

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

CONTINO, VINCENZO

Plaintiff

- and -

OLYMEL L.P.

Defendant

)
)
) Katherine Chau, for the Plaintiff
)
)
)
)
)
) Julien Frigon and Sophie Arseneault,
) for the Defendant
)
)
) **HEARD:** October 30, 2025, by video
) conference

2025 ONSC 7064 (CanLII)

ENDORSEMENT

Nitchke AJ.

Nature of the Motion

[1] The Plaintiff, Vincenzo Contino, brings a motion pursuant to Rule 25.11 of the *Rules of Civil Procedure* to strike the Defendant's Counterclaim in its entirety, without leave to amend.

[2] The Defendant, Olymel, seeks leave to amend its Statement of Defence and Counterclaim pursuant to a draft amended Statement of Defence and Counterclaim which was previously served on the Plaintiff.

Factual Background

[3] The Affidavits filed on behalf of both parties are silent as to the key facts at issue for the motion. However, in deciding whether to strike a claim, the allegations of fact as pleaded are to be accepted as proven: [Hazelton Hotels International Inc. v. Daniels, 2010 ONSC 1791](#) (CanLII) at para.2. Therefore, the following factual outline stems from the pleadings filed by the parties.

[4] The Defendant, Olymel L.P. (“Olymel”), is a meat packing and processing company with operations across Canada and internationally.

[5] The Plaintiff, Vince Contino (“Contino”) was a former employee of Olymel. He joined Olymel in July 2013. The Statement of Claim alleges that he started out as an Account Manager and was promoted to Director of Sales in November 2020. He was further promoted in May 2023.

[6] Contino gave notice of his resignation on November 22, 2024, effective December 13, 2024. While cleaning up his company computer, he admits to downloading various documents, including some personal and some work-related files.

[7] On November 27, 2024, Contino met with his manager and two Human Resource representatives. He was told they knew he had been downloading files and that they had a list of the files he downloaded. He was not shown a copy of this list. He was then terminated on the spot.

[8] In his Statement of Claim, Contino pled that he returned the downloaded files on a USB key to Olymel. There is no evidence as to whether he retained a copy or kept a list before he delivered the USB key to Olymel.

[9] In December 2024, Contino commenced new employment at a new employer as a VP of Sales. Olymel's Statement of Defence alleges that the new employer, Freshstone Brands Inc., is competitor of Olymel's.

[10] In its Statement of Defence, Olymel claims that the Plaintiff signed a Statutory Declaration on December 31, 2024, confirming:

- a) surrendered through the courier, Purolator, all Stolen Property that was in his possession, to Olymel, through its counsel;
- b) has not accessed the Stolen Property on any device other than the mediums identified in the Stolen Property, nor did he forward any of the Stolen Property from the identified mediums to any other electronic storage device or to any email address belonging to him, his immediate family, his new employer, or any other person or entity;
- c) has not saved Stolen Property to any storage media device to which he has access, including, but not limited to, any "cloud" storage format, other than the identified mediums;
- d) has never printed or otherwise made or kept copies of the Stolen Property (whether paper, electronic or otherwise), except for those records of Stolen Property which he returned to Olymel by sending the documents to its counsel;

- e) has no means of accessing Stolen Property, in any format, nor will he be able to obtain such means in the future;
- f) has not used and will not use Stolen Property for personal benefit, for the benefit of his current employer, or for the benefit of any third party; and
- g) he did not forward or otherwise disclose Stolen Property to any third parties, immediate family member, and in particular to anyone at his new place of employment.

[11] Contino initiated a Statement of Claim for wrongful dismissal on April 14, 2025. On May 16, 2025, Olymel served a Statement of Defence and Counterclaim, claiming, inter alia, damages for breach of confidence, breach of his employment contract, and copyright infringement (“original Counterclaim”) arising from the Plaintiff’s unauthorized downloading and retention of approximately 466 confidential files (“Stolen Property”). The Counterclaim also seeks punitive damages.

[12] In its Statement of Defence, Olymel pleaded that the Plaintiff had access to proprietary information in his role as a Director of Sales. Olymel pleads that the Plaintiff downloaded confidential documents to a USB stick and emailed others to his personal email address. The Plaintiff is alleged to have downloaded:

- Deals
- Business projections,

- Price lists
- Customer lists
- Kilos and prices of various meat products
- Business strategies.

