

KING'S BENCH FOR SASKATCHEWAN

Citation: 2025 SKKB 119

Date: 2025 07 30
File No.: QBG-MJ-00029-2022
Judicial Centre: Moose Jaw

BETWEEN:

JUNG RAN HONG

PLAINTIFF

- and -

MOOSE JAW PUBLICATIONS LIMITED PARTNERSHIP,
GORDON EDGAR, UNITE HERE! LOCAL 41,
and GARRY WHALEN

DEFENDANTS

Counsel:

Nathan R. Sgrazzutti
Candice Grant

Kevin Miller

for the plaintiff
for the defendants, Moose Jaw
Publications Limited Partnership and
Gordon Edgar
for the defendants, Garry Whalen and
Unite Here! Local 41

FIAT
July 30, 2025

DAVIS J.

Introduction

[1] Jung Ran Hong was the manager of the Super 8 Hotel in Moose Jaw, Saskatchewan. She and the hotel were negotiating with their employees' union – Unite Here! Local 41– to reach a new collective bargaining agreement. Negotiations were

fraught.

[2] The Union president, Garry Whalen (now deceased), made several strong statements regarding Ms. Hong to local journalists. Gordon Edgar wrote articles including some of Mr. Whalen's statements, and those articles were published by Moose Jaw Publications Limited Partnership (Moose Jaw Today) Ms. Hong views these statements as defamatory and contends that they interfered with the hotel's business.

[3] Mr. Edgar and Moose Jaw Publications, the "settling defendants", negotiated a Pierringer Agreement with Ms. Hong. This agreement would see them removed as defendants, and it would indemnify them from any third-party claim. The agreement would limit the future liability of the non-settling defendants, Garry Whalen and the Union, to their several liability. The Court must approve the agreement before it takes effect.

[4] The non-settling defendants, to whom I refer as the "additional defendants", oppose the agreement. They contend it will prejudice them because, in their view, the pleadings will no longer acknowledge the role of the settling defendants. They believe that they will be left on the hook for 100% of the damages assessed at trial with no ability to claim contribution from the settling defendants.

[5] In my view, the Pierringer Agreement has been properly drafted, and I must approve it. The prejudice the additional defendants allege is unlikely to materialise. The additional defendants' position is predicated on a misreading of the agreement and the proposed amendments to the pleadings. Besides, the nature and magnitude of the alleged prejudice would not justify the Court in rejecting the agreement, given the public interest in promoting settlement.

Pierringer Agreements

[6] Pierringer Agreements are designed to allow one or more defendants to reach a settlement with a plaintiff even where not all defendants are prepared to settle. The settling defendants can withdraw from the litigation; the non-settling defendants are left responsible only for the loss they caused. They are not jointly liable with the settling defendants but may be jointly liable with each other: *Sable Offshore Energy Inc. v Ameron International Corp.* 2013 SCC 37 at paras 6 and 23, [2013] 2 SCR 623 [*Sable*].

[7] Trial judges are entitled to apportion liability as between settling and non-settling defendants. A non-settling defendant's proportionate liability cannot be assessed in a vacuum, and fairness to that defendant may require the trial judge to also consider the several liability of other tortfeasors. This includes those who have been removed from the litigation through settlement: *M.(J.) v Bradley* (2004), 240 DLR (4th) 435 at paras 68 – 70 (Ont CA). Pierringer Agreements contemplate a trial judge making such a determination.

[8] Pierringer Agreements have obvious benefits in “reduc[ing] litigation’s stubbornly endemic delays, expense, and stress”: *Sable* at para 1. This is why there is an “overriding public interest in favour of settlement”: *Sparling v Southam Inc.* (1988), 66 OR (2d) 225 (WL) (Ont H Ct J) at para 17. Courts will approve such agreements unless the agreement “significantly prejudices a non-settling defendant” and that prejudice outweighs the public interest in encouraging settlement: *Cadieux v Cadieux*, 2025 ONCA 405 at para 16 [*Cadieux*].

