CITATION: Shillingford v. 9706151 Canada Ltd. et al, 2025 ONSC 2840
COURT FILE NO.: CV-20-4357-00A1
DATE: 2025 05 13

ONTARIO
SUPERIOR COURT OF JUSTICE

B ET W EE N:	)	
GUR PREM PYARI SHILLINGFORD	)	No one Appeared, for the Plaintiff
Plaintiff	)	
- and -	)	
9706151 CANADA LTD., 11037315 CANADA INC., 2224504 ALBERTA CORP., ROY D'MELLO, APEX FINANCIAL CORP. HARCHARAN KAUR	)	Self Represented, for the Defendant ROY D'MELLO No one Appeared, for the Defendants 9706151 CANADA LTD., 11037315 CANADA INC., 2224504 ALBERTA CORP.,APEX FINANCIAL CORP. and HARCHARAN KAUR
Defendants	)	
- and -	)	
2224504 ALBERTA CORP.	)	No one Appeared, for the Plaintiff by Counterclaim
Plaintiff by Counterclaim	)	
- and -	)	
NEIL COLVILLE-REEVES and REEVES RICHARZ LLP	)	HUGHES, Brett, for the third parties NEIL COLVILLE-REEVES and REEVES RICHARZ LLP
Third Parties	)	
	)	**HEARD:** April 2, 2025

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REASONS FOR JUDGMENT

LEMAY J

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[1] The Plaintiff, Gur Prem Pyari Shillingford, owned a property on which one of the numbered companies, 9706151 Canada Ltd. ("970), held a mortgage. 970 claimed that the mortgage had gone into default and 970 enforced its security. The Plaintiff ultimately sued 970, Mr. D'Mello, a real estate agent (Harcharan Kaur) and a series of other companies, alleging that they engaged in a scheme to strip the equity that would otherwise have been payable to her if the property were sold under power of sale. This action was defended by Mr. D'Mello and the various numbered companies.

[2] Mr. D'Mello also brought a third-party claim against the Plaintiff's lawyer, Mr. Colville-Reeves and his law firm, Reeves Richarz LLP. The third-party claim seeks contribution and indemnity from the Plaintiff's lawyer for any damages owing to the Plaintiff in the main action as well as making claims of maintenance and champerty.

[3] The third parties have brought a motion to strike the third-party claim against them without leave to amend. This motion is brought on the basis that the claims for contribution and indemnity cannot succeed because the third-parties are acting as agents for the Plaintiff and that the claim of maintenance and champerty is not made out. The Defendant opposes this motion and argue that their claims are sufficient to survive scrutiny on a pleadings motion and that the claims potentially have merit. In the alternative, the Defendant argues that they should be given leave to amend the pleadings.

[4] For the reasons that follow, the third-parties motion is granted. The third-party claim is struck and leave to amend the claim is denied.

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Background

a) The Parties and the Litigation

[5] On a pleadings motion, the Court is required to accept the facts in the impugned pleading as either true or provable. In this case, the impugned pleading is the third-party claim. In setting out the brief factual summation, I have treated the third-party claim as either true or provable subject to the observation that bald, conclusory facts or legal conclusions unsupported by material facts will attract the Court's scrutiny. I have had reference to the other pleadings only to provide the background to this case.

[6] In respect of the facts, I would also note that my summary is not a final determination of any of the facts in this matter. It is not binding on any judge who subsequently considers this matter.

[7] I start with the claims being advanced by the Plaintiff. The sequence of events that is claimed is a complicated one, but the outline is simple enough.

[8] The Plaintiff and her husband owned a property at 16 Mara Crescent in Brampton, Ontario. It was purchased back in August of 2013, and financed with a first mortgage through Computershare. I should note that the Plaintiff's husband passed away at some point, and is not a party to the litigation.

[9] In June of 2018, the Plaintiff obtained a second mortgage from the Defendant 9706151 Canada Ltd. The Defendant Roy D'Mello is a director of this company. Mr. D'Mello is also a director of 11037315 Canada Inc.

[10] The other Defendants involved in this case are Harcharan Kaur, who is a real estate ageing, and 2224504 Alberta Corp., a company owned by Ms. Kaur. These parties are not relevant to the motion that I have to determine and I will not consider their involvement further.

