KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 146**

Date: **2024 08 15**
File No.: QBG-RG-01877-2022
Judicial Centre: Regina

BETWEEN:

THE OWNERS: CONDOMINIUM PLAN NO. 87R53163
PLAINTIFF/APPLICANT

- and -

YI ZENG and YAN WANG
DEFENDANTS/RESPONDENTS

- and -

ZACHARY EUGENE GEORGE and
CHARAN PROPERTY MANAGEMENT INC.
THIRD PARTIES

CORRECTED JUDGMENT: The text of the original judgment has been changed *per* the corrigendum released August 21, 2024. (A copy of the corrigendum is appended to this corrected judgment.)

Appearing:

Ryan Tulloch	for the plaintiff/applicant and for the third-party, Charan Property Management Inc.
Yi Zeng	self-represented defendant and for the defendant, Yan Wang
No one appearing	for the third-party, Zachary Eugene George

FIAT
August 15, 2024

TOCHOR A.C.J.

I. INTRODUCTION

[1] The plaintiff/applicant, The Owners: Condominium Plan No. 87R53163 [Condo Board], seeks the following orders pursuant to Rule 7-9 of *The King's Bench*

Rules:

(a) An order striking out the defendants', Yi Zeng and Yan Wang, statement of defence;

(b) An order striking out the defendants' third-party claim against Charan Property Management Inc. [Charan];

(c) Leave to apply for an Order *Nisi* for foreclosure; and

(d) Costs.

[2] The defendants/respondents, Yi Zeng and Yan Wang [defendants], own a unit in the condominium building which is governed by the Condo Board. The third-party, Charan, provides management services for the building.

[3] The defendants leased their unit to a tenant, the third-party Zachary Eugene George [Tenant], from September 1, 2016, to July 31, 2017. On January 26, 2017, a water pipe burst in the defendants' unit causing extensive damage to the defendants' unit and to other units in the building. The pleadings indicate the Tenant left the door open because the unit was too hot, and the water pipes froze because of exposure to outside temperatures in January.

[4] The Condo Board and Charan arranged for the necessary repairs to the building and then, pursuant to ss. 65(6) of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [*CPA*], sought reimbursement of the repair costs and expenses from the defendants.

[5] The defendants refuse to pay these costs. They argue these costs should form part of the common expenses shared by all unitholders, and they argue the Tenant is responsible for these costs, not them. As a result, the Condo Board registered a lien against the unit for the unpaid fees and costs, and commenced foreclosure proceedings

in accordance with ss. 63(2)(b) of the *CPA*. Leave to commence foreclosure proceedings was granted by the court.

[6] The defendants were served with a statement of claim, and then filed a statement of defence and a third-party claim against Charan.

[7] The Condo Board and Charan now make an application to strike the defendant's statement of defence and third-party claim.

[8] For the reasons that follow, I grant the application to strike the defendant's statement of defence and third-party claim. I conclude these pleadings do not disclose a reasonable cause of action and, pursuant to Rules 7-9(2)(a) and (b) of *The King's Bench Rules*, these pleadings must be struck.

[9] I also conclude that it is inappropriate in these circumstances to give the defendants an opportunity to amend their statement of defence and third-party claim because no amendments would affect their liability for damages under ss. 65(6) of the *CPA*.

[10] I further conclude that leave shall be granted to the Condo Board to apply for an Order *Nisi* for foreclosure and, during this application, the presiding judge in chambers may address the defendants' concerns about the amount owing in accordance with Rule 10-43 of *The King's Bench Rules*.

II. THE LEGAL FRAMEWORK

[11] The Condo Board advances two avenues by which the defendants' defence and third-party claim should be struck:

(a) These pleadings do not disclose a reasonable cause of action under Rule 7-9(2)(a); and

(b) These pleading are scandalous, frivolous, and vexatious, or an abuse of process under Rule 7-9(2)(b) and (e).

[12] After reviewing the general principles underlying applications to strike under Rule 7-9, I will address the distinct legal framework for each of these two avenues separately.

