IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ajvazi v. Century 21 Prudential Real Estate (Rmd) et al.,* 2024 BCSC 276

Date: 20240216
Docket: S227909
Registry: Vancouver

Between:

Jasar Ajvazi

Plaintiff

And

Century 21 Prudential Real Estate (Rmd) Ltd., City of Richmond, Malcolm Brodie, McCormack & Company Law Corporation, The Owners, Strata Owners Plan NW 87, Jody Marie Kovacs, Marvin Russell Evenson, Mark Albert Perley Mohr, Darren Chi-Ho Szeto

Defendants

Before: The Honourable Justice Blake

Reasons for Judgment
In Chambers

The Plaintiff, appearing in person:	J. Ajvazi
Counsel for the Defendant, McCormack & Company Law Corporation:	J.R. Lithwick
Counsel for Defendants, The Owners, Strata Plan NW87, Century Prudential Estates (RMD) Ltd., Jody Marie Kovacs, Marvin Russel Evenson, Mark Albert Perley Mohr and Darren Chi-Ho Szeto:	E.T. McCormack
Counsel for the Defendants, City of Richmond and Malcolm Brodie:	D. C. Russel
Place and Date of Hearing:	Vancouver, B.C. November 6-7, 2023
Place and Date of Judgment:	Vancouver, B.C. February 16, 2024

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I. INTRODUCTION

[1] Two applications were brought by the defendants: one by McCormack & Company Law Corporation (the "Law Corporation") and one by the City of Richmond and Malcolm Brodie (collectively, the "City of Richmond"). Both seek to strike the underlying notice of civil claim pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], without leave to amend, and for Mr. Ajvazi to pay the lump sum special costs of this application. The defendants, Century 21 Prudential Real Estate (Rmd) Ltd. ("Century 21"), the Owners, Strata Plan NW 87, and the individual members of the strata council, being Jody Kovacs, Marvin Evenson, Mark Mohr, and Darren Szeto (collectively, the "Strata"), did not bring a separate application, but consent to the relief sought by the Law Corporation and the City of Richmond, and agree it is appropriate that the notice of civil claim be struck in its entirety.

II. BRIEF BACKGROUND

[2] Mr. Ajvazi filed his notice of civil claim on October 3, 2022. The defendants characterize this notice of civil claim as yet another claim in a multitude of proceedings involving the plaintiff, the Law Corporation and the Strata.

[3] All allegations in the notice of civil claim arise from the plaintiff's ownership of the residential strata unit #218-6560 Buswell Street in Richmond, British Columbia ("Unit #218"). Mr. Ajvazi's position is that he did nothing contrary to the *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*], and yet for some reason that is inexplicable to him, he ended up losing Unit #218 and he and his family became homeless. At its heart, his position appears to be that he had $15,000 in funds held with the Strata, and notwithstanding that he admits he owed the Strata money, they inappropriately refused to produce a Form B upon his request and so frustrated his efforts to access those funds to pay the amounts due and owing. He says in doing so, the Strata breached his rights as a strata owner and his human rights. His position in oral submissions was that a hard-working, multicultural family should not be harassed, targeted and treated unfairly, and should not lose their home in these circumstances.

He eloquently argued that he did not deserve this to happen to his family, and he has never understood how it happened.

[4] It is therefore necessary to review briefly the historical background of the many disputes between the parties, and the previous proceedings, to put these applications to strike into the appropriate context.

[5] The Law Corporation has been counsel for the Strata, in relation to various disputes with the plaintiff, from 2015 to date.

[6] In approximately November 2015, there was a water leak in the condominium building, caused by a water leak which originated from Unit #218.

[7] On or about January 14, 2016, in response to a complaint of construction without a permit, the City of Richmond building department inspected Unit #218. During the inspection, inspectors discovered multiple alterations to the unit for which no plans had been submitted, and no building or plumbing permit applications were sought or granted.

[8] Throughout 2016, the plaintiff was instructed to apply for and obtain the necessary permits, and to submit for further inspections, but throughout 2016, these efforts were unsuccessful.

[9] On December 27, 2018, the Strata, still represented by the Law Corporation, was awarded damages against the plaintiff in a small claims action, in the amount of $5,536.96, arising from the water leak originating in Unit #218 (“Small Claims Judgment”).

[10] On February 2, 2019, in response to a complaint from the Strata that the possible removal of a load bearing wall in Unit #218 was causing or contributing to roof ponding, the City of Richmond again inspected Unit #218 and ordered the plaintiff to restore a party wall to original condition and obtain permits for all other alterations and changes made to Unit #218. These efforts to obtain the plaintiff’s voluntary compliance were unsuccessful. The file was turned over to the Richmond

Bylaws department for enforcement of the City of Richmond, Bylaw No. 7230, *Building Regulation Bylaw* (11 March 2002), and further efforts to make contact and garner voluntary compliance were unsuccessful.

