

Court File Number SC-06-SC094645-0000

**SUPERIOR COURT OF JUSTICE
(SMALL CLAIMS COURT)**

BETWEEN:

JAMES, CHARLENE & NICOLE LABOMBARD

Plaintiff(s)

-and-

LORIE DIXON

Defendant

REASONS FOR DECISION

**DELIVERED BY DEPUTY JUDGE M. GALLIGAN
on the 22nd day of July, 2009, at OTTAWA.**

APPEARANCES:

Mr. L. Barrick

Counsel for the Plaintiffs

Mr, T. Green

Counsel for the Defendant

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James, Charlene & Nicole Labombard - and - Lorie Dixon
Reasons for Decision

REASONS FOR DECISION

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GALLIGAN, M., Deputy Judge (S.C.J., S.C.C.):

The Plaintiffs bring this action against the Defendant for damages for defamation and for interference with economic interests and interference with contractual relations flowing therefrom.

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The Defendant takes the position that she merely portrayed the facts accurately and candidly, and she relies upon the defence of truth. That position was maintained in her pleadings, in her affidavit filed prior to trial and in the evidence which she gave during the trial of the action.

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The Plaintiffs operate a commercial kennel and dog breeding operation and offer and advertise many different breeds of dog for sale. The Defendant replied to the Plaintiff's advertisement, made contact with their business known as "Paws R Us", and on April 6, 2002, purchased a Labrador retriever from them. For an additional fee, the Plaintiffs offer a one-year guarantee against any hereditary defect to be satisfied by providing a replacement dog. The Defendant declined to purchase the guarantee.

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After the delivery of the puppy, relations were quite cordial between the parties with frequent telephone and e-mail communications dealing with the progress of the dog and its well-being.

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In the spring of 2004, a problem arose with the then two-year old dog and it was diagnosed with hip displacea. Without informing the Plaintiffs, the Defendant opted to have the dog euthanized rather than undertake the expense of remedial surgery. Upon being advised of the problem, the Plaintiffs immediately offered to supply a replacement dog, without charge, and on April 9, 2004, the Defendant came to the premises of Paws R Us

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and received a golden retriever dog. The Defendant communicated by e-mail with the Plaintiffs through the months of April, May, June and July of 2004, giving, generally, good news of the new dog and its health.

About the beginning of August, 2004, the Defendant telephoned the Plaintiffs and advised that the new dog had developed mange and that she was going to shut the Plaintiffs business down. Thereupon, the Defendant began to post messages concerning Paws R Us Kennel on the internet, which messages and remarks the Plaintiffs consider defamatory. The Defendant posted comments on the internet during the period July, 2004 through April, 2005, and the following are examples of those postings on the Defendant's website identified as goldenblaze, Jordie & Blaze's Mom:

- A. *"Paws R Us Kennel in Shawville Quebec has sick puppy's with disease please stay away from them as they do not care what happens after you pay for you puppy and you are gone."*
- B. *"If you have not read my other post Paws are selling puppies with a disease and need to be closed as I feel it is indeed a puppy mill!"*
- C. *"Paws know at this time that I am going after them ful force to close them and make life better for many pets."*
- D. *"Hey we have a online petition going to close down puppy mills from their free abuse and neglect [...]."*
- E. *"This Place PAWS R US Shawville, Quebec is a PUPPY MILL! Please stop buying from them and tell others the same. [...] please stop the greed, many people have sick puppies from PAWS R US and they must be stopped!"*
- F. *"I started this thread to hope other would read before buying."*
- G. *"I know too well about their barn and puppies, very glad to know this posting did help someone from buying and having heartache after the puppy comes home. We ca make a difference if we keep going and stop people from buying."*

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H. *"Never ending till they are closed, I would never give up till they have all they need to close them for good."*

A great of evidence was led dealing with the question of whether or not the Plaintiffs kennel operation constituted a "puppy mill". It is common ground that the term "puppy mill" used in this sense is derogatory.