(a) Application to Strike a Claim: Rule 7-9 of *The King's Bench Rules*

[13] Applications to strike pleadings are governed by Rule 7-9 of *The King's Bench Rules* which provides:

> **Striking out a pleading or other document, etc. in certain circumstances**
>
> **7-9**(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:
>
> (a) that all or any part of a pleading or other document be struck out;
>
> (b) that a pleading or other document be amended or set aside;
>
> (c) that a judgment or an order be entered;
>
> (d) that the proceeding be stayed or dismissed.
>
> (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
>
> (a) discloses no reasonable claim or defence, as the case may be;
>
> (b) is scandalous, frivolous or vexatious;
>
> (c) is immaterial, redundant or unnecessarily lengthy;
>
> (d) may prejudice or delay the fair trial or hearing of the proceeding; or
>
> (e) is otherwise an abuse of process of the Court.
>
> (3) No evidence is admissible on an application pursuant to clause (2)(a).

[14] When considering an application to strike a claim, it is important to recognize that the fundamental purpose of pleadings is to give fair notice of the case which must be met. This purpose informs the general requirements of pleadings which are set out in Rule 13-8 of *The King's Bench Rules*. The purpose and functions of pleadings are summarized in *Ducharme v Davies and Rogoschewsky* (1983), [1984] 1 WWR 699 (Sask CA) at 718 [*Ducharme*].

[15] The fundamental purpose of pleadings is also considered in *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 29 [*Harpold*]; *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 [*Reisinger*]; *Rieger v Burgess*, [1988] 4 WWR 577 (Sask CA), leave to appeal refused [1988] SCCA No 209 (QL); *National Bank Financial Ltd. v Barthe Estate*, 2015 NSCA 47 at para 281, 359 NSR (2d) 258; and *Thirsk v Public Guardian and Trustee of Saskatchewan*, 2017 SKQB 66 [*Thirsk*].

[16] *Harpold* explains that, in an application to strike, the inquiry into the adequacy of pleadings must focus on whether they fairly identify the case an opposing party must meet, and not whether technical compliance is achieved. Substance must take precedence over form (*Harpold* at para 32). Further, the court observed "it remains possible for a cause of action to be pleaded on a recitation of narrative facts alone, without a classic legal formulation of the cause of action" (*Harpold* at para 37).

[17] *Harpold* also articulates an important obligation on the part of a chambers judge. The court ruled a judge must review the pleadings and determine whether a cause of action is "capable of being discerned" from the pleadings. In other words, a chambers judge must review the substance of the pleadings and identify causes of action, even if they are not specifically identified by the pleader (*Harpold* at para 38).

[18] *Harpold* at para 37 also carefully underscores a qualification on the extent of a reviewing judge's obligation to sift through the pleadings in search of a reasonable

cause of action. There, the court repeated a warning which was previously given in *Reisinger* at para 49, which states:

> [49] … Where there are nothing more than *headings* referring to torts and where the reviewing judge and the defendant must, as in this case, laboriously wade through 20 pages of pure fact to try to find the pony in the barn, the state of the pleadings must be construed against the pleader.
>
> [Emphasis in original]

[19] This qualification is not new and is recognized in earlier cases.

[20] For example, in *Robin Hood Management Ltd. v Gelmich*, 2014 SKQB 347 at para 5, 459 Sask R 183 [*Robin Hood*], the court held the duty to discern a cause of action must be exercised "within reason":

> [5] … I have accordingly approached the analysis of the plaintiffs' pleadings on the basis that the plaintiffs will, within reason, be given the benefit of the doubt in determining what facts have been pled, and how those facts relate to the causes of action at issue on this application. …
>
> [Emphasis added]

[21] Another example highlighting this qualification is found in *Thirsk* at para 23:

> [23] The point, in other words, was not the mere fact that the statement of claim breached Rules 1-3 and 13-8. It was that those breaches were such that the statement of claim did not serve the essential functions of pleadings. It failed to adequately define the issues in dispute and to give fair notice to the other side of what was claimed, in relation to all but the two causes of action which survived. The fact that it may have been possible for the court to find allegations which could be stitched together to disclose all essential elements of a claim was not enough.
>
> [Emphasis added]

[22] This "within reason" requirement, identified in *Robin Hood* at para 5, is consistent with the rulings in *Harpold* at para 37, *Reisinger* at para 49, and *Thirsk* at

para 23.

[23] *Harpold* requires a reviewing judge to sift through the pleadings and discern if a reasonable claim or defence can be identified. However, *Harpold* does not elevate that obligation to require a judge to discern any conceivable or possible claim that may be somehow conceptually divined from the pleadings. Nor does *Harpold* require a reviewing judge to assume the role of a party's legal counsel for the purpose of creating an arguably viable claim out of an array of pleaded facts.

