**CITATION:** Henderson v. Amega Holdings (Barbados) Inc., 2024 ONSC 7046
**COURT FILE NO.:** CV-23-00091353-0000
**DATE:** 20241217

**SUPERIOR COURT OF JUSTICE – ONTARIO**



**RE:** Dean Henderson (Plaintiff)

**AND**

Amega Holdings (Barbados) Inc., Aubrey de Young, Sicotte Guilbault LLP and Joseph Marcel Denis Sicotte (Defendants)

**BEFORE:** Justice R. Ryan Bell

**COUNSEL:** Christopher P. Morris, for the Plaintiff

Stephen Cavanagh, for the Defendants Sicotte Guilbault LLP and Joseph Marcel Denis Sicotte

No one appearing for the Defendants Amega Holdings (Barbados) Inc. and Aubrey de Young

**HEARD:** September 19, 2024

## ENDORSEMENT

### Overview

[1] The defendants Sicotte Guilbault LLP, an Ottawa law firm, and Joseph Marcel Denis Sicotte, a partner in the firm, move for an order striking the statement of claim against them, without leave to amend, and dismissing the action against them. The defendants Amega Holdings (Barbados) Inc. and Aubrey de Young are alleged to have been clients of the Sicotte defendants.

[2] The statement of claim seeks judgment against Mr. de Young and the Sicotte defendants in respect of a judgment and three orders against Amega in favour of the plaintiff Dean Henderson. The claim seeks declaratory relief against the Sicotte defendants based on the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 and the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33, and an order setting aside the alleged transfer of assets from Amega to Mr. de Young and the Sicotte defendants. The claim advances causes of action based on conspiracy (although it is conceded that the claim does not use the word "conspiracy"), and unjust enrichment.

[3] For the following reasons, I conclude that the statement of claim discloses no reasonable cause of action against the Sicotte defendants. The statement of claim against the Sicotte defendants is struck out, without leave to amend, and the action against them is dismissed.

**The allegations in the pleadings**

[4] On a motion to strike under r. 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, no evidence is admissible, and the facts pleaded are assumed to be true unless they are patently ridiculous or incapable of proof: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 17; *Gaur v. Datta*, 2015 ONCA 151, at para. 5. In determining whether a cause of action is disclosed, particulars can be considered as part of the pleading: *Gaur*, at para. 5. In assessing the substantive adequacy of the claims, the court is entitled to review the documents referred to in the pleadings: *McCreight v. Canada*, 2013 ONCA 483, at para. 32.

[5] In addition to the statement of claim, I have considered the response to demand for particulars, as well as the judgment and orders against Amega because they are documents that are referred to in the statement of claim. The trust ledger document included in the responding motion record is not properly before the court because it is not referred to in either the claim or the response to demand for particulars; accordingly, I have not reviewed the document.

[6] The relief sought against the Sicotte defendants is set out at paragraph 1 of the claim:

> (a) a declaration that Mr. de Young and the Sicotte defendants fraudulently conveyed, gifted, delivered or transferred the assets of Amega for inadequate or no consideration with the intention to defeat its creditors;
>
> (b) a declaration that the transfer of assets of Amega is fraudulent and void as against Mr. Henderson and other creditors of Amega;
>
> …
>
> (e) judgment against Mr. de Young and the Sicotte defendants in the sum of $280,000 USD plus interest at the rate of 8.0 %, per annum, for monies owing to Mr. Henderson pursuant to the judgment of Kane J. dated November 24, 2017, in Ontario Superior Court of Justice File No. 14-61119 (the "Judgment");
>
> (f) judgment against Mr. de Young and the Sicotte defendants in the sum of $900 plus interest pursuant to the *Courts of Justice Act* for costs owing to Mr. Henderson pursuant to the Order of Master Fortier dated October 25, 2018, in Ontario Superior Court of Justice File No. 14-61119;
>
> (g) judgment against Mr. de Young and the Sicotte defendants in the sum of $7,000 CDN plus interest pursuant to the *Courts of Justice Act* for costs owing to Mr. Henderson pursuant to the Order of Justice MacLeod dated October 1, 2019, in Ontario Superior Court of Justice File No. 14-61119;
>
> (h) judgment against Mr. de Young and the Sicotte defendants in the sum of $4,751 USD for costs owing to Mr. Henderson pursuant to the Order of the Supreme Court of Barbados dated June 12, 2019, in Supreme Court of Barbados in the High Court of Justice Claim No. CV-0329 of 2019;

(i) in the alternative to paragraphs (e), (f), (g), and (h), compensation for unjust enrichment from Mr. de Young and the Sicotte defendants; and

(j) in the alternative to paragraphs (e), (f), (g), and (h), an order setting aside the transfer of assets from Amega to Mr. de Young and the Sicotte defendants.

