CITATION: Apollo Technology Capital Corporation, Nobul Technologies Inc. and Regan McGee v. Pidduck and Taves, 2025 ONSC 6366
COURT FILE NO.: CV-25-00742450-00CL
DATE: 2025/11/12

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: APOLLO TECHNOLOGY CAPITAL CORPORATION, NOBUL TECHNOLOGIES INC. and REGAN McGEE

AND

DAVID PIDDUCK and CHRIS TAVES

BEFORE: W.D. Black J.

COUNSEL: *Efua K. Gyan*, for the Plaintiffs

Matthew Karabus and Jenny Zhou, for the Defendants

HEARD: October 31, 2025

ENDORSEMENT

Overview of Motion and Claim

[1] This is an "anti-SLAPP" motion under section 137.1(3) of the CJA (I will use this and other terms as defined in the parties' materials) brought by the remaining defendants, David Pidduck and Chris Taves, seeking a dismissal of the plaintiffs' libel action against them.

[2] In circumstances discussed below, the claim against two of the original four defendants, the law firm TYR LLP ("TYR") and one of its founding partners, James Bunting, was earlier dismissed on a with-prejudice basis.

[3] Mr. Pidduck and Mr. Taves are directors of MediPharm, a public company listed on the Toronto Stock Exchange that produces pharmaceutical quality cannabis products, and was recently the target of a proxy contest initiated by the plaintiffs. Mr. Bunting and his firm were advising MediPharm in connection with the developing proxy fight.

The April 29 Letter

[4] In the timeframe leading up to the proxy contest, on April 29, 2025, TYR sent a letter (the "April 29 Letter"), authored and signed by Mr. Bunting, which is the basis of the within claim. In its initial incarnation, the claim also alleged that Mr. Bunting and TYR were in a conflict of interest in advising MediPharm, but those aspects of the claim were dismissed along with the action against those defendants. More particularly, Mr. Bunting and TYR steadfastly denied the alleged conflict, and, when Osborne J. directed the plaintiffs to bring a motion to force that issue, the plaintiffs agreed to dismiss with prejudice the aspects of the claim asserting the conflict. Notably, in that context, the plaintiffs did not maintain the libel claim against Mr. Bunting and TYR relative to the April 29 letter sent and signed by Mr. Bunting, and agreed to a dismissal of those aspects of the claim against Mr. Bunting and TYR along with the allegations of conflict of interest.

[5] The correct characterization of the contents of the April 29 Letter is hotly contested between the parties. For convenience, I have attached the April 29 Letter as Appendix "A" to this endorsement.

[6] The plaintiffs allege that the April 29 Letter was defamatory, motivated by malice, and irresponsible.

[7] The remaining defendants, who were copied on the April 29 Letter when it was sent, and admittedly approved it, say, to the contrary, that the April 29 Letter was a measured response to what the defendants maintain was a campaign of intimidation and personal attacks pursued by the plaintiffs. The defendants say that the April 29 Letter raised fair concerns about matters of public interest, including "the governance and management of a public company, the integrity of the proxy process, compliance with securities laws, and transparency in the capital markets."

Conclusion

[8] Having reviewed the materials carefully, and having heard a full day of submissions from counsel, I have concluded that the defendants' motion should be granted, and, for the reasons set out below, I am dismissing the claim.

Additional Relevant Background

[9] Mr. Bunting's April 29 Letter was sent to Tim Hayden, a former executive of a subsidiary of MediPharm.

[10] The April 29 Letter responded to perceived personal attacks by the plaintiff Regan McGee against Mr. Pidduck and Mr. Taves, raised concerns about related conduct by Mr. Hayden, Mr. McGee and others potentially breaching securities laws, and asked Mr. Hayden to preserve relevant documents in his possession. Mr. McGee is the principal of Apollo, an Ontario-based mergers and acquisitions firm, and of Nobul, a subsidiary of Apollo.

