

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Bridal Falls Development Corp. v. Bridal
Falls RV Park Inc.,
2023 BCSC 156

Date: 20230202
Docket: S217748
Registry: Vancouver

Between:

Bridal Falls Development Corp.

Plaintiff

And

Bridal Falls RV Park Inc.

Defendant

Before: Master Hughes

Reasons for Judgment

Counsel for Plaintiff:

R. Shaw

Counsel for Defendant and proposed
parties Arnold Poettcker and Terry Dirks:

T. Boyd

Counsel for proposed parties Don Munro,
Don Munro PREC and West Coast Realty
Ltd.:

A. Peck

Place and Date of Trial/Hearing:

Vancouver, B.C.
November 17, 2022

Place and Date of Judgment:

Vancouver, B.C.
February 2, 2023

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Introduction

[1] This proceeding arises from a failed real estate transaction concerning the sale of properties owned by the defendant (referred to in the pleadings as the “Seller”) and located at 53480 Bridal Falls, Chilliwack, BC (the “Properties”). The plaintiff alleges that it was induced into taking an assignment of the contract of purchase and sale by representations as to the status of government approvals for development of the Properties (the “Approvals”). Those representations were allegedly made by two directors of the defendant, and by a realtor who acted as a dual agent in the negotiation of the Contract.

[2] In this application, the plaintiff seeks leave to add the two directors, Arnold Poettcker and Terry Dirks (the “Directors”), as defendants to this action, along with the realtor Don Munro (“Mr. Munro”), Don Munro Personal Real Estate Corporation, and West Coast Realty Ltd. (collectively the “Realtors”), to amend the style of cause, and to amend the notice of civil claim to add claims against the Directors and the Realtors.

Background

[3] The background of this matter and sequence of events bear on the determination of the issues on this application.

[4] In or about December 2020, Joe Duminuco (“Mr. Duminuco”), a shareholder of the plaintiff, was approached by Mr. Munro regarding an opportunity to purchase the Properties for development purposes. Mr. Duminuco alleges that Mr. Munro assured him that various government approvals were in place such that development could proceed.

[5] Infinite Expansion Corp. (“Infinite”), of which Mr. Duminuco is also a shareholder, offered to purchase the Properties for \$8 million. A contract of purchase and sale was entered into on February 1, 2021 (the “Contract”), between Infinite as buyer and the defendant as seller.

[6] Mr. Duminuco, as representative of Infinite, alleges that he subsequently attended three meetings, one in each of February, March and April 2021, at which one or both of the Directors also indicated that the Approvals were in place.

[7] On or about May 18, 2021, Infinite assigned the Contract to Belmar Holdings Inc. (“Belmar”). Belmar removed the buyer’s conditions on May 19, 2021.

[8] The plaintiff company was incorporated some time after May 18, 2021, although the specific date was not in the materials before the court. Belmar assigned the Contract to the plaintiff on June 8, 2021.

[9] Infinite, Belmar and the plaintiff are affiliated and closely held corporations, and Mr. Duminuco is the representative of all three.

[10] The completion date of the transaction was extended several times, finally to June 23, 2021. On June 22, 2021, the plaintiff learned that the Approvals had not been obtained by the defendant. The sale did not complete. The parties disagree as to the reason, but that is not relevant to the issues to be determined on this application.

Procedural History

[11] This action was commenced on August 30, 2021, and a response to civil claim and counterclaim were filed on October 6, 2021. This action is in the early stages: no lists of documents have been exchanged, no examinations for discovery are scheduled, nor has a trial date been set.

[12] The parties appeared before Madam Justice Sharma in November 2021, when the defendant applied to remove the certificates of pending litigation (“CPLs”) filed by the plaintiff against the Properties, in order to facilitate a sale to another purchaser. In her unreported oral reasons for judgment dated November 25, 2021, Sharma J. found that the plaintiff’s claim for specific performance of the Contract was doomed to fail, and she ordered that the CPLs be released on the posting of \$500,000 security by the defendant. The security was posted in May 2022, and the CPLs have been released.

[13] No further steps were taken until this application was filed on May 27, 2022.

Test

[14] The parties generally agree on the legal principles that apply to an application to add a party under Rule 6-2(7) of the *Supreme Court Civil Rules*, which are summarized as follows:

1. Discretion to add parties should be generously exercised (*Meade v. Armstrong (City)*, 2011 BCSC 1591 at para. 16; *Delta Sunshine Taxi (1972) Ltd. v. Vancouver (City)*, 2014 BCSC 2100 at para. 12.)

