CITATION: Jugini Anthonipillai v. Azin Ghorbankhani et al, 2026 ONSC 470
COURT FILE NO.: CV-24-00723786-0000
DATE: 20260128

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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JUGINI ANTHONIPILLAI, Plaintiff

AND:

AZIN GHORBANKHANI, AG PROFESSIONAL CORPORATION, and 1956596 ONTARIO LIMITED, Defendants

BEFORE: Parghi J.

COUNSEL: *Gregory Gryguc*, for the Plaintiff

Alexander Melfi and *Kevin Mooibroek*, for the Defendants Azin Ghorbankhani and AG Professional Corporation

Matthew Kersten for the Defendant 1956596 Ontario Limited

HEARD: January 14, 2026

ENDORSEMENT

[1] The defendants move to strike a Statement of Claim in an action arising from a construction mortgage transaction on a property at 27 Dempsey Crescent in Toronto. The property was destroyed by arson and was allegedly under-insured.

[2] The plaintiff, Jugini Anthonipillai, who claims to have had an interest in the property, has sued 1956596 Ontario Limited, carrying on business as Synergy Capital ("Synergy"), for breach of contract. Ms. Anthonipillai also claims negligence, breach of contract, and breach of fiduciary duty against Azin Ghorbankhani, a lawyer, together with Ms. Ghorbankhani's professional corporation, AG Professional Corporation. Synergy was the lender on the mortgage transaction in respect of the property and Ms. Ghorbankhani was counsel to Synergy on the transaction.

[3] All three defendants now move to strike the Statement of Claim without leave to amend on the basis that it discloses no reasonable cause of action against them under rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[4] Ms. Ghorbankhani and AG Professional Corporation move in the alternative to have the action dismissed as vexatious and as an abuse of process under rule 21.01(3)(d)). Synergy moves in the alternative to have the action dismissed because there was a prior proceeding in which judgment was rendered, and as frivolous, vexatious, and as an abuse of process under rule 21.01(3)(d).

[5] For the reasons below, I grant the defendants' motions to strike under rule 21.01(1)(b), without leave to amend. As such, I need not consider their requests for relief in the alternative.

The law

[6] In a motion to strike under rule 21.01(1)(b), the test is whether, reading the Statement of Claim generously, and assuming that the facts in it can be proved, it is plain and obvious that there is no reasonable prospect that the action can succeed (*Frank v. Legate*, 2015 ONCA 631, 339 O.A.C. 359, at para. 36; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980).

[7] The facts pleaded in the Statement of Claim "are the firm basis upon which the possibility of success of the claim must be evaluated" under rule 21.01(1)(b); a party must plead all the facts that it must prove to establish a cause of action (*Floryan v. Luke et al.*, 2023 ONSC 5108, at para. 8) .

[8] All allegations of fact pleaded are generally assumed to be true for the purposes of this analysis. However, this principle does not apply if the pleaded factual allegations are patently ridiculous or manifestly incapable of proof (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at paras. 21-22). Nor does it apply to bald conclusory statements of fact unsupported by material facts (*Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121, 136 O.R. (3d) 654, at para. 15; *Trillium Power Wind Corporation v. Ontario (Natural Resources),* 2013 ONCA 683, 117 O.R. (3d) 721, at para 31). In this vein, the Court of Appeal has upheld a lower court's decision to strike a portion of a pleading where "the brief reference to [the] tort in the pleading was so vague that a defendant who read it would have no idea what conduct was being alleged against them" (*Frank,* at para. 84).

[9] The court is to read the impugned pleading generously to allow for drafting deficiencies and the plaintiff's lack of access to key documents and discovery information (*Transamerica Life Canada Inc. v. ING Canada Inc.* (2003), 68 O.R. (3d) 457 (C.A.), at para. 38; *Rausch v. Pickering (City)*, 2013 ONCA 740, 313 O.A.C. 202, at para. 34).

[10] If the impugned pleading is found to be deficient under the analysis described above, and accordingly struck, consideration must be given to granting leave to amend the pleading. Pleadings "should not lightly be struck without leave to amend" and such leave "should only be denied in the clearest of cases when it is plain and obvious that no tenable cause of action exists on the alleged facts and there is no reason to expect that" amending the pleading can cure its deficiencies (*Burns v. RBC Life Insurance Co.,* 2019 ONSC 6977, at para. 21). Whether the defendant would be prejudiced is a factor to be considered when deciding whether to grant leave to amend a pleading (*South Holly Holdings Limited v. The Toronto-Dominion Bank*, 2007 ONCA 456, at para. 6).

