

CITATION: Diverse Transportation v. Chen, 2025 ONSC 554
COURT FILE NO.: CV-22-00688400-0000
DATE: 20250127

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 Jacqueline Houston*, for the Plaintiff

Edward Zhou, for the Defendant

HEARD: December 10, 2024

ANTI-SLAPP MOTION

[1] This anti-SLAPP motion asks whether a message that says, in effect, ‘pay me or I’ll destroy your reputation’, can be in the public interest.

I. Background

[2] The Defendant, Mr. Zhou Chen, is a truck driver and former employee of the Plaintiff, Diverse Transportation (“Diverse”). Diverse is a trucking company that transports liquid cargo in tanker trucks. Mr. Chen and Diverse had a falling out. Mr. Chen claimed that Diverse still owed him money when it let him go. Diverse was of the view that Mr. Chen had quit.

[3] Mr. Chen sued and obtained default judgment and a garnishment order against Diverse. Diverse says it is unsure whether it was ever properly served, but has nevertheless settled by paying approximately \$20,000 that Mr. Chen claimed to be owed, stating that the payment was made on a cost-benefit basis – i.e. without conceding liability. In a written decision, the Small Claims Court judge has acknowledged the settlement terms and expressly confirmed that it does not reflect a judgment on the merits of the claim.

[4] Mr. Chen now claims that Diverse still owes him interest and vacation pay on top of the amount he has been paid. Diverse disputes these charges, which, according to Mr. Chen, amount to \$1,116.55.

[5] Mr. Chen has taken an unorthodox approach to collecting what he feels he is owed. He accused Diverse of a number of wrongful business practices, and advised Diverse that he would publish this information if it did not pay him. These include assertions that Diverse commits fraud by altering tank wash tickets that show it has cleaned its vehicles' storage tanks properly, and, alarmingly, that Diverse's trucks contaminate their cargoes of food grade liquids by using unwashed tanks that also carry industrial liquids. In addition, he included in his threatened communication an accusation that Diverse cheats all of its employees in its payroll practices.

[6] As Mr. Chen characterizes it, he has, in the "public interest", advised Diverse that it must pay him what he claims or he will contact Diverse's customers directly to tell them of Diverse's misdeeds. In fact, he has provided Diverse with a number of "kindly reminders" of this tactic in writing. In an email dated August 16, 2022, Mr. Chen wrote:

To Whom might be concern at Diverse Transportation:

I had been received a letter from your lawyer at May 20,2022, I guess Diverse will be dispute with me at the court, so I decided to hire a famous lawyer as respect Diverse...

...It's Diverse responsibility to pay for the interest of the court order new delay, the interest happened from May 13 to August 12,2022 is 116.55 dollars, base on the total amount 23634.5 with 2% interest per year, total 90 days new delay after May 13, 2022 . So the total amount above is 1116.55 dollars...

PLEASE BE ADVISED: Diverse must be pay for the 1116.55 amount and finish my payroll statement etc. send to my legal counsel Mr. Jinxing Wang in 10 business days to prevent new legal action.

KINDLY REMINDER: Do not force me share Diverse payroll shortage story and your fake Tank Wash Tickets story to the Media, Facebook, Twitter and newspapers, your customers might don't like to read that, and no drivers like to work for a dishonesty company... If you don't believe, you can try!

Hopefully Diverse could fix all the issues in 10 business days to prevent new troubles!

You can find my legal counsel Mr. Jinxing Wang mailing address at all of court documents. Attached is some of pictures and documents.

Thanks!

[7] As indicated, Diverse disagreed with the full amount claimed by Mr. Chen. For his part, Mr. Chen was dissatisfied with Diverse's position on the debt that he claimed. And, as it turns out, he is a man of his word. Since Diverse did not paid the full amount claimed from it, Mr. Chen did as he said he would; he sent written messages containing the disparaging tank wash and payroll allegations to Diverse's most important customers. What's more, each time he did so, he linked those supposed public interest issues with the money that Diverse refused to pay him.

[8] For example, on August 24, 2022, Mr. Chen wrote a lengthy email to Soltex Inc., a company that accounts for roughly 40% of Diverse's business. In that email, Mr. Chen explicitly linked his monetary dispute to his allegations of misconduct. He also conceded that his information may not be accurate, but he assured the reader that Diverse is in any case a bad actor:

To whom may be concern at Shipping or Receiving:

Greeting!

