CITATION: UM Financial Inc. v. Butler, 2025 ONSC 480
COURT FILE NO.: CV-24-00722413-0000
DATE: 2025-02-03

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: UM FINANCIAL INC., OMAR KALAIR, and YUSUF PANCHBHAYA, Plaintiffs/Respondents

AND:

RONALD BUTLER and BUTLER MORTGAGE INC., Defendants/Moving Parties

BEFORE: Parghi J.

COUNSEL: Peter I. Waldmann, for the Plaintiffs/Respondents

Gregory M. Sidlofsky and Adin Wagner, for the Defendants/Moving Parties

HEARD: December 20, 2024

ENDORSEMENT

[1] In April 2024, the Federal Government of Canada announced, through its annual budget, that it was "exploring new measures to expand access" to alternative home financing products, including Shariah-compliant arrangements, commonly known as halal mortgages, to better "enable Muslim Canadians, and other diverse communities" to buy homes. A halal mortgage is a form of home financing that, in the view of some observant Muslims, accords with the prohibition in Islam against paying or receiving interest.

[2] After the Federal Government's announcement, the prospect of halal mortgages sparked public response, ranging from concern that Muslims in Canada would be getting special "no-interest" deals on their mortgages, to assertions that the Federal Government was endorsing Shariah law, to allegations that halal mortgages are fraudulent and would result in Muslim borrowers paying higher mortgage rates.

[3] The Defendant Mr. Butler weighed in on this public discussion. Mr. Butler, a mortgage broker with the Defendant Butler Mortgage Inc., regularly created and posted online content about mortgages and financial literacy. Mr. Butler published a post on LinkedIn and X (formerly Twitter) entitled "The Truth About Halal Mortgages: It's Not What You Think" (the "Post"). Butler Mortgage Inc. also published the Post on LinkedIn.

[4] In the Post, Mr. Butler explains what halal mortgages are and how they work, describes Great Britain's experience with the implementation of halal mortgages, and disputes what he calls the "myths" that halal mortgages confer special benefits upon their borrowers or constitute

religious interference in the financial system. Mr. Butler concludes by stating that Canada "correctly supports" freedom of religion and that readers of the Post "should too". Of particular importance for the purposes of this motion is a sentence in the Post stating, "Sadly," one halal mortgage organization "ripped off its clients years ago & embezzled people's money".

[5] In June 2024, the Plaintiffs commenced a defamation action, alleging that the Post "falsely asserts that the Plaintiffs engaged in fraudulent activities, including ripping off clients, embezzling money, … and committing theft and fraud" and that the Post was "clearly intended to target and refer specifically to the Plaintiffs". They identify several allegedly defamatory statements in the Post, chief among them the reference to a halal mortgage organization that "ripped off" its clients "years ago" and "embezzled people's money". They assert that this sentence can only be understood to be a reference to them and is defamatory.

[6] The Plaintiff UM Financial Inc. ("UM Financial"), together with UM Capital Inc. ("UM Capital"), was once a provider of halal mortgages. The two corporations were ordered into receivership in 2011. The Plaintiff Omar Kalair was the Chief Executive Officer of UM Financial. The Plaintiff Yusuf Panchbhaya was the chair of the Shariah Ethics Board that oversaw the religious aspects of the financing provided by UM Financial and UM Capital. In 2014, Mr. Kalair and Mr. Panchbhaya were criminally charged with theft, fraud, and money laundering arising from their alleged roles in the disappearance of about $2 million in accumulated profits and homeowner funds held by UM Financial. In 2019, both men were acquitted of all charges (*R. v. Kalair and Panchbhaya*, 2019 ONSC 3471). The Plaintiffs allege that the Post refers to them and defames them by "falsely accusing individuals of crimes of which they were acquitted nearly 10 years earlier".

[7] The Defendants now move to dismiss the defamation claim against them pursuant to the so-called "anti-SLAPP" provisions in section 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "Act"). The "anti-SLAPP" provisions aim to "achieve a 'delicate equilibrium'" between two competing goals: protecting free speech by screening out "early stage strategic lawsuits that adversely affect debate and participation in matters of public interest" and ensuring that people can seek redress for reputational harm caused by defamatory statements (*Teneycke v. McVety*, 2024 ONCA 927, at para. 34).

[8] For the reasons below, I grant the Defendants' motion.

