CITATION: Argyle v. Dickinson, 2025 ONSC 7003
COURT FILE NO.: CV-25-00743033-00CL
DATE: 20251215

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

Roanne Argyle, Robert Gemmill, Robert Mcewan, Tomas Stefan Moores, Correy Myco, Ngi Holdings Inc., Kimberley Blanchette, Krystyna Lloyd, Jillian Mclean, Kristin Owen, Whitney Siemens, And Matthew Stradiotto,

Plaintiffs

-and-

Arlene Dickinson and Arlene Dickinson Enterprises,

Defendants

BEFORE: FL Myers J

COUNSEL: *Simon Bieber, Sean Blakeley, and Caroline Harrell*, for the Plaintiffs

Jeremy Devereux and Aliyyah Jafri, for the Defendants

David A. Schatzker for *Daniel Tisch Communications Inc.*

HEARD: December 12, 2025

ENDORSEMENT

The Motions

[1] The former shareholders of ACI Argyle Communications Inc. bring this action. It is nearly identical in all respects to a companion action brought by Daniel Tisch Communications Inc. under Court File No. CV-25-00750076-00CL.

[2] This endorsement applies to motions brought by the defendants in both actions.

[3] Both actions seek identical relief for fraudulent or negligent misrepresentation and unjust enrichment arising from the transaction

in which Argyle, Tisch and others merged to form Believeco:Partners ("BCP").

[4] The plaintiffs allege that Ms. Dickinson lied to them and provided false information to accountants at KPMG during the due diligence process that preceded the merger. In effect, they claim that Ms. Dickinson told them that her company, Venture Communications Marketing Ltd., was a thriving and valuable business when in fact it was failing. The plaintiffs allege that Ms. Dickinson painted a rosy picture of a combined super-firm under her leadership when, in fact, she intended the merger to save her business by shifting its losses onto the merger partners.

[5] The defendants move to strike the claims for disclosing no reasonable causes of action.

[6] In *PMC York Properties Inc. v. Siudak*, 2022 ONCA 635, the Court of Appeal discussed motions to strike claims that plead known causes of action. At para. 34 Roberts JA wrote:

> Pleadings are very important. They frame the proceedings and the case that must be met. However, long gone are the days where proceedings could be terminated at the early pleadings stage on mere technicalities that can be cured by amendment unless it would result in non-compensable prejudice to the opposing party or the administration of justice. Motions to strike can certainly serve a useful purpose at early stages of a proceeding to weed out clearly untenable causes of action that have no chance of success: *Imperial Tobacco*, at para. 19. But in circumstances where parties are quibbling over whether a known cause of action has been pleaded with sufficient particularity, injudicious use of motions to strike inevitably lead to proceedings becoming mired down, as here, in technical pleadings disagreements that cause unnecessary delay and expense, rather than the adjudication of the dispute on the merits.

Unjust Enrichment

[7] The cause of action of unjust enrichment seems to add nothing to the claims of misrepresentation. The alleged unjust benefit and deprivation are the same in both. The merger agreement(s) likely provide a juristic reason for any loss. That means that unjust enrichment only applies if the merger agreement(s) are rescinded or invalidated by

misrepresentations. But if that happens, then the misrepresentation claims will have already succeeded.

[8] Moreover, the remedy of rescission is not claimed as a remedy for the misrepresentations. Whether positions have changed too much over time to make rescission realistic is not before me.

[9] As will become a common theme below, I find that the claim of unjust enrichment is not properly pleaded without a plea of rescission or a plea that the agreements are otherwise not valid juristic reasons for the adjustment of wealth between the parties. If the plaintiffs wish to continue this claim, then they will need to amend their statements of claim. Whether there is any purpose to doing so is for them to determine.

[10] The words "and unjust enrichment" in paragraph 1 (a) and all of paragraph 50 of the statement of claim in the Argyle shareholders' action (and the corresponding paragraphs in the Daniel Tisch action) are struck out with leave to mend.