2. In considering an application to add parties as defendants, the court must answer two questions:

- i. Is there a question or issue between the plaintiff and the proposed defendants related to the relief claimed in or the subject matter of the proceeding; and
- ii. Would joinder of the proposed defendants, in the circumstances, be just and convenient to decide the issues between the plaintiff and the proposed defendants in this proceeding?

(*McIntosh v. Nilsson Bros. Inc.*, 2005 BCCA 297 at para. 7)

3. Determination of whether there is a question or issue between the plaintiff and the proposed defendants has a low threshold: is there an issue between them that is not frivolous, or that the plaintiff has a possible cause of action against the proposed party? (*The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 [*Neilson Architects*] at para. 45). Evidence is not required and amendments ought to be liberally allowed (*Meade*, para. 16). If evidence is provided, the court is not to weigh it and assess whether the plaintiff could prove the allegations. It is limited to examining the evidence only to the extent necessary to determine if the required issue between the parties exists (*Neilson Architects*, para. 45).

4. Whether joinder would be just and convenient is a discretionary decision that must be exercised judicially considering factors including: the extent of any delay, the reasons and explanation for the delay, any prejudice arising from the delay, and the degree of connection between the existing action and the new parties and claims to be contemplated. No one factor is determinative. (*Neilson Architects* at para. 46, *Letvad v. Fenwick*, 2000 BCCA 630, at para. 29.)

[15] There is no issue of delay on the part of the plaintiffs in the case at bar, as the limitation period has not yet expired.

The Directors

[16] The Directors oppose the application on three grounds:

1. Neither the pleadings nor the evidence are sufficient to sustain a claim against the Directors in their personal capacities;
2. The proposed pleadings do not ground a claim in misrepresentation on behalf of the plaintiff at all; and
3. In respect of Mr. Dirks, the pleadings and evidence do not particularize a basis for the proposed amendments.

[17] Where a director or officer is sought to be joined as a party in their individual capacity, the pleadings or evidence must show material facts indicating that the individual acted in a tortious manner or in a manner that exhibited a separate and independent identity or interest free from that of the corporate party (*Neilson Architects*, para. 58).

[18] The proposed amended notice of civil claim alleges various representations made by the Directors regarding the status of the Approvals under **Part 1:**

Statement of Facts:

20. Subsequent to entering into the Contract and prior to the removal of the Buyer's Conditions, on several occasions in meetings with Infinite's representatives the Directors affirmed the Agent's Representation. Particulars of those meetings and the representations made by the Directors at same (collectively, the "Directors' Representations") include, but are not limited to, the following:

- a) A meeting in February 2021, at a Tim Hortons in Agassiz, BC, between Infinite's representative, Joe Duminuco, Poettcker and representatives of a civil works contractor Infinite had engaged to discuss the planned civil works for Phases 3 - 6 of the development. The contractor's representative asked Poettcker how quickly they could mobilize to start civil work for Phases 3 - 6 and Poettcker advised that all Phases 3-6 were approved to start servicing now.
- b) A meeting in March 2021, at the Resort between Duminuco, another civil works contractor Infinite engaged, the Directors and other representatives of the Seller at which Poettcker represented that all permits and bonds were in place for Phases 3-6. The Directors advised that copies of all government approvals, permits and other pertinent documents concerning the Properties would be provided to the buyer and its lawyers at the time of closing on the Contract.
- c) A meeting in April 2021, between Duminuco, Munro, the Directors and representatives of Infinite's civil works contractor at the Resort clubhouse to discuss the Infinite's plans for the commencement of civil works in Phases 3 - 6. During the meeting, the Directors again confirmed that all Approvals were in place and civil works could start in Phases 3-6 immediately.

21. The Directors made the Directors' Representations fraudulently in that they made them knowing them to be false or made them without belief in their truth or made them recklessly, not caring whether they were true or false.

[19] It then alleges the following under **Part 3: Legal Basis** with respect to the liability of the Directors:

5. The Seller knowingly or recklessly made false representations to potential buyers of the Properties, like the plaintiff, to induce them to purchase the Properties at a price significantly higher than market value. The representations were made with the intent to be acted upon and the plaintiff did so to its detriment.

...

12. The Directors are personally liable for the fraudulent representations made by the Seller because the representations were given outside the scope of their authority as directors of the Seller.

