

**CITATION:** Aimhome Realty Inc. v. GTA Office DMM Inc., 2024 ONSC5918  
**COURT FILE NO.:** CV-22-683456  
**DATE:** October 25, 2024

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Aimhome Realty Inc. and James Yang v. GTA Office DMM Inc., 123 Natural Food Ontario Ltd., 123 Real Estate Development Ontario Ltd., Visionary Education Services & Management Inc., Fan Zhou and CBRE Limited;

**BEFORE:** ASSOCIATE JUSTICE C. WIEBE

**COUNSEL:** Fabian Otto for Aimhome Realty Inc. and James Yang;  
Rachel Laurion (and Tina Cody) for CBRE Limited.

**HEARD:** October 24, 2024.

**ENDORSEMENT**

[1] This endorsement contains my reasons for my oral ruling on October 24, 2024 in favour of CBRE Limited (“CBRE”) concerning the plaintiffs’ proposed pleading amendment about CBRE.

[2] On October 24, 2024 the plaintiffs brought this motion for an order granting leave to amend the statement of claim to add 13995291 Canada Inc. as a defendant and make minor other amendments relating to the defendant, Fan Zhou, and the corporate defendants other than CBRE. Ms. Zhou owns the corporate defendants other than CBRE. None of these amendments were contested and I granted leave for them to be done.

[3] The contentious part of the motion concerned CBRE. The plaintiffs proposed adding the following claim to the prayer for relief as paragraph 1(e): “A Declaratory Judgment that the Defendant, CBRE Limited (“CBRE”), acted in a deceitful manner with respect to the Plaintiffs and in breach of ethical duties owed by CBRE as set out in the code of ethics paragraphs: 3, 7, 12, 38 and 39 of the *Real Estate Business Brokers Act*.”

[4] In argument, Mr. Otto conceded that the proposed pleading of a breach of ethical duties under the *Real Estate and Business Brokers Act* was not in fact a separate cause of action. Rather, he conceded, it was a part of the proposed pleading of “deceit.” We focused, therefore, on the issue of whether leave should be granted for the proposed amendment about deceit.

[5] The underlying action is by the plaintiffs, who are realtors, for damages for an alleged lost commission on a purchase by 123 Natural Food Ontario Ltd. (“123NF”) of a commercial property. Tony Gill of CBRE was the agent for the vendor, GTA Office DMM Inc. James Yang of Aimhome Realty Inc. was the agent for 123NF. The plaintiffs allege that Ms. Zhou caused 123NF to breach a representation agreement it had with the plaintiffs by using another agent and another one of Ms.

Zhu's corporate defendants to buy the land at a lower commission, all without informing the plaintiffs.

[6] Rule 26.01 makes granting pleading amendments mandatory; but it is undisputed law that the amendments must disclose a tenable claim; see *Moon v Milborne*, 2017 ONSC 2650 (CanLII) at paragraph 8. The tort of deceit has the following elements: (a) the defendant made a false representation of fact to the plaintiff; (b) the defendant knew the representation was false or had no belief in its truth or was reckless as to whether it was true; (c) the defendant intended that the plaintiff would act in reliance on the representation; (d) the defendant in fact acted on the representation; and (e) the plaintiff suffered a loss as a result; see *Amertek Inc. v. Canadian Commercial Corp.*, 2005 CanLII 23220 (ON CA) paragraph 63.

[7] Pleading amendments must also abide by the rules of pleading. Rule 25.06(8) specifies that where fraud, misrepresentation, breach of trust, malice or intent are alleged, "the pleading shall contain full particulars." It was undisputed that the claim of deceit falls within this requirement.

[8] The original statement of claim made claims of damages (without specifying the basis of same), restitution and *quantum meruit* as against all of the defendants, including CBRE. The only pleading that pertained to CBRE was in paragraph 18 which alleges only that CBRE assisted Ms. Zhou and her corporate defendants in going "behind the back" of the plaintiffs to effect the sale with another one of Ms. Zhou's companies.

