

**CITATION:** Bergman v Diamond & Diamond Lawyers LLP, 2025 ONSC 2209  
**COURT FILE NO.:** CV-24-00729978  
**MOTION HEARD:** 20250403

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** ZEV BERGMAN and ZEV BERGMAN PROFESSIONAL CORPORATION,  
Plaintiffs

**AND:**

DIAMOND & DIAMOND LAWYERS LLP, JEREMY DIAMOND, SANDRA  
ZISCKIND, ISAAC ZISCKIND, JEREMY DIAMOND PROFESSIONAL  
CORPORATION, SANDRA ZISCKIND LAW PROFESSIONAL  
CORPORATION and ZISCKIND PROFESSIONAL CORPORATION,  
Defendants

**BEFORE:** Associate Justice L. La Horey

**COUNSEL:** Alexander Evangelista, Counsel for the Moving Party Defendants

Stephen J. Moreau, Counsel for the Responding Party Plaintiffs

**HEARD:** April 3, 2025 by videoconference

**REASONS FOR DECISION**

**OVERVIEW**

- [1] The defendants bring this motion under rule 5 of the *Rules of Civil Procedure* for an order deleting or removing the defendants other than Diamond and Diamond Lawyers LLP (“Diamond LLP”) as parties to the action or in the alternative, an order staying the action against those defendants.<sup>1</sup>
- [2] For the reasons that follow, the defendants’ motion is dismissed.

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<sup>1</sup> In the same motion record, the defendants seek an order striking out the statement of claim pursuant to rules 25.06 and 25.11, without leave to amend. As set out in my endorsement of April 1, 2025, the parties did not book enough time to argue all issues and so only the relief sought under rule 5 was argued before me on April 3, 2025. If the parties cannot resolve the remaining issues, I will hear the balance of the defendants’ motion at a later date.

## PRELIMINARY ISSUE

- [3] The plaintiffs, in their factum, objected to paragraphs 6 to 11 of the affidavit affirmed by the defendant Sandra Zisckind on this motion, on the basis that it contains inadmissible opinion evidence. At the hearing, it was agreed between counsel for the parties that the agreement (described below) attached as an exhibit in paragraph 6 is admissible but that I would not otherwise have regard to the paragraphs in question.

## ANALYSIS

- [4] In this action, Zev Bergman, a lawyer, and his professional corporation, Zev Bergman Professional Corporation, sue Diamond LLP, the individual lawyer defendants, and the professional corporations of those individuals. It is Ms. Zisckind's evidence that Diamond LLP is a limited liability partnership of the three defendant professional corporations and three other unnamed professional corporations. It is her evidence that the individual defendants are the principals and sole shareholders of the defendant professional corporations.
- [5] According to the Fresh as Amended Statement of Claim (the "Claim"), Mr. Bergman worked as a plaintiff-side personal injury lawyer at Diamond LLP from 2015 until his termination in 2024. He alleges breach of his employment contract, wrongful dismissal and other torts. The plaintiffs claim that one or both of the plaintiffs were employees and not partners. Although the defendants have not filed a defence, they take the position in their factum on the motion that Zev Bergman Professional Corporation became a partner of Diamond LLP as of January 1, 2019.
- [6] It is not in dispute that the plaintiffs entered into an agreement entitled: "Partnership Agreement (Non-Equity)" effective as of January 1, 2019 (the "Agreement"). The face page of the document states that the parties to the Agreement are Zev Bergman Professional Corporation, Zev Bergman, Jeremy Diamond, Sandra Zisckind, Isaac Zisckind, and Diamond LLP. The Agreement is signed by each of those parties, with Mr. Bergman signing on his own behalf and on behalf of his professional corporation and Isaac Zisckind signing on his own behalf and on behalf of Diamond LLP.
- [7] The Agreement states that as of the date of the Agreement the equity partners of Diamond LLP were the three individual defendants. Based on Ms. Zisckind's affidavit this is no longer the case, and the current equity partners are the three professional corporation defendants and three other professional corporations, not named in the action.
- [8] Rule 5 of the Rules deals with joinder of claims and parties. Rule 5 provides in part:

### **Joinder of Parties**

5.02

...

*Multiple Defendants or Respondents*

(2) Two or more persons may be joined as defendants or respondents where,

...

