IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jones v. Davidson,*
2026 BCSC 161

Date: 20260202
Docket: S233719
Registry: Vancouver

Between:

Eric Jones and Eric Jones in his capacity as Administrator of the Estate of Larry David Jones, deceased

Plaintiffs

And

Tracey Ann Davidson, Tracey Ann Davidson in her capacity as Administratrix of the Estate of Larry Daniel Jones, deceased, Northern Savings Credit Union, Northern Union Insurance Service Ltd., Sherry McColl, Dawn Fawdrey, Judy Shannon, Intact Insurance Company and Lora Anjos

Defendants

Before: The Honourable Justice Jones

Reasons for Judgment

Counsel for the Plaintiffs:	J. Richter
Counsel for the Defendant, Lora Anjos:	J.G. Dives, K.C.
Place and Date of Hearing:	Vancouver, B.C. December 20, 2024
Place and Date of Judgment:	Vancouver, B.C. February 2, 2026

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Introduction

[1] This is an application by the defendant, Lora Anjos, to strike paragraphs of the plaintiff's amended notice of civil claim filed February 5, 2024 ("ANOCC"), and to dismiss the action against her.

[2] The two plaintiffs are Eric Jones personally, and Eric Jones in his capacity as administrator (the "Administrator") of the estate of his deceased father, Larry Daniel Jones, who died on March 18, 2014 (the "Estate").

Background

[3] The background to this application is a prior estate action, Vancouver Registry Action No. S185623, (the "Estate Action"), regarding the administration of the Estate.

[4] After the death of Larry Daniel Jones, Tracey Ann Davidson applied for and was granted letters of administration to the Estate based on her purported status as the deceased's common law spouse (the "Administratrix").

[5] The deceased's son, the plaintiff, Eric Jones, commenced the Estate Action, challenging Ms. Davidson's status as the deceased's common law spouse.

[6] In the Estate Action, Ms. Davidson was represented by the defendant lawyer, Lora Anjos.

[7] The Estate included a residential property in Terrace, B.C. (the "Property").

[8] On September 15, 2020, after a trial in August 2020, Justice Mayer found that Ms. Davidson was not the common law spouse of the deceased, and Eric Jones was the appropriate person to be named as the Administrator of the Estate: *Jones v. Davidson*, 2020 BCSC 1371.

[9] Key terms of the orders of Justice Mayer are as follows:

a) the grant of letters of administration to Ms. Davidson for the Estate was revoked;

b) Eric Jones was granted letters of administration to the Estate;

c) Ms. Davidson was ordered to transfer the Property to Eric Jones; and

d) Ms. Davidson was ordered to provide vacant possession of the Property to the Estate within three months of the judgment.

(the "Mayer J. Order")

[10] Ms. Davidson filed a Notice of Appeal of the Mayer J. Order on February 1, 2021.

[11] A flood occurred at the Property in May 2021 (the "Flood").

[12] Ms. Davidson's appeal was heard on September 24, 2021.

[13] The appeal was dismissed on January 31, 2022: *Jones v. Davidson*, 2022 BCCA 31.

[14] The plaintiffs, Mr. Jones personally and in his capacity as Administrator of his father's estate, commenced this action on May 18, 2023. The ANOCC was filed on February 4, 2024.

[15] The ANOCC seeks damages against the defendants, including Ms. Davidson, a credit union, an insurance broker and an underwriter, and Ms. Anjos.

[16] As a general comment on the ANOCC, there are a number of apparent deficiencies in the pleadings.

[17] For example, the ANOCC does not clearly plead the material facts in relation to Ms. Anjos and the elements of the causes of action pleaded. In Part 1 – statement of facts, the allegations against Ms. Anjos appear to be focussed at paras. 39, 39.1

and the two paras. 39.2, and paras. 50 to 53, specifically relating to a "direct tort", and some elements of negligence (duty of care, standard of care, breach of duties), without specifically referring to negligence in the statement of facts, nor causation, nor how the facts relate to the other causes of actions pleaded, other than a brief reference to trust, and reference to a "direct tort" against the beneficial, financial and legal interests of the plaintiffs.

[18] In Frederick M. Irvine, ed., McLachlin & Taylor, *British Columbia Court Forms*, 2nd Ed. (LexisNexis Canada Inc., electronic version current to December 2025) at §2.6 [*BC Court Forms*], the need to identify facts in relation to causes of action and parties is stated as follows:

> When several causes of action are being alleged against multiple parties, the notice of civil claim must clearly identify what facts relate to what cause of action and to which party. It is inappropriate to lump defendants together in a pleading and to make blanket allegations against them, unless those defendants were in an identical relationship with the plaintiff: *Canfor Pulp Limited Partnership v. Siemens Building Technologies Ltd*, [2016] B.C.J. No. 2360, 2016 BCSC 2089 at para. 22; *Wang v. Epoch Press Ltd*, [2017] B.C.J. No. 148, 2017 BCSC 136.
>
> [Emphasis added.]

[19] In *BC Court Forms*, the commentary on pleading facts supporting the relief claimed includes an outline of the three Parts of a Notice of Civil Claim, with emphasis on the need to plead facts disclosing a cause of action, and the elements that must be pleaded, as follows:

> § 11.84
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> Part 1 (statement of facts) of a notice of civil claim must disclose, in numbered paragraphs, a cause of action upon which the plaintiff sues and a corresponding legal liability in the defendant. The elements which must be pleaded are:
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> (a) the plaintiff's legal right;
>
> (b) the defendant's duty to observe the plaintiff's right;
>
> (c) the acts or omissions by the defendant which constitute a breach of that right and duty;
>
> (d) that the plaintiff suffered damage; and

> (e) that the damage suffered by the plaintiff resulted from the defendant's breach.
>
> § 11.85
>
> Part 2 (relief sought) of a notice of civil claim must set out in numbered paragraphs the relief sought and where there are multiple defendants indicate against which defendants that relief is sought.
>
> § 11.86
>
> Although historically it was unnecessary to plead the legal cause of action or theory relied on, this now must be done in Part 3 (legal basis) of the notice of civil claim. The "real purpose" of Part 3 in a notice of civil claim "is to identify causes of action arising from the pleaded facts": *Pyper v. The Law Society of British Columbia*, [2017] B.C.J. No. 2426, 2017 BCCA 410 at para. 52. It is sufficient to name the nominate tort, negligence, breach of contract or other cause of action relied on as well as any statutory provisions; it is not necessary to set out the constituent elements of the elements of the tort. See General Rules of Pleading at §§ 11.23 to 11.28.
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> [Emphasis added.]

[20] Here, the ANOCC in Part 3—legal basis, identifies causes of action, although in a very summary and simplistic form.

[21] In Part 2—relief sought, there is reference to the relief sought against the various defendants, although there are no particulars of damages, for example, whether the damages are for repair costs, or devaluation of the Property, or both, and whether the damages are claimed by the Estate or by Mr. Jones personally, or both.

[22] Part 1—statement of facts, does not clearly identify what facts relate to what cause of action, other than some elements of negligence, a brief reference to trust, and allegations of a "direct tort" against the beneficial, financial and legal interests of the plaintiffs.

[23] More specifically, a pleading of negligence must include pleading material facts of the relationship between the parties, the duty of care, the standard of care, a breach of the duty of care with reference to the standard of care, the plaintiff suffered loss and damages as a result of the negligence of the defendant, and the damages suffered. Some, but not all of these elements are pleaded.

[24] Similar to the quote from *BC Court Forms*, above, in Frederick M. Irvine, ed., McLachlin & Taylor, *British Columbia Practice*, 3rd Ed. (LexisNexis Canada Inc., electronic version current to December 2025) [*BC Practice*] at Rule 3-1 Notice of Civil Claim–(2) Contents of notice of civil claim, the requirements for a notice of civil claim are set out as follows:

> If a notice of civil claim is to serve the ultimate function of pleadings, namely, the clear definition of the issues of fact and law to be determined by the court, the material facts of each cause of action relied upon should be stated with certainty and precision, and in their natural order, so as to disclose the three elements essential to every cause of action, namely, the plaintiff's right or title; the defendant's wrongful act violating that right or title; and the consequent damage, whether nominal or substantial. See too *Sahyoun v. Ho*, [2013] B.C.J. No. 1388, 41 C.P.C. (7th) 231, 2013 BCSC 1143 ... . The material facts should be stated succinctly and the particulars should follow and should be identified as such: *Homalco Indian Band v. British Columbia*, [1998] B.C.J. No. 2703, 25 C.P.C. (4th) 107 (S.C.). In *Glenayre Manufacturing Ltd. v. Pilot Pacific Properties Inc.*, [2003] B.C.J. No. 456, 26 C.L.R. (3d) 112 (S.C.), at para. 63, the chambers judge agreed with what was said in *Homalco Indian Band v. British Columbia*, *supra*, but added that "the statement of claim must also be organized in such a way that the court can understand from the pleadings what issues of fact and law it will be called upon to decide".
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> [Emphasis added.]

[25] Here, at paras. 39 to the first of the two paras. 39.2 of the ANOCC, the plaintiffs allege Ms. Anjos obstructed the plaintiffs' attempt to address the Flood with the credit union and insurers, and Ms. Anjos communicated privately and secretly with the credit union and insurers, in interference with, and prejudice to the plaintiffs' interests.

[26] In the second para. 39.2, the plaintiffs then allege a direct tort against the interests of the plaintiffs in and to the Property, including proper and timely remediation of it after the Flood.

[27] The plaintiff does not plead what "direct tort" is alleged, but para. 5.1 of Part 2 pleads "direct tortious interference", which appears to relate to the previous allegations of obstruction and interference with the plaintiff's interests as the "direct tort". Since the cause of action appears to be wrongful or unlawful interference with the plaintiffs' interest, the elements of that tort need to be pleaded. This cause of

action is analysed in more detail in the separate section on that cause of action below.

[28] It is not contrary to Rules 3-1 and 3-7 to state the cause of action or causes of action to which the material facts relate in the statement of facts, including causation. Where, as here, there are a number of causes of action pleaded, a clearer organization of the facts and law, including the causes of action pleaded, would make the plaintiffs' case against the various defendants more understandable, and specifically Ms. Anjos.

[29] At para. 52 of Part 1 of the ANOCC, the plaintiff alleges a duty of care of Ms. Anjos to Mr. Jones as Administrator to ensure the Property was safe, and to take all reasonable steps to ensure its timely remediation after the Flood took place. At para. 53 the plaintiff alleges that Ms. Anjos breached those duties, but there is no allegation that Ms. Anjos' alleged breach of those duties caused damage or loss to the plaintiff as Administrator, or personally. The only pleadings against Ms. Anjos relating to damages are at Part 2 – relief sought, at paras. 5 and 5. 1, where damages are pleaded against Ms. Anjos for breach of the court order, breach of trust, negligence, and direct tortious interference with the interests of the plaintiffs, without distinguishing the difference, if any, between the claims of the two plaintiffs.

[30] The following is a summary of what the plaintiffs appear to be claiming against Ms. Anjos:

a) Ms. Anjos failed to transfer in a timely manner the Property from Ms. Davidson as Administratrix of the Estate, to Eric Jones as Administrator of the Estate, pursuant to the Mayer J. Order;

b) the Flood occurred and caused physical damage to the Property;

c) timely remediation of the Flood damage did not occur because Ms. Anjos failed to transfer the Property, obstructed and excluded Mr. Jones from the insurance claims adjudication process, and Ms. Anjos failed to take reasonable steps to ensure timely remediation of the Flood damage;

d) additional damage to the Property was caused by the failure to take timely remediation of the Flood damage;

e) the Estate suffered a loss for the cost of a partial remediation of the Flood damage, and additional damage, and the Estate suffered an economic loss on the sale of the Property as a result of the Flood damage and additional damage;

f) Mr. Jones has suffered loss, or is expected to suffer loss as a beneficiary of the Estate, which has been diminished in value by the alleged acts or omissions, or both, of Ms. Anjos;

g) although causation is not clearly pleaded in the ANOCC, it appears the allegation is that the losses suffered by the Estate were caused by Ms. Anjos' failure to transfer the Property, her alleged obstruction and exclusion of the plaintiff in the insurance claims adjudication and remediation processes, and her direct involvement and failure to take steps to timely remediate the Flood damage and additional mold damage, either in her capacity as a lawyer, or possibly acting outside the scope of her duty as a lawyer;

h) although the ANOCC in Part 2 – relief sought, does not make clear whether one plaintiff or both plaintiffs claim damages, it appears likely that the Estate claims damages against the defendants as alleged in the ANOCC, including claims for damages against Ms. Anjos for breach of a court order, breach of trust, negligence, and direct tortious interference with the financial and legal interests of the plaintiffs in and to the Property and its remediation.

[31] I make no findings of fact, the above summary of what appear to be the plaintiffs' allegations is simply to provide a framework for understanding the plaintiffs' pleadings in the ANOCC, and how the pleadings relate to the causes of action, which is the focus of the analysis below pursuant to Rule 9-5(1)(a).

Parties' Positions

Applicant Ms. Anjos' Position

[32] The applicant, Ms. Anjos, applies pursuant to Rule 9-5 of the *Supreme Court Civil Rules* [*SCCR*], and Rules 3-1 and 3-7, seeking to have struck the following paragraphs of the ANOCC as they relate to her:

- Part 1: Statement of Facts - paras. 10, 11, 35.1-35.3, 39, 39.1, 39.2, 39.2 [*sic* – two para. 39.2s], 41, 50-53;
- Part 2: Relief Sought – paras. 5 and 5.1;
- Part 3: Legal Basis – paras. 4.1 to 4.3; and
- Appendix, Part 1, first para. – the words "and her lawyer".

[33] The full wording of these paragraphs of the ANOCC is attached to these reasons as Schedule "A"; however, in these reasons the ANOCC is considered as a whole since other portions of the ANOCC other than the impugned provisions provide context for the plaintiffs' allegations.