In a document issued by the Pet Industry Joint Advisory Council of Canada, in 2003, and repeated in the May, 2007 Code of Practise for Canadian Kennel Operations, a puppy mill is defined as follows:

"Puppy Mill: A high volume, sub-standard dog breeding operation, which sells purebred or mixed breed dogs to unsuspecting buyers. Some of the characteristics common to puppy mills are:

- Sub-standard health and/or environmental issues;
- Sub-standard animal care, treatment, and/or socialization;
- Sub-standard breeding practices which lead to genetic defects or hereditary disorders;
- Erroneous or falsified certificates of registration, pedigrees, and/or genetic background."

The Pet Industry Joint Advisory Council of Canada (hereinafter referred to PIJAC), publishes a further, more particular definition of "puppy mills" on its website. The further definition is as follows:

"The definition of a puppy mill is paramount in evaluating regulatory mechanisms appropriate to address the issue. Puppy mills are best defined as breeders who do one or more of the following:

- a) **Fail to follow acceptable standards of breeding,**
- b) **Fail to provide veterinary care and husbandry,**
- c) **Fail to provide socialization,**
- d) **Fail to provide safe housing,**
- e) **Fail to maintain sanitary facilities,**

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- f) Fail to transport in humane and safe manner, or
- g) Knowingly breed adult dogs with hereditary or genetic defects."

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Mr. Louis McCann, an inspector with PIJAC Canada, testified that in 2002, certain of the Plaintiff family were members of his association for the purpose of taking educational programs. They requested that an inspection be made of their premises and, in addition, PIJAC had received written complaints which generally are investigated by his office. McCann did attend the Plaintiffs facility on January 10, 2003 and did a thorough review of the buildings and operation, as a result of which he issued a very detailed report commenting on generally all aspects of the kennel operation. At the end of his report, Mr. McCann made the following conclusion:

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"Our visit enabled us to come out with a more detailed portrait of Paws R Us kennels and its owners. Care and attention to animal care and welfare is evident as demonstrated by all the established health protocols, working relationships with animal care professionals, and after sale support already put in place by this operation. Ms. Labombard's genuine interest in always trying to improve their operations was clearly demonstrated to us during our visit. We feel confident that the recommendations provided in this report will continue to help her in achieving these goals."

In his evidence, Mr. McCann stated, "what I found did not support a designation of a puppy mill".

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Doctor Aliva Jong, a graduate veterinarian, served as veterinarian for the facility through 2002 to 2004. She initially dealt with the Plaintiffs, in 1997, doing vaccinations for pups and later began visiting the farm regularly. In 1998, she did a walk-through to resolve health issues and make recommendations for improvements, which were followed to a large extent. She testified that the animals were healthy, save for occasional problems, and the recommendations she made for improvements were generally followed and the problems resolved. She stated categorically that the Plaintiffs facility is not a puppy mill; that they make every effort to provide

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care for the animals.

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Doctor Sylvie Choquette, a graduate veterinarian, replaced Doctor Jong in November, 2004, and was still caring for the animals at the time of the trial of this action. Her care includes regular visits to the farm every two weeks for purposes of vaccinating puppies, and generally caring for animals that present with problems. Doctor Choquette testified that the Plaintiffs' facility is not a puppy mill, and when referred to a definition of a "puppy mill" in the Code of Practise for Canadian Kennel Operations, she confirmed that the Plaintiffs premises would not fall within it. Finally, Doctor Choquette testified that she had been present at the Plaintiffs facility at the time of one of the visits there by Daniel Davenport of the Montreal Humane Society.

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Evidence was given by a series of witnesses who visited the premises, some on a number of occasions, and some of whom purchased dogs. All expressed satisfaction with the facility and the conditions which they found, as well as with the care and treatment of the animals demonstrated by the Plaintiffs. Most of them asserted that they would recommend the facility to others without hesitation.

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Mr. Jack Lang, the mayor of Claredon Township, where the Plaintiffs' facility is located, testified that his municipality received a number of out-of-province telephone calls of complaint with respect to "Paws R Us". He determined to visit the premises to see whether or not the complaints were justified, and whether or not any action was required on behalf the municipal council. He found that the dogs were in a good and clean environment, and found no justification for the complaints which had been received by his office.

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On behalf of the Defendant, evidence was led from a number of witnesses, some of whom have purchased animals from the Plaintiffs, some of whom had visited the premises of the Plaintiffs, and some who had received information about Paws R Us from others and in particular from the Defendant's website. Their evidence was, generally, negative with

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complaints with respect to the dogs which they had purchased, and very negative statements concerning the conditions which they had found at the facility of the Plaintiffs.

