

Anonymous internet commenter fails to set aside default judgment

February 22, 2021

On February 5, 2021, the Ontario Superior Court of Justice released its decision in [Theralase Technologies Inc. v. Lanter](#), 2021 ONSC 943. The decision is the second installment in a defamation dispute between the plaintiffs and previously unidentified internet commenters. The decision confirms that remedies do exist against anonymous internet commenter defendants, particularly when the defendant is operating in a commercial or professional context.

Background

In [Theralase Technologies Inc. v. Lanter](#), 2020 ONSC 205, the plaintiffs, a pharmaceutical company and two of its officers, obtained default judgment against a number of anonymous internet commenters who had made derogatory comments on stockhouse.com, a website designed for investors. Although the commenters could not be identified, many of them had been served via their stockhouse.com emails in accordance with a court order for substitute service. The majority of the commenters did not respond to the lawsuit.

After the default judgment was granted, the plaintiffs continued in their efforts to identify the anonymous defendants. The plaintiffs were able to identify one of the defendants and contact him. Once the defendant realized he had been identified, he moved to set the default judgment aside.

[BLG's case summary on the first decision can be found here.](#)

The decision

The Court dismissed the defendant's motion for a number of reasons. Firstly, the defendant acknowledged previously receiving a number of emails from the plaintiffs, which he deposed he "did not actually believe to be serious." The Court saw the defendant's dismissal of the plaintiffs' service emails as a conscious decision not to participate in the proceedings. Following [Sunlife Assurance Company of Canada v. Premier Financial Group Incorporated \(Premier Financial\)](#), 2013 ONCA 151 the Court held that the defendant's motion could be dismissed on this basis alone.

The Court held that the defendant had not moved promptly to set the judgment aside, as he had waited to be identified by the plaintiff before acting. The Court added that even if the merits of the case were to be considered, the defendant’s limitations defence must fail as he cannot conceal his identity then allege that the plaintiffs ought to have found him sooner. Finally, the court added that prejudice and the interests of justice weigh in favour of the plaintiffs as they had invested significant time, effort and money into locating the defendant, and allowing the defendant to reopen the proceeding would be an “abuse of process”.

Commentary

The decision indicates that with persistence, it may in fact be possible to successfully claim against anonymous internet commenter defendants for defamation. However, the decision does distinguish the defendant, a “seasoned professional in the investment industry”, from a non-professional, indicating that the Court may be especially harsh on defendants who post anonymously in a commercial or professional context.

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