[24] Instead, this review must be undertaken in the context of the fundamental purpose of pleadings set out in *Ducharme* at para 64 and *Harpold* at para 29: to "define with clarity and precision the question in controversy between litigants" and to "give fair notice of the case which has to be met". Importantly, in this regard, Rule 7-9(2)(a) is crafted to require an assessment of whether a reasonable claim or defence exists, not whether any imaginable claim or defence can be stitched together.

[25] Therefore, in light of this line of case authorities, a reviewing judge must be mindful that the exercise of discerning a reasonable claim or defence from within a pleading should be approached "within reason".

[26] Finally, *Harpold* at para 68 also points out that, in this assessment, the fact a plaintiff is self-represented is a relevant consideration.

[27] In summary, *Harpold* offers important guidance in many respects, including the following three. First, when considering if a pleading should be struck, courts must regard the substance of the pleadings over form. Second, reviewing courts have an obligation to examine pleadings to discern whether any reasonable causes of action are contained therein; importantly, however, this obligation to discern is subject to the "within reason" limit set out in *Robin Hood*, *Reisinger*, and *Thirsk*. Third, appropriate latitude must be afforded to pleadings prepared by self-represented parties.

[28] As set out below, each of the two avenues relied upon by the applicant is subject to a separate and distinct legal framework under *The King's Bench Rules*.

(b) Reasonable Cause of Action: Rule 7-9(2)(a) of *The King's Bench Rules*

[29] As a starting point, when considering an application to strike pleadings because they do not disclose a reasonable cause of action pursuant to Rule 7-9(2)(a), a court may only have regard for the pleadings and any particulars that have been provided: see Rule 7-9(3); *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA) at para 16; and *Wilson v Saskatchewan Water Security Agency*, 2023 SKCA 16 at para 22, 478 DLR (4th) 170 [*Wilson*].

[30] No reference may be made to any other evidence, such as affidavit evidence or other material filed, and courts must presume the truth of the contents of the claim: *Haug v Loran*, 2017 SKQB 92 at para 50.

[31] Whether a claim discloses a reasonable cause of action, as required by this sub-rule, has been considered in a multitude of cases and the applicable principles are summarized in *Harpold* at paras 25-26:

> [25] A useful summary of the governing principles with respect to an application to strike a pleading for failing to disclose a reasonable cause of action is found in *Swift Current (City) v Saskatchewan Power Corporation*, 2007 SKCA 27, [2007] 5 WWR 387 [*Swift Current*]:
>
> > [18] These general principles were summarized by Gunn J. in the case of *Collins v. McMahon*, 2002 SKQB 201, [2002] S.J. No. 318 (QL)*:*
> >
> > > [11] The principles which apply to an application to strike a plaintiff's claim under Rule 173(a) are the following:
> > >
> > > > (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success. (*Sagon v. Royal Bank of Canada et al*. (1992, 105 Sask. R. 133 at 140 (C.A.));

> (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (*Sagon*, at 140; *Milgaard v. Kujawa et al*. (1994), 123 Sask. R. 164 (Sask. C.A.));
>
> (iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);
>
> (iv) The court can strike all, or a portion of the claim (Rule 173);
>
> (v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish and Carson* (1996), 140 Sask. R. 146 (Q.B.)).

As noted, see *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA) at para 16 [*Sagon*].

[26] When called upon to review a claim in response to an application under Rule 7-9(2)(a), the reviewing judge is required to determine whether sufficient facts have been pleaded to establish the legal elements of a cause of action by considering the whole of the statement of claim. It is for the reviewing judge "to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action" (*Reisinger v J.C. Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 [*Reisinger*]).

[Emphasis added]

[32] In *Wilson* at paras 17-19, the same authorities are relied upon.

[33] In summary, the threshold test for a claim to survive an application to strike is quite low. As noted above, a reviewing court must exercise restraint, assume all allegations in the claim are true, and may only strike the claim in plain and obvious cases where the matter is beyond doubt. Claims in which an arguable case or a reasonable chance of success are manifest, must be interpreted generously and should not be struck.

[34] When reviewing pleadings to determine if a claim contains a reasonable cause of action, it is also necessary to determine if facts are pleaded which support the claim. Several cases reiterate the necessity of an articulated factual basis to support a pleaded cause of action; some examples follow below.

