CITATION: Alessandro v. Co-Operators General Insurance Company, 2024 ONSC 3073
COURT FILE NO.: CV-22-00002957
DATE: 20240530

2024 ONSC 3073 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
JOE ALESSANDRO, also known as GIUSEPPE ALESSANDRO and ELITE GRANDE o/a 1925773 ONTARIO LTD. Plaintiffs	Joe Alessandro, Self-Represented
– and –	
CO-OPERATORS GENERAL INSURANCE COMPANY Defendant	Robert Dowhan and Joyce Zhao, for the Defendant
	HEARD: May 24, 2024

REASONS FOR DECISION

CHARNEY J.:

[1] The Defendant, Co-operators General Insurance Company, brings this motion:

a. to strike out the Statement of Claim with leave to amend certain paragraphs, on the ground that, as presently drafted, it discloses no reasonable cause of action;

b. to strike out or dismiss the claim of the personal Plaintiff, Joe Alessandro, also known as Giuseppe Alessandro, on the basis that he has no standing in this action;

c. to require the corporate Plaintiff, Elite Grande o/a 1925773 Ontario Ltd., to retain and be represented by a lawyer in accordance with Rule 15.01(2); and

d. an Order for security for costs against the corporate Plaintiff.

[2] The action relates to an insurance claim by the Plaintiffs in relation to a fire in a banquet hall operated in leased premises by the corporate Plaintiff. The Defendant takes the position that the insurance policy was void *ab initio* because of Mr. Alessandro's material misrepresentations and/or material non-disclosure.

[3] The policy was issued in the name of the corporate Plaintiff, 1925773 Ontario Ltd.

Motion to Strike the Statement of Claim

[4] Rule 21.01 (1)(b) provides:

> 21.01 (1) A party may move before a judge,
>
> …
>
> (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,
>
> and the judge may make an order or grant judgment accordingly.
>
> (2) No evidence is admissible on a motion,
>
> …
>
> (b) under clause (1) (b).

[5] The test to be applied under Rule 21.01(1)(b), on a motion to strike a pleading on the ground that it discloses no reasonable cause of action is well-settled:

- The court must accept the facts alleged in the pleading as proven, unless they are patently ridiculous, or incapable of proof;
- It must be "plain and obvious" that the claim cannot succeed – the pleading must have a "radical defect" before the party will be driven from the judgment seat;
- The pleading should be read generously, with allowance for inadequacies due to drafting deficiencies;
- It is important to note Rule 21.01(2)(b), which states that no evidence is admissible on a motion to strike under Rule 21.01(1)(b);
- While evidence is not admissible, documents referred to and relied on in the pleading are not evidence precluded by Rule 21.01 but are, in effect, incorporated into the pleading.

[6] See for example: *Kraik v. Ungar*, 2020 ONSC 7221, at paras. 14 and 15, and cases cited therein; *Harris v. GlaxoSmithKline Inc.*, 2010 ONSC 2326, at paras. 36 – 41 and cases cited therein.

[7] "Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial": *Knight v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42, at para. 17.

2024 ONSC 3073 (CanLII)

[8] In *Knight*, at para. 19, the Supreme Court stated that the power to strike out claims that have no reasonable prospect of success "is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial."

[9] While the pleading must be read generously in favour of the plaintiff, the minimum requirements must be present. The Court cannot draft the Statement of Claim for the plaintiff. If a material fact necessary for a cause of action is omitted, the statement of claim is bad and the remedy is a motion to strike the pleading, not a motion for particulars: *Coote v. Ontario Human Rights Commision,* 2009 CanLII 55130 (ON SC), at para. 40.

[10] In a passage particularly apt for the present case, the Supreme Court stated in the *Knight* case, at para. 22:

> 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.

[11] Paragraphs 4 to 8 and 15 of the Statement of Claim allege that Mr. Alessandro's rights under ss. 12, 15(1), 24(1), and 26 of the *Charter of Rights and Freedoms* were infringed by Co-operators General Insurance Company "by acting in poor deceitful conduct throughout the fire insurance claim".

