KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 109**

Date: **2025 07 23**
Docket: KBG-SA-00535-2024
Judicial Centre: Saskatoon

BETWEEN:

ANTON PIKOR, LAURA GRIFFITH, DAWNA GRAMLICH, AARON WARMAN, DUSTIN PIKOR, LINDA BEECHINOR, LARRY BEECHINOR, RANDY GEISSLER, SHERRY GIESSLER, DARLENE FITTERER, CHERYL FITTERER, GREG MARLOW, AMY PIKOR, MIKE COULTER and BRIAN VELDHOEN, DEAN CHARTRAND

PLAINTIFFS

- and -

LEMSFORD FERRY REGIONAL PARK AUTHORITY GOVERNMENT OF SASKATCHEWAN, MINISTRY OF PARKS, CULTURE AND SPORT

DEFENDANTS

Counsel:

Stuart A. Busse, K.C.	for the plaintiffs
Janine L. Lavoie and Taylor L. Wilcox	for Lemsford Ferry Regional Park Authority
Justin T. Stevenson	for the Government of Saskatchewan

JUDGMENT
July 23, 2025

CLACKSON J.

INTRODUCTION

[1] The plaintiffs apply for an interim injunction restraining the Lemsford Ferry Regional Park Authority [Authority] and the Government of Saskatchewan [Saskatchewan] from enforcing a writ of possession granted by this Court in the Swift Current Judicial Centre on January 11, 2024.

[2] The defendants apply to strike out the plaintiffs' claim under Rule 7-9(1) of *The King's Bench Rules*.

[3] I conclude that the plaintiffs' claim must be struck out as disclosing no reasonable claim against either defendant.

BACKGROUND

[4] Lemsford Ferry Regional Park [Park] was created in 1961 by ministerial order pursuant to the provisions of *The Regional Parks Act, 1960*, SS 1960 c 40 (since rep). The Authority was constituted as a corporation to operate the Park. The Board of the Authority is composed of representatives from the surrounding rural municipalities.

[5] The Park is composed of land owned by the Authority and the Crown in Right of Saskatchewan, as represented by the Ministry of the Environment. Under the terms of a written lease, the Park lands owned by Saskatchewan are leased to the Authority from May 1, 2009 to March 31, 2030. The Authority generated revenue to operate the Park through various means including granting annual leases of lots within the Park.

[6] In the early 2000's the Authority began to struggle financially and could not maintain the Park. In 2015 the Authority determined that it would commence the process required to dissolve the Park. On March 21, 2016, the Authority met with the annual leaseholders, among others, to discuss dissolution. The Authority acceded to the

leaseholders' request for a three-year grace period to return the Park to financial viability. The initial enthusiasm of the leaseholders waned over the grace period and efforts to save the Park were unsuccessful.

[7] On June 12, 2019, all annual leaseholders were advised that no lease renewals would occur after December 31, 2019 and the Park would be closing. The annual leaseholders were also invited to the Authority's annual general meeting on June 26, 2019. At its annual general meeting the Authority passed resolutions confirming closure of the Park and resolved to initiate the formal process to dissolve the Park.

[8] The Authority presented its dissolution plan to the Ministry of Parks, Culture, and Sport [Ministry] in June of 2020. The plan stalled during the COVID-19 pandemic and was resubmitted to the Ministry in November of 2021. The Ministry formally approved the plan on February 16, 2022 [Dissolution Plan]. The Dissolution Plan consists of nine steps. The second-last step is sale of the Park lands with final step being formal dissolution.

[9] In accordance with the terms of the Dissolution Plan, overholding annual leaseholders were twice advised that the Park would be dissolved and that they were required to vacate the Park. Some annual leaseholders heeded the advice and removed their property from their leased lots, while others did not and continued to be overholding. The dissolution process is now stalled at step four of the process: removing the overholding leaseholders from the Park land.