[35] In *Reisinger*, it was held at paras 50-51:

> [50] The statement of claim fails to distill the essential facts of an event to properly plead what occurred or what is legally significant or material in relation to any of the specific torts. In this respect, it offends Rule 13-8 and Rule 1-3 and the rules of pleading generally. The respondents must bear some responsibility for the state of their pleadings. It cannot be assumed that causes of action and the elements thereof are properly pleaded just because copious facts are pleaded.
>
> [51] I conclude that the state of the respondents' pleadings do not allow a court to determine whether the specific torts denoted by the headings are properly pleaded. Neither would the appellants be sure of that matter, the issues in play and how to prepare for trial. The result of all of this is that it is plain and obvious based on the state of the pleadings that no reasonable cause of action regarding the specific torts are *properly* raised by the pleadings. The headings referring to torts in the statement of claim are therefore superfluous and will be struck.
>
> [Emphasis in original]

[36] See also: *Ryan v Benderski*, 2020 SKQB 132 at para 13 [*Ryan*]; *Country Plaza Motors Ltd. v Indian Head (Town)*, 2005 SKQB 442 at para 14, 272 Sask R 198 [*Country Plaza*]; *Harpold* at para 26; and *Shaw v Shaw*, 2020 SKQB 320 at paras 35 and 37 [*Shaw*].

[37] *Wilson* at para 19 also adds further guidance with respect to potential amendments to claims. The court points out that, where feasible, a party must be given an opportunity to correct deficiencies and to amend the pleadings before they are struck, even if the pleader has not applied to amend (*Wilson* at para 20).

[38] However, the court in *Wilson* cannot have intended to impose a requirement that a judge must offer a party an opportunity to amend pleadings in every

case. In *Wilson*, a pleading was struck by a chambers judge because the necessary details of the alleged defamation were not provided. However, on appeal, it was held that an amendment should have been granted to permit the plaintiff to plead those necessary details.

[39] Whether a chance to amend a pleading must be offered will depend on the circumstances of each case. In some instances, such an opportunity will be required: see, for example, *Holliday v Saskatchewan (Education)*, 2023 SKKB 273 at para 85 [*Holliday*]; and *Yashcheshen v Canada (Attorney General)*, 2024 SKKB 63 at para 108 [*Yashcheshen*]. In other instances, an opportunity to amend will not be required: see, for example, *Holliday* at para 86; *Yashcheshen* at para 106; and *Holmes v Justanother Farm Ltd.*, 2021 SKQB 172 at para 80.

(c) Abuse of Process: Rule 7-9(2)(b) and (e) of *The King's Bench Rules*

[40] The legal framework for applications based on assertion that the claim is "scandalous, frivolous, or vexatious" or an "abuse of process" is distinct from the framework which governs whether a reasonable cause of action exists. In an application under Rule 7-9(2)(b) and (e), different considerations come into play.

[41] This avenue is summarized in *Yashcheshen v Canada (Attorney General)*, 2020 SKQB 188 at paras 27-28 [*Yashcheshen-Janssen*]:

> **3.2 <u>Operative Legal Principles</u>**
>
> [27] Rule 7-9(2)(b) authorizes the striking of a pleading if it is "scandalous, frivolous or vexatious".
>
> [28] In *Siemens* [*Siemens v Baker*, 2019 SKQB 99], the court elaborated on the application of this Rule as follows at paras. 23-25:
>
> > [23] Although these terms are often used interchangeably, it is helpful to differentiate among them. A pleading will qualify as "scandalous" if it levels degrading charges or baseless allegations of misconduct or bad faith against an opposite party. See: *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119 at para 45, 418

> Sask R 96 [*Paulsen*] and the authorities cited there. Courts in British Columbia, for example, have described a scandalous pleading as "one that is so irrelevant that it will involve the parties in useless expense and prejudice the [pursuit] of the action by involving them in a dispute apart from the issues". See: *Turpel-Lafond v British Columbia*, 2019 BCSC 51 at para 23, 429 DLR (4th) 131 [*Turpel-Lafond*] quoting from *Woolsey v Dawson Creek (City)*, 2011 BCSC 751, at para 28.
>
> [24] A pleading will qualify as "vexatious" if it was commenced for an ulterior motive (other than to enforce a true legal claim) or maliciously for the purposes of delay or simply to annoy the defendants. See: *Paulsen*, at para 46. Put another way, it is vexatious if it does not assist in establishing a plaintiff's cause of action or fails to advance a claim known in law. See: *Turpel-Lafond*, at para 23.
>
> [25] A pleading will qualify as "frivolous" if it is plain or obvious or beyond reasonable doubt the claim it advances is groundless and cannot succeed. See: *Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 at 980; *Paulsen* at para 47; and *Wayneroy Holdings Ltd. v Sideen*, 2002 BCSC 1510 at para 17.