[11] In October of 2018, the second mortgage was transferred from 970 to 110. 110 then issued a Statement of Claim against the Plaintiff and her husband, seeking damages and possession of the property. This action was not defended at the time it was brought.

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[12] As a result, in March of 2019, the Court made an order granting a writ of possession to 110 and a writ of possession was duly issued. The Plaintiff and her husband apparently attempted to pay all amounts owing to 110, but the company refused to accept payment, evicted the Plaintiff and her husband and took possession of the property.

[13] The Plaintiff did not take any steps to pursue a claim until she brought a Statement of Claim on November 3rd, 2020. The Statement of Claim that was ultimately filed by the third parties was a “Fresh as Amended Statement of Claim” and was dated May 9th, 2024.

[14] I am not aware of the procedural history between the original Statement of Claim being served in November of 2020 and the claim that was being advanced in May of 2024. The current Statement of Claim alleges, in essence, that Mr. D’Mello, along with the other Defendants, developed a scheme to improperly strip the equity from the Mara Crescent property and transfer it to the Defendants.

[15] The allegations include a claim that Mr. D’Mello fraudulently applied for home insurance and impersonated both the Plaintiff and her husband, overpaid for renovations to the property and engaged in other misconduct. I make no findings in respect of those allegations.

[16] For the purposes of this motion, it is also important to note that the Statement of Claim includes an allegation that a *Mareva* injunction was granted against Mr. D’Mello in a different proceeding and that it had been breached by the manner that Mr. D’Mello dealt with the properties in this case.

[17] The other action involved the property of a Mr. Chris Sapusak. A *Mareva* injunction was granted in that action. It has also been the subject of a number of decisions. Mr. D'Mello brought an action against Ricchetti R.S.J, Petersen J. and other officials as part of this claim. Those actions were all dismissed: see *D'Mello v. Sapusak*, 2023 ONSC 970 and *D'Mello v. Sapusak*, 2023 ONSC 3088 and *Sapusak v. 9706151 Canada Ltd.*, 2024 ONSC 4113.

b) The Pleadings and the Motion

[18] As I have noted, there have been considerable amendments to the Statement of Claim since it was issued in November of 2020. Ultimately, defences were delivered in 2024, including a counter-claim brought by Ms. Kaur and her company.

[19] This brings me to how the third-parties came to be involved in this matter. They were counsel in the *Sapusak* actions and, I believe, remain counsel. The action between Mr. Sapusak and the numbered companies involves one of the same companies that is involved in this case.

[20] During the course of the Sapusak actions, a *Mareva* injunction was obtained against Mr. D'Mello, among others. In addition, the third-parties became counsel to the Plaintiff in this case and commenced an action on her behalf. That action claims that Mr. D'Mello "devised a scheme to strip the equity that would otherwise be payable" to her out of the property. There are also allegations in the Statement of Claim that Mr. D'Mello and various others inflated remediation costs for 16 Mara and that there were agreements of purchase and sale that were not executed.

[21] The third-party claim was finally brought by Mr. D'Mello in June of 2024. That third party claim advances claims for contribution and indemnity for any

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damages for which Mr. D'Mello might be liable and claims for damages. The third party claim contains the following general allegations:

a) That the third parties instigated the Plaintiff to commence an action against Mr. D'Mello for the purposes of advancing their own interests and/or the interests of their other client, Mr. Sapusak.

b) That the third parties instigated the Plaintiff to make unfounded allegations against the Defendants to thwart the sale of the 16 Mara Crescent property.

c) That the third parties are deliberately attempting to thwart the sale of the property at 16 Mara Crescent.

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[22] Shortly after this, the third-parties brought a motion to strike the third-party claim. That matter was listed for Triage Court in January of 2025. A timetable for materials was set, and the motion was scheduled to proceed on April 2nd, 2025. The motion proceeded before me.

The Positions of the Parties

[23] The third parties take the position that the claims against them should be dismissed without leave to amend. They argue that Mr. D'Mello's allegations against them relate solely to their actions as the Plaintiff's counsel. Therefore, they argue that their actions cannot be used to found either an action for contribution and indemnity or a claim of an independent actionable wrong.

