

COURT OF KING’S BENCH OF MANITOBA

B E T W E E N:

ROBERT ARNOLD VOSTERS,) Robert Arnold Vosters
) on his own behalf
 plaintiff,)
)
 -and-)
)
 S.A.M. MANAGEMENT INC. and JENNIFER) Adam D. Pollock
 MAIDENS and VASA LUND ESTATES INC.) for the defendant Jennifer
 and NEIL CARLSON and VASA LUND ESTATES) Maidens
 TENANTS ASSOCIATION and JIM) Timothy J. Lach
 WINTEMUTE,) For the defendants Vasa
) Lund Tenants Association,
 defendants.) Jim Wintemute and Neil
) Carlson
)
)
) Judgement delivered:
) March 6, 2026

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] The plaintiff claims wrongful termination, breach of contract, breach of fiduciary duty, harassment and intimidation, stress, anxiety, embarrassment and humiliation, and defamation against the defendants (the Claim).

[2] The defendant S.A.M. Management Inc., properly named as S.A.M. (Management) Inc. (S.A.M.), and the defendant Vasa Lund Estates Inc. (VLE) have filed statements of defence and crossclaims against each other.

[3] The defendants, Neil Carlson, Jim Wintemute and the Vasa Lund Estates Tenants Association (the Association) move to strike out the Claim in its entirety against them. The defendant Jennifer Maidens has brought her own motion to strike the Claim in its entirety as against her. These four defendants are referred to as the moving defendants.

DECISION

[4] The Claim is struck in its entirety against the moving defendants. Leave to amend is granted only with respect to a properly pleaded claim in defamation and only against the specific individual(s) alleged to have made the defamatory statement(s).

FACTUAL BACKGROUND

[5] The plaintiff was employed as a resident caretaker at 5445 Roblin Boulevard in Winnipeg (the Property). The Property was managed by S.A.M., a non-profit organization. Jennifer Maidens served as a senior property manager with S.A.M. in relation to the Property.

[6] VLE is a non-profit organization. Neil Carlson was the chair of VLE's volunteer Board of Directors, which provides general oversight of VLE.

[7] The Association (correctly named the Vasa Lund Estate Tenants Council) is a volunteer-led body of eight or nine tenants that raises residents' concerns and reports to the VLE Board. Jim Wintemute served as the Association's President.

[8] The plaintiff commenced employment on November 1, 2022, under a written employment contract as the Property's resident caretaker at the Property. His employment was terminated on January 10, 2024.

ANALYSIS

[9] Carlson, Wintemute and the Association move under all four grounds of Rule 25.11 (1) of the Court of King's Bench Rules, M.R. 553/88 (the Rules), which provides that a pleading may be struck if it:

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious;
- (c) is an abuse of the process of the court; or
- (d) does not disclose a reasonable cause of action or defence.

[10] Maidens moves under Rule 25.11(1)(d) only, asserting the Claim discloses no reasonable cause of action against her.

[11] Because all moving defendants rely on Rule 25.11(1)(d), I begin with whether the Claim discloses a reasonable cause of action against each of them.

IS THERE A REASONABLE CAUSE OF ACTION AGAINST THE MOVING DEFENDANTS?

[12] The causes of action pleaded or purportedly pleaded against the moving defendants include claims for wrongful termination, breach of contract, breach of due diligence and/or fiduciary duty, stress, anxiety, embarrassment and humiliation, and defamation.

[13] Where identical causes of action are advanced against multiple defendants, the plaintiff must plead material facts showing either that each defendant's role is the same in all material respects or, alternatively, particularized facts supporting the claim against

each defendant individually. See ***Dowd et al. v. Skip the Dishes Restaurant Services Inc.***, 2019 MBQB 63 at paras. 66-67, 113-114.

CLAIMS FOR WRONGFUL TERMINATION AND BREACH OF CONTRACT

[14] The plaintiff pleads that he was wrongfully terminated and that terms of his employment contract were breached, asserting he was employed by VLE. The Claim does not allege that any moving defendant was a party to that contract or otherwise in a contractual relationship with the plaintiff.

[15] As there is no pleaded privity of contract between the plaintiff and any moving defendant, the Claim discloses no reasonable cause of action in wrongful dismissal or breach of contract against them. Those claims are struck without leave to amend as against the moving defendants.

CLAIMS FOR BREACH OF DUE DILIGENCE AND/OR FIDUCIARY DUTY

[16] The Claim makes general references to a failure of “due diligence” (e.g. alleged failures by Carlson and the VLE Board to investigate and to “fiduciary duty” (including a general lack of fiduciary responsibility by S.A.M.).

[17] A lack of “due diligence” without more is not a recognized standalone tort. See e.g., ***Fenton Group Investment Ltd. et al v. Riverbend Realty Ltd.***, 2021 MBQB 150. Nor does the Claim plead material facts capable of establishing a fiduciary relationship between the plaintiff and any moving defendant. A fiduciary duty requires, at minimum, an undertaking – express or implied – by the alleged fiduciary duty to act in the other party’s best interests. In the absence of such an undertaking, a fiduciary

claim cannot succeed. See ***Robertson v. Manitoba Keewatinowi Okimakanak Inc.***, 2011 MBCA 4.

[18] Because the Claim pleads no facts showing that any moving defendant undertook to act in the plaintiff's interests, and because "lack of due diligence" is not an independent tort, these claims are struck against the moving defendants without leave to amend.

CLAIMS FOR STRESS, ANXIETY, EMBARRASSMENT AND HUMILIATION

[19] The Claim seeks compensation for stress, anxiety, embarrassment, and humiliation, including in relation to alleged conduct by Maidens. These are not independent causes of action recognized in Manitoba law. To the extent the Claim purports to assert standalone claims for stress, anxiety, embarrassment, or humiliation against the moving defendants, those claims are struck without leave to amend.

CLAIM FOR DEFAMATION

[20] The Claim alleges that one or more defendants stated that the plaintiff withheld building access keys, and that S.A.M. consequently replaced front entrance doors/keys at a cost of \$10,000. To plead defamation, the plaintiff must allege a defamatory statement, referring to the plaintiff, that was communicated to at least one other person. See ***Grant v. Torstar Corp.***, 2009 SCC 61 at para. 28.

[21] As pleaded, the Claim does not identify who made the allegedly defamatory statement(s) or sufficient circumstances of the publication. It therefore fails to disclose a reasonable cause of action in defamation against any specific moving defendant and must be struck on the present pleadings.

[22] However, unlike the claims addressed above, leave to amend is granted only with respect to defamation, and only against the specific moving defendant(s) alleged to have made the statement(s), and provided that the amended pleading has the requisite material facts for a reasonable cause of action in defamation.

[23] The plaintiff is strongly encouraged to obtain legal advice before filing any amended defamation claim, given the potential for significant cost consequences if an amended pleading again fails to disclose a reasonable cause of action.

OTHER GROUNDS UNDER RULE 25.11(1)

[24] Given my conclusion that the Claim does not disclose a reasonable cause of action against the moving defendants, it is unnecessary to determine whether the Claim also should be struck on the additional grounds in Rule 25.11(1)(a)-(c).

CONCLUSION AND ORDER

[25] In conclusion, I order that:

1. The Claim is struck in its entirety as against Jennifer Maidens, Neil Carlson, Jim Wintemute, and the Vasa Lund Estates Tenants Association.
2. Leave to amend is granted only in respect of a properly pleaded claim in defamation, and only against the specific moving defendants(s) alleged to have made the defamatory statement(s).
3. Costs may be spoken to if not agreed.

J. L. Goldenberg
Associate Judge