

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
DEE-ANNE HAMER and ROO ROO CAT )  
RESCUE )  
 )  
Plaintiff/Responding Party ) *Adrienne Zaya, for the Plaintiffs*  
 )  
**– and –** )  
 )  
JANE DOE also known as TINA MELO, )  
J.C. PRICE, SUSAN NAMEDOF and )  
NICOLE ALGAR )  
 )  
Defendant/Moving Party ) *Charlotté Calon, for the Defendants*  
 )  
 )  
 )  
 ) **HEARD:** July 27, 2023

**MERRITT J.**

**REASONS FOR DECISION**

**Overview**

[1] This is an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion.

[2] The Plaintiffs in the defamation action are Dee-Anne Hamer ("Ms. Hamer"), and Roo Roo Cat Rescue ("Roo Roo"), which Ms. Hamer owns and operates. Roo Roo provides cat rescue, rehabilitation, and adoption services in the Hamilton region. The Plaintiffs are the respondents on this motion.

[3] The moving Defendants, Susan Namedof ("Ms. Namedof"), incorrectly spelled "Namedoff" in the claim, and Nicole Algar ("Ms. Algar"), incorrectly named as "Nicole Accord" in the claim, (the "Defendants") bring this motion to dismiss the Plaintiffs' claim as being a proceeding that limits freedom of expression on matters of public interest under Section 137.1 of the *Courts of Justice Act*, R.S.O.1990, c. C.43 ("s. 137.1"), also known as a Strategic Lawsuit

Against Public Participation. The two other Defendants Tina Melo and J.C. Price did not participate in the motion.

[4] The Plaintiffs' claim arises from three posts that were published to the Facebook group Helping Pets in Need ("HPIN") and the comments made under those posts (collectively, the "Impugned Posts"). HPIN is an online forum where members of the animal rescue community in the Hamilton region exchange information and ideas about animal welfare issues and incidents. At the material time, Ms. Namedof and Ms. Algar were two of the volunteer administrators of HPIN. One of the administrators must approve all posts in advance but they do not approve comments. However, administrators have the power to remove both comments and posts.

[5] The Plaintiffs' action is dismissed because it is a proceeding that limits the Defendants' freedom of expression as contemplated by s. 137.1. The Impugned Posts were expressions related to matters of public interest. The Plaintiffs' action does not have substantial merit because the Defendants have valid defenses. The harm suffered by the Plaintiffs is not sufficiently serious to outweigh the public interest in protecting the Defendants' expression.

## Facts

[6] On March 19, 2020, a member of the group using the pseudonym "Tina Melo" ("Tina") made the following post on HPIN's page (the "First Post"):

Unfortunately the hotline won't do anything. A friend of mine lives in the area of Barton and Glendale. She says that there is a lady coming with cats in traps and with food and litter. The windows of the property are covered with newspapers. She says she always sees her bringing in cats and never sees her leaving with any. We think it's a hoarding situation and possibly worse. What can we do?

[7] Ms. Namedof approved the post. There were comments on the First Post expressing concern for the cats and suggestions for resolution, including calling an animal welfare agency or the police. Ms. Namedof reviewed the comments, removed some that contained offensive language and reminded commenters that the rules prohibited disclosure of addresses. The Defendants also made comments. Not knowing the post related to the Plaintiff, Ms. Namedof made a comment about a wellness check. Ms. Algar made two comments suggesting various reporting options including providing photographs if possible and then notified the group she was turning off the comment function on the post. She said that the situation needed to be investigated and proven like any other post with suspected animal abuse or neglect.

[8] On March 25, 2020, the Defendant JC Price made the following post to HPIN: "Anyone have any updates on the location at Barton and Glendale that seemed to be housing a lot of cats" (the "Second Post"). Ms. Namedof approved this post and commented on it reminding group members that the rules prohibited posting addresses.

[9] Tina then commented saying she knew the name of the woman at the property being discussed. She also described activities she and her friend had observed at the property including

“feverishly cleaning inside the property” and removing “over 25 garbage bags” from the property. Tina included a photograph of a large number of garbage bags sitting on a sidewalk. The property itself was not visible.