[11] The Law Corporation continued to represent the Strata in legal proceedings relating to arrears due and owing to the Strata from the plaintiff. On September 11, 2019, the Strata registered a lien against Unit #218 in the Land Title Office, pursuant to s. 116 of the *SPA*. The basis for that lien was the plaintiff's failure to pay the outstanding arrears.

[12] In oral submissions, the plaintiff made clear his personal belief that the Strata's lawyer inappropriately encouraged the Strata to sue him, which he identified as the basis of his claim against her.

[13] On September 26, 2019, City of Richmond bylaw officers and inspectors executed Entry Warrant SW #19-00237 at Unit #218, and again observed and recorded unauthorized alterations in Unit #218, including removal of walls, creating potentially unsafe conditions in the building. On November 7, 2019, the City of Richmond issued an order to comply, requiring the plaintiff to obtain permits for unauthorized and unpermitted alterations and to have a structural review of Unit #218 completed.

[14] The plaintiff retained a structural engineer, and in February 2020, the structural engineer confirmed that the removal of the partition wall in Unit #218 was not causing or contributing to the roof ponding. The City of Richmond acknowledged receipt of this engineering advice and again requested that the plaintiff apply for permits relating to all unauthorized and unpermitted construction in Unit #218, but he refused to do so.

[15] On March 17, 2020, the City of Richmond laid charges pursuant to the *Building Regulation Bylaw* and in accordance with the *Offence Act,* R.S.B.C. 1996, c. 338. The trial of these charges was held on November 26 and 27, 2020. The judicial justice found the plaintiff guilty of three of the charges and others were stayed.

A penalty of $6,000 was imposed, which was payable in 12 months, and the Court ordered injunctive relief requiring the plaintiff to apply for permits and complete all required work to obtain final approval. The plaintiff did not appeal this decision, did not apply for permits, and did not pay the penalty as ordered.

[16] On December 29, 2020, the Strata filed a petition in the New Westminster British Columbia Supreme Court Registry, seeking an order for sale of Unit #218 pursuant to the *SPA* (the "Sale Petition"). The Law Corporation continued to represent the Strata in this petition.

[17] On May 14, 2021, an Associate Judge heard the Sale Petition and granted judgment to the Strata in the amount of $4,418.08 (plus any further unpaid amounts accruing). The plaintiff was given a 60-day redemption period expiring July 13, 2021, after which the Strata was granted exclusive conduct of the sale of Unit #218. The Strata was also awarded reasonable legal costs, land title and court registry fees and other reasonable disbursements in relation to the Sale Petition (the "Sale Petition Costs").

[18] The plaintiff says he tried to explain to the Associate Judge that he wanted to pay the amounts due and owing out of the $15,000 he says had secured with the Strata, and that he needed a Form B produced by the Strata, but in any event, he understood he had 60 days to redeem the property, and he intended to do so. The plaintiff did not appeal Associate Judge's order, as he says he did not need to, because he argues he had paid everything she ordered him to pay, other than the reasonable legal fees which were to be assessed.

[19] Notwithstanding any efforts he may have made to redeem the property, the amount due and owing by the plaintiff was not paid. On October 20, 2021, a judge of this court granted an order for the sale of Unit #218, with a completion date of November 4, 2021 (the "Order for Sale"). He ordered that if the parties could not agree on the amount owing by the plaintiff to the Strata on account of the Sale Petition Costs, then $70,000 from the sale of Unit #218 was to be paid into court as security for those costs (the "$70,000 Security Order"). Again, the plaintiff's

position is that he explained to the judge that he had paid all the amounts ordered to be paid and that he offered reasonable legal fees, but he did not believe he was heard.

[20] The plaintiff brought a short-notice application seeking to vary the terms of the Order for Sale, which application was dismissed. The sale of Unit #218 completed on November 4, 2021. Some of the sale proceeds were used to pay the outstanding Small Claims Judgment and $70,000 was paid into court as security for the defendant Strata's unassessed costs pursuant to the $70,000 Security Order.

[21] On October 30, 2021, the plaintiff sent a copy of what appeared to be a complaint against the Strata and the Law Corporation to the Human Rights Tribunal to the Strata's strata manager.

[22] On February 1, 2022, the plaintiff commenced a petition against the Strata in the Supreme Court (the "Plaintiff's Petition"). The substance of this petition appears to be a challenge to the court-approved sale of the Unit #218. It contains claims relating to the sufficiency of the purchase price and claims reimbursement of realtors' fees paid in relation to the sale.