The Post and the Claim of Defamation

[9] The Post reads in full as follows:

> The Truth About Halal Mortgages: It's Not What You Think
>
> The Federal Government said they would study a framework to have Halal Mortgages become a mainstream offering of Financial Institutions: should we worry?
>
> No, we shouldn't because it has no impact on Non-Muslims[.] It also has no

> impact for most Muslims: the majority of Muslims in Canada chose to have a regular interest bearing mortgage[.] The Islamic prohibition against paying or receiving interest prevents some Muslims from getting standard Bank Mortgages [–] this has been true for years[.] Some methods have evolved to provide Halal mortgages through various organizations[.] Some organizations develop clerical support for something close to a regular mortgage. Others use methods to change the interest portion of a mortgage into fees [–] All have extra expenses[.] Sadly one such organization ripped off it's [sic] clients years ago & embezzled people's money[.]
>
> Here's possibly the most important thing to understand: Great Britain created a Regulatory Framework for Halal Mortgages over a decade ago [–] And nothing bad happened[.] In Britain there are thousands of Halal Mortgages worth Billons[.] Nothing has gone wrong, no one cares about it, just a lending product[.] No one using Halal Mortgages escapes from costs that work just like Interest Bearing Mortgages work[.] It's just a different form of payment[.]
>
> Even in Britain the product comes at a slight premium[.] In other words everyone choosing an Halal Mortgage in Britain pays a slightly higher cost than a normal mortgage[.] Let's dispense with the myths:
>
> NOT an Interest free mortgage
>
> NOT a special benefit
>
> NOT religious interference in Canada's Financial System
>
> None of those things[.] Just financial framework to support religious beliefs that will come at an extra cost to the user[.] And Canada correctly supports Freedom of Religion[.] We all should[.]
>
> - Ron
>
> Call Butler Mortgage TODAY for more information and insight into this ever-changing market! We are here to help! 1-877-568-9255

[10] The Plaintiffs allege that the following words from the Post target them and are defamatory:

a. “It also has no impact for most Muslims: the majority of Muslims chose to have a regular interest bearing mortgage”;

b. “All have extra expenses”;

c. “Sadly one such organization ripped off it’s [sic] clients years ago & embezzled people’s money”;

d. “And nothing bad happened [.] Nothing has gone wrong, no one cares about it, just a lending product”;

e. “Lets dispense with the myths: NOT an interest free mortgage [;] NOT a special benefit”; and

f. “We [all] should”.

In their written materials and in argument before me, the parties focused on the sentence “Sadly one such organization ripped off it’s [sic] clients years ago & embezzled people’s money”.

[11] The factual circumstances surrounding the Post are contested. The Plaintiffs assert that Mr. Butler knew about UM Financial and the prior criminal proceedings at the time he published the Post. They rely on an email that they say Mr. Kalair sent to Mr. Butler, under the name Muhammad Farooq, attaching the Post and a February 2014 news article in *The Globe and Mail* about the criminal proceedings against Mr. Kalair and Mr. Panchbhaya. In his email, Mr. Kalair asked Mr. Butler if the organization he was referring to in the Post was the one referenced in the news story. Mr. Butler responded in the affirmative. They point to his response as evidence that he used the news story as an information source for the Post. They fault Mr. Butler for “ignore[ing] and fail[ing] to mention” that Mr. Kalair and Mr. Panchbhaya were eventually acquitted of any criminal charges, as noted in a subsequent news article in *The Globe and Mail* published in June 2019. They accuse him of malice on this basis.

[12] The Defendants dispute this. They state that when Mr. Butler published the Post, he did not know about UM Financial’s bankruptcy proceedings. Nor did he know that about the previous criminal proceedings against Mr. Kalair and Mr. Panchbhaya: he only knew that there had been some venture involving halal mortgages about a decade earlier, in which money was embezzled, and that there were legal proceedings about it. Mr. Butler attests that when Mr. Kalair sent the February 2014 *Globe and Mail* article to him, he “glanced” at it, “realized” that UM Financial “must have been the organization that [he] had been thinking of, and confirmed as much.” The Defendants do not accept the assertion that Mr. Butler relied on the news story as an information source when drafting the Post.