[9] Prejudice in this context refers primarily to the curtailment of the additional defendants’ ability to know and present their case or pursue their own settlement. It is not simply the inability to share among defendants in any joint and several liability, particularly as a Pierringer Agreement frees the non-settling

defendants from any liability for the fault of the settling defendants: *Cadieux* at paras 17 and 30.

[10] A valid Pierringer Agreement has three components. It must:

- (a) limit the plaintiff's claim against any non-settling defendant to their several liability;
- (b) require the settling defendant to seek no contribution or indemnity from the non-settling defendant; and
- (c) provide that the plaintiff indemnifies any settling defendant against any claim by a non-settling defendant: *Cadieux* at para 13.

[11] It is not my role to parse the wording of the agreement, but I must carefully consider whether the agreement provides adequate protections to the additional defendants: *Rosetown (Town) v Bridge Road Construction Ltd.*, 2020 SKQB 3 at paras 11 and 22. It is my view that the agreement does adequately protect them.

[12] It is also my view that the agreement fulfils the three essential requirements outlined in *Cadieux*. Below, I explain why the agreement does not open the additional defendants up to liability for the settling defendants' actions, and why the prejudice they may experience does not justify declining to approve the agreement.

Does the Pierringer Agreement unfairly expose the additional defendants to liability for all the alleged harm?

[13] The agreement contemplates the trial judge will determine proportionate liability. The agreement holds the plaintiff will not claim against the additional defendants for the proportionate share of damages attributable to the settling defendants. Despite this, the additional defendants contend that the amended pleadings attribute 100% of possible damages to them, by ceasing to acknowledge the settling

defendants' contribution to the alleged harm. I disagree.

[14] While the amended pleadings no longer refer to the settling defendants as defendants, the pleadings clearly address their role. In fact, the description of Mr. Edgar's and Moose Jaw Publication's actions, in paras. 13-15 and 18 of the amended pleadings is almost unchanged from the original Statement of Claim. The amended pleadings dropped the detailed allegations of tortious acts attributable to the settling defendants. The allegations of tortious acts remaining in the amended pleadings are those which the plaintiff says are attributable to the additional defendants.

[15] In other words, the plaintiff no longer claims the additional defendants are jointly and severally liable for the settling defendants' actions. She does claim they are severally liable for their own actions, and that they are jointly liable – as between Mr. Whalen and the Union – for each other's actions.

[16] It is not prejudicial for the Statement of Claim to focus only on the alleged wrongful acts of the additional defendants, even though there were other parties who may be alleged to have acted wrongly too. It would be prejudicial if the agreement limited the additional defendants' ability to know and respond to the case. That is not the prejudice they allege.

[17] The additional defendants say they can no longer amend their Statement of Defence to assert that the settling defendants contributed to the alleged wrongs.

[18] This assertion appears misguided for two main reasons. First, as the plaintiff will be filing an Amended Statement of Claim, the additional defendants will have a right to file an Amended Statement of Defence. To make that especially clear, I am ordering that their Statement of Defence may be filed in accordance with *The King's Bench Rules*, or in such longer time as a subsequent order of this Court may allow.

[19] The additional defendants cited no authority that would prevent them

from asserting that their responsibility for the alleged loss was limited. In my view, the additional defendants are entitled to plead facts capable of demonstrating the settling defendants' contribution.

[20] Pleadings tend to give a one-sided account of a particular act or transaction. To the extent the Amended Statement of Claim does so, the additional defendants have every right to plead what they believe to be material facts.

[21] Second, the agreement is designed to free the additional defendants from liability for the fault of the settling defendants. The agreement contemplates that a judge will determine proportionate liability at trial. The plaintiff filed that agreement with the Court. I ordered that an unredacted copy be placed on the Court file and sealed until further order of the Court. The redacted copy, which contains all material terms apart from the quantum of settlement, is available to anyone with authorisation to view the file.

[22] It is not reasonable to contend that either the plaintiff or this Court will ignore the terms of the agreement, including the following clauses:

3. Court Order Required. This Agreement is conditional on the Court granting an order:

- (a) Giving leave to the Plaintiff to amend her Statement of Claim in the Action to formally remove the Settling Defendants from the Action and for the Plaintiff to limit her claim in the Action as against the Additional Defendants to their respective shares of several liability or potential liability;

...