[9] CBRE served a demand for particulars, including particulars of paragraph 18. The plaintiffs' reply concerning paragraph 18 stated that, while Mr. Gill had the ethical duties of a realtor and made promises to work with Mr. Yang, Mr. Gill "ignored" Mr. Yang and worked with Ms. Zhou to "cut-out" Mr. Yang from his earned commission. CBRE delivered a statement of defence, but made it clear in this pleading that there was no cause of action pleaded against CBRE.

[10] I note that in this motion the plaintiffs seek no amendments concerning CBRE other than the proposed added claim of deceit in paragraph 1(e). Therefore, the plaintiffs rely of their original pleading to lay the foundation for the claim of deceit.

[11] In argument, Mr. Otto conceded that the complaint against CBRE involved acts of omission as well as acts of commission, namely that Mr. Gill had knowledge of the plaintiff's representation agreement either because he saw it or Mr. Yang told him about it, that Mr. Gill made representations to Mr. Yang that he, Mr. Gill, would protect Mr. Yang's position in the transaction, that Mr. Gill had independent professional obligations to so protect Mr. Yang's position, that Mr. Gill failed to inform Mr. Yang in real time of Ms. Zhou's conduct in buying the subject land through another agent and another company, and that Mr. Gill did so deliberately to assist Ms. Zhou with her plan by leaving the plaintiffs ignorant of the true process and therefore unable to interfere with it. None of these particulars were included in the original pleading or the proposed amendments.

[12] I concluded that the tort of deceit was not properly pleaded, and that the amendment in this regard was, therefore, not tenable. I also concluded that the statement of claim did not contain the level of full particularity required by Rule 25.06(8) of a pleading of deceit. Just pleading that CBRE "assisted" Ms. Zhou in going "behind the back" of the plaintiffs, and that M. Gill "ignored" Mr. Yang and worked with Ms. Zhou to cut Mr. Yang out of his commission, does not give rise to the

claim of deceit. These allegations do not contain the necessary following particulars: Mr. Gill had a disclosure duty to the plaintiffs; how this disclosure duty arose; what was contained in that duty; how Mr. Gill's breached that duty in detail; the critical fact that he did also deliberately to assist Ms. Zhou with her plan by keeping the plaintiffs' ignorant of what was really going on to their detriment; that the plaintiffs remained ignorant of the true process as a result and thereby unable to affect it; and that the plaintiffs were damaged as a result of this conduct by Mr. Gill with full particulars of such damage.

[13] Deceit is a serious allegation. In this case, it could seriously affect a realtor's professional reputation, particularly as the allegation is lodged by another realtor. I found that the plaintiffs failed to meet the required standard of pleading and I dismissed this part of the motion as a result.

[14] As for costs, CBRE filed a costs outline for this motion that showed \$8,383.47 in partial indemnity costs, \$11,177.96 in substantial indemnity costs and \$13,972.45 in actual costs. The plaintiffs filed a costs outline for this motion that showed \$4,893.65 in partial indemnity costs, \$6,701.50 in substantial indemnity costs and \$7,821.48 in actual costs.

[15] As the successful party, CBRE was entitled to costs. Ms. Laurion argued that CBRE should get its claim for partial indemnity costs of \$8,383.47. Mr. Otto argued that this was too much and that the award should be substantially less. He argued that the use of two lawyers on this motion, as was the case for CBRE, was excessive, and that the reasonable expectation of what the unsuccessful plaintiffs might expect to pay in the event of a defeat, as reflected in their costs outline, should be reflected in the costs award.

[16] Considering these arguments, I decided that a fair and reasonable award of costs in favour of CBRE was \$7,000 to be paid in 30 days from October 24, 2024. This was a serious motion for CBRE and merited the resources it applied. However, the reasonable expectation of what the plaintiffs might expect to pay in the event of defeat as reflected in their costs outline was a factor to be considered. That is what I ordered.

**DATE:** October 25, 2024

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**ASSOCIATE JUSTICE C. WIEBE**