[34] Ms. Anjos' position regarding specific paragraphs of the ANOCC is summarized as follows:

a) Part 1—statement of facts, paras. 39, 39.1, and the two 39.2s: Ms. Anjos submits that these paragraphs are "amorphous" pleadings without particulars of Ms. Anjos' alleged obstruction of the plaintiffs' attempts to address the Flood with the credit union and insurance interests, including Ms. Anjos' alleged secret discussions with the other defendants to the prejudice of the plaintiffs' interests.

I understand "amorphous" to mean "without a clearly defined shape or form": *The Concise Oxford Dictionary,* edited by A. Stevenson and M. Waite, 12th ed. (New York: Oxford University Press, 2011) at 43.

I agree with Ms. Anjos that the pleadings are not well-defined; however, there is at least some pleading of the alleged material facts of obstruction, without pleading evidence, for example, specific letters, emails or other communications the plaintiffs may allege are evidence of the alleged obstruction.

b) Paras. 50, 51 and 51.1: Ms. Anjos submits that these paragraphs lack particulars and are conclusory pleadings of the alleged failure of Ms. Anjos to comply with the Mayer J. Order, her alleged assumption of control of the claims adjudication process, and her allegedly unreasonable obstruction of information about a transfer of the insurance policy, or policies (paras. 50 and 51) and obstruction of the plaintiffs' attempts to address the Flood in a timely fashion.

c) Paras. 52 and 53: Ms. Anjos submits that no material facts or particulars are pleaded to support the allegation Ms. Anjos owed the plaintiffs a duty of care and she breached that duty, which she submits is a conclusion of law, citing *Young v. British Columbia (Public Guardian and Trustee)*, 2023 BCSC 1499; *Aune v. Canada (Attorney General)*, 2013 BCSC 1783; and, there are no particulars pleaded of a relationship between the plaintiffs and Ms. Anjos that give rise to a duty of care owed by Ms. Anjos to the plaintiffs. Ms. Anjos only owed a duty of care to her own client, citing *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2012 BCCA 22.

d) Part 2—relief sought, paras. 5.1 and 5.2: These provisions claim damages for breach of a court order, breach of trust, negligence, and direct tortious interference with the financial and legal interests of the plaintiffs in the Property and its remediation. Ms. Anjos submits that a breach of a court order cannot give rise to a claim for damages, only remedies under the *SCCR*, for example contempt proceedings under Rule 22-8 or Rule 13-2(7), citing *Glenwood Label & Box Mfg. Ltd. v. Brunswick Label System*

Inc. et al, 2011 MBQB 33, and *Slater Vecchio LLP v. Arvanitis*, 2020 BCSC 385.

e) Appendix: Ms. Anjos submits there are no material facts pleaded to support the allegation in the Appendix to the ANOCC that "[t]he former administratrix [Ms. Davidson] and her lawyer [Ms. Anjos] obstructed the insurance claims process", and there is nothing distinguishing Ms. Anjos from her client.

f) Ms. Anjos submits that the ANOCC does not disclose any reasonable cause of action against her.

Respondent Plaintiffs' Position

[35] The plaintiffs submit that Ms. Anjos' criticism of the ANOCC for lacking material facts and being conclusory is misguided in mischaracterizing what is an appropriate lack of evidence in pleadings, referring to Rule 3-7(1), which states that a pleading must not contain the evidence by which the facts alleged in it are to be proved.

[36] The plaintiffs also criticize Ms. Anjos for alleging a lack of particulars, when she has not delivered a demand for particulars.

[37] The plaintiffs submit that Ms. Anjos' counsel wrongfully equates the breach of a court order with the independent tort and negligence pleaded against her. The plaintiffs submit that there is no claim against Ms. Anjos for breach of a court order, but there is a claim against her for the independent tort of obstructing the plaintiff's attempts to address the Flood. The plaintiffs submit that "[i]t is deliberately misleading and a *non sequitur* to equate the breach of a court order with the pleadings which address an independent tort."

[38] The plaintiffs also submit that "[t]here is a legitimate claim against Lora Anjos for acting contrary to the court order of Mr. Justice Mayer by wrongfully assuming

control herself and obstructing the plaintiff in dealing with the flood, insurance policies and its remediation."

[39] I emphasize the words "independent tort" above because, as explained in more detail below, the plaintiffs refer to "independent tort" in their application response (part 4, paras. 21, 42, 43), but use the terms "intentional tort" and "direct tort" in the ANOCC. The two terms—independent tort and intentional tort—are distinguished in the case upon which the plaintiffs place heavy emphasis, *Laiken v. Carey*, 2011 ONSC 5892 [*Laiken ONSC*], at paras. 55-57, discussed in more detail below.

[40] The plaintiffs' materials on this application include a draft further amended notice of civil claim ("FANOCC"), including additional pleadings in Part 1 at paras. 35.6 – 35.10 regarding Ms. Anjos not transferring the Property; Part 3 at para. 2.1 regarding the law relating to the liability of a lawyer in negligence to third parties; and the Appendix regarding not applying for a stay of the Mayer J. Order.

[41] I note as a matter of practice, for the sake of clarity amendments in the FANOCC should be distinguished from the ANOCC amendments by, for example, double-underlining the FANOCC amendments to distinguish them from the single-underlined ANOCC amendments.

Issues

[42] The issues from Ms. Anjos' notice of application are based on Rule 9-5(1)(a), (b) and (d), as follows:

a) Does the ANOCC disclose a cause of action?

b) Is the ANOCC unnecessary, scandalous, frivolous or vexatious?

...

d) Is the ANOCC an abuse of process of the court?

Legal Framework

[43] Ms. Anjos relies on *SCCR* 3-1, 3-7 and 9-5, as follows:

Rule 3-1

…

(2) A notice of civil claim must do the following:

a) set out a concise statement of the material facts giving rise to the claim.

b) set out the relief sought by the plaintiff against each named defendant.

c) set out a concise summary of the legal basis for the relief sought.

…

g) otherwise comply with Rule 3-7.

…

Rule 3-7

…

(9) Conclusions of law must not be pleaded unless the material facts supporting them are pleaded.

…

(18) If the party pleading relies on misrepresentation, fraud, breach of trust, willful default, or undue influence, or if particulars may be necessary, full particulars with dates and items if applicable must be stated in the pleading.

[Emphasis added.]

Rule 9-5

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition, or other document on the ground that:

a) it discloses no reasonable claim or defence, as the case might be.

b) it is unnecessary, scandalous, frivolous, or vexatious.

…

d) it is otherwise an abuse of process of the court, and the court may pronounce judgment or order that the proceeding be stayed or dismissed and may order costs of the applications to be paid as special costs.

(2) No evidence is admissible on an application under subrule (1)(a).

[44] When considering Rule 9-5(1)(a), the Court must consider only the plaintiffs' pleadings, and assume the facts plead to be true: *BNSF Railway Company v. Teck Metals Ltd.*, 2016 BCCA 350 at para. 2 [*BNSF*]; *Kindylides v. Does*, 2020 BCCA 330 at para. 29.

[45] Having done that, the Court must then examine the allegations of fact to determine whether a cause of action exists: *Big Bear Hills Inc. v. Bennet Jones Alberta Ltd. Liability Partnership*, 2010 ABQB 764, at para. 8, citing *Tottrup v. Lund* (2000), 2000 ABCA 121 (CanLII), 186 D.L.R. (4th) 226 (Alta.C.A.) at paras. 8 and 11.

[46] When considering Rule 9-5(1)(b), whether pleadings are unnecessary, scandalous, frivolous, or vexatious; and (d) whether the pleading is otherwise an abuse of process, evidence may be considered.

[47] Under Rule 9-5(1)(a), a claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada,* [2011] 3 S.C.R. 45 at para. 17, citing *Odhavji Estate v. Woodhouse*, 2003 SCC 69, [2003] 3 S.C.R. 263, at para. 15; *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959, at p. 980.

[48] In *BNSF*, the Court of Appeal summarized the law related to a strike-out application, as follows:

> [2] It is settled law that an application made by a defendant to have a plaintiff's pleadings struck is brought on the basis that the action(s) asserted therein cannot succeed *as a matter of law*. The chambers judge considers only the plaintiff's pleadings, and assumes them to be true. The threshold to be met by the plaintiff is a low one; an order striking out pleadings is made only in "plain and obvious" cases. (See *A.G. of the Duchy of Lancaster v. London & North Western Railway Co.* [1892] 3 Ch. 274; *Hunt v. Carey Canada Inc.* 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959; *International Taoist Church of Canada v. Ching Chung Taoist Association of Hong Kong Ltd.* 2011 BCCA 149 at para. 9.) Courts are enjoined not to rule out pleadings merely because the cause of action asserted is novel. If the claim is

> arguable, or can be amended to be so, it should be permitted to proceed: see *R. v. Imperial Tobacco Ltd*. 2011 SCC 42 at para. 21.
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> [Italics emphasis in original; underline emphasis added.]

[49] Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: see, generally, *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] 3 S.C.R. 83; *Odhavji Estate*; *Hunt*; *Attorney General of Canada v. Inuit Tapirisat of Canada*, 1980 CanLII 21 (SCC), [1980] 2 S.C.R. 735.

[50] In *Imperial Tobacco*, the Supreme Court of Canada described the power to strike pleadings as "a valuable housekeeping measure essential to effective and fair litigation" that serves two aims: to promote efficiency and to encourage correct results: *Imperial Tobacco* at paras. 19-20.

[51] However, courts should also exercise care when striking pleadings and recognize that the law is not static. The fact a claim is novel will not automatically mean it is bound to fail: *Imperial Tobacco* at para. 21.

[52] In considering whether to strike a claim, the Court should take a "generous" approach and "err on the side of permitting a novel but arguable claim" to proceed to a hearing on its merits: *Imperial Tobacco* at para. 21.

[53] The plaintiffs are required to plead material facts that support each essential element of any cause of action identified in the notice of civil claim: Rule 3-1(a); *Kindylides* at para. 31.

[54] Material facts are facts that are "essential in order to formulate a complete cause of action": *Kindylides* at para. 31, citing *Young v. Borzoni et al*, 2007 BCCA 16.

[55] Bare assertions or mere conclusory statements of law are not a pleading of material fact: *Kindylides* at para. 34, citing *Owimar v. Stewart*, 2019 BCSC 1198.

[56] In *The Public Guardian and Trustee of British Columbia v. Johnston*, 2016, BCSC 1388 ["*Johnston*"], the Court provides a useful overview of key concepts relating to Rule 9-5(1), as follows:

> [41] The *raison d'être* of Rule 9-5(1) is as a mechanism to enforce the rules of pleadings: *Doyle Construction Co. v. Carling O'Keefe Breweries of Canada Ltd.*, 1988 CanLII 2843 (BC CA), [1988] B.C.J. No. 831, 27 B.C.L.R (2d) 81 (C.A.) [*Doyle*].
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> [42] The paramount function of pleadings is to define the issues of fact and law with clarity and precision, in order to give the opposing party fair notice of the case to be met at trial. Equally important is that by defining the essential contours of the case, pleadings facilitate useful pretrial case management, establish the parameters of pretrial discovery and disclosure, and determine the necessity and scope of expert opinions: *Keene v. British Columbia (Ministry of Children and Family Development) & Others*, 2003 BCSC 1544; *Sahyoun v. Ho*, 2013 BCSC 1143 [*Sahyoun*].
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> [43] Pleadings are not a vehicle to outline a detailed narrative of the facts and events that may have bearing upon the case. Evidence is not to be included: *Sahyoun* at para. 29; Rule 3-7(1). Rather, pleadings must be summary in nature, setting out a concise and orderly statement of the material facts that give rise to the claim (or counterclaim), establish a defence, or relate to matters raised by the claim: *Doerksen v. First Open Heart Society of British Columbia,* 2010 BCSC 1291.
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> [44] Material facts are the facts that are essential to formulate each cause of action or defence; no averment crucial to success should be omitted: *Pyke v. Price Waterhouse Ltd.* , 40 C.P.C. (3d) 7, 1995 CarswellBC 907 (S.C.); *Delaney & Friends Cartoon Productions Ltd. v. Radical Entertainment Inc. et al*, 2005 BCSC 371; *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500; *Young v. Borzoni et al*, 2007 BCCA 16 at para. 20.
>
> [45] It is the expectation that material facts will be stated succinctly and with precision, and also be organized in a way that informs the Court of the issues of fact and law it is being called upon to decide: *Homalko Indian Band v. British Columbia*, 1998 CanLII 6658 (BC SC), [1998] B.C.J. No. 2703, 25 C.P.C. (4th) 107 (S.C.); *Glenayre Manufacturing v. Pilot Pacific Properties, et al*, 2003 BCSC 303.
>
> [46] Particulars and material facts are different in their character and purpose. Broadly speaking, particulars are intended to limit the generality of the pleadings and the issues to be tried; enable the other side to properly prepare for trial; tie the hands of the party supplying the particulars; and inform the opposing party what the pleader intends to prove, as distinct from the mode in which the case is to be proved: *Cansulex Ltd. v. Perry*, 1982 CarswellBC 836 (C.A.). They should follow the material facts and be identified as such. Although particulars must supply sufficient detail of the case to be met, they are not to include the evidence that is anticipated will be adduced at trial to prove the pleaded facts.

> [47] The distinctions between evidence and material facts, and between evidence and particulars can be difficult to draw in practice. Despite the challenges, the integrity of those lines must be maintained as stringently as is reasonably possible.
>
> [48] Where a party pleads a legal conclusion such as, for example, the existence of a duty of care or of a fiduciary duty, sufficient material facts must be pleaded to support that conclusion: *Ferstay v. Dywidag Systems International*, 2008 BCSC 793; Rule 3-7(9).
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> [Emphasis added.]

