

COURT OF APPEAL FOR ONTARIO

CITATION: UM Financial Inc. v. Butler, 2025 ONCA 844

DATE: 20251203

DOCKET: COA-25-CV-0346

Paciocco, George and Monahan JJ.A.

BETWEEN

UM Financial Inc., Omar Kalair*, and Yusuf Panchbhaya

Plaintiffs
(Appellant*)

and

Ronald Butler and Butler Mortgage Inc.

Defendants
(Respondents)

Peter I. Waldmann, for the appellant

Gregory M. Sidlofsky, for the respondents

Heard: December 1, 2025

On appeal from the order of Justice Ira G. Parghi of the Superior Court of Justice, dated February 3, 2025, with reasons reported at 2025 ONSC 480.

REASONS FOR DECISION

[1] A defamation action brought by the appellant, Omar Kalair, against the respondents, Ronald Butler and Butler Mortgage Inc., was dismissed by a motion judge pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. A

motion judge's decision to dismiss is entitled to deference absent an error of law or palpable and overriding error of fact or mixed fact and law: *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645, at para. 77; *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 811, 174 O.R. (3d) 21, at para. 47. We see no such error. We therefore dismissed the appeal at the end of the appellant's oral submissions, for reasons to follow. These are our reasons.

[2] The allegedly defamatory passage is found in a social media post written by Mr. Butler, a mortgage broker and regular blogger on financial matters. That post primarily engages a government proposal to expand access to alternative home financing products, including Halal mortgages. After making comments in support of a government framework for Halal mortgages to facilitate their mainstream availability, Mr. Butler wrote, referring to Halal mortgage providers, "Sadly one such organization ripped off it's [sic] clients years ago & embezzled people's [sic] money". Mr. Kalair was the CEO of UM Financial, which was once a provider of Halal mortgages. He claims the impugned line in Mr. Butler's social media post was a defamatory reference to fraud-related allegations made against him and his business approximately a decade ago which ultimately resulted in an acquittal at a criminal trial.

[3] The motion judge was entitled to find, given the content and context, that the respondents met their burden in demonstrating this post relates to a matter of public interest. This finding placed the onus on Mr. Kalair to, among other things,

demonstrate that there was a basis in the record and the law to believe that the underlying defamation claim had substantial merit: *Courts of Justice Act*, s. 137.1(4)(a)(i). The motion judge was entitled to conclude that Mr. Kalair did not do so, notwithstanding the bald assertions of impact made in his affidavit.

[4] An essential element of the tort of defamation is that “the words in fact referred to the plaintiff”: *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28. Where the alleged defamatory expression does not refer to the plaintiff by name, the plaintiff must demonstrate that reasonable people could conclude the expression was about the plaintiff: see generally *Sykes v. Fraser*, [1974] S.C.R. 526, at p. 541; *S.G. v. J.C.* (2001), 56 O.R. (3d) 215 (C.A.), at paras. 19-26. The impugned line is general and vague, not referring to any individual or organization, nor does it particularize the acts of embezzlement, and there is nothing else in the post that could identify Mr. Kalair or his company.

[5] Since Mr. Kalair was required to meet this substantial merit standard to avoid his defamation claim being dismissed, and the motion judge was entitled to find that he did not do so, his appeal cannot succeed: see *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587, at para. 33. There is no need to address the other grounds of appeal relating to other elements of the anti-SLAPP test.

[6] The appeal is dismissed.

[7] The respondents submitted that s. 137.1(7) of the *Courts of Justice Act* applies to an appeal of a dismissal, such that they are entitled to costs on a full indemnity basis as the successful party on appeal. Our court has held that s. 137.1(7) does not apply on appeal and that the normal principles governing costs on appeal should be employed: see e.g., *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2023 ONCA 533, at para. 9. We are not persuaded that elevated costs are justified in this case. We therefore order costs be paid by Mr. Kalair to the respondents on a partial indemnity basis of \$14,159.18, inclusive of applicable taxes and disbursements.

“David M. Paciocco J.A.”

“J. George J.A.”

“P.J. Monahan J.A.”