

<b>CITATION:</b>		
<b>ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)</b> <b>CIVIL ENDORSEMENT FORM</b> <i>(Rule 59.02(2)(c)(i))</i>		
<b>BEFORE</b>	Justice Papageorgiou	<b>Court File Number:</b> CV-24-00733909-0000
<b>Title of Proceeding:</b> <div style="text-align: center; margin-top: 20px;"> <b>AIO ASSET CONSULTING LTD.</b> </div> <div style="text-align: right; margin-top: 0;">Plaintiff(s)</div> <div style="text-align: center; margin-top: 10px;">-v-</div> <div style="text-align: center; margin-top: 10px;"> <b>TUMMILLO et al</b> </div> <div style="text-align: right; margin-top: 0;">Defendants(s)</div>		

<b>Case Management:</b> <input type="checkbox"/> Yes If so, by whom:	<b>No</b>
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**Participants and Non-Participants:** *(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) <b>Plaintiffs</b>	Tanya Walker  Sobiga Kamalakaran	<a href="mailto:tanya@tcwalkerlawyers.com">tanya@tcwalkerlawyers.com</a>  <a href="mailto:sobiga@tcwalkerlawyers.com">sobiga@tcwalkerlawyers.com</a>		Y
2) <b>Defendants</b>				
3)				

<b>Date Heard:</b> <i>(Rule 59.02(2)(c)(iii))</i> <b>January 15, 2025</b>
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<b>Nature of Hearing (mark with an "X"):</b> <i>(Rule 59.02(2)(c)(iv))</i>				
<input type="checkbox"/> Motion	<input type="checkbox"/> Appeal	<input checked="" type="checkbox"/> Case Conference	<input type="checkbox"/> Pre-Trial Conference	<input type="checkbox"/> Application

<b>Format of Hearing (mark with an "X"):</b> <i>(Rule 59.02(2)(c)(iv))</i>			
<input type="checkbox"/> In Writing	<input type="checkbox"/> Telephone	<input checked="" type="checkbox"/> Videoconference	<input type="checkbox"/> In Person

If in person, indicate courthouse address:

The plaintiff brings a motion for:

- i. an order permitting this motion to be heard on an *ex parte* and urgent basis and dispensing of the need for service of the Notice of Motion dated January 10, 2025;
- ii. an interim and/or interlocutory injunction restraining and enjoining Evan Tummillo ("**Mr. Tummillo**"), Sarah Ann Lys ("**Ms. Lys**"), John Doe and Jane Doe, and/or anyone acting pursuant to the instructions of Mr. Tummillo and/or Ms. Lys (collectively hereinafter referred to as the "**IG Respondents**") from making, publishing, speaking, communicating or causing to be made,

published, communicated, or otherwise disseminated, any malicious, defamatory, fake or false statements or expression about the Plaintiffs on any website, social media platform, or in any manner whatsoever;

- iii. a mandatory injunction requiring the IG Respondents to delete/remove the IG Statements and delete the Defamatory Instagrams (defined below);
- iv. a mandatory injunction requiring Instagram Inc., Instagram LLC, and Meta Platforms Inc. (collectively hereinafter referred to as “**Meta**”) to remove from its platform the IG Statements and delete the Defamatory Instagrams; and
- v. an order requiring Meta to produce for inspection information necessary to obtain the identity of any other individual(s) behind the Defamatory Instagrams and the IG Statements published on Instagram.

**Relief Requested:** (Rule. 59.02(2)(c)(v))

**Ex parte**

1. The plaintiffs have provided case law that supports their request to have this matter heard ex parte with a return date. I allow this to proceed Ex parte.

**Interim Injunction Restraining the defendants.**

2. Elliot Whyte (“**Mr. Whyte**”) and his two companies, AIO Asset Consulting Ltd. (“**AIO**”) and SGI Realty Group Inc. (“**SGI**”) (collectively hereinafter referred to as the “**Moving Parties**”), carry on business in construction and real estate.
3. AIO has been in business since March 3, 2020 and SGI has been in business since November 30, 2022. AIO contracted with the Respondent, Mr. Tummillo to perform renovations at Mr. Tummillo’s residential property located at 34 Morland Road, Toronto, ON, M6S 2M8 (the “**Morland Property**”) (the “**Service Agreement**”). The Respondent, Ms. Lys is Mr. Tummillo’s girlfriend who is law student at Osgoode Hall Law School. AIO and Evan are currently in the midst of a contractual dispute concerning renovations (the “**Renovation Dispute**”), which is subject to arbitration.
4. The plaintiffs say that the defendants have launched a campaign of defamation against the Moving Parties on the social media platform Instagram by parties under the pseudonyms @my\_shitty\_contractor\_to and @allmightyboosh (the “**Defamatory Instagrams**”). They believe that the individuals behind the Defamatory Instagrams are the Respondents, Mr. Tummillo, Ms. Lyn, and their unnamed agents John Doe and Jane Doe (if any) (collectively, the “**IG Respondents**”) as the content published contains information which is only known to them. For example, one of the posts by @my-shitty\_contractor\_ features a video

of the interior of the Morland Property and was first published when the parties were corresponding about the Renovation Dispute.

