Citation: OwniCloud Inc v Shared Health Manitoba, 2025 MBCA 38
Date: 20250428
Docket: AI23-30-10004

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Mr. Justice Christopher J. Mainella
Madam Justice Lori T. Spivak

BETWEEN:

OWNICLOUD INC.	)	***S. J. Thliveris*** *and*
	)	***E. Podaima***
(Plaintiff) Appellant	)	*for the Appellant*
	)	
- and -	)	***K. L. Dixon***
	)	*for the Respondent*
SHARED HEALTH MANITOBA	)	
	)	*Appeal heard and*
(Defendant) Respondent	)	*Decision pronounced:*
	)	***April 28, 2025***

MAINELLA JA (for the Court):

[1] This appeal is about a deficient pleading.

[2] Mr. Yang, the principal of the plaintiff, filed a statement of claim alleging irregularities by the defendant in its testing of the plaintiff's computer software that he says resulted in the software being misappropriated and illegally obtained by third parties, including computer hackers in China.

[3] The defendant successfully moved for an order to strike the statement of claim, which claimed over $2.9 million in damages, with leave to amend within thirty days. Mr. Yang was encouraged by the senior associate

2025 MBCA 38 (CanLII)

judge to consult a lawyer and was advised that, if an amended claim was filed but was deficient, it could be struck again without leave to amend.

[4] Mr. Yang filed an amended statement of claim, seeking damages in the revised amount of over $89 million, within the stipulated time limit, which the defendant again successfully moved to strike without leave to amend.

[5] On an appeal, the motion judge affirmed the senior associate judge's order that the amended statement of claim should be struck without leave to amend, as it is scandalous, frivolous or vexatious, is an abuse of the court process, and failed to disclose a reasonable cause of action (see MB, *King's Bench Rules*, Man Reg 553/88, rr 25.11(1), 62.01 [*KB Rules*]).

[6] As he had done in the lower Court, Mr. Yang proposed to represent the plaintiff in this Court but the panel adjourned the appeal until counsel was retained.

[7] In our view, it is only necessary to comment on the question of whether it is plain and obvious that the cause of action, as pleaded, is certain to fail (see *KB Rules*, r 25.11(1)(d); *Grant v Winnipeg Regional Health Authority*, 2015 MBCA 44 at para 36). We are not persuaded that, in exercising his discretion, the motion judge made any reversible error of fact or law or reached a result that amounts to an injustice (see *ibid* at para 39).

[8] The motion judge took the requisite generous read of the pleading despite its imprecise language and prolixity. Despite the able attempt of counsel for the plaintiff to painstakingly parse the pleading to extract possible causes of action in contract, tort and unjust enrichment, we are not convinced that there is a basis to disturb the motion judge's conclusion that the pleading

2025 MBCA 38 (CanLII)

fails to set out the material “facts which, if proven at trial, would entitle the plaintiff to any remedy.” We agree with the motion judge that the amended statement of claim runs fatally afoul of the pleading requirements of rule 25.06 of the *KB Rules*. In short, the pleading is unsalvageable as drafted.

[9] We also see no reason to interfere with the motion judge’s exercise of discretion to refuse granting leave to amend the statement of claim for a second time. Given the clear warning that was provided to Mr. Yang the first time the statement of claim was struck, it was open to the motion judge to show “less tolerance and indulgence for non-compliance by a plaintiff who, through past experience, cannot honestly plead ignorance of the rules” (*Bazan v The Assiniboine South School Division*, 2013 MBQB 68 at para 73).

[10] In the result, the appeal is dismissed with costs.

_______________________________ JA

_______________________________ CJM

_______________________________ JA

2025 MBCA 38 (CanLII)