

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Universalcare Canada Inc.m Villa Colombo)	
Seniors Centre (Vaughan) Inc., and Joseph)	Sachdeva, B. for the Plaintiffs
Gulizia)	
)	
Plaintiff)	
)	
– and –)	
)	
Domenica Gusciglio)	Singer, D.,Siskind, J., Condotta, N. and
)	Reider, C. for the Defendant (moving party)
Defendant)	
)	
)	
)	
)	
)	HEARD: November 30, 2022

2023 ONSC 6874 (CanLII)

P.T. SUGUNASIRI, J.:

Overview:

[1] Ms. Gusciglio’s mother lived at Villa Colombo’s Senior’s Centre in Vaughan, from June 2015 until she died in March of 2020. During her mother’s time there, Ms. Gusciglio claims that she witnessed elder abuse and neglect. She first complained to the Ministry of Health and Long-Term Care which led to several orders against Villa Colombo. Despite these orders, Ms. Gusciglio felt she did not see change and took to what was then known as Twitter to express her frustrations and concerns. Villa Colombo has sued Ms. Gusciglio for what they believe to be defamatory tweets. Ms. Gusciglio moves to dismiss the action as a strategic lawsuit against public participation (“SLAPP”) pursuant to Ontario’s anti-SLAPP legislation.¹

[2] I adopt Justice Morgan’s succinct formulation of the test when he writes:

“Subsections 137.1(3) and (4) of the CJA set out a two-part test for a motion to dismiss an action on this basis. First, the defendant has the onus of showing that the

¹ *Courts of Justice Act*, R.S.O. 1990, c. C.43, section 137.1.

plaintiff's proceeding arises from an expression that "relates to a matter of public interest". If the defendant meets that threshold, the court must dismiss the action unless the plaintiff satisfies the court that there are grounds to believe the proceeding has substantial merit, that there are grounds to believe that the defendant has no valid defence, and that the harm suffered by the plaintiff is sufficiently serious such that the public interest in allowing the proceeding to continue outweighs the public interest in protecting that expression."²

- [3] The "crux of the inquiry" is the balancing exercise in section 137.1(4)(b) between the harm suffered by the Plaintiffs and the public interest in protecting the impugned expressions. I dismiss the action as required by the legislation because, read as a whole, Ms. Gusciglio's tweets relate to a matter of public interest and the harm to the Plaintiffs is not sufficiently serious to curb her expression.

The expressions in question relate to a matter of public interest:

- [4] Section 137.1(3) requires Ms. Gusciglio, as the defendant, to establish on a balance of probabilities that (a) the proceeding against her arises from an "expression" made by her, and (b) her expression relates to a matter of public interest.³
- [5] There is no dispute at this motion that the action arises from Ms. Gusciglio's expression. Mr. Sachdeva agrees that at least some of Ms. Gusciglio's tweets relate elder care and long-term care homes which are matters of public interest. However, he submits that there are multiple tweets that air private grievances about staff and Mr. Gulizia. Those, he says, seem less about raising awareness of the broader issues and more about expressing her animosity towards them. Villa Colombo argues that the driving force of Ms. Gusciglio's animus was the fact that she did not have power of attorney over her mother's care, and she disagreed with the decisions her siblings made. The Plaintiffs allege that Villa Colombo and its staff were caught in the middle of a family dispute and were harassed by Ms. Gusciglio to provide care for her mother that was contrary to the instructions of the formal power of attorney holders. The tweets, they say, is Ms. Gusciglio's retaliation.
- [6] Mr. Sachdeva suggests that Ms. Gusciglio has not met the first branch of the test because only some of the tweets address the conditions of a long-term care facility. Others are personal attacks. I disagree that Ms. Gusciglio's tweets ought to be divided in this manner. Even when she is criticizing staff about her mother's particular circumstances, those are still expressions that relate to elder care in a regulated long-term care facility in this Province, which in turn is a matter of public interest. As noted in *Pointes*, the expression should be assessed as a whole, not piecemeal, and it must be asked whether "some segment of the community would have a genuine interest in receiving information on the subject."⁴

² *Gill v. McIver*, 2022 ONSC 1279 at para.8 and section 137.1(4) of the *CJA*; *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22; *Bent v. Platnick*, 2020 SCC 23.

³ *Pointes* at para. 20.

⁴ *Pointes supra* note 2 at para 27 citing *Grant v. Torstar*, 2009 SCC 61.

Pointes encourages a broad and liberal interpretation to meet the legislative purpose of section 137.1(3) that the full scope of legitimate participation in public matters is made subject to the special procedure.⁵ Read as a whole, the impugned tweets relate to a matter of public interest and some segment of the community would certainly have a genuine interest in receiving information about Villa Colombo, its executive, and staff.