The Legal Test in an “Anti-SLAPP” Motion

[13] The Supreme Court of Canada established the legal framework for applying the “anti-SLAPP” provisions set forth in section 137.1 of the Act in *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587, and its companion case *Bent v. Platnick*, 2020 SCC 23, [2020] 2 S.C.R. 645. Under this framework, the defendant must first establish, on a balance of probabilities, that the proceeding “arises from an expression made by the person that relates to a matter of public interest” (section 137.1(3); *Pointes*, at para. 18). The burden then shifts to the plaintiff, who must satisfy the court that there are “grounds to believe” that there is substantial merit to the claim and that the defendant has no valid defences (section 137.1(4)). Additionally, the plaintiff must show that the harm it has suffered, or is likely to suffer, as a result of the defendant's expression is sufficiently serious that the public interest in permitting

the underlying proceeding to continue outweighs the public interest in protecting the expression and public participation (*Pointes*, at paras. 18 and 82).

[14] In its analysis, the court is to engage only in a limited weighing of the evidence for the purpose of considering the criteria under section 137.1 and only a preliminary assessment of the claim and defences to determine the overall prospects of success (*Teneycke*, at paras. 35-36).

Whether the Defendants have demonstrated that the proceeding arises from an expression that relates to a matter of public interest

[15] Turning to the first part of this test, the Defendants must establish that the proceeding "arises from an expression made by" Mr. Butler "that relates to a matter of public interest."

[16] Section 137.1(2) of the Act defines "expression" for the purpose of the "anti-SLAPP" provisions as "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."

[17] The Post falls under this definition of an "expression". It is a communication on a social medium. The Plaintiffs do not contest this conclusion.

[18] The Supreme Court held in *Pointes* that when evaluating whether an expression relates to a matter of public interest, the court should adopt a "broad and liberal interpretation," in keeping with the legislative purpose of section 137.1(3) of the Act (at para. 26). It should not "scrutiniz[e]" the impugned statement "in isolation"; rather, it should undertake a contextual analysis that considers "what the expression is really about," the "subject matter of the publication as a whole," and whether some segment of the community would have a genuine interest in receiving information on the subject (*Pointes*, at paras. 27-30; *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 101; and *Levant v. DeMelle*, 2022 ONCA 79, 79 C.P.C. (8th) 437, at para. 58).

[19] The Post discusses a matter of public interest. It directly pertains to the activities of the Federal Government. It educates and advises its readers about financial issues (halal mortgages and how they compare to other home financing mechanisms), political and policy issues (the Federal Government's announced intention to study a framework to offer Canadians halal mortgages), and cultural and religious issues (the facilitation of halal mortgages, and whether halal mortgages constitute "a special benefit" or "religious interference in Canada's Financial System"). At the time Mr. Butler published the Post, there was ongoing public discourse on the issue of halal mortgages. The Post responds to, and contributes to, that discourse. Drawing on the language of *Pointes*, it addresses a subject that some segment of the community would have a genuine interest in receiving information on.

Whether the Plaintiffs have demonstrated that there are grounds to believe that there is substantial merit to the claim and that the Defendants have no valid defences

[20] Under the second part of the test, the Plaintiffs must satisfy me that there are grounds to believe that there is substantial merit to the claim and that the Defendants have no valid defences.

[21] The Supreme Court explained in *Pointes* that for the underlying defamation action "to have 'substantial merit', it must have a real prospect of success". This need not amount to a "demonstrated likelihood of success" but must "ten[d] to weigh more in favour of the plaintiff" (at para. 49). The court "needs to be satisfied that there is a basis in the record and the law — taking into account the stage of the proceeding — for drawing such a conclusion. This requires that the claim be legally tenable and supported by evidence that is reasonably capable of belief" (at para. 49).

[22] For the reasons below, I find that the Plaintiffs have not met this burden.

Substantial Merit

The claim by UM Financial

[23] The alleged defamatory statement in the Post pertains most directly to UM Financial, which is, according to the Plaintiffs, the organization alluded to in the Post's reference to an organization that "ripped off it's [sic] clients years ago & embezzled people's money". I therefore start by considering whether the Plaintiffs have satisfied me that there are grounds to believe that there is substantial merit to the defamation claim by UM Financial.

[24] I conclude that they have not.

[25] First, UM Financial lacks standing and legal authorization to commence the defamation proceeding.