[7] Mr. de Young is the sole director and senior officer of Amega and the "controlling mind and alter ego of Amega"; he has "operated Amega as an extension of himself and for his own benefit." (Claim, at para. 11) The claim alleges that, faced with the 2017 judgment in favour of Mr. Henderson, Mr. de Young "immediately took steps to transfer the assets of Amega in order to defeat the Judgment in favour of the plaintiff." (Claim, at para. 12)

[8] In paragraph 13 of the claim, Mr. Henderson pleads, in the alternative, that,

> … de Young and/or Amega fraudulently transferred Assets (and made payments) to Sicotte Guilbault LLP and Denis Sicotte for no consideration or inadequate consideration with the intent to defeat, hinder, delay, defraud or prejudice Amega's creditors, including Henderson (both or either of such transfers referenced to [*sic*] as the "Transfer").

[9] The claim alleges that the transfer of assets was done with the knowledge and participation of the Sicotte defendants "by transferring funds through trust accounts held by Denis Sicotte and Sicotte LLP." The claim further alleges that the Sicotte defendants were aware of the 2017 judgment and of Mr. de Young's intention to defeat creditors by using the trust amounts at the time of the transfers and payments. (Claim, at para. 16)

[10] It is pleaded that the transfer of assets (cash) occurred between February 2018 and November 2019 and payments were made and/or authorized by Amega and/or Mr. de Young. It is admitted that some of the payments made to Sicotte Guilbault from its "bank account" (presumably, a reference to the firm's trust account) were for professional services rendered by Sicotte Guilbault. (Response to demand for particulars, at para. 1) Amega and/or Mr. de Young allegedly transferred cash from Amega and/or from other investors into the Sicotte defendants' bank account and subsequent transfers and/or payments were made from the Sicotte defendants' account to the Sicotte defendants and Mr. de Young for no consideration, and for no juristic reason in an attempt to avoid enforcement and collection of the judgment debt owing to Mr. Henderson. (Response to demand for particulars, at para. 2)

**The *Fraudulent Conveyances Act***

[11] Section 2 of the *Fraudulent Conveyances Act* provides:

> Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[12] The *Fraudulent Conveyances Act* does not create a right of action that sounds in damages, nor does it create a legal duty, the breach of which gives rise to a cause of action: *Perry, Farley & Onyschuk v. Outerbridge Management Ltd.*, 2001 CanLII 5678 (ON CA), at para. 30. The plaintiff in a fraudulent conveyance action asserts that the debtor has improperly placed assets beyond the reach of ordinary legal process. The statute provides for a declaratory type of proceeding that has the effect of nullifying transfers and conveyances of the debtor's property so as to make execution of the creditor's debt possible: *Perry, Farley & Onyschuk*, at para. 30.

[13] Here, the fraudulent conveyance alleged – the transfer of Amega's cash to the Sicotte defendants' trust account – cannot give rise to declaratory relief against the Sicotte defendants. The alleged debtor is Amega. The Sicotte defendants could not fraudulently convey Amega's assets – cash or otherwise.

**The *Assignments and Preferences Act***

[14] While the statement of claim does not refer to specific sections of the *Assignments and Preferences Act*, Mr. Henderson identifies s. 4(1) and s. 12(1) in his written submissions. Section 4(1) provides:

> Subject to section 5, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person when insolvent or unable to pay the person's debts in full or when the person knows that he, she or it is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice creditors, or any one or more of them, is void as against the creditor or creditors injured, delayed or prejudiced.