13. The Directors owed a fiduciary duty to the Seller to act in good faith with its best interest in mind. This duty was owed solely to the Seller. The Directors breached this duty by giving false representations to potential purchasers of the Properties like the plaintiff in their capacity as corporate representatives of the Seller. This was done in bad faith and not in the best interests of the Seller.

[20] The Directors rely on *Neilson Architects* for the proposition that sufficient material facts must be pleaded to support a separate cause of action against the individual defendants apart from any corporate liability. “It is not enough to plead undifferentiated allegations against the corporation and its directors and employees” (*Neilson Architects* at para. 71). The court in *Neilson Architects* held, at para. 72:

The further amended statement of claim does not set out material facts to support commission of an independent tort. The proposed amendments simply introduce the individuals as directors or employees of their corporate entities and then allege that they owed the same duties, committed the same breaches, and caused the same damages as their companies. Nothing in the pleading indicates why the corporate veil should be pierced to find liability on the part of these four individuals.

Neilson Architects concerned allegations of negligence, not the fraudulent misrepresentation alleged here. Further, the proposed pleading alleges that the Directors acted outside the scope of their authority as directors of the seller.

[21] Directors and officers of companies can be held personally liable for their fraudulent misrepresentations if the evidence warrants it (*Ma v. Nutriview Systems Inc.*, 2014 BCSC 725 at para. 221 (affirmed on appeal)). The Alberta court has recently considered this issue in *1234389 Alberta Ltd. v. 606935 Alberta Ltd.*, 2020 ABQB 28 and said:

158 Dr. Phu argues that she is not personally liable because everything she did was for the purpose of her business and done in the course of that business. She also argues that this is not a circumstance in which the corporate veil should be pierced.

159 There are two areas of law implicated in Dr. Phu's position: (i) the liability of directors and officers for torts committed while conducting corporate business; and, (ii) the principle of corporate separateness, which says that a corporation is a legal person separate from its shareholders (***Salomon v Salomon & Co.***, [1897] AC 22).

160 While there is some conflicting authority in relation to when directors and officers are personally liable for ordinary negligence, there is no such doubt when the facts invoke fraud, deceit or dishonesty: Slatter JA in ***Hogarth*** at para 96, citing ***ScotiaMcLeod Inc. v Peoples Jewellers Ltd.*** (1995), 26 OR (3d) 481 (CA) at paras 25-26. This aligns with the requirements in the *Business Corporations Act*, RSA 2000, c B-9, s 122 that every director in exercising her powers and discharging her duties shall act honestly and in good faith with a view to the best interests of the corporation. Section 122(3) further states that no provision in a contract, the articles, bylaws or a resolution can relieve the director from liability for breach of this duty.

161 When a director and officer of a corporation acts in a fraudulent manner, as I find Dr. Phu has done, that individual is no longer acting in the best interests of the corporation and is personally liable for their tortious actions: ***Dominion of Canada General Insurance Co. v MD Consult Inc.***, 2013 ONSC 1347 at para 25 (leave to appeal dismissed 2013 ONSC 6906), citing ***ADGA Systems International Ltd. v Valcom Ltd.*** (1999), 43 OR (3d) 101 (CA).

162 It does not offend the principle of corporate separateness to impose personal liability on Dr. Phu for her fraudulent misrepresentation because her actions as the directing mind of the Seller "exhibit a separate identity or interest from that of the [Seller] so as to make the act or conduct complained of her own": ***Hogarth***, per O'Brien and Rowbotham at para 13, citing ***Blacklaws v 470433 Alberta Ltd.***, 2000 ABCA 175, leave to appeal refused [2000] S.C.C.A. No. 442, [2001] 1 SCR vii.

163 The point here was summarized in ***ADGA Systems International*** at 105 where the Ontario Court of Appeal said:

... the House of Lords' decision in *Salomon v. Salomon & Co. Ltd.*, [1895-9] All E.R. 33 (H.L.), ... established that a company, once legally incorporated, must be treated like any other independent person, with rights and liabilities appropriate to itself. From time to time, litigants have sought to lift this "corporate veil", by seeking to make principals of the corporation liable for the obligations of the corporation. However, where, as here, the plaintiff relies upon establishing an independent cause of action against the principals of the company, the corporate veil is not threatened and the Salomon principle remains intact.