[12] Section 32 of the *Charter of Rights and Freedoms* specifies that the *Charter* applies to the legislative, executive and administrative branches of government. It does not apply to private disputes and does not apply to the Defendant in this case, which is a private insurance company. The allegations in paras. 4 to 8 and 15 of the Statement of Claim do not involve any exercise of governmental action that could invoke the *Charter* rights relied on by the personal Plaintiff: *RWDSU v. Dolphin Delivery Ltd.*, 1986 CanLII 5 (SCC), [1986] 2 SCR 573, at para. 34; *Pugliese v. Chartwell*, 2024 ONSC 1135, at para. 118.

[13] Accordingly, paras. 4 – 8 and 15 of the Statement of Claim do not disclose a reasonable cause of action and will be struck out.

[14] Also problematic is para. 1(b) of the Statement of Claim, which seeks $500,000 damages "for conspiracy to commit deception".

[15] No material facts are alleged in the Statement of Claim to ground this claim. Moreover, there is only one defendant, and the tort of conspiracy requires two or more persons: *Hunt v. Carey Canada Inc.,* [1990] 2 SCR 959; *Normart Management Ltd. v. West Hill redevelopment Co. Ltd.*, 1998 CanLII 2447 (ON CA), 37 OR (3d) 97.

2024 ONSC 3073 (CanLII)

[16] In an action founded in conspiracy, the statement of claim must include, with clarity and precision, particulars of (i) the parties and their relationships, (ii) the agreement to conspire, (iii) the precise purpose or objects of the alleged conspiracy, (iv) the overt acts that are alleged to have been done by each of the conspirators, and (v) the injury and particulars of the special damage suffered by the plaintiff by reason of the conspiracy: *Normart Management Ltd.* at p. 104 (O.R.); *Kates v. Trapeze Asset Management Inc.,* 2019 ONSC 3483, at para. 39; *Filler Depot v. Copart Canada Inc*., 2024 ONSC 466, at para. 36.

[17] Accordingly, para. 1(b) of the Statement of Claim will be struck out.

[18] The Defendant argues that the balance of the Statement of Claim – paras. 9 to 14 – do not explicitly state what cause of action is claimed against the Defendant. Assuming that it is a claim for breach of contract, the claim does not set out the terms of the contract or even say that there was a breach. The Defendant argues that the claim does not plead the material facts relating to a breach of contract.

[19] While paras. 9 – 14 are not professionally drafted, there is, when read generously, with allowance for inadequacies due to drafting deficiencies, sufficient information for the Defendant to understand and respond to the claim made. The Statement of Claim alleges that on February 22, 2022, the Defendant gave a certificate of insurance to the Plaintiffs for a banquet hall located at 1126 Finch Ave., that included, but was not limited to, equipment, contents, loss of income and liability. On February 28, 2022, there was a fire at the banquet hall and the loss was estimated to be $1,275,000. The Plaintiffs submitted a proof of loss form on June 10, 2022, and on July 4, 2022 the Defendant terminated the policy with the Plaintiffs.

[20] That, in my view, is sufficient. The Plaintiff does not have to use the phrase “breach of contract” in order plead the cause of action. The contract at issue is identified in the Statement of Claim. The damages are quantified. It is clear from the material filed by the Defendant on this motion that it knows that it cancelled the policy and the reasons why it cancelled the policy.

[21] Accordingly, paragraphs 9 – 14 will not be struck out.

Claim of the personal Plaintiff, Joe Alessandro, also known as Giuseppe Alessandro

[22] The Defendant seeks an order striking out or dismissing the claim of the personal Plaintiff, Joe Alessandro, also known as Giuseppe Alessandro, on the basis that he has no standing in this action.

[23] The Certificate of Insurance referenced in the Statement of Claim is appended to the Defendant’s motion material. While evidence is not admissible, documents referred to and relied on in the pleading are not evidence precluded by Rule 21.01 but are, in effect, incorporated into the pleading: *Del Giudice v. Thompson*, 2024 ONCA 70, at para. 18.

2024 ONSC 3073 (CanLII)

[24] The corporate Plaintiff 1925773 Ontario Ltd. is the only insured named on the Certificate of Insurance. The personal Plaintiff, Joe Alessandro, is not referenced on the Certificate of Insurance.

[25] It is a basic principle of corporate law that a corporation is a separate legal entity, and that a shareholder, even a sole shareholder cannot sue on behalf of the corporation.