My name is Zhuo Chen, I am a former truck driver at Diverse Transportation, c/o 1486151 Ontario Limited, located at 2401 Royal Windsor Dr.Oakville Ontario Canada,L6J 7X6. They purportedly a DANA Transport Company. Diverse isn't a honest company, they owed me over 25,000 dollars payroll/salary and didn't obey the Superior Court of Justice Order to pay me until I applied a Garnishment, so I decide to report Diverse Transportation Sometimes use the FAKE Tank/Trailer Wash Ticket to Cheating the Shippers, because of some reason:

1. If the "last contain" doesn't match the load pick up restrictions, like when last contain was wax or oil base (as Diverse haul the lubricant oil product often), Diverse might have to "play" the Trailer Wash Ticket, mostly will be use the same product name as " last contain" in order to prevent pick up problems.
2. Sometimes the Shipper don't accept one certain Wash Company but Diverse choose wash trailer in there, so Diverse have to give Shipper another Trailer Wash Ticket, mostly will be use Dana Tank Wash Ticket.
3. Mostly the false or fake Trailer Wash Ticket prepared by the Diverse Transportation dispatchers before the trip ,some times they have to FAX the Wash Ticket to the drivers, that's why some of Wash Ticket there is FAX number and time etc. at top, also the Diverse office gave some of BLANK Dana Tank Wash Ticket to drivers just in case need to cheat the Shippers.
4. Now because the Diesel prices too expensive, Diverse might use more "SPECIAL" Wash Ticket to reduce the cost as they don't want driving too far away to wash or change trailers. Attached documents is some of the Fake Trailer Wash Tickets EXAMPLE, and with original Tickets for compare:...

I have no problem send you more tickets copies if you need more details.

Kindly advise Diverse might damage and mixture your product quality, cause health and safety problems even hurt your Receiving Customers...

Although my evidences was 2 or 3 years ago ,I might be forgot the details or might be something wrong, but it's for sure Diverse Transportation ALWAYS like to play the Trailer Wash Ticket to cheat customers in order to make more money...

Thanks!

Best Regards!
Truck Driver:
Zhuo, Raymond Chen

[9] As another example, in September 2022 Mr. Chen sent a similar missive, this time by text message, to Evonik Canada Inc., a customer that accounts for roughly 20% of Diverse's business:

Still use Diverse Transportation as a carrier? Diverse isn't a honest company, they use fake Wash Tickets, which will bring the product quality problems, health problems and safety problems for your company and your customers!

My name is Zhou Chen, I am a former truck driver at Diverse Transportation, c/o 1486151 Ontario Limited, located at 2401 Royal Windsor Drive Oakville Ontario, L6J 7X6.

They purportedly a branch of DANA Transport Company.

Diverse isn't a honest company, they owed me over 20,000 dollars salary and didn't pay the Superior Court...

[10] Those are just two of Mr. Chen's messages that are the subject of Diverse's defamation claim. The record contains more.

[11] On September 30, 2022, a lawyer representing Diverse wrote to Mr. Chen stating that he must cease and desist from writing false and defamatory messages to Diverse's customers. The lawyer indicated that Diverse was contemplating a defamation action as well as a motion for an injunction, and advised Mr. Chen to preserve all evidence of communications with the clients so that Diverse could assess the extent of the damage with these messages had caused it. The lawyer's letter also reminded Mr. Chen that his conduct had been going on for a long time:

As you know, I represent 1486151 Ontario Ltd. operating as Diverse Transportation ("Diverse").

You are currently engaging in illegal behaviour. This matter is extremely serious and can result in significant legal liability for you. I strongly recommend you retain legal counsel.

As you know, on November 12 and 23, 2020 and September 26, 2021, you made threats to publicize false allegations that Diverse committed a "crime" if Diverse did not meet certain monetary demands...

I responded to you on August 18, 2022 stating: "These threats are unlawful, constitute attempts at blackmail and extortion, and must stop immediately. If you continue this behaviour Diverse Transportation will take necessary action to protect its legal interests."