[26] UM Financial is an undischarged bankrupt. The record indicates that it was ordered into receivership on October 7, 2011. There is no evidence that it was ever discharged from bankruptcy. As an undischarged bankrupt, it lacks standing to commence this proceeding: an action commenced by undischarged bankrupt is a nullity (*Murphy v. Stefaniak*, 2007 ONCA 819, 231 O.A.C. 76, at para. 28).

[27] The Plaintiffs assert that "it remains unclear whether" UM Financial has been discharged from bankruptcy. Yet having conceded that UM Financial was bankrupt, the burden falls on the Plaintiffs to prove that UM Financial was discharged from bankruptcy and has the legal capacity to commence this proceeding. They have failed to satisfy this burden.

[28] The Plaintiffs also suggest that UM Financial's receiver was discharged and that accordingly UM Financial itself has been discharged from bankruptcy. Respectfully, this view is incorrect. The discharge of a bankrupt's receiver is distinct from the bankrupt's discharge from bankruptcy. The former can and does happen in the absence of the latter.

[29] I therefore conclude that UM Financial is an undischarged bankrupt and as such lacks standing to bring the defamation action.

[30] Additionally, the 2011 Order appointing a receiver for UM Financial and UM Capital provides that no legal proceeding in respect of UM Financial may be commenced except with the

receiver's consent or leave of the court, neither of which has been granted. I therefore conclude that UM Financial is not authorized by the terms of the 2011 Order to commence this action.

[31] Even if UM Financial did have standing and authorization, it could only bring this action in relation to the economic consequences of the defamation to its reputation; that is the only basis on which the tort of defamation can be maintained by a corporation (*PSC Industrial Canada Inc. v. Ontario (Ministry of the Environment)* (2004), 48 B.L.R. (3d) 58 (Ont. S.C.), at para. 51, appeal allowed but not on this point, *PSC Industrial Canada Inc. v. Ontario (Ministry of the Environment)* (2005), 258 D.L.R. (4th) 320 (Ont. C.A.)). There is no evidence before me of economic losses incurred by UM Financial as a consequence of the alleged defamation.

[32] For these reasons, I am not persuaded that there are grounds to believe that there is substantial merit to the defamation claim by UM Financial.

The claim generally

[33] One of the elements of the tort of defamation is that the impugned words refer to the Plaintiffs (*Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130). In a defamation action, where the impugned language does not identify the plaintiffs by name, as is the case here, the plaintiffs must demonstrate that the impugned words are capable of referring to them and that reasonable people would conclude that the words did in fact refer to them (*Foulidis v. Ford*, 2014 ONCA 530, 323 O.A.C. 269, at para. 17).

[34] Accordingly, in assessing whether the Plaintiffs have persuaded me that there are grounds to believe the defamation claim has substantial merit, I am to consider whether there are grounds to believe the impugned words in the Post refer to the Plaintiffs. That is, would a reasonable reader conclude that the organization referred to in the Post as having "ripped off its [sic] clients years ago and embezzled people's money" must have been UM Financial and that Mr. Kalair and Mr. Panchbhaya had something to do with it?

[35] I answer this question in the negative.

[36] The impugned words in the Post expressly refer only to an organization, not to individuals: the Post refers to an "organization" that "ripped off it's [sic] clients years ago and embezzled people's money". These words cannot, on their own terms, refer to the individual Plaintiffs.

[37] Moreover, neither the impugned words nor the Post read in its entirety identify any of the Plaintiffs by name. Nor do they describe any of the Plaintiffs or provide any information about any of them. The impugned language is broadly worded and not particularly descriptive, referring only to an unnamed and undescribed halal mortgage organization that "ripped off" its unnamed clients, some unidentified number of years ago, in some unspecified place, and embezzled an unclear sum of money from unidentified individuals.

[38] I am unable to see how this language would lead a reasonable reader to the Plaintiffs. The Plaintiffs point to the *Globe and Mail* article from 2014 reporting on the criminal charges against Mr. Kalair and Mr. Panchbhaya, but there is no evidence to suggest that UM Financial was the only halal mortgage company to have ever been implicated in such allegations, in Canada or

anywhere else. For the Plaintiffs' claim to be true, a reader of the Post would have to assiduously search for fraud and similar criminal allegations having been made against halal mortgage providers, encounter the 2014 news article about the criminal proceedings involving Mr. Kalair and Mr. Panchbhaya, and determine that there have been no similar charges against any other halal mortgage providers anywhere, at any time. In my view, it is very unlikely that a reader would go to all this effort and make this determination.

