

**CITATION:** Lansdowne Office Inc. et al. v. Sheppard et al, 2024 ONSC 7055  
**COURT FILE NO.:** CV-21-85734  
**DATE:** 2024/12/18

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** CPCS Transcom Limited, Plaintiff

**AND:**

Lansdowne Office Inc., Parallel45 Design Group Ltd. and C & W Ottawa Inc. c.o.b.  
as Cushman & Wakefield Ottawa and Cushman & Wakefield, Defendants

**AND:**

Steven Sheppard and SKS Law LLP, Third Parties

**BEFORE:** Rees J.

**COUNSEL:** Anna Husa, for the Third Parties/Moving Parties, Steven Sheppard and SKS Law  
LLP

Ryan D. Garrett, for the Defendant/Responding Party, Lansdowne Office Inc.

**HEARD:** October 15, 2024

**ENDORSEMENT**  
**MOTION TO STRIKE THE THIRD PARTY CLAIM**

**Introduction**

[1] This is a motion under r. 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to strike the defendant Lansdowne Office Inc.'s third party claim against Steven Sheppard and SKS Law LLP for disclosing no reasonable cause of action.

[2] Mr. Sheppard is a lawyer practicing law with SKS. Mr. Sheppard acted as the solicitor for the plaintiff, CPCS Transcom Limited, in connection with a commercial lease of premises in Ottawa. Lansdowne was the landlord.

[3] CPCS commenced an action against Lansdowne and others for damages in connection with the lease. In its statement of claim, CPCS alleges that it entered into a lease for a rentable area of 7,500 square feet, but that after it entered into the lease, Lansdowne demanded rent based on a recalculated area of 9,258 square feet.

[4] CPCS alleges that it has been paying full rent based on 9,258 square feet of rentable area under protest, and seeks to recover from Lansdowne and the other defendants the additional amounts paid above the rent calculated, on the basis of 7,500 square feet of rentable area.

[5] In its statement of defence and crossclaim, Lansdowne alleges, among other things, that it had a right, under the measurement clause in the lease, to recalculate the rentable area of the premises and to adjust the net rent and additional rent. Lansdowne also pleads that CPCS was represented by solicitors during the lease negotiations and that CPCS's failure to understand the wording and the effect of the lease is solely the responsibility of CPCS, its solicitors, and others, and not Lansdowne.

[6] Lansdowne commenced a third party claim against Mr. Sheppard and SKS. It is this third party claim at issue on the motion.

[7] The third party claim seeks contribution and indemnity from Mr. Sheppard and SKS for any damages, interest, costs, or judgment which Lansdowne may be found liable to pay to CPCS in the main action.

[8] The third party claim pleads, among other things, that Mr. Sheppard and SKS failed or neglected to exercise reasonable care and skill in providing advice to their client, CPCS, with respect to the lease and the measurement clause, and that they are entirely responsible for any losses incurred by CPCS.

[9] Although the third party claim does not expressly rely on the *Negligence Act*, R.S.O. 1990, c. N.1, Lansdowne and the third parties agreed, for the purpose of this motion, to proceed as if it had been pleaded so as to avoid a formal amendment.

**Should Lansdowne's third party claim against Mr. Sheppard and SKS for contribution and indemnity under the *Negligence Act* be struck?**

[10] Mr. Sheppard and SKS ask me to strike the third party claim under r. 21.01(1)(b) for not disclosing a reasonable cause of action. A claim will be struck if it is "plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action": *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17. In other words, "the claim has no reasonable prospect of success": *ibid.*

[11] Mr. Sheppard and SKS argue that the outcome of this motion is governed by the Court of Appeal's decision in *Hengeveld v. The Personal Insurance Company*, 2019 ONCA 497, 146 O.R. (3d) 182. They argue that Lansdowne has no independent cause of action against them in negligence or otherwise. They further contend that there can be no apportionment of liability between themselves and Lansdowne at trial.

[12] Lansdowne argues that its third party claim for contribution and indemnity under the *Negligence Act* is based on the alleged negligent advice Mr. Sheppard and SKS gave the plaintiff during the lease transaction. Lansdowne argues that this kind of third party claim has been recognized as disclosing a reasonable cause of action and ought to move forward.

[13] In Ontario, the applicable principles have been set out in *478649 Ontario Ltd. v. Corcoran* (1994), 20 O.R. (3d) 28 (C.A.) and *Hengeveld*. Those principles may be summarized as follows:

- a. A third party claim must assert a cause of action.
- b. A third party claim based on the contribution and indemnity provisions of the *Negligence Act* does not require that the third party owe a duty of care to the defendant. It is sufficient that the third party owe a duty of care to the plaintiff, making the third party someone who, if sued by the plaintiff, would have been liable in respect of the damages the plaintiff suffered.
- c. Whether a claim by a defendant seeking contribution and indemnity from a third party for alleged negligence that caused or contributed to the plaintiff's damages discloses a reasonable cause of action is a function of whether the negligence is attributable to the plaintiff. If the negligence is attributable to the plaintiff, the defendant has no cause of action against the third party.
- d. In cases involving third party claims against a plaintiff's solicitors, allegations relating to the solicitors' actions as agent for the plaintiff and negligent mitigation advice are attributable to the plaintiff.
- e. Other allegations of negligent advice by the plaintiff's solicitors which are not attributable to the plaintiff may disclose a reasonable cause of action for contribution and indemnity.

