

CITATION: Ferguson v. Equitable Bank, 2025 ONSC 3774
COURT FILE NO.: CV-24-5398
DATE: 2025 06 26

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Beverly Ferguson and Clement Ferguson, Plaintiffs

AND:

Equitable Bank & EQB Covered Bond Guarantor Limited, Andrew Moor and
Chadwick Westlake, Defendants

BEFORE: M.T. Doi J.

COUNSEL: Beverly Ferguson and Clement Ferguson, self-represented Plaintiffs

Danny Gurrizan, for the Defendants

HEARD: June 26, 2025 (In writing)

ENDORSEMENT

Overview

[1] On February 11, 2025, I directed the registrar to provide notice to the plaintiffs that I had reviewed the statement of claim and was considering a dismissal of the action for being frivolous or vexatious or an abuse of the court's process. The registrar notified the plaintiffs of my concerns and invited them to provide submissions but none were delivered.

[2] As discussed below, I am satisfied that the action does not disclose a discernable claim and, therefore, is clearly frivolous, vexatious, and an abuse of the court's process and 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 that the action should be dismissed for being frivolous, vexatious, and an abuse of process. A review of the one-page statement of claim makes it clear that a dismissal of the action should be granted at this time.

[6] The plaintiffs are claiming a total of \$890,000.00 plus a restoration of full property rights to the Clement-Claude Family of Ferguson. However, the plaintiffs have not pleaded any cause of action or set out any material facts in the statement of claim to establish a discernable basis for the action. In effect, the statement of claim contains no intelligible or actionable claim on its face. It follows that the action is frivolous as it cannot possibly succeed. In addition, I find that the action is vexatious as the defendants should not be forced to litigate the matter without a cause of action and a factual nexus to support the claim for damages. The plaintiffs had an opportunity to make submissions to persuade me that the action should be allowed to continue but did not provide

any written representations. In the circumstances, I am satisfied that the statement of claim is an abuse of the court's process.

Outcome

[7] Accordingly, the statement of claim is dismissed in its entirety with leave for the plaintiffs to deliver an amended statement of claim within 60 days that claims relief known to law.

[8] In my view, this is not an appropriate case for costs and none are awarded. The need for the defendants to seek the plaintiffs' approval as to the form and content of the order for this motion is dispensed with. Should the plaintiffs decide to deliver an amended statement of claim, I would strongly encourage them to obtain legal advice.

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