[39] Even if they did, this would not be an appropriate basis on which to determine that the impugned words in fact refer to the Plaintiffs. The case law is clear that when discerning the meaning of allegedly defamatory words, the court should not "consider what persons setting themselves to work to deduce some unusual meaning might succeed in extracting from them". Rather, the court must construe the words "according to the meaning they would be given by reasonable persons of ordinary intelligence" and "in the light of generally known facts" (*Hodgson v. Canadian Newspapers Co.* (1998), 39 O.R. (3d) 235 (Ont. Gen. Div.), at pp. 16-17).

[40] The Plaintiffs point to the fact that Mr. Kalair wrote to Mr. Butler, under the name Muhammad Farooq, asking if the organization he refers to in the Post is the one referenced in the news story, and that Mr. Butler answered in the affirmative. They say that this is proof that Mr. Butler is indeed referring to UM Financial.

[41] I do not see how this helps the Plaintiffs. It would appear that Mr. Kalair, who was directly involved in UM Financial and had faced criminal charges in relation to its affairs, required confirmation that the Post refers to UM Financial – hence his inquiry to Mr. Butler. If Mr. Kalair was uncertain whether the post refers to UM Financial, I do not see how a reasonable member of the community would conclude that the post refers to UM Financial.

[42] The Plaintiffs offer affidavit evidence from Mr. Kalair that "to [his] knowledge, no other halal mortgage provider or promotor in Canada [other than UM Financial] has been accused of such conduct." They rely on this affidavit in support of the argument, essential to their position on this motion and the underlying action, that the Post can only be understood to be referring to them.

[43] I do not read this evidence in the same way. Mr. Kalair's evidence is limited to organizations in Canada and to his personal knowledge, the basis of which is unexplained. It does not satisfy me that there are no other organizations, including those outside of Canada and outside of his personal knowledge, to whom the words could refer, such that a reader of the Post would conclude that it refers to UM Financial and no one else. While Mr. Kalair's evidence may accurately reflect his understanding, it does not satisfy the Plaintiffs' burden.

[44] I note that the criminal proceedings against Mr. Kalair and Mr. Panchbhaya resulted in a factual finding that the manager of finance for the Shariah Ethics Board appropriated funds from UM Financial's clients. This finding makes clear that there has been at least one organization other than UM Financial implicated in "ripping off" clients – a fact that undermines the Plaintiffs' claim that a reasonable reader of the Post would conclude that it in fact refers only to them.

[45] For these reasons, the Plaintiffs have not persuaded me that there are grounds to believe a reasonable reader would conclude that the Post in fact refers to any of the Plaintiffs. In turn, they have not persuaded me that there are grounds to believe the defamation claim has substantial merit.

[46] Finally, as discussed above, the Plaintiffs assert that other sentences within the Post are defamatory. In my assessment, even construed expansively, none of those statements are capable of referring to the Plaintiffs. They are simply observations or comments by Mr. Butler to the effect that most Muslims will pursue halal mortgages, that halal mortgages entail extra expenses, that "nothing bad happened" when halal mortgages were introduced in Great Britain, that the views that halal mortgages are interest-free or special benefits are "myths," and that "we all should" support freedom of religion. They are not referrable to any of the Plaintiffs. They are not referable to any individual(s) or organization(s) at all. The Plaintiffs have therefore not persuaded me that there are grounds to believe there is substantial merit to the defamation claim in respect of those sentences, read expansively and in the context of the Post as a whole.

Defences

[47] As part of the assessment of substantial merit, I must also consider whether there are grounds to believe that there are no valid defences to the defamation allegations. The Plaintiffs must show that the defences put forward by the Defendants do not have a real prospect of success – that they could be found legally untenable or unsupported by evidence that is reasonably capable of belief (*Pointes,* at paras. 55-60).

[48] They have not satisfied me on this point.

[49] I begin by noting that the Plaintiffs misapprehend their legal burden under this branch of the legal test. They assert that the burden is on the Defendants to show that they do have valid defences to defamation. That is certainly the case when a defamation action is heard on the merits. However, in an "anti-SLAPP" motion, the burden is on the plaintiff to show that there are grounds to believe the defendants do not have valid defences.