5. The plaintiffs have provided evidence that the posts on Instagram say that the plaintiffs are criminal or “fraudsters” and tagging other businesses with whom he has a relationship. The plaintiffs’ business is a relationship business, and individuals have begun questioning the individual plaintiff as to his criminal record, which he says he does not have.
6. The plaintiffs have provided sufficient evidence and law to support the conclusion that they have raised a substantial interest to be tried as to whether the defendants have defamed them, as well as the fact that they would suffer irreparable harm if the injunction does not issue. I rely upon the case law set out in their factum.
7. As the court noted in *Maison Privé v. Moazzani*, 2020 ONSC 8199, “Technology [...] can proliferate defamatory and hateful content at remarkable speed, with the click of a button. Pictures and words can live indefinitely on the web, accessible to all. [...] it can [...] be dangerous [...] if used for malicious purposes.
8. Therefore, I order an interim injunction as requested restraining the defendants as set out in paragraph 2 above, pending return of the matter when it can be argued on a full record with a response from these defendants if they respond.

### **Mandatory Injunction**

9. Here the plaintiffs must demonstrate a strong prima facie case.
10. I am satisfied that the plaintiffs have demonstrated a strong prima facie case that it is the defendants who have made these posts.
11. Therefore, I also grant this order but reword it so that if it is ultimately determined that the defendants are not the ones who made these posts, they will not be in contempt by failing to remove them, if that is something they could not have accomplished.
12. I order that the IG Defendants remove any defamatory posts that they have made about the plaintiffs that suggest that they are criminal or fraudster or crooks or that they do not comply with their contractual obligations. Therefore, if they are the ones who have made the posts in Schedule “A” then they shall delete them. They shall also delete any images or videos of Mr. Whyte or any of his family members, or of 34 Morland Road, Toronto that they have published which are referenced on the Instagram account @my\_shitty\_contractor\_to and @allmightyboosh, which identifying details are attached to my order as Schedule “B”)

13. With respect to the Meta defendants, however, since they are the platform upon which the posts have been made, they shall delete the posts set out in Schedule "A" to the Order as well as any images or videos of Mr. Whyte or any of his family members, or of 34 Morland Road, Toronto referenced on the Instagram account @my\_shitty\_contractor\_to and @allmightyboosh, which identifying details are attached to my order as Schedule "B")
14. In my view, as noted there is a sufficient prima facie case.
15. If the Meta defendants take issue with this, the balance of convenience also favours an interim mandatory injunction in this regard because it is only for ten days and if upon the return of the matter they can satisfy someone that there are reasons why this order should not have been made against them, they can simply put the posts back up.

#### **Information from Meta**

16. With respect to the request for information from Meta, the plaintiffs rely on r. 30.04(5) where the court may order production for inspection of documents that are not privileged and that are in the possession, control or power of a party.
17. They say that Instagram Inc., Instagram LLC, and/or Meta Platforms Inc. (collectively, "**Meta**") are in possession, power and control of the information required to identify the author(s) behind the IG Accounts and the Defamatory Statements. Meta Platforms owns and operates Instagram Inc. and/or Instagram LLC. Meta is the only practicable source of the information available.
18. Meta is the only party to this herein motion that can confirm whether there are any unnamed agents of Mr. Tummillo and Ms. Lys behind the Defamatory Instagrams and/or the IG Statements. The Moving Parties have asked Meta for this information and for the Defamatory Instagrams to be deleted, but there was no response.
19. It is not clear to me why this is urgent and needed to be without notice. Rule 37 requires notice to all interested parties.
20. I am not making the order sought but directing that the plaintiffs serve Meta with its motion for production of materials. However, pending the service, I do make an Order that the Meta defendants preserve any information they have regarding the identity of the persons who made the posts attached to my order.

#### **Conclusion**

21. In making this order, I am cognizant of the strong interest in freedom of expression and the ability of home owners to be able to speak publicly. However, the plaintiffs have satisfied me that on an interim basis, pending argument, that the totality of the posts when read as a whole, would reduce their reputation in the

minds of the reasonable person. The plaintiffs have addressed the possible defences in their factum and materials and I also find that they have presented a prima facie case that these defences will not be successful, subject to the materials that they file which may paint a different picture.

22. In that regard, again, the balance of convenience favours a short interim injunction so that the irreparable harm does not continue. The short return date protects freedom of expression because it gives the defendants the opportunity to file materials and if they are successful, then the only impact to their freedom of expression will be temporary.

**Disposition made at hearing or conference (operative terms ordered):** *(Rule 59.02(2)(c)(vi))*

**The matter shall return on January 27, 2025 to be spoken to for one hour and/or argued if the defendants provide responding materials and wish to argue it at that time.**

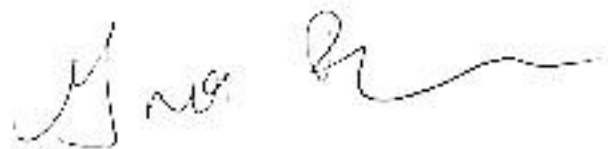
**Costs:** On a \_\_\_\_\_ indemnity basis, fixed at \$ \_\_\_\_\_ are payable  
by \_\_\_\_\_ to \_\_\_\_\_ [when]

**Brief Reasons, if any:** *(Rule 59.02(2)(b))*

**Additional pages attached:** ☐ Yes ☒ No

**January 15**, 20 **25**

Date of Endorsement *(Rule 59.02(2)(c)(iii))*



Signature of Judge/Associate Judge *(Rule 59.02(2)(c)(i))*