[10] Tina continued to comment, saying she had been removed from the "rescue page" of the person she suspected to be the woman, and implored HPIN members to "do the right thing and call the hotline." She reported that the woman had not been attending daily at the property "to water or feed" the cats and expressed her concern about whether the woman could afford veterinary treatment for all of the animals in her care. Tina was challenged by other commenters and she responded.

[11] Ms. Namedof removed several of Tina's comments but left others that included descriptive information about the situation at the property. Ms. Algar commented warning others against drawing premature conclusions. The Defendants monitored the comments under the second posts and removed comments that violated the group's rules because they were offensive, irrelevant to animal welfare concerns, or risked identifying the Plaintiffs.

[12] The claim against the Defendants is primarily that they are jointly liable, as administrators of HPIN, for the statements made by the other two defendants.

[13] On April 28, 2020, the Plaintiffs' lawyers sent a letter to all four of the HPIN administrators demanding removal of the First Post and the Second Post. On May 4, 2020 they sent separate notices of libel to the Defendants.

[14] On May 4, 2020, Tina's Facebook profile was deleted or deactivated causing Tina's posts and comments to be removed from the group page and no longer viewable by the group members. This included the First Posts and all comments under it and Tina's comments on the Second Post and all of the responses to Tina's comments. In effect, the Plaintiffs' demands were met.

[15] On May 27, 2020, derogatory posts were published about the Defendants and Tina on a website called The Dirty ("The Dirty Posts"). The Dirty is a US-based website that anonymously publishes posts about individuals that are submitted by users of the website. The Dirty Posts included pictures of the Defendants and Tina and relate them to each other and to Tina's concerns that were posted on HPIN. The Defendants have been unsuccessful in having the Dirty Posts removed from the website.

[16] At the end of May 2020, the Defendants retained counsel to respond to the Plaintiffs and to address the Dirty Posts. The parties exchanged correspondence in June ending with a letter from the Plaintiffs dated June 11, 2020 particularizing the HPIN postings about which they were complaining. At that time, the posts and comments were no longer visible as set out above.

[17] On July 3, 2020, Ms. Namedof made a post in HPIN on behalf of the administrators advising that they had been threatened with legal action concerning posts made in the group (the "Third Post"). The Third Post also did not name the plaintiffs or include any identifying information about them. It explained the purpose and values of the group and defended the administrators' decisions giving rise to the allegations.

[18] The Plaintiffs sent a notice of libel to Ms. Namedof regarding the Third Post. The Defendants did not remove the Third Post and the Plaintiffs commenced this action for defamation.

[19] The Defendants move for an order dismissing the claim under s. 137.1, which provides as follows:

(3) On motion by a person against whom a proceeding is brought, a judge shall, subject to subsection (4), dismiss the proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that relates to a matter of public interest.

(4) A judge shall not dismiss a proceeding under subsection (3) if the responding party satisfies the judge that,

(a) there are grounds to believe that,

(i) the proceeding has substantial merit, and

(ii) the moving party has no valid defence in the proceeding; and

(b) the harm likely to be or have been suffered by the responding party as a result of the moving party's expression is sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression.

[...]

(6) Unless a judge orders otherwise, the responding party shall not be permitted to amend his or her pleadings in the proceeding,

(a) in order to prevent or avoid an order under this section dismissing the proceeding; or

(b) if the proceeding is dismissed under this section, in order to continue the proceeding.

[20] The Statement of Claim appends the Impugned Posts to it. In their factum and argument on the motion, the Plaintiffs also include other posts from October 2019 which are not contained in their Statement of Claim (the "Other Posts"). In a libel action the words complained of must be pled. I cannot read into the claim specifics of libel which have not been pled. I can only consider the Impugned Posts which are the subject of and appended to the claim: *Thatcher-Craig v. Clearview (Township)*, 2023 ONCA 96, 480 D.L.R. (4<sup>th</sup>) 639, at paras. 50-53. The Plaintiffs became aware of the Other Posts on August 30, 2022, and this motion was commenced by way of an attendance in Civil Practice Court of September 20, 2022. There was no motion before me to amend the claim and I will not consider other posts or private Facebook conversations which are not the subject of the claim.

