



ENDORSEMENT / ORDER

CV-24-2378

Court File No.

BETWEEN

BARRIE MUNICIPAL NOT-PROFIT HOUSING CORPORATION

Plaintiff(s)/Applicant(s)

- and -

DYCK, LEAH

Defendants(s)/Respondent(s)

BEFORE: Justice V.V. Christie

HELD BY: In person Videoconference Teleconference In writing

DATE: October 29, 2024

EVENT TYPE: Motion, defamation

APPEARING:

Plaintiff(s)/Applicant(s): Barrie Municipal Not-Profit Housing Corporation Present

Representative: Riley Brooks - Email: Rbrooks@hgrgp.ca Present

Defendant(s)/Respondent(s): Leah Dyck - Email: leah.dyck@icloud.com Present

Representative: Present

RELIEF REQUESTED:

Per notice of motion/application Per notice of appeal Other (specify):

DISPOSITION:

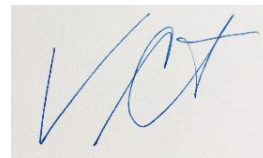
- Order to go in the form of consent / draft order submitted
 - Order to go as asked in paragraph(s) _____ of relief requested
 - Costs of \$ _____ on a _____ indemnity basis are payable by _____ to _____ by _____, 20__.
 - Parties to provide submissions as to costs of no more than ___ pages by _____ 20__.
 - Parties to attend before me to make oral submissions on costs on _____, 20__.
 - Other (specify below):
- No formal order need be taken out.

BRIEF REASONS (if any):

1. The Plaintiff seeks an interim and/or interlocutory injunction
 - a. requiring the Defendant to remove all posts, in any form or in any media whatsoever (including but not limited to Facebook and www.freshfoodweekly.com), all statements about the Plaintiff (or its employees), directly or indirectly, which are false, misleading and/or defamatory; specifically posts alleging, expressly or impliedly, that the Plaintiff (or its employees) are criminals, are involved in criminal wrongdoing, are guilty of crimes, or otherwise any statements alleging criminality against the Plaintiff (or its employees);
 - b. restraining the Defendant from publishing, in any form or in any media whatsoever (including but not limited to Facebook and www.freshfoodweekly.com), any further statements about the Plaintiff (or its employees), directly or indirectly, which are false, misleading and/or defamatory; specifically posts alleging, expressly or impliedly, that the Plaintiff (or its employees) are criminals, are involved in criminal wrongdoing, are guilty of crimes, or otherwise any statements alleging criminality against the Plaintiff (or its employees);
 - c. Costs of this motion on a substantial indemnity basis.
2. The Plaintiff, Barrie Municipal Not-Profit Housing Corporation, is a corporation incorporated pursuant to the Not-for-profit Corporations Act of Ontario. The Plaintiff owns and operates various properties in the Barrie area, 964 units, for the primary purpose of providing accommodation to tenants who qualify for rent-geared-to-income.
3. The Defendant, Leah Dyck, has been a tenant of the Plaintiff since 2009.
4. Since July 2024, the Defendant has published approximately 200 online posts across more than 40 different Facebook pages / groups.
5. The content of the postings make various unsubstantiated allegations of criminality against the Plaintiff and its employees, including allegations of theft and fraud, comparisons to the Nazi regime, and the suggestion that the Plaintiff is fostering or promoting an environment conducive to human trafficking.
6. The test for granting an interim injunction is that in *RJR-Macdonald v Canada (Attorney General)*, [1994] 1 S.C.R. 311 (S.C.C.), which requires the consideration of three factors:
 - a. Whether the plaintiff has presented a serious issue to be tried or, in a narrow band of cases, a strong prima facie case;
 - b. Whether the plaintiff would suffer irreparable harm if the remedy for the respondents' misconduct were left to be granted at trial; and
 - c. Where the balance of convenience or inconvenience lie in the granting or the refusing to grant an interlocutory injunction.
7. Having said that, in *Canada v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, the court found that the balance of convenience factor does not apply to injunctions in defamation cases, but rather the

consideration is whether the words complained of are so manifestly defamatory that any jury verdict to the contrary would be considered perverse.

8. Being guided by these factors:
 - 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.
9. There is nothing in the record before this court to suggest that any of the posts alleging criminality against the Plaintiff and its employees are true.
10. It would appear that the Defendant’s ultimate purpose in making such posts is to bankrupt the Plaintiff.
11. Unquestionably, the posts are interfering with the Plaintiff’s ability to carry out its purpose / mission and is causing reputational damage.
12. It seems quite clear that an injunction is necessary to stop these posts. In fact, the Defendant has stated that even if ordered by a court to remove or refrain, she will not comply and will go to jail.
13. The Plaintiff will suffer real prejudice if an injunction is not granted, including a diminishment of reputation and good name. The Plaintiff is at risk of losing employees and board members who do not wish to be subjected to being called “criminals” on Facebook. There is the real risk that essential community partners will distance themselves from the Plaintiff.
14. For all of the foregoing reasons, the Plaintiff’s motion is granted as to the relief set out in para 1a and 1b above.
15. As for costs of this motion, the court strongly encourages the parties to consult with each other and attempt to reach a reasonable agreement. If the parties are unable to agree as to costs, the court will accept written submissions on costs, which shall be no more than two pages in length, excluding supporting documentation. All costs submissions are to be filed through the civil JSO portal as well as directly with my assistant by email to Nicole.Anderson@ontario.ca and which shall be provided no later than 4:30 p.m. on November 1, 2024.



October 30, 2024

Date

Signature of Judicial Official