[10] In October of 2023, the Authority applied under the provisions of *The Landlord and Tenant Act*, RSS 1978, c L-6, for a writ of possession to recover possession of the lots from the overholding leaseholders [Swift Current Action]. With the exception of Dean Chartrand, all the plaintiffs in the action now before the court

were also among the defendants named in the Swift Current Action. Mr. Busse represented those plaintiffs in the Swift Current Action as he does in this action.

[11] Mr. Chartrand is an anomaly. He was not a party to the Swift Current Action. In the application for a writ of possession the Authority relied on the affidavit of Anthony Wagner. At the time, Mr. Wagner had been a member of the Board of the Authority for 27 years. Exhibits "I" and "J" to Mr. Wagner's affidavit set out the names of overholding leaseholders and leaseholders who were not overholding respectively. Mr. Chartrand's name is not mentioned in either exhibit. While the plaintiffs as a group are described as "tenants" of the Park in the statement of claim, there is no allegation or evidence establishing Mr. Chartrand's status as a tenant of the Park.

[12] On January 11, 2024, Justice Keene concluded that the defendants in the Swift Current Action were overholding tenants and that the Authority was entitled to a writ of possession with respect to the lands occupied by each of them. As a result of Justice Keene's order, the Authority was granted a writ of possession with respect to the lands occupied by each of the plaintiffs in the action now before the court. The writ of possession lists the surface parcels within the Park that are subject to the writ but does not identify any of the plaintiffs by name. Whether Mr. Chartrand leases any of the parcels listed in the writ is not in evidence.

[13] Justice Keene's order was served on Mr. Busse on January 16, 2024. It was not appealed by any party.

[14] In early February of 2024, Mr. Busse asked the Authority to delay enforcement of the writ of possession to permit the affected leaseholders an opportunity to remove their property from the leased lots. In response, the Authority advised that the leaseholders were not to enter upon the Park lands for any reason but would be

permitted to access the formerly leased lots on May 31, 2024 to remove their belongings.

[15] On May 2, 2024, the plaintiffs commenced this action in the Judicial Centre of Saskatoon. Mr. Busse could not explain why it had not been commenced in the Swift Current Judicial Centre where the land is located and an existing order respecting the plaintiffs' continued occupation of the land is in effect. The statement of claim makes no mention of the Swift Current Action except in the prayer for relief wherein the plaintiffs ask, "That any prior court order that has any affect upon the rented lands to be restrained until further order of the Court or agreement of the Parties. Specifically, the Fiat of Justice Keen dated January 11, 2024."

ISSUES

[16] The plaintiffs' application seeks, "[a]n interlocutory injunction against the Respondents/Defendants preventing them from removing or otherwise interfering with the Applicants/Plaintiffs occupation or use of the said rented lands until further Court order or agreement of the parties."

[17] The defendants apply to strike out the statement of claim on the basis that it discloses no reasonable cause of action, is frivolous and vexatious, and an abuse of the court's process.

ANALYSIS

Should the statement of claim be struck out?

Applicable legal principles

[18] Pursuant to Rule 7-9(1) the court may strike out a pleading if one or more of the conditions in Rule 7-9(2) exist and the circumstances warrant it. The defendants rely on the conditions set out in Rule 7-9(2)(a), (b) and (e), thus:

> **7-9** …
>
> (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
>
> (a) discloses no reasonable claim or defence, as the case may be;
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> (b) is scandalous, frivolous or vexatious;
>
> …
>
> (e) is otherwise an abuse of process of the Court.

[19] "The overarching purpose of [Rule 7-9] is to save the court and the parties the cost, time and inconvenience of dealing with seriously defective or unmeritorious pleadings, claims or defences": *Roynat Inc. v Northland Properties Ltd.*, [1994] 2 WWR 43 (QL) (Sask QB) at para 33.