### **Are the posts expressions in the public interest?**

[21] The purpose of s. 137.1 is to safeguard the fundamental value that is public participation in democracy by encouraging people to express themselves on matters of public interest and discouraging the use of litigation to unduly limit such expression. The first issue is whether the posts are public interest expression under s. 137.1(3).

[22] The Plaintiffs say the posts are about Ms. Hamer's personal life and not matters of public interest. Roo Roo's is a not-for-profit company that accepts donations from the public and volunteers. Roo Roo's fostering work at the property includes rescuing, rehabilitating, and re-homing feral, stray, and abandoned cats in the Hamilton area. The other work of Roo Roo's includes adopting cats for a fee and educating the public about rescue work and practices.

[23] Public interest expression is to be interpreted broadly, expansively, and generously. It is not a requirement that the expression be political or of interest to all members of the public; rather, it is sufficient if it be of interest to some segment of the community: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2020 SCC 22, [2020] 2 S.C.R. 587 at paras. 27, 28 and 30.

[24] The Impugned Posts are public interest expression. They relate to the public's interest in animal protection, welfare, and rescue generally and the welfare of the cats in the Plaintiffs' care specifically. They also relate to the quality of the Plaintiffs' services and the importance of public debate on these issues. The very purpose of HPIN is to create a space for members of the group to report potential animal welfare incidents and to discuss the quality of the animal protection services being offered by people and entities purporting to provide those services. The First Post and the Second Post related to concerns about the quality of the Plaintiffs' rescue and re-homing services. These are matters of public interest expression: *Yankofsky c. MacKasey*, 2021 QCCS 307, at paras. 3 and 31-33. The Third Post relates to the importance of public debate on these issues. It is addressed to HPIN's members to defend the purpose and values of HPIN and the importance of facilitating discussion about animal protection issues in light of the threatened legal action.

[25] Under s. 137.1(4) the Plaintiff's claim will not be dismissed if the Plaintiff shows that its case has merit and the Defendants have no valid defence (together, the "Merits Hurdle"), and that the harm to the Plaintiffs is sufficiently serious that the public interest in allowing the case to proceed outweighs the public interest in protecting the Defendant's expression (the "Public Interest Hurdle").

### **Section 137.1(4)(a): Merits Hurdle**

[26] The Plaintiffs must show their claim has substantial merit, meaning it is tenable and supported by evidence that is reasonably capable of belief and that it has a real prospect of success; a possible or arguable case is insufficient. The question here is whether a reasonable trier of fact could conclude that the Plaintiffs have a real chance of establishing that they were libeled. The Plaintiffs must also show that whatever defences the Defendants have put into play are not valid and have no real prospect of success: Todd L. Archibald, Stephen E. Firestone & P. Tamara Sugunasiri, *Ontario Superior Court Practice*, 2023 ed, (LexisNexis Canada), "137.1 Purposes" §1B(1)(b).

[27] The Plaintiffs must show that they have a real chance of proving that the words were published, that they referred to the Plaintiffs, and that they are defamatory in the sense that they would lower the Plaintiffs' reputation in the eyes of a reasonable person: *Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3 S.C.R. 640, at para. 28; *Simpson v. Mair*, 2008 SCC 40, (sub nom. *WIC Radio Ltd. v. Simpson*) [2008] 2 S.C.R. 420 ("*WIC Radio*"), at para. 69.