[42] In summary, a "scandalous" claim is one which alleges, *inter alia*, baseless claims of misconduct against another party. A "vexatious" claim is described as one which was made for an ulterior motive. A "frivolous" claim is one which is groundless and cannot succeed.

[43] By way of further illustration, claims which are doomed to fail are also liable to be struck. For example, *Yashcheshen-Janssen* at para 29 points out that claims brought outside of a limitation period may be struck in an application under Rule 7-9(2)(b). See also: *GHC Swift Current Realty Inc. v BACZ Engineering (2004) Ltd.*, 2020 SKQB 161 at para 17; and *Jardine v Saskatoon Police Service*, 2017 SKQB 217 at para 43.

[44] It is within this legal framework that the application of the Condo Board to strike the pleadings of the defendants must be considered.

III. APPLYING THE LEGAL FRAMEWORK

[45] This is a foreclosure action in which the defendants raise several arguments, including whether the defendants or their Tenant is liable for the damage caused by the frozen water pipe in the defendants' unit. It is uncontroverted in the pleadings that the defendants' Tenant caused the damage by leaving the door to the unit open, allowing the water pipes to freeze.

[46] The Condo Board argues the defendants are liable for damages to the building caused by the defendants' Tenant to the building by virtue of ss. 65(6) of the *CPA.* This provision makes an owner liable to the Condo Board for the damage caused by a person residing in the unit with the permission or knowledge of the owner.

[47] The defendants, however, argue that because they did not personally cause the damage, they are therefore not liable. They are also critical of some of the processes followed by the Condo Board and Charan when the damages were repaired. For example, they are critical about how and when they were notified about the damage to the building, and about how and when they were provided with a copy of the condominium bylaws. They argue that if the damages are not part of the common expenses shared by all unitholders, their Tenant is solely responsible.

[48] At the outset, I recognize the defendants' pleadings were not drafted by counsel and, in keeping with the direction in *Harpold* at para 68, I recognize this is a relevant consideration. I also acknowledge the direction in *Harpold* at para 38 that a chambers judge must sift through the pleadings and determine if a cause of action is "capable of being discerned".

[49] In keeping with these obligations, I reviewed the statement of defence and the third-party claim and observed a significant overlap between the two documents. Much of the third-party claim contains a repetition of the allegations made in the statement of defence, and the allegations in both documents refer to both the Condo Board and Charan. Therefore, when reviewing the various allegations made, I

address the allegations against the Condo Board and Charan together, rather than repeating the same analysis for the allegations made against each party.

[50] Below, I attempt to identify allegations in the pleadings from which a cause of action is "capable of being discerned". In the interest of efficiency, I cross-reference the allegations made in the statement of defence with the same allegations made in the third-party claim.

[51] I isolate the following allegations in the pleadings which must be considered in an application to strike:

1. The defendants did not cause the damage or losses to the Condo Board (statement of defence at para. 6.a; third-party claim at paras. 8.a and 35);

2. The Condo Board and Charan were guilty of misconduct and professional incompetence in handling the damages caused (statement of defence at paras. 6.b and 35; third-party claim at paras. 8.b and 35);

3. The Tenant caused the damage and is therefore solely responsible (statement of defence at paras. 6.c and 35; third-party claim at para 8.c);

4. The Condo Board and Charan arranged and paid for repairs without notifying the defendants (statement of defence at paras. 8 and 10);

5. The defendants were not notified of the cost of the repairs until September 1, 2017 (statement of defence at para. 11);

6. The Condo Board and Charan did not comply with the defendants' request to provide a witness for the hearing before the Office of

Residential Tenancies to prove the damages were caused by the Tenant (statement of defence at paras. 17-19);

7. The Condo Board and Charan did not provide an accurate copy of the condominium bylaws to the defendants when requested (statement of defence at paras. 25-29 and 32-33; third-party claim at paras. 27-32 and 35);

8. The owner of Charan stated in an affidavit that the value of the defendants' unit was $70,000, when she listed a similar condominium unit for $109,000 (statement of defence at paras. 30-31; third-party claim at paras. 33-34); and

9. The calculation of total arrears wrongfully includes Charan's solicitor's costs and interest (statement of defence at para 31; third-party claim at para. 34).