A. Plaintiffs' Conduct Leading to April 29 Letter

[11] The defendants allege that the conduct at issue on the part of Mr. McGee and others was self-evidently intended to gain leverage in the brewing proxy contest, and included the following:

(a) In a call with Mr. Pidduck on April 3, 2025, Mr. McGee, after offering to pay Mr. Pidduck handsomely if Mr. Pidduck would sell his shares to Apollo, as recorded in Mr. Pidduck's contemporaneous notes of the discussion, threatened that Mr. Pidduck, if he did not sell, would "never work again" and would go to prison, and concluded: "You have two options: 1. Destroy your life and ruin you, or 2. Play ball with us";

(b) On April 6, 2025, Mr. McGee sent unsolicited share purchase agreements to Mr. Pidduck and to Keith Strachan, a MediPharm shareholder and director, whom Mr. McGee had also contacted in early April and who filed an (un-cross-examined) affidavit in support of this motion. Mr. Pidduck and Mr. Strachan each declined Mr. McGee's offer;

(c) On April 7, 2025, Mr. McGee emailed to Mr. Pidduck a draft Apollo press release. That draft press release is remarkable. It demands Mr. Pidduck's removal from his position at MediPharm "for cause", refers to Mr. Pidduck's previous employment at Purdue Pharma Canada, and compares Mr. Pidduck – in light of Purdue's involvement in selling opioid medications – to the serial killers Whitey Bulger and Ted Bundy. The press release alleges that Mr. Pidduck's "personal toxicity" is contagious, and Mr. McGee's covering email threatened that the press release would be issued publicly unless "the game playing stops immediately";

(d) During the period April 8-11, Mr. McGee and Mr. Hayden had various communications with MediPharm shareholders, telling them about Apollo's plans to acquire control of MediPharm, offering to buy shares "for a very good deal", and, in a call to Mr. Taves by Mr. McGee on April 8, threatening Mr. Tave's career, reputation and family. Mr. Hayden also sent repeated messages to Mr. Strachan, pressuring him to sell his shares and saying "the advice you're getting is very bad."

(e) On April 16, a former MediPharm executive Brett Moon forwarded Mr. Strachan a mass WhatsApp message from former MediPharm CEO Pat McCutcheon, who had clearly aligned with the plaintiffs, outlining the plaintiffs' solicitation and market-pressure strategy as follows:

> "…we already have almost 15M worth of shares being signed by shareholders….Read over the voting support agreement and if you're good with it I can send Docusign and you can be added to the list. Our target is between 20-30M worth of shares so that Apollo can execute on their plan of action. If [Apollo] do not successfully achieve the voting trust numbers, they are going to go with a very aggressive public markets communications strategy and attack the company legally – which will drop

> the stock to .01 - .02 cents and then give them the ability to do a hostile takeover of the company."

[12] On May 13, 2025, MediPharm announced its Annual and Special Meeting ("ASM") for June 16, 2025. Apollo filed a dissident circular two days later, on May 15, disclosing that it had been acquiring MediPharm shares since February 25, 2025, but not disclosing the extent of the plaintiffs' solicitation activities already underway.

B. Preparation of April 29 Letter

[13] Given these various events, and with the ASM upcoming, Mr. Pidduck and Mr. Taves enlisted TYR and Mr. Bunting to prepare what became the April 29 Letter. Mr. Pidduck and Mr. Taves acknowledge working with Mr. Bunting to prepare the April 29 Letter, and instructed him to send it.

[14] The April 29 Letter explicitly responded to Mr. McGee's draft April 7 press release (discussed in subparagraph 11(c) above). It also referenced information that had come to the defendants' attention, including the shareholder communications noted above (and other similar communications) bespeaking an apparent campaign by Apollo and Mr. McGee (and others) to drive down MediPharm's share price, warning that such conduct could amount to unlawful market manipulation.

C. Content of April 29 Letter

[15] In my view, and as discussed in more detail below, the April 29 Letter is not defamatory. It is typical of a lawyer's letter that one might expect to see in these circumstances. That is, while it raises specific (and in my view appropriate) concerns about the would-be buyers' conduct, and the potential legal implications and consequences of that conduct, it does so in a fashion that is appropriately measured and qualified. For example, in discussing a concern that Mr. Hayden, acting "jointly or in concert" with Mr. McGee (and/or others) had solicited support from more than 15 shareholders, contrary to rules governing proxy solicitations, the April 29 Letter says that "it appears" that this conduct has taken place. I find that this is a reasonable way of raising an issue of significant concern, arises from known facts giving rise to that concern, and, as stated, does not reach the level of libel. As an aside I observe that there is nothing in the April 29 Letter approaching the level of vitriole and malice evident, in particular, in Apollo/Mr. McGee's draft April 7 press release comparing Mr. Pidduck to Whitey Bolger and Ted Bundy.

[16] Of note, although Mr. McGee's affidavit in this motion refers to the April 29 Letter as "threatening and intimidating," and "defamatory" and "malicious", Mr. McGee does not deny the substantive contents of the April 29 Letter nor any of the assertions it contains. In cross-examination, Mr. McGee acknowledged that Mr. Hayden had been working with Mr. McGee in the effort to have Apollo purchase MediPharm shares.

[17] Indeed Mr. McGee admitted that he continues to work with Mr. Hayden to this day, and the plaintiffs proffered no evidence from Mr. Hayden on this motion.

D. Further Actions by Plaintiffs

[18] After receiving the April 29 Letter, Apollo doubled down on its aggressive allegations regarding the defendants, releasing a series of press releases naming Mr. Pidduck and Mr. Taves, and including the following:

(a) "All indications point to the Board's desire to run a corrupt election process to ensure their victory so that they can continue to siphon the remainder of MediPharm's cash reserves into their own pockets….[W]e expect Chairman Chris Taves…to continue to obstruct the appointment of an independent chair…"(May 21, 2025 press release);

(b) "Opioid-Pusher Pidduck, Chairman Chris Taves and the Current MediPharm Board Have Presided Over $1 Billion in Shareholder Value Destruction while funneling $5,587,059 of the Shareholders' Money Directly into Pidduck's Pocket" (May 27 press release);

(c) "Apollo Capital has received alarming reports from multiple highly credible and independent sources revealing that MediPharm Labs allegedly engaged in deliberate, systematic financial misfeasance and deceptive accounting practices aimed at grossly misleading investors and artificially inflating the Company's reported revenues and stock valuation." (May 29 press release);

(d) "Apollo Capital has received credible information…specifically implicating MediPharm's Chairman, Chris Taves…in orchestrating schemes to intentionally overstate Company revenues." (May 29 press release);

(e) "Apollo…today issued an urgent warning to shareholder, regulators, and the investing public concerning serious allegations of alleged extensive securities act disclosure violations committed by MediPharm Labs' Board of Directors (the 'Board') and management team." (May 29 press release).

E. Plaintiffs' Application to Court re ASM, and Decision of J. Dietrich J.

[19] Apollo also applied to this court for an order appointing an independent ASM chair, requiring shared scrutineer communications, and validating its dissident circular. Justice J. Dietrich found no grounds to justify interference with the ongoing process and dismissed the ASM Application, subsequently awarding costs to MediPharm on an elevated scale "given the egregious statements by Mr. McGee" during his cross-examination. These costs remain unpaid.

[20] MediPharm's ASM proceeded on June 16, 2025 as directed by J. Dietrich J., and the applicants' dissident proxies were accepted and counted.

[21] In the result, MediPharm shareholders decisively rejected the dissident slate (and by implication the public narrative promulgated by the applicants), approving management's nominees by a margin of roughly three-to-one.

Required Analysis of Anti-SLAPP Provisions

[22] I turn now to discuss the familiar anti-SLAPP test under s. 137.1 of the CJA.

[23] The starting point for the analysis is s. 137.1(3), which provides that a proceeding "shall" be dismissed, subject to s. 137.1(4), if it arises from an expression made by the defendants that relates to a matter of public interest.

[24] If the defendants satisfy that threshold inquiry, the burden then shifts to the plaintiffs under s. 137.1(4)(a) to show grounds to believe that (i) the action has "substantial merit" and that (ii) the defendants have no valid defence. Under s. 137.1(4)(b), the critical balancing exercise, the plaintiffs must also establish that the harm likely to be or that has been suffered by them as a result of the April 29 Letter is sufficiently serious that the public interest in permitting the action to continue outweighs the public interest in protecting the expression.

[25] As noted above, Mr. McGee's affidavit, the only evidence filed by the plaintiffs, does not deny any of the assertions contained in the April 29 Letter, nor offer contrary evidence to refute those contents. Mr. McGee's affidavit also does not address any of the defences raised by the defendants and provides no evidence attesting to any serious (financial or reputational) harm.

[26] In this regard, the defendants reference the Supreme Court of Canada's landmark decision in 1704604 *Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, and Cote J.'s guidance that,

> "[i]f the responding party cannot satisfy the motion judge that it has met its burden [under s. 137.1(4)(a) or (b)], then the s. 137.1 motion will be granted and the underlying proceeding will be consequently dismissed."

A. Section 137.1(3) – Public Interest

[27] In terms of the threshold question under s. 137.1(3) as to whether the proceeding arises from an expression made by the defendants that relates to a matter of public interest, I find, first, that the April 29 Letter is an "expression" made by the defendants under s. 137.1(2) of the CJA, which expressly includes any communication, public or private. *Pointes* provides that the term "expression should be interpreted expansively (see also *Subway v. CBC*, 2019 ONSC 6785, and *Marcellin v. LPS*, 2022 ONSC 5886).

[28] Among the matters of public interest raised within the April 29 Letter, the defendants assert, are: "management and governance of a public company, the integrity of a TSX-listed issuer's proxy solicitation process, compliance with securities law, transparency in the public securities market, and the protection of shareholder rights."

[29] The Supreme Court of Canada in *Pointes* said that "relates to a matter of public interest" should be interpreted broadly and liberally, and that the onus on the moving party is not a heavy one.

[30] More particularly, the court is to ask, as *Pointes* directs, whether "some segment of the community would have a genuine interest in receiving information on the subject" and, at this stage of the analysis, there is no "qualitative assessment," as it is "not legally relevant whether the expression is desirable or deleterious, valuable or vexatious, or whether it helps or hampers the public interest." The question at this stage, the court in *Pointes* explains, "is only whether the expression pertains to any matter of public interest, defined broadly."

[31] Against this low threshold, courts have recognized that the management and governance of publicly traded corporations are in fact matters of public interest. In *Nowvertical Group Inc. v. Trousdell*, 2024 ONSC 595, for example, Wilton-Siegel J. of this court found that disputes over Board composition and strategic direction of a company are of public interest "to the shareholders as well as to potential investors in the Company and potential counterparties with the Company" and concluded that these considerations satisfied the burden under s. 137.1(3).

[32] The plaintiffs contend, relying on the Court of Appeal for Ontario's decision in *Benchwood Builders, Inc. v. Prescott*, 2025 ONCA171, that the dispute in which the April 29 Letter was launched was a purely private dispute between more or less equals. In my view, this narrow focus ignores that broader implications to and impact on MediPharm's shareholders, and the public interest imbedded in the issues of corporate governance and proxy solicitation relative to a widely held public corporation.

[33] More particularly, I find that the expression in the April 29 Letter, relating to a potential takeover of MediPharm by way of proxy solicitation, to concerns about the way in which the solicitation has been undertaken and to concerns about market manipulation, clearly relates to matters of public interest. As such, I find that the defendants have met their burden pursuant to s. 137.1(3).

B. Section 137.1(4)(a)(i) – Substantial Merit

[34] With the defendants having surpassed that threshold inquiry, s. 137.1(4)(a)(i) requires the plaintiffs to satisfy the court that there are grounds to believe that the action has substantial merit. This "grounds to believe" inquiry requires the plaintiffs to establish an "evidentiary foundation" with a "real prospect of success" (*Pointes*, para. 49).

[35] In their factum, the defendants recite the necessary constituent elements of a libel claim: that the words (1) were published to someone other than the plaintiff; (2) refer to the plaintiff; and (3) are defamatory, meaning they would tend to lower the plaintiff's reputation in the eyes of a reasonable person. The defendants acknowledge that anyone who participates in creating, repeating or approving a defamatory statement is liable for the resulting harm.

[36] As noted above, Mr. McGee's affidavit for this motion provides no evidence to support a finding that this libel action has substantial merit.

[37] The defendants assert that the evidence in the record in fact points to the contrary conclusion.

[38] The defendants first emphasize the fact that the plaintiffs consented to a with-prejudice dismissal of this action as against TYR and Mr. Bunting. Given that Bunting signed the April 29 Letter, and was undoubtedly in large measure responsible for its contents, the defendants argue that the dismissal underlines the lack of merit to this libel action.

[39] The defendants point out that the April 29 Letter was sent only to Mr. Hayden who, as Mr. McGee acknowledged under oath, was "working with" Mr. McGee to acquire MediPharm shares, and who has continued to work and collaborate with Mr. McGee following the April 29 Letter, suggesting, the defendants say, that no "serious reputational harm" resulted from the letter.

[40] Finally, the defendants note that the April 29 Letter does not refer at all to the plaintiff Nobul, and that, read as a whole, it cannot be said to lower the plaintiffs' reputation.