[57] Generally, if pleadings are inadequately drafted, the Court will give the party a chance to amend them: *Avjazi v. Century 21 Prudential Estates (RMD) Ltd.*, 2024 BCSC 276.

[58] However, when it is plain and obvious that pleadings are bound to fail and this cannot be cured, then the party will not be given the opportunity to re-draft: *Avjazi* at para. 54.

[59] The Court should not grant leave to amend if doing so would "violate the principles of judicial economy, consistency and finality, and would undermine the integrity of the administration of justice:" *Avjazi* at para. 54, citing *Stein v. Keebler*, 2019 BCSC 1338.

Analysis

[60] Rule 9-5(1)(a) is clear that in considering whether the pleadings disclose a cause of action, I must confine myself to a consideration of the plaintiffs' pleadings and consider the allegations of fact to be true, without reference to evidence.

[61] The plaintiffs have filed an affidavit in response to Ms. Anjos' application, which I will only consider when I address the arguments related to sub-rules (b) and (d) of 9-5(1) where evidence may be considered when the Court considers whether the pleadings are unnecessary, scandalous, frivolous or vexatious, or otherwise an abuse of the court process.

Rule 9-5(1)(a): Does the ANOCC disclose a cause of action?

[62] Although not completely clear, the plaintiffs appear to assert four causes of action against Ms. Anjos: breach of a court order; breach of trust; negligence; and tortious interference.

[63] Although the plaintiff denies claiming for breach of a court order (application response, part 4, para. 43), in Part 2 of the plaintiff's ANOCC, para. 5, the plaintiff clearly claims damages against Ms. Anjos for "breach of the court order of Justice Mayer, breach of trust and negligence."

[64] The amendment in Part 2, para. 5.1 of the ANOCC also pleads damages against Ms. Anjos for "direct tortious interference with the financial and legal interests of the plaintiffs in and to the Property and its remediation during the claims adjudication process."

[65] As a general comment, although the plaintiffs responded to Ms. Anjos' criticism of conclusory language in the ANOCC by referring to the need to state only material facts and not evidence, the ANOCC in Part 1 includes evidence, for example, paras. 14, 18 and 19, and quotes the complete wording of the Mayer J. Order, which could have been referenced more concisely.

[66] Also, the ANOCC at para. 60 of the Part 1 statement of facts pleads damages for aggravated and punitive damages, which is not a pleading of material facts.

[67] In *British Columbia Teachers' Federation v. British Columbia*, 2012 BCSC 1722 [*BCTF*], Justice Griffin reviewed principles relating to the distinction between material facts and evidence, as follows:

> [15] I agree that the real question is whether the material facts to support the legal basis for the plaintiff's claim are sufficiently pleaded in Part 1, the "Statement of Facts" section of the claim. In this section, the plaintiff pleads 49 paragraphs of facts. Rule 3-1(2)(a) emphasizes that a notice of civil claim must "set out a concise statement of the material facts giving rise to the claim". Rule 3-7(1) brings home the point that a material fact is different than evidence and that evidence must not be pleaded.
>
> [16] The distinction between a material fact and an evidentiary fact was canvassed by the British Columbia Court of Appeal in *Jones v. Donaghey*,

> 2011 BCCA 6 [*Jones*]. Mr. Justice K.J. Smith at para. 14 held that "the purpose of pleadings is to define the 'issues' of material or ultimate fact as between the parties". The court explained that a "material fact" is one that, when resolved, will have legal consequences as between the parties to the dispute. This is also sometimes referred to as a fact "in issue" or as "the ultimate fact" or "ultimate issue" and it is distinct from facts that are evidentiary facts.
>
> [17] The court in *Jones* described a material fact as:
>
> > [18] … the ultimate fact, sometimes called "ultimate issue", to the proof of which evidence is directed. It is the last in a series or progression of facts. It is the fact put "in issue" by the pleadings. Facts that tend to prove the fact in issue, or to prove another fact that tends to prove the fact in issue, are evidentiary or "relevant" facts.

[68] The ANOCC amendments in paras. 35.1 to 35.3, and 39.1 to 39.2 do provide further particulars about the alleged obstruction and exclusion of the plaintiff; however, the allegations in paras. 39, 39.1 and the first para. 39.2 are not as clear as they could be by linking the allegations to a cause of action. For example, the paragraphs following para. 39 regarding obstruction appear to be the allegations of the "direct tort" in the second para. 39.2.

[69] It is also unclear what "direct tort" the plaintiff alleges Ms. Anjos committed, although in the context of the second para. 39.2 it appears to be the alleged interference with the plaintiffs' beneficial, financial and legal interests, including timely remediation.

[70] Similarly, in paras. 51-52 of the ANOCC, the plaintiffs refer to Ms. Anjos' failure to transfer the Property pursuant to the Mayer J. Order, referring again to the alleged obstruction and remediation, and Ms. Anjos' alleged assumed control of the claims adjudication process, and excluding the plaintiffs, then asserting a duty of care, again not linking these allegations by reference to a cause of action, other than each allegation following each other.

[71] As a result, the ANOCC appears to claim the following causes of action, each of which will be analysed separately, below:

a) Breach of a court order;

b) Intentional tort of interference with the financial and legal interests of the plaintiffs;

c) Breach of trust; and

d) Negligence.

The claim for breach of a court order

[72] The ANOCC pleads that damages are sought against Ms. Davidson personally and as Administratrix of the Estate, and Ms. Anjos, for "breach of the court order of Justice Mayer": ANOCC, Part 2 at para. 5.

[73] The Mayer J. Order, para. 4, states that "Tracy Ann Davidson shall transfer the property ...".

[74] The ANOCC does not allege that the Mayer J. Order named Ms. Anjos as a person ordered to transfer the property; however, the plaintiff relies on *Laiken ONSC*, which is discussed in detail below.

[75] In the ANOCC statement of facts, the plaintiff alleges that despite the Mayer J. Order, and the plaintiffs' request and demands, Ms. Davidson fails, neglects or refuses to transfer the Property (para. 33).

[76] At para. 51, the plaintiff alleges that Ms. Davidson, personally and as Administratrix, and/or Ms. Anjos neglected, or refused to transfer the property pursuant to court order.

[77] As the Supreme Court of Canada has stated, breach of court order is not an independent tort: *Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38 at para. 58.

[78] Breach of a court order does not give rise to a cause of action, and the only way a litigant can deal with breach of a court order or breach of an undertaking is by a contempt proceeding: *Glenwood Label & Box Mfg. Ltd. v. Brunswick Label Systems Inc. et al.*, 2011 MBQB 33 at para. 7.

[79] As stated in *Laiken ONSC*, a case the upon which the plaintiffs rely:

> [58] There is no tort for breach of a court order; a breach of a court order by itself cannot found a claim for damages.

[80] The plaintiffs' counsel's submissions at the hearing of the application conceded that the proper forum for breach of a court order is a contempt proceeding, but then submitted that if a breach of a court order causes damages, there is a legitimate claim, citing the appeal decision of the *Laiken ONSC* case*: Sabourin and Sun Group of Companies v. Laiken*, 2013 ONCA 530 [*Laiken ONCA*].

[81] In *Laiken ONCA*, the Court of Appeal held that as Mr. Carey was the solicitor of record on that case, and as an officer of the court, he was to be held to the same standard of compliance with a court order as his client who was a party, as follows:

> [64] ... The solicitor-client bond creates a community of interest between Carey and Sabourin that is plainly distinguishable from the situation of a stranger to the litigation who is apprised of the court order. As an officer of the court, a solicitor of record is duty-bound to take scrupulous care to ensure respect for court orders. In my view, as the solicitor of record in the case, Carey should be held to the same standard of compliance as his client who was a party.
>
> [Emphasis added.]

[82] This paragraph was quoted and adopted by Cromwell J. at the Supreme Court of Canada in response to the submission that a higher degree of intention is required to make a non-party liable for contempt: *Carey v. Laiken*, [2015] S.C.R. 79, para. 46 [*Carey SCC*].

[83] The plaintiffs appear to place significant emphasis on the underlined portion of the quote above; however, while a solicitor being held to the same standard of compliance with a court order as the client may expose the solicitor to a finding of contempt of court, it does not necessarily follow that, by itself, a breach of a court order can support a claim for damages.

[84] What was argued in *Laiken ONSC*, and apparently accepted by the Court, is that a breach of a court order may inform a duty of care to establish proximity, and foreseeability and support for the claim that the care fell below the standard required in the circumstances: *Laiken ONSC*, para. 59.

[85] Here, as a result, the plaintiffs have no cause of action for the alleged breach of the Mayer J. Order, but that breach may inform a duty of care.

[86] In *Laiken ONSC*, the Court described the plaintiff's action as framed in negligence against the lawyer not in his capacity as a lawyer, but as a "reasonable person", and distinguished that cause of action from an intentional tort, or an independent tort.

[87] The plaintiffs rely heavily on *Laiken ONSC* and the subsequent Court of Appeal and Supreme Court of Canada decisions in support of their claim against Ms. Anjos. For that reason, the cases must be considered carefully, particularly became *Laiken ONSC* makes a distinction between the following concepts: an independent tort; an intentional tort; and negligence; and the related concept of a claim made against a lawyer acting in her capacity as a lawyer, as distinguished from a lawyer acting outside the scope of her duty as a solicitor.

[88] In my view, the plaintiffs' submissions and the ANOCC are somewhat confusing by not clearly distinguishing between these concepts. For example, the plaintiffs use the term "independent tort" in the application response, and "intentional tort" and "negligence" and "direct tort" in the ANOCC, and do not appear to distinguish, if there was any intention to do so, between Ms. Anjos acting in her capacity as lawyer, compared to her acting outside the scope of her duty as a lawyer, for example, by her alleged acts or omissions relating to her involvement in the remediation of the Property.

[89] For this analysis of the alleged cause of action for breach of the court order, I understand the plaintiff's position to be that Ms. Anjos as a lawyer and officer of the Court was obliged to comply with the Mayer J. Order, and it is that failure to transfer the Property and her alleged obstruction relating to the insurance and remediation that ground the allegation of a "independent tort" (plaintiff's application response, Part 4, paras. 42-44); or, as plead in the ANOCC–an "intentional tort" (ANOCC, Part 3, para 4.1, and in the application response, Part 5, para. 10); and a "direct tortious interference with the financial and legal interests of the plaintiffs in and to the

Property and its remediation during the claims adjudication process." (ANOCC, Part 1, paras. 39.1 – 39.2; and Part 2, para. 5.1).

[90] The plaintiffs' reference to "independent tort" is unclear because the plaintiff does not plead an "independent tort" in the ANOCC; however, the plaintiffs refer in the application response to "the independent tort of obstructing the plaintiff's attempts to address the flood when she as an officer of the court knew of" the Mayer J. Order.

[91] An independent tort is often referred to in the context of a contractual relationship where a claim is also made personally against an individual. For example, in *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121 the issue was whether directors of a company were personally responsible for their tortious conduct even though they acted in a *bona fide* manner in the best interests of the company. The Court of Appeal explained the concept of an independent tort as follows:

> [21] In *XY v. Zhu*, we also referred to this court's decisions in *Hildebrand v. Fox* 2008 BCCA 434, which involved a claim against a school board employee, and *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.* 2010 BCCA 329. In the latter case, Neilson J.A. stated for the Court:
>
> > The fact that a director, officer or employee was acting within the course of employment and the corporation is vicariously liable for his negligence does not preclude a claim in negligence against the employee personally. However, in my view, the *London Drugs* principle requires that claim against the individual must be based on the breach of a duty of care that would support an action against the individual personally. The material facts that support that personal claim in tort must be specifically pleaded to establish a possible cause of action under R. 15(5)(a)(iii). [At para. 66.]
>
> [22] In *XY v. Zhu* itself, we concluded that:
>
> > ... it appears to be the law in Canada that as long as tortious conduct on the part of an employee or agent of a corporation (or any other employer) is properly pleaded and proven as an "independent tort" by the employee or agent, the wrongdoer can be held personally liable notwithstanding that he or she may have been acting in the best interests of (and at the behest of) the employer or principal. I see no reason in principle or policy why such liability should be restricted to cases involving physical damage (as *Said v. Butt* may have suggested in 1920), or to claims in negligence (as referred to in

> *London Drugs*, *Hildebrand* and *Neilson*.) Certainly the Ontario Court of Appeal did not so restrict it in *ADGA*. ... [At para. 73.]
>
> [Single underline emphasis in original; double underline emphasis added.]

[92] Here, there is no distinction made in the ANOCC between a claim against Ms. Anjos acting in her capacity as a lawyer, and a claim, if any, against Ms. Anjos acting in her personal capacity (as a "reasonable person" as referenced in *Laiken ONSC*, para. 57), and no plea of an independent tort in the ANOCC (or an "independent tortious act" as referenced in *Laiken ONSC* at para. 56), so the claim appears from the wording of the ANOCC to be limited to the alleged intentional tort of interference with the financial and legal interests of the plaintiffs.

[93] For these reasons, it is clear that there is no tort for breach of a court order. The plaintiffs' allegation of damages for breach of a court order is struck out as against Ms. Anjos because that claim has no reasonable prospect of success and it is plain and obvious that any claim for breach of court order as a cause of action is bound to fail.

The claim for tortious interference

[94] As noted above, the plaintiff alleges an "independent tort" (plaintiff's application response and submissions), or "intentional tort" (ANOCC, Part 3, para 4.1), or "direct tortious interference with the financial and legal interests of the plaintiffs in and to the Property and its remediation during the claims adjudication process." (Part 1, para. 39.1 – 39.2; and Part 2, para. 5.1).

[95] If the plaintiffs wished to plead against Ms. Anjos for an independent tort, they would have had to make that claim clear, and presumably distinguish between Ms. Anjos' acts or omissions acting in her capacity as a lawyer, and acting outside the scope of her duty as a lawyer. As in *Laiken ONSC* case, that distinction might also be plead in negligence, discussed below in the section on negligence.