[24] The Defendants take the position that the motion should be dismissed and that the third-party claim should be allowed to continue. They advance two arguments in this respect, as follows:

a) That any damages that are suffered by the Plaintiff have been caused by the conduct of the third-parties. Specifically, the third parties have attempted to thwart the sale of the Mara Crescent property and, as a result, the third party should indemnify Mr. D'Mello for any losses suffered as a result of the failure of the transaction to close promptly.

b) That the third-parties are engaged in the torts of champerty and maintenance and that this gives rise to an independent actionable wrong.

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[25] From these positions it is clear that the issues to be determined are whether the Defendants can sustain a claim against the third parties for contribution and indemnity or, in the alternative, champerty and maintenance. I will set out the test for striking a claim and will then address each issue in turn.

The Test for Striking a Claim

[26] This is a motion brought under Rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. That Rule permits a judge to "strike out a pleading on the ground that it discloses no reasonable cause of action." Rule 21.02(2)(b) states that no evidence is admissible on a motion of this nature.

[27] In *The Wedgewood Brockville Inc. v. Paul Doust*, 2012 ONSC 1944, this Court set out the test for striking a pleading under Rule 21.01(1)(b) as follows (at para. 6):

> [6] This motion is brought under rule 21.01(1)(b). It is common ground that under that rule a claim will be struck only if it is plain and obvious, assuming the facts plead to be true, that the pleading discloses no reasonable cause of action. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed. In other words the threshold for sustaining a pleading is not a high one.

[28] Further, on a motion to strike out a pleading under Rule 21.01(1)(b) the pleaded facts are assumed to be true unless they are patently ridiculous or

incapable of proof: *Darmar Farms Inc. v. Syngentia Canada Inc*, 2019 ONCA 789 at para. 11.

[29] Finally, while pleadings must be read generously, claims which disclose no reasonable cause of action should be ‘weeded out” at an early stage. *Kapila v. Chhina*, 2023 ONSC 2270 at para. 31.

[30] With these principles in mind, I will now address the issues that have been raised in this motion.

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Issue #1- Can Mr. D’Mello Advance a Claim for Contribution and Indemnity?

[31] No.

[32] The problem with the Defendants’ contribution and indemnity claim is that it is a claim being made against the Plaintiff’s lawyers. A lawyer almost always acts as an agent for their client. In light of the relationship between a lawyer and client, it is very difficult for a Defendant to sustain a third-party claim against a Plaintiff’s lawyer, especially claims in respect of the Plaintiff’s decisions and actions.

[33] In *Hengveld v. Personal Insurance Co.*, 2019 ONCA 497, (2019) 146 O.R. (3d) 182, the Court considered a case where the Plaintiff had insured his insurance company for damages flowing from the fact that the insurance company did not keep his car after an accident had taken place. The insurance company sued the Plaintiff’s lawyers, alleging that the lawyers were negligent in that they should have, *inter alia*, made a request to preserve the car sooner. The third parties brought a motion to dismiss the third party claim and the motions judge granted it.

[34] The Court of Appeal upheld the dismissal of the third-party claim. The Court of Appeal considered, in detail, *Adams v. Thompson, Benwick Pratt and*

Partners [1987] B.C.J. No. 1388, (1987) 15 B.C.L.R. (2d) 51 (C.A.) and concluded (at para. 32):

> [32] McLachlin J.A. describes two situations in which a lawyer's negligence will be attributed in law to the plaintiff.[4] One is where the alleged negligence is committed by the lawyer as agent for the plaintiff, within the scope of the agency. A second, and different, situation is where the lawyer's alleged negligence relates to advice about the plaintiff's duty to mitigate a loss that has already occurred. Although both situations share the same result -- the negligence will be attributed to the plaintiff and can be raised directly against the plaintiff by the defendant, making a third party claim redundant -- it is important not to conflate them.

[35] In other words, if the lawyer's conduct relates to either actions taken by the lawyer at the Plaintiff's direction or advice given by the lawyer that the Plaintiff acts on, then it is the Plaintiff (and not the lawyer) who bears any liability. Put differently, if damages for any negligence can be sought against the Plaintiff, then an action cannot be sustained against a Plaintiff's lawyer.