[20] The general principles to be applied when examining a pleading through the lens of Rule 7-9(2)(a) remain the same as the principles applied under the former Rule 173(a). The principles are summarized by Gunn J. in *Collins v McMahon*, 2002 SKQB 201 at para 11:

> 11. The principles which apply to an application to strike a plaintiff's claim under Rule 173(a) are the following:
>
> (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success. (*Sagon v. Royal Bank of Canada et al.* (1992), 105 Sask.R. 133 at 140 (C.A.));
>
> (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (*Sagon*, at 140; *Milgaard v. Kujawa et al.* (1994), 123 Sask.R. 164 (Sask. C.A.));
>
> (iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document

> referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);
>
> (iv) The court can strike all, or a portion of the claim [Rule 7-9(1)(a)];
>
> (v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish and Carson* (1996), 140 Sask.R. 146 (Q.B.)).

[21] In applying the last principle, the court must consider the statement of claim as a whole "… to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action": *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687; *Harpold v Saskatchewan (Ministry of Corrections and Policing)*, 2020 SKCA 98 at para 26.

[22] The jurisdiction to strike out a claim under Rule 7-9(2)(a) should be exercised sparingly. Pleadings should not be struck on this basis merely because the claim is highly improbable: *Paulsen v Saskatchewan (Ministry of Environment)*, 2013 SKQB 119, 418 Sask R 96.

[23] The principles governing an application to strike under Rule 7-9(2)(b) and (e) are different. As noted in *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA) at paras 18-19:

> [18] Striking out an entire claim on the ground that it is frivolous, vexatious or an abuse of process of the court is based on an entirely different footing. Instead of considering merely the adequacy of the pleadings to support a reasonable cause of action, it may involve an assessment of the merits of the claim, and the motives of the plaintiff in bringing it. Evidence other than the pleadings is admissible. Success on such an application will normally result in dismissal of the action, with the result that the rule of *res judicata* will likely apply to any subsequent

efforts to bring new actions based on the same facts. Odgers on *Pleadings and Practice*, 20th Ed. says at pp. 153-154:

> "If, in all the circumstances of the case, it is obvious that the claim or defence is devoid of all merit or cannot possibly succeed, an order may be made. But it is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. Its exercise would not be justified merely because the story told in the pleadings is highly improbable, and one which it is difficult to believe could be proved." (footnotes omitted)

[19] Finally, a separate mention should be made of the power of the court to prevent abuse of its process, a power which is inherent as well as conferred under rule 173. Bullen and Leake defines the power as follows at pp. 148-149:

> "The term 'abuse of the process of the court' is a term of great significance. It connotes that the process of the court must be carried out properly, honestly and in good faith; and it means that the court will not allow its function as a court of law to be misused but will in a proper case, prevent its machinery from being used as a means of vexation or oppression in the process of litigation. It follows that where an abuse of process has taken place, the intervention of the court by the stay or even dismissal of proceedings, 'although it should not be lightly done, yet it may often be required by the very essence of justice to be done'.
>
> "The term 'abuse of process' is often used interchangeably with the terms 'frivolous' or 'vexatious' either separately or more usually in conjunction." (footnotes omitted)

[24] When examining pleadings through the lens afforded by Rules 7-9(2)(b) and (e), the reviewing judge must assess the merits of the claim and the plaintiff's motives for bringing it. The reviewing judge may therefore consider not only the party's pleadings but any other evidence relevant to the merits of the claim or the party's reasons for advancing it. The purpose of the review is to weed out those claims which are obviously bad or have been brought for an improper purpose. While the reviewing judge must, to some extent, weigh the party's case on its merits, he or she must do so

with caution. An assessment of the party's pleadings must not become a summary hearing on the merits of the party's claim(s).

[25] In *C & J Hauling Ltd. v Mistik Management Ltd.*, 2010 SKQB 60 at para 16, 351 Sask R 199, Popescul J. (as he then was) identified three examples of abuse of process:

> 16 …
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> - commencing an action knowing no cause of action exists (see: *Gola v. Zaporanik* (1924), [1925] 1 D.L.R. 34 (Sask. C.A.));
>
> - re-litigating issues already determined (see: *Kadziolka v. Royal Bank of Canada* (1993), 111 Sask. R. 90 (C.A.)); and
>
> - commencing a civil action which is a collateral attack on a criminal court (see: *M.L.R. v. Dueck*, 2002 SKQB 113, 220 Sask. R. 56).

