

CITATION: Diverse Transportation v. Chen, 2025 ONSC 1552
COURT FILE NO.: CV-22-00688400-0000
DATE: 20250306

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 1486151 ONTARIO LIMITED o/a DIVERSE TRANSPORTATION, Plaintiff

– and –

ZHOU CHEN, Defendant

BEFORE: Justice E.M. Morgan

COUNSEL: *Cameron Rempel and Kathleen Glowach*, for the Plaintiff

Leon Li and Edward Zhou, for the Defendant

HEARD: Cost submissions in writing

COSTS ENDORSEMENT

[1] The Defendant, a former employee of the Plaintiff's, alleged that the Plaintiff is dishonest and fraudulent. He further alleged that the Plaintiff tampers with truck wash tickets, and that it mixes toxic chemicals with food-grade produce in its tanker trucks. He demanded payment from the Plaintiff, on threat of destroying the Plaintiff's business by spreading these falsehoods to the its largest customers.

[2] When the Plaintiff refused to pay up, the Defendant did what he had threatened to do. He emailed the false accusations to the Plaintiff's customers, advising them to keep their business away from the Plaintiff.

[3] The Defendant never relented in his campaign, even after being sued for libel and being subjected to an interlocutory injunction to cease and desist his damaging correspondence with the Plaintiff's customers. His position in the anti-SLAPP motion continued to assert the rightfulness of his conduct. In fact, it continues until now, where the Defendant's counsel has made the following submission on costs:

The Defendant proceeded to argue the motion because of two central reasons. One, there is clear evidence showing that Diverse was, in fact, modifying wash tickets, which is the crux of Chen's emails to Diverse's client. In fact, upon review of Diverse's injunction motion material, it was clear that Diverse's alleged explanation that its modification was limited to changing a brand name to a chemical name, does not actually address the modification that Chen complained

about. It is for this core reason that Chen felt his messages were captured by the spirit of Section 137.1 of the CJA, as he believed in the purpose of his messages.

[4] The record before me in fact contained no evidence of any modification of wash records beyond a technical name change in listing the substance transported in the Plaintiff's trucks. And there was certainly no evidence of contamination of foodstuffs, or that the Plaintiff transported edible products in anything other than specially designated trucks. His correspondence with the Plaintiff, its customers, and its lawyer suggest that nothing short of receiving the payment he was attempting to extract – the Plaintiff's solicitor used the word “extort” – would have satisfied him.

[5] In view of the evidence that private payment was the aim of the Defendant's correspondence, an anti-SLAPP motion was destined to fail. At the outset of the hearing, I suggested that counsel take some time before making any submissions to review with their clients one more time whether a settlement was possible. While I made no comment on the merits of either side's case, the strength of my suggestion that they canvass settlement prospects in a serious way must have conveyed some message of my view of the value of the motion. However, it seems to have made no impression on the moving party.

[6] Although the Plaintiff presumptively gets no costs for successfully defending an anti-SLAPP motion, under the circumstances I have reason to exercise the discretion I am given in section 137.1(8) of the CJA. The Plaintiff did not merely defend his position; he did so brazenly and long after it should have been apparent that it was futile: see *Kielburger v. Canadaland Inc.*, 2024 ONSC 3856, at para. 8. In the process, he put the Plaintiff to substantial expense.

[7] Counsel for the Defendant submits that the Defendant was entitled to his day in court on the issues at hand. As he put it in his costs submissions, “While Mr. Chen did lose the Anti SLAPP Motion, he was entitled to at least make an attempt.” That, of course, is true; the parties having been unable to settle, both sides deserved to have their day in court. But having lost under these circumstances, the Defendant deserves to pay for the expense he brought on.

[8] The Plaintiff seeks costs on a substantial indemnity basis in the amount of \$64,210.48 (including HST and disbursements), or, in the alternative, partial indemnity in the amount of \$43,637.51. These amounts are significantly lower than the Defendant's costs. He has submitted a Bill of Costs indicating that he would have sought all-inclusive costs in the amount of \$80,918.55 on a substantive indemnity scale or \$61,759.22 on a partial indemnity scale.

[9] I am prepared to exercise my discretion under sections 137.1 and 131 of the *Courts of Justice Act* to award costs somewhat under the mid-point between the Plaintiff's substantial and partial indemnity figures. Using round numbers for convenience, the Defendant shall pay the Plaintiff costs of \$50,000, inclusive of all fees, disbursements, and tax.

Date: March 6, 2025

Morgan J.