Misrepresentation Claims

(i) Pleading Required Particulars

[11] The statement of claim in the Argyle shareholders' action is supplemented by a Response to Demand for Particulars. The Argyle shareholders have helpfully delivered an appendix to their factum to put the two pleadings together and link each allegation to the causes of action pleaded.

[12] To try to stay in synch with the Argyle shareholders, Daniel Tisch delivered a purported set of Particulars of Daniel Tisch Communications Inc. But the defendants did not deliver a prior Demand for Particulars in the Daniel Tisch action. Accordingly, the purported response is not a proper pleading as it is not delivered within the *Rules*. Having said that, the document does indicate the particulars that could be incorporated into an amended statement of claim when one is delivered by Daniel Tisch.

[13] In my view, subject to the specifics below, the statements of claim with the particulars, plead the requisite elements of the two types of misrepresentation. Honestly however, one must struggle to make legal sense of the claims. The fact that the Argyle shareholders needed an 8-page, small-font, appendix to relate the facts to the required legal elements of the torts speak volumes.

[14] In particular, paras 15 and 16 of the Argyle shareholders' claim set out a number of documents that might have contained misrepresentations or broad topics of conversations in which representations were allegedly made. But they never say, "The Defendant X represented Y as a fact and it was not true to her knowledge or she was negligent as to its truth or falsity." You have to parse through a lot of verbiage to find each piece as best as one can.

[15] The Response to Demand for Particulars does provide better details. As I already said, they are married to each other and the requisite elements of the torts in the appendix to the factum.

[16] On a pleadings motion facts are assumed to be true and the pleadings are read generously to allow for drafting styles. I would not strike out the pleadings for failing to set out the requisite elements of the two torts. In my view the elements of the torts are sufficiently pleaded to meet the technical requirements listed in *Lysko v. Braley*, 2006 CanLII 1846 (ON CA). The defendants know the cases they have to meet. They are not presented in a way that is easy to follow. These pleadings will not make either discovery or trial judge's job simpler. Generally, they should be amended to set out the causes of action, element by element, with the facts alleged supported by particulars simply and logically if the plaintiffs are so advised. But these statements of claim are neither prolix nor incomprehensible. I will not strike them out for being difficult to follow alone.

[17] Since the Daniel Tisch claim does not yet have the particulars incorporated, I direct Daniel Tisch to amend its statement of claim to do so. It may be technically sufficient to add a paragraph incorporating the details set out in a schedule attaching the Particulars of Daniel Tisch Communications Inc. However, the comment in the last paragraph applies equally to the pleading of Daniel Tisch. It should be revised to lay out a simple, clear narrative that shines light on the requisite elements of the torts pleaded.

(ii) Actionable Misrepresentations Must be Statements of Current Fact

[18] To sue someone for misrepresentation, whether innocent, negligent, or fraudulent, the plaintiff must allege that the defendant made a statement of objective fact that was not true. Opinions and sales puffery are not statements of objective fact.

[19] In *Hembruff v Ontario (Municipal Employees Retirement Board),* 2005 CanLII 39859 (ON CA), at para. 76, the Court of Appeal held:

> It is, of course, well settled that a representation, to be of effect in law, should be in respect of an ascertainable fact as distinguished from a mere matter of opinion. A representation which amounts merely to a statement of opinion, judgment, probability, or expectation, or is vague and indefinite in its nature and terms, or is merely a loose, conjectural or exaggerated statement, goes for nothing, though it may not be true, for a man is not justified in placing reliance on it.

[20] The defendants submit that the misrepresentations attributed to them by the plaintiffs were opinions, judgment calls, or sales puffery that do not amount to objective facts on which they can be sued.

[21] The defendants rely on a decision of Morawetz J. (as he then was) in *Healy v. Canadian Tire Corporation, Limited*, 2012 ONSC 77 (CanLII). In that case the issue was whether a financial forecast could form the basis of a misrepresentation claim. A forecast is, by definition, a statement about the future. It is an estimate or aspirational hope rather than a statement that some observable fact exists today. On that basis, the defendants submitted that they could not be the subject of a claim for misrepresentation.