9. Proportionate Liability. The Court shall have full authority to determine the proportionate liability of the Settling Defendants and the Additional Defendants at trial or other disposition of the Action as if the Settling Defendants remained parties to the Action. The Plaintiff shall not claim and is not entitled to recover from the Additional Defendants that portion

of any damages, costs, or interest awarded in respect of any claims that correspond to the proportionate liability of the Settling Defendants as proven at trial or other disposition of the Action.

[23] It is not reasonable to suggest that the plaintiff is, in the additional defendants' words "abandoning... an acknowledgement that it has been paid out (some) proportionate share" of future damages. The clauses reproduced are a full answer to the additional defendants' complaints. In my view, those complaints are completely without merit.

Does the alleged prejudice outweigh the public interest in settlement?

[24] However, even if I thought there was something to the additional defendants' arguments, I would not withhold my approval for the agreement in these circumstances. That is because the prejudice the additional defendants allege is outweighed by the public interest in promoting settlements.

[25] Settlement is not just about saving court time or about saving the cost of litigation. In settling a matter, the parties reach an accommodation which they can live with. A settlement may be vastly different from what a judge would order after a contested hearing and yet may conduce to a more satisfactory outcome for all.

[26] The first party to settle often sets off cascading settlements among the other litigants. A court that intervened too much in the settlement process would not promote justice but would gum up the workings of the system. I must be careful before declining to approve a settlement that is mutually acceptable to the litigants it directly concerns.

[27] The most the additional defendants can say is that the agreement removes allegations of tortious actions by the settling defendants from the Statement of Claim, limiting what this case is about, and closing the door to further contribution from those

settling defendants. That is the point of a Pierringer Agreement, and without those features, parties would not attempt to settle in this manner at all.

[28] I have already explained why I do not think the additional defendants are likely to be responsible for the whole of the alleged loss. But even if the parties' circumstances resulted in the Pierringer Agreement exposing the additional defendants to a greater risk of paying a somewhat larger damage award than otherwise, that would not justify a refusal to approve the settlement in these circumstances.

[29] While the situation in *Cadieux* turned on the application of Ontario's *Negligence Act*, RSO 1990, c N.1, I found its discussion of potential prejudice instructive. In that case, one non-settling defendant was exposed to liability for more than its proportionate share. The settlement dealt with the settling defendant's proportionate liability only. By acting when it did, the settling defendant avoided being found jointly liable with an insolvent. Because of how the *Negligence Act* operates, an insolvent defendant's share of the future damages must be paid by those who are jointly liable with the insolvent.

[30] The Ontario Court of Appeal pointed out that the agreement was not inherently prejudicial to the non-settling defendant's interest, even though the agreement meant they might get saddled with the insolvent's share. That was always a risk in the litigation: *Cadieux* at para 31.

[31] In this case it is even more obvious to me that the agreement is not prejudicial to the non-settling defendants. They will not be responsible for other people's tortious actions. They may be held responsible for the full extent of their own. The speculative and remote possibility that the additional defendants may be liable for a greater quantum of damages than would be the case without the settlement does not indicate prejudice.

[32] The prejudice the additional defendants allege is no more than what is “inherent in the basic form of a Pierringer agreement”: *Cadieux* at para 17. Unlike the situation in *Cadieux*, which was governed by the Ontario *Negligence Act*, the additional defendants may argue for proportionate liability at trial. The agreement contemplates that the Court will determine proportionate liability.

[33] The question of proportionate liability is one the trial judge will be well-equipped to handle. The additional defendants have failed to identify any way they are actually prejudiced by the agreement. In the alternative, if they have identified actual prejudice, it does not outweigh the public interest in promoting settlement.

[34] I am allowing the plaintiff’s application. I am approving the agreement and giving leave to the plaintiff to amend her Statement of Claim in the manner proposed. The additional defendants are barred from bringing claims for contribution or indemnity against the settling defendants whether as crossclaims, third-party claims, or as claims in a separate proceeding.

[35] The plaintiff is entitled to costs of this application in accordance with column 2.

J.
A.S. DAVIS