[15] Section 12(1) provides:

> In the case of a gift, conveyance, assignment or transfer of any property, real or personal, that is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made has sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover belongs not only to an assignee for the general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

[16] Section 4(1) of the *Assignments and Preferences Act* does not assist Mr. Henderson in relation to the Sicotte defendants. The transfer pleaded is Mr. de Young and/or Amega's transfer of Amega's assets to the Sicotte defendants in trust; however, those funds remained the property

of Amega. The insolvency or the inability to pay the person's debts in full or the knowledge that the person is on the eve of insolvency all refer back to the debtor, Amega, not the Sicotte defendants. The intention to defeat, hinder, delay or prejudice creditors, is that of the debtor, Amega, not the Sicotte defendants.

[17] In his submissions, Mr. Henderson identifies s. 12(1) of the *Assignments and Preferences Act* in support of the relief claimed at paragraph 1(j) of the statement of claim: "in the alternative to paragraphs (e), (f), (g), and (h), an order setting aside the transfer of assets from Amega to Mr. de Young and the Sicotte defendants." Section 12(1) provides that where a conveyance of any property is made that is invalid against creditors and the property is sold or disposed of, the money may be recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the transfer was made.

[18] In my view, Mr. Henderson cannot rely on s. 12(1) in relation to the Sicotte defendants. First, on the present wording of the claim, the order sought would set aside the "transfer" of funds from Amega to the Sicotte defendants. But because these funds were deposited to the law firm's trust account, the funds remained those of Amega; there was no property transferred to the Sicotte defendants and no transfer to set aside.

[19] Second, if Mr. Henderson is seeking to set aside the alleged subsequent transfers from the Sicotte defendants' trust account to Mr. de Young and the Sicotte defendants, the cash has not been "disposed of" within the meaning of s. 12(1). The funds in Sicotte Guibault's trust account were held in trust for the firm's clients, including Amega. Mr. Henderson admits that some of the funds were appropriately transferred from Sicotte Guibault's trust account for professional services rendered. The remaining funds in the trust account received from Amega would still be Amega's property. Any disposition of those funds by the Sicotte defendants to themselves for any reason other than for professional services rendered would amount to theft from Amega. No such allegation has been made.

[20] Mr. Henderson submits that a plaintiff may rely on the tracing remedy provided for in s. 12(1) of the *Assignments and Preferences Act* by relying on the provisions of another statute, such as the *Fraudulent Conveyances Act*: *Reliable Life Insurance Company v. Ingle*, 2009 CanLII 45317 (ON SC), at para. 9. However, as I have explained, the *Fraudulent Conveyances Act* does not assist Mr. Henderson here because the Sicotte defendants could not convey Amega's assets.

**The conspiracy claim against the Sicotte defendants**

[21] While the statement of claim does not use the word "conspiracy", there is no serious dispute that Mr. Henderson alleges a conspiracy against all defendants: the statement of claim alleges that a fraudulent transfer of assets was made by Amega and Mr. de Young "with Denis Sicotte's and Sicotte LLP's knowledge and participation" and that the Sicotte defendants were aware of the 2017 judgment and of Mr. de Young's "intention to defeat creditors by using the trust amounts [*sic*] at the time of the transfers and payments." (Claim, at para. 16)

[22] The requirements for a pleading of conspiracy are:

> The statement of claim should describe who the several parties are and their relationship with each other. It should allege the agreement between the defendants to conspire, and state precisely what the purpose or what were the objects of the alleged conspiracy, and it must then proceed to set forth, with clarity and precision, the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance and in furtherance of the conspiracy; and lastly, it must allege the injury and damage occasioned to the plaintiff thereby: *Normart Management Limited v. West Hill Redevelopment Company Limited et al.*, 1998 CanLII 2447 (ON CA).

[23] The conspiracy allegations in this case do not meet this standard. The pleadings do set out the parties to the alleged conspiracy. Their relationship – that of solicitor and client – can be inferred from the pleadings as presently drafted. However, the conspiracy's purpose is described as "to defeat, hinder, defraud or prejudice Amega's creditors", including Mr. Henderson. This is a bald and conclusory statement, lacking in precision, that merely tracks the language of s. 2 of the *Fraudulent Conveyances Act*.