Notwithstanding this notice, you continued to make similar extortionate threats on August 18 and 24, 2022.

I write to you today because on September 28, 2022 Diverse learned (via your own email dated September 27, 2022, 10:27pm) that you have now made libellous and defamatory statements about Diverse to certain Diverse customers and to the general public via social media. The statements include, among other things, false allegations related to fake/fraudulent documents, dishonesty, and product quality, health and safety problems.

In your email dated September 27, 2022, you also threatened to continue making false and defamatory statements about Diverse to Diverse customers, the media and the general public. In the context of your similar threats on August 16, 18 and 24...

[12] Diverse's lawyer then concluded this message with an observation that had become all too obvious to Diverse, given Mr. Chen's conduct and the content of his communications:

[I]t is clear your September 27, 2022 email is also an attempt to extort money you are not owed from Diverse.

[13] Mr. Chen was obviously unimpressed with a legal letter on behalf of Diverse. On October 2, 2022, he wrote to Diverse's lawyer with yet one more "kindly reminder" about Diverse's reputation, this time using the prospect of court proceedings to make his point:

Mr.Brian:

Greeting!

Appreciate you continue make money from Diverse Transportation...

3. Kindly reminder MEDIA news reports will be much more FASTER than the Court process, once I release my story on the newspapers, all of Shipper name will be appear with Diverse together. Diverse will be give up by costumes and lost your business...

Kindly reminder after I send all of Evidences to the Facebook and newspapers, nothing could be changed from me...

4. I can claim my money back again at small claims court, because Diverse has responsibility pay for the legal process fee, pay me 4% Vacation Pay, give me payroll statement and T4 (later) etc. I can kindly ignore the interest, just try to finish the problem between us ASAP...

Just let you know I don't want hurt Diverse too hard as I don't want my friends lost job, that's why I didn't send my story to newspapers yet, but my appointment with the newspaper journalist is next Thursday, so hopefully Diverse could fix all of the problems immediately please, then will be not problem between us in the future, both will be satisfied...

[14] Mr. Chen then ended his correspondence with one more kindly reminder, dismissing any concern he might have about Diverse commencing a lawsuit:

Kindly reminder Diverse, the only way to find a solution is nice talking please. You need several years to process the lawsuit but your customers can be lost only in one day, or by one email, or one Facebook message.

[15] Having exhausted any means of persuading Mr. Chen to desist from further damaging its reputation (except, perhaps, to give in and make the payments that he claimed in this and other correspondence), Diverse brought an injunction motion. On November 24, 2022, Justice Myers issued an interlocutory injunction prohibiting Mr. Chen from communicating disparaging comments about Diverse to its customers or posting disparaging comments about Diverse on the internet.

[16] Justice Myers' Order remains in force. It does not prohibit communication by Mr. Chen with any proper regulatory authority or with the police. However, those public authorities do not appear to be Mr. Chen's audience of choice. His "public interest" concerns are directed at Diverse's customers. At the hearing of the motion before me, Mr. Chen's counsel confirmed that it is Mr. Chen's view that Diverse's customers represent the most effective target for him. Like the mark's spouse in a classic blackmail scenario, it is the customers, according to Mr. Chen, who really "need to know" about Diverse's activities.

[17] The record confirms that Diverse has never received any regulatory compliance order or criminal charge in relation to its transportation business. Moreover, it has never been advised that it is being investigated for alleged infractions by any regulatory authority or by the police. In its 20 years of operation, it has never had an incident of contaminated cargo or any similar customer complaint.

[18] Diverse has sued Mr. Chen for defamation. It has suffered damage to its business reputation as a result of his communications with its customers: *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, at para. 49.

[19] Mr. Chen has moved to dismiss the claim as Strategic Litigation Against Public Participation ("SLAPP"), arguing that his warnings to the customers were a matter of public concern. His entire point in this anti-SLAPP motion is that the public at large – identified solely as Diverse's best customers – has a need to know that Diverse is a bad company and that it should not be hired to transport any goods.

