

CITATION: Rahman v. Dewart Gleason LLP, 2025 ONSC 3869
COURT FILE NO.: CV-25-648
DATE: 2025 06 27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Aqib Rahman, Plaintiff

AND:

Dewart Gleason LLP and Lawyers Professional Indemnity Company, Defendants

BEFORE: M.T. Doi J.

COUNSEL: Aqib Rahman, self-represented Plaintiff

Tim Gleason, for the Defendants

Overview

[1] On March 28, 2025, I directed the registrar to give the plaintiff notice that I had reviewed the statement of claim and was considering a request to dismiss the action for being frivolous or vexatious or an abuse of the court’s process. The registrar notified the plaintiff and invited him to make written submissions. In response, the plaintiff filed a submission dated April 9, 2025.

[2] As explained below, I find that the action should be dismissed under Rule 2.1.01(1) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

Legal Principles

[3] Rule 2.1.01(1) allows the court to exercise its gatekeeping function by making a summary determination as to whether, on its face, a proceeding should be dismissed for being frivolous or vexatious or otherwise an abuse of process. A frivolous or vexatious action lacks a legal basis or legal merit, or is brought without reasonable grounds: *Van Sluytman v. Orillia Soldiers' Memorial Hospital*, 2017 ONSC 692 at para 11.

[4] The key principles governing the operation of Rule 2.1 were summarized by the Court of Appeal in *Visic v. Elia Associates Professional Corporation*, 2020 ONCA 690 at para 8, leave to appeal refused [2020] SCCA No. 473, as follows:

1. Rule 2.1 must be “interpreted and applied robustly so that a motion judge can effectively exercise his or her gatekeeping function to weed out litigation that is clearly frivolous, vexatious, or an abuse of process”: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, at para. 8, leave to appeal refused, [2015] S.C.C.A. No. 488. The Rule is not for close calls — it may be used only in “the clearest of cases where the abusive nature of the proceeding is apparent on the face of the pleading and there is a basis in the pleadings to support the resort to the attenuated process”: *Scaduto*, at paras. 8-9; *Khan v. Law Society of Ontario*, 2020 ONCA 320 (“*Khan*”), at para. 6, leave to appeal [refused 2021 CanLII 4696 (SCC)].

2. A motion under r. 2.1 focuses on the pleadings and any submissions of the parties made under the rule. No evidence is submitted on a r. 2.1 motion: *Scaduto*, at paras. 9, 11-12. A court may, however, review reasons and pleadings from other proceedings to determine whether the case is abusive: *Khan*, at para. 9.

3. Rule 2.1 does not replace other rules in the *Rules of Civil Procedure* to strike out actions or to deal with other procedural irregularities summarily: *Khan*, at para. 7. The rule is “not meant to be an easily accessible alternative to a pleadings motion, a motion for summary judgment, or a trial”: *Khan v. Krylov & Company LLP*, 2017 ONCA 625, 138 O.R. (3d) 581, at para. 12; *P.Y. v. Catholic Children’s Aid Society of Toronto*, 2020 ONCA 98, at para. 11. The Rules provide many other remedies to address cases that are not clear on the face of the pleading: *Khan*, at para. 15.

Analysis

[5] I am satisfied this action is clearly frivolous, vexatious, or an abuse of process and should be dismissed under Rule 2.1.01(1).

[6] The statement of claim alleges that the defendants committed civil fraud while defending certain lawyers in another proceeding. The plaintiff owns a unit in a condominium building owned by Peel Standard Condominium Corporation No. 779 (“PSCC 779”). The plaintiff and PSCC 779 were embroiled in litigation before various tribunals and courts. One proceeding involved an action (CV-23-1421) by the plaintiff against the lawyers for PSCC 779 in which he alleged that the lawyers committed fraud, among other things, while acting for the condominium corporation in litigation. Dewart Gleason LLP, the defendant law firm in this action, acted for the Lawyers Professional Indemnity Company, the defendant insurer in this action, and successfully defended the lawyers in that action (CV-23-1421) by bringing a Rule 21.01(1) motion to strike the plaintiff’s statement of claim. The plaintiff’s appeal of the motion judge’s decision to strike that claim was unsuccessful: *Rahman v. Elia Associates*, 2025 ONCA 16 at paras 1-4. In upholding the dismissal of the plaintiff’s claim against the defendant lawyers in that action, the Court of Appeal considered

the doctrine of absolute privilege as it applied to the fraudulent statements allegedly made by the lawyers in the other litigation and arrived at the following determination:

[6] Here, the statements alleged by the appellant to be fraudulent were made during ongoing litigation or for the purpose of actual contemplated litigation. The statements, made by the respondents on behalf of their clients, were about the very dispute that gave rise to the court proceedings. Therefore, the motion judge correctly ruled that absolute privilege was a complete defence to the allegations of fraud. As he held: “*statements made by a solicitor in pleadings or documents filed with the court in a judicial proceeding or in submissions to the court are not actionable.*”

Rahman at para 6.

[7] In this action, the plaintiff claims that the defendants made fraudulent statements while defending the lawyers in his prior action (CV-23-1421). However, absolute privilege provides a complete defence to the plaintiff’s fraud allegations in this case as the statements made by the defendants on behalf of their clients in pleadings, in documents filed in judicial proceedings, or in submissions to the court are not actionable as the Court of Appeal recently confirmed: *Rahman* at para 6. It follows that the fraud claims made by the plaintiff against the defendants in this action cannot succeed. Relying on decisions by lower or other courts, the plaintiff submits that the issue of whether absolute privilege is a complete defence to the fraud claim in this case is unclear and remains an unresolved question that should proceed to trial. Respectfully, I do not accept this submission. The Court of Appeal in *Rahman* clearly determined that absolute privilege gives a complete defence to the alleged fraudulent statements raised in this action, and its decision on this point is determinative and binding on this court: *Ibid.*

[8] Taking everything into account, I am satisfied that statement of claim is clearly devoid of any potential merit and, therefore, is frivolous, vexatious or an abuse of process given that there is no reasonable basis to expect that the relief sought may be obtained: *Brown v. Lloyd's of London Insurance Market*, 2015 ONCA 235 at para 11. As set out above, absolute privilege affords a complete defence to the fraud claims in this action: *Rahman* at para 6. It follows that the action cannot possibly succeed and, therefore, is frivolous. In addition, I find that the action is vexatious as the defendants should not be dragged into litigation involving a non-actionable claim by the plaintiff that seeks to re-argue the application of absolute privilege to alleged fraudulent statements made during ongoing litigation, which is now a settled matter: *Talwar v. Grand River Hospital*, 2025 ONCA 35 at para 3. Moreover, given that the plaintiff just recently litigated the issue of

absolute privilege in a comparable context, I find that allowing this action to continue to trial would constitute an abuse of the court's process.

Outcome

[9] Accordingly, the action is dismissed without costs.

Date: June 27, 2025

M.T. Doi J.

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ENDORSEMENT

M.T. Doi J.

DATE: June 27, 2025