

**CITATION:** DREAMZ HOLDINGS LTD. v. 2456914 ONTARIO INC. et al.,  
2025 ONSC 5892  
**COURT FILE NO.:** CV-23-00002614  
**DATE:** 2025 10 28

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:** )  
 )  
DREAMZ HOLDINGS LTD. ) Harry Sarros, for the Plaintiff  
 )  
 )  
 )  
Plaintiff )  
- and - )  
 )  
 )  
2456914 ONTARIO INC., DANIEL ) Michael Kestenberg for the  
SPENCER, SATYAMKUMAR TRIVEDI, ) Defendants  
 )  
THE MORTGAGE ALLIANCE COMPANY )  
OF CANADA INC., WALL STREET )  
CAPITAL INC. and 12374277 CANADA )  
INC., STEPHEN SPENCER, USMAN )  
ASGHAR BHATTI and RZCD LAW FIRM )  
 )  
Defendants )  
 )  
 ) **HEARD:** August 13, 2025

**REASONS FOR DECISION**

**McGee J.**

**Result**

[1] Dreamz Holdings Ltd. (“Dreamz”) is a private lending company. The defendant Usman Asghar Bhatti is an associate lawyer with the defendant RZCD Law Firm

(collectively referred to as “RZCD”). Together, they move for a dismissal of the claims against them in this proceeding by way of summary judgment.

- [2] The defendants 2456914 Ontario Inc., Daniel Spencer, Satyamkumar Trivedi, Wall Street Capital Inc., 12374277 Canada Inc., and Stephen Spencer have been previously noted in default.
- [3] For the reasons set out below, I grant the motion for summary judgment.
- [4] The claim as against the Mortgage Alliance Company of Canada (the “Mortgage Alliance”) continues.
- [5] Costs of this motion for summary judgment shall be paid by the plaintiff to RZCD in the amount of \$16,950.

### **Relevant Background Facts**

- [6] RZCD represented the defendant, 2456914 Ontario Inc. (“245”), as the mortgagor in a mortgage transaction with the plaintiff, Dreamz.
- [7] Dreamz agreed to provide 245 with a mortgage loan for \$650,000. The security for the loan included a mortgage to be registered in second position on title to 168 Dunlop Street West, Barrie, Ontario (the “property”), a General Security Agreement from 245, and a Guarantee from the director/officer of 245.
- [8] The transaction closed on December 2, 2021, and funds were disbursed by RZCD in accordance with 245’s instructions. At all relevant times, Dreamz was represented by their own, independent counsel.
- [9] Throughout the mortgage transaction, the defendant, Daniel Spencer, presented himself as 245’s authorized officer and guarantor. On behalf of the corporation, and working with Satyamkumar Trivedi (“Trivedi”), a purported mortgage broker with the Mortgage Alliance, he had previously entered into an agreement with Dreamz for the advance of \$650,000. Spencer then retained RZCD in early November 2021 to complete the transaction.

- [10] RZCD had never worked with Daniel Spencer before being retained on the mortgage transaction but had been introduced to him by Settimio Testa, the prior owner of 245. RZCD relied on information provided by Testa that he had assigned his shares to Spencer. RZCD had not acted on the assignment of shares. Mr. Testa died two months prior to the closing of the mortgage transaction.
- [11] RZCD also relied on documents confirming the assignment, which were provided by Daniel Spencer. These documents included the Minute Book containing the Directors' Register, the Shareholders' Register, the Officers' Register, the Shareholders' Ledger and the Transfer Register, as well as several pieces of identification including an Ontario Photo Card, Government of Canada Permanent Resident Card and BMO Mastercard. All the documents confirmed Daniel Spencer's identity.
- [12] Relying on the above information and documents, RZCD arranged for the execution of the mortgage documents by Daniel Spencer on behalf of 245, including the Acknowledgment of Standard Charge Terms, the Direction re: Funds, a General Security Agreement, a General Assignment of Rents and Leases, and a Guarantee and Postponement of Claim by Daniel Spencer to Dreamz.
- [13] RZCD confirmed that it was satisfied that the "individual executing the documents was an authorized signatory after examining the identification and comparing the photographs and signatures to the individual executing the mortgage documents". Specifically, they:
- a. confirmed Daniel Spencer's identity based on documents and information provided to them by him,
  - b. provided a Certificate of Independent Legal Representation to Dreamz that it had been retained by 245 to provide legal representation and advice,
  - c. provided an opinion by letter dated November 26, 2021 that the security by 245 was valid and enforceable, and