[23] The Law Corporation was not a named party in the Plaintiff's Petition; however, the petition contained allegations against the Law Corporation (and others), similar to those made in this action. In relation to the Law Corporation, the plaintiff alleged, among other things, that the Law Corporation was engaged in spiteful and surreptitious behavior and that:

a) the Law Corporation assured the Strata that it "has connection" in Westminster Supreme Courts;

b) the Law Corporation's conduct in the small claims action cast doubt on the lawyer's competence and reflected adversely on the integrity of the legal profession, and amounting to "professional misconduct"; and

c) the Law Corporation made “offensive racially comments" against the judge in the small claims action and against the plaintiff, encouraging conflicts between the owners, provoking violence against the plaintiff and committing “Crimes, and Fraud".

[24] In response, the Law Corporation filed a response to petition, noting, among other things, that it is improper to bring Supreme Court proceedings in order to challenge existing orders in other proceedings made by other judges. On March 9, 2022, the Strata filed an application to strike the Plaintiff’s Petition pursuant to Rule 9-5 of the *Rules.*

[25] The plaintiff amended the Plaintiff’s Petition on March 25, 2022. On March 29, 2022, the parties appeared in court, at which time the proceedings were stayed and the plaintiff was given 30 days to amend his petition. He did so, and filed a further amended Plaintiff’s Petition on April 28, 2022, seeking relief relating to legal fees and damages allegedly incurred as a result of the sale of Unit #218.

[26] On September 6, 2022, the plaintiff applied to the Court of Appeal for leave to appeal the Order for Sale, and for an extension of time to apply for leave to bring his appeal. The Court of Appeal denied leave on September 28, 2022.

[27] The plaintiff then commenced this proceeding on October 3, 2022. In this petition, he has added the Law Corporation, the Mayor of Richmond, the City of Richmond, and the individual members of the defendant Strata council.

[28] On November 1, 2022, the Strata filed an application to strike the Plaintiff’s Petition, and sought a vexatious litigant order. That application was set for hearing on December 5, 2022. The Plaintiff’s Petition was dismissed by consent, with partial special costs awarded to the Strata. The application to have the plaintiff declared a vexatious litigant was adjourned. At that hearing, the plaintiff acknowledged that he understood that it was not the appropriate procedure to bring a proceeding to have a judge of this court overrule another judge’s ruling. He also acknowledged that he understood that it was not possible to sue under the *Criminal Code*, R.S.C. 1985, c.

C-46 in civil court. The special costs awarded to the Strata have not yet been assessed.

[29] The within applications were filed by the Law Corporation on January 11, 2023, and by the City of Richmond on January 12, 2023, and both were set for January 31, 2023. There were a number of adjournments of this hearing, most occurring because no judge was available to hear the applications. The matter has previously come before this court for hearing on January 12, 2023, May 31, 2023, July 20, 2023, and September 7, 2023.

[30] The assessment of the Sale Petition Costs was heard for five days before Registrar Gaily, commencing on May 15, 2023. Registrar Gaily assessed the Strata's costs in the Sale Petition at $95,617.55, and she awarded $25,000 in special costs to the Strata for the cost assessment hearing (the "Registrar's Decision"). Her reasons note that the plaintiff did not attend at the pre-hearing conference, although duly served, and did not provide a written list of objections to the Strata as ordered to do at the pre-hearing conference. Registrar Gaily noted in her reasons for judgment:

> [11] The assessment, which was set for five days, concluded after three days. Mr. Ajvazi left the hearing at the lunch break of the second day, asserting that he intended to both appeal any decision I made and seek my disqualification as registrar, ostensibly because I had accepted the evidence of the process servers the Strata Corporation retained, which confirmed that Mr. Ajvazi had been served with the appointment and supporting materials, and because I had advised him I did not have jurisdiction to hear his claim for damages against the Strata Corporation. Although I cautioned Mr. Ajvazi that the assessment would proceed in his absence, he did not return.
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> …
>
> [13] ...While in attendance, Mr. Ajvazi was disruptive and disrespectful to the Court and to the Strata Corporation's counsel, frequently interrupting to object to the submissions and evidence, as well as to the Court's directions. Despite the explanation of the purpose of the S. 118 Costs assessment and the nature of the evidence tendered for the assessment, Mr. Ajvazi repeatedly alleged that counsel was committing perjury because the evidence in the McCormack Affidavit, which speaks to the S. 118 Costs claimed, was not before presiders at the Lien enforcement proceedings...

> [14] When I advised Mr. Ajvazi that his conduct was disrespectful of the Court, he accused me of being racist, disrespectful and bullying. He alleged that I had threatened him and scared him, and that his human rights were being violated. Throughout the Lien enforcement proceedings, Mr. Ajvazi has repeatedly levelled similar allegations against the Strata Corporation's counsel, strata council members and Century 21 PEL staff, as well as raising them before other presiders, and in complaints he filed with the Law Society of British Columbia ("LSBC") and the British Columbia Human Rights Tribunal ("BCHRT") in the midst of the enforcement proceedings.
>
> [15] This is only a sample of the conduct the Strata Corporation and its counsel dealt with from the time the Lien was registered through to the assessment hearing.

[31] The plaintiff has filed a notice of appeal of the Registrar's Decision, in which he makes allegations of professional misconduct against two lawyers at the Law Corporation, and allegations they violated s. 372 of the *Criminal Code.*

[32] Before the July 20, 2023 scheduled hearing, the plaintiff set two notices of application returnable on June 30, 2023. These two notices of application continued to make allegations of improper conduct, and sought various relief, including the dismissal of these two applications. On June 30, 2023, Justice Kent adjourned the plaintiff's two applications generally, and imposed a stay of all further proceedings pending resolution of these two applications to strike (the "June 2023 Order"). The Law Corporation was awarded $800 in special costs, payable by July 14, 2023. These costs have not been paid, and the plaintiff has appealed the June 2023 Order.

[33] On July 17, 2023, the plaintiff filed two documents in court, both entitled "Responding to Notice of Application, Joined Application, General Application", which were application responses to the two application responses, and in which he also purported to obtain a variety of court orders.

[34] At the July 20, 2023 hearing, the parties appeared but again there were no available judges, and the matter was adjourned to September 7, 2023. On that date, this matter came before me, but due to inadvertence, the plaintiff had not been served with a requisition resetting these applications to that date. I seized myself of

these two applications, asked the court clerk to email the plaintiff with resources for self-represented litigants, and set down a judicial management conference to occur on September 27, 2023. At that judicial management conference, all parties appeared. I set out my expectations with respect to how evidence was to be tendered at the substantive hearing, and my concern with flaws in the plaintiff's notice of civil claim, application response and affidavit. I also ordered filing schedules for amended materials.

[35] The plaintiff filed an amended response to application on October 4, 2023 (the "Amended Response"), another affidavit on October 10, 2023 (the "Affidavit"), and an amended notice of civil claim on October 10, 2023 (the "ANOCC"). While there were initially concerns over whether all parties had full copies of the plaintiff's filed materials, that concern was addressed, and all parties were satisfied at this hearing that they had a complete set of the relevant materials for these two applications to proceed on November 6, 2023.

[36] While counsel for the defendants noted that the plaintiff did not have leave to file an amended response to application, all parties agreed that it was appropriate for this application to proceed on the basis of the Amended Response, the Affidavit and the ANOCC.

III. ISSUES

[37] The issue that I must determine is whether the applicants have established that it is appropriate to strike the notice of civil claim pursuant to Rule 9-5(1) of the *Rules*.

IV. APPLICABLE LEGAL PRINCIPLES

A. Required Contents of a Notice of Civil Claim

[38] Rule 3-1(2) sets out the necessary contents of a notice of civil claim. It provides:

> **Contents of notice of civil claim**
>
> (2) A notice of civil claim must do the following:

> (a) set out a concise statement of the material facts giving rise to the claim;
>
> (b) set out the relief sought by the plaintiff against each named defendant;
>
> (c) set out a concise summary of the legal basis for the relief sought;
>
> (d) set out the proposed place of trial;
>
> (e) if the plaintiff sues or a defendant is sued in a representative capacity, show in what capacity the plaintiff sues or the defendant is sued;
>
> (f) provide the data collection information required in the appendix to the form;
>
> (g) otherwise comply with Rule 3-7.

[39] The purpose of a notice of civil claim is to clearly and precisely set out the material facts, applicable law, and the relief sought. In *Sahyoun v. Ho,* 2013 BCSC 1143, Justice Voith (as he then was) stressed that it is a mandatory requirement that a notice of civil claim "set out a concise statement of the material facts giving rise to the claim" and "set out a concise summary of the legal basis for the relief sought": at para. 23. This requirement is directed to promote clarity. A material fact is one that "is essential in order to formulate a complete cause of action": *Sahyoun* at para. 25.

B. Application to Strike a Notice of Civil Claim

[40] Rule 9-5 sets out the grounds under which the court may strike out a notice of civil claim. It provides:

> **Scandalous, frivolous or vexatious matters**
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[41] The applicants rely upon Rules 9-5(1)(a), (b) and (d).