[96] The description of the cause of action as a "direct" or "intentional" tort, distinguishes the alleged cause of action from negligence.

[97] What the ANOCC does not do is clearly plead the elements of the causes of actions upon which the plaintiff relies.

[98] For example, the ANOCC at Part 3, para. 4.1 pleads that “the law relating to a lawyer’s liability to third parties for an intentional tort”, with reference to an uncited article and case law, which in my view does not meet the requirement in Rule 3-7 explaining the legal basis for the relief sought.

[99] The article and case law cited by the plaintiff regarding the “law relating to a lawyer’s liability to third parties for an intentional tort” are as follows:

a) Stewart Bussey, Q.C., Linda Jensen, and Bottom Line Research, *Liability of an Attorney for Damages to the Opposing Party* [no citation] [“Bussey Article”];

b) *Laiken ONSC*;

c) *Laiken ONCA*;

d) *Laiken SCC*.

[100] As the plaintiff appears to rely heavily on these three “*Laiken*” decisions, the following discussion considers the cases in some detail.

[101] As an introduction, as already noted above, what the plaintiffs appear to be alleging against Ms. Anjos is that Ms. Anjos’ intentional act or omission in not transferring the Property from Ms. Davidson to Mr. Jones as Administrator pursuant to the Mayer J. Order, and her subsequent alleged obstruction and exclusion of the plaintiff in dealing with the insurance and credit union interests, and remediation of the Property, and her acts or omissions in her direct involvement in the remediation of the Property, caused physical damage to the Property, and caused the plaintiffs’ loss in the decreased value of the Property on account of the physical damage to the Property.

[102] In those allegations, there appear to be two potential causes of action against Ms. Anjos in the alleged intentional tort of interference with the financial and legal interests of the plaintiffs, and in the alleged negligence as a lawyer, or possibly in acting outside the scope of her duty as a lawyer.

[103] In *Laiken ONSC*, Ms. Laiken applied for a declaration that the defendants' lawyer, Mr. Carey, be found in contempt for having allegedly breached a *Mareva* order; and, Mr. Carey applied for summary judgment to dismiss the action against him. Ms. Laiken's allegation was that Mr. Carey had breached a *Mareva* order by returning $440,000 to his client for whom he was holding the funds in trust.

[104] Ms. Laiken's action against Mr. Carey was referred to by the court as being for damages in negligence for having returned the money to his client in breach of the *Mareva* order, not for an intentional tort, but the court referred to potential claims by an opposite party against a lawyer for the opposing party in negligence, intentional torts, and independent torts, as follows:

> [53] Generally a lawyer holds no duty to the opposite party. In *Shuman v. Ontario New Home Warranty Program* [citation omitted], Madam Justice K. Swinton held that such claims cannot succeed:
>
> > "Moreover, as to the claims against [the opposing party's solicitors] in negligence, or breach of fiduciary duty, there is no legal authority to support the proposition that a solicitor for a party owes a duty of care to an opposing party. Therefore, there is no basis for a claim in negligence or fiduciary duty against these defendants (*Geo. Cluthe Manufacturing Co. v. ZTW Properties Inc*. …). …."
>
> [54] This issue was also before the Court in *Brignolio v. Desmarais, Keenan & Robert* [citation omitted]. In his decision, Mr. Justice D. Lane held, at paragraph 17, that an action does not lie against an adverse party or his counsel based on a lawyer's breaches of ethical duties since such duties are owed to the Court and to the Law Society of Upper Canada, but not to the opposite party in litigation, and referenced the public policy rationale that protects a lawyer from such actions:
>
> > "If the policy of the court were otherwise, the same difficulties would arise as would arise in the case of negligence. There would be a temptation, which many would find irresistible, to re-litigate in actions against their opponent's counsel the issues which they have lost in the main litigation, or to attempt to handicap the other side by eliminating experienced and knowledgeable counsel from the case. The public policy in such instances is referred to by Lord Donaldson of Lymington

> M.R. in *Al-Kandari v. J.R. Brown & Co*. [1988] 1 All E.R. 833 at p. 835 (C.A.) cited in the *Cluthe* case … as follows:
>
> > I would go rather further and say that, in the context of "hostile" litigation, public policy will usually require that a solicitor be protected from a claim in negligence by his client's opponent, since such claims could be used as a basis for endless re-litigation of disputes.
>
> In my view, the same principles apply to allegations of breaches of ethical conduct."

[55] There are a few well established exceptions to the general rule that a lawyer owes no duty to opposing or third parties, including:

> i. Where a lawyer gives an undertaking to the Court or the opposing or third parties and fails to perform it, the lawyer may be ordered to do that act or make good the loss flowing from the failure to perform the undertaking [citation omitted].
>
> ii. Where a lawyer is implicated in intentional torts, including fraud, slander of title, false imprisonment, malicious prosecution, abuse of process and civil conspiracy, those intentional torts are not defeated by the rule that a lawyer owes no duty of care to the opposing party in litigation [citation omitted].

[56] **Further, there is no absolute bar to an action against a lawyer by an opposing or third party whom the lawyer has injured while the lawyer was acting outside the scope of his or her duty as a solicitor. A lawyer can be liable to an opposing or a third party where the lawyer commits an independent tortious act that causes foreseeable injury** [citing *Dufort Testing Services v. Berube,* [2004] O.J. 6225 (H.C.J.), at para. 21, affirmed, [2005] O.J. No. 5208 (C.A.)].

[57] **In the present case, Ms. Laiken squarely frames her action against Mr. Carey in negligence. She does not allege that he committed any intentional tort**, voluntarily gave an undertaking that he did not fulfill, made any representations to her upon which she relied, or was retained by her in any capacity. In fact, Ms. Laiken does not say that Mr. Carey was negligent while acting as a lawyer; she alleges that he fell below the standard of care expected of a "reasonable person" by his breach of the Mareva Order.

[58] **There is no tort for breach of a court order** [citing *Syl Apps Secure Treatment Centre v. B.D.*, [2007] 3 S.C.R. 83, at para. 58]; **a breach of a court order by itself cannot found a claim for damages**. [citing *Gordon H. Freund Professional Corp. v. Haljun* (1996), 8 C.P.C. (4th) 201; *353903 Ontario Ltd. v. Nova Scotia*, 1998 CarswellNS 252 (N.S.S.C.), at para 125].

[59] **Mr. Toyne argues for Ms. Laiken that a breach of a court order can, however, inform a duty of care, in that it can establish proximity, foreseeability and support for the claim that the care fell below the standard required in the circumstances.** He contends that Ms. Laiken's claim should be recognized as a novel cause of action for pure economic loss under the *Anns v. Merton London Borough Council* analysis.

> [60] The *Anns* test involves a two-stage analysis to determine, first, if there is sufficient proximity between the parties to give rise to a duty of care and, then, whether there are any policy considerations that ought to negate or limit the scope of the duty [citation omitted].
>
> [61] The proximity test is largely held to relate to foreseeability and whether the plaintiff is so closely and directly affected by the act of the defendant that the defendant ought to reasonably have had her in his contemplation as being so affected [citation omitted].
>
> [62] In the present case, it is clear that Mr. Carey knew or should have known about Ms. Laiken's interest in the Sabourin trust funds and knew or should have known that she would be directly affected if those funds did not remain secure under the terms of the Mareva Order. I hold that the foreseeability test is met.
>
> [63] The more difficult question is the policy considerations to be taken into account in the second part of the *Anns* analysis. Mr. Schindler refers to the above noted policy consideration against lawyers being sued by an opposing party. The distinction that I have already noted is that the claim is not pleaded against Mr. Carey *qua* lawyer, but as a "reasonable person", so that the policy consideration referenced by Mr. Schindler does not appear to be relevant.
>
> [Emphasis added.]

[105] On Mr. Carey's motion for summary judgment, the lower court concluded that there was a genuine issue requiring a trial as to whether or not Mr. Carey owed Ms. Laiken a duty of care, and whether Ms. Laiken suffered any damages as a result of Mr. Carey returning the $440,000 to his client (paras. 68 and 71).

[106] The subsequent *Laiken ONCA* and *Laiken SCC* cases relate only to the contempt proceedings, not Ms. Laiken's claim for damages against Mr. Carey.

[107] At the Court of Appeal in *Laiken ONCA*, the focus was on the issue of the motion judge having made a finding of contempt against the lawyer at the first hearing, then having set aside the contempt finding at a subsequent hearing after the lawyer filed further evidence regarding his conduct in paying out the funds being consistent with the practice of counsel generally.

[108] The Court of Appeal allowed the appeal and restored the order of contempt, with the sanction limited to the payment of costs, leaving the issue of the lawyer's violation of the *Mareva* Order as an element of the plaintiff's claim against the lawyer "in a proceeding that provides a proper procedural framework for its adjudication":

Laiken ONCA at para. 68. That plaintiff's claim against Mr. Carey in negligence is not otherwise the subject of the three *Laiken* cases cited by the plaintiffs and considered here.

[109] At the Supreme Court of Canada in *Laiken SCC*, the issue was the Court considering principles relating to the law of civil contempt, including the standard to which a lawyer should be held. Justice Cromwell quotes and adopts the following excerpt from the reasons of the Court of Appeal, as quoted above from the *Laiken ONCA* case, repeated here for emphasis because of the plaintiffs' significant reliance on it:

> [46] ... The solicitor-client bond creates a community of interest between Carey and Sabourin that is plainly distinguishable from the situation of a stranger to the litigation who is apprised of the court order. As an officer of the court, a solicitor of record is duty-bound to take scrupulous care to ensure respect for court orders. ... [A]s the solicitor of record in the case, Carey should be held to the same standard of compliance as his client who was a party. [para 64]
>
> [Emphasis added.]

[110] The meaning of "standard of compliance" is the lawyer's obligation to the court to "take scrupulous care to ensure respect of court orders", and that a lawyer may be held in contempt of court for breaching a court order; however, in my view, that principle does not support the proposition that a lawyer's breach of a court order can found a basis for a claim in damages.

[111] What *Laiken ONSC* states, as quoted above in para. 56 of that case, is that a breach of a court order can inform a duty of care, in that it can establish proximity, foreseeability and support for the claim that the care fell below the standard required in the circumstances.

[112] The plaintiffs here allege that Ms. Anjos knew or should have known about the interest of Mr. Jones personally, and his interest as Administrator of the Estate's interest in the Property, the insurance on the Property, and the timely remediation of the Property following the Flood.

[113] Here, the issue is not contempt, it is the alleged liability of Ms. Anjos to the plaintiffs.

[114] To summarize, paras. 53—63 of *Laiken ONSC* quoted above refer to five different aspects of potential liability:

a) There is no tort for breach of a court order; a breach of a court order by itself cannot found a claim for damages (para. 58);

b) A lawyer may be liable for committing an intentional tort (para. 55), here apparently wrongful or unlawful interference with economic relations;

c) A lawyer can be personally liable to an opposing or a third party where, in acting outside the scope of the lawyer's role, the lawyer commits an independent tortious act that causes foreseeable injury (para. 56);

d) In very limited circumstances, a lawyer may be liable in negligence to an opposing or a third party where the lawyer is acting in her capacity as a lawyer; and alternatively: (e) where the lawyer acts outside the scope of the lawyer's role (para. 57, and paras. 59—62).

[115] The ANOCC in Part 3—legal duty, para. 4.1 refers to "a lawyer's liability to third parties for an intentional tort," citing the three *Laiken* cases, without reference to what tort is alleged; however, the intentional tort alleged by the plaintiffs appears to be as stated in Part 1 of the ANOCC at para 39.2 where the plaintiffs allege that Ms. Anjos "commits a direct tort against the beneficial, financial and legal interests of the plaintiff in and to the Property including the proper and timely remediation of it after the flood."

[116] This allegation does not state how that alleged direct tort was committed, other than that paragraph is preceded without linkage to paras. 39, 39.1 and the first para. 39.2, those paragraphs alleging obstruction of the plaintiff's attempts to address the Flood with the credit union and insurance representatives (para. 39), and alleging private and secret communication between Ms. Anjos and those

representatives (first para. 39.2), with alleged prejudice to the plaintiff's interests (first para. 39.2).

[117] A clearer pleading of the alleged tort, if it is interference with the plaintiffs' interests, would be the allegation that Ms. Anjos committed a direct tort against the interests of the plaintiffs, followed by particularizing the alleged acts, with clear reference to the tort, and an allegation that the alleged acts or omissions caused loss or damage to one or both of the plaintiffs.

[118] The allegation of interference with the plaintiffs' interests is supported by the pleading in Part 2—relief sought, where damages are claimed against Ms. Anjos for "direct tortious interference with the financial and legal interests of the plaintiff in and to the Property and its remediation during the claims adjudication process" (Part 2, para. 5.1).

[119] In Part 3—legal basis of the ANOCC, at paras. 4.1, 4.2 and 4.3, the plaintiffs allege an intentional tort (para. 4.1), negligence to third parties (para. 4.2), and "negligence in the context of a court order arising from at trial in which the lawyer participates, holding the lawyer to the same standard of compliance as the client and precluding acting contrary to it," citing *Laiken SCC* (para. 4.3).

[120] Again, the standard of compliance relates to compliance with a court order, and contempt for breach, not negligence, the three *Laiken* cases dealing primarily with the contempt of the lawyer for breach of the *Mareva* order, not dealing in any substantive way with the plaintiff's claim in negligence against the lawyer, other than the reference to the lawyer's conduct potentially informing a duty of care to establish proximity and foreseeability and support for the claim that the care fell below the standard required in the circumstances, with the question of whether Mr. Carey did owe a duty of care to be determined on a fully developed record at trial (para. 68).