[52] I address, in turn, each of these allegations in the defendants' pleadings in order to determine if a reasonable cause of action exists.

IV. ALLEGATIONS

1. The defendants did not cause the damage or losses to the Condo Board

3. The Tenant caused the damage and is therefore solely responsible

[53] As set out above, the defendants plead they did not cause the damage to the building, and they are therefore not liable.

[54] This allegation in both pleadings, however, betrays a fundamental misunderstanding of the impact of ss. 65(6) of the *CPA*:

> **65** (6) If the owner of a unit, or a person residing in the owner's unit with the permission or knowledge of the owner, through an act or

> omission causes damage to a unit, the amount determined pursuant to subsection (7) may be added to the common expenses payable by the owner of that unit.

[55] Subsection 65(6) of the *CPA* makes clear that the defendants are liable to the Condo Board for damage caused by their Tenant. While it is open to the defendants to subsequently seek recovery of any damages from their Tenant, this provision permits the Condo Board to recover repair costs from the defendants by adding the costs to the common expenses payable by the defendants.

[56] After accepting as true the defendants' allegations that their Tenant is personally responsible, I conclude there is no reasonable defence against the claim of the Condo Board on this basis. Although the defendants plead they are not responsible, the law is clear they are statutorily liable to the Condo Board.

[57] I therefore conclude it is plain and obvious this part of the pleadings cannot succeed in light of ss. 65(6) of the *CPA*, and it is beyond doubt that this part of the pleadings will fail. As a result, this portion of both pleadings must be struck under Rule 7-9(2)(a).

[58] Even if I had not decided this portion of the pleadings discloses no reasonable cause of action, I would have decided this portion was groundless and cannot succeed in law. Therefore, it is frivolous under Rule 7-9(2)(b).

[59] In these circumstances, I also conclude it is inappropriate to give the defendants leave to amend their pleadings. This is not a situation where otherwise tenable defences were imprecisely expressed but are nevertheless discernible from the whole of the pleadings, as discussed in *Harpold* at para 37 or *Wilson* at paras 28-31. Here, no defences are discernible from a generous reading of this portion of the pleadings and no amendment would eliminate the statutory liability of the defendants under ss. 65(6) of the *CPA*.

2. The Condo Board and Charan were guilty of misconduct and professional incompetence in handling the damages caused

[60] After reviewing these portions of the pleadings, I conclude a reasonable claim or defence is not discernible in respect of the allegations of misconduct or incompetence.

[61] First, there is no factual basis in the pleadings to support allegations of misconduct or incompetence against the Condo Board or Charan. There is no articulated basis in the pleadings to factually support these allegations; there are no particulars to establish what duty to the defendants was breached, or how, or by whom. There is no sufficient notice to the Condo Board as to what case they may have to meet in this regard, or what impact the alleged misconduct or incompetence may have on the defendants' liability. See, for example: *Reisinger* at paras 50-51; *Ryan* at para 13; *Country Plaza* at para 14; *Harpold* at para 26; and *Shaw* at paras 35 and 37.

[62] Second, allegations of misconduct or incompetence in "handling the damages" – without a supporting factual foundation in the pleadings – does not establish a basis for a reasonable defence to an action for foreclosure. The primary issues in a foreclosure action are: (i) whether there is a mortgage agreement; (ii) whether the property is subject to a mortgage; and (iii) whether there has been a material default in the mortgage: *First National Financial GP Corporation v Churko*, 2024 SKKB 118 at para 72. Here, under ss. 62(3)(b) of the *CPA*, the Condo Board is permitted to enforce its lien on the defendants' unit as a mortgage.

[63] The defendants' allegations in this regard are not a defence to a foreclosure action but are, instead, claims. See, for example, *Royal Bank of Canada v 629398 Saskatchewan Ltd.*, 2006 SKQB 434 at paras 14 and 16, 286 Sask R 62, where the court held claims which seek payment of damages do not constitute a defence to a debt action.

[64] Therefore, I conclude this portion of the pleadings does not disclose a reasonable defence or claim under Rule 7-9(2)(a). I also conclude this portion of the pleadings is groundless and therefore frivolous under Rule 7-9(2)(b).

[65] Further, in these circumstances, I conclude it is not appropriate to give the defendants an opportunity to amend their pleadings in this regard because this is not a situation where otherwise tenable defences were imprecisely expressed. No amendment will serve to re-characterize these allegations as a reasonable defence.