The distinction between an independent cause of action and looking through the corporation was confirmed by the subsequent case of *Said v. Butt*, [1920] 3 K.B. 497. This is a King's Bench decision but has been adopted in Canada and throughout the United States. (See, for instance, *Kepic v. Tecumseh Road Builders* (1987), 18 C.C.E.L. 218 at p. 222, 23 O.A.C. 72; and *Golden v. Anderson*, 64 Cal.Rptr. 404 (1967) at p. 408.)

164 I find that, on the facts of this case, Dr. Phu is independently liable for the Purchaser's damages caused by her intentional tortious conduct in her capacity as director and officer of the Seller. It is not necessary to pierce the corporate veil to attach liability to Dr. Phu in that capacity.

[22] A claim of fraudulent misrepresentation requires four elements:

1. The wrongdoer must make a representation of fact to the victim;
2. The representation must be false in fact;
3. The party making the representation must have either known it was false or made it recklessly without knowing whether it was true or false; and
4. The victim must have been induced by the representation to enter into the contract.

(*Catalyst Pulp and Paper Sales Inc. v. Universal Paper Export Company Ltd.*, 2009 BCCA 307 at para. 55)

The Court of Appeal in *Catalyst* went on to consider the fourth element in the context of a tort claim, and determined that a claim in tort does not require a finding of inducement to enter a contract, but rather a reliance on the representation by the victim to their detriment (*Catalyst*, paras. 54 - 61).

[23] I am satisfied that the claim for fraudulent misrepresentation against the Directors has been pleaded with sufficient particularity that it grounds a separate cause of action against them in their personal capacity and does not pierce the corporate veil.

[24] The next issue is whether the proposed pleading grounds a claim for misrepresentation on behalf of the plaintiff. Three representations were alleged to have been made by the Directors in February, March and April 2021. The Contract was entered into by Infinite as the buyer on February 1, 2021. Infinite assigned the Contract to Belmar on May 18, 2021, and Belmar subsequently assigned the Contract to the plaintiff on June 8, 2021. The Directors argue that the representations alleged to have been made by them were made, if at all, to Mr. Duminuco as representative of Infinite. They say that the representations could not have been made to Mr. Duminuco as representative of the plaintiff, as the plaintiff did not exist until its incorporation, after the representations were made.

[25] The Directors submit that the proposed pleading does not specify that it was the plaintiff to whom the representations were made and who relied on those representations. The Directors allege that each of their representations were made (if at all) to Infinite, at a time when the contract had already been entered into, but before the subjects were removed. They say that it is arguable that Belmar acted in reliance on the representations in taking the assignment of the Contract and removing the subjects, but that there is no basis in the pleading or in logic on which to conclude that the Directors intended to induce the plaintiff to rely on the representations to its detriment. They had no need to induce the plaintiff, as Infinite (and subsequently Belmar) had already entered into the Contract and were bound by it.

[26] The Directors further submit that a claim of fraudulent misrepresentation must plead a specific representation made to a specific victim, not to a class of victims. They point to paragraph 5 under **Part 3: Legal Basis** of the proposed amendment, which pleads that false representations were made "...to potential

buyers of the Properties, like the plaintiff ... with the intent to be acted upon and the plaintiff did so to its detriment.” No legal authority was provided for the Directors’ proposition that a fraudulent misrepresentation cannot be made to a class of victims, with one or more members of that class being induced to rely on the representation to their detriment.

[27] The notice of civil claim pleads that Infinite, Belmar and the plaintiff are affiliated and closely held corporations. The plaintiff says that Mr. Duminuco is a representative of all three companies, and that the representations were made to Mr. Duminuco. Incorporation of a corporate entity for the purpose of purchasing a specific piece of real property is a common business practice, and to allow a defendant to escape liability for a fraudulent misrepresentation made to a controlling individual prior to incorporation of that corporate entity would result in a miscarriage of justice. When applying the test for fraudulent misrepresentation, the plaintiff says that the victim is essentially Mr. Duminuco, since he is the individual to whom the representations were made and who relied on them in directing the actions of the three corporate entities in entering into the Contract, removing the buyer’s subjects, and accepting assignment of the Contract. There is an arguable case to be made that Belmar and the plaintiff also relied on those representations to their detriment, and I am not convinced that the argument is bound to fail.

[28] I am satisfied that the proposed pleading alleges that the Directors knowingly made false representations made to Mr. Duminuco, who was a representative of Infinite, Belmar and the plaintiff, and that it further pleads that the plaintiff relied on those representations to its detriment when it agreed to take an assignment of the Contract from Belmar. Accordingly, the proposed pleading does allege a cause of action against the Directors on behalf of the plaintiff.