[121] As noted above, the plaintiffs do not allege any damage having been caused by Ms. Anjos or Ms. Davidson in not transferring the Property to him as Administrator. The ANOCC does include the fact that the Property was transferred

into Mr. Jones' name in his capacity as the Administrator of the Estate on June 22, 2022 (Part 1, para. 44), with no allegation that such a transfer was the result of action by Ms. Anjos. The plaintiff was the Administrator since the date of the Mayer J. Order, and Ms. Davidson ceased to be the Administratrix on that date as well. If the plaintiff, Mr. Jones, as Administrator, could have transferred the Property without Ms. Davidson's or Ms. Anjos' action, that may raise a question of causation; however, all that is pleaded in para. 44 is that the Property was transferred, without mention of how that was accomplished.

[122] The ANOCC also does not make clear what are the elements of a cause of action in interference with the interests of the plaintiff.

[123] The Supreme Court of Canada has recognized a tort of "unlawful interference with economic relations", also referred to as "interference with a trade or business by unlawful means", "intentional interference with economic relations", "causing loss by unlawful means", or the "unlawful means" tort: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.,* 2014 SCC 12 at para. 2 [*Bram*].

[124] Recently, this Court considered a claim for "tortious interference in business relationships" by applying the test for "unlawful interference with economic relations" from *Bram.* In *Ibrahim v. Allibhai*, 2024 BCSC 955, the Court set out the three elements for a claim for unlawful interference with economic relations from *Bram*, at para. 5, as follows:

> 1. the defendant intended to injure the plaintiff's economic interest;
>
> 2. the interference was by illegal or unlawful means; and
>
> 3. the plaintiff suffered economic loss or harm as a result.

[125] The Court of Appeal for British Columbia summarized the essential elements of this tort in *Qualcomm Incorporated v. Barroqueiro*, 2025 BCCA 65:

> 154] The unlawful means tort requires intentional targeting of the plaintiff by the defendant. This requirement may be satisfied where the defendant intends to cause economic harm to the plaintiff either as an end in itself or

> "because it is a necessary means of achieving an end that serves some ulterior motive": *Bram* at para. 95. It is not sufficient that the harm to the plaintiff be an incidental consequence of the defendant's conduct, even where the defendant is aware that harm to the plaintiff is "extremely likely" to result, as this is an accepted part of market competition: *Bram* at para. 95.
>
> [155] Thus, the core elements of the unlawful means tort are the intentional infliction of economic injury on the plaintiff by the defendant's use of unlawful means against a third party: *Bram* at paras. 23, 28. The chambers judge, who relied on both *Bram* and *Low*, correctly described the elements of this tort as **"(a) an unlawful act committed against a third party**; **(b) that is intended to cause economic harm to the plaintiff**; and **(c)** results in economic harm to the plaintiff": at para. 177. He also correctly described the intention requirement as set out above.
>
> [Emphasis added.]

[126] *Qualcomm* also quotes *Bram* for the meaning of conduct that is unlawful, at para. 153, as follows:

> Conduct is unlawful "if it would be actionable by the third party or would have been actionable if the third party had suffered loss as a result of it": [*Bram*] at paras. 5, 26.

[127] See also *Low v. Pfizer Canada Inc*., 2015 BCCA 506 at paras. 79-92 regarding the meaning of unlawful conduct.

[128] In *Bram*, the Supreme Court of Canada also emphasized the importance of the element of intention to cause economic harm, as follows:

> [95] The Court of Appeal of England in *Douglas v. Hello! Ltd.*, [2005] EWCA Civ 595, [2005] 4 All. E.R. 128, one of the appeals heard with *OBG*, identified five types of intention which might be relevant in this context: (a) an intention to cause economic harm to the claimant as an end in itself; (b) an intention to cause economic harm to the claimant because it is a necessary means of achieving an end that serves some ulterior motive; (c) knowledge that the course of conduct undertaken will have the inevitable consequence of causing the claimant economic harm; (d) knowledge that the course of conduct will probably cause the claimant economic harm; (e) knowledge that the course of conduct undertaken may cause the claimant economic harm coupled with reckless indifference as to whether it does or not: para. 159. In my opinion, the first two of these species of intention represent the core intention required for the unlawful means tort. They describe cases in which the tortfeasor is "aiming at" or "targeting" the plaintiff: see Carty, "The Economic Torts in the 21st Century", at p. 654. This is the approach favoured by the majority of commentators as well as by the cases: see, e.g., Carty, *An Analysis of the Economic Torts*, at pp. 80-82; Podolny, at p. 70; Kain and Alexander, at pp. 181-82; *Correia*, at para. 101. It is the intentional targeting

> of the plaintiff by the defendant that justifies stretching the defendant's liability so as to afford the plaintiff a cause of action. It is not sufficient that the harm to the plaintiff be an incidental consequence of the defendant's conduct, even where the defendant realizes that it is extremely likely that harm to the plaintiff may result. Such incidental economic harm is an accepted part of market competition.
>
> [96] Goudge J.A. put this point aptly in *Alleslev-Krofchak*, where he summarized the House of Lords' discussion in *OBG*:
>
> > . . . intentional interference with economic relations requires that the defendant intend to cause loss to the plaintiff, either as an end in itself or as a means of, for example, enriching himself. If the loss suffered by the plaintiff is merely a foreseeable consequence of the defendant's actions, that is not enough. [para. 50]
>
> [97] In my view, this narrow approach to intention is consistent both with the policy concerns relevant to this area of law as well as the underlying "liability stretching" rationale for the tort. It is an important safeguard against attaching liability to vigorous but lawful competitive behaviour. Economic harm to a competitor is often a foreseeable consequence of such behaviour. Mere foreseeability of such harm does not meet the requirement for intention in the unlawful means tort.
>
> [Emphasis added.]

[129] As a result, the three elements of a claim for unlawful interference with economic relations are again as follows:

1. an unlawful act committed against a third party;
2. intended to cause economic harm to the plaintiff; and
3. resulting in economic harm to the plaintiff.

[130] Here, the plaintiffs do not clearly plead material facts of these three elements: an unlawful act, that Ms. Anjos intended to cause harm to the plaintiffs, and Ms. Anjos caused the plaintiffs economic harm.

[131] The Bussey Article cited by the plaintiffs in ANOCC, Part 3, para. 4.1—*Liability of an Attorney for Damages to the Opposing Party*—at p. 5, provides further details and examples of the intentional tort upon which the plaintiffs appear to rely.

[132] First, the Bussey Article refers to the general rule regarding the liability of lawyers, as follows:

> ... the general rule, clearly established in Canadian law, is that a lawyer does not owe a duty of care or a fiduciary duty to the opposing party; nor does the duty owed

> as an officer of the court extend to private parties, including the opposing party. An action launched on these bases, without more, faces a high probability of been [*sic*] struck for failing to disclose a cause of action.
>
> [Emphasis added.]

[133] The underlined portion of the quote above emphasizes the point earlier made that breach of a court order does not give rise to a cause of action, but may inform a duty of care.

[134] Second, the plaintiffs' reference to the Bussey Article appears to be intended to highlight the exceptions to the general rule (protecting a lawyer against a claim in negligence by an opposing party), including the following selection of citations from the Bussey Article, with emphasis on those that involve intentional torts, and specifically the tort of intentional interference with economic relations, as follows:

a) *Halsbury's Laws of Canada* – Legal Professions, V.5.(3)(a)): "a solicitor may be liable for an intentional tort, notwithstanding he or she was acting within the scope of a retainer".

b) *Laiken ONSC*, at para. 55: "[w]here a lawyer is implicated in intentional torts, including fraud, slander of title, false imprisonment, malicious prosecution, abuse of process and civil conspiracy, those intentional torts are not defeated by the rule that a lawyer owes no duty of care to the opposing party in litigation."

c) *Big Bear Hills Inc. v. Bennet Jones Alberta Ltd. Liability Partnership*, 2010 ABQB 764, in which one of the alleged causes of action was the tort of conspiracy to commit the tort of unlawful interference with the contractual and commercial interests of the plaintiffs, where the tort is described as follows:

> [26] The tort of unlawful interference with the contractual and commercial interests of a person, including a corporation as described by Lewis W. Klar et al., is set out at paragraphs 81 and 82 of *Polar Ice Express Inc. v. Arctic Glacier Inc.*, 2007 ABQB 717, affirmed 2009 ABCA 20.
>
> > [81] The tort of unlawful interference with economic interests is defined by Lewis N. Klar et al. in *Remedies in Tort* (Calgary: Carswell Legal Publication (Western), 1987) at pp. 24-60.6, to 24-60.7, para. 47 as:

> "There exists a tort of uncertain ambit which consists of one person using unlawful means with the object and effect of causing damage to another." Characterized by some as the "wider principle" of which the nominate torts of inducing breach of contract, interference with employment relations, intimidation and conspiracy are "but instances" and by others as "no more than a rationalization of the specific cases", this action's exact place in and effect on the general field of economic torts is uncertain: "Why have specific nominate torts when you can lump practically all of the factual situations into a tort of unlawfully interfering with economic interest? Is that, after all, not the gist of every action in the area of economic torts?" [citation omitted.]
>
> [82] To establish this tort, the plaintiff must prove that: (1) the defendant had an intention to injure it; (2) the means employed by the defendant to accomplish this were unlawful; and (3) the plaintiff suffered economic loss or a related injury as a result: *Remedies in Tort* at p. 24-60.9, para. 50.
>
> [Emphasis added.]

d) In *New Solutions Extrusion Corporation v. Gauthier*, 2020 ONSC 1037, aff'd 2010 ONCA 348:

   i. The plaintiff claimed against the defendants' lawyers, including a claim for intentional interference with economic interests.

   ii. The Bussey Article quotes portions of the judgment relating to the allegation of the intentional torts of conspiracy, inducing breach of contract and interference with economic relations, including the following:

> [27] To the extent that the Statement of Claim pleads that the lawyers intentionally conspired with their client to knowingly effect an illegal trespass and disablement of the machine so that the plaintiff would have to abandon its legitimate defence, and they did so for their own enrichment, it is at least arguable that the lawyers could be found to be joint tortfeasor with their client assuming all the facts pleaded were true. I am not prepared to find that a claim of conspiracy cannot be brought against lawyers in the circumstances as pleaded.

iii. The Court also set out the elements of the tort of intentional interference with economic interests as follows:

> [48] In addition to damages, the elements of the tort are:
> (1) wrongful interference by the defendant with the actions of a third party in which the plaintiff has an economic interest; and
> (2) an intention by the defendant to cause loss to the plaintiff.
> (*Correia v Canac Kitchens*, [(2008), 2008 ONCA 506 (CanLII), 294 D.L.R. (4th) 525 (Ont. C.A.)], at para. 95.)
>
> [Emphasis added.]

[135] Here, the plaintiff's pleadings in the ANOCC relating to Ms. Anjos and this potential cause of action at paras. 39 to 39.2 are summarized as follows:

a) the defendants knew the Estate had an insurable interest in the Property (ANOCC, Part 1, para. 35.2);

b) Ms. Anjos took "active steps to exclude the plaintiffs and their counsel and interfere with the plaintiffs' financial and legal interests in the Property" (ANOCC, Part 1, para. 39.1);

c) Ms. Anjos communicates privately and secretly with the credit union and insurance companies without taking into account, and to the prejudice of, the plaintiff's financial and legal interests in the Property; and (ANOCC, Part 1, para. 39.2);

d) Ms. Anjos commits a direct tort against the beneficial, financial and legal interests of the plaintiffs in and to the Property including the proper and timely remediation of it after the flood (ANOCC, Part 1, para. 39.2).

[136] Also relevant are the ANOCC pleadings relating to Ms. Anjos at paras. 50–52, as follows:

a) Ms. Anjos was an officer of the court, court orders must be obeyed in a timely fashion, the plaintiff as Administrator of the Estate was the real owner of the Property with an interest in the insurance policy and the prompt remediation of the flood damage (ANOCC, Part 1, para. 50);

b) Ms. Anjos failed, neglected or refused to transfer the Property pursuant to court order, unreasonably obstructed information about and the transfer of the insurance policies, and obstructed the plaintiff's attempts to address the Flood in a timely fashion (ANOCC, Part 1, para. 51);

c) Ms. Anjos assumed control of the claims adjudication process with the insurance companies such that all communication went through her office, and excluded the plaintiff and their counsel from information and input (ANOCC, Part 1, para. 51.1);

d) Ms. Anjos owed a duty of care to the plaintiff as Administrator of the Estate to ensure the Property was safe from harm including flooding and to take all reasonable steps to ensure it timely remediation upon the Flood taking place (ANOCC, Part 1, para. 52);

e) Ms. Anjos breached those duties (ANOCC, Part 1, para. 53), without describing the breach.

[137] In Part 2 of the ANOCC, relief sought, the plaintiff pleads:

> 5.1 Damages against Lora Anjos for direct tortious interference with the financial and legal interests of the plaintiffs in and to the Property and its remediation during the claims adjudication process.

[138] Arguably, the plaintiffs have pleaded a wrongful or unlawful element of the tort by virtue of the allegations of Ms. Anjos breaching the Mayer J. Order by not transferring the Property in a timely manner; however, there is no allegation or suggestion that Ms. Anjos' alleged obstruction and exclusion of the plaintiffs in relation to Ms. Anjos' dealings with the claims adjudication process and remediation were actionable by the third parties against Ms. Anjos, and the plaintiffs have not pleaded that Ms. Anjos' actions taken in relation to the third parties—the credit union, insurance and remediation interests—were done with the intent to harm Mr. Jones or the Estate.

[139] In order to properly plead the elements of the tort, the plaintiffs would have to plead that Ms. Anjos' dealings with the credit union, insurance representatives, and the remediation company, were wrongful or unlawful and were intended to cause harm to the plaintiff, and that harm was in fact caused to the plaintiffs; however, there are no such allegations and elements pleaded.

[140] With no allegation that Ms. Anjos' dealings with the credit union, insurance representatives, and remediation company were wrongful or unlawful as actionable against these parties, and with no allegation that Ms. Anjos intended to cause harm to the plaintiff, the claim for tortious interference discloses no reasonable cause of action against Ms. Anjos, and it is plain and obvious that the cause of action asserted cannot succeed.