[41] The plaintiffs argue that their claim reaches the "substantial merit" threshold, because it is legally tenable and supported by evidence which, if believed, would be likely to succeed at trial. Mr. McGee's affidavit, the defendants say, establishes without dispute that the April 29 Letter was sent by TYR on behalf of Mr. Pidduck and Mr. Taves to Mr. Hayden, that the letter names Apollo and Mr. McGee and makes serious allegations about their conduct. The plaintiffs point out that Mr. McGee characterizes the letter as "threatening and intimidating", "defamatory" and "malicious".

[42] I disagree.

[43] As discussed above, I find that the April 29 Letter is typical of a lawyer's letter that one would expect in these circumstances. While that of course does not preclude a finding that the claim arising from the letter has substantial merit, I find that this letter, based on facts that were known and that were not, and are not, denied, and given the qualifications within the letter, largely referring to potential consequences from the undisputed facts, is difficult to construe as libelous. Moreover, Mr. McGee's evidence, again, does not deny the truth of the assertions in the April 29 Letter, nor otherwise provide evidence to lead to a likely finding of defamation at trial.

[44] Accordingly, I find that the plaintiffs' evidence falls short of meeting the substantial merit test.

C. Section 137.1(4)(a)(ii) – Valid Defence(s)

[45] In terms of the validity of the defences of Mr. Pidduck and Mr. Taves, s. 137.1(4)(a)(ii) confirms the plaintiffs' onus to establish grounds to believe that the defendants have no

valid defence. As *Pointes* confirms, if even one defence asserted by defendants is valid, the claim must be dismissed.

[46] Here again the plaintiffs' complete lack of evidence undermines their position(s).

[47] That is, the defendants assert four defences, and the plaintiffs offer no evidence addressing any of those four defences. While in my view it is unlikely that the plaintiffs could provide evidence demonstrating that any of the defences are invalid, the absence of any evidence from the plaintiffs, at all, means this is not a close call.

[48] The first defence asserted by the defendants is the defence of qualified privilege.

[49] Qualified privilege arises, as the defendants confirm, when the communicator has a legal, moral or social duty to speak and the recipient has a corresponding interest in receiving the communication.

[50] This court has held that qualified privilege protects communications during board elections (*Wan v. Lau*, 2016 ONSC 127) and communications between shareholders and directors (*Clark v. Snow*, 2019 ONSC 3686). As Nishikawa J. wrote in *Clark*, "Communications between shareholders and a board of directors to share information regarding its business affairs and to protect its business interests will generally be protected by a qualified privilege." While the circumstance with which Her Honour was dealing was not identical to the one before me, Nishikawa J. explained that "The statements in the Board Letter" before her were "protected by qualified privilege as statements made in the exercise of a duty, or for the purpose of pursuing or protecting some interest to a person who has some corresponding interest."

[51] In my view, framed in this way, the rationale underlying Nishikawa J.'s conclusions would apply equally here. The April 29 Letter was sent on behalf of MediPharm (and its directors), to a participant in a solicitation of proxies (albeit at an early stage), and clearly with a view to protecting the corporation's interests, and driven by a duty to do so.

[52] Moreover, this court's decision in *Moseley-Williams v. Hansler Industries Ltd*., 2008 CanLII 57457 (ON SC) confirms that a letter in the nature of a cease-and-desist communication (in that case sent to former employees and a competitor suspected of unlawful conduct) was protected by qualified privilege. Justice Brown (as he then was) wrote:

> "It is well recognized that a defendant may take appropriate steps to defend its business and business interests, including informing others of their suspected violation of the defendant's legal rights and the legal actions it proposes to take…That is precisely what [the defendant] did in this case…Accordingly, I find that the Letter was written on an occasion of qualified privilege."

[53] I find that this reasoning applies with equal force to the case before me, and that the April 29 Letter was sent on an occasion of qualified privilege.

[54] The defendants' next defence is the defence of fair comment.

[55] This defence, first promulgated by the Supreme Court of Canada in *WIC Radio v. Simpson*, 2008 SCC 40, protects opinions based on matters of public interest that a reasonable person could honestly express. The *Libel and Slander Act*, RSO 1990 c. L12, provides that fair comment will succeed if the opinion is based on proven facts, even if not every fact is true or the publisher does not personally hold the opinion.