(c) there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief;

...

**Misjoinder, Non-Joinder and Parties Incorrectly Named***Proceeding not to be Defeated*

5.04

...

(2) At any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

**Relief against Joinder**

5.05 Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the hearing or cause undue prejudice to a party, the court may,

...

(d) stay the proceeding against a defendant or respondent, pending the hearing of the proceeding against another defendant or respondent, on condition that the party against whom the proceeding is stayed is bound by the findings made at the hearing against the other defendant or respondent;

...

- [9] The defendants submit that I should make an order deleting the individual defendants and their professional corporations pursuant to rule 5.04(2). In the alternative, they argue that I should stay the claims against the individual defendants and their professional corporations under rule 5.05(d) on the basis that the joinder of multiple parties will unduly complicate or delay the hearing or cause undue prejudice.
- [10] The defendants argue that although the individual defendants are signatories to the Agreement, the Agreement imposes no specific contractual obligations on any of the individual defendants or the professional corporation defendants. In their submission, the only obligations are on Diamond LLP. The plaintiffs take a different view.

- [11] The defendants contend that the plaintiffs have the choice whether to commence a proceeding against the partnership or the individual partners. They cannot sue both for the same cause of action.
- [12] The plaintiffs do not dispute that a client with a claim against a firm must normally choose whether to sue the partnership or its partners. However, they say that this rule does not apply when the individual partners undertake certain liabilities to the plaintiff. They allege that under the Agreement, the individual defendants, along with Diamond LLP, directly contracted with the plaintiffs to pay the plaintiffs for their work. Then, as alleged in the Claim, the individual defendants transferred their obligations to the professional corporation defendants pursuant to a contractual enurement clause.
- [13] It is not my role to interpret the Agreement. This is not a summary judgment motion or a trial. Nor is this motion brought under rule 21.01.<sup>2</sup> The defendants do not argue that the claims against the non Diamond LLP defendants should be struck out on the basis that the plaintiffs do not have a reasonable cause of action against them. In any event, as an associate judge, I have no jurisdiction under that rule.
- [14] The plaintiffs rely on rule 5.02(2)(c) and say that joinder of defendants in this case is permissible because there is doubt as to the person or persons from whom the plaintiffs are entitled to relief.
- [15] Neither side could point me to a case on all fours with the case at bar. Mr. Evangelista argues that the decision of Justice Morgan in *Tataryn v 2398968 Ontario Inc.*<sup>3</sup> is “on all threes”. Coincidentally, *Tataryn* also involved a lawsuit (a class action) against Diamond LLP. In *Tataryn*, a former client sued Diamond LLP and also named as defendants the professional corporations that were partners in Diamond LLP, the lawyers who practiced through those professional corporations and others. Justice Morgan stayed the claim against all of the defendants except for Diamond LLP.
- [16] With respect to the claim against the professional corporation defendants, Justice Morgan held:<sup>4</sup>

77 As for the professional corporation Defendants -- CJS Law Professional Corporation, Jeremy Diamond Professional Corporation, Sandra Zisckind Law Professional Corporation, and Zisckind Professional Corporation (collectively, the "PCs") -- they are partners in Diamond LLP. It is trite law that a Plaintiff may sue a partnership or its partners, but may not sue both: *Wabi Iron Works Ltd. v. Patricia Syndicate*, 1923 CanLII 532 (Ont CA); *Kucor Construction & Developments & Associates v. Canada Life Assurance Co.*, 1998 CanLII 4236 (Ont CA). This restriction has been reiterated in the context of class actions: *Canadian Imperial*

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<sup>2</sup> Pursuant to his endorsement of December 11, 2025, Justice Koehnen refused the defendants' request to schedule a Rule 21 motion to strike out the statement of claim on the basis that the plaintiff was an independent contractor.

<sup>3</sup> 2021 ONSC 2624, leave to appeal denied, 2023 ONSC 2674

<sup>4</sup> *Tataryn* at paras 77 and 78

*Bank of Commerce v. Deloitte & Touche*, 2003 CanLII 38170, at para. 19 (Div. Ct.).