[28] Clearly the words were published. None of the words refer directly to the Plaintiffs, although it is now known that the individual Plaintiff is the woman at the property described in Tina's posts. There was no evidence that it was widely known that the Plaintiffs were operating at the property described in Tina's posts, although people who knew the Plaintiffs would be able to deduce that the posts were about them. The Defendants concede that there is a real prospect that the Plaintiffs will be able to show that at least some of the statements made by Tina in the First and Second Posts are *prima facie* defamatory. These are the statements suggesting that Ms. Hamer might be a hoarder or unstable. The other statements contained in the Impugned Posts are not *prima facie* defamatory. The Second Post merely asks for an update and is not defamatory. Only Tina's posts contain information about the Plaintiffs. All of the other statements are reactions to the situation described by Tina, and many, including the comments by Ms. Namedof, are suggestions for addressing the concerns. The Third Post did not contain the identity of the Plaintiffs or any means by which they could reasonably be identified, and by the time the Third Post was made Tina's post and comments had been removed. Therefore, the Third Post could not lower the Plaintiffs reputation.

### **Valid Defences**

[29] The Plaintiffs must show that there are grounds to believe that the Defendants have no valid defence. The Plaintiffs have failed to do so. I find that there are grounds to believe that the Defendants do have valid defences of justification and fair comment that have a real prospect of success.

### **Justification**

[30] On this motion I am not required to determine the issue, but rather, the test is whether the defendant has put a defence in play and whether the plaintiff has shown it is not valid, meaning it has no real prospect of success.

[31] There are grounds to believe that the Impugned Posts are substantially true. There is evidence that a number of people involved in the Hamilton rescue community had concerns about the Plaintiffs' rescue practices at the time of the Impugned Posts, including a concern that the Plaintiffs tended to keep too many cats at one time. People known to the Plaintiff have admitted she had difficulty with the practice of trapping, neutering and returning feral cats to their environment. The Plaintiffs have admitted many of the statements made by Tina are true (i.e. the windows were covered, cats were held at the property including cats that were undergoing treatment or in critical conditions, and some cats were kept there for weeks at a time).

[32] The Plaintiffs have not provided evidence of the number of cats kept at the property or denied that there were too many cats at the property, which is the central concern of the Impugned

Posts. The Plaintiffs have not allowed any meaningful investigation into their rescue practices on this motion. They refused to answer all questions about Roo Roo's registration and licensing status except to confirm that it is not a registered animal shelter. This information is relevant to the issue of how many cats the plaintiffs were lawfully permitted to keep at the property and whether the posts about there being too many cats were true. The Plaintiffs have not shown on a balance of probabilities that the defence of justification is not valid or has no real prospect of success.

### **Fair comment**

[33] The Defendants also plead the defence of fair comment. The constituent elements of the defence are:

- (a) the comment must be on a matter of public interest;
- (b) the comment must be based on fact;
- (c) the comment, though it can include inferences of fact, must be recognizable as comment;
- (d) the comment must satisfy the following objective test: could any person honestly express that opinion on the proved facts?
- (e) even though the comment satisfies the objective test, the defence can be defeated if the plaintiff proves that the defendant was subjectively actuated by express malice: *WIC Radio* at para. 28.

[34] The concerns expressed in the Impugned Posts about the Plaintiffs' rescue practices and to the effect that the Plaintiffs had too many cats at the property are opinions, based on facts and inferences of fact. The Plaintiffs' admissions and the evidence of people who know her and others establish that the defence of fair comment is most definitely in play and the Plaintiffs have not shown it is not valid, or that it has no real prospect of success.

[35] The opinion must relate to the facts upon which it is based, but there is no requirement that that opinion be reasonable. "The purpose of this element is not to measure the fairness of expression, but to ensure the reader is aware of the basis for the comment to enable them to make up their own minds": *Hansman v. Neufeld*, 2023 SCC 14, 481 D.L. R. (4th) 218, at para. 100.

[36] The posts appear to have a factual foundation; they were based on Tina's observations that the Plaintiffs were keeping cats at a commercial property, some cats were under the care of a veterinarian and in critical condition, some cats were kept at the property for multiple weeks at a time, there was newspaper on the windows, and Tina only ever saw cats going inside in cages and none coming out. Based on these facts, a person could honestly express the opinion that the Plaintiffs' rescue practices were concerning and the Plaintiffs were keeping too many cats at the premises and this could lead to poor outcomes for the cats. I note that the Plaintiffs have not denied the central concern that there were too many cats at the property. They have refused to provide the number of cats at the property or information about the type of license they hold so as to determine

whether the number of cats on the property was lawful. Read in context, Tina's expressions are recognizable as opinion. In the comments other, different opinions are expressed. In both the First Post and the Second Post the Defendants state that these are only allegations which have not been proven and need to be investigated.

