COURT OF APPEAL FOR ONTARIO

CITATION: Raymond J. Pilon Enterprises Ltd. v. Village Media Inc., 2019 ONCA 981
DATE: 20191212
DOCKET: C66891

Juriansz, Brown and Miller JJ.A.

BETWEEN

Raymond J. Pilon Enterprises Ltd.

Plaintiff/Responding Party (Appellant)

and

Village Media Inc., Stacey Van Dyk, Joel Van Dyk, and Andrew Autio

Defendants/Moving Party (Respondents)

Peter J. Doucet, for the appellant

Paul Bragagnolo, for the respondents Stacey Van Dyk and Joel Van Dyk

Brendan Hughes, for the respondents Village Media Inc. and Andrew Autio

Heard and released orally: December 6, 2019

On appeal from the order of Justice Robin Y. Tremblay of the Superior Court of Justice dated April 4, 2019, with reasons reported at 2019 ONSC 2017, and November 28, 2019, with reasons reported at 2019 ONSC 6890.

REASONS FOR DECISION

[1] The appellant, Raymond J. Pilon Enterprises Ltd. (the "Corporation"), advances a single ground of appeal: the motion judge erred in finding that the proceeding arose "from an expression made by the person that relates to a matter of public interest": *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137.1(3).

[2] Whether an expression relates to a matter of public interest involves a question of mixed fact and law that attracts a deferential standard of review. Absent the identification of an extricable error of law or a palpable and overriding factual error, an appellate court will defer to the motion judge's assessment: *1704604 Ontario Ltd. v. Pointes Protection Association*, 2018 ONCA 685, 142 O.R. (3d) 161, at para. 66, leave to appeal granted and appeal heard and reserved November 12, 2019, [2018] S.C.C.A. No. 467.

[3] On this appeal, the Corporation renews its submission that the expressions contained in the post and media article related to nothing more than a private dispute between a customer and staff at its Canadian Tire store in Timmins.

[4] The motion judge rejected that submission. Describing the post as "a customer's account of an incident of poor customer service at the local Canadian Tire store", the motion judge concluded that it related "to the issues of customer service and shopping experience at a major retail store" and raised "the question of the appropriateness of a store manager involving the police in such a matter": 2019 ONSC 2017, at para. 45. The motion judge read the post "as cautioning potential customers of the Canadian Tire in Timmins about the treatment they may receive at that store": at para. 46.

[5] The motion judge observed, at para. 47, that in *New Dermamed Inc. v. Sulaiman*, 2019 ONCA 141, 144 O.R. (3d) 721, the defendant had written four

webpage reviews about the quality of the laser resurfacing treatment she had received from the plaintiff: 2019 ONCA 141, 144 O.R. (3d) 721, at paras. 3-4. On a s. 137.1 motion, the motion judge found that the comments made by the defendant in her reviews were expressions on a matter of public interest: at para. 5. On the appeal, the appellant did not quarrel with that conclusion, which this court accepted: at para. 7.

[6] In this case, the motion judge concluded that "the Van Dyks' Facebook post detailing an incident of poor customer service at a major local retail store is an expression that relates to a matter of public interest": at para. 50.

[7] We see no basis on which to interfere with the motion judge's analysis and conclusion on this point. The appellant has not identified any extricable error of law or palpable and overriding error in the motion judge's assessment of the nature of the expression. The appellant simply quarrels with the motion judge's application of the factors involved in a *Grant v. Torstar Corp.* analysis: 2009 SCC 61, [2009] 3 S.C.R. 640. That is not a sufficient basis to attract appellate intervention.

[8] The appellant does not take issue with the motion judge's recent disposition of the issues of damages and costs: 2019 ONSC 6890.

DISPOSITION

[9] Accordingly, for the reasons set out above, the appeal is dismissed.

[10] The Corporation shall pay the respondents Village Media Inc. and Andrew Autio their costs of the appeal fixed at $10,000, and the respondents Stacey Van Dyk and Joel Van Dyk their costs fixed at $10,000, both amounts inclusive of disbursements and costs.

"R.G. Juriansz J.A."
"David Brown J.A."
"B.W. Miller J.A."