[56] I find that the April 29 Letter was based on known facts. For example, as the defendants point out, the April 29 Letter opines that the plaintiffs' threat to mount an "aggressive public markets communications strategy" to "drop the stock" would, if acted upon, "constitute unlawful market manipulation." The factual basis for this proposition came directly, and largely verbatim, from the WhatsApp message sent by Mr. McCutcheon to Mr. Strachan on April 16, 2025, and the provisions of the *Securities Act*, RSO 1990 c. S5, prohibit an "act, practice or course of conduct that results in or contributes to…an artificial price for a security…" and making a statement that is "misleading or untrue" and "would reasonably be expected to have a significant effect on the market price or value of a security."

[57] Again, these opinions in the April 29 Letter are based on evidence that is unchallenged in the record by the plaintiffs.

[58] I find, likewise, that the defendants' third defence, responsible communication, is both made out by evidence provided by the defendants, and unchallenged by any evidence from the plaintiffs.

[59] More particularly, I find that Mr. Pidduck and Mr. Taves acted responsibly and in good faith, and in relation to matters of public interest, in setting out (or approving) comments intended to, among other things, preserve the integrity of a proxy contest. Again, Mr. McGee and the plaintiffs have adduced no evidence to cast doubts on the validity of this defence.

[60] Finally, the defendants assert the defence of truth.

[61] The defendants point out that Mr. McGee's evidence does not challenge the defendants' evidence concerning:

(a) Mr. McGee's April 6, 2025 share purchase offers to Mr. Pidduck and Mr. Strachan seeking voting control;

(b) Mr. Hayden's communications confirming he was working with Mr. McGee to acquire MediPharm shares (Mr. McGee in fact acknowledged that he worked with Mr. Hayden to buy MediPharm stock prior to the dissident circular);

(c) Mr. Hayden privately messaging other MediPharm insiders and shareholders including Mr. Ferguson and Mr. Binns to buy shares and request contact information for other shareholders;

(d) Mr. McCutcheon's April 16 WhatsApp message describing a coordinated solicitation campaign, including a voting support agreement, and threat to depress the share price (coupled with Mr. McGee's admission that his counsel prepared the agreement and provided it to Mr. McCutcheon for distribution;

(e) Mr. Hayden attending a Zoom call with Mr. McGee to push for share sales and voting control;

(f) Evidence of Mr. Hayden's ongoing participation in the dissident effort; and

(g) Evidence regarding Check-Cap and MBody AI (related corporations, or with which Apollo and Nobul's leadership had ties) corroborating that Mr. Hayden and the dissident group acted jointly across multiple ventures.

[62] In my view there is ample evidence confirming the truth of the assertions/concerns in the April 29 Letter and, again, no evidence to the contrary.

[63] The plaintiffs, relying in particular on *Benchwood* argue that a "valid" defence for purposes of s. 137.1(4)(a)(ii) is not merely an "arguable" defence.

[64] They assert – and this assertion cuts across many of the plaintiffs' arguments – that because the defences advanced by Mr. Pidduck and Mr. Taves depend on contested findings of fact, particularly findings that go to credibility, motive, malice or state of mind, the defences cannot be found or deemed "valid" without a trial.

[65] In my view this assertion by the plaintiffs misconceives the nature of the Anti-SLAPP motion.

[66] That is, as I apprehend these motions, the expectation is something akin to the familiar requirement in summary judgment motions that the responding party is to "put its best foot forward." While that may overstate the expectation slightly when applied to the anti-SLAPP context, and while it may be that evidence less than that required to ward off summary judgment will suffice to avoid dismissal of a claim by way of an anti-SLAPP motion, given what is at stake, being a potential dismissal of the action, I believe it is fair for the court to expect affirmative evidence from the plaintiffs relative to the elements contemplated and required in the s. 137.1 analysis. It is not open, in my view, to the plaintiffs to offer no evidence, and to claim that such evidence will be forthcoming if the matter is allowed to proceed to trial.

[67] Put another way, not unlike the need for a party to adduce cogent and sufficient evidence to avoid summary judgment, an anti-SLAPP motion is likewise an occasion for the responding party to "fish or cut bait."

[68] For the reasons discussed, and in the absence of evidence from them, I find that the plaintiffs have utterly failed to meet the onus required of them, and I find that the defendants have on balance established valid defences in the case of each of the four defences they assert.

Section 137.1(4)(b) – Balancing Public Interest v. Harm

[69] As will be evident at this stage, it follows from the foregoing that in the all-important balancing exercise required under s. 137.1(4)(b), the plaintiffs fall well short of proving on the balance of probabilities that the harm they suffered (or are likely to suffer) from the defendants' expression is "sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression."

[70] The plaintiffs have produced no evidence that the April 29 Letter caused any harm, let alone the "serious harm" that they must show under s. 137.1(4)(b).

[71] In addition, as the defendants fairly point out, any alleged reputational harm suffered by the plaintiffs is frankly far more likely attributable to the plaintiffs' own conduct, including their coercive approach to shareholders and insiders, their inflammatory and unfounded public accusations and rhetoric in press releases, and their threatening communications to Mr. Pidduck and Mr. Taves. Had the plaintiffs offered evidence of reputational harm or other serious harm, I expect that there would have been a "causation" question about whether such harm was engendered by the April 29 Letter or in fact self-inflicted, but in any event, inasmuch as no evidence of harm is proffered, that potential contest does not arise.

[72] For the reasons discussed in the "public interest" section above, I do find a significant public interest in protecting the defendants' expression, but for the purposes of s. 137.1(4)(b), with nothing to balance that public interest against, the outcome is a foregone conclusion, and I find that the plaintiffs again fail to meet the test required.

Motion Granted; Claim Dismissed

[73] For all of these reasons, I grant the defendants motion and dismiss the remaining aspects of the claim.

Costs

[74] Neither side has uploaded costs outlines to Case Center. The defendants seek full indemnity costs of the motion (and I presume of the claim), but I do not know, of course, if any offers have been made that are asserted to trigger costs consequences, or whether the claim for the higher scale of costs is based on other considerations.

[75] In the circumstances, the defendants are to provide their costs outline, together with costs submissions not to exceed four pages in length, within 10 days of the date of the release of this endorsement.

[76] The plaintiffs are then to have a further 10 days to file responding costs submissions, also not to exceed four pages in length. The plaintiffs may also choose to file a costs outline; they are not obligated to do so but a failure to do so may lead to inferences about what that costs outline would show.

_____

W.D. BLACK J.

DATE OF RELEASE: November 12, 2025

APPENDIX "A"

TYR LLP LETTER TO HAYDEN APRIL 29, 2025

Tyr LLP

488 Wellington Street West
Suite 300-302

Toronto, ON M5V 1E3
CANADA

James D. Bunting

+ 1 647 519 6607

April 29, 2025

DELIVERED VIA EMAIL

Tim Hayden
Email: tim@arcstoneglobalsecurities.com

Dear Mr. Hayden:

Re: MediPharm Labs Corp./Shareholder Solicitation

We are litigation counsel to MediPharm Labs Corp. ("**MediPharm**" or the **Company**").

We write in respect of your recent communications to MediPharm shareholders regarding an apparent joint takeover scheme by Regan McGee and an entity he controls, being Apollo Technology Capital Corporation ("**ATCC**"), which raise serious concerns under common law, corporate law, the *Securities Act*, R.S.O. 1990, c. S.5 (the "**Securities Act**"), the regulations thereto, and the rules, policies and instruments adopted by the Ontario Securities Commission.

We understand that you, Mr. McGee and others have been soliciting support for his and/or ATCC's efforts to take over the Company and replace management and the board of directors. This solicitation effort has included privately delivered messages to shareholders of MediPharm endorsing ATCC's takeover, attempts to purchase MediPharm shares, and soliciting support via a voting support agreement.

It appears that you, jointly or in concert with Mr. McGee and/or others, have solicited support from more than 15 shareholders, contrary to the proxy solicitation rules contained in NI-51-102, section 9.1(2)(b) and section 86(2) of the *Securities Act,* and section 112(1) of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "**OBCA**").

Your communications are communications to security holders "under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy," and fail to meet the limited private proxy solicitation exemption.

All proxies or voting support agreements or similar documents obtained in breach of these rules are tainted, and the Company will consider appropriate action arising from that conduct, including having such proxies or voting support agreements or similar documents invalidated. Further, you have an obligation to not make a takeover or issuer bid, whether alone or acting jointly or in concert with one or more persons or companies, except in accordance with the regulations. The Company will strenuously oppose any such bid made contrary to the regulations, particularly if done in coordination with other MediPharm shareholders or if you may be deemed or presumed to be acting jointly or in concert with an offeror without appropriately disclosing such actions, contrary to early warning requirements.