The Ghorbankhani and AG Professional Corporation motion to strike

[11] Ms. Ghorbankhani is a lawyer who was retained to act for Synergy, the lender in the mortgage transaction at issue. The mortgage was registered on title to the property. Ms.

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Anthonipillai claims to have had an interest in the property. It is common ground between the parties that Ms. Ghorbankhani acted as the lawyer only for Synergy, and not for the borrower, allegedly a partner of Ms. Anthonipillai, who had his own lawyer. Ms. Anthonipillai also appears to have had her own lawyer, against whom she has commenced a separate action for negligence and breach of contract.

Breach of contract

[12] Reading the Statement of Claim liberally, as I must in this motion, the breach of contract claim advanced against Ms. Ghorbankhani and AG Professional Corporation is that they breached the mortgage agreement by releasing, or allowing for the release of, the mortgage funds to the borrower and guarantor for purposes other than the construction of the property, and by failing to make sure that there was sufficient insurance on the property. This claim is articulated in paragraphs 9, 10, and 14 of the Statement of Claim.

[13] It is plain and obvious that this claim cannot succeed. The mortgage agreement was entered into between Synergy and the borrower. Neither Ms. Ghorbankhani nor Ms. Anthonipillai are parties to that contract. It is trite law that under the doctrine of privity of contract, "no one but the parties to a contract can be bound by it or entitled under it" (*Brown v. Belleville (City)*, 2013 ONCA 148, at para. 73). As a non-party to the contract, Ms. Anthonipillai cannot advance a claim in contract. Likewise, as a non-party, Ms. Ghorbankhani cannot be sued under the contract.

[14] As such, the claim of breach of contract against Ms. Ghorbankhani and AG Professional Corporation is untenable and must be struck.

Negligence and breach of fiduciary duty

[15] The negligence and breach of fiduciary duty claim, pleaded at paragraphs 15 through 19 of the Statement of Claim, arises from the same acts underlying the breach of contract claim. It alleges that Ms. Ghorbankhani and AG Professional Corporation owed a duty of care and/or fiduciary duty to Ms. Anthonipillai in respect of the mortgage. It pleads that they failed to protect Ms. Anthonipillai's interests competently and properly by allowing the mortgage to be registered on title without sufficient insurance and by allowing the mortgage funds to be advanced improperly. It alleges that Ms. Ghorbankhani was "contracted to be skillful and protect interests with respect to" the mortgage and was negligent because she "knew or should have known the possible consequences of … a loss greater than insured value."

[16] This claim, too, is incapable of success. For a lawyer to be found professionally negligent, it must first be established that the lawyer owes the plaintiff a duty of care. It is settled law in Ontario that a lawyer owes a duty of care only to their own client, and not to clients represented by their own independent counsel (*Diamond Contracting Ltd. v. McDermid*, 214 O.A.C. 92, at para. 3). The potential harms to which the contrary view could give rise are well-canvassed in the jurisprudence (see, for example, *2116656 Ontario Inc. v. Grant and LLF Lawyers LLP*, 2019 ONSC 114, at paras. 33 and 34).

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[17] It is uncontested that Ms. Anthonipillai was not Ms. Ghorbankhani's client. As such, Ms. Ghorbankhani presumptively owed Ms. Anthonipillai no duty of care.

[18] There is a specific and narrow exception to this general rule: a lawyer may be found to owe a duty to a non-client third party to protect their interests where the solicitor has actual knowledge, from placing themselves in a position of sufficient proximity with the non-client third party, that the non-client third party is relying on the solicitor's skill; the non-client third party in fact relies on the solicitor's guidance and skill; and the reliance is reasonable (*2116656 Ontario Inc.*, at para. 36).

[19] This exceptional circumstance does not arise here. The record is clear that Ms. Ghorbankhani did not have actual knowledge that Ms. Anthonipillai was relying on her skill. Indeed, Ms. Anthonipillai admits that Ms. Ghorbankhani was unaware of her alleged interest in the property at the time of the mortgage transaction. Nor does Ms. Anthonipillai plead any reliance on Ms. Ghorbankhani's guidance and skill.