d. confirmed the identity of the guarantor whose photo identification was attached to the correspondence (Daniel Spencer) and confirmed that he understood the transaction, the nature and extent of the documents, and that he did not sign the documents under duress.

- [14] On closing, RZCD received \$621,102.05 from Dreamz which it disbursed in accordance with 245's instructions. The disbursements included: (i) mortgage broker fees of approximately \$150,000; (ii) the payment of a mortgage instalment in the approximate sum of \$26,000; and (iii) a shareholder reimbursement payable to Marcella Di Lieto in trust in the sum of \$300,000.
- [15] The mortgage in favour of Dreamz, as well as an Assignment of Rents, were registered on title to the property. In addition, the Firm provided Dreamz with post-dated cheques payable by 245 to Dreamz in the sum of \$7,583.33 per month, the General Security Agreement executed by 245, and the Guarantee signed by Daniel Spencer.
- [16] The first post-dated cheque was returned with insufficient funds. None of the subsequent cheques passed. The mortgage went into default. This Statement of Claim was issued on July 26, 2023.
- [17] While attempting to serve Daniel Spencer with the Statement of Claim, it was learned that "Daniel" is an alias and the actual name of the person purporting to be the owner of the shares of 245 is Stephen Spencer (hereinafter "Stephen Spencer").
- [18] Stephen Spencer was subsequently charged with possession of a forged Ontario photo identification card and fraud over \$5,000. The defendant, Satyamkumar Trivedi, who was the mortgage agent on the transaction, was also charged with fraud over \$5,000. I am advised that this charge was later withdrawn.
- [19] Dreamz describes the relief sought against RZCD in their factum as declaratory and monetary relief against RZCD arising from "solicitor negligence, negligent

misrepresentation, and failures of identification, authority confirmation, and title insurance compliance.”

- [20] Dreamz has never initiated power of sale proceedings on the property or attempted any other form of recovery on the property against which their mortgage remains fully registered.
- [21] Dreamz has not obtained a valuation of the property to determine whether there is sufficient equity in the property to pay out their claim.

### **Amendment of Claim Granted**

- [22] The specific claims made by Dreamz against RZCD in their Statement of Claim have been amended. As a preliminary matter to this motion for summary judgment, the plaintiff asks to again amend their action, which is not opposed. By separate Order, I grant the amendment of the Statement of Claim.
- [23] As a result, the plaintiff’s claims against all the defendants, “jointly, severally, or in the alternative” are:
- a. \$650,000 in damages for negligent misrepresentation, innocent misrepresentation, negligence and/or breach of contract;
  - b. Unpaid interest at a rate of \$249.31 per diem commencing December 1, 2021; \$270 in not sufficient funds fees; a \$249.31 per diem late penalty charge commencing January 1, 2022; a \$1,500 administration fee; and \$2,825 in costs upon the initiation of the action;
  - c. Pre- and post-judgment interest in accordance with the pre- and post-maturity rate on the mortgage note;
  - d. Costs of this action on a substantial or appropriate basis; and
  - e. Such further or other relief as counsel may advise and as to this Honourable Court seems just.