II. The anti-SLAPP test

[20] Mr. Chen seeks an order dismissing the action under section 137.1 of the *Courts of Justice Act*, RSO 1990, c. C43 ("CJA"). It is by now well known, but worth repeating, that under section 137.1(3), a defendant can have the proceeding dismissed if he can meet what the Supreme Court of Canada has called the "threshold burden" of satisfying the court that the proceeding arises from an expression relating to a matter of public interest: *Bent v. Platnick*, [2020] 2 SCR 645, at para. 78.

[21] The statutory test is a multi-step exercise. If Mr. Chen, as defendant, can meet the threshold burden, the onus will shift to Diverse, as plaintiff, to demonstrate that the proceeding should not be dismissed. To do so, Diverse would have to clear a "merits-based hurdle": *Ibid*, at para. 3. That would require it to satisfy the court that there are grounds to believe that the proceeding has

substantial merit (s. 137.1(4)(a)(i)) and that Mr. Chen has no valid defence to the claim (s. 137.1(4)(a)(ii)).

[22] Diverse would also have to clear a further “public interest hurdle”: *Ibid.*, at para. 139. That would require it to satisfy the court that “the harm likely to be or have been suffered by it as a result of Mr. Chen’s expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.” (s. 137.1(4)(b)).

[23] The Court of Appeal has indicated that an anti-SLAPP motion should be treated as a screening device: *Lascaris v. B’nai Brith Canada*, 2019 ONCA 163, at para 30. It is not a version of summary judgment motion whose purpose is to determine the entire merits of the claim. Rather, the *Courts of Justice Act* “aims to remove from the litigation stream at an early stage those cases, which under the criteria set out in the section, should not proceed to trial for a full determination on the merits: *1704604 Ontario Ltd. v Pointes Protection Association*, 2018 ONCA 685, at para 73.

[24] Although not every motion lives up to the aspirations of the drafters of section 137.1 of the *CJA*, “an anti-SLAPP motion is meant to be efficient and economical”: *Park Lawn Corporation v. Kahu Capital Partners Ltd.* (2023), 165 OR (3d) 753, at para. 39 (CA). To accomplish this task with the requisite level of judicial economy, a motion court is encouraged to cut to the chase, leaving aside whatever pretenses the parties may put forward and focusing on “what is really going on”: *Ibid.*, at para. 29. In approaching the present controversy, I intend to do just that.

III. The public interest

[25] The Supreme Court of Canada has provided the general guidance that public interest is to be assessed taking the whole picture into account: *Grant v. Torstar Corp.*, [2009] 3 SCR 640, at paras. 101-102. In the anti-SLAPP context, the question is whether “some segment of the community would have a genuine interest in receiving information on the subject”, or would have “a genuine stake in knowing” about what a defendant had to say: *1704604 Ontario Ltd. v. Pointes Protection Association*, [2020] 2 SCR 587, at para. 27.

[26] The interpretation of whether the expression relates to a matter of public interest is meant to be “broad and liberal” and “generous and expansive”: *Ibid.*, at paras. 24, 30. At the same time, it is to be noted that the Supreme Court has emphasized that the public aspect of the expression, and the public’s interest in the expression, must be “genuine”.

[27] Accordingly, where a defamation claim is brought in the context of a commercial dispute, the first stage of the *Courts of Justice Act* test requires some preliminary analysis. A motion court must determine whether the expression is genuinely of public interest in its own right, or whether the public interest reference is really tangential to, or a façade for, the private aspects of dispute.

[28] Illustrating this approach, in *Sokoloff v. Tru-Path Occupational Therapy Services Ltd.*, 2020 ONCA 730, a law firm brought a defamation claim against an insurance and client referral service, who, in the course of a dispute over an invoice for services rendered to the law firm, broadcast and published disparaging comments about the lawyers. In analyzing the defendant’s attempt to dismiss the claim as a SLAPP suit, the Court of Appeal indicated that, “The real question

was whether the expression concerned the respondents' publicly scrutinized conduct as members of the legal profession or, instead, the respondents' private conduct in carrying on their business": *Ibid.*, at para. 6.

[29] There is necessarily a normative aspect to what is "genuinely" a matter of public interest. As the Supreme Court put it, there is "no single 'test'" for identifying the public interest; "[t]he public has a genuine stake in knowing about many matters' ranging across a variety of topics": *Pointes (SCC)*, at para. 27; *Grant*, at paras. 103, 106. The proper interpretation of whether expression relates to a matter of public interest as both a "broad and liberal" and a "generous and expansive" one: *Pointes (SCC)*, at paras. 24, 30.