The claim for breach of trust

[141] The plaintiffs plead a claim for damages against Lora Anjos for "breach of trust" (Part 2, para. 5 of the ANOCC), and rely on "[t]he law relating to breach of trust" and "constructive trust" (Part 3, paras. 3 and 4 of the ANOCC); however, the respondents do not make any allegation of fact as against Ms. Anjos in relation to a trust.

[142] The only trust allegation in Part 1 of the ANOCC is at para. 49 where the plaintiff alleges that after the Mayer J. Order, Ms. Davidson is a trustee of the Property, holding it in trust for the plaintiff, Eric Jones as the Administrator of the Estate.

[143] As a result, there does not appear to be pleadings supporting a claim against Ms. Anjos for breach of trust.

[144] If the plaintiff seeks to plead the law relating to a constructive trust as against Ms. Anjos, whether remedial or substantive, more is needed.

[145] A starting point is a summary of where a constructive trust may be imposed, as set out in *Schwarzkopf v. McLaughlin*, 2008 BCSC 730, as follows:

> [42] ... There are two categories in which a constructive trust may be imposed. The first is where property has been obtained by the wrongful act of the defendant, such as breach of fiduciary duty or a duty of loyalty, and secondly, where although the defendant has not acted wrongfully in obtaining the property, he would be unjustly enriched to the plaintiff's detriment if he was allowed to keep the property: *Soulos v. Korkontzilas*, 1997 CanLII 346 (SCC), [1997] 2 S.C.R. 217 at paras. 33, 34 and 36.
>
> [43] The four conditions which generally should be satisfied before a constructive trust is imposed in respect of the first category are set out at para. 45:
>
> (1) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
>
> (2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
>
> (3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties and;
>
> (4) There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.
>
> [Emphasis added.]

[146] Here, the plaintiff does not claim a proprietary remedy against Ms. Anjos, raising a question of how the plaintiff's allegations against Ms. Anjos can be plead in constructive trust.

[147] In *Aura Ventures Corp. v. Vancouver (City),* 2023 BCCA 209, the Court of Appeal explained some elements of a remedial constructive trust, as follows:

> [72] As per *Moore v. Sweet*, 2018 SCC 52:
>
> > [32] A constructive trust is a vehicle of equity through which one person is required by operation of law – regardless of any intention – to hold certain property for the benefit of another… In Canada, it is understood primarily as a *remedy*, which may be imposed at a court's discretion where good conscience so requires.
>
> [73] Furthermore "a proper equitable basis *must* exist" before the courts will impose a remedial constructive trust. A plaintiff seeking imposition of a remedial constructive trust must demonstrate some basis on which this remedy can be imposed, such as unjust enrichment or breach of fiduciary duty: *Moore* at para. 33.

> [Italics emphasis in original; underline emphasis added.]

[148] The three elements of unjust enrichment are an enrichment, a corresponding deprivation and absence of any juristic reason for the enrichment: *Pettkus v. Becker*, 1980 CanLII 22 (SCC), [1980] 2 S.C.R 834.

[149] In *BNSF*, the Court of Appeal distinguished between a remedial constructive trust and a substantive constructive trust, as follows:

> [20] The chambers judge referred to *Atlas Cabinets and Furniture Ltd. v. National Trust Co.* (1990) 1990 CanLII 1312 (BC CA), 45 B.C.L.R. (2d) 99 (C.A.), where Mr. Justice Lambert for the Court described two types of constructive trust:
>
> > A substantive constructive trust must be distinguished from a remedial constructive trust. In a substantive constructive trust, the acts of the parties in relation to some property are such that those acts are later declared by a court to have given rise to a substantive constructive trust and to have done so at the time when the acts of the parties brought the trust into being. ... In a remedial constructive trust, on the other hand, the acts of the parties are such that a wrong is done by one of them to another so that, while no substantive trust relationship is then and there brought into being by those acts, nonetheless a remedy is required in relation to property and the court grants that remedy in the form of a declaration which, when the order is made, creates a constructive trust by one of the parties in favour of another party. [At 108; emphasis added.]

[150] In *Nouhi v. Pourtaghi,* 2019 BCSC 794, at para. 25, the Court stated the following regarding pleading a constructive trust:

> [25] In Canada, when a constructive trust is referred to it is generally taken to mean a remedial constructive trust, therefore a plaintiff who seeks a substantive constructive trust should plead that expressly: *BNSF* at paras. 54 and 85.

[151] Here, the plaintiff has not pleaded elements of trust other than pleading a constructive trust, a breach of trust, and damages for breach of trust, without linking any pleadings of fact to the elements of a substantive or remedial constructive trust, for example, in the case of a remedial constructive trust, a fiduciary relationship or the elements of unjust enrichment – enrichment, corresponding deprivation and absence of juristic reason for the enrichment.

[152] *Dufort Testing Services Ltd. v. Berube*, [2004] O.J. No. 6225 (cited in *Laiken ONSC* at para. 56 regarding an independent tortious act), is useful in the context of a constructive trust regarding the proprietary nature of a claim in constructive trust.

[153] In that case, the plaintiffs claimed that the defendants misappropriated technology the plaintiffs alleged they had invented. Two law firm defendants were patent agents retained by some of the defendants. The plaintiffs sought a declaration that the law firms were trustees of their patent rights in the technology. The law firms applied to strike the statement of claim against them for failing to disclose a reasonable cause of action. Constructive principles are discussed as follows:

> 16 In order to impose a constructive trust based on wrongful conduct, the plaintiffs must establish, amongst other things, that the defendants had an equitable obligation that was owed to the plaintiffs and that, in breach of that obligation, and as a result of the defendants' activities, the defendants obtained assets (*Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 (SCC)). The Statement of Claim does not provide a basis upon which to impose an equitable duty on the part of the patent agent defendants towards the plaintiffs. For the reasons stated above, their duty was towards their clients. There is also no allegation that the patent agent defendants have received any assets as a result of their activities. The only thing that the defendants presumably received were their fees.
>
> 17 A constructive trust may also be imposed as a remedy for unjust enrichment (*Becker v. Pettkus*, [1980] 2 S.C.R. 834 (SCC)). However, there are no facts pleaded that would provide a basis for a finding that the patent agent defendants have been unjustly enriched. The Statement of Claim's reference to unjust enrichment is in paragraph 33 and provides that the technology was "used by the Defendants in their business to their profit by way of unjust enrichment and to the Plaintiff's detriment". The reference to Defendants in that paragraph must be to the Carber defendants since it is obvious that the patent agent defendants would not have used the technology. There is no suggestion that the patent agent defendants had any gain other than their fees.
>
> 18 The plaintiffs seek an imposition of a trust, but the defendant patent agents, as distinct from the Carber defendants, have no property over which a trust could be imposed. Any proprietary interest is vested in the patentees, not in their agents.
>
> [Emphasis added.]

[154] The relevance of the above quote to the case at bar becomes clear with reference to Ms. Anjos by inserting “Ms. Anjos” in place of “defendant patent

agents". Specifically, Ms. Anjos had no property over which a trust could be imposed. At relevant times, any proprietary interest was vested in Ms. Davidson as Administratrix of the Estate, not Ms. Anjos.

[155] The plaintiffs do claim a constructive trust over the insurance policy and damages (Part 2, para. 6), but there is no allegation that Ms. Anjos had anything to do with an insurance policy payout or damages in relation to a constructive trust.

[156] It might be pleaded that Ms. Anjos had an equitable obligation to the plaintiffs to transfer the Property pursuant to the Mayer J. Order, but Ms. Anjos did not receive any assets as a result of not transferring the Property, she was not unjustly enriched, and she personally held no property over which a trust could be imposed.

[157] The plaintiffs might respond by submitting, based on *Laiken ONCA*, that Ms. Anjos should be held to the same standard of compliance with the Mayer J. Order as her client, Ms. Davidson, who is a party, but again, that standard of compliance relates to Ms. Anjos' obligation, and failure to transfer the Property, and a possible finding of contempt of court, but not to support a proprietary trust obligation on Ms. Anjos.

[158] The alleged breach of the court order might inform an equitable obligation in trust; however, here, the plaintiffs have not pleaded material facts to support a claim that Ms. Anjos owed any equitable obligation in trust to the plaintiffs, other than the alleged failure of Ms. Anjos to transfer the Property on behalf of Ms. Davidson as Administratrix, to Mr. Jones as Administrator pursuant to the Mayer J. Order.

[159] Finally, the *Dufort Testing* case is also an example of the general principle that a lawyer's duty is to their client and not to a third party, in particular an opposing party, and the existence of a duty to an opposing party would adversely affect the relationship between solicitor and client: *Dufort Testing*, paras. 5-14.

[160] Ms. Anjos notes that, under Rule 3-7(18), a plaintiff is required to state particulars in their pleadings when relying on a breach of trust claim: notice of application, Part 3, para. 17.

[161] In response, the plaintiffs say Ms. Anjos never made a demand for particulars: application response, Part 4 at para. 26.

[162] Particulars are distinct from material facts: *Sahyoun v. Ho*, 2013 BCSC 1143 at para. 27, quoting *BC Practice*, as follows:

> There is a distinction between material facts and particulars. A material fact is one that is essential in order to formulate a complete cause of action. If a material fact is omitted, a cause of action is not effectively pleaded. Particulars, on the other hand, are intended to provide the defendant with sufficient detail to inform him or her of the case he or she has to meet. Particulars are provided to disclose what the pleader intends to prove.

[163] The obligation to plead particulars under Rule 3-7(18) is triggered by pleading one of the enumerated causes of action, not by a written demand for particulars. In other words, the plaintiffs are required to plead particulars whether or not they receive a demand. The plaintiffs have an obligation under Rule 3-1 to set out a concise statement of the material facts giving rise to the claim; to set out the relief sought by the plaintiff; and to set out a concise summary of the legal basis for the relief sought.

[164] However, there is authority in support of the plaintiffs' submission that failure to provide particulars is not in itself a ground to strike pleadings: see *BC Practice* – Rule 9-5 Striking Pleading Rule, as follows:

> Failure to provide particulars is not a ground for striking out a pleading under Rule 9-5(1)(a), even where particulars are required by the *Supreme Court Civil Rules*, as in the case of allegations of fraud, [or breach of trust] to which Rule 3-7(18) specifically applies. If a pleading is lacking in particularity, the proper course is to demand further and better particulars in writing, and if the plaintiff fails to serve them, to apply under Rule 3-7(22) for an order requiring the defendant to serve them: *Frisen v. Hammel*, [1997] B.C.J. No. 510, 28 B.C.L.R. (3d) 354 (S.C.) [at para. 58].

[165] Furthermore, while Rule 3-7(23) requires a party make a written demand for particulars before applying to the court for particulars, this is not the purpose of the application before me. It is an application to strike the pleadings, not an application for particulars.

[166] However, the inclusion or exclusion of particulars is ultimately not determinative. The plaintiff has not pleaded the material facts to support the essential elements of their claim for a constructive trust, or a breach of trust against Ms. Anjos. Therefore, the ANOCC does not disclose a reasonable cause of action against Ms. Anjos in trust, and has no reasonable prospect of success.

The claim in negligence

[167] The plaintiff claims that Ms. Anjos is liable in negligence.

[168] The plaintiffs' pleadings in the ANOCC are that:

a) Ms. Anjos is a lawyer who acted for the defendant Tracey Ann Davidson in Ms. Davidson's personal capacity and as Administratrix (Part 1, paras. 10 and 11);

b) Ms. Anjos owed a duty of care to the plaintiff Administrator, which required her to "ensure the Property was safe from harms including flooding and to take all reasonable steps to ensure its timely remediation upon the flood taking place" (Part 1, para. 52);

c) Ms. Anjos and/or Ms. Davidson breached those duties (Part 1, para. 53).

[169] In support of the claim in negligence, the plaintiffs further plead that Ms. Anjos:

a) knew or ought to have known, as an officer of the court, that Court orders must be obeyed in a timely fashion;

b) knew or ought to have known that, at the time of the flood, Mr. Jones was the real owner of the property and had an interest in the insurance policy and "prompt remediation" of the flood damage (ANOCC, para. 50);

c) "neglected or refused" to transfer the property pursuant to court order, obstructed information about and the transfer of the insurance policies,

obstructed the plaintiff's attempts to address the flood in a timely fashion, and "other such matters as shall be shown;" and

d) assumed control of the insurance claims adjudication process and excluded the plaintiff and their counsel.

[170] In response to these allegations, Ms. Anjos submits that the only person who could breach the Mayer J. Order was Ms. Davidson.

[171] Ms. Anjos also submits that the pleadings plead conclusions, rather than facts: notice of application, Part 1 at para. 10.

[172] Additionally, Ms. Anjos submits that the respondents have failed to "provide any particulars of a relationship between the Plaintiff and the Lawyer [Ms. Anjos] which would give rise to a duty of care": notice of application, Part 1 at para. 16.

[173] To succeed on a claim of negligence, the plaintiff must establish the following essential elements: duty of care, breach of the standard of care, harm, and causation: *Mustapha v. Culligan of Canada Ltd.,* 2008 SCC 27.

[174] Generally, lawyers do not owe a duty of care to third parties who are not their clients, absent "special circumstances or fraud": *Cowichan Tribes v. Canada (Attorney General),* 2007 BCSC 1915 at para. 13.

[175] In *Crooks v. Manolescu*, [1995] B.C.J. No. 17, 1995 CanLII 1818 (B.C.S.C.), the Court found that merely stating the existence of a duty of care is not an allegation of fact but a conclusion of law: at para. 8; see also: *The Public Guardian and Trustee of British Columbia v. Johnston*, 2016 BCSC 1388 at para. 48, aff'd 2017 BCCA 59. When pleadings assert that a duty exists, they must support this conclusion with allegations of material facts: *Crooks* at para. 8.