### **Narrow Duty of Care Conceded at the Start of this Motion**

- [24] Counsel for RZCD conceded at the start of this motion that RZCD owed Dreamz a duty of care in the course of the mortgage transaction because they were invited to rely upon their legal opinion letter dated November 26, 2021.
- [25] In that letter, RZCD confirmed the identity of “Daniel Spencer,” opined that he had the corporate power, authority and capacity to bind the corporation, and further opined that he had the corporate power, authority and capacity to execute the mortgage documents. It is not contested that these representations were relied upon by Dreamz.
- [26] Solicitors must exercise diligence when certifying corporate status, authority, and identity, particularly when issuing legal opinions. A third-party reliance grounded in a direct communication can create a duty of care. See para 63 of *Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165.
- [27] However, this is a narrow duty of care. Counsel do not, generally, owe a duty of care to the opposing party. As stated in *2116656 Ontario Inc. v. Grant and LLF Lawyers LLP*, 2019 ONSC 114, at paras. 32-34, the applicable principles are as follows:
- [32] A lawyer generally owes a duty of care only to his or her own client, and not to persons other than his or her client.
- [33] Indeed, where liability for purely economic loss is sought to be imposed on a solicitor vis-a-vis a party other than his or her client, “courts have trod carefully”, recognizing that imposition of such a duty greatly hampers the conduct of commercial and private business, and interferes fundamentally with the operation of that economic system.
- [34] Moreover, courts recognize that imposition of such a duty raises numerous concerns, including the following:
- i. It makes a solicitor responsible to someone who neither retains nor pays him or her.
  - ii. It is somewhat illogical to impose upon a solicitor, who is merely an agent for his or her own client, a duty to a third party which his or her client himself, herself or itself does not have.

iii. It usually is not possible to disclaim or limit liability to such non-client third party.

iv. Making a solicitor assume such a duty to a non-client third party may potentially or actually place the solicitor in conflict with the interests of the solicitor's own client.

[Footnotes omitted].

See also paras. 35-37.

### **Issues to be Determined**

[28] First, I will set out the legal tests on a motion for summary judgment. The moving party, here RZCD, bears the onus.

[29] Next, I will address the primary issue to be determined on this motion for summary judgment: whether expert evidence on the standard of care of a solicitor conducting a mortgage transaction is required in a claim of professional negligence; and if so, whether there can be a genuine issue for trial in its absence.

[30] As a secondary issue, I will address RZCD's submission that the claim ought to be dismissed because the plaintiff has tendered no evidence of damages.

[31] I will also briefly respond to submissions received during the motion concerning the loss of title insurance coverage.

### **Summary Judgment Motion**

[32] Rule 20.04(2)(a) of the *Rules of Civil Procedure* provides that the court shall grant summary judgment if "the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence" (R.R.O. 1990, Reg. 194).

[33] Rule 20.04(2.1) provides that when a court is considering whether there is a genuine issue requiring a trial, it "shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.”

- [34] In *Hryniak v. Mauldin*, the Supreme Court of Canada held that on a motion for summary judgment under rule 20, courts should first determine if there is a genuine issue requiring trial based only on the evidence in the motion record, without using the fact-finding powers enacted when rule 20 was amended: 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66.
- [35] There is no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. “This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result”: *Hryniak*, at para. 49.
- [36] “[T]he standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principles to resolve the dispute”: *Hryniak*, at para 50.
- [37] The court is entitled to assume that parties have advanced their best case and put forward the best evidence on which they rely upon to support their case. This places a burden on the responding party to “lead trump or risk losing”: see *CIBC v. Mitchell*, 2010 ONSC 2227, at para. 18 .
- [38] The analysis of whether there is a genuine issue requiring a trial should be done by reviewing the factual record and granting a summary judgment if there is sufficient evidence to fairly and justly adjudicate the dispute, and a summary judgment would be a timely, affordable and proportionate procedure.
- [39] If, however, there appears to be a genuine issue requiring a trial, then the court should determine if the need for a trial can be avoided by using the powers under

rules 20.04(2.1) and (2.2) of the *Rules of Civil Procedure*. As a matter of discretion, the motion judge may use those powers, provided that their use is not against the interest of justice.