[30] Having said that, it is also apparent that "not everything relates to a matter of public interest. For example, it is not enough if expression simply makes reference to something that is of public interest, or to something that arouses the public's curiosity": *Sokoloff*, at para. 19. Along similar lines, it is not enough for a defendant to unilaterally insist that the subject matter is in the public interest.

[31] For that reason, "[t]he burden is on the moving party to establish that its expression relates to a matter of public interest": *Ibid.* And while a qualitative assessment of the impugned expression is not called for, the court must get to the heart of what the defendant was doing in saying or writing what he did. As the Court of Appeal has put it, "The question at the heart of s. 137.1(3) is this: Understood in its context, what is the expression really about?": *Ibid.*, at para. 20.

[32] When understood in context, the expression at issue between Mr. Chen and Diverse is really about a private employment/interest payment dispute. The supposed public interest concern about Diverse's tank washing, etc., is a façade for the real message. Mr. Chen makes this as clear as he can in most of the messages that appear in the record. As set out above, his long email of October 2, 2022 to Diverse's lawyer says that he is concerned about the company's "SAFETY" issues, and then concludes by saying: "I can claim my money back again at small claims court... , just try to finish the problem between us ASAP."

[33] Likewise, in an email to Diverse itself dated August 16, 2022, Mr. Chen threatens, in pseudo civil language:

PLEASE BE ADVISED:

Diverse must pay for the \$1116.55 amount and finish my payroll statement etc. send to my legal counsel Mr. Jinxing Wang in 10 business days to prevent new legal action.

KINDLY REMINDER:

Do not force me share Diverse payroll shortage story and your fake Tank Wash Tickets story to the Media, Facebook, Twitter, newspapers, your customers might don't like to read that, and no drivers like to work for a dishonest company.

If you don't believe, you can try!

[34] While safety of a trucking company's operations might under most circumstances qualify as a matter of public interest, that issue would have to be a *bona fide* issue in order to pass the section 137.1(3) threshold. The same is true for financial honesty; it could be an issue of public interest in the right circumstances, but the public aspect would have to be genuine, and not just be a disguised debt collection method.

[35] The Court is not in a position at this stage to thoroughly evaluate the merits of a defamation claim or the truth of the impugned expression. At the same time, the Court's duty is to examine the reality of the situation. Mr. Chen's various messages – e.g. SAFETY is the concern, but the problem can be finished by making a payment to him ASAP, or honesty is the concern, but pay the money to the lawyer and don't try me – undermine themselves. Indeed, read as a whole they more than lack credibility; they strain all credulity.

[36] Mr. Chen's counsel is of the view that, disregarding the seemingly threatening language, even the monetary dispute that Diverse characterizes as personal has a public interest aspect to it. According to that view, the public, and especially Diverse's clientele, have an interest in knowing of Diverse's mistreatment and non-payment of an employee. After all, Diverse is an employer of more drivers and others than just Mr. Chen and must be financially responsible to those employees, and it is a company that carries on business and thus must be responsible for paying its bills.

[37] I would not be prepared to agree with that view even if Mr. Chen had not accompanied it with threats to damage Diverse's customer base. If Mr. Chen's perspective were to be accepted by a court, there would be no more distinction between a matter of public interest and a private dispute. It is axiomatic, for example, that a pleading loses its privileged status if it is broadcast or published outside of court, and that defamatory statements contained therein are actionable. Mr. Chen's position would do away with that rule.

[38] Adopting Mr. Chen's view, every claim of money owing or of tortious conduct would easily be made into a public interest issue by the simple move of saying that the public, a portion of which might have dealings with the allegedly wrongful party, has an interest in knowing about it. The public/private edifice on which the anti-SLAPP provisions are built would turn to dust.

[39] There is nothing about the monetary dispute between Mr. Chen and Diverse that is of public interest. Likewise, there is nothing about Mr. Chen's threat to write to its best customers about Diverse's "safety" issues if money is not paid to him that is of genuine public interest. To accept either part of the argument would be to turn the anti-SLAPP provisions in the *CJA* into a vehicle for defamation with impunity – i.e. for abuse.