[13] After receiving the original Counterclaim, on May 16, 2025, counsel for the Plaintiff conveyed concern regarding the insufficiency of material facts pleaded and asked the Defendant to provide an amended Counterclaim.

[14] On July 3, 2025, counsel for the Defendant subsequently delivered a proposed Amended Statement of Defence and Counterclaim (“second Counterclaim”) and sought consent to file it with the court. Consent was not provided. The Plaintiff takes the position that the second Counterclaim is likewise deficient.

[15] The Plaintiff now brings this motion pursuant to Rule 25.06 of the *Rules of Civil Procedure* to strike the Counterclaim in its entirety, without leave to amend. Although alternative relief is set out in the Notice of Motion – seeking an Order to strike the Counterclaim with leave to deliver an amended Statement of Defence and Counterclaim within 20 days – this was not pursued in oral submissions.

Analysis

General principles applicable to pleadings

[16] Rule [25.06 \(1\)](#) of the *Rules of Civil Procedure* provides that:

Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

[17] Rule 25.11 provides that the Court may strike out all or part of a pleading, with or without leave to amend, on the ground that the pleading is scandalous, frivolous or vexatious, or is an abuse of process of the Court. A pleading that has no material facts is considered frivolous and vexatious: [Carney Timber Company, Inc. v. Pabedinskas, 2008 CanLII 63163](#) (ON SC) at para. 16.

[18] The Plaintiff asserts that the impugned pleadings consist of nothing more than argument, bare allegations and legal conclusions, and thus lack the material facts sufficient to make out each of the three causes of action of breach of contract, breach of confidence, and copyright infringement.

[19] The Defendant argues that striking pleadings is only to be done in exceptional circumstances. The threshold to do so is high and is reserved for pleadings that are plainly and obviously incapable of supporting a cause of action. The Defendant argues that this is not one of the clearest of cases that would justify such drastic relief.

Does Olymel's original or second Counterclaim contain material facts to make out the constituent elements for breach of contract?

[20] A claim for breach of contract must contain sufficient particulars to identify: (a) the nature of the contract; (b) the parties to the contract; (c) the facts supporting

privity of contract between the Plaintiff and Defendant; (d) the relevant terms of the contract; (e) which term or terms were breached; and (f) the damages that flow from the breach. (see [Fasteners & Fittings Inc v Wang, 2020 ONSC 1649](#) at para 91).

[21] Olymel's Counterclaim pleads the existence of a contractual relationship with the Plaintiff in three ways: an Employment Agreement, a Non-Disclosure Agreement ("NDA"), and a Code of Conduct, all of which are said to have imposed confidentiality obligations on the Plaintiff.

[22] Olymel argues that their original Counterclaim complies with the legal elements for breach of contract and refers to the following paragraphs of their proposed Amended Statement of Defence and Counterclaim in support of this assertion:

a. Nature, parties and privity of the contract

- Para. 10: The Plaintiff, Vincenzo Contino, executed an Employment Agreement with Olymel, establishing his role and responsibilities as an employee.
- Para. 11: He also entered into a Non-Disclosure Agreement with Olymel, binding him to confidentiality obligations during and after his employment.
- Para. 14: Contino further signed an acknowledgement of Olymel's Code of Conduct, confirming his acceptance of Olymel's policies regarding confidential information and workplace standards.

b. Relevant terms and obligations

- Paras. 10, 11, 14: The Plaintiff was required to strictly safeguard Olymel's confidential information, keep it secret, and refrain from disclosing it to anyone without Olymel's prior written approval.
- Para. 12: Confidential information could only be disclosed on a need-to-know basis to authorized persons, with the Plaintiff assuming responsibility for any violation by those to whom he disclosed it.
- Para. 12: The Plaintiff was prohibited from using confidential information for any purpose other than those specifically authorized by Olymel.
- Para. 14: Upon departure, the Plaintiff was required to return all documents, equipment, and materials containing confidential information to Olymel, and his confidentiality obligations continued after his employment ended.
- Para. 12: The Non-Disclosure Agreement required the Plaintiff to indemnify Olymel for any damages, liabilities, costs, loss of income, or other losses resulting from a breach, and to assign any benefit or gain obtained from unauthorized disclosure or use to Olymel.

