

**CITATION:** Stronach v. York Region, 2023 ONSC 1264  
**COURT FILE NO.:** CV-00002443  
**DATE:** 20230222

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
STRONACH CONSULTING CORP.	)	
	)	J. Suttner for Plaintiff, Responding Party
Plaintiff	)	
	)	
<b>– and –</b>	)	
	)	
YORK REGION VACANT LAND	)	J. Berall and A. Sahai for the Defendants,
CONDOMINIUM CORPORATION NO.	)	Moving Parties
1010, RICK IRONS, JUDSON	)	
WHITESIDE, CYNTHIA MITCHELL,	)	
RICHARD MANGAT, NINO CAMPOLI	)	
and JOHN OR JANE DOE DIRECTORS	)	
OF YORK REGION VACANT LAND	)	
CONDOMINIUM CORPORATION NO.	)	
1010	)	
	)	
Defendants	)	
	)	
	)	
	)	<b>HEARD:</b> January 11, 2023 (virtually via Zoom)

**REASONS ON MOTION**

**MCCARTHY J.**

**Introduction**

[1] The Defendants move for an order striking out (without leave to amend) certain portions of a claim brought against both York Region Vacant Land Condominium Corporation No. 1010 (referred to as “Adena Meadows”) and individual members of its board of directors (“the directors”). Adena Meadows is a condominium complex featuring luxury homes within an exclusive gated community in Aurora.

- [2] The fresh as amended claim was filed on April 8, 2022. It is hereinafter referred to as “the subject pleading.” The subject pleading is the third version of a claim brought by the Plaintiff for breach of contract, breach of trust, and unjust enrichment.
- [3] The claim as advanced seeks damages in an amount just shy of \$1.5 million. This includes a claim for punitive/aggravated damages. The Plaintiff also seeks declaratory relief: an order declaring certain funds and property to be trust funds; and an order for an accounting.
- [4] A central feature of the subject pleading is its allegations against the respective directