

Defamation Judgment Upheld Against Pseudonymous Online Poster

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In *Theralase Technologies Inc. v Lanter*, 2021 ONSC 943 (CanLII), Justice F.L. Myers dismissed a motion to set aside default judgment obtained against a defendant who had posted defamatory internet comments about the plaintiffs using a pseudonym.

The plaintiffs were a pharmaceutical company whose shares were listed on the TSX Venture Exchange and the US over-the-counter market OTCQB, as well as the company's CEO and CFO. In 2019, they commenced an action against a number of unidentified "John Doe" defendants for defamatory statements published from 2014 through 2018 on a website known as Stockhouse.com, which was aimed at investors in Canada and the US.

The Stockhouse.com site included a function called a "Bullboard," which provided an internet chat forum on which users could publish self-generated content about a listed company. Users of the website could also communicate with other users privately using a service akin to internal messaging in Facebook Messenger or Twitter Direct Messages, and using pseudonyms to avoid disclosing their true identities.

The plaintiffs alleged that the defendants published defamatory statements on the "Bullboard" of the plaintiff's company using pseudonyms. The plaintiffs recognized one of the posters as a former employee but they could not identify any of the others.

Prior to commencing the action, the plaintiffs obtained a court order requiring the owner of Stockhouse.com to disclose the actual identities of the users whose comments it published on its website. The owner claimed that it suffered technical problems that prevented it from determining the posters' true identities. However, it was able to provide email addresses for most of them. The defendants were then served with the statement of claim provided by them to the website.

In 2020, the plaintiffs obtained default judgment against the "John Doe" posters who had not defended the claim. As against one defendant who had used the pseudonym "Truenorthstrong," Justice Myers found that he had published five defamatory posts alleging that the plaintiff company was operated as a "pump and dump" scheme for the benefit of the promoters, and that the posts were intended to warn potential investors against investing in the company. Justice Myers awarded \$35,000 in general damages against the user of the "Truenorthstrong" pseudonym.

After the judgment was obtained, the plaintiffs retained consultants to assist them to track the emails by which they sent the judgment to the defendants. Eventually one of the defendants, who used the pseudonym "Truenorthstrong," revealed himself and moved to set aside the judgment.

The "Truenorthstrong" defendant, Mr. Singer, admitted to making the posts in question. He testified that he thought that the Stockhouse.com site was a place for investors to "post freely" about stocks purchased and that he gave little thought to what he said. He did not claim that what he alleged was true, but rather that what he posted on the website would be seen as innocuous. Mr. Singer also admitted to receiving the plaintiffs' communications about the claim but that he did not take their threats to be serious and instead assumed them to be from a scammer. He claimed that he did not appreciate that court proceedings could be served by email or that a judgment obtained against an online pseudonym could be converted into an enforceable judgment against him.

Justice Myers had little regard for Mr. Singer's arguments. Singer was an experienced professional in the investment community, with over 25 years' experience in the financial services and investment management sectors. Justice Myers found that he consciously chose not to respond to the threat of legal proceedings or to set aside the judgment until the plaintiffs were close to confirming his true identity.

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Further, Justice Myers was highly critical of the circumstances in which the defamatory posts were made, under the guise of a pseudonym, and of the “hoops” that Singer had forced the plaintiffs to go through before attempting to respond to their claim on the merits. Perhaps as a warning to dissuade others from engaging in similar conduct, Justice Myers stated as follows:

[32] In my decision granting the original judgment, I quoted the words of Goldstein J. in *Manson v John Doe*, 2013 ONSC 628:

[t]here are few things more cowardly and insidious than an anonymous blogger who posts spiteful and defamatory comments about a reputable member of the public and then hides behind the electronic curtain provided by the Internet. The Defendant confuses freedom of speech with freedom of defamation. There are, undoubtedly, legitimate anonymous Internet posts: persons critical of autocratic or repressive regimes, for example, or legitimate whistleblowers. The Defendant is not one of those people. The law will afford his posts all the protection they deserve, which is to say none.

[33] Mr. Singer’s evidence shows why these words are so important. Mr. Singer is not a nerdy teenager sitting in his parents’ basement roll-playing as a self-aggrandized internet troll. He is a seasoned professional in the investment industry who says he believed that he was free to publish anonymous comments accusing people in the public markets of illegal conduct.

[34] That a seasoned investment industry professional thinks he can publish anonymous accusations of illegal conduct against management of a reporting issuer on an inventors’ website without taking any care to ascertain the truth of his accusations and without any care about the damage that his words might cause in the market place shows the frightening potential for harm associated with anonymity on the internet. It can be safely assumed that Mr. Singer would not have made his defamatory posts if he had had to sign his name and identify his important position.

In the result, Singer’s motion to set aside the default judgment was dismissed and the plaintiffs will likely be entitled to further legal costs against him.

The decision demonstrates that courts will take action against anonymous posters of defamatory comments on the internet, and will carefully scrutinize the conduct of persons who only surface after judgment has been obtained against them in deciding whether to allow them to reopen a case to defend the claim. Anyone who is served with notice of a potential court proceeding against them should immediately take steps to verify the legitimacy of such communications as the courts will allow claims to be served via email on pseudonym or anonymous email addresses. Anyone who ignores the threat of genuine legal proceedings does so at their peril. A PDF version is available to download [here](#).

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