[42] In *Gateway Building Management Limited v. Manjit Singh Randhawa,* 2013 BCSC 350, Justice Burnyeat described the test pursuant to Rule 9-5(1) as follows:

> [16] The test to be applied to determine whether an action should be struck out as disclosing no reasonable claim requires a conclusion that, assuming that the facts as stated or even if amended are true, those facts disclose no cause of action, the pleadings disclose no arguable issue, and it is plain and obvious that the claim cannot succeed. If there is a chance that the action may succeed, then the Petition and the Action should be allowed to proceed: *Hunt v. Cary Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959.
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> [17] In *Dempsey v. Envision Credit Union*, 2006 BCSC 750, Garson J., as she then was, provided the following summary of Rule 9-5 jurisprudence:
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> > In summary, a pleading will be struck out if:
> >
> > (a) the pleadings are unintelligible, confusing and difficult to understand (*Citizens for Foreign aid Reform*, [*Citizens of Foreign Aid Reform Inc. v. Canadian Jewish Congress* (1999), 1999 CanLII 5860 (BC SC), 36 C.P.C. (4th) 266 (B.C.S.C.)]);
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> > (b) the pleadings do not establish a cause of action and do not advance a claim known in law (*Citizens for Foreign aid Reform*, *supra*);
> >
> > (c) the pleadings are without substance in that they are groundless, fanciful and trifle with the Court's time (*Borsato v. Basra*, [2000 BCSC 28 (CanLII), [2000] B.C.J. No. 84 (S.C.)])
> >
> > (d) the pleadings are not bona fides, are oppressive and are designed to cause the Defendants anxiety, trouble and expense (*Borsato v. Basra*, *supra*);
> >
> > (e) the action is brought for an improper purpose, particularly the harassment and oppression of the Defendants (*Ebrahim v. Ebrahim*, 2002 BCSC 466).
> >
> > (at para. 17)
>
> [18] Pursuant to Rule 9-5, pleadings that are so prolix and confusing that it is difficult, if not impossible, to understand the case to be met should also be struck out: *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473, at para. 36.

[43] The court may strike a claim pursuant to Rule 9-5(1)(a). No evidence is admissible on such an application: Rule 9-5(2). The test is whether it is “plain and obvious”, assuming the facts pleaded to be true, that the claim discloses no reasonable cause of action, has no reasonable prospect of success, or is certain to fail.

[44] Where it is plain and obvious a claim discloses no reasonable cause of action, and is thus bound to fail, it should be struck pursuant to Rule 9-5(1)(a). The material facts as set out in the notice of civil claim are taken to be true, and evidence is not to be considered on such an application: *R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42 at para. 23 [*Imperial Tobacco*].

[45] When insufficient material facts have been pleaded to support each element of a cause of action, then a cause of action is bound to fail. The facts as pleaded are the basis upon which the possibility of success of the claim must be evaluated: *Imperial Tobacco* at para. 22.

[46] It is not appropriate to consider the possibility that, as the case progresses, new evidence may be revealed: *Imperial Tobacco* at para. 23. Rather, the exercise is whether, taking the material facts pleaded as true, the notice of civil claim discloses a cause of action.

[47] When deciding whether pleadings disclose a cause of action, the judge should read them generously, err on the side of permitting novel but arguable claims to proceed, and accommodate inadequacies in form to the extent reasonable by allowing for proposed amendments to cure deficient drafting. Nevertheless, for a claim to be allowed, the prospect of success must be reasonable, not speculative, taking into account the salient law and the litigation context: *Imperial Tobacco* at paras. 21–25.

[48] An effectively pleaded cause of action must include sufficient material facts to support each element of the cause of action: *Imperial Tobacco* at para. 22. The material facts giving rise to the claim, or that relate to the matters raised in the claim, must be concisely set out. This obligation was explained by Chief Justice McLachlin, as she then was, in *Imperial Tobacco* in the context of a motion to strike at para. 22:

> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is

> admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.
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> [Emphasis added.]

[49] However, assertions that are based on assumption and speculation need not be taken as true, and it is appropriate to look behind mere allegations, and it may be appropriate to subject the allegations to a skeptical analysis: *Grosz v. Royal Trust Corporation of Canada*, 2020 BCSC 128 at paras. 58, 60.

[50] The court may also strike a claim pursuant to Rule 9-5(1)(b). Evidence is admissible on such an application, and the applicant must establish that the notice of civil claim "is unnecessary, scandalous, frivolous or vexatious": Rule 9-5(1)(b). A court may strike a claim if "it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources": *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 65–66.

[51] Finally, the court may strike a claim under Rule 9-5(1)(d) if it is an abuse of process. Evidence is admissible on an application to strike pursuant to Rule 9-5(1)(d). Abuse of process is a flexible doctrine, allowing the court to dismiss claims if the court's process is being used for improper purposes. It is a flexible doctrine "unencumbered by specific requirements": *Krist v. British Columbia*, 2017 BCCA 78 at para. 52.