Harm to the Plaintiffs is minimal and does not outweigh the public interest in protecting Ms. Gusciglio's expressions:

- [7] Having met her initial burden, section 137.1(4)(a) requires me to first determine whether the Plaintiffs' claim is legally tenable and supported by evidence that is reasonably capable of belief such that it can be said that they have a real chance of success. The Plaintiffs must then persuade me on a balance of probabilities that none of the defences Ms. Gusciglio put in play against their defamation suit are legally tenable or supported by evidence that is reasonably capable of belief such that those defences have no real prospect of success.⁶ If the plaintiff meets those hurdles, section 137.1(4)(b) requires them to show on a balance of probabilities that they likely have suffered, or will suffer serious enough harm from the expression to outweighs the deleterious effects of stifling it or discouraging public participation on a matter of public interest.⁷ Parts a) and b) are conjunctive, meaning I must dismiss the action if the Plaintiff does not meet both tests.
- [8] Because the test is conjunctive, I need not consider section 137.1(4)(a) because the Plaintiffs have not persuaded me that they likely have suffered any harm, or will suffer harm from Ms. Gusciglio's tweets, let alone serious harm sufficient to outweigh the deleterious effect of stifling her expression on a matter of public interest. As noted by my colleague in *Gill v. McIver*, to overcome this hurdle, the Plaintiffs must show the existence of harm that is linked to the impugned expression and is sufficiently serious to allow them to proceed rather than protecting expression. In so doing, the Plaintiffs must provide direct evidence of harm or sufficient evidence from which I can draw an inference of its likelihood. Bald assertions are not enough.⁸
- [9] In this case, there is insufficient evidence of harm. The Plaintiffs' evidence was tendered by Mr. Gulizia by way of an affidavit sworn October 4, 2022, and a Supplementary Affidavit sworn November 4, 2022. He is the President and CEO of Universal Care Canada who manages Villa Colombo. Universalcare is a private Ontario corporation who specializes in providing management and other business services to long-term care centres, complex continuing care supportive housing, and independent and assisted living centres. Villa Colombo Seniors Centre is the licensee of a 160-bed long-term care home in Kleinberg, Ontario. Mr. Gulizia makes the bald statement that the tweets had serious harmful consequences for all the plaintiffs. He states that staff refused to work that section of Villa Colombo where Ms. Gusciglio's mother was, and that her harassment was the main

⁵ *Ibid.* at para. 26.

⁶ *Pointes, supra* at para. 59.

⁷ *Ibid.* at para. 82.

⁸ *Gill, supra* note 2 at paras. 97-99.

reason why he believes the Director of Care resigned. Mr. Gulizia complains that friends and family would constantly ask him about the tweets. In cross-examination Mr. Gulizia added that he felt disappointed by the tweets.

- [10] The sum of the Plaintiffs' evidence reveals little or no harm from Ms. Gusciglio's tweets. Most of the Plaintiffs' evidence was about the impact of Ms. Gusciglio's harassing conduct when visiting the home itself rather than the impact of her tweets. The reasonable inference is that the lawsuit is designed to address Ms. Gusciglio's behaviour at the home (rather than the tweets arising from her interactions and impressions), teach her a lesson, stand behind staff, and to deter others from behaving as she did. The effect of it is to curb her commentary on a matter of public interest. Section 137.1(4)(b) is intended to be a "robust backstop" to screen out lawsuits of this nature. I dismiss the action with costs.

Costs:

- [11] Section 137.1(7) of the *Courts of Justice Act* presumes that Ms. Gusciglio is entitled to full indemnity costs for successfully dismissing the action. This presumption can be overcome by considering the factors in Rule 57.01 of the *Rules of Civil Procedure*. Mr. Sachdeva argues that much time was spent responding to Ms. Gusciglio's initial theory of the case that she did not tweet the things alleged in the Statement of Claim. His Bill of Costs plus disbursements for the motion alone is \$79,938.19. Ms. Gusciglio's legal team has four lawyers and a law clerk seeking \$139,923.19 for the whole action, including disbursements. Ms. Gusciglio suggests that she receive full indemnity for the motion and substantial indemnity for the action. I agree that this suggestion appropriately recognizes the Plaintiffs' argument. I also find there should be a discount for time spent by four lawyers. The Plaintiffs shall pay Ms. Gusciglio the all-inclusive amount of \$100,000 payable forthwith.

P.T. Sugunasiri, J.

Released: December 5, 2023

CITATION: Universalcare Canada Inc. et al. v. Gusciglio, 2023 ONSC 6874

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Universalcare Canada Inc.m Villa Colombo
Seniors Centre (Vaughan) Inc., and Joseph Gulizia
Plaintiff

– and –

Domenica Gusciglio
Defendant

REASONS FOR JUDGMENT

P.T. Sugunasiri, J.

Released: December 5, 2023