[176] Lawyers can owe a duty of care to persons other than their client, but before such a duty can be found to exist, facts must be alleged in pleadings which describe the relationship and the circumstances from which the duty arose: *Crooks* at para. 12.

[177] Therefore, whether the claim against Ms. Anjos has a reasonable prospect of success turns on whether the plaintiff has properly pleaded the relationship and the circumstances from which the duty arose.

[178] The plaintiffs pleading a duty of care which required Ms. Anjos to ensure the Property was safe and to take reasonable steps for its timely remediation (Part 1, para. 52 above), is an example of a formulation of the standard of care in terms of duty, as described in *Esser v. Luoma*, 2004 BCCA 359 at paras. 30-33.

[179] By comparison, the proper pleading of duty of care involves the two-stage analysis in *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.)—reasonably foreseeable harm and proximity focussing on the relationship, and policy considerations, confirmed by the Supreme Court of Canada in *Cooper v. Hobart*, 2001 SCC 79 (CanLII), [2001] 3 S.C.R. 57, with its emphasis on proximity to describe the relationship necessary to ground a duty of care.

[180] The FANOCC in Part 3 references the *Esser*, *Anns* and *Cooper* cases, but the plaintiffs' pleadings do not separate the duty of care and standard of care as set out in the cases, and as outlined well in the example of the form of negligence pleading in *BC Court Forms* quoted below.

[181] The plaintiffs plead in Part 3—the legal basis of the ANOCC, at para. 2: "[t]he law relating to negligence including duty, breach of the standard of care, causation and factual and legal damages," but the plaintiffs do not clearly articulate the allegations of materials facts relating to these elements of negligence in Part 1—statement of facts.

[182] The ANOCC amendments regarding a lawyer's alleged negligence include paras. 4.2 and 4.3 in Part 3, as follows:

> 4.2 The law relating to a lawyer's liability in negligence to third parties, which the original civil or criminal context, precludes a duty of care to the other party [citing *Laiken ONSC* at para. 57.]
>
> 4.3 The law relating to negligence in the context of a court order arising from a trial in which the lawyer participates, holding the lawyer to the same standard of compliance as the client and precluding acting contrary to it: *Carey v. Lakin* [*sic*].

[183] This ANOCC para. 4.2 of Part 3 cites *Laiken ONSC* at para. 57. That para. 57 of *Laiken ONSC* refers to the plaintiff claiming against the lawyer, but not while acting as a lawyer. Para. 57 states that "she [Ms. Laiken] alleges that he [Mr. Carey] fell below the standard of care expected of a 'reasonable person' by his breach of the *Mareva* Order."

[184] The plaintiffs rely heavily on the *Laiken* cases, in my view over-emphasizing the concept of a lawyer being held to the same "standard of compliance" of a court order as the client, extending it to a claim in damages, when the *Laiken* cases cited, as I have repeated, are focussed on contempt for breach of the court order, not Ms. Laiken's claim in negligence against the lawyer, Mr. Carey.

[185] As discussed above in the section on breach of a court order, *Laiken ONSC* is useful for the principle that a breach of a court order in limited circumstances may inform a duty of care; however, Ms. Laiken's ultimate claim against the lawyer is referred to only briefly in *Laiken ONSC* by distinguishing between the lawyer's actions as a lawyer, and actions outside of his duty as a lawyer, but Ms. Laiken's claim in negligence against the lawyer is not otherwise addressed in the *Laiken* proceedings cited, except where the court in conclusion states that whether or not Mr. Carey owed a duty of care to Ms. Laiken was best determined on a fully developed record at trial (para. 68).

[186] Here, the plaintiffs do not make such a distinction in the Ms. Anjos' actions, if there is any, in their allegations about Ms. Anjos' acts or omissions as a lawyer, or acting outside the scope of her duty as a lawyer.

[187] I agree with Ms. Anjos that the plaintiffs have not clearly pleaded facts alleging the duty of care as between Ms. Anjos and the plaintiffs. As noted above, in the ANOCC, Part 1, para. 52, the plaintiffs allege that "Lora Anjos owed a duty of care to Eric Jones ..." without clearly pleading the relationship between the two to establish a duty of care. At para. 53 the plaintiffs allege that Ms. Anjos "breached those duties"; however, particulars of the breach of the duty are not relevant to the question of the existence of the duty: *Crooks* at para. 8.

[188] Typically, the alleged facts of a claim in negligence would plead the relationship of proximity for the duty of care, then allege the standard of care, then allege that the defendant breached the standard of care, and that breach caused the plaintiff damage and how that damage was caused.

[189] Although the ANOCC does not plead the elements of a cause of action in negligence in an organized fashion, and appears to over-extend the meaning of "standard of compliance" in *Laiken SCC* beyond the need to comply with a court order by alleging support for a claim for damages, the reference to the *Laiken* cases does provide some support for an element of a cause of action in negligence, that is, informing a duty of care (*Laiken ONSC* at para. 59).

[190] A useful precedent for pleading the elements of the cause of action in negligence is provided in *BC Court Forms*, as follows:

> **Chapter 11 Pleadings**
> **...**
> **11F169 Negligence—Generally—Cause of Action**
>
> [*where duty of care arises out of established law concerning relationship between plaintiff and defendant*]
>
> 1. The Defendant owed a duty of care to the Plaintiff by virtue of [*state relationship between plaintiff and defendant, providing particulars of how and when that relationship came into existence*].
>
> OR
>
> **[*where existence of duty of care may be problematic or even novel in terms of current case law*]**
>
> 1. The Defendant owed a **duty of care** to the Plaintiff by virtue of the following facts:
>
> (a) [*set out facts showing that the plaintiff was a reasonably foreseeable victim harm that might result from the defendant's conduct*];
>
> (b) [*set out facts that show the closeness and directness of the relationship between the parties, as they relate both to the factors of legal proximity, and factual proximity*], and
>
> (c) [*set out facts that relate to considerations such as the reasonable expectations of the parties, representations, reliance, and the property or other interests involved, that make it just and fair having regard to the*

> *relationship between the parties to impose a duty of care upon the defendant*] [citation omitted].
>
> 2. The Defendant **breached the duty of care** owed to the Plaintiff in that the Defendant **failed to exercise the standard of care** required of a reasonable and careful person in the circumstances in that [*set out that aspect of the standard of care that was breached and the facts relating to the breach of the standard of care, including the specific conditions or circumstances in which the standard of care was not met*] [citation omitted].
>
> 3. **The Plaintiff suffered loss [injuries] and damages as a direct result of the negligence of the Defendants**. Particulars of the loss [injuries] and damages are [set out in the following paragraphs] [or are as follows: [*set out particulars of loss, injuries and damages*]] [citation omitted].
>
> OR
>
> 3. The negligence of the Defendant was a direct cause [*or* caused or contributed to] the Plaintiff's, loss [injuries] and damages, particulars of which are [set out in the following paragraphs] [*or* are as follows: set out particulars of loss, injuries and damages] [citation omitted].
>
> [Emphasis added.]

[191] As can be seen in this precedent, each element of the cause of action in negligence is clearly set out in an organized faction, with the material facts clearly linked to the relevant element of the cause of action.

[192] Regarding negligence of a lawyer to third parties, the FANOCC adds para. 2.1 to Part 3 with additional cases on "the law relating to the liability of a lawyer in negligence to third parties."

[193] The plaintiffs cite *Larkin v. Glase*, 2009 BCCA 321, a family law matter in which the appellant was found at trial to be in contempt of court for violation of four previous court orders, for which he was sentenced to ten days in jail. The issues before the Court of Appeal were the appropriate response of the Court to the failure of the appellant to comply with court orders, and whether the ten-day sentence for contempt was reasonable.

[194] The *Larkin* case does not appear to assist the plaintiffs as it emphasizes the point made above that breach of a court order is a serious matter that may be

punished by a finding of contempt of court, which is an issue between the party and the court, and is not concerned with the merits of the dispute, as follows:

> [8] Contempt of court is an issue between a party and the court. It is not concerned with the merits of the dispute between parties to litigation (*Frith v. Frith,* 2008 BCCA 2 at para. 36, 47 R.F.L. (6th) 286). Although the issue is pursued by the respondent, the court's determination that Mr. Glase is in contempt only indirectly affects her interests. As was stated in *Ontario (Attorney General) v. Paul Magder Furs Ltd.* (1992), 1992 CanLII 7704 (ON CA), 10 O.R. (3d) 46 at 53, 94 D.L.R. (4th) 748 (C.A.), a finding of contempt of court "transcends the dispute between the parties; it is one that strikes at the very heart of the administration of justice ...".
> [9] A court's ability to punish for contempt is at the core of its jurisdiction (*MacMillan Bloedel Ltd. v. Simpson,* 1995 CanLII 57 (SCC), [1995] 4 S.C.R. 725, 130 D.L.R. (4th) 385). It is a jurisdiction that must be exercised *strictissimi juris*, that is, the court must ensure no one is found to have transgressed without a full consideration of all the relevant information, including any explanations for the conduct of persons accused of violating court orders (*Frith; Claggett v. Claggett* (1945), 1945 CanLII 271 (BC CA), 61 B.C.R. 238 (C.A.)).
>
> [Emphasis added.]

[195] The plaintiff also cites the *Esser* case, where the Court found a notary, and by analogy a solicitor, may be liable to a third party if the third party shows they reasonably relied on the notary, or that the notary assumed a contractual duty to one person to do something for the benefit of the third party: *Esser*, para. 32.

[196] Here, Mr. Jones has not pleaded that he reasonably relied on Ms. Anjos in a manner that would give rise to a duty. For example, he does not claim that Ms. Anjos gave him legal advice about the insurance and remediation process and then he relied on it. In fact, he claims the opposite—that Ms. Anjos excluded him from her communications with the insurance companies and credit union. The plaintiffs also do not plead that Ms. Anjos had a contractual duty to take actions that would benefit them.

[197] However, in *Esser* the Court of Appeal does refer to the trial judge having referred to cases where a duty of care has been found to exist, including *Tracy v. Atkins*, 1979 CanLII 760, 16 B.C.L.R. 223 (BCCA), and *Whittingham v. Crease & Co.*, 1978 CanLII 1930, 88 D.L.R. (3d) 353 (BCSC), also cited in *Tracy*. In *Esser*, the

Court of Appeal refers to *Whittingham* as being "an example of the 'disappointed beneficiary' cases brought against solicitors who fail to draw up wills as instructed by their clients."

[198] Here, the plaintiffs' claim against Ms. Anjos is not directly analogous to the disappointed beneficiary cases, but there are some parallels in terms of the plaintiffs' allegations of the failure of Ms. Anjos to transfer the Property to the plaintiff as Administrator, and her subsequent dealings with the third parties, the credit union, the insurance representatives, the remediation company, and the remediation itself.

[199] The plaintiffs also cite *Dhillon v. Jaffer*, 2012 BCCA 156, in which the Court of Appeal found that the respondent lawyer, who acted for the appellant's wife, breached his duty of care to the appellant as a non-client, and was liable to the appellant in negligence for damages for having transferred the appellant's funds from the sale of the matrimonial home to the appellant's estranged wife without his approval.

[200] The Court of Appeal's discussion of the elements of negligence are useful relating to the question of whether the lawyer owed a duty of care to the non-client, citing the *Mustapha*, *Anns* and *Cooper* cases*,* ultimately asking whether in carrying out his solicitor/client duties to his client, the lawyer was under an obligation to be mindful of the non-clients' interests. In the circumstances of that case, which was the handling of trust funds pursuant to a court order, the Court of Appeal found the answer to that question to be yes.

[201] Considering the principles of the cases discussed above, in these circumstances of the Mayer J. Order to transfer the Property, and Ms. Davidson and Ms. Anjos' failure to timely transfer the Property, followed by the Flood, and the allegations against Ms. Anjos related to her dealings with the credit union, insurance representatives, and remediation company, and the remediation itself, I cannot say that the plaintiffs' claims against Ms. Anjos in negligence cannot succeed as a matter of law, and I cannot say that it is plain and obvious that the pleadings are bound to fail and cannot be cured.

[202] While the plaintiffs' pleadings in negligence in the ANOCC are deficient as described above in not clearly pleading the separate elements of duty of care, standard of care, breach and causation, I consider that the pleadings may be capable of amendment to more clearly plead the allegations against Ms. Anjos in relation to the elements of a cause of action in negligence.

[203] A starting point is the form of pleading in negligence quoted above in *BC Court Forms*, which provides a framework for the plaintiffs to more clearly plead the plaintiffs' allegations of negligence against Ms. Anjos in her role as a lawyer, or acting outside that role, that is, the allegations of a duty of care, standard of care, breach of the standard of care, and damage caused by the alleged negligence of Ms. Anjos.

[204] As a result, the application of Ms. Anjos to strike out those portions of the ANOCC pleading negligence against Ms. Anjos, and the application of Ms. Anjos to strike out the claim against Ms. Anjos generally are denied.

[205] The plaintiffs are granted leave to amend and file a further amended notice of civil claim within 30 days of the date of these reasons to amend the ANOCC in negligence, taking into consideration these reasons.

Amend the Pleadings?

[206] I have granted leave to the plaintiffs to amend their pleadings in negligence. The question remains whether the other causes of action pleaded by the plaintiffs can be preserved, that is, the claims in breach of a court order, trust, and unlawful interference with economic interests.

[207] When there is an attack on a pleading as showing no reasonable claim or defence, the court is well advised to first consider whether the pleading can be preserved by amendment: *International Taoist Church* at para. 28.