[26] This principle was summarized by the Court of Appeal in *Meditrust Healthcare Inc. v. Shoppers Drug Mart,* 2002 CanLII 41710 (ON CA), at paras. 12 – 14:

> The rule in *Foss v. Harbottle* provides simply that a shareholder of a corporation -- even a controlling shareholder or the sole shareholder -- does not have a personal cause of action for a wrong done to the corporation. The rule respects a basic principle of corporate law: a corporation has a legal existence separate from that of its shareholders. See *Salomon v. Salomon & Co. Ltd.,* [1897] A.C. 22, 66 L.J. Ch. 35 (H.L.). A shareholder cannot be sued for the liabilities of the corporation and, equally, a shareholder cannot sue for the losses suffered by the corporation.
>
> The rule in *Foss v. Harbottle* also avoids multiple lawsuits. Indeed, without the rule, a shareholder would always be able to sue for harm to the corporation because any harm to the corporation indirectly harms the shareholders.
>
> *Foss v. Harbottle* was decided nearly 160 years ago but its continuing validity in Canada has recently been affirmed by the Supreme Court of Canada in *Hercules Management Ltd. v. Ernst & Young,* 1997 CanLII 345 (SCC), [1997] 2 S.C.R. 165, 146 D.L.R. (4th) 577 and by this court in *Martin v. Goldfarb* (1998), 1998 CanLII 4150 (ON CA), 41 O.R. (3d) 161, 163 D.L.R. (4th) 639 (C.A.).

[27] Once paras. 4 – 8 and 15 of the Statement of Claim are struck, Mr. Alessandro has no personal claim against the Defendant because he was not a party to the insurance contract: *Kumar v. Heather,* 2020 ONSC 6911, at para. 40. Only the corporate Plaintiff can sue with respect to that agreement.

[28] Accordingly, the claims advanced by Mr. Alessandro in his personal capacity must be struck and his personal action dismissed.

[29] The claims advanced by 1925773 Ontario Ltd. at paras. 9 – 14 of the Statement of Claim may proceed.

Should the Corporate Plaintiff be required to retain counsel?

[30] Rule 15.01(2) of the Rules of Civil Procedure requires a corporation to have a lawyer representing them, except with leave of the court. Rule 15.01(2) provides:

2024 ONSC 3073 (CanLII)

> 15.01(2) A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.

[31] 1925773 Ontario Ltd. is not represented by a lawyer. If Mr. Alessandro wants to represent the corporation, he must bring a motion for leave to represent the corporation.

[32] The Defendant has brought a motion for an Order to require the corporate Plaintiff to retain and be represented by a lawyer. That motion is entirely unnecessary. Rule 15.01(2) already requires the corporate Plaintiff to be represented by a lawyer. If Mr. Alessandro wants to represent the corporate Plaintiff, the onus is on him to bring a motion to do so. Until such a motion is successful, Mr. Alessandro is precluded from representing the corporate Plaintiff in court.

[33] The moving corporation has the onus of satisfying the court that leave to be represented by a non-lawyer ought to be granted: *De La Rocha v. Markham Endoscopy Diagnostics Inc*., 2010 ONSC 5100; *Super Channel International Corp. v. Canada (Attorney General),* 2024 ONSC 1439, at paras. 6 – 8.

[34] I am advised that Mr. Alessandro has now brought such a motion (after being served with the Defendant's motion) and it is returnable on December 18, 2024. It would not be appropriate for me to rule on that motion today. Mr. Alessandro can make his case when his motion is heard.

Security for Costs

[35] Finally, the Defendant seeks an Order for security for costs pursuant to Rule 56.01(d), which provides:

> 56.01 (1) The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,
>
> (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent.

[36] The initial onus is on the moving party to satisfy the court that it appears there is good reason to believe one of the criteria described in r. 56.01(1) has been satisfied. Once the court is satisfied that one of the criteria of r. 56.01 has been met, "the onus is on the plaintiff to establish that an order for security would be unjust".

[37] The plaintiff can rebut the onus by either demonstrating that:

(a) the plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation,

2024 ONSC 3073 (CanLII)

(b) the plaintiff is impecunious and that justice demands that the plaintiff be permitted to continue with the action, i.e. an impecunious plaintiff will generally avoid paying security for costs if the plaintiff can establish that the claim is not “plainly devoid of merit”, or

(c) if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success: *Coastline Corporation Ltd. v. Canaccord Capital Corporation*, 2009 CanLII 21758 (ON SC), at para. 7.