[36] Part of the reason for this approach is that the Courts are always concerned about the "obvious mischief" that would arise from allowing one party to sue another party's lawyer. *Hengveld,* para. 46. The same approach is evident in the Court's reluctance to remove a lawyer from the record or permit the lawyer to be called as a witness: *Mazinani v. Bindoo*, 2013 ONSC 4744 at para. 60, *Shanthakumar v. R.B.C.*, 2024 ONSC 7253 at para. 58.

[37] In this case, it is important to step back and consider Mr. D'Mello's allegations against the third parties. Those allegations all relate to whether the positions taken in **this** litigation by the Plaintiff and her counsel increased the liability of either Mr. D'Mello or other Defendants. Those are allegations that can be pled against the Plaintiff directly.

[38] These allegations will undoubtedly be based on the same factual matrix as Mr. D'Mello's claim that the third parties improperly interfered in the sale of 16 Mara Crescent. Even accepting Mr. D'Mello's pleading as true, any alleged interference

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in the sale of 16 Mara Crescent or any of the other impugned conduct of the third parties arose in the litigation. If substantiated, these claims would properly be made against the Plaintiff. Given that the third parties were acting as the Plaintiff's agent in this litigation, these claims cannot be sustained against the third parties and they must be struck.

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Issue #2- Can a Claim for Champerty and Maintenance Succeed?

[39] No.

[40] Champerty and maintenance is described by Perell J. in *Ali v. Datta*, 2011 ONSC 2496 at para. 54.

> [54] In Morden and Perell, *The Law of Civil Procedure in Ontario* (1st ed) (NexisLexis: Toronto, 2010) at p. 73, I discuss the nature of champerty and maintenance as follows:
>
> > The focus of attention of maintenance is on the officious intermeddler and the profiteer in another's litigation. The element of officious intermeddling — which is encouraging litigation that the parties would not otherwise pursue — must be present to constitute the tort: *Buday v. Locater of Missing Heirs Inc* (1993), 1993 CanLII 961 (ON CA), 16 O.R. (3d) 257 (C.A.); *Operation 1 Inc. v. Phillips*, 2004 CanLII 48689 (ON SC), [2004] O.J. No. 5290 (S.C.J.); *R. v. Goodman*, 1939 CanLII 21 (SCC), [1939] S.C.R. 446. There is no maintenance unless there is an improper motive: *Lorch v. McHale* (2008), 2008 CanLII 35685 (ON SC), 92 O.R. (3d) 305 (S.C.J.); *S. v. K.*, (1986), 1986 CanLII 2789 (ON SC), 55 O.R. (2d) 111 (Ont. Dist. Ct.), and there is no maintenance if the alleged maintainer has a legitimate reason or justification for assisting the litigant: *Lorch v. McHale*, [2008] O.J. No. 2807, 92 O.R. (3d) 305 (Ont. S.C.J.); *Morgan v. Steffanini*, [2005] O.J. No. 1606 (S.C.J.); *Ingle v. ACA Assurance*, 2005 CanLII 39682 (ON SC), [2005] O.J. No. 4653 (S.C.J.). The objection to the assistance is that the person providing it is doing so without a proper purpose and is acting maliciously or to stir up strife. If there is an allegation of maintenance, the court must carefully examine the conduct of the parties and the propriety of the motive of the alleged maintainer: *McIntyre Estate v. Ontario (Attorney General)*, (2002), 2002 CanLII 45046 (ON CA), 61 O.R. (3d) 257 (C.A.); *Morgan v. Steffanini*, [2005] O.J. No. 1606 (S.C.J.).

[41] Perell J. goes on to say that a party can provide assistance to a litigant and that such assistance does not amount to champerty and maintenance unless it is "officious intermeddling."

[42] In his factum, Mr. D'Mello states that Rule 21 does not permit evidence on a motion to strike. He goes on to make the following submissions about why the champerty and maintenance claim should be allowed to continue:

> 46 At para. 14 the Third-Party Claim specifically references the Original Claim and pleads that the third parties instigated the plaintiff to make unfounded allegations specifically designed to thwart the sale.
>
> 47. The Third-Party Claim pleads that the third parties are using the plaintiff as a pawn to advance their own interests or gain advantage for another client.
>
> 48. The Third-Party Claim pleads that the plaintiff has no equity in the property and therefore would not otherwise pursue the defendants.
>
> 49. The Third-Party Claim pleads that the third parties made false allegations of non- compliance with the relevant legislation.