78 Moreover, section 10(4) of the *Partnership Act*, RSO 1990, c. P5, provides that, "A partner in a limited liability partnership is not a proper party to a proceeding by or against the limited liability partnership for the purpose of recovering damages or enforcing obligations arising out of the negligent acts or omissions [of the limited liability partnership]." Since the PCs are the partners of Diamond LLP, they cannot be sued along with Diamond LLP.

- [17] Justice Morgan held that the inclusion of the individual lawyer defendants was legally unnecessary and that a pleading against the partnership would suffice. He held that the statement of claim provided no basis for the personal claim against them as individuals. He said:<sup>5</sup>

80 The four personal Defendants -- Jeremy Diamond, Sandra Zisckind, Isaac Zisckind, and Corey Sax (collectively, the "Individual Defendants") -- are not partners in Diamond LLP; rather, their professional corporations are the partners. The Statement of Claim provides no basis for a personal claim against them as individuals. It neither alleges nor articulates any grounds for piercing their professional corporate veils.

81 Counsel for the Defendants concedes that section 3.4 of the *Business Corporations Act*, RSO 1990, c. B16, deems the acts of a professional corporation to be the acts of its shareholders, employees, or agents for liability purposes. That said, there is no basis in the pleading or as matter of legal principle or policy for naming the individual principals as party defendants when the professional corporations themselves are improperly named.

82 The inclusion of the Individual Defendants here is unnecessary since they are all bound by the acts of Diamond LLP. Further, Diamond LLP has inherited the liabilities of its predecessors and constituent professional corporations, and the *Partnership Act* ensures that their liability remains an issue since it can flow through the limited partnership and the professional corporations. There is no prejudice to the Plaintiff if the Individual Defendants are removed from the action.

- [18] In contrast to the situation in *Tataryn*,<sup>6</sup> the Claim in this case provides a basis for the claim against the individual defendants. They are, each on their own behalf, signatories to the Agreement. As noted above, it is not my role to interpret the Agreement. Nor can I say, on the motion before me, that subsection 10(4) of the *Partnerships Act*, RSO 1990, c. P5

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<sup>5</sup> *Tataryn* at paras 80 - 82

<sup>6</sup> The defendants also rely on *IAP Claimant K-10106 v Nelligan O'Brien Payne LLP*, 2020 ONSC 6746, also a case where a former client sued the partnership and individual partners. Justice Gordon held that as there was no independent cause of action against the defendant partner, she was not properly named as a party.

requires that the action be dismissed as against the non Diamond LLP defendants. I accept that, at this stage of the proceeding, rule 5.02(c) is engaged.

- [19] With respect to the professional corporations, there is a basis for a claim against them, by virtue of the enurement clause in the Agreement.
- [20] I decline to make an order deleting the non Diamond LLP defendants pursuant to rule 5.04(2). I am also not satisfied that I should exercise my discretion to grant a stay of the Claim against the non Diamond LLP defendants under rule 5.05(d).
- [21] The individual defendants allege that naming them and their professional corporations is prejudicial and that naming them personally harms their professional reputations. It is hard to see how being named as defendants in a lawsuit can be said to be prejudicial to the individual defendants who signed the Agreement.
- [22] By contrast, there is prejudice to the plaintiffs if I grant the relief, and the trial judge interprets the Agreement to find that the individual defendants or their professional corporations had independent obligations to the plaintiffs that Diamond LLP did not share.
- [23] The defendants also submit that if the claims of the plaintiffs against the non Diamond LLP defendants are permitted to stand, their inclusion will unduly complicate or delay the litigation. They submit that “narrowing down the defendants will streamline the process”. The plaintiffs did not provide a cogent basis for this argument. It does not appear that the number of parties to be examined for discovery will be reduced, as whether or not the individual defendants are named, the partners of Diamond LLP may be subject to examination for discovery.<sup>7</sup>

## DISPOSITION AND COSTS

- [24] In the result, the defendants’ motion is dismissed.
- [25] The parties agreed that the costs of the motion would be payable to the successful parties in the sum of \$10,000. Therefore, the defendants shall pay costs in the sum of \$10,000 (all-inclusive) to the plaintiffs within 30 days.

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L. La Horey, A.J.

**Date:** April 9, 2025

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<sup>7</sup> Rule 31.03(3)(a); *General Electric Capital Inc., v Deloitte & Touche LLP*, [2003] O.J. No. 370 (Div. Ct.) at para 20