[37] In *Canadian Standards Association v. P.S. Knight Co. Ltd.*, 2019 ONSC 1730, at para. 104, the court set out the test for malice: publication of a defamatory expression (i) knowing that it is false; (ii) recklessly indifferent as to whether it is true or false; (iii) for the dominant purpose of injuring the plaintiff because of spite or animosity; or (iv) for some other dominant purpose which is improper or indirect. Little or no effort to check the facts may support a finding of malice: *Awan v. Levant*, 2016 ONCA 970, 133 O.R. (3d) 401, leave to appeal refused, [2017] S.C.C.A. No. 71, at paras. 55 and 94.

[38] There is no evidence that Tina's comments about the Plaintiffs were made with malice, were knowingly false or that she was recklessly indifferent when she made them.

[39] There is no evidence that the Defendants acted with malice. Rather, they reasonably believed that the concerns raised in the Impugned Posts were credible. They had each been separately advised of these concerns by Maria Charalambous, who is an experienced and well-respected rescuer in the Hamilton community and someone who they trusted. Maria reported first-hand observations of the conditions in which Ms. Hamer's cats were kept and her concerns were consistent with comments made by others.

[40] There is no evidence that the Impugned Posts were made for any other reason than a genuine concern for the welfare of the cats in the Plaintiffs' care. The Plaintiffs have pointed to a comment on one of their posts thanking a donor for cat food where Ms. Namedof expressed her upset at the Plaintiffs receiving cat food. Again, this is consistent with the concerns of the Defendants and others about the Plaintiffs rescue practices and ability to properly care for the cats in her possession.

### **Section 137.1(4)(b): Public Interest Hurdle**

#### **Harm**

[41] The Plaintiffs must establish harm caused by the expression. Such harm can be monetary or not (e.g., reputation) and need not be quantified. The issue is whether the harm is sufficiently serious that the public interest in allowing case to proceed outweighs the public interest in protecting the expression. This does involve considering the quality of the expression and motivation behind it. The level of protection to be afforded to the expression is grounded in its nature. A higher degree of protection will be afforded to expression which involves any of the core values underlying freedom of expression: *Pointes Protection* at para. 77.

[42] The issue here is whether the real purpose of the claim is to silence the Defendants and whether the harm to the Plaintiffs is sufficient to outweigh the public interest in protecting the Defendants' expression.



[43] In *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, 478 D.L.R. (4th) 514, at para. 28, the Court of Appeal cited Justice Côté in *Pointes Protection*, and its companion case, *Bent v. Platnick*, 2020 SCC 23, 449 D.L.R. (4th) 45:

... the 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.

[44] The motion should not be a trial of the issue, but rather a screening procedure.

[45] While harm can be presumed in a defamation action, presumed harm may not be sufficient in the weighing exercise under s 137.1 particularly where the Plaintiff is a corporation: *Barrick Gold Corp. v. Lopehandia*, 71 O.R. (3d) 416 (C.A.), at para. 49; *Levant v. DeMelle*, 2022 ONCA 79, at paras. 49-50.

[46] In *New Dermamed Inc v. Sulaiman*, 2019 ONCA 141, 144 OR (3d) 721, at para. 15, the court said:

While the appellant has filed evidence of some lost business as a result of the reviews that the respondent posted, it has not provided any quantification of those losses nor identified how those losses relate to its overall business. The appellant has not, therefore, established that any harm that it has suffered at the hands of the respondent is “sufficiently serious that the public interest in permitting the proceeding to continue outweighs the public interest in protecting that expression”: see s. 137.1(4)(b).