[208] In *Jones v. Bank of Nova Scotia*, 2018 BCCA 381, the Court of Appeal discussed the discretion to permit an amendment to pleadings, as follows:

> [35] ... The exercise of that discretion may require consideration, including the degree to which the pleadings are deficient, of the extent to which the deficiencies may be addressed by an obvious or straightforward amendment, the apparent merit of the claim that may be made out with amendment and the prejudice that may be incurred by dismissing the claim. The exercise of that discretion requires consideration of the factors set out in Rule 1-3:
>
> > (1) The object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits.
> >
> > (2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to
> >
> > > (a) the amount involved in the proceeding,
> > >
> > > (b) the importance of the issues in dispute, and
> > >
> > > (c) the complexity of the proceeding.

[209] Here, in analysing the pleadings pursuant to Rule 9-5(1)(a) above, I have described the alleged cause of action for breach of a court order as failing to disclose a cause of action. As a result, these pleadings are deficient to a high degree and I do not consider the deficiencies to be capable of being addressed, or of straightforward amendment. I have noted the plaintiff's suggestion that no cause of action for breach of a court order is pleaded; however, clearly the ANOCC does plead damage for breach of a court order, so this simply confirms that no amendment on that basis is available.

[210] Similarly, for the claim in trust against Ms. Anjos, the pleadings are deficient to a high degree and I do not consider the deficiencies to be capable of being addressed, or of straightforward amendment.

[211] For the plaintiffs' claim for interference with the plaintiffs' financial and legal interests in the Property, which I have assessed as unlawful interference with economic relations, also referred to as "unlawful interference with economic relations", also referred to as "interference with a trade or business by unlawful means", "intentional interference with economic relations", "causing loss by unlawful means", or the "unlawful means" tort (*Bram* at para. 12), the plaintiffs have not pleaded the material facts to support the essential elements of the tort. The plaintiffs

have not alleged a wrong by Ms. Anjos that would be actionable against the third parties, and the plaintiffs have not alleged that Ms. Anjos' actions taken in relation to the third parties were done with the intent to harm Mr. Jones or the Estate.

[212] As a result, the ANOCC pleadings for interference with the plaintiffs' financial and legal interests in the Property are deficient to a high degree and I do not consider the deficiencies to be capable of being addressed, or of straightforward amendment.

[213] Regarding consideration of the factors in Rule 1-3, I do not consider these factors to weigh in favour of permitting an amendment to the pleadings when considered in the context of the deficiencies referred to above. The issues raised by the plaintiff against Ms. Anjos are of significance to the parties, but they do not have a broader impact. The proceeding has some complexity, but given the deficiency of the pleadings, an amendment to the existing pleadings would not assist in determination of the proceeding in a just, speedy and inexpensive determination on its merits.

Rule 9-5(1)(b) and 9-5(1)(d): Is the ANOCC otherwise unnecessary, scandalous, frivolous or vexatious, or is the NOCC an abuse of process?

[214] Ms. Anjos also claims that the ANOCC is scandalous, frivolous or vexatious under Rule 9-5(1)(b), or an abuse of process under Rule 9-5(1)(d).

[215] Unlike under Rule 9-5(1)(a), the Court is permitted to consider evidence when weighing whether pleadings are vexatious or otherwise an abuse of the court process under subrules (b) and (d). The plaintiff has filed an affidavit on this application, which I have only considered in addressing the arguments related to Rules 9-5(1)(b) and (d).

Rule 9-5(1)(b): Is the ANOCC otherwise unnecessary, scandalous, frivolous or vexatious?

[216] Pleadings may be unnecessary or vexatious if they do not go to establishing the action will not succeed; the action would serve no useful purpose and would

waste resources; or the pleading is so confusing that "it is difficult to understand what is pleaded": *Willow v. Chong*, 2013 BCSC 1083 at para. 20.

[217] Referring to some of the evidence, the affidavit filed by the plaintiffs provides some evidence that some of Ms. Anjos' actions in terms of her communications with the insurance representatives might be characterized as taken to protect the interests of her client, Ms. Davidson, with respect to Ms. Davidson's interest in the Property, which at relevant times following the Mayer J. Order was contingent on the outcome of her appeal of that order, ultimately unsuccessful.

[218] However, unexplained is the Property not having been transferred pursuant to the Mayer J. Order, nor a stay application of that order having been made.

[219] There may also be a question of Ms. Anjos' involvement in the remediation of the Property following the Flood; however, I make no findings of fact, and I emphasize that my comments are based only on the allegations and the very limited evidence filed only by the plaintiffs. Ms. Anjos may have a very valid response to these questions and the affidavit evidence. The purpose of my comments is simply to address the allegation that the pleadings against Ms. Anjos are unnecessary, scandalous, frivolous or vexatious. I am not convinced that they are.

[220] Although the claim in negligence against Ms. Anjos may be a difficult claim to make, I am not convinced that the claim of the plaintiffs against Ms. Anjos in negligence can be considered unnecessary, scandalous, frivolous or vexatious.

Rule 9-5(1)(d): Is the ANOCC an abuse of process?

[221] There is no closed list of conduct that constitutes an abuse of process: *Babavic v. Babowech*, [1993] B.C.J. No. 1802, 1993 CarswellBC 2950 at para. 18; Jensen v. Ross, 2014 BCCA 173 at para. 40. As stated in *Babavic* and quoted in *Jensen*:

> [17] ... The principle of abuse of process is somewhat amorphous. The discretion afforded courts to dismiss actions on the ground of abuse of process extends to any circumstance in which the court process is used for an improper purpose. …

> [18] The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior or improper purpose; proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression. ..

[222] Ms. Anjos submits that the plaintiffs' "only discernible purpose" for naming Ms. Anjos as a defendant is "to seek to abrogate solicitor-client privilege as [Ms. Anjos] cannot respond fully to the claims without revealing privileged communications with Davidson": notice of application, Part 3 at para. 20. Ms. Anjos argues that this amounts to an abuse of process.

[223] In response, the plaintiff notes that, on August 29, 2023, his counsel sent a letter to counsel for Ms. Anjos "to address solicitor client privilege and the implied undertaking on the litigation file": application response, Part 4 at para. 27.

[224] The letter states that respondents' counsel's view is that Ms. Anjos' counsel should list any documents they claim are privileged under Part 4 of Form 22: Documents for which privilege is claimed: Affidavit #1 of Emma Wright, dated January 22, 2024, Exhibit FF.

[225] Without more, it is difficult to conclude that the plaintiffs brought the claim for the improper purpose of an attempt to abrogate solicitor-client privilege.

[226] Counsel for Ms. Anjos does not explain why the Court should conclude the purpose of the plaintiffs' application is to abrogate solicitor-client privilege as opposed to, say, obtaining damages from Ms. Anjos.

[227] At the same time, the plaintiffs have not offered a compelling argument denying this. The plaintiffs simply point to a letter stating that counsel should list privileged documents under the appropriate section of Form 22. Without more, it would also be inappropriate to conclude that any delay in producing documents is because those documents contain information that harms Ms. Anjos' case, rather than because of a genuine effort to protect solicitor-client privilege.

[228] For these reasons, the pleadings should not be struck as an abuse of process under Rule 9-5(1)(d) on the basis that they were improperly brought in an attempt to abrogate privilege, and I do not consider the ANOCC as a whole to be an abuse of process.

[229] I note that one of the plaintiffs' amendments in the FANOCC at para. 35.10 is that "[a]s a practical matter, at all material times Tracey Ann Davidson was and remains effectively insolvent".

[230] This pleading is not material to the plaintiffs' claims. If Ms. Davidson's alleged insolvency is a motivation for the claim against Ms. Anjos, it would be inappropriate and potentially an abuse of process; however, as it is simply an irrelevant pleading, I make no finding in that respect.

Conclusion

[231] To summarize the above, the defendant Lora Anjos' application for an order that the action be dismissed against her is dismissed.

[232] The plaintiff's claims in the ANOCC against Ms. Anjos alleging as a cause of action a breach of the Mayer J. Order, breach of trust and constructive trust, and interference with the plaintiffs' financial and legal interests in the Property are dismissed, and the following portions of the ANOCC are struck out regarding breach of the Mayer J. Order; breach of trust and constructive trust; and interference with the plaintiffs' financial and legal interests in the Property:

a) Strike out the second para. 39.2 of Part 1 regarding the alleged direct tort;

b) Amend para. 5 of Part 2 to limit relief sought against Lora Anjos to negligence.

c) Strike out para. 5.1 of Part 2;

d) Strike out para 4.1 of Part 3, with leave to amend to move the citations to paras. 4.2 and/or para. 4.3 of Part 3;

[233] The plaintiffs are granted leave to amend the Amended Notice of Civil Claim in accordance with these reasons relating to the claim in negligence. Any amendments to the ANOCC are to be made and filed within 30 days of the date of these reasons.

"Jones J".

SCHEDULE "A"

Portions of NOCC sought by Applicant to be struck

Part 1: STATEMENT OF FACTS

...

10. The defendant Lora Anjos is a British Columbia lawyer who has an office at Suite 1400 – 1125 Howe Street, Vancouver, BC V6Z 2K8.

11. At all material times, Lora Anjos acted for Tracey Ann Davison in her personal capacity and as Administratrix of the Estate of Larry Daniel Jones, deceased.

…

35.1. Between January and May 18, 2021, the defendants, and each of them had actual or constructive knowledge that the Property was registered in the name of the Estate of Larry Daniel Jones, deceased, was vacant pursuant to a court order and was the subject of ongoing litigation

35.2. Between January and May 18, 2021, the defendants, and each of them had actual or constructive knowledge of the publicly available reasons for judgment and the insurable interests in the Property, which included the estate of Larry Daniel Jones, deceased

35.3. On and before May 18, 2021, the defendants, and each of them had actual or constructive notice of the notice of appeal filed February 1, 2021.

…

39. Beginning on May 21, 2021, Lora Anjos and Tracey Ann Davidson obstruct the plaintiff's attempts to address the flood with Northern Savings Credit Union, Northern Savings Insurance Services Ltd., and Intact Insurance Company.

39.1 Beginning on May 21, 2021 and directly contrary to the previsions and implications of Mr. Justice Mayer's order with respect to the plaintiff's interests in the Property, Lora Anjos takes active steps to exclude the plaintiffs and their counsel and interfere with the plaintiffs' financial and legal interests in the Property.

39.2 Lora Anjos communicates privately and secretly with the defendants Northern Savings Credit Union, Northern Savings Insurance Services Ltd., Sherry McColl, Dawn Fawdrey, Judy Shannon and/or Intact Insurance Company without taking into account, and to the prejudice of, the plaintiff's financial and legal interests in the Property.

39.2. Lora Anjos commits a direct tort against the beneficial, financial and legal interests of the plaintiffs in and to the Property including the proper and timely remediation of it after the flood.

…

41. On August 4, 2021, the plaintiff requests updates about the flood and the insurance coverage on the Property from Lora Anjos and Tracey Ann Davidson. There is no substantive response.

…

50. At all material times, Lora Anjos as an officer of the court, knew or ought to have known that court orders must be obeyed in a timely fashion, and that at the time of the flood, the real owner of the property was Eric Jones as Administrator of the Estate of Larry Daniel Jones, deceased with an interest in the insurance policy and the prompt remediation of the flood damage.

51. Tracey Ann Davidson, Tracey Ann Davidson in her capacity as named but removed Administratrix of the Estate of Larry Daniel Jones, deceased and/or Lora Anjos failed, neglected or refused to transfer the property pursuant to court order, unreasonably obstructed information about and transfer of the insurance policies, obstructed the plaintiff's attempts to address the flood in a timely fashion and such other matters as shall be known.

51.1 Lora Anjos assumed control of the claims adjudication process with the insurance companies such that all communication with the defendants Northern Savings Credit Union, Northern Savings Insurance Services Ltd., Sherry McColl, Dawn Fawdrey, Judy Shannon and Intact Insurance Company went through her office, and excluded the plaintiffs and their counsel from information and input.

52. Tracey Ann Davidson, Tracey Ann Davidson in her capacity as named but removed Administratrix of the Estate of Larry Daniel Jones, deceased and/or Lora Anjos owed a duty of care to Eric Jones as Administrator of the Estate of Larry Daniel Jones, deceased to ensure the Property was safe from harms including flooding and to take all reasonable steps to ensure its timely remediation upon the flood taking place.

53. Tracey Ann Davidson, Tracey Ann Davidson in her capacity as named but removed Administratrix of the Estate of Larry Daniel Jones, deceased and/or Lora Anjos breached those duties.

…

Part 2: RELIEF SOUGHT

…

5. Damages against Tracey Ann Davison, Tracey Ann Davidson in her capacity as Administratrix of the Estate of Larry Daniel Jones, deceased and Lora Anjos for breach of the court order of Justice Mayer, breach of trust and negligence;

5.1 Damages against Lora Anjos for direct tortious interference with the financial and legal interests of the plaintiffs in and to the Property and its remediation during the claims adjudication process;

…

Part 3: LEGAL BASIS

…

4.1 The law relating to a lawyer's liability to third parties for an intentional tort. Liability of an Attorney for Damages to the Opposing Party by Stuart Bussey, QC, Linda Jenson and Bottom Line Research;

Laiken v. Carey; *Sabourin v. Laiken*, 2011 ONSC 5892 (CanLII);
Sabourin and Sun Group of Companies v. Laiken, 2013 ONCA 530 (CanLII; and
Carey v. Laiken, 2015 SCC 17 (CanLII)

4.2 The law relating to a lawyer's liability in negligence to third parties, which in the ordinary civil or criminal context, precludes a duty of care to the other party.

Laiken v. Carey; Sabourin v. Laiken, supra at para. 57

4.3 The law relating to negligence in the context of a court order arising from a trial in which the lawyer participates, holding the lawyer to the same standard of compliance as the client and precluding acting contrary to it: *Carey v. Lakin.*

…

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

After a trial, Mr. Justice Mayer removed an administratrix, appointed the deceased's son administrator and ordered the former administratrix to transfer the property to him. The property was not transferred, a flood occurred and the insurance company retrospectively voided the policy and denied coverage. The former administratrix and her lawyer obstructed the insurance claims process.