[52] The abuse of process doctrine is designed to prevent actions that violate principles of judicial economy, consistency, finality and the integrity of the administration of justice. It prevents re-litigation, essentially for the purpose of preserving the integrity of the court's process. Collateral attack is one application of

the larger doctrine of abuse of process. To determine whether a claim constitutes a collateral attack, a judge must inquire into whether the claim, or any part of it, is an appeal of an order: *Sood v. Hans*, 2023 BCCA 138 at paras. 51–58. Where the substance of a proceeding concerns the same substance as that of a prior, determined, proceeding, it will constitute an abuse of process: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 35–37 [*CUPE*]. The doctrine of abuse of process also encompasses the doctrine of ulterior or improper purpose, and the principle of *res judicata.*

[53] The court may consider whether its processes are being used dishonestly or unfairly, or for some ulterior or improper purpose. Bringing a series of successive related proceedings is an abuse of process, even where the plaintiff genuinely believes that earlier decisions were wrong or unfairly reached: *Grosz* at para. 65.

[54] When a notice of civil claim is inadequately drafted, then a party will generally be given an opportunity to re-draft it. However, where it is plain and obvious that a re-drafted pleading is bound to fail as it does not raise an arguable issue, then a party will not be granted the opportunity to re-draft: *Strata Plan LMS3259 v. Sze Hang Holdings Ltd.,* 2009 BCSC 473 at para. 40. Leave to amend is not appropriate in cases where allowing that to occur would violate the principles of judicial economy, consistency and finality, and would undermine the integrity of the administration of justice: *Stein v Keebler,* 2019 BCSC 1338 at para. 28 [*Stein*].

V. ANALYSIS

A. Mr. Ajvazi's Position

[55] The plaintiff followed my directions at the judicial management conference, and took steps to file an ANOCC, an Amended Response, and another Affidavit in support of his Amended Response. Counsel agreed that he tempered his language in those amended pleadings, and removed some claims, but nonetheless still maintain their position that his ANOCC is still deficient, and fails to comply with the *Rules*. While Mr. Ajvazi is to be commended for attempting to comply with our *Rules*

of Court, I nonetheless must conclude that his ANOCC fails to comply with the *Rules*. It does not contain a concise statement of material facts giving rise to a cause of action (or causes of action). It is an unfortunate cut and paste job from the Affidavit and the Amended Response. The resulting pleading is lengthy, repetitive, confusing and impossible to understand. It fails to identify properly the legal relief sought, and fails to set out a comprehensible summary of the applicable law. For that reason alone, I must strike the ANOCC in its entirety.

[56] However, the fundamental issue I must determine in these applications is whether it is appropriate to give the plaintiff another opportunity to amend the ANOCC, or whether it is appropriate in these circumstances to strike the ANOCC without leave to amend.

[57] The plaintiff, in oral submissions, identified the basis upon which he is bringing the ANOCC. As I understood his arguments, he argues that when you buy a condominium, you are governed by the *SPA*. He believes that it is inappropriate that he is now homeless, when he believes that according to the *SPA*, he has done nothing wrong. He argues that he had $15,000 on deposit with the Strata, reserved for special levies, and that any judgment ordered against him—such as the Small Claims Judgment—should properly have been paid out of that. He says that he requested that the Strata sign the Form B, which would have allowed him to use those funds for the Small Claims Judgment, but the Strata chose not to and decided to pursue him in the Supreme Court of British Columbia. He argues that he tried to explain this to the associate judge and judges who adjudicated previous proceedings, but was unsuccessful. He is critical of other judicial officers, and makes serious accusations as against them. He likewise makes serious allegations that unnamed defendants, and their counsel, have committed perjury. He summarized that he believes his multicultural family was harassed and targeted improperly, and that no one has effectively explained to him why he and his family ended up homeless.

B. The Law Corporation

[58] The plaintiff argues that the Law Corporation encouraged the Strata to sue him, improperly and in violation of the *SPA*, and in violation of his human rights. While the relief he seeks is difficult to ascertain, it appears he seeks the following: a remedy against the Law Corporation in the amount of the lien that was registered against Unit #218 on September 11, 2019; a declaration the Law Corporation committed fraud against the Strata by wrongly causing it to pay legal fees of over $90,000; lump sum costs in an unspecified amount; and damages for loss of value of Unit #218.

[59] First, the plaintiff's various allegations against the Law Corporation are speculative and based on assumptions, including assumptions pertaining to what legal advice was provided. However, a careful review of the ANOCC and of the plaintiff's oral submissions makes clear that his claims as against the Law Corporation relate to the services provided to the Strata in the Sale Petition, and to the Strata in determining the special costs from the Sale Petition at the Registrar's Decision.

[60] It is well established the only party to whom a lawyer owes an actionable duty is to his or her client: *Singh v. Nielson*, 2016 BCSC 2420 at para. 18; *Babich v. Urban Land Holdings Ltd.,* 2022 BCSC 1070 at para. 49(i). As explained by Justice Verhoeven in *Singh*:

> [20] In particular, allegations that counsel for the opposing party has misled or intentionally deceived the court resulting in decisions or rulings unfavourable to the claimant do not found actionable breaches of any private duty owed to the claimant: *Gateway Building Management Limited v. Manjit Singh Randhawa*, 2013 BCSC 350, at paras. 23 – 26. If it were otherwise, there would be no end to such litigation.
>
> [21] The real causes of the losses that the plaintiffs complain of are the orders themselves, not the conduct of counsel for the Board. Their alleged damages relate to the orders and their consequences. Both orders were consented to by counsel for the plaintiffs (first Kajoba, then Pyper), and were not appealed. The allegation that the losses alleged by the plaintiffs flow from Nielsen's conduct cannot succeed. Therefore, the plaintiffs' claims against him must fail.