[40] Since there is no genuine public interest in Mr. Chen's messages sent to Diverse's customers, the section 137.1(3) threshold has not been crossed. Diverse's defamation claim is not a SLAPP suit.

IV. Anti-SLAPP as a screening device

[41] I note that Diverse's response to the motion focused on the final stage of the analysis under section 137.1(4)(b) of the *CJA* – that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression. This emphasis on the final "public interest hurdle" weighs two public interests against each other: that of remedying the harm caused

by the defamatory language, against that of informing the public of about the issues expressed therein.

[42] By definition, Diverse's approach to the motion therefore accepts, at least for the sake of argument, that the initial public interest hurdle has been passed. Obviously, if, as I have concluded, there is no public interest in the impugned messages sent by Mr. Chen to Diverse's customers, then there is nothing to weigh against the prevailing public interest in claimants taking an alleged wrong to trial and, if successful, fashioning a remedy.

[43] Before exploring the reason for Diverse's approach, it is worth observing that the result of focusing on the final public interest hurdle would be the same as the result of my focus on the initial public interest question. The evidence in the record is overwhelming that the public's need to know anything about Diverse's safety record is minimal to nil. Since there is no public interest in stifling public discussion, the prejudice to Diverse pursuing its claim would outweigh anything else and the claim would be permitted to proceed.

[44] To demonstrate the point, the Logistics Manager for Diverse has submitted an affidavit in which some 30 paragraphs are devoted to addressing every one of Mr. Chen's ticket wash allegations, point by point. This includes a demonstration that Diverse's record keeping is in line with industry standards and has never been the subject of any regulatory complaint in Diverse's 22 years of operation.

[45] Importantly, it also entirely refutes Mr. Chen's allegation that its truck washing methods are faulty and documented fraudulently. The evidence shows that, firstly, Diverse is not a truck washing company; it hires third party contractors with those facilities to do the washing. Mr. Chen broadcast to Diverse's customers that it "always uses fake truck wash tickets". But in cross-examination, he conceded that in all the time he worked for Diverse, he saw only a handful of tickets – about 10 – which he says were changed by Diverse after receiving them from the truck washing contractors.

[46] In response, Diverse's affiant shows that those changes were made by Diverse in order to correct clerical or technical errors in the contractor's description of the goods being carried. They have nothing to do with billing or customer accounts, were innocuous changes in order to make the tickets more correct and compliant with regulations, and were not done, and could not have been done, "to cheat customers and make more money", as Mr. Chen falsely wrote to Diverse's customers.

[47] Moreover, the record establishes that the most alarming statement made by Mr. Chen – that Diverse's trucks mix food grade liquids with other chemicals – is entirely a product of Mr. Chen's imagination. In fact, the evidence is that Diverse did not transport any food grade liquids at all until May 2023 – approximately 18 months after Mr. Chen published his accusatory statements.

[48] Since that time, the only food grade liquid transported by Diverse is Kosher soybean oil. That product is always transported in a designated truck, used for no other purpose, and continuously inspected to the satisfaction of Diverse's customer, the Kashruth Council of Canada. Despite this brazen allegation designed to raise an alarm about Diverse, Mr. Chen conceded in

cross-examination that he was not aware of any actual incidents of contamination involving Diverse's tank trucks.

[49] In addition to all of that, Diverse's record in this motion contains a lengthy, 78-line chart addressing and correcting every one of Mr. Chen's payroll allegations. Each line item has a specific explanation and reveals a specific misunderstanding or misstatement by Mr. Chen in making these allegations. Mr. Chen is unlikely to ever substantiate these allegations, or to characterize them as either true or as fair comment for the purposes of defending the defamation action.

[50] Mr. Chen also makes much of the fact that he obtained default judgment and a garnishment order against Diverse, and throughout the motion and in communication with Diverse's customers pointed to this as proof of Diverse's wrongful treatment not only of him but, somehow, of all its employees. What he fails to reflect, however, is the basis for the resolution of his employment claim (and the ongoing interest payment dispute) – i.e. that was entered on a cost-benefit basis rather than as a reflection of any finding of wrongdoing against Diverse. Indeed, in his reasons for judgment of August 2022, Small Claims Court Deputy Judge Latimer specifically said that is the case:

42. Based on the evidentiary record before me, there appears to be a triable issue with respect to whether Chen resigned from his employment and whether Chen was owed money for unpaid wages. However, notwithstanding Diverse's understanding that Chen resigned and that there were no unpaid wages, Diverse made a conscious decision not to contest the Judgment and let Chen keep the garnished funds.

