

COURT OF APPEAL FOR ONTARIO

CITATION: Swan v. Duggan, 2025 ONCA 302

DATE: 20250417

DOCKET: COA-24-CV-1082

Coroza, George and Monahan JJ.A.

BETWEEN

Leslie Arthur Swan

Plaintiff (Appellant)

and

Timothy Duggan, Catherine Debbert, MCD Enterprises, Durham Condominium Corporation #45, Elia Associates, Brian Horlick and Sheldon Inkol

Defendants (Respondents)

Frances A. Marinic, for the appellant

James R.G. Cook and Delila Bikic, for the respondents Timothy Duggan, Elia Associates, Brian Horlick, and Sheldon Inkol

Nina L. Di Pietro, for the respondents Catherine Debbert, Durham Condominium Corporation #45, and MCD Enterprises

Heard: April 15, 2025

On appeal from the order of Justice Eugenia Papageorgiou of the Superior Court of Justice, dated September 16, 2024.

REASONS FOR DECISION

[1] At the conclusion of the hearing of this appeal, we advised the parties the appeal was dismissed for reasons to follow. These are our reasons.

[2] The appellant brought a claim against the respondents for conspiracy and defamation. The motion judge dismissed the action on the basis that it was frivolous, vexatious and an abuse of process pursuant to r. 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[3] The underlying events started in 2009 when the appellant was elected to the Board of Directors (“Board”) of the Durham Condominium Corporation #45 (the “DCC”). Later that year, the appellant received a requisition notice for a meeting of the Board to remove the appellant as a director due to claims of interference with his election to the Board. The appellant was subsequently removed as a director. The respondents in this appeal include the DCC, its manager, and legal counsel who acted for the DCC in various proceedings.

[4] This litigation has a tortured history. Since 2009, the appellant’s removal as director has resulted in four separate groups of proceedings. During this time period, the DCC registered a lien on the appellant’s property that included costs orders awarded to the DCC as part of the proceedings. The lien is part of the subject of the underlying action. This action was commenced in March 2024 when the appellant brought claims in conspiracy and defamation related to the respondents conduct in 2009 and in 2013. The appellant alleged that the respondents conspired to remove him as a director of the Board, the respondents defamed him when they mailed a notice of requisition for a meeting of the Board to remove him as a director, and the

respondents conspired to improperly register a lien against his property for legal fees in 2013.

[5] The respondents made a request under r. 2.1.01 for an order that the claim be dismissed. The motion judge provided the appellant an opportunity to make written submissions in response to the respondents' request. The appellant provided written submissions in which he referenced other ongoing proceedings before the court that related to his claim.

[6] On September 16, 2024, the motion judge dismissed the appellant's claim. She found that the appellant's claim was an abuse of process because it was a collateral attack against the earlier proceedings. The statement of claim also included hallmarks of vexatious proceedings because it was repetitive and 81 pages in length. Finally, the motion judge held that the appellant's claims in conspiracy and defamation were statute-barred.

[7] On appeal, the appellant submits that the motion judge erred in her finding that the claim was frivolous, vexatious and an abuse of process. The crux of the appellant's argument is that his claims of conspiracy and defamation have never been raised in any prior proceeding and dismissing the claim on a r. 2.1.01 motion is a miscarriage of justice.

[8] The motion judge's decision is a discretionary decision and, as such, is entitled to deference unless the appellant can point to an error or persuade us that the decision is so clearly wrong that it amounts to a miscarriage of justice.

[9] The motion judge understood the appellant's argument that his claims of conspiracy and defamation had never been raised before in a prior proceeding.

However, she found otherwise. She concluded:

This is really the point. There are other proceedings currently litigated where the Plaintiff has already raised his claim that the lien is fraudulent or invalid such that raising it again in this separate proceeding is an abuse of process. Even if he has not raised the issue that the Condo corporation's lien is invalid in the Oshawa proceeding because of the issues set out in this Statement of Claim, that is the place to do so, not in this separate and new proceeding.

[10] We see no error in the motion judge's conclusion that the claim was frivolous, vexatious and an abuse of process.

[11] The appeal is dismissed. The respondents are entitled to costs of the appeal. The respondents Timothy Duggan, Elia Associates, Brian Horlick, and Sheldon Inkol are awarded costs fixed in the sum of \$2,750 inclusive of disbursements and applicable taxes. The respondents Catherine Debbert, Durham Condominium Corporation #45, and MCD Enterprises are awarded costs fixed in the sum of \$2,750 inclusive of disbursements and applicable taxes.

"S. Coroza J.A."

"J. George J.A."

"P.J. Monahan J.A."