[43] Mr. D'Mello's claims that the Plaintiff made unfounded and false allegations are issues that can be addressed with the Plaintiff. If unfounded allegations are being made, then that is a matter that can be addressed in a costs award if the Plaintiff is unsuccessful. Particularly egregious conduct could even be addressed in an award of costs against the Plaintiff's solicitor personally: see Rule 57.07 of the *Rules of Civil Procedure*.

[44] In my view, even if the allegations in the third-party claim are true, they do not amount to maintenance or champerty. For example, even if Mr. Colville-Reeves sought the Plaintiff out, he was doing so in order to bring a potential claim to her attention and potentially advance her interests in her litigation. The Statement of Claim focuses on the property that was owned by the Plaintiff. If the allegations are unproven, then the Plaintiff will bear costs consequences for advancing them. If they are proven, then the Plaintiff may recover damages. For example, if the Plaintiff had equity in the property at the time that 110 took possession of it, then the Plaintiff may be entitled to damages. If not, then the Defendants may be entitled to have the claim dismissed with costs.

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[45] With that context in mind, it becomes clear that Mr. D'Mello's allegation that this litigation has been brought to "stir up strife" within the meaning of the test as set out by Perrel J. is unsustainable. In this case, the third parties are the Plaintiff's litigation counsel. They have brought this litigation on the Plaintiff's instructions, to pursue the Plaintiff's claims.

[46] Mr. D'Mello's argument is, in essence, that the Plaintiff has a meritless claim and that she wouldn't be pursuing it unless the third parties had instigated the claim. A Plaintiff's decision to advance a meritless claim cannot be sufficient to allow a Defendant to, in turn, claim maintenance and champerty against the Plaintiff's lawyers. Placing the bar for maintenance and champerty that low would inevitably lead to claims for maintenance and champerty being used by Defendants to abuse Court processes.

[47] Even if I accept that the third parties brought the claim to the Plaintiff's attention and that she would not otherwise have pursued it would not change my analysis. It is ultimately the Plaintiff's decision to pursue the claim. If the claim is unsuccessful, the liability for advancing it can be assigned to the Plaintiff by way of a costs award.

[48] In summary, even the fact that the Plaintiff is alleging the same **type** of conduct in her dealings with Mr. D'Mello and the other Defendants as is alleged in the Sapusak action does not found a claim of maintenance or champerty. Similarly, even if the third parties identified the potential claim for the Plaintiff, that fact would not found a claim for maintenance and champerty.

[49] As a result, the claims of maintenance and champerty are struck out.

Issue #3- Should Leave to Amend be Granted?

[50] No.

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[51] The law on whether leave to amend a Statement of Claim should be granted is set out in *South Holly Holdings Ltd. v. The Toronto Dominion Bank*, 2007 ONCA 456. In that decision, the Court stated (at para. 6):

> [6] We also agree with the Bank that, in the circumstances, it should have been granted leave to amend its third party claim. A litigant's pleading should not lightly be struck without leave to amend. To the contrary, leave to amend should be denied only in the clearest of cases. This is particularly so where the deficiencies in the pleading may be cured by an appropriate amendment, as in this case. Importantly, on this record, there is no evidence of prejudice to the respondents if leave to amend is granted.

[52] The Court hearing the motion has an obligation to articulate the reasons why leave is being denied: *Tran v. University of Western Ontario,* 2015 ONCA 295 at para. 27.

[53] However, leave to amend should be denied where the pleading contains a radical defect such that it cannot be improved by amendment, or if there is no reason to suppose that the party can improve their case by amendment. *Net Connect Installation Inc. v. Mobile Zone Inc*, 2017 ONCA 766 at paras 8-9, *Davies v. Clarington (Municipality) et. al.*, 2009 ONCA 722 at paras 28-33.

[54] In this case, I am of the view that leave to amend should be denied for three reasons. First, there is no merit to the third party claim and there are no amendments that are going to alleviate that problem. Mr. D'Mello is attempting to advance claims against the Plaintiff's counsel that are claims that are properly advanced against the Plaintiff herself. There is simply no way at law to reframe these claims in a way that would support a cause of action against the third parties. This reason alone is sufficient to deny Mr. D'Mello leave to amend his claim.