c. Terms breached

- Para. 17: The Plaintiff sent confidential and proprietary documents – including deals, business projections, price lists, and customer lists – to his personal email address.
- Para. 17: He downloaded approximately 466 files to a USB stick between November 10 and November 25, 2024, which included highly sensitive, confidential, and proprietary information including deals, business projections, price lists, customer lists, kilos and prices of various meat products and business strategies.
- Para. 37: The Plaintiff retained, mishandled, copied, and/or disseminated the Stolen Property or its contents to third parties, including his new employer, Freshstone Brands.

d. Damages

- Para. 37: The Plaintiff's conduct resulted in the disclosure of Olymel's confidential information to third parties, including his new employer Freshstone Brands, Inc., to Olymel's detriment.

- Para. 37: The Stolen Property provided the Plaintiff and Freshstone Brands, Inc. with a competitive advantage they would not have had absent the breach, causing actual and potential loss to Olymel.

[23] The Plaintiff argues that the Counterclaim acknowledges that Olymel does not have knowledge of the facts giving rise to breach of contract. In paragraph 40 of both versions of the Counterclaim, they state:

What particular information and/or documents the Plaintiff disclosed, and to whom, is presently unknown to Olymel, will be disclosed prior to trial. Similarly, the full extent of Olymel's losses are presently unknown, but will be determined prior to trial.

[24] Essentially, the Plaintiff argues that Olymel has not pled the material facts surrounding what confidential information is at issue. He argues that "kilos and prices of various meat products, customer lists and business strategies" is inadequate. He argues that further particulars are necessary to provide a fulsome explanation as to why he downloaded the documents.

[25] I do not regard this as a challenge to the elements of breach of contract with respect to a) its nature, b) the parties, c) privity or d) the terms. In my view, those have been adequately pleaded.

[26] I also do not see this to be a challenge as to the terms that were breached. Reviewing the original and second Counterclaim, generously, in my view there are many paragraphs identifying the terms of the contract, Non-Disclosure Agreement and Code of Conduct that were breached:

- Para. 12: (2.1) keep the confidential information secret; (2.2) refrain from using the confidential information for an unauthorized purpose without prior written approval; (2.3) only disclose confidential information to officers, employees and representatives on a need-to-know basis.
- Para. 14: no confidential information may be disclosed to any unauthorized person without prior written permission.
- Para. 14: upon departure an employee must return all documents.
- Para. 20: following termination the Plaintiff did not return the stolen property.

[27] In my view, Olymel's Defence read as a whole contends that the contract documents prohibited the Plaintiff from misappropriating and disseminating confidential information and imposed an obligation to return all documents upon departure. On a broad reading, the terms alleged to have been breached are set out with sufficient clarity.

[28] However, the last element in establishing a breach of contract does give rise for concern. The Defendant's original Counterclaim contained no material facts with respect to damages. In the Defendant's second Counterclaim, it is said, at para. 37:

...disseminating the Stolen Property or the contents contained therein to third parties, including the Plaintiff's new employer Freshtone Brands Inc., to the detriment of Olymel. Olymel further pleads that the Plaintiff relied upon the contents of the Stolen Property while employed by Freshtone Brands, Inc., in the course of attempting to increase his new employer's market share. The contents of the Stolen Property, including information about kilos and prices of various meat products, customer lists, and business strategies, provided the Plaintiff and Freshstone Brands, Inc., with a competitive advantage against Olymel that they would not have had in the absence of that confidential information.

[29] The Plaintiff cites [Lysko v. Braley et al. 2006 CanLII 11846](#) (ON CA) to show that while the concept of detriment is broad, the claim must still plead material facts to show the damages that flow from the breach of contract.

[30] The Court of Appeal in *Lysko* found that a “bald allegation” of a damaged reputation that failed to plead any facts showing loss or detriment was insufficient (see paras. [19 and 20](#)).

[31] The Plaintiff claims paragraph 37 of the second Counterclaim makes a bald allegation that there was a detriment to Olymel without pleading any facts to specify how they suffered a detriment. He contends that the assertion that Contino and his new employer gained a competitive advantage is not enough. Further, he relies on Olymel’s own pleading at paragraph 40 where they acknowledge a lack of material facts.