Your solicitation to shareholders made jointly or in concert with Mr. McGee is also misleading and coercive. In at least one form of apparent mass communication, a party working jointly or in concert with yourself and Mr. McGee explained ATCC's plan to manipulate the public markets and drive MediPharm's stock price down to effect a hostile takeover:

> "Our target is between 20-30M worth of shares so that [ATCC] can execute on their plan of action.
>
> If [ATCC] do not successfully achieve the voting trust numbers, they are going to go with a very aggressive public markets communications strategy and attack the company legally - which will drop the stock to .01-.02 cents and then give them the ability to do a hostile takeover of the company."

This same message attached a form of voting support agreement for recipients to execute. In our view, the threatened course of action, if acted upon, would constitute unlawful market manipulation. We are also concerned, especially in the

context of a widely-held retail security, that this message attempts to coerce and manipulate recipient shareholders.

This is particularly the case when taken together with other forms of coercive correspondence sent to MediPharm shareholders by Mr. McGee, or which Mr. McGee and ATCC intend to send to shareholders. An example of this would be Mr. McGee's April 7, 2025 correspondence with MediPharm's Chief Executive Officer David Pidduck, upon which he attached a defamatory draft press release comparing Mr. Pidduck to Ted Bundy and threatened to issue such press release publicly. The only purpose of disseminating such an inflammatory and defamatory press release, or by including such false information in a legal filing, would be to manipulate the public markets with false and misleading information to – as the above communication to shareholders admits – drop the Company's share price.

Further, we understand that you have privately written to MediPharm executives seeking contact information of shareholders as well as to purchase shares for a "very good deal", including following up in the face of refusal. This supports the inference that you are acting jointly or in concert with Mr. McGee and/or others in carrying out the scheme. Together with the above-described communications, these messages constitute an inappropriate attempt to coerce these shareholders to sell their shares to you.

The Company has contacted the Ontario Securities Commission to raise its concerns about this conduct.

To the extent necessary, the Company will seek to invalidate any proxies or voting rights in respect of proxies or securities ultimately procured or impacted by the misleading and false information disseminated by you or those with whom you are acting jointly or in concert.

Document Preservation Notice

As this matter may become the subject of litigation, you have an obligation to take all reasonable steps to preserve all documents, data, and communications in your possession, power, or control that may be relevant to the potential claims against you. These claims may include breaches of securities law, breach of fiduciary duty, defamation, unlawful market manipulation, and related matters.

You have an obligation to preserve documents, including documents, data, and

information, inclusive of metadata and geolocation data, stored by or accessible to you on personal property, including your personal electronic devices, personal email or internet accounts, third parties (including applications and websites, professionals (e.g. accountants, lawyers, brokers and other professional consultants), insurers, third party service providers, data warehouses or internet service providers), whether or not those documents are stored on your property.

For certainty, your obligations in this respect extend to ensuring that all potentially relevant data that exists on your personal electronic devices and cloud storage, including data stored on personal computers, tablets, cell phones and similar technology, third- party servers (including cloud servers), such as Gmail, other email servers, LinkedIn, Bloomberg, WhatsApp, Telegram, Signal, BBM, X, Facebook, Meta, Instagram, iMessage, SMS, TikTok, OneDrive, iCloud, other websites, or any third-party communication application, with its data in its native form and with metadata intact, is preserved. This obligation is in addition to your obligation to retain any potentially relevant hard copy or other record. You must ensure that all such data is preserved in its native form with metadata intact.

Without limiting the requirement to preserve records set out above, please ensure that you specifically preserve all communications with shareholders relating to MediPharm and that you have turned off any automatic disappearing message functions on any communication platform that you use.

As well, please disclose to us without delay a full list of persons that you (or anyone on your behalf or acting jointly or in concert with you) have solicited; and all proxies, voting agreements, lock-up agreements, or similar agreements that have been made, executed, or provided because of such solicitation.

To the extent required, we will rely on this letter in court to evidence our request and notification of your preservation obligations.

MediPharm reserves all rights against you in respect of the foregoing, including the right to commence legal proceedings without further notice.

Yours very truly,

James Bunting

cc: Michael O’Brien, Maria Naimark – *Tyr LLP*

Adria Leung Lim, Melanie Cole, Sanj Sood, Patrick Copeland– *Aird & Berlis LLP*