[55] Second, I have serious concerns that Mr. D'Mello is bringing this third party claim for an ulterior purpose. It appears reasonable to infer two different ulterior purposes on the facts of this case. It could be that Mr. D'Mello is seeking to delay this matter, a concern that Daley J. had in a previous case involving the same type

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of allegations that are being made in this case. Alternatively it could be that Mr. D'Mello is seeking to force the Plaintiff to change counsel. Either of these purposes would be an abuse of process, and permitting Mr. D'Mello to amend his claim would simply facilitate those purposes.

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[56] Finally, Mr. D'Mello has been a lawyer (although he is not at this point, I understand) and is an experienced litigant. If he had additional facts or other points to raise either in the third party claim or in opposition to this motion, I would have expected him to have raised those issues long ere since. The fact that he has not raised any additional points suggests that there are none to raise.

[57] For all of those reasons, leave to amend the third-party claim is denied.

Conclusion

[58] For the foregoing reasons, the motion to dismiss Mr. D'Mello's claim against the third parties is granted. Leave to amend the third-party claim is denied.

[59] The parties are encouraged to agree on costs. In the event that they are unable to agree on costs, then the third parties are to serve, file and upload costs submissions of no more than two (2) single-spaced pages, exclusive of case-law, bills of costs and offers to settle within fourteen (14) calendar days of the release of these reasons.

[60] Mr. D'Mello will then have a further fourteen (14) calendar days to serve, file and upload costs submissions of no more than two (2) single-spaced pages, exclusive of case-law, bills of costs and offers to settle.

[61] There are to be no extensions on the time limits for costs submissions, even on consent, without my leave. In the event that costs submissions are not provided within this timeline, there shall be no order as to costs.

[62] **In addition** to serving, filing and uploading their costs submissions, the parties are to provide a copy of those submissions to my judicial assistant. Those submissions are to be sent to the general email box at **SCJ.CSJ.General.Brampton@ontario.ca** . This is not in lieu of filing with the Court office. The email is to have the file name and for my attention in it when it is sent. There are to be no communications from the parties, save and except for a copy of the costs submissions or notice that the parties have resolved the issue of costs.

[63] Finally, this matter has been before the Courts for some considerable time. I understand that Mr. D'Mello has brought a motion on behalf of 110 to have the Statement of Claim struck as disclosing no reasonable cause of action. It was originally to proceed before Chang J. on April That matter is now set for May 29th, 2025.

[64] A timetable was also imposed on this action by Ricchetti J. back in June of last year. I suspect that the timetable has not been adhered to except as to completing the pleadings. To that end, I am imposing a further timetable on the parties, as follows:

a) Affidavits of Documents are to be completed, sworn and served by August 31st, 2025.

b) Examinations for Discovery are to be completed by October 31st, 2025.

c) Undertakings are to be provided within thirty (30) calendar days of the completion of the Examination for Discovery. Anything taken under advisement at the discovery becomes a refusal immediately. With respect to refusals, the motion record for refusals is to be served, filed and uploaded within forty-five (45) days of the examination for

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discovery, failing which the party seeking the item under refusal will be deemed to have consented to the refusal.

d) The action is to be set down for trial by January 31st, 2026.

[65] There are to be no variations to this timetable, even on consent, without my leave or the leave of the RSJ. The matter needs to move forward.

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LEMAY J

Released: May 13, 2025

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SUPERIOR COURT OF JUSTICE

B ET W EE N:

GUR PREM PYARI SHILLINGFORD

Plaintiff

- and -

9706151 CANADA LTD.,
11037315 CANADA INC.,
2224504 ALBERTA CORP.,
ROY D'MELLO,
APEX FINANCIAL CORP.
HARCHARAN KAUR

Defendants

- and -

2224504 ALBERTA CORP.

Plaintiff by Counterclaim

- and -

NEIL COLVILLE-REEVES and REEVES RICHARZ LLP

Third Parties

REASONS FOR JUDGMENT

LEMAY J

Released: May 13, 2025