[61] The plaintiff's argument is that the Law Corporation wrongly pressured the Strata to sue and to seek reimbursement of their actual legal fees. This claim must fail as one that is not properly actionable at law. Therefore, the ANOCC must be struck as against the Law Corporation pursuant to R. 9-5(1)(a) as it discloses no reasonable cause of action.

[62] Second, to the extent the plaintiff raises arguments his human rights have been abused, the Human Rights Tribunal has exclusive jurisdiction to adjudicate all complaints of human rights abuses. This Court has no power to consider any such claims at first instance: *Van Beest v. Canadian Mental Health Association*, 2006 BCSC 381 at para. 37. Likewise, to the extent he raises arguments of discrimination, there is no independent cause of action for discrimination, and any such claims must be brought as a breach of the *Human Rights Code*, R.S.B.C. 1996, c. 210: *Honda Canada v. Keays*, 2008 SCC 39 at paras. 63–64.

[63] Finally, a claim may be struck pursuant to R. 9-5(1)(b) when it is unnecessary, scandalous, frivolous or vexatious. A pleading is unnecessary or vexatious if it does not go to establishing a cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Nevsun* at para. 65. Vexatious litigation includes bringing an action to determine an issue which has already been determined by a court of competent jurisdiction. In determining whether a proceeding is vexatious, it is necessary to review the history of the matter, and not merely whether there was originally a good cause of action. I find the pleading is unnecessary or vexatious, as it fundamentally seeks to relitigate matters which have already been finally determined by this court. The plaintiff seeks to attack and undermine previous proceedings, and seeks to argue matters that should properly have been raised in those prior proceedings. The fact the plaintiff has now drawn several new parties into this proceeding does not alter this conclusion.

[64] The claims as articulated by the plaintiff are clearly to re-litigate those matters which have been previously determined against him in previous litigation. This is an attempt to improperly re-litigate matters, and as such is also an abuse of process under R. 9-5(1)(d): see *Stein* at para. 25; *CUPE* at paras. 35–37.

[65] As a result, I am satisfied that the claim as against the Law Corporation should be struck pursuant to Rule 9-5(1)(a) on the basis that the ANOCC discloses no reasonable cause of action as against the Law Corporation. I am also satisfied it should be struck pursuant to Rule 9-5(1)(b) on the basis it is unnecessary, scandalous, frivolous or vexatious. Finally, I am also satisfied that it should be struck pursuant to Rule 9-5(1)(d) on the basis it is an abuse of process.

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[66] As noted above, there was a previous bylaw prosecution which led to a trial before a judicial justice on November 26 and 27, 2020. The judicial justice found the plaintiff guilty of three of the charges and others were stayed. A penalty of $6,000 was imposed, which was payable in 12 months, and the Court ordered injunctive relief requiring the plaintiff to apply for permits and complete all required work to obtain final approval. The plaintiff did not appeal this decision. In the ANOCC, the plaintiff appears to assert that actions of the City of Richmond employees were wrongful in the course of their investigation into the breach of the bylaws that ultimately led to the determination by the judicial justice.

[67] Again, the plaintiff tempered his language in the ANOCC and removed many of the serious allegations as against Mayor Brodie. While the relief he seeks is difficult to ascertain, it appears he seeks the following: a declaration they (jointly with Century 21) damaged the plaintiff's property and are jointly and severally liable for damages; a declaration they (jointly with Century 21) discriminated against him contrary to the *Human Rights Code*; lump sum costs in an unspecified amount; and damages for loss of value of Unit #218.

[68] As already set out above, to the extent that the ANOCC attempts to make a claim for harassment, or for a breach of the *Human Rights Code*, such causes of action are inappropriate to be brought before this Court, and must be struck.

[69] Likewise, to the extent that the plaintiff is claiming an entitlement to a remedy based upon breaches of the *Criminal Code*, he fails to set out any bases upon which he would be entitled to seek damages in a civil action arising from alleged criminal activity: *Anderson v. Double M. Construction Ltd.*, 2021 BCSC 1473 at para. 70.

[70] In the ANOCC, the plaintiff makes a number of references to his family, and to suffering they experienced. They are not plaintiffs in this action, and the plaintiff may not recover damages for any alleged mental or physical health problems they have suffered as a result of these events.

