

Court File No. CV-20-00653410-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

**ANSON ADVISORS INC., ANSON FUNDS MANAGEMENT LP,
ANSON INVESTMENTS MASTER FUND LP and MOEZ KASSAM**

Plaintiffs

- and -

**JAMES STAFFORD, ANDREW RUDENSKY, ROBERT LEE DOXTATOR,
JACOB DOXTATOR, JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4 and OTHER PERSONS UNKNOWN**

Defendants

AND BETWEEN:

ROBERT LEE DOXTATOR

Plaintiff by Counterclaim

- and -

**ANSON ADVISORS INC., ANSON FUNDS MANAGEMENT LP,
ANSON INVESTMENTS MASTER FUND LP, MOEZ KASSAM,
ALLEN SPEKTOR and ANDREW RUDENSKY**

Defendants by Counterclaim

STATEMENT OF DEFENCE OF ANDREW RUDENSKY

1. The Defendant, Andrew Rudensky ("**Rudensky**"), admits none of the allegations contained in the Fresh as Amended Statement of Claim (the "**Claim**").

2. Rudensky either has no knowledge of or denies all other allegations in the Claim, except to the extent expressly admitted herein. Rudensky specifically denies that any of the Plaintiffs are entitled to any of the relief sought in paragraph 1 of the Claim.

Andrew Rudensky

3. Rudensky resides in Naples, Florida, USA.

4. Rudensky is a stock trader. Between approximately 2017 and January 2020, Rudensky traded stocks out of the office of the Delavaco Group headed by Andy DeFrancesco. Rudensky was not a partner or an employee in the Delavaco Group.

5. Rudensky has no relationship with the Defendants, Robert Doxtator and Jacob Doxtator.

6. Rudensky met the Defendant, James Stafford in 2018.

7. Rudensky denies having an *animus* against the Plaintiffs, Anson Advisors Inc., Anson Funds Management LP and Anson Investments Master Fund LP (together "**Anson**") or their principal, the Plaintiff, Moez Kassam ("**Kassam**") and/or blaming the Plaintiffs for the critical research findings of Hindenburg Research regarding Aphria Inc. Rudensky made money on trades of Aphria Inc. securities and did not suffer any meaningful losses as a result of any negative articles published about the company or about Andy DeFrancesco.

No Conspiracy

8. Rudensky denies having any involvement in the making and publication of the Unlawful Statements as defined in the Claim.

9. Rudensky denies entering into an agreement with any of the other Defendants to make and publicize the Unlawful Statements against the Plaintiffs with the predominant purpose of injuring them by damaging their business and reputation.

10. Rudensky further denies carrying out an alleged conspiracy with the other Defendants by any unlawful means with the knowledge that the Unlawful Statements would harm the Plaintiffs.

No False Light

11. Rudensky denies giving publicity to false allegations against the Plaintiffs that placed them in a false light. As set out above, Rudensky was not involved in making and publishing the Unlawful Statements.

12. In the alternative, there is no falsity in the Unlawful Statements for Rudensky to have knowledge of, or to have reckless disregard for. The Unlawful Statements are substantially true.

No Intentional Interference with Economic Relations

13. Rudensky denies making, assisting with, contributing to and/or publicizing any false, malicious, defamatory, or unlawful public statements about the Plaintiffs, Kassam

or other Anson personnel with the intent to harm the Plaintiffs' business and to damage their reputation.

14. In any event, there was no deception of third parties by the subject matter of the Unlawful Statements. Any harm to the Plaintiffs' reputation or business allegedly experienced is a direct result of the Plaintiffs' own conduct, including being the subjects of criminal and/or securities regulatory investigations, proceedings and orders in the United States.

No Appropriation of Personality

15. Rudensky denies purchasing the domain name www.MoezKassam.com or using it to publicize the Unlawful Statements. Rudensky also denies acquiring the email address info@moezkassam.com in furtherance of the alleged conspiracy.

16. In any event, Kassam is not a celebrity, and the acquisition of neither the domain name www.MoezKassam.com nor the email info@moezkassam.com constitutes an exploitation or appropriation of a proprietary right of Kassam to market his personality for commercial gain.

No Internet Harassment

17. Rudensky denies writing, publishing, disseminating, and publicizing any of the Unlawful Statements and further denies engaging in any "defamation campaign" against the Plaintiffs.

18. In any event, the writing, dissemination, and publication of the Unlawful Statements does not constitute “extreme conduct that is beyond all bounds of decency or tolerance,” and has not caused harm to the Plaintiffs.

No Defamation

19. Rudensky denies making the Unlawful Statements, including any and all alleged defamatory statements contained in the Claim.

20. In any event, the subject matter of the Unlawful Statements concerns the fairness and integrity of the capital markets, and the damage that is caused to companies and shareholders by the short-selling tactics allegedly employed by the Plaintiffs. This is a matter of public interest.

21. Furthermore, all of the alleged defamatory statements in the Unlawful Statements are either opinions or comments which are generally incapable of proof, or statements of fact that are substantially true. None of these constitute defamation.

This Action is an Abuse of Process, and a Proceeding That Limits Freedom of Expression on Matters of Public Interest

22. As set out above, Rudensky denies publicizing any defamatory statements. However, even if he had participated in making the Unlawful Statements alleged in the Claim, such matters are matters of public interest entitling the Defendants to bring a motion under s 137.1(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, to dismiss this claim. Rudensky reserves the right to do so at any time in this proceeding.

23. This proceeding was commenced in bad faith for the purpose of discouraging individuals from expressing themselves on matters of public interest related to the Plaintiffs' business practices and the corresponding fallout in the capital markets. If allowed to proceed, it will stifle broad participation in debates on these matters of public interest and defeat the objectives of s. 137.1 of the *Courts of Justice Act*.