[47] Here, the Plaintiffs have alleged harms such as loss of donations, loss of volunteers, and loss of public engagement, which are amenable to being established by documentation; however, none has been forthcoming. The Plaintiffs’ claim is for damages of \$100,000 plus punitive damages of \$60,000 plus unquantified special damages. The Plaintiffs have not led any evidence to quantify or substantiate these alleged losses despite the passage of almost three years since the Impugned Posts were made. With respect to reputational and emotional harm, the Plaintiffs have also not provided any documentary evidence. There has been no medical evidence produced and no production of the Plaintiffs’ online correspondence about the Impugned Posts.

[48] In *Fortress Real Developments Inc. v. Rabidoux*, 2017 ONSC 167, the plaintiff’s action relating to the defendant’s tweets regarding OSC violations, syndicated mortgages and condo developments, which were deleted after the plaintiff complained, was dismissed under s. 137.1.

[49] Here, there has been no *prima facie* defamatory content about the Plaintiffs visible on HPIN since the Plaintiffs first demanded that allegedly defamatory statements be removed. Tina’s posts

and her comments were deleted when her account was deleted within days of the Plaintiff's demand.

[50] In terms of reputational harm, it is of note that the Plaintiffs say they were subjected to similar allegations and an investigation by the Hamilton Animal Services in the summer of 2019 and this fact raises an issue of causation.

### **Importance of the expression**

[51] For many years, the Defendants have engaged in animal welfare volunteer work and participated in online activities related to animal welfare and rescue. They have founded and/or acted as administrators for several Facebook groups that, like HPIN, focus on animal rescue efforts and issues. HPIN's purpose is to provide a forum for people involved or interested in animal rescue in the Hamilton region to connect vulnerable animals to animal rescue services and shelters, and to respond to possible instances of animal mistreatment in the community. HPIN helps to organize the efforts and resources of volunteer animal rescues and rescuers.

[52] The Defendants intended that HPIN would support and facilitate animal rescue efforts in the Hamilton area. HPIN is a closed group meaning membership requires approval from an administrator and only members can view and make posts and comments. Membership is restricted to people who live in the Hamilton area and who agree that posts will be positive, helpful, and made only for the purposes of animal rescue and welfare. There are rules designed to keep the posts and comments kind, respectful, private among group members, and not aggressive, bullying, or offensive. There is a specific rule prohibiting identifying individuals in unconfirmed incidents of animal abuse or neglect. The Defendants and the other administrators review posts in advance for compliance with the rules. They also review comments and have the ability to remove posts and comments, turn off the comments function on posts, and remove members from the group.

[53] The Plaintiffs did not bring this action for the purpose of having defamatory content removed from HPIN. At the time that the Plaintiffs commenced their claim, only the Third Post and very little of the Second Post were visible on HPIN. Neither of them identified or was capable of identifying the Plaintiffs, or contained any defamatory statements.

[54] The Plaintiffs' claim is an attempt to silence concerns and debate about their rescue practices. On at least one other occasion the Plaintiffs have threatened litigation against a member of the community who raised such concerns and made a report to Hamilton Animal Services. On another occasion the Plaintiffs sent a lawyer's letter when Hamilton Animal Services refused to return a cat to the Plaintiffs.

[55] In my view this case is about the Plaintiffs wanting to silence the Defendants and any criticism of their rescue practices, and is not about any real damage to them. The potential harm to the Plaintiffs is not sufficiently serious that the public interest in allowing their defamation case to proceed outweighs the public interest in protecting the Defendants' expression.

[56] The action is dismissed.

**Costs**

[57] The parties are encouraged to agree on costs. If they cannot do so, they may make written submissions of no more than three pages in length by **September 15, 2023**.

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**Merritt J.**

**Released:** August 24, 2023

**CITATION:** Hamer v. Doe, 2023 ONSC 4837  
**COURT FILE NO.:** CV-20-00648756-0000  
**DATE:** 20230824

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

DEE-ANNE HAMER et al

Plaintiff/Responding Party

– and –

JANE DOE also known as TINA MELO, J.C. PRICE,  
SUSAN NAMEDOF and NICOLE ALGAR

Defendant/Moving Party

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**REASONS FOR DECISION**

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**Merritt J.**

**Released:** August 24, 2023