4. The Condo Board and Charan arranged and paid for repairs without notifying the defendants

5. The defendants were not notified of the cost of the repairs until September 1, 2017

[66] The primary thrust of this portion of the pleadings is that the defendants were not notified of the repairs, or the cost of the repairs, until some months after the damage occurred.

[67] Again, this portion of the pleadings does not constitute a reasonable defence or claim. At their highest, these pleadings can be construed as claims, but not defences to an action in debt.

[68] Therefore, I conclude there is no reasonable defence or claim under Rule 7-9(2)(a) and this portion of the pleadings is groundless and therefore frivolous under Rule 7-9(2)(b). I decline to give the defendants an opportunity to amend their statement of defence and third-party claim because no amendment to this part of the pleadings would articulate a reasonable defence or claim.

6. The Condo Board and Charan did not comply with the defendants' request to provide a witness for the hearing before the Office of Residential Tenancies to prove the damages were caused by the Tenant

[69] The thrust of this portion of the pleadings is that the Condo Board and

Charan did not provide a witness for the hearing before the Office of Residential Tenancies to prove the damages were caused by the Tenant.

[70] There is no allegation that the Condo Board or Charan had a legal duty to provide a witness for this hearing, and it was open to the defendants to subpoena any person that might have had relevant evidence to provide at this hearing. These pleadings cannot be construed as defences to a foreclosure action.

[71] Therefore, I conclude there is no reasonable defence or claim under Rule 7-9(2)(a); I also conclude this portion of the pleadings is groundless and therefore frivolous under Rule 7-9(2)(b). I decline to give the defendants an opportunity to amend their statement of defence and third-party claim because this is not a situation where otherwise tenable defences were imprecisely expressed; no amendment to this portion of the pleadings would constitute a defence.

7. The Condo Board and Charan did not provide an accurate copy of the condominium bylaws to the defendants when requested

8. The owner of Charan stated in an affidavit that the value of the defendants' unit was $70,000, when she listed a similar condominium unit for $109,000

[72] The primary thrust of these portions of the pleadings is that valid or accurate bylaws were not forwarded to the defendants as requested and the owner of Charan provided an affidavit setting out a lower market value for the defendants' unit than the value set out for a similar unit.

[73] Again, there is no reasonable defence alleged in this portion of the pleadings. Taken at their highest, these allegations may be construed as claims, not defences.

[74] Therefore, I conclude there is no reasonable defence or claim under Rule

7-9(2)(a) and this portion of the pleadings is groundless and therefore frivolous under Rule 7-9(2)(b).

[75] I decline to give the defendants an opportunity to amend their statement of defence and third-party claim because no amendment to this portion of the pleadings would support a reasonable defence. As with the above categories of allegations, this is not a situation where otherwise tenable defences were imprecisely expressed.

9. The calculation of total arrears wrongfully includes Charan's solicitor's costs and interest

[76] This portion of the pleadings disputes the amounts claimed by the plaintiff; the defendants plead that these arrears are not accurate and that they include amounts that should not be claimed.

[77] However, disputing the calculation of an amount owing under a contract does not constitute a triable issue. In *Smith v The Toronto-Dominion Bank*, 2023 SKCA 81 at para 19 [*Smith*], Richards C.J.S. held that a denial of the amount owing is not a defence:

> [19] There are a number of Queen's Bench cases that use language to the effect that a denial of the amount owed under an agreement is not a defence. *Royal Bank* [*Royal Bank of Canada v 4445211 Manitoba Ltd.*, 2015 SKQB 261], the decision relied on by the Chambers judge in her Fiat, is a good example. There, Danyliuk J. wrote as follows:
>
> > [23] As to the former, the denial of the amounts owed is not a defence. It only places into issue the calculations of the plaintiff. There are not any substantive matters of fact or law put into dispute by the defendants. The case law is clear that in such circumstances, a reference (under current rule 6-58) can be ordered to determine the amounts owing. There is no triable issue.
>
> Similar kinds of statements can be found in cases such as *Porcupine Credit Union Ltd. v Szydlowski*, 1992 CarswellSask 613 (WL) (QB) at paras 25–28 [*Porcupine Credit Union*]; *Farm Credit Canada v 101181565 Saskatchewan Ltd.*, 2018 SKQB 280 at para 14;

> *International Capital Corp. v 590188 Saskatchewan Ltd.*, 2001 SKQB 325 at paras 16–18; *Roynat Inc. v Northland Properties Ltd.* (1993), [1994] 2 WWR 43 (CanLII) (Sask QB) at para 52; *Toronto Dominion Bank v Mitchelson*, 2015 SKQB 305 at paras 10, 11 and 16, 80 CPC (7th) 363; *Singh v 1329369 Alberta Ltd.*, 2015 SKQB 294 at para 7, 80 CPC (7th) 200; *Input Capital Corp. v TKN Company Farm Ltd.*, 2021 SKQB 275 at para 50; *Canada (Attorney General) v Blerot*, 2001 SKCA 18, 203 Sask R 73.