[29] I turn now to the allegation that the proposed pleading does not sufficiently particularize a claim against Mr. Dirks. Of the three representations alleged in paragraph 20, there is no claim of Mr. Dirks being present at the February 2021

meeting, although he is alleged to have attended and made representations at the March and April 2021 meetings.

[30] The Directors invited me to consider the affidavit of Mr. Duminuco made November 17, 2021, in assessing whether any misrepresentations are alleged to have been made by Mr. Dirks. Mr. Duminuco's affidavit was sworn in response to the affidavit of Mr. Poettcker, in the context of the defendant's application for cancellation of the CPL. That affidavit focussed specifically on responding to evidence given by Mr. Poettcker. Although it refers to representations made by Mr. Poettcker and does not refer to any made by Mr. Dirks, it does not say that no representations were made by Mr. Dirks, nor does it purport to be an exclusive statement as to the representations made by the Directors. As emphasized by the Court of Appeal in *Neilson Architects*, the court is not to weigh evidence on an application to add parties, but is limited to examining the evidence to the extent necessary to determine if the required issues between the parties exists (*Neilson Architects*, at para. 45).

[31] The claims against the Directors are made in the aggregate, rather than particularizing the representations alleged to have been made by each of them. While making specific allegations of representations by Mr. Poettcker at two of the meetings, the plaintiff also pleads that both Directors were present for at least two meetings and both made representations at those meetings. As both individual Directors are alleged to have made the same representations on the same dates, these are not the "blanket allegations" that met with the court's disapproval in *Forde v. Interior Health Authority*, 2007 BCSC 1706. As found in *0782484 B.C. Ltd. v. E-Pro Enterprises Inc.*, 2021 BCSC 1509, the facts pleaded in the proposed amendment give rise to the same causes of action in respect of each of the Directors.

[32] I have concluded that the low threshold of whether there is a real issue to be tried between the plaintiff and the Directors has been met. With respect to the Directors, there was no argument that, if the threshold was met, it would not be just

and convenient to decide those issues in this proceeding. Accordingly, the plaintiff's application to add the Directors as defendants in this action, with the consequent amendments to the notice of civil claim, is granted.

The Realtors

[33] The Realtors oppose the application on two grounds:

1. The proposed pleading does not support a claim against the Realtors; and
2. In the alternative, if the pleadings do support a claim against the Realtors, it is not just and convenient for that claim to be joined with this proceeding.

[34] The allegations against the Realtors in the proposed pleadings include the following under **Part 1: Statement of Facts**:

14. At all materials times, Munro and Sutton Group acted as agent for the Seller and Infinite in the negotiation of the Contract.

15. During the negotiation of the Contract, Munro advised Infinite not to retain its own agent and represented to Infinite that he would act as agent for Infinite as well as the Seller.

...

17. Prior to entering into the Contract, Munro represented to Infinite that all necessary local and provincial government approvals (the "Approvals") had been obtained to allow for the stratification and development on the undeveloped parcel of land in the Properties known as Lot A (the "Agent's Representation").

...

27. Infinite relied on the Agent's Representation when it agreed to enter into the Contract.

28. Belmar relied on the Agent's Representation and the Directors' Representations when it agreed to the assignment of the Contract and the May 19 Addendum.
29. The plaintiff relied on the Agent's Representation and the Directors' Representations when it agreed to the Assignment of the Contract.
- ...
31. On or about June 22, 2021, the plaintiff learned, through discussions with personnel at the Fraser Valley Regional District, that the Agent's Representation and the Directors' Representations were false as the Approvals had not been obtained by the Seller.

[35] Under **Part 2: Relief Sought** are claims for specific performance of the Contract; damages for breach of contract, negligent misrepresentation or fraudulent misrepresentation; and rescission of the Contract.