- [40] Their use will “not be against the interest of justice if their use will lead to a fair and just result and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole” see *1880 O’Connor v. Universal Medical*, 2018 ONSC 5311, at para. 6.
- [41] The Order sought in this motion is more akin to a partial summary judgement because it involves only two defendants – the lawyer and his law firm retained by Stephen Spencer to close the mortgage transaction that had already been negotiated.
- [42] Before embarking on the hearing of a motion for partial summary judgment, a motion judge must determine whether, in the circumstances, partial summary judgment will achieve the objectives of proportionate, timely, and affordable justice or, instead, cause delay and increase expense.
- [43] Here, I am satisfied that dealing with this motion separately from the whole of the action will prove to be less expensive and faster for the parties and will not result in inconsistent findings.
- [44] The remaining defendant will be the Mortgage Alliance and the limited manner of that claim will ensure that it reaches trial faster.
- [45] A determination on this motion for summary judgment is on the narrow issue of whether RZCD owed Dreamz a duty of care and whether it breached that duty of care. As such, this will not result in inconsistent findings regarding the action against the Mortgage Alliance.
- [46] Dreamz does not assert that RZCD was in any manner connected to the other potential players in the fraud: Satyamkumar Trivedi, Wall Street Capital Inc. and 12374277 Canada Inc.

## Analysis

### *Is Expert Evidence of the Standard of Care Required?*

- [47] Dreamz details in its factum the requirements of the *Ontario Business Corporations Act*, the indoor management rule, and the legal principles underlying material misrepresentation, negligent misrepresentation, and reasonable reliance. They argue that RZCD should have known or taken additional steps to discover that Daniel Spencer was a fictitious person.
- [48] Dreamz sets out, with the benefit of hindsight, how RZCD might have detected that Daniel Spencer had never been appointed as a director of 245. For example, Daniel Spencer was not listed as an officer or director in any public record at the time of the mortgage transaction. This would have come to RZCD's attention if they had done independent public searches rather than relying on the documents provided by their client.
- [49] Dreamz may be correct that the fraud would have been exposed prior to the registering of the mortgage had RZCD made that and/or additional independent inquiries. Does the failure to have done so constitute a breach of the duty of care owed by RZCD to Dreamz? Is it sufficient to ground a claim in damages arising from professional negligence?
- [50] As a general rule, it is not possible to determine a professional negligence case without expert evidence except where: (i) the court is faced with non-technical matters; (ii) an ordinary person may be expected to have knowledge; or (iii) the conduct of the professional is so egregious that clearly her conduct has fallen short of the standard of care. See *Lindsay v. Aird & Berlis LLP*, 2018 ONSC 7424, at para. 46.
- [51] In *McPeake v. Cadesky & Associates*, 2017 ONSC 5705, at para. 75, aff'd 2018 ONCA 554, Justice Ryan-Bell frames this third exception as one in which it is obvious that the professional's conduct falls short of the standard of care. However, in the case before her, she found that expert evidence of the standard of care was

required: at para. 77. Because it had not been tendered within a summary judgment motion to dismiss an action issued against the professional, Justice Ryan-Bell found that the plaintiff had failed to show a genuine issue requiring a trial and she granted the dismissal.

[52] Similarly, I find that in these circumstances I cannot determine whether RZCD breached its duty of care to Dreamz absent expert evidence.

[53] The standard of care expected of a solicitor conducting a mortgage transaction, who in the course of the transaction is being defrauded by his own client is neither a non-technical matter, nor is it something that an ordinary person would be expected to know. RZCD appears to have made reasonable inquiries when setting up their retainer with Spencer, who had been personally introduced to them by the former owner of 245 as the new owner of 245. Mr. Spencer provided documentation that appeared to be in good order.

[54] Bhatti had reason to believe that his client was who he represented himself to be. The law firm accepted the retainer and registered a valid, enforceable mortgage on title, in accordance with terms that had been contracted prior to the firm's retainer.

[55] When viewed as a whole, I find that the actions of RZCD were not so egregious that an expert opinion on the requisite standard of care is unnecessary, see *Krawchuk v. Scherbak*, 2011 ONCA 352, 106 O.R. (3d) 598, at para. 135-136 leave to appeal refused [2011] S.C.C.A. No. 319.

[56] As a result, I find that expert evidence is necessary to establish the standard of care that is required of a lawyer conducting a mortgage transaction. In its absence, I find that Dreamz is unable to establish that there is a genuine issue for trial.