[22] Morawetz J discussed this issue as follows:

> [35] I also agree with the Respondent's statement that a negligent misrepresentation claim cannot be based on a forecast about the future; it must be based on a statement of existing fact: *Deep v. MD Management*, [2007] O.J. No. 2392 (S.C.), at para. 13, aff'd [2008] O.J. No. 961 (C.A.).
>
> [36] Further, a financial forecast carries with it an implied representation (or statement of existing fact) that the forecast was prepared by a person of skill and experience who exercised reasonable care and skill in its preparation. (*J.R.K. Car Wash* at pp. 541-545, particularly at p. 541 where Watt J. cites *Esso Petroleum Co. v. Mardon*, [1976] 1 Q.B. 801, at p. 818); *Deep* at para. 14, citing (2005),

> 77 O.R. (3d) 321 (C.A.), at para. 136). Thus, if the forecast was such that no person of reasonable skill or experience should have made, the implied representation will be untrue, inaccurate or misleading, and may have been negligently made.
>
> [37] The Respondent submits that the courts properly recognize that there is an element of judgment involved when preparing a forecast and, in order to determine whether the forecast was such that no person of reasonable skill should have made it, the court will assess whether the forecast comes within a "range of acceptable opinion", or "range of reasonableness". The plaintiff has the onus of proving that the forecast falls outside the range of acceptable opinion (*J.R.K. Car Wash* at p. 544).

[23] From this discussion, the defendants submit that there is an exception to the rule that future predictions are not actionable misrepresentations where a defendant has presented a financial forecast. The defendants allow that a forecast contains an implicit current representation of fact that it was prepared by a person of skill and experience. However, they submit that the plaintiffs do not claim that they relied on Ms. Dickinson as being a person with sophisticated forecasting or financial skills or experience. As such, her forecasts about the future cannot be actionable.

[24] In my view, the defendants read the case law too narrowly. In para. 37 of *Healey,* Morawetz J. recognized that to determine if a forecast is made by someone of reasonable skill, the court will consider whether the forecast falls within a "range of acceptable opinion." That inquiry considers merits of the forecast and whether a defendant implicitly represented that the forecast fell within the range of reasonableness. That inquiry goes beyond the identity of the author of the forecast and aims at the behaviour of the defendant in delivering an unreasonable forecast.

[25] In addition, I disagree with the defendants' submission that this is a narrow exception that applies only to financial forecasts. Cases have long recognized that statements concerning the future may contain an implicit representation of a current objective fact. An example to consider is when a vendor of a business says that the business will be worth $X in two years. Implicit in that future prediction, is the vendor implicitly saying that currently she or he honestly believes that to be reasonably possible?

[26] The prediction itself is not actionable. It is not a current fact. Moreover, if the plaintiffs wanted to hold the defendant vendor to the prediction, they ought to have obtained a warranty or covenant in their purchase and sale agreement. Statements of future performance are the stuff of contract not the misrepresentation torts.

[27] In addition, if the defendant reasonably believed the forecast was within the range of reality, then it may just be trade puffery. We know vendors try to make their products look good. Buyers are taken to know better than to believe every word a used car salesman says to exaggerate the quality of his or her wares. Buyers can conduct their own due diligence review of the subject matter of the sale if they want to satisfy themselves and/or they can demand a warranty or covenant as discussed above.

[28] But what about the case where the vendor is lying and says the business will be worth $X in two years while believing it will be dead by then (or where the amount represented is not in the range of acceptable opinion)? Representations about the future can and often do can contain an implicit representation that the defendant believes or intends the statement to be true or reasonably attainable. The defendant's belief or intention at the time she makes a representation about the future can be a current objective fact. If, for example, Ms. Dickinson knew that she was not intending to lead BCP to prosperity or that she was not capable of devoting the time, attention, or expertise needed to do so, when she told the plaintiffs that this was her intention in the transaction, might the statement of her future intent be seen to contain an implicit representation that when she made the statement, she intended the statement to be truthful and to be relied upon by her merger partners?