[36] It then alleges the following under **Part 3: Legal Basis** with respect to the liability of the Realtors:

14. In the alternative, the plaintiff's loss and damage was caused by the negligence and breach of duty of Munro, particulars of which include but are not limited to the following:
 - a) acting in a dual-agency capacity in the negotiation of the Contract without right or authority;
 - b) failing to ensure that Infinite, Belmar and/or the plaintiff were advised to obtain separate agents in respect of the subject transactions;
 - c) failing to use reasonable and customary efforts to discover relevant facts concerning the Properties before they were listed for sale;

- d) failing to conduct due diligence to ensure the Agent's Representation was true and not misleading; and
 - e) such further and other particulars as may be shown at trial.
15. In respect of the sale of the Properties described above, Munro was at all times a "controlling individual" engaged by a personal real estate corporation, as those terms are defined in the Real Estate Services Regulation, B.C. Reg. 506/2004. Pursuant to section 10.6(3) of the Real Estate Services Regulation, Munro is personally liable to the plaintiff despite his engagement by his personal real estate corporation.
16. Sutton Group is vicariously liable for any liability of Munro or his personal real estate corporation arising from their performance of professional real estate services.

[37] In reviewing paragraph 14 under the heading **Part 3: Legal Basis**, it is unclear whether the proposed amendments purport to make claims in negligence, negligent misrepresentation, or both. The distinction is important, as the legal test, and thus the material facts required to be pled, differ.

[38] The elements required to establish a claim of negligence against a realtor were summarized by Justice Dardi in *Beacock v. Moreno*, 2019 BCSC 955 at para. 109, and recently affirmed by Justice Kirchner in *Kaltenegger v. Cao*, 2022 BCSC 2203 at para. 203, as follows:

1. The realtor defendants were possessed of a special skill;
2. The realtor defendants undertook to apply that skill for the assistance of the plaintiff;
3. The plaintiff relied upon such skill;

4. The conduct of the realtor defendants fell below the requisite standard of care of a reasonably prudent brokerage and real estate agent at the material time; and
5. The plaintiff suffered damage as a result of the breach of the standard of care by the realtor defendants.

[39] Realtors are deemed to possess general skills that are particular to their profession (*Kaltenegger*, para. 206). In order to satisfy the second element required to ground a claim in negligence, the plaintiff must rely on a contractual or agency relationship between a realtor and a client. The only agency relationship pleaded in the proposed amendment is between the Realtors and Infinite; there is no contractual or agency relationship pleaded as between the Realtors and the plaintiff. Accordingly, the proposed pleading as drafted does not support a claim in negligence against the Realtors.

[40] It appears, then, that the only proposed claim against the Realtors is for negligent misrepresentation. In some circumstances, realtors can owe duties of care to non-clients. A cause of action may be available to a person who relies on an agent, regardless of whether that agent is acting for that person specifically (*McIntosh v. Papoutsis*, 2009 BCSC 174 at para. 58).

[41] There are five required elements for a claim in negligent misrepresentation:

1. There must be a duty of care based on a special relationship between the representor and the representee;
2. The representation must be untrue, inaccurate or misleading;
3. The representor must have acted negligently in making the representation;
4. The representee must have reasonably relied on the representation; and
5. The reliance must have been to the detriment of the representee in the sense that damages resulted.

(*Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at p. 110)

[42] To the extent that the claim is in negligent misrepresentation, the Realtors argue that the proposed pleading fails to assert any duty of care or special relationship between the Realtor and the plaintiff. As noted previously, the plea of a dual agency relationship is only with respect to Infinite, not the plaintiff. There are no material facts pled to support the allegation that the Realtors acted in a dual agency capacity without right or authority. There is only one representation pleaded, and that is specifically pleaded as having been made to Infinite.

[43] As the existence of a duty of care is a fundamental element in a claim for negligent misrepresentation, the proposed pleading as currently drafted does not support a claim against the Realtors.

[44] Given my findings that the pleadings as drafted do not sufficiently plead a cause of action against the Realtors, I need not consider the Realtors' alternative argument that it is not just and convenient to join those claims to this action.

[45] The plaintiff's application to add the Realtors as defendants in this action is dismissed, without prejudice to the plaintiff's ability to reapply should they wish to propose further amended pleadings.

Summary

[46] In summary, the plaintiff's application is granted with respect to the addition of the Directors, Arnold Poettcker and Terry Dirks, as defendants, and the style of cause shall be amended accordingly.

[47] The plaintiff's application is dismissed with respect to the addition of the Realtor Defendants, with liberty to reapply.

[48] The plaintiff is granted leave to file an Amended Notice of Civil Claim substantially in the form attached as Schedule "A" to its Notice of Application, but excluding paragraphs 14 through 16 on pages 10 and 11.

[49] The plaintiffs are entitled to costs in the cause as against the defendants including the Directors.

[50] The Realtors are entitled to their costs as against the plaintiff, in any event of the cause, payable forthwith following assessment or agreement.

“Master Hughes”