[26] With these principles in mind, I turn now to consider the issues raised in these applications.

Does the statement of claim disclose a reasonable claim against either defendant?

[27] The statement of claim alleges the defendants committed equitable fraud.

[28] In *Nadeau v Clement*, 2008 SKQB 1 at para 50, 67 RPR (4th) 124, Koch J. observed that, "[u]nlike common law fraud, equitable fraud does not require specific dishonesty or deceit but only conduct which, having regard to the relationship between the parties, is unconscionable."

[29] In *Kequahtooway v Saskatchewan (Government)*, 2018 SKCA 68 at para 35, 426 DLR (4th) 95, Jackson J.A. described equitable fraud as a more expanded

version of common law fraud as it is "…based on a relationship grounded in vulnerability."

> 35 … This more expanded notion was first discussed in *Guerin v The Queen*, [1984] 2 SCR 335 [*Guerin*]. In *Guerin*, the Supreme Court, referring to *Kitchen v Royal Air Force Association*, [1958] 1 WLR 563 (CA) [*Kitchen*], held that "[t]he fraudulent concealment necessary to toll or suspend the operation of the statute need not amount to deceit or common law fraud" (at 390). Without purporting to define the phrase, the Court in Kitchen was confident that equitable fraud covers "conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for one to do towards the other" (at 573). In *M.(K.) v M.(H.)*, [1992] 3 SCR 6 [*M.(K.)*], the Supreme Court, citing both *Guerin* and *Kitchen*, stated that "'fraud' in this context is to be given a broad meaning, and is not confined to the traditional parameters of the common law action" (*M.(K.)* at 57)….

[30] In *Pioneer Corp. v Godfrey*, 2019 SCC 42, [2019] 3 SCR 295, the court addressed the issue of fraudulent concealment of a cause of action in the context of a limitation defence and observed that fraudulent concealment in this context is a form of equitable fraud. In discussing the nature of equitable fraud at paras. 53 and 54 the court stated:

> 53 While it is therefore clear that equitable fraud *can* be established in cases where a special relationship subsists between the parties, Lord Evershed, M.R. did not limit its establishment to such circumstances, nor did he purport to define exhaustively the circumstances in which it would or would not apply (see *Photinopoulos v. Photinopoulos*, 1988 ABCA 352, 92 A.R. 122 (Alta. C.A.), at para. 10). Indeed, he expressly refused to do so: "[w]hat is covered by equitable fraud is a matter which Lord Hardwicke did not attempt to define two hundred years ago, and I certainly shall not attempt to do so now" (*Kitchen*, at p. 249, emphasis added).
>
> 54 When, then, does fraudulent concealment arise so as to delay the running of a limitation period? Recalling that it is a form of *equitable* fraud, it becomes readily apparent that what matters is *not* whether there is a *special relationship* between the parties,

> but whether it would be, for *any* reason, *unconscionable* for the defendant to rely on the advantage gained by having concealed the existence of a cause of action. This was the Court's point in *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19, [2002] S.C.R. 678 (S.C.C.), at para. 39:
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> > [Equitable fraud] "... refers to transactions falling short of deceit but where the Court is of the opinion that it is unconscientious for a person to avail himself of the advantage obtained" (p. 37). Fraud in the "wider sense" of a ground for equitable relief "is so infinite in its varieties that the Courts have not attempted to define it", but "all kinds of unfair dealing and unconscionable conduct in matters of contract come within its ken" [Emphasis in original]
>
> It follows that the concern which drives the application of the doctrine of equitable fraud is not limited to the unconscionability of taking advantage of a special relationship with the plaintiff. Nor is the doctrine's application limited, as my colleague suggests, to cases where there is something "tantamount to or commensurate with" a special relationship between the plaintiff and the defendant (paras. 171 and 173-74). While a special relationship is *a* means by which a defendant might conceal the existence of a cause of action, equitable fraud may also be established by pointing to other forms of unconscionable behaviour, such as (for example) "some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts" (M. (K.), at p. 57, citing Halsbury's Laws of England (4th ed. 1979), vol. 28, para. 919). In short, the inquiry is not into the *relationship* within which the conduct occurred, but into the *unconscionability* of the conduct itself. [emphasis in original]