2024 ONSC 3073 (CanLII)

[38] The Defendant did cross-examine Mr. Alessandro in advance of this motion. Mr. Alessandro has failed to provide any evidence as to the financial viability of the corporate Plaintiff. Indeed, Mr. Alessandro refused to answer any questions relating to the corporate Plaintiff including the identity of the shareholders, its ongoing business operations and its assets and liabilities. His consistent response to these questions was: “That’s none of your business.”

[39] The difficulty that I have, however, is that, at this stage in the proceedings, Mr. Alessandro has not been given leave to represent the corporate Plaintiff. As such, the corporate Plaintiff was not represented on this motion. In my view, it would not be fair to deal with the Defendant’s motion for security for costs until Mr. Alessandro’s Rule 15.01(2) motion has been dealt with. At that point, we will know whether Mr. Alessandro will be permitted to make submissions on behalf of the corporate Plaintiff, or whether the corporate Plaintiff will have to retain a lawyer. The decision on that motion may impact the security for costs issue.

[40] Accordingly, I am adjourning this aspect of the Defendant’s motion until after a decision has been made with respect to Mr. Alessandro’s Rule 15.02 motion, which is currently scheduled for December 18, 2024. I remain seized of this motion, and the Defendant may contact my assistant, Robyn Pope, at Robyn.Pope@Ontario.ca to schedule a new date once the Rule 15.02 motion decision is released.

Costs

[41] The Defendant was substantially (but not completely) successful on this motion. The Defendant seeks $21,963 on a partial indemnity basis. The Defendant’s success on this motion related to the Rule 21.01 motion to strike. This aspect of the motion was straightforward, and no evidence was admissible with respect to this part of the motion. In the result, paras. 1(b), 4 to 8 and 15 of the Statement of Claim were struck, and the personal Plaintiff’s action was dismissed. Paragraphs 9 to 14 survived, and the corporate Plaintiff may continue its action based on those paragraphs.

[42] The affidavit evidence filed by the Defendant and the cross-examination of Mr. Alessandro related only to the Rule 15.02 motion and the security for costs motion. This represents the bulk of the hours spent preparing for the motion, but those aspects of the motion were not decided at this hearing.

[43] In these circumstances, I conclude that a reasonable costs award for the portions of the motion on which the Plaintiff was successful is $3,500, inclusive of fees, disbursements and HST. The balance of the costs award will have to await the outcome of the Rule 15.02 and security for costs motion.

Conclusion

[44] Paragraphs 1(b), 4 – 8 and 15 of the Statement of Claim are struck, without leave to amend.

[45] The personal Plaintiff, Joe Alessandro, also known as Giuseppe Alessandro, is struck as a Plaintiff and his personal action against the Defendant is dismissed.

[46] The Defendant's motion to strike paras. 9 to 14 of the Statement of Claim is dismissed.

[47] The Defendant's motion to require the corporate Plaintiff to retain and be represented by a lawyer is adjourned to December 18, 2024, to be heard with Mr. Alessandro's motion for leave to represent the corporate Plaintiff.

[48] The Defendant's motion for security for costs is adjourned pending the decision on Mr. Alessandro's motion for leave to represent the corporate Plaintiff. I remain seized and the Defendant may reschedule the motion by contacting my judicial assistant.

[49] Costs are fixed at $3,500 all inclusive, to be paid by the Plaintiff, Joe Alessandro, also known as Giuseppe Alessandro, to the Defendant within 45 days.

[50] Costs of the motion related to Rule 15.02 and security for costs are to be dealt with when those motions are heard.

Justice R.E. Charney

Released: May 30, 2024

2024 ONSC 3073 (CanLII)

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

JOE ALESSANDRO, also known as GIUSEPPE ALESSANDRO and ELITE GRANDE o/a 1925773 ONTARIO LTD.

Plaintiffs

– and –

CO-OPERATORS GENERAL INSURANCE COMPANY

Defendant

REASONS FOR DECISION

Justice R.E. Charney

Released: May 30, 2024

2024 ONSC 3073 (CanLII)