[50] The Plaintiffs have not persuaded me that there are grounds to believe the Defendants do not have a valid defence of justification. The crux of the defence of justification is that the main thrust or the "sting" of the alleged defamation is substantially true (*Bent*, at para. 107). Here, the thrust or "sting" of the impugned words is that client money held by UM Financial went missing and that this was a "rip-off".

[51] In my assessment, the record does not provide grounds to believe that the defence of justification is not a valid defence.

[52] The 2019 proceedings against the individual Plaintiffs for theft, fraud and money laundering under the *Criminal Code*, R.S.C. 1985, c. C-46, and offences under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 concerned $2.2 million of the funds held by UM Financial and believed to have gone missing. In those proceedings, the court made a number of factual findings that, in my view, could support the defence of justification, including the following:

a. That UM Financial functioned as a middleman, servicing halal mortgages with homeowners under the oversight of an independent ethics board overseen by Mr. Panchbhaya;

b. That UM Financial's bank account held funds from homeowners who had paid those funds towards their mortgages;

c. That Mr. Kalair used funds held in UM Financial's bank account to purchase gold and silver valuing over $2 million. He claimed that he made this purchase to fulfill the debt for outstanding fees owed for shariah services provided by the Shariah Ethics Board, of which Mr. Panchbhaya was the chair;

d. That Mr. Panchbhaya never received any of the gold and did not retain any of the silver;

e. That three days before a receiver was appointed for UM Financial, Mr. Kalair transferred the gold and silver to the newly named manager of finance for the Shariah Ethics Board, Mr. Adam;

f. That in the course of the receivership, the precious metals were ordered by the court to be returned, and the silver was returned but the gold was not; and

g. That the last Mr. Kalair knew was that Mr. Adam had the gold, roughly 34 kilograms worth, and was in Egypt. It has not been seen since.

[53] Put simply, it was found by the court that money from homeowners being held by UM Financial was converted into gold, not returned despite a court order, and not ever recovered.

[54] I do not diminish the fact that the individual Plaintiffs were not convicted criminally on the basis of these factual findings. Nonetheless, in light of these factual findings, the Plaintiffs have not persuaded me that there are no grounds to believe the defence of justification has no real prospect of success. Drawing on the language of *Bent*, I am not satisfied that there is any basis in the record or law, having regard to the stage of the proceeding, to support a finding that the justification defence does not tend to weigh more in favour of the Defendants (at para. 103).

[55] The Defendants submit in the alternative that the Plaintiffs have failed to show that they do not have a valid defence of fair comment. In light of my findings that the Plaintiffs have not demonstrated grounds to believe that there is substantial merit to the claim or that there is no valid defence based on justification, it is not necessary for me to consider this alternative submission.

Whether the Plaintiffs have demonstrated that the public interest in permitting their action to continue outweighs the public interest in protecting Mr. Butler's expression

[56] Finally, the Plaintiffs have not satisfied me that the harm they have suffered or are likely to suffer as a result of the Defendant's expression is sufficiently serious that the public interest in permitting this action to continue outweighs the defamation action's "deleterious effects on

expression and public participation" (*Pointes*, at para. 82; *Hansman v. Neufeld*, 2023 SCC 14, 481 D.L.R. (4th) 218, at para. 59).

[57] In *Pointes*, at paras. 81-82, the Supreme Court explained that this weighing exercise is the "crux or core" of the section 137.1 analysis. At this stage, the court is to consider "what is really going on" (at para. 82):

> [T]he open-ended nature of s. 137.1(4)(b) provides courts with the ability to scrutinize what is really going on in the particular case before them: s. 137.1(4)(b) effectively allows motion judges to assess how allowing individuals or organizations to vindicate their rights through a lawsuit — a fundamental value in its own right in a democracy — affects, in turn, freedom of expression and its corresponding influence on public discourse and participation in a pluralistic democracy.

[58] As the Court of Appeal for Ontario put it in *Burjoski v. Waterloo Region District School Board*, 2024 ONCA 811, at para. 47:

> It is at this stage that the intention behind the legislation is given expression and force. It is here that the court determines whether the public interest in the impugned speech is such that it should not be silenced or chilled by the threat of litigation. It is here that the strategy in allegedly strategic litigation is potentially identified and exposed.