General Defences

24. Rudensky denies that the Plaintiffs have suffered any damages and puts the Plaintiffs to the strict proof thereof.

25. In the alternative, if the Plaintiffs have suffered damages, which is not admitted but is expressly denied, such damages were too remote and unforeseeable and therefore not recoverable at law.

26. In addition, or in the further alternative, the Plaintiffs caused or contributed to some or all of any damages they may have suffered by engaging in the conduct outlined in some or all of the Unlawful Statements set out in the Claim. The Plaintiffs were contributorily negligent and Rudensky pleads and relies upon the relevant provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended.

27. In addition, the Plaintiffs have failed to take reasonable steps to mitigate any damages they may have suffered, including, but not limited to, seeking court orders requiring the ISP providers that host the relevant websites containing the alleged Unlawful Statements to remove them from the internet, and other steps.

28. The claim against Rudensky is scandalous, frivolous, vexatious, and an abuse of the process of this court. It is rife with improper pleadings, including the pleading of evidence, and was drafted for a different audience than this court.

29. Rudensky denies that the evidence pleaded in the Claim demonstrates his alleged involvement in the development and dissemination of the Unlawful Statements. Rudensky contests the authenticity of the alleged “Transcript #3” referred to in Appendix “E” of the Claim, which does not refer to him or any other speakers by name, and in which alleged conversation he has no recollection of participating. Rudensky further states that the Defendant, Robert Doxtator, has admitted under oath that he falsely accused Rudensky of participating in or contributing to the Defamatory Manifesto (as defined in the Claim) in his Whatsapp chat with Kassam on October 1, 2020, referenced in paragraph 98 of the Claim.

30. The Plaintiffs’ conduct in naming Rudensky in this action, in harassing his family with improper efforts to serve him, in improperly noting him in default and in obtaining default judgment against him are part of a calculated, high-handed and malicious effort to intimidate Rudensky. The Plaintiffs are pursuing Rudensky in the hopes of obtaining information or cooperation from him that may assist the Plaintiffs in pursuing the other Defendants and Andy DeFrancesco, the latter whom the Plaintiffs believe is involved in the conduct described in the Claim. However, Rudensky was not involved in the dissemination of the allegedly defamatory publications set out in the Claim.

31. Kassam specifically called Rudensky prior to adding him as a defendant in the action and told Rudensky that he was not the target of this lawsuit, and that Kassam

would leave Rudensky out of it if Rudensky assisted him in pursuing the other Defendants and Andy DeFrancesco. Kassam further threatened to name Rudensky in a Globe & Mail article if he did not comply with his demands for assistance.

32. The Plaintiffs' claims are statute-barred. Rudensky pleads and relies on the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, as amended, and the *Libel and Slander Act*, R.S.O. 1990, c. L.12, as amended.

33. Rudensky requests that the action be dismissed against him in its entirety, and that he be awarded full or substantial indemnity costs of the action and/or costs as provided for under s. 137.1 of the *Courts of Justice Act*.

January 29, 2024

BLANEY MCMURTRY LLP

Barristers and Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

John Polyzogopoulos (LSO #43150V)

Tel: (416) 593-2953

jpolyzogopoulos@blaney.com

Connor Allison (LSO #79878R)

Tel: (647) 776-7306

callison@blaney.com

Lawyers for the Defendant, Andrew
Rudensky

✓

TO: DAVIES WARD PHILLIPS & VINEBERG LLP

Barristers and Solicitors
155 Wellington Street West
Toronto, ON M5V 3J7

Matthew Milne-Smith (LSO #44266P)

Tel: (416) 863-5595

mmilne-smith@dwpv.com

Andrew Carlson (LSO #58850N)

Tel: (416) 367-7437

acarlson@dwpv.com

Maura O'Sullivan (LSO #77098R)

Tel: (416) 367-7481

mosullivan@dwpv.com

-and-

BENNETT JONES LLP

Barristers and Solicitors
37th Floor – 155 Wellington Street West
Toronto, ON M5V 3J7

Robert W. Staley (LSO #27115J)

Tel: (416) 863-1200

staleyr@bennettjones.com

Douglas A. Fenton (LSO #75001I)

Tel: (416) 863-1200

fentond@bennettjones.com

Dylan H. Yegendorf (LSO #85016M)

Tel: (416) 863-1200

yegendorfd@bennettjones.com

Lawyers for the Plaintiffs/Defendants by Counterclaim

AND

TO: KIM SPENCER McPHEE
Barristers and Solicitors
Suite 1203 – 1200 Bay Street
Toronto, ON M5P 2A5

Won J. Kim
Tel: (416) 349-6570
wjk@complexlaw.ca

Megan B. McPhee
Tel: (416) 349-6574
mbm@complexlaw.ca

Lawyers for the Defendants, James Stafford and
Jacob Doxtator

AND

TO: ROBERT LEE DOXTATOR
238 Ridge Rd.
Tyendinaga Mohawk Territory
Ontario, Canada K0K 1X0
harvestmoonresearch@gmail.com

Defendant/Plaintiff by Counterclaim

ANSON ADVISORS INC. ET AL

and

JAMES STAFFORD ET AL

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

STATEMENT OF DEFENCE OF ANDREW RUDENSKY

BLANEY MCMURTRY LLP

Lawyers

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

John Polyzogopoulos (LSO #43150V)

Tel: (416) 593-2953

jpolyzogopoulos@blaney.com

Connor Allison (LSO #79878R)

Tel: (647) 776-7306

callison@blaney.com

Lawyers for the defendant, Andrew Rudensky