[20] Ms. Anthonipillai submits that there are special circumstances that urge in favour of finding that Ms. Ghorbankhani nonetheless owed her a duty of care. Those special circumstances consist of the fact that the mortgage at issue was large ($5.5 million) and was a construction mortgage. The suggestion appears to be that these two facts mean that there would be "more people depending on" the mortgage.

[21] I reject this argument. I am taken to no case law in its support. Nor does the argument make sense. The idea that the sheer quantum of a mortgage could create a duty of care between a lawyer and an opposing client is illogical and would have absurd commercial and ethical consequences. The same may be said of the suggestion that the fact that a mortgage is a construction mortgage could, on its own, somehow create legal obligations where they otherwise do not exist.

[22] Because Ms. Ghorbankhani did not owe, and could not have owed, a duty of care to Ms. Anthonipillai, the claim of negligence against her and AG Professional Corporation is untenable and ought to be struck.

[23] Likewise, Ms. Ghorbankhani owed no fiduciary duty to Ms. Anthonipillai. This court has consistently held that a lawyer acting for one party in a proceeding owes neither a duty of care nor a fiduciary duty to the opposite party (*Hamid v. Milaj*, 2013 ONSC 2104, at para. 29).

[24] Because Ms. Ghorbankhani did not owe, and could not have owed, a fiduciary duty to Ms. Anthonipillai, the claim of breach of fiduciary duty against her and AG Professional Corporation is untenable and ought to be struck.

The Synergy motion to strike

[25] The Statement of Claim alleges breach of contract as against Synergy. This claim, set forth at paragraphs 10 and 14, is identical to the breach of contract claim against Ms. Ghorbankhani and AG Professional Corporation: it pleads that Synergy breached the

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mortgage agreement by releasing the funds without ensuring that they were used for the construction and by failing to confirm that adequate insurance was obtained.

[26] It is plain and obvious that this claim cannot succeed. Ms. Anthonipillai is not a party to the mortgage agreement. As such, based on the principle of privity of contract, discussed above, she cannot sue on the mortgage agreement.

[27] The claim against Synergy is accordingly untenable and ought to be struck.

Leave to amend

[28] Having struck the claims against the moving parties, I now consider whether leave to amend the Statement of Claim should be granted.

[29] In my view, it should be not. Per *Burns,* there is no reason to expect that amending the pleading will cure its deficiencies. No amount of amending could create a duty of care or fiduciary duty between Ms. Anthonipillai and Ms. Ghorbankhani where, as a matter of law, none exists. No amount of amending could render Ms. Anthonipillai and Ms. Ghorbankhani parties to the mortgage agreement, surmounting the privity of contract issue that renders the breach of contract claims against all defendants untenable at law. The defects in the Statement of Claim are fundamental and incapable of being cured via amendment.

[30] I therefore deny leave to amend.

Conclusion on the motions

[31] For these reasons, I grant all three moving parties' motions to strike the Statement of Claim under rule 21.01(1)(b). Accordingly, I need not consider their alternative requests for relief.

Costs

[32] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, I may consider the factors enumerated in rule 57.01. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[33] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable".

[34] Applying these factors here, I note, first, that the moving parties were all entirely successful on the motion, and as a consequence have now extracted themselves from the action.

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[35] Additionally, the amounts sought by the moving parties are reasonable. Ms. Ghorbankhani and AG Professional Corporation's total costs on the motion and underlying action are $15,173. Synergy's are $8,042.89. These costs include the time required to prepare pleadings, attend at the case conference and this motion, and prepare materials in support of the motion to strike. Those materials were clear and helpful to the court, as were counsel's oral submissions. Tasks were delegated to more junior members of the counsel team as appropriate.

[36] I am also of the view that these amounts were in the reasonable contemplation of the plaintiff. While the plaintiff's costs were less than those of either defendant, it is also the case that the plaintiff's response to the motion was significantly less substantive than either moving party's case. In effect, the plaintiff asked me to make a novel finding based on minimal argument and no jurisprudential authority. The defendants' materials were more substantive and thorough, offering an appropriately detailed discussion of the pleadings and the law. Accordingly, such materials necessarily took more time to prepare. The plaintiff's costs are therefore not a proper gauge of reasonable costs.

[37] I award the costs in the amounts of $14,000 to Ms. Ghorbankhani and AG Professional Corporation and $8,000 to Synergy, inclusive of all fees, disbursements, and taxes, to be paid within 30 days. In my view, this result is fair and reasonable in all the circumstances.

Parghi J.

Date: January 28, 2026

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