[32] In [Miguna v. Ontario \(Attorney General\)](#), 2005 CanLII 46385 (ON CA) at para. 18, the Court of Appeal quoted from *Region Plaza Inc. v. Hamilton-Wentworth (Regional Municipality)* (1990), 12 O.R. (3d) 750 in finding that the Plaintiff had to have actual knowledge of the facts supporting his claims and not merely plead allegations that he believes may or may not be true:

. . . If the plaintiff does not at the outset have knowledge of the facts that give rise to the conclusions of malice, breach of duty, conspiracy to intentionally injure, etc., then it is inappropriate to make these allegations in the statement of claim. It may be that in the future the plaintiff will determine facts as a result of discovery or in some other way that will support some or all of the allegations. . . [B]ut until the plaintiff has knowledge of some facts on which to base the conclusions alleged in

the statement of claim, it is improper to allow these conclusions to be pleaded baldly and without any supporting facts.

[33] I agree that even on a very liberal and generous interpretation of the Defendant's Counterclaim, the facts proffered to support the claim for damages arising from breach of contract fails to meet the minimum level of disclosure required by Rule 25.06. It is simply not enough to plead that Contino suffered a detriment without specifying what that detriment is, and how they are to be quantified. There are also no material facts as to nature of the competitive advantage alleged to be gained by the Plaintiff's new employer. The claim for damages remains entirely speculative.

[34] Accordingly, the cause of action for breach of contract must be struck out.

Does Olymel's Counterclaim contain material facts to make out the constituent elements for breach of confidence?

[35] The allegation of the Plaintiff's breach of confidence is closely tied to the claims for breach of contract as they both seek remedies as a result of the claim for misappropriation of confidential information. However, the elements to establish a breach of confidence are unique. To succeed on a claim for breach of confidence, the Defendant must demonstrate that: (a) the information conveyed was confidential; (b) the information was communicated in confidence; and (c) the information was misused by the party to whom it was communicated to the

detriment of the party conveying the information: [Lac Minerals Ltd. v. International Corona Resources Ltd.](#), 1989 CanLII 34 (SCC), [1989] 2 SCR 574.

[36] The Plaintiff contends that he is entitled to know what confidential information was misappropriated. Without that, he states, it is impossible to determine whether the information taken was in fact confidential or received in confidence, and thus be able to respond to the allegations against him. He points to paragraph 17 of the Amended Statement of Defence identifying only “some of” the stolen property as containing confidential information.

[37] In striking a claim for misappropriation and misuse of confidential information, the Court in [Evertz Technologies Limited v. Lawo AG](#), 2019 ONSC 1355 (CanLII) made it clear that a general description of categories of confidential information is inadequate. Justice Cavanagh found that descriptions of confidential information being “software, architecture, product solution, roadmap, materials, workflow and pricing information” was too vague and general to satisfy the minimum requirement for pleading material facts. At paragraph 32, Cavanagh J. stated:

Each defendant is entitled to know with particularity what confidential information the defendant is alleged to have taken, and the acts allegedly taken by the defendant to misuse the confidential information. It is not an answer for a plaintiff to say that these facts are within the knowledge of the defendants, or that the information will be provided after examinations for discovery have been conducted.

[38] Justice Cavanagh struck out the Statement of Claim and granted leave to the Plaintiff to amend its pleading.

[39] The description of the stolen property in Olymel's Statement of Defence and Counterclaim refers to proprietary documents being downloaded and sent to Contino's personal email address and specifically: "deals, business projections, price lists and customer lists." Further, it refers to 466 files saved to a USB stick containing sensitive information such as "kilos and prices of various meat products, and business strategies."

[40] In my view, the lack of particularity that troubled Justice Cavanagh in *Evertz* is similarly lacking in the Defendant's pleading here. Broadly referring to 466 files without identifying the documents said to hold confidential information, fails to meet the minimum level of factual disclosure required by Rule 25.06. This decision should not be taken as requiring a list of every document taken; but using broad categories such as "business strategies," "price lists" and "deals" is too vague and general to meet the required standard of disclosure and does not inform the Plaintiff of the information taken that was confidential.