[24] More significantly, the pleadings fail to set out, "with clarity and precision", the overt acts which are alleged to have been done by each of the alleged conspirators in furtherance of the conspiracy. As Pitt J. observed in *Hostmann-Steinberg v. 2049669 Ontario Inc.*, 2010 ONSC 2441, at para. 20, "[t]he plaintiff cannot just state that some or all of the defendants did something together, without attributing specific acts to specific defendants." Yet, that is what has occurred in this case. There are no particulars provided as to the creditors of Amega (apart from Mr. Hamilton) and the investors in Amega whose cash is alleged to have been transferred to the Sicotte defendants in trust. Are the third party investors alleged to be parties to the conspiracy? How did Amega and Mr. de Young transfer funds from Amega's creditors and investors to Sicotte Guilbault's trust account? Funds from Amega's creditors and from Amega's investors would have continued to belong to those creditors and investors. How did the Sicotte defendants then transfer or pay such funds from the trust account to themselves if not for professional services rendered? What was the ostensible character of such payments if not for their fees and disbursements? To the latter question, Mr. Henderson has responded "this is not within the knowledge of the Plaintiff."

[25] With respect, it is not appropriate for Mr. Henderson to say that the particulars are not within his knowledge and to await discovery "to assemble the ingredients for a proper plea": *Hostmann-Steinberg*, at para. 20. If at the time of pleading, the plaintiff does not have knowledge of the facts necessary to support the cause of action, it is inappropriate to advance the allegation in the statement of claim: *Balanyk v. University of Toronto*, 1999 CanLII 14918 (ON SC).

[26] There are no particulars as to the impugned "transfers" into or out of the firm's trust account – either dates or amounts. The total disbursements to Mr. Young, Mr. Sicotte, and the law firm said to have occurred over a 20-month period do not suffice. The pleadings also fail to account for the admission by Mr. Henderson that some of the payments from the firm's trust account to the Sicotte defendants were valid payments for professional services rendered.

[27] There is no allegation of injury and damages occasioned to Mr. Henderson as a result of the acts of the defendants in furtherance of the alleged conspiracy; the claim seeks only compensation for unjust enrichment.

[28] The absence of these particulars serves to reinforce the bald and conclusory nature of the conspiracy plea. The conspiracy plea is struck out.



**The unjust enrichment claim against the Sicotte defendants**

[29] In the alternative to the judgments sought by Mr. Henderson against Mr. de Young and the Sicotte defendants, Mr. Henderson claims damages based on unjust enrichment. The elements of a claim in unjust enrichment are: (i) that the defendant was enriched; (ii) that the plaintiff suffered a corresponding deprivation; and (iii) that the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason: *Moore v. Sweet*, 2018 SCC 52, at para. 37.

[30] While these elements are not addressed in the statement of claim, Mr. Henderson does purport to address them in the response to demand for particulars. There, it is alleged that the Sicotte defendants have been unjustly enriched by making "Payments or Transfers to themselves and/or to Aubrey de Young (other than for valid professional services rendered) over judgment creditors such as the Plaintiff." The amount by which the Sicotte defendants are said to have been unjustly enriched is "at least $205,000 USD." The corresponding deprivation to Mr. Hamilton is alleged to be "the ability to enforce and/or to collect all or part of the judgment debt owing from Amega Holdings (Barbados) Inc. to the Plaintiff." It is alleged that there was no juristic reason for any of the payments or transfers "from the Sicotte Defendants' bank account and subsequently to Aubrey de Young and the Sicotte Defendants (other than payments for valid legal services rendered)."

[31] There are six key problems with the unjust enrichment pleading:

(i) the allegations are bald and conclusory, lacking in material facts;

(ii) the Sicotte defendants would not have been unjustly enriched by payments or transfers made to Mr. de Young;

(iii) there is no legal or factual foundation advanced to support the proposition that the law firm incurred liability by paying funds out from its trust account to Mr. de Young on the direction of Amega and/or Mr. de Young, the clients;

(iv) the Sicotte defendants would not have been unjustly enriched by transfers from their trust account for professional services rendered; professional services rendered is a juristic reason for payments or transfers from the law firm's trust account to the Sicotte defendants;

(v) the amount of the unjust enrichment is said to be "at least $205,000", but no explanation has been provided as to how this total has been arrived at; and

(vi) the deprivation alleged to have been suffered by Mr. Hamilton is in relation to Amega, not the Sicotte defendants.

[32] The unjust enrichment claim against the Sicotte defendants is struck out.

**Leave to amend is not granted**

[33] Leave to amend a statement of claim should be denied only in the clearest of cases, when it is plain and obvious there is no tenable cause of action, the proposed pleading is scandalous or vexatious, or there is non-compensable prejudice to the defendants. This test applies even where it is determined that the statement of claim, as pleaded, should be struck: *Gagne v. Harrison*, 2024 ONCA 82, at para. 13.