[29] It may be hard to prove that a defendant did not believe the representation when she made it i.e., she was lying or so unreasonable as to be negligent. In addition, it seems to me that lies in contract formation may be better addressed under the organizing principle of good faith performance of contracts rather than in tort. But generally, difficulty of proof is not a basis to strike an otherwise proper pleading.

[30] In *Datile Financial Corp. v. Royal Trust Corp. of Canada*, 1991 CanLII 7310 (ON SC) rev'd on different grounds 1992 CanLII 7661 (ON CA), Hollingworth J. discussed the broader principle as follows:

> At this juncture, the second issue is to determine whether these representations are actionable as

misrepresentations. As stated above, representations as to the future are not actionable. Halsbury's Laws of England, supra, [Halsbury's Laws of England, 4th ed., vol. 31 (London: Butterworths, 1980), pp. 616-17, 618, 619] provides an accurate statement of the law on this point at p. 618 [Section1007] and p. 619 [Section1009]:

> A statement of intention is not a representation as to the matter said to be intended, because that belongs to the future and is not a matter of present or past fact. On the other hand, a statement of intention involves a representation as to the existence of the intention which is itself a present fact. However, the difficulty of proving the non-existence of the intention diminishes the value of such representations. The mere circumstance of the expressed intention is not fulfilled does not by itself establish the non-existence of the intention at the time when it was expressed, although the non-fulfilment of the intention may be some evidence, strong or weak according to the circumstances of the individual case, that the intention never existed at all.
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> . . . . .
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> A promise that something will or will not be done or occur in the future is in itself not a statement of a matter of present or past fact and therefore not a representation. However, it may happen that language which contains promissory expressions can be shown, nevertheless, to have been intended as a statement of an existing intention. Conversely, although a party used words expressive of intention, it may be apparent from other expressions or the surrounding circumstances, that what he really meant, and the other party understood to be conveyed, was a promise of offer and nothing else.

(Emphasis added; footnotes omitted)

Based on the above, it is clear that no action will lie for misrepresentation unless it is a statement of an existing

> fact. Put another way, only representations of fact can give rise to actionable negligence. On the other hand, representations as to future occurrences do not form a ground for legal relief as negligent misrepresentation unless they import by implication a misstatement of an existing fact.

[31] A pleadings motion is not the time to determine whether a statement concerning the future actually contains an implicit statement of current fact. That determination will depend on an assessment of all the relevant evidence and circumstances. But a statement of claim relying on the principle of implicit representation at least needs to say so and plead the actionable misrepresentations relied upon.

[32] For the following paragraphs, I will refer to paragraph numbers in the Argyle shareholders' statement of claim. I am to be taken as well to be referring to the same paragraphs in the Daniel Tisch claim whether the paragraph numbers are the same or not.

[33] The representations at paras. 15 (a) to (c) and (e) are vague. They do not identify a basis for the projections to carry an implicit representation of current fact whether as to the defendants' intentions or the skill of the author of the projections (KPMG), or the content of the information given to KPMG by the defendants or otherwise. They are struck out with leave to amend.

[34] The rest of para. 15 is dealt with adequately as set out in Appendix "A" to the Argyle shareholders' factum. However, they certainly could be made clearer by amendment should counsel so advise.

[35] Para. 16 (b) is a pleading of current fact. The rest of para. 16 pleads future promises that are contractual in nature. They are struck out with leave to amend to plead an implicit representation of a current fact.

[36] Para. 18 is a general statement of knowing falsity. But falsity of the future fact is not the issue. There needs to be a current fact pleaded that is knowingly or negligently false (i.e. the defendants' intention etc.)

[37] Paras. 16 (f), 42, and 43 purport to dress up a plea of breach of contract in the guise of a plea of misrepresentation. They are struck without leave to amend. BCP is already suing for the purchase price adjustments under the merger agreements.