[71] If the plaintiff is bringing a cause of action as against the City of Richmond in negligence, he has failed to set out clearly the material facts underlying such a claim, and the legal basis for such a claim. The necessary elements of a negligence claim are: (1) the defendant owed the plaintiff a duty of care; (2) the defendant's conduct breached the standard of care; (3) the plaintiff suffered compensable damages; and (4) the defendant's breach caused the plaintiff's damages in fact and law: *1688782 Ontario Inc. v. Maple Leaf Foods Inc.,* 2020 SCC 35 at para. 18. The ANOCC does not properly plead any of these necessary elements.

[72] However, it is clear from the evidence that on September 26, 2019, City of Richmond bylaw officers and inspectors executed Entry Warrant SW #19-00237 at Unit #218, and again observed and recorded unauthorized alterations in Unit #218. That is the latest time that any alleged damage could have occurred. Events after that date involved the proceedings in provincial court, and did not involve physical inspections of Unit #218. The notice of civil claim was filed on October 3, 2022, more than 2 years after this last visit by the bylaw officers and inspectors. Accordingly, any potential negligence claim is brought outside the limitation period set out in s. 6 of the *Limitation Act,* S.B.C. 2012, c. 13. Accordingly, it is plain and obvious

the ANOCC discloses no reasonable cause of action in negligence, and therefore that claim must be struck under Rule 9-5(1)(a).

[73] Finally, with respect to any other damages sought by the plaintiff as against the City of Richmond, s. 735 of the *Local Government Act*, R.S.B.C. 2015, c. 1, provides that all such claims must be commenced within six months after the cause of action first arose, and s. 736 provides that notice must be delivered within two months from the date on which the damage was sustained. I am satisfied that the actions the plaintiff complains of with respect to the City of Richmond, being the actions in inspection Unit #218, and in pursuing inspections to ensure compliance with the city's bylaws, were not brought in time, and so are now statute-barred.

VI. CONCLUSION

[74] Notwithstanding the Strata has not brought an application to strike, I must conclude that the plaintiff's purpose in commencing this action is to inappropriately attempt to re-litigate issues that have already been resolved in other proceedings. For the reasons set out above, I have concluded that the ANOCC should be struck pursuant to Rule 9-5(1)(a) as the pleading is unintelligible and confusing, and does not establish a cause of action.

[75] I have also concluded it is unnecessary and vexatious, and so must also be struck pursuant to Rule 9-5(1)(b), and that it is an abuse of process, and so must be struck pursuant to Rule 9-5(1)(d).

[76] Considering the ANOCC as a whole, and the plaintiff's oral submissions, I must conclude his ANOCC reveals no viable cause of action. Leave to amend should not be granted where doing so would violate the principles of judicial economy, consistency and finality, and would undermine the integrity of the administration of justice: *Stein* at para. 28.

[77] In all of the circumstances, I find it is appropriate to strike the entirety of the ANOCC, without leave to amend, as the FANOCC is clearly an attempt to inappropriate re-litigate matters that have already been finally resolved by this court.

[78] The Law Corporation seeks an award of lump sum special costs in the amount of $5,000, and the City of Richmond also seeks an award of lump sum special costs. They both argue that special costs are warranted as the plaintiff's persistence with making serious and meritless allegations throughout this proceeding meets the threshold of reprehensible conduct which merits rebuke: *Gichuru v. Smith*, 2014 BCCA 414 at paras. 78– 79. Rule 9-5 also provides that the court "may order the costs of the application to be paid as special costs". They say that it is appropriate to do so by way of a lump sum award, arguing that this Court has the necessary knowledge to do so and that the cost of another registrar's hearing cannot be justified: *Gichuru* at para. 107.

[79] The Law Corporation provided a draft bill of costs in the amount of $9,504.92, and the City of Richmond provided one in the amount of $6,408.71.

[80] I am satisfied it is appropriate to order lump sum special costs be payable by the plaintiff in all of the circumstances. His insistence in continuing to attack previous orders of this court by way of collateral attack merits rebuke by way of an order for special costs. I am also satisfied that in this unfortunate matter it is appropriate to set a lump sum amount, to avoid the cost of yet another registrar's hearing. I order that the plaintiff pay $3,000 in special costs forthwith to the Law Corporation and pay $3,000 in special costs forthwith to the City of Richmond. I do not order that he pay costs to the Strata, as the Strata brought no application, and sought no costs in the within applications.

[81] The need for the plaintiff's signature on each order made after application is dispensed with, but counsel must promptly file the order and serve the plaintiff with a filed copy by email once they receive the same.

[82] Finally, counsel for the Law Corporation sought leave to bring an application before me at some point in the future for a determination that the plaintiff is a vexatious litigant. That relief was not sought in either notice of application. As I

have struck the entirety of the ANOCC, I find it is not appropriate to grant leave to bring such a future application.

"Blake J."