David Davenport is a peace officer in the Province of Quebec, an investigator for the Canadian Society for Protection of Animals and associated with the Montreal Humane Society. He stated that he had investigated puppy mills in the Province of Quebec and had been responsible for closing some of them. He readily confirmed his view that Paws R Us constituted a puppy mill, although he had taken no action against it. He stated that on his five visits to the premises, he made recommendations and gave advice to the Plaintiffs as to improvements which they might make, and he confirmed that most of his recommendations had been followed. His failure to act against the facility obviously contradicts his opinion of it.

The Plaintiffs, in addition to the affect of the defamatory comments made by the Defendant have suffered loss by reason of the Defendant's interference with the conduct of their business in the form of loss of contracts valued in the amount of \$9,050. In addition, they have been advised by numerous callers, who otherwise would have attended their premises to view and, perhaps, purchase an animal, that they would not do so by reason of having read the Defendant's postings on the Internet.

Although there was evidence of incidents of occasional health problems, some must be expected in a facility accommodating hundreds of animals. Such a facility must be attended with unusual levels of barking noise and with foul odors from time to time, depending on the climatic conditions. The Plaintiffs have testified that they constantly and carefully attended to the dogs and have never knowingly sold animals with any disease, or genetic problems.

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Having reviewed all of the evidence led by the parties, I find that the Plaintiffs' facility, known as Paws R Us, was not a "puppy mill" within the definitions which have been used for purposes of description, and that the Plaintiffs' facility is wrongly described in that respect. The Defendant's defamation of the Plaintiffs' personally is clear from certain of the internet postings alleging their lack of care for customers and their greed, and generally suggesting that they are of bad character.

The Defendant, in cross-examination, acknowledged that she was the author of the comments listed previously and that she believed them to be true. She also acknowledged that all of her postings to the internet were headed by the title, "Golden Boys, Jordie and Blaze's Mom".

A defamatory statement may be described as one which,

"...if published of, and concerning a person, is calculated to expose him to hatred, contempt, or ridicule, or to convey an imputation to him disparaging, or injurious to him in his trade, business, profession, calling, or office."

Knox v. Spencer [1923], 1 D.L.R., 162

Not only has the Defendant defamed the Plaintiffs, but the defamation is worsened by the use of the internet, which is said to be,

"...not only different, but more serious for purposes of damages than defamation in other media."

In the case of **Barrick Gold Corp. v. Lopehandia, [2004], O.J. 2329 (Ont. C.A.)**, Blair, J.A., stated as follows:

"...the internet is instantaneous, seamless, interactive, blunt, borderless and far-reaching. It is also impersonal, and the anonymous nature of such

communications may itself create a greater risk that the defamatory remarks are believed."

Barrick Gold Corp. v. Lopehandia, [2004], O.J. 2329 (Ont. C.A.)

The Defendant's action is particularly malicious in that her purpose was to close the business of the Plaintiffs', notwithstanding that she knew it to be the source of income and support for a family of some eleven persons.

In view of all of the circumstances, there will be Judgment for the Plaintiffs for damages for defamation, for interference with economic interests, and for interference with contractual relations in the amount of \$10,000, plus costs.

By Defendant's Claim, the Defendant seeks compensation and damages related to the care of the second dog supplied to her voluntarily and gratuitously by the Plaintiffs. I find no liability on the part of the Plaintiffs in this respect and the Defendant's Claim is dismissed without costs.

The Plaintiff in this action had brought an application for a finding of Champerty and Maintenance on the part of the Defendant. This matter has been reviewed and the application is hereby dismissed without costs.

As part of the conclusion of this matter, which has been the subject of numerous applications of one kind or another, any and all outstanding orders for costs in favor of one party or the other, which has not, to this date, been satisfied, is hereby set aside.

The Plaintiffs shall have costs of this action against the Defendant consisting of a counsel fee of \$3,000, plus \$1,000 on account of disbursements and post judgment interest at the court rate from the date from which this judgment is issued.

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Deputy Judge M. Galligan
Superior Court of Justice
(Small Claims Court)

RELEASED: *July 22, 2009*
Filed to both parties solicitors

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