[41] More significantly, the material facts of how the Plaintiff or his new employer allegedly misused the confidential information are missing and have not been pleaded, nor how Olymel suffered a loss as a result of the misuse of that information. A bald assertion of misuse and detriment does not inform the Plaintiff of the acts that the Plaintiff took to misuse the confidential information and how the Defendant suffered a loss. If the Defendant does not have knowledge of certain facts to support a claim for breach of confidence, then it is not appropriate to plead

it (*Region Plaza Inc. v. Hamilton-Wentworth (Regional Municipality)* (1990), [1990 CanLII 6761 \(ON SC\)](#)).

[42] Accordingly, I have reached the conclusion that the Defendant's claim for breach of confidence ought to be struck as well.

Does Olymel's Counterclaim contain material facts to make out the constituent elements for breach of copyright?

[43] The [Copyright Act](#), RSC 1985, c C-42 sets out the conditions for the existence, ownership and enforceability of copyright.

[44] Section 27 of the *Copyright Act* says that it is an act of infringement "for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of the copyright has the right to do."

[45] The decisions in Federal Court surrounding copyright infringement should be given deference given the specialized role of Federal Court in intellectual property cases: [\(AOM\) NA Inc. et al v. Reveal Group](#), 2013 ONSC 8014 (CanLII).

[46] In [Adacel Technologies Ltd. v. Nav Canada](#), 2006 FCA 227 (CanLII), Pelletier J.A. stated, at para. 16, that "[s]ection 3 of the Act says that the copyright, in relation to a work, means "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, ... if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right ...to produce, reproduce, perform or publish any translation of the

work...”. To allege infringement is to allege that the defendant has reproduced a work or a substantial portion of a work without the consent of the owner. Thus, the material facts are the existence of the work, the ownership of copyright in the work, the existence of the infringing work and the absence of the owner’s consent to the production or reproduction of the work” (emphasis added).

[47] The Plaintiff claims that the Counterclaim contains only bald, conclusory statements and has not pled any details to show what “works” were infringed, how they classify as literary and/or artistic works protected by the *Copyright Act*, the author of each of the works and chain of title of ownership to each of the works.

[48] For the following reasons, I find that the claim for copyright should also be struck, as it fails to sufficiently plead sufficient material facts relating to the identity of the works subject to copyright, and to the ownership of those works.

1) *The existence of the work*

[49] The Court in *AOM* noted that copyright is a specific right attaching to a “work.” In striking the claim for copyright breach, Master MacLeod (as he then was) stated that the Plaintiff “must specify what it is that is covered by copyright and what it alleges has been done that gives rise to statutory remedies.” There, the pleading was found to be vague about what it was that was subject to copyright and the claim was struck.

[50] In *Dermaspark Products Inc. v. Prestige MD Clinic et al.*, an unreported decision of then-referred to Case Management Judge Trent Horne (Docket T:1194-20) dated June 6, 2022, the Associate Judge found reference to works published on a website was insufficient to identify what specific works were in issue in the copyright infringement claim. The works were not identified or particularized at all. In striking the copyright claims, Associate Justice Thorne stated, at para: 40:

The defendants should not be required to guess what literary or artistic works on the Pollogen website are alleged to have been reproduced by the defendants without authorization, and which ones are not...the defendants are entitled to know, before filing a defence, at least: the specific works that are in issue; the identity of the authors of each work; whether Pollogen's claimed ownership in the works arises by operation of law or assignment (or both); whether any of the works are licensed to Dermaspark,; and how or where the copyrighted works are alleged to have been misused.

[51] Olymel states that they have pled that the 466 files have been sufficiently described in its Counterclaim by function and significance: sales forecasts, pricing data, customer lists, product metrics and strategic plans. They rely on the Plaintiff's admission in his statutory declaration that he downloaded and retained the 466 files to show that he knew what works are at issue.

[52] I disagree. It is not clear from the pleadings whether all or part of the 466 files are covered by copyright. More particularity is needed to sufficiently claim what files are subject to copyright.

2) *The ownership of copyright in the work*

[53] The Defendant asserts that ownership of the works is not in issue. They state that the Plaintiff has admitted in his statutory declaration that the documents belonged to Olymel. They claim that there is no suggestion of assignment, transfer or third-party ownership and that the presumption of ownership in the employment context applies (s. 13(3) of the *Copyright Act*).