[59] In the first stage of this balancing exercise, I am to consider the harm suffered as a consequence of the alleged defamation. The Plaintiffs must be able to demonstrate the existence of harm that is sufficiently serious. They must also demonstrate that the harm was caused by the impugned expression. They need not tender a damages brief or quantify or particularize the harm, but must provide evidence from which I may infer the likelihood of harm and causation. "Presumed harm or bald assertions of harm will not, in themselves, be sufficiently serious such that the public interest in permitting a respondent's proceeding to continue would outweigh the public interest in protecting the moving party's expression on a matter of public interest" (*Burjoski*, at para. 47).

[60] The record before me contains no evidence of harm to UM Financial. It contains no mention of harm to UM Financial. Nor does it contain any evidence of harm, or any mention of harm, to Mr. Panchbhaya.

[61] Having regard to Mr. Kalair, the record contains only a bald assertion of harm, with no particulars or explanation that would enable me to infer that some degree of harm exists. Mr. Kalair attests that the Post has been "inherently damaging to" his "standing" and "has negatively impacted his ongoing discussions with numerous institutions". Such evidence is insufficient for the purposes of this motion. The phrase "inherently damaging" is vague and unexplained. I am simply asked to accept an assertion of inherent damage as evidence of actual damage. In a similar vein, Mr. Kalair refers to the alleged negative impact the Post has had on his "discussions" with "institutions". But he does not describe the discussions, identify those institutions, or provide even a minimal description of the alleged negative impact. He voices concern that "many respected community

leaders engaged with" the Post. However, he provides no evidence of this engagement or, more importantly, its alleged effect on his dealings with, or esteem in the eyes of, those unnamed community leaders.

[62] In the result, I am left with unexplained, abstract claims of harm that leave me unable to infer that the Plaintiffs have experienced or will experience actual harm, let alone any harm that is "sufficiently serious" to outweigh the public interest in protecting the impugned words.

[63] Nor am I able to conclude that any alleged harm was caused by the Post. Even if Mr. Kalair had demonstrated that he experienced harm, there would be no basis on which I could determine that such harm flowed from the Post and not, for example, from the press coverage of the criminal proceedings many years ago. This concern is heightened by the fact, discussed above, that I am not persuaded that a reasonable member of the public would conclude the Post refers to Mr. Kalair.

[64] In the second stage of the balancing exercise, I must consider the public interest in protecting the expression in issue – that is, whether the quality and nature of the expression and the motivation behind it justify protecting the expression from the defamation action. As van Rensburg J.A. explained in *Marcellin v. London (Police Services Board)*, 2024 ONCA 468, at para. 102, citing *Hansman*, at para. 79: "not all expression is created equal, and the level of protection to be afforded to any particular expression can vary according to the quality of the expression, its subject matter, the motivation behind it and the form through which it was expressed".

[65] The Post was made in response to an announcement by the Federal Government of its intention to look into facilitating halal mortgages. It was a contribution to public discourse on a current and relevant policy topic. It addressed topics within Mr. Butler's professional expertise. It attempted to correct what Mr. Butler considered to be misinformation on that topic, thus furthering the search for truth – a core value underlying freedom of expression. It aimed to inform and educate readers. It was substantive in nature and temperate in tone. The quality and nature of the Post, and the motivation behind it, all urge in favour of its protection.

[66] The Plaintiffs argue that the Post reflects malice. They claim that the impugned words were published on LinkedIn in an effort to reach a large audience, and that this choice reflects malice on the part of Mr. Butler.

[67] I am unable to agree. The evidence is that Mr. Butler regularly posts on LinkedIn about various mortgage-related and financial topics. More importantly, I do not accept that the mere choice to publish on social media reflects malice. Respectfully, this argument is not consistent with common sense or with the legal definition of malice. In my view, the impugned words and the Post as a whole were not motivated by, nor are they reflective of, malice, a fact that underscores the value of protecting the expression.

[68] Accordingly, the Plaintiffs have not satisfied me that any harm they have suffered or are likely to suffer as a result of the Post is sufficiently serious that the public interest in permitting their action to continue outweighs the public interest in protecting Mr. Butler's expression.

Conclusion

[69] For the reasons above, I grant the Defendants' motion to dismiss the defamation action.

[70] The Defendants are entitled to their costs. If the parties are unable to agree on the quantum of costs, they may provide me, within 30 days, with written submissions outlining their position on costs, having regard to the provisions of section 137.1 of the Act and the case law on costs on "anti-SLAPP" motions. The Defendants have already provided their Costs Outline and need not provide it again.

Parghi J.

Date: February 3, 2025