[34] At the same time, however,

> . . . If the plaintiff does not at the outset have knowledge of the facts that give rise to the conclusions of malice, breach of duty, conspiracy to intentionally injure, etc., then it is inappropriate to make these allegations in the statement of claim. It may be that in the future the plaintiff will determine facts as a result of discovery or in some other way that will support some or all of the allegations. . . [B]ut until the plaintiff has knowledge of some facts on which to base the conclusions alleged in the statement of claim, it is improper to allow these conclusions to be pleaded baldly and without any supporting facts: *Region Plaza Inc. v. Hamilton-Wentworth (Regional Municipality)* (1990), 12 O.R. (3d) 750 (H.C.J.), at 757, cited in *Miguna v. Ontario (Attorney General)*, 2005 CanLII 46385 (ON CA), at para. 18. See also *TSCC Corporation No. 2123 v. Times Group Principals*, 2018 ONSC 4799, at para. 88.

[35] Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading is required to contain full particulars: *Rules of Civil Procedure*, r. 25.06(8). Where a party alleges conduct akin to fraud or intentional misconduct – as is the case here – particulars of the specific facts that are required to ground such an action must be pleaded: *Fasteners & Fittings Inc. v. Wang*, 2020 ONSC 1649, at para. 118.

[36] For the reasons previously given, the *Fraudulent Conveyances Act* cannot give rise to declaratory relief against the Sicotte defendants: the Sicotte defendants could not fraudulently convey Amega's assets. This issue cannot be "cured" by further particulars or an amendment to the statement of claim.

[37] I have concluded that neither s. 41(1) nor s. 12(1) of the *Assignments and Preferences Act* assists Mr. Henderson in relation to the Sicotte defendants. There is an admission that some of the funds in the law firm's trust account were appropriately transferred to the Sicotte defendants for professional services rendered. The remaining funds in the trust account received from Amega would remain the property of Amega. These issues cannot be "cured" by further particulars or an amendment to the statement of claim.

[38] The conspiracy claim against the Sicotte defendants is bald and conclusory. It fails to set out "with clarity and precision" the overt acts which are alleged to have been done by the Sicotte defendants. Reading the claim and the response to demand for particulars generously, it is evident that Mr. Henderson does not have knowledge of the facts necessary to support the civil conspiracy cause of action against the Sicotte defendants. It is improper to baldly plead the conclusory allegations of conspiracy without supporting material facts. Leave to amend the statement of claim in relation to the conspiracy claim is denied.

[39] The unjust enrichment claim against the Sicotte defendants is also bald and conclusory. It also suffers from defects that cannot be remedied by further particulars or amendments.

[40] Accordingly, I do not grant leave to amend the statement of claim.

**Conclusion**

[41] The motion is granted. The statement of claim as against the Sicotte defendants is struck out, without leave to amend, and the action against them is dismissed.

[42] As the successful parties, the Sicotte defendants are entitled to their costs of the motion and the action. The Sicotte defendants request costs of the motion on a substantial indemnity basis in the amount of $6,912.38. They request costs of the action on a substantial indemnity basis in the amount of $11,750.11.

[43] Mr. Henderson alleged the Sicotte defendants participated in a conspiracy and engaged in fraudulent conduct. The Sicotte defendants are entitled to their costs of the motion and the action on a substantial indemnity basis. Mr. Henderson does not take issue with the time incurred by or the hourly rate of counsel for the Sicotte defendants. Having regard to all the circumstances, I find the amounts requested by the Sicotte defendants to be fair and reasonable. Costs to the Sicotte defendants fixed in the total amount of $18,662 all-inclusive. This amount is to be paid by Mr. Henderson within 30 days.

Justice R. Ryan Bell

**Date: December 17, 2024**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**RE:** Dean Henderson (Plaintiff)

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**COUNSEL:** Christopher P. Morris, for the Plaintiff

Stephen Cavanagh, for the Defendants Sicotte Guilbault LLP and Joseph Marcel Denis Sicotte

No one appearing for the Defendants Amega Holdings (Barbados) Inc. and Aubrey de Young

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**ENDORSEMENT**

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Justice Ryan Bell

**Released:** December 17, 2024