[14] The third party claim in *Corcoran* is illustrative of these principles.

[15] In *Corcoran*, the plaintiff retained and received advice from its lawyer and its realtor. The plaintiff claimed against its realtor for negligently misrepresenting the value and development potential of the commercial property. The realtor brought a third party claim against the plaintiff's lawyer on the transaction, alleging that the lawyer was negligent in advising the plaintiff about the contents of the agreement for purchase and sale. The Court of Appeal allowed the third party claim to proceed. In doing so, it held, at p. 35:

This may not be a case where the fault alleged against the third party is in fact the fault of the plaintiff, but rather a case where the plaintiff may not be responsible for the negligence alleged against this solicitor.

[16] Similarly, the Divisional Court in *Cardar Investments Ltd. v. Thorne Riddell* (1989), 71 O.R. (2d) 29 (Div. Ct.) granted leave to a defendant accountant to bring a third party claim against the plaintiffs' solicitors who acted for the plaintiffs on the purchase of scientific research tax credits. The plaintiffs claimed against their accountant for damages they allegedly suffered because of negligent advice on the amount of the tax credits they needed to buy to maximize their tax savings. The proposed third party claim alleged that the solicitors were negligent in failing to make the calculations needed to maximize the plaintiffs' tax savings.

[17] The Divisional Court relied on *Adams v. Thompson, Berwick, Pratt & Partners* (1987), 39 D.L.R. (4th) 314 (B.C.C.A.), at p. 318, in which McLachlin J.A. (as she then was) held that “where the pleadings and the alleged facts raise the possibility of a claim against the third party for which the plaintiff may not be responsible, the third party claim should be allowed to stand”: p. 33.

[18] The Divisional Court held that the solicitors could be held liable to contribute to the plaintiffs’ damages under the *Negligence Act* and thus the defendant should be allowed to issue the third party claim.

[19] Here, at para. 16 of the third party claim, Lansdowne alleges that Mr. Sheppard and SKS were negligent in carrying out their duties to the plaintiff. Lansdowne particularizes Mr. Sheppard and SKS’s alleged negligence as follows:

- (a) They failed to exercise reasonable care and skill in providing advice to the Plaintiff in relation to the clauses of the Lease, including the Measurement Clause;
- (b) They failed to provide any explanation, or adequate explanation, of the import and effect of the clauses of the Lease, including the Measurement Clause;
- (c) They failed to advise the Plaintiff that the rentable area could increase as a result of the operation of the Measurement Clause;
- (d) They failed to explore whether the Plaintiff had made assumptions about the operation of the Measurement Clause, which assumptions are not supported by the terms of the Lease, including the Measurement Clause; and,
- (e) Such further and other particulars as will be provided prior to the trial of this action.

[20] The allegations that Mr. Sheppard and SKS provided negligent advice to the plaintiff is not attributable to the plaintiff. The alleged negligent advice would not be the fault of the plaintiff; it would be the fault of Mr. Sheppard and SKS. It can therefore ground a third party claim for contribution and indemnity under s. 5 of the *Negligence Act*.

[21] Mr. Sheppard and SKS argue that the only possible claim against them is a claim in solicitor’s negligence, which the plaintiff has not advanced and for which the limitation period has expired.

[22] I disagree that this defeats Lansdowne’s third party claim for contribution and indemnity under s. 5 of the *Negligence Act*. As the Court of Appeal explained in *Hengeveld*, at para. 20: “[s]ection 5 of the Act contemplates the situation where a defendant has been sued but believes there is another wrongdoer who caused or contributed to the plaintiff’s injury and has not yet been

sued. It allows a defendant to pursue a right of contribution and indemnity against that person by third party claim” (emphasis added).

[23] Thus, the allegations that Mr. Sheppard and SKS provided negligent advice disclose a reasonable cause of action for contribution and indemnity under s. 5 of the *Negligence Act*.

**Costs**

[24] The parties filed cost materials on the motion. Lansdowne was entirely successful on the motion and seeks partial indemnity costs of \$7,189.20. Mr. Sheppard and SKS sought partial indemnity costs of \$12,958.90, had they been successful.

[25] The costs sought by Lansdowne are fair and reasonable.

**Disposition**

[26] The third parties’ motion to strike under r. 21.01(1)(b) is dismissed.

[27] The third parties shall pay Lansdowne \$7,189.20 in costs, all inclusive, within 30 days of this endorsement.

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Justice Owen Rees

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Rees J.

**Released:** December 18, 2024