Special Relationship

[38] In my view, the relationship of parties negotiating a significant commercial transaction is a sufficiently proximate relationship to meet the pleading requirement of a "special relationship" for the tort of negligent misrepresentation. The defendants do not provide any precedent case law in which negligent misrepresentations between negotiating commercial parties have been immunized from liability based on there being an insufficiently proximate or special relationship to support liability in negligent misrepresentation.

Post-Transaction Conduct

[39] Paragraphs 32 through 44 of the Argyle shareholders' statement of claim refer to post-merger misconduct allegedly committed by the defendants. Para. 34 refers to "false representations and misconduct." It is ambiguous then, as to whether the plaintiffs' claims include damages for the post-transaction misconduct separate from the pre-contractual misrepresentations.

[40] The defendants rightly note that much of the misconduct alleged in these paragraphs relates to harm or wrongs suffered by BCP. The plaintiffs have no standing to bring claims on behalf of the corporation. This is not a derivative action.

[41] Counsel for both the Argyle shareholder plaintiffs and Daniel Tisch made a clear and binding concession that their clients are not asserting claims based on the post-transaction misconduct. Rather, they say these paragraphs contain particulars establishing the falsity of the pre-contractual misrepresentations, the defendants' efforts to hide the facts to prevent the plaintiffs from discovering the falsity of the pre-contractual misrepresentations, or of the losses caused to them. While some seem far-fetched and perhaps added for colour, I cannot find them to be scandalous or vexatious.

[42] Based explicitly on the concessions by counsel, these paragraphs are not struck out.

ADE

[43] It is implicit in the facts alleged that the plaintiffs seek to hold ADE liable for the misrepresentations made by Ms. Dickinson. They plead she is the sole shareholder and that because of her misrepresentations, ADE became the largest shareholder in the merged entity BCP. While those facts are likely sufficient to show that the defendants are alleged to have acted in common or with joint purpose to attract liability as joint tortfeasors, technically the plaintiffs should say so expressly. Similarly,

if they rely on the doctrine of vicarious liability, they need to plead it with facts sufficient to show that it can apply in the circumstances of this case.

Costs

[44] The statements of claim and particulars are not models of pleading. Much has been struck subject to amendment. On the other hand, this was never realistically a motion to strike out the statement of claim to dismiss the lawsuit. Mr. Devereux made clear in his opening submissions that realistically the motion was about the adequacy of the particulars.

[45] The causes of action of negligent misrepresentation, fraudulent misrepresentation, and unjust enrichment are well understood. The requisite facts that must be pleaded to sustain these causes of action are listed in innumerable cases. These motions are a good example of quibbling over particulars that has mired down the actions discussed by the Court of Appeal in *Siudak*. The end result is that I have struck many claims so that the plaintiffs can plead them again and do a better job of it next time. As a result, the defendants' apparent "success" will see them facing more organized, better drafted pleadings. All the defendants' might have achieved therefore, is to force the plaintiffs to do a better job pleading a stronger case against them. Time will tell whether any victory on these motions proves pyrrhic.

[46] Subject to hearing from the parties, my inclination is that the costs of this motion should be in the cause. I have no idea who will win this lawsuit. If it proves to be frivolous and add nothing to BCP's action for breach of contract, perhaps a trial judge will find that it ought to have been cut off summarily. On the other hand, if the plaintiffs establish liability, especially for fraud, then these motions will likely be viewed as tactical delays and little more.

[47] Any party that seeks costs of the motion despite my initial leaning, may send submissions to the Commercial List office by December 31, 2025. Submissions shall be no longer than 750 words, double spaced, with normal margins and minimum 12-point font. Anyone against whom costs are sought may respond with submissions of the same length by January 9, 2025. Submissions shall be accompanied by a Costs Outline.

[48] I invite counsel to confer and if they are content that costs be in the cause, I request that they advise me through my Judicial Assistant at therese.navrotski@ontario.ca so we can close the file.

FL Myers J

Date: December 15 , 2025