[31] Given this jurisprudence I conclude that the plaintiff need not demonstrate that the unconscionability arose from the defendant taking advantage of a special relationship between the parties, but rather equitable fraud is established where the plaintiff proves that the defendant, through unconscionable acts or omissions, gained an advantage for himself and caused a disadvantaged to the plaintiff.

[32] In the context of Rule 7-9(2)(a) then, to disclose a reasonable claim grounded in equitable fraud, the statement of claim must set out sufficient facts, which if true, demonstrate that:

a. one or both defendants committed an unconscionable act or omission;

b. as a result of that act or omission, one or both of the defendants secured a benefit for themselves; and

c. the plaintiffs were disadvantaged or lost a benefit that would otherwise have accrued to them had the unconscionable act or omission not occurred.

[33] In support of the claim of equitable fraud the statement of claim contains the following factual allegations:

a. The plaintiffs entered into annual leases with the Authority with respect to residential lots located in the Park. The plaintiffs were long-term residents of the Park, and constructed cabins and other improvements on their individual lots;

b. The annual leases were intended to be long-term arrangements;

c. After the Authority decided it could no longer operate the Park there were discussions between the leaseholders and the Authority concerning the leased lots;

d. When the leaseholders became aware of the Authority's decision to no longer operate the Park, the leaseholders approached Saskatchewan directly to secure leases of their individual lots, but were unsuccessful;

e. The Authority sought Saskatchewan's approval to dissolve the Park, and

that approval was given on February 16, 2022;

f. The defendants both knew that the plaintiffs had made improvements to the leased lots;

g. The Dissolution Plan requires that the leaseholders vacate and remove their belongings from their respective lots without compensation;

h. The plaintiffs were not advised that the Dissolution Plan was pending and were not given an opportunity to make representations to Saskatchewan regarding the Dissolution Plan; and

i. "The Plaintiffs expected that the long-term possession of their individual lots would continue indefinitely, upon payment of rental and/or purchase of the lots regardless of whether [the] Park remained operational."

[34] None of the facts alleged demonstrate an unconscionable act or omission by either defendant, much less an act or omission that resulted in a benefit to the defendants that otherwise would not have accrued to them. In their brief, the plaintiffs concede that, "[i]t is not in issue that the [Authority] has the right to terminate operations and it is not disputed that the Government of Saskatchewan has the right to issue a 'Dissolution Order' which it did in February 2022." I take from this admission that the plaintiffs concede both defendants did as they were entitled to do. There is no allegation in the statement of claim that the plaintiffs were entitled to a voice in formulating the Dissolution Plan nor in Saskatchewan's approval of the same. In any event, the statement of claim alleges that the plaintiffs were aware of the Authority's intention to dissolve the Park and sought to maintain their leasehold status by negotiating lease renewals directly with Saskatchewan.

[35] In my view, no factual basis is pleaded in the statement of claim which, if true, would support a claim against either defendant for equitable fraud. Furthermore, in light of the plaintiffs' admission that both defendants acted as they were entitled to do in formulating and approving the Dissolution Plan, it is not possible to cure the defects in the pleading by amendment. Any such amendment would require the plaintiffs to allege one or both defendants acted in a manner that they were not entitled to do.

[36] Before moving on to consider the conditions set out in Rule 7-9(2)(b) and (e) I note that the statement of claim at paragraph 18 contains the following curious pleading:

> The actions of Lemsford Park have had the effect that it economically harmed the Plaintiffs and the Ministry of Parks was negligent (careless to extent of equitable fraud) in failing to protect the interests of the Plaintiffs in the development of a fair and equitable Dissolution Plan.