[78] In light of these authorities, the defendants' pleadings which dispute the plaintiff's calculation of the amount owing do not raise a reasonable defence or claim.

[79] Therefore, I conclude there is no reasonable defence or claim under Rule 7-9(2)(a), and I also conclude this portion of the pleadings is groundless and therefore frivolous under Rule 7-9(2)(b). I therefore strike this portion of the pleadings.

[80] As with other categories of the defendants' allegations, this is not a situation where otherwise tenable defences were imprecisely expressed. Therefore, I decline to give the defendants an opportunity to amend their statement of defence and third-party claim because no amendment to this portion of the pleadings would support a reasonable defence or claim.

[81] However, there are appropriate avenues for the defendants to address these concerns in the foreclosure process.

[82] As set out in *Smith* at para 20, in these circumstances, a chambers judge is required to either (a) order an accounting to determine the amount owing by the defendants or (b) expressly open the door for the defendants to make an application for an accounting.

[83] In these circumstances, I conclude the issue of the amount owing to the plaintiff may be determined by the judge hearing the application for an Order *Nisi* for foreclosure. Rule 10-43 of *The King's Bench Rules* expressly authorizes a judge hearing an application for an Order *Nisi* to either determine the amount due (Rule 10-43(1)(a))

or to order a reference for the purpose of determining the amount due (Rule 10-43(2)(a)).

[84] In summary, I strike the defendants' pleading in this regard as well; however, the chambers judge hearing the application for an Order *Nisi* for foreclosure may either determine the amount due in accordance with Rule 10-43(1)(a) or, if necessary, order a reference under Rule 10-43(2)(a).

V. SUMMARY OF ORDERS

[85] In summary, after reviewing the pleadings in accordance with the direction given by the case authorities, and after hearing submissions from the parties, I make the following orders:

(a) The defendants' statement of defence is struck;

(b) The defendants' third-party claim against Charan is struck;

(c) The plaintiff has leave to apply for an Order *Nisi* for foreclosure;

(d) The chambers judge hearing the application for an Order *Nisi* for foreclosure may either determine the amount due in accordance with Rule 10-43(1)(a) of *The King's Bench Rules* or, if necessary, order a reference under Rule 10-43(2)(a); and

(e) The defendants shall pay the costs of this application to the plaintiff in the total sum of $750.

A.C.J.
M.D. TOCHOR

KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 146**

Date: **2024 08 21**
Docket: QBG-RG-01877-2022
Judicial Centre: Regina

BETWEEN:

THE OWNERS: CONDOMINIUM PLAN NO. 87R53163
PLAINTIFF/APPLICANT

- and -

YI ZENG and YAN WANG
DEFENDANTS/RESPONDENTS

- and -

ZACHARY EUGENE GEORGE and
CHARAN PROPERTY MANAGEMENT INC.
THIRD PARTIES

Appearing:

Ryan Tulloch	for the plaintiff/applicant and for the third-party, Charan Property Management Inc.
Yi Zeng	self-represented defendant and for the defendant, Yan Wang
No one appearing	for the third-party, Zachary Eugene George

CORRIGENDUM to JUDGMENT
DATED AUGUST 15, 2024 TOCHOR A.C.J.
AUGUST 21, 2024

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[86] Paragraph 1 shall now read:

> [1] The plaintiff/applicant, The Owners: Condominium Plan No. 87R53163 [Condo Board], seeks the following orders pursuant to Rule 7-9 of *The King's Bench Rules*:

(f) An order striking out the defendants', Yi Zeng and Yan Wang, statement of defence;

(g) An order striking out the defendants' third-party claim against Charan Property Management Inc. [Charan];

(h) Leave to apply for an Order *Nisi* for foreclosure; and

(i) Costs.

A.C.J.
M.D. TOCHOR