

Ontario Court Uses Its Teeth To Dismiss A SLAPP Suit And Award Damages: *United Soils Management v. Mohammed*

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In the Fall of 2015, the Ontario government passed an amendment to the *Courts of Justice Act* ("CJA") providing an important tool for a defendant to combat strategic litigation against public participation or what are commonly known as SLAPP lawsuits. A SLAPP lawsuit is a lawsuit initiated against an individual or group that speaks out or takes a position on an issue of public interest. SLAPP lawsuits use the court system to limit the effectiveness of the opposing party's speech or conduct.

The legislature determined that in some circumstances an expedited procedure for the dismissal of the action should be available to a defendant in order to promote and protect expression on matters of public interest. This is clear by the stated purposes of the legislation which seeks to encourage free expression and participation on matters of public interest while at the same time discouraging the use of litigation as a means to limit or hamper this public discourse.

Legislation With Teeth

This SLAPP legislation has teeth. Once a SLAPP motion has been advanced, Section 137.1(5) of the CJA provides that no fresh step in the litigation can be taken until the motion is decided. Further, if a defendant is successful on a SLAPP motion, the defendant is entitled to damages and costs on a full indemnity basis for the entire action.

Section 137.1(3) of the CJA allows a judge on a motion brought by a defendant to summarily dismiss an action where the "*expression*" of concern relates to a matter of public interest (the "SLAPP Motion").

If the defendant is able to establish that the expression is a matter of public interest, then, under section 137.1(4), the onus shifts to the plaintiff to establish that the action should not be dismissed because: the proceeding has substantial merit; the defendant has no valid defence; and the harm suffered by the plaintiff is sufficiently serious that it outweighs the public interest in protecting the expression. This is a high standard to meet because the test is conjunctive meaning that all elements of Section 137.1(4) of the CJA must be satisfied by the plaintiff to avoid having a claim dismissed as a SLAPP suit.

United Soils Management Ltd. v. Mohammed

The court recently dealt with the SLAPP legislation in *United Soils Management Ltd. v. Mohammed*, 2017 ONSC 4450. In this case, the plaintiff brought a claim against Katie Mohammed alleging that she made false, malicious and defamatory remarks concerning an agreement United Soils reached with the Town of Whitchurch-Stouffville (the "Town") to allow for the deposits of acceptable fill from hydro excavation trucks in a gravel pit located near a drinking water source (the "Agreement").

Based on her review of several tweets made by councillors of the Town as well as a story published in a local newspaper, Mohammed was concerned that the Agreement could result in contaminated drinking water for residents of the Town. She made several posts on the internet that the plaintiff argued were defamatory (the "Words Complained Of").

The defamation lawsuit was commenced even after Mohammed acquiesced to United Soils' demand that she retract the statements made and apologize for the alleged defamatory words.

Mohammed brought a motion to dismiss United Soils' action as a SLAPP suit pursuant to Section 137.1(3) of the CJA.

United Soils conceded that Mohammed's expression was related to a matter of public interest. However, United Soils argued that the Words Complained Of were slanderous based on Mohammed's use of the word "poison", that suggested that United Soils intended to, and was, poisoning the children living in the Town.

Having found that there was no dispute that the Words Complained Of were an expression of a public interest, the court focused its analysis as to whether the defendant could satisfy the test provided by Section 137.1(4) of the CJA.

Plaintiff's Action Had No "Substantial Merit"

The court concluded that Union Soils' action had no merit much less any "*substantial merit*" as required by Section 137.1(4) of the CJA. Justice Lederer found that the context in which the Words Complained Of were made, was based on Mohammed's concern that the Agreement meant there was a risk that the ground water could be contaminated and endanger those who used and drank the water. This was a risk that Mohammed believed the Town should not take.

Although Mohammed could have used more careful language, Justice Lederer found that the Words Complained Of did not demonstrate the basis upon which an action in defamation could be said to have "*substantial merit*".

In addition, the court determined that the action had no merit because Mohammed had apologized and with the apology made there was little or no purpose in Union Soils continuing the action.

The court concluded that the only reason that Union Soils sought to continue the action was to place an impediment to public discussion and debate on the issue.

Although not required to do so, the court went on to find that the four defences; justification, fair comment, qualified privilege and responsible communication, plead by Mohammed, were all valid.

Plaintiff's Harm Was Not Sufficiently Serious That It Outweighed The Public Expression

The court further found that the harm likely to be suffered by United Soils as a result of the Words Complained Of was not sufficiently serious that it outweighed the public interest in protecting Mohammed's expression because there was no evidence of any particular harm or damage caused to the Plaintiff. The court found that if Union Soils' action was to proceed, there was no way of knowing how many members of the public interested in the issue, or for that matter, any other public concern, would feel intimidated and not take part in the discussion for fear of being the subject matter of a similar law suit.

Damages

In addition to dismissing the action by Union Soils, the court exercised its jurisdiction pursuant to Section 137.1(9) of the CJA to award damages to Mohammed.

The court found that there was sufficient evidence before the court to find that Union Soils acted with improper purpose. Prior to the hearing of the SLAPP Motion, Union Soils advanced three interlocutory motions including to strike Mohammed's defence, an appeal of that decision, a motion for refusals and a motion to examine the Mayor of the Town. Justice Lederer found that each of the motions, and in concert, were an objective demonstration of an improper purpose by Union Soils and constituted an abuse of the court process.

The court awarded \$7,500 in damages to Mohammed finding that the action by Union Soils unnecessarily caused Mohammed stress that affected her day to day life.

Take Away

United Soils Management Ltd. v. Mohammed is an important decision because it signals the court's willingness to use the teeth granted by the CJA to summarily dismiss claims that are intended to silence opposition rather than advance legitimate rights. Further, the

decision shows that in circumstances of bad faith or improper purpose, the court will award damages to punish or deter the use of SLAPP suits.