...

45. Any prejudice that Diverse may suffer from the dismissal of the motion is prevented by the term I am including in this order. The term is that in the Defamation Action, Diverse is granted leave to allege that Chen resigned from his employment and that Diverse did not owe any wages to Chen. This term will give Diverse an opportunity to prove that statements made to Diverse's customers about Diverse owing money to Chen and not paying a judgment were defamatory.

[51] In short, the record before me demonstrates that Diverse will have no trouble at all in meeting its burden to prove that Mr. Chen's statements about it are false, indefensible, and harmful to its business reputation. Given the inflammatory nature of the allegations, the fact that Diverse's customer base was targeted by Mr. Chen for dissemination of the allegations, and the demands by Mr. Chen that he be paid money in respect of his threat to publish them to the customer base, it is also likely that not only intentional conduct, but malice will be established by Diverse. The present defamation action, in other words, is a tort claim aimed at vindicating Diverse's business reputation, and has nothing whatsoever to do with stifling public participation or blocking information that Mr. Chen says the public has a right to know.

[52] In light of the overwhelming record supporting Diverse's position, one might ask how it is that Mr. Chen has persisted in his aggressive, extra-judicial approach to collecting money. After all, his falsehoods turn out to be patent and his threats were explicit; a defamation suit was as much

as acknowledged as justified by the judge that heard the underlying Small Claims Court employment case.

[53] As related in part I of these reasons, Mr. Chen advised Diverse, in writing on August 16, 2022 (among other times), that he would publish all of his allegations to Diverse's customers if he remained unpaid, and that "If you don't believe me, you can try!" How could he think that Diverse's response to that threat would be seen as a SLAPP suit?

[54] One possible answer is that, in fact, Mr. Chen has tried this – or almost tried this – once before. In *Contrans Tank Group GP Inc. v. Chen*, 2024 ONSC 5441, Mr. Chen's former employer for whom he worked prior to working for Diverse, sued him for defamation. The background to the case was similar to the background to Mr. Chen's dispute with Diverse. The parties had an employment dispute in which Mr. Chen claimed for wrongful dismissal and the former employer, Contrans Tank Group GP Inc. ("Contrans"), submitted that Mr. Chen had quite and was not owed any money.

[55] In an effort to expedite collection of what he claimed to be owed, Mr. Chen apparently wrote to the principals of his former employer a message similar to the ones he sent to Diverse. As set out in *Contrans*, at para. 55, 57:

[55] In September and October 2021, Mr. Chen exchanged email correspondence with Contrans' in-house counsel. On October 21, 2021, Mr. Chen sent an email to Jinxing Wang and Lyndsay Hone in which he wrote:

Tell your boss know: I DON'T CARE will win or little lost [sic] the lawsuit with Contrans, my responsibility is let your drivers, your customers and public know Contrans isn't a honest company with serious potential safety problem!

Attached letter will send to Contrans, Lailaw and TFI drivers by message, Internet, media etc., you have 3 business days to review if there is any information incorrect and reminds me ASAP, this message will send it to your drivers at October 25, 2021 night.

Another messages send to your customers and newspapers are the same similar contents and details, also will let you review first as respect!

...

[57] Certainly, in the September and October 2021 emails, Mr. Chen threatened to communicate with all or substantially all the plaintiff's drivers, with newspapers, with customers, with competitors and more. Mr. Chen wanted satisfaction in the form of a letter of reference, an apology, and compensation.

[56] That, however, is where the similarity between the two cases ends. Unlike in the present case, Mr. Chen did not go through with his threats. The *Contrans* decision relates this turn of events, at paras. 58-59:

[58] In its pleading, the plaintiff points to emails sent by Mr. Chen in September and October 2021 in which they assert that he threatened to share his story with all their drivers, to share his story on Facebook, and Twitter and newspapers. They plead that they have no knowledge that he did so. I observe that the September and October 2021 emails referred to by the plaintiff predate the commencement of this action by nearly a year.

