyck, notwithstanding others appear to be curious about her problem. The expression is intended to manufacture public interest out of a private dispute.

[32] For all these reasons, I find that Ms. Dyck has not met her burden under Step One.

C. Step Two: Respondent's Burden

[33] Given my analysis on Step One, I need not consider this step. However, even if I had found otherwise, I would find that Barrie Housing has met its burden under Step Two.

[34] Step Two requires that I consider whether there are grounds to believe that the action has substantial merit, whether there is a valid defence, and the that the public interest in allowing the action to continue outweighs the public interest in protecting expression.

(i) *Does the action have substantial merit?*

[35] The action has substantial merit. Ms. Dyck is engaging in inflammatory language intended to provoke anger towards Barrie Housing. There is no evidence of criminal activity or that the staff are engaging in illegal activities. The dominant purpose of the rhetoric used by Ms. Dyck like witches, Nazis and death camps is to stoke rage. The posts are clearly defamatory.

[36] Ms. Dyck found out that she had been overcharged and began to allege criminal wrongdoing calling employees thieving witches and Nazis and comparing social housing to death camps because of what happened to her. The intended purpose was to foster animosity towards Barrie Housing and its employees. Ms. Dyck submitted to me that this was therapeutic for her.

[37] Ms. Dyck conceded before me that she knows that there are neither guns nor death camps and that the staff are not practicing witchcraft. The purpose of the posts is to demean and to anger.

(ii) *Does Ms. Dyck have a valid defence?*

[38] The Court of Appeal for Ontario in in *Benchwood Builders, supra* , at paras. 29-30 considered this part of the test:

But what happens when the judge is only satisfied that the defamer might have a valid defence? Some cases have placed too high a burden on the defamed plaintiff. In my view, it is an error to conclude that because the responding party – the defamed party in the underlying proceeding – is not able to utterly invalidate the defence, the motion to dismiss must be granted.

To the contrary, when the judge hearing the anti-SLAPP motion is satisfied that the defence has some merit but is not satisfied that it will prevail, then the analysis must proceed to the weighing exercise in s. 137.1(4)(b). I note that (a) is followed by “;and (b)”...

[39] I cannot find some merit. I adopt the conclusions and reasoning of Justice Christie that there is no defence of absolute or qualified privileged and the defence of responsible communication cannot succeed. In the case of the latter, before me, Ms. Dyck conceded that she made statements about staff and Barrie Housing being witches and Nazis when she knew that was not true.

(iii) *Does the public interest in allowing the action to continue outweigh the public interest in protecting expression?*

[40] This is a case where there is public interest in allowing the action to proceed. It is a detriment to the public interest to permit a person to knowingly make defamatory statements for the purpose of drumming up animosity to a housing provider.

[41] As I stated in my analysis in Step One, the action has its root in a private dispute. Ms. Dyck is on a crusade of her own making. While there may be interest in her views on Barrie Housing, the expression does not engage a broader societal concern. (See *Benchwood Builders, supra*, at para. 43.)

[42] If she believes as she claims that there may be others who similarly overpaid their rent, there are many ways to spread the word to others without using defamatory language. I acknowledge the grinding effect of poverty and that an overpayment can have a huge impact on a person living on ODSP benefits. However, Ms. Dyck’s inflammatory rhetoric diminishes the real problems faced by low-income tenants from whom she claims to advocate and at the same time, baselessly disparages a vital housing provider and its employees.

[43] On the weighing of these concerns, the scale tips heavily to permitting the action to proceed.

IV. Conclusion and Disposition

[44] For the reasons set out above, I conclude that the action is not a strategic lawsuit to quell Ms. Dyck’s expression. Rather, there is a *bona fide* claim.

[45] The motion is dismissed. The action shall continue.

[46] Barrie Housing is presumptively entitled to its costs. If the parties cannot agree on costs, I will decide the costs by way of written submissions. Barrie Housing shall provide written costs submissions limited to two double-spaced pages exclusive of any offers and bill of costs by August 15, 2025. The Applicant shall provide her written submissions subject to the same limits by August 23, 2025. There shall be no reply without leave. They shall be

filed through the portal, uploaded to Case Center and a copy sent to my Judicial Assistant Robyn Pope at Robyn.Pope@ontario.ca.

Date: July 31, 2025

Justice S.E. Fraser

CITATION: Barrie Municipal Not-Profit Housing Corporation v. Dyck, 2025 ONSC 4476

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

BARRIE MUNICIPAL NOT-PROFIT HOUSING
CORPORATION

Plaintiff

– and –

LEAH DYCK

Defendant

RULING ON ANTI-SLAPP MOTION

Justice S.E. Fraser

Released: July 31, 2025