[37] Counsel for the Plaintiffs offered no explanation for the peculiar wording of this paragraph. Indeed, counsel did not address this allegation at all. The court is left to its own devices to suss out the intent of this pleading and thus I conclude that this paragraph seeks to advance a claim in negligence against Saskatchewan "in failing to protect the interests of the plaintiffs in the development of a fair and equitable Dissolution Plan."

[38] This allegation is unsupported by any factual allegations demonstrating:

a. That a special relationship existed between the plaintiffs and Saskatchewan such as would give rise to a common law duty of care on the part of Saskatchewan;

b. The nature of the duty of care;

c. Saskatchewan's failure to meet the standard of care arising from that duty; nor

d. The damages suffered by the plaintiffs as a consequence of Saskatchewan's failure to meet that standard of care.

[39] Each of these elements must be proved to establish liability in negligence and yet the statement of claim is silent as to all of them. Furthermore, a claim in negligence does not jibe with the relief sought. The plaintiffs do not seek damages for negligence but rather that a previous order of the court be restrained and that the plaintiffs be given a "reasonable opportunity to offer their assistance" in formulating a dissolution plan.

[40] If paragraph 18 of the statement of claim is a pleading in negligence it is hopelessly deficient and cannot possibly succeed on the facts as pleaded.

[41] I am satisfied that the statement of claim does not disclose a reasonable claim in either equitable fraud or negligence and must be struck out.

Should the statement of claim be struck out as an abuse of process?

[42] The foregoing conclusion is a complete answer to both applications. However, in the event that my conclusion concerning the efficacy of the plaintiffs' pleadings is in error, I will consider the statement of claim through the lens of Rule 7-9(2)(e).

[43] When assessing an application under Rule 7-9(2)(e) the court may consider the pleadings and evidence relating to the merits of the plaintiffs' claim and their motives for bringing it.

[44] Hereafter, I will use the terms “plaintiffs” to refer to all of the plaintiffs in this action except Mr. Chartrand, whose status as leaseholder in the Park is not established in the evidence.

[45] Each of the plaintiffs occupied lands within the Park pursuant to the terms of an annual lease. The leases did not renew automatically. There was no obligation on the Authority to renew any lease. It was up to the plaintiffs to renew their respective leases. All leases included a term requiring the leaseholder to remove all property from the occupied lands if the lease was not renewed.

[46] All of the plaintiffs were informed in June of 2019 that their lease would not be renewed after December 31, 2019. Consequently, all of the plaintiffs were overholding tenants on Park land by January 1, 2020. On October 30, 2023, the Authority applied to the Court of Queen’s Bench (as it was then designated) Judicial Centre of Swift Current for a writ of possession of the lands occupied by each of the plaintiffs and others. On January 11, 2024, Justice Keene granted the writ of possession. As of that date each of the plaintiffs was bound by an order of this Court to relinquish possession of the Park lands they each occupied.

[47] The plaintiffs did not appeal that order. In fact, Mr. Busse, who was counsel then as now, attempted to stave off execution of the writ of possession by requesting a moratorium on its enforcement to permit the plaintiffs more time to remove their belongings from the occupied lands. When that entreaty did not yield the desired result, the action now before the court was instituted.

[48] While the statement of claim seeks to turn back the clock concerning the preparation and approval of the Dissolution Plan, that relief is pointless if the plaintiffs are dispossessed of the Park lands they now occupy. Accordingly, the principal thrust of the statement of claim is to permanently override the operation of Justice Keene’s

order. If the plaintiffs disputed the correctness of that decision, it was open to them to appeal it. They did not. Rather, this action is commenced as a collateral attack on that order and as such is an abuse of process; *M.L.R. v Dueck*, 2002 SKQB 113, 220 Sask R 56.

CONCLUSION

[49] The statement of claim is struck out as disclosing no reasonable claim against either defendant. Consequently, the defendants' application is granted and the plaintiffs' application for an interim injunction against the order of Justice Keene is dismissed.

J.
C.D. CLACKSON