[59] There is no evidence on this motion that Mr. Chen actually sent the threatened letters, emails, messages or made the social media posts referred to in his September and October 2021 correspondence with Contrans.

[57] In reading the *Contrans* decision, one surmises that Mr. Chen's former employer must have concluded that it had jumped the gun, as it were. It had issued its claim in anticipation of Mr. Chen's threatened defamatory conduct, but since he had not yet published any defamatory statements the cause of action had not yet been formed. Contrans then decided to discontinue its defamation action, but by then it was too late as Mr. Chen had already issued his anti-SLAPP notice of motion.

[58] Section 131.1(5) of the *CJA* provides that no further steps may be taken in the action until the motion is heard. In *Contrans*, at para. 43, the Court concluded that this bar on further steps includes the issuance of a notice of discontinuance. Accordingly, it proceeded to hear Mr. Chen's anti-SLAPP motion in the context of a case where no defamation had actually occurred.

[59] Moreover, it appears from the reported decision that Contrans, having already decided to abandon its claim, put little effort into its response to the motion. As the Court described it, at para. 89, "Mr. Dierick [Contrans' affiant] deposed simply: 'The October 2021 Statements and the July 2022 Statements are false and offensive.' That is the full extent of his evidence as to whether Contrans was intentionally and systemically improperly reducing driver pays..." With no substantive evidence from the plaintiff's side of the protection-of-expression vs. prejudice-to-plaintiff equation, the Court granted Mr. Chen's motion to stay the defamation action.

[60] I can only conclude that when Mr. Chen got into a pay dispute with his next employer – i.e. with Diverse – he took the *Contrans* case as a license for employees to threaten employers with reputational harm if they don't pay up. Needless to say, that is not the message of *Contrans*, and is not conduct condoned by this Court.

[61] As indicated earlier in these reasons, if Mr. Chen's view were correct, there would be no civil dispute – no money claim whether between employer and employee or between other contractors, no tort claim whether between accident victims and drivers or any other combination of persons, no property claim whether between titleholders and easement claimants or any other estate holders, etc. – that would not be in the "public interest" for others to know. Any plaintiff could simply threaten to spread false information about the adversary to expedite collection, and the falsities could not be the subject of a defamation claim. That, of course, is not what the anti-SLAPP policy was enacted to produce.

[62] The policy was born of a study addressing the problem of lawsuits "initiated against one or more individuals or groups that speak out or take a position in a public debate on an issue of

public interest...” Thus, the Ontario advisory committee that recommended the revisions that now form section 137.1 of the *CJA* observed that “legal proceedings that fit the definition of a SLAPP [are brought] in order to silence groups or citizens who [are] speaking out on public issues, especially on environmental, but also municipal or consumer issues”: Ministry of the Attorney General, *Anti-Slapp Advisory Panel Report to the Attorney General* (28 October 2010), at paras 4-5, online: <www.attorneygeneral.jus.gov.on.ca>.

[63] In other words, the legislation was designed to eliminate intimidation, not to foster it. It is meant to put an end to lawsuits that silence genuine critics and other speakers on public issues, without judging those critics: *Ibid.*, at para. 4. It is not meant to end legal redress for those targeted with demands to be paid coupled with the publication of false and damaging accusations.

[64] There is no public interest in the form of debt collection and redress presented by the record before me. It is a private dispute for Mr. Chen as the party demanding payment, and the public does not ‘need to know’ about the dispute except insofar as it is addressed in an open court. It is also a private dispute for Diverse as the party seeking to remedy a damaged reputation. The screening function of an anti-SLAPP motion does not close down that attempt at redress.

V. Disposition

[65] Mr. Chen’s motion is dismissed.

[66] The parties may make written submissions on costs. I would ask counsel for Diverse to email brief submissions to my assistant within two weeks of today, and counsel for Mr. Chen to email my assistant equally brief submissions within two weeks thereafter.

A handwritten signature in blue ink, appearing to read 'Morgan J.', is positioned above a horizontal line.

Morgan J.

Date: January 27, 2025