### *Damages*

[57] RZCD further points out that Dreamz has failed to demonstrate that they have suffered any damages by relying on RZCD's opinions because they have never

produced evidence concerning the realizable equity in the property that secures their mortgage.

- [58] Dreamz has failed to provide the current value of the property, the status of the first mortgage, whether the first mortgagee has taken steps to realize on its mortgage, whether the property has ever been listed for sale/was sold, or whether Dreamz has ever taken steps to enforce its registered security. As a result, I have no evidence of a shortfall that would inform a calculation of damages.

### *Loss of Title Insurance*

- [59] Dreamz raises a further issue for trial: that RZCD's conduct resulted in a loss of title insurance which might have been available as a source of recovery. It is not contested that the manner in which the funds secured by the mortgage were paid out resulted in title insurance coverage becoming unavailable.
- [60] RZCD contends that it was Dreamz's lawyer who was responsible to ensure that title insurance on the transaction was valid. Dreamz's lawyer neither requested that RZCD attach the Trust Ledger Statement to the closing documents, nor did he seek an undertaking in this regard. He only asked for the documents after closing. As a result, RZCD argues that Dreamz failed to conduct its own due diligence to ensure that it had proper title insurance
- [61] I accept RZCD's argument that the events which led to the failure to qualify for title insurance are unrelated to Spencer's fictitious identify not being discovered by his counsel.
- [62] Moreover, I am not persuaded that a valid policy of title insurance would assist Dreamz. Title insurance protects property buyers and lenders against financial losses from title defects which may include forgery, fraud, and errors in the legal description of the property, encroachment of unpaid expenses such as a lien incurred by a prior owner, zoning violations and other title defects.

[63] Title insurance is not a form of security for a mortgage registered on property by its current owner which has gone into default.

[64] I do not find on the pleadings before me that the loss of title insurance raises a genuine issue for trial.

### **Conclusion**

[65] I must decide this motion on the basis that the parties have placed before me all of the evidence that will be available at trial.

[66] On the record before me, and in the absence of expert evidence as to the standard of care required of solicitor conducting a mortgage transaction, and there being no evidence as to damages, I must find that there is no genuine issue requiring a trial against Usman Asghar Bhatti and RZCD Law Firm.

### **Costs**

[67] RZCD has been the successful party and seeks the rounded amount of \$40,000 in partial indemnity costs. Dreamz confirms in their own submissions that they have expended in the range of \$35,000 in costs.

[68] The preponderance of these costs: \$40,000 and \$35,000, are attributable to the question of whether a duty of care existed between RZCD and Dreamz. This was an assertion vigorously disputed by RZCD throughout, and then conceded for the purposes of this motion at the start of submissions.

[69] Costs awards as between litigants have a number of purposes, including to a) indemnify (partly) successful litigants, b) encourage settlement, c) correct behaviour of the parties, and d) discourage frivolous or ill-founded litigation. See *394 Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238, at para. 10.

[70] But as Armstrong J.A. explained in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), when a judge is fixing costs, his or her task involves more than a mere calculation using the hours docketed

and the costs grid. “[I]t is also necessary to step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable”: see para. 24.

[71] RZCD’s factum and Dreamz’s responding factum<sup>1</sup> to this motion for summary judgment were heavily weighted towards the issue of whether RZCD owed the plaintiff a legal duty of care. Indeed, a careful reading of Dreamz’s factum suggests that establishing a duty of care was the primary focus of its advocacy.

[72] I reduce the amount of costs sought by RZCD by an amount that reflects the costs appertain to the issue of whether RZCD owed Dreamz a duty of care. The facts informing the duty of care were unchanged throughout the proceeding. By not offering the concession until the start of submissions, I find that the proceeding was unnecessarily lengthened, and costs were incurred needlessly.

[73] I grant RZCD costs in the amount of \$16,950 being \$15,000 in fees and disbursements and \$1,950 in HST thereon.

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McGee J.

Released: October 28, 2025

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<sup>1</sup> Which grievously exceeded the proscribed page limit.

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**REASONS FOR DECISION**

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