[54] I do not read s. 13(3) of the *Act* as creating a presumption of ownership for documents other than a document created by an employee in the course of their employment. The problem here is that Olymel's Counterclaim does not particularize whether any of the documents alleged to have been stolen were documents created by the Plaintiff, another employee, by Olymel, or by any third party. It does not particularize how ownership rights arose in respect to each of the works.

[55] Olymel claims that where there may be deficiencies in pleading in terms of chain of title, they can be cured by particulars if necessary. I do not agree that the cases referred to in the Defendant's factum stand for the broad proposition that chain of title need not be particularized in a pleading.

[56] In the case of [GE Renewable Energy Canada Inc. v. Canmec Industrial Inc.](#), 2024 FC 887 (CanLII), the Plaintiff had included an authors list in its Statement of Claim and the parties had had discoveries. The Court found that there had been

sufficient particularization as to chain of title and to the extent there was any deficiencies, particulars could cure it.

[57] In [*Abercrombie & Fitch Co. v. Giant Tiger Stores Limited*](#), 2009 FC 492 (CanLII), the Court found that identifying all the authors might be prejudicial due to the sensitive nature of the information at issue. That is not alleged here.

[58] I find that the Counterclaims fail to plead material facts as to the ownership of copyright in each of the works. Simply stating that Olymel is the owner of the copyright of each of the works fails to establish how the ownership rights arose and fails to establish chain of title.

3) *The infringement and absence of consent*

[59] Olymel claims that the infringement arises through the very nature of the unauthorized downloading. As the Plaintiff has admitted in his statutory declaration to the unauthorized act of downloading and retaining the 466 files, there is no question of infringement. I agree.

[60] The Plaintiff asserts that Olymel has pled that he reproduced the works “with authorization” which is inconsistent with reproduction as an “illicit act.” I have read paragraph 39 of the second Counterclaim. It is clear to me that there is a typo, and that the Defendant meant to state “without authorization.” The entire pith and substance of the Defendant’s Counterclaims involve the unauthorized nature of the downloaded files.

[61] There is no doubt that this has been sufficiently pled.

Should leave to amend be granted?

[62] Striking a pleading without leave to amend is a power that must be exercised with caution. If a pleading shows a scintilla of a cause of action, it will not be struck out if it can be cured by amendment: [Fox Restaurant Concepts LLC v. 43 North Restaurant Group Inc.](#), 2022 FC 1149 (CanLII).

[63] In *Aristocrat Restaurants Ltd. (c.o.b. Tony's East) v. Ontario*, [2003] O.J. No. 5331 (SCJ), Epstein J. adopted Justice Moldaver's approach from *Anderson Consulting Ltd. v. Canada (Attorney General)*, [2001] O.J. No. 3576 (CA) in deciding whether to grant leave to amend, at para. 85:

“well-established rule that amendments like those sought in the present case should be presumptively approved unless they would occasion prejudice that cannot be compensated by costs or an adjournment; they are shown to be scandalous, frivolous, vexatious or an abuse of the court's process; or they disclose no reasonable cause of action.”

[64] Justice Epstein also adopted the Divisional Court's finding in *Lido Industrial Products Ltd. v. Exbar Properties Inc.* [1988] O.J. No. 349 (Div.Ct.), that “[l]eave to amend should only be refused in the clearest of cases” (para. 9).

[65] The Plaintiff submits that the Defendant has had many opportunities to cure its deficiencies such that there can be no reasonable expectation they could improve their counterclaim through amendment: first, in the initial preparation of its pleading; second, in its proposed amendment; third, at any point prior to the

hearing of the within motion or at the motion. Therefore, they argue, this is a clear case in which leave to amend should be refused.

[66] The Plaintiff's view is not without merit. If Olymel chose not to provide further particularization in advance of the motion, it would strongly suggest that there are no material facts to advance each of the three causes of action that have been struck.

[67] In the case of [RH20 North America et al v Bergmann et al, 2023 ONSC 2378](#), aff'd [RH20 North America Inc. v. Bergmann, 2024 ONCA 445](#) (CanLII) at para 25, the Plaintiff was denied leave to amend in circumstances where the moving party's motion to strike had been outstanding for 2 ½ years prior to argument. The Plaintiff did nothing to improve its position over that period and thus, the Court concluded that it would be unlikely to better its position given the passage of time.

[68] Here, there has not been a lengthy passage of time between the commencement of pleadings, issuance of motion materials, and the hearing of the motion. While there are shortcomings in the Counterclaim, there is more than a scintilla of a cause of action given the Plaintiff's admission for unauthorized downloading of information from Olymel's business. I find that the deficiencies in the pleading are relatively minor when considered against the broader

requirements of proper pleading. As such, I do not find this to be a clear case in which I should refuse leave to amend.

[69] I am prepared to exercise my discretion and allow the Defendant to amend its pleading. This shall be in the form of a fresh as amended Statement of Defence and Counterclaim, which shall be delivered within thirty days of the date these reasons are released.

Punitive Damages

[70] The Plaintiff asks that the claim for punitive damages also be struck if the Defendant's other claims are struck without leave to amend, as the claim for punitive damages cannot stand on its own.

[71] Given my ruling above, I do not need to address that argument. The claim for punitive damages can stand so long as the amendments are pursued and not struck at a later date.

[72] The Plaintiff also argues, however, that the claim for punitive damages should be struck because it is boilerplate and lacks particularity.

[73] In [Whiten v. Pilot Insurance Co., 2002 SCC 18 \(CanLII\)](#) at para 87 and [89](#),

Binnie J. said:

Moreover, the facts said to justify punitive damages should be pleaded with some particularity. The time-honoured adjectives describing conduct as "harsh, vindictive, reprehensible and malicious" (*per* McIntyre J. in *Vorvis, supra*, p. 1108) or their pejorative equivalent, however apt to capture the essence of the remedy, are conclusory rather than explanatory...In this case, the plaintiff specifically asked for punitive damages in her statement of claim and if the respondent was in any doubt about the

facts giving rise to the claim, it ought to have applied for particulars and, in my opinion, it would have been entitled to them.

[74] I am not persuaded that the appropriate remedy for the failure to plead punitive damages with more particularity should be to strike the claim in its entirety. The Plaintiff can apply for particulars should he seek further details.

[75] I therefore decline to strike the claim for punitive damages at this time.

Costs

[76] The starting point in determining costs is s.131 of the *Courts of Justice Act*, R.S.O., 1990, c. C. 43, as amended, which provides that costs are in the discretion of the court.

[77] Rule 57 of the *Rules of the Civil Procedure*, R.R.O., 1990, Reg, 195 sets out the factors for the Court to consider in exercising its discretion with respect to costs in accordance with s.131 of the *Courts of Justice Act*. Rule 57 lists the factors for the Court to consider. It reads as follows:

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
 - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
 - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
- (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and
 - (i) any other matter relevant to the question of costs.

[78] The overriding principle is reasonableness and fairness: [Boucher v. Public Accountants Council for the Province of Ontario, 2004 CanLII 14579](#) (ON CA).

[79] The Plaintiff has been largely successful in this motion. The Defendant has been given an opportunity to correct its deficient pleading. In the circumstances, the Plaintiff is entitled to its costs.

[80] The Plaintiff seeks its partial indemnity fees of \$5,803.70. The Defendant submitted a Costs Outline which outlines a partial indemnity rate of \$13,073.20. In the circumstances, then, the amount outlined in the Plaintiff's Bill of Costs is far below what the Defendant would reasonably have expected the successful party to pay.

[81] I find that it is fair and proportionate that the Defendant pay the Plaintiff \$5,803.70 in costs, payable within 30 days.

Disposition

[82] For the above reasons, I grant the motion to strike the Counterclaim but grant leave to deliver a Fresh as Amended Statement of Defence and Counterclaim in accordance with the above directions. The Defendant shall deliver the amended Counterclaim within thirty (30) days. The Plaintiff will have 30 days after service of the amended pleading to deliver any reply or Defence.

[83] Costs are to be paid by the Defendant to the Plaintiff in the amount of \$5,803.70 within 30 days.

[84] All timelines outlined herein are subject to the computation of time under the Rules.

Associate Justice Nitchke

Released : December 17, 2025

CITATION: Contino v. Olymel L.P, 2025 ONSC 7064
COURT FILE NO.: CV-25-00001885-0000
DATE: 2025-12-17

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CONTINO, VINCENZO

Katherine Chau, for the Plaintiff

- and -

OLYMELL L.P.

Julien Frigon and Sophie Arseneault, for
the Defendant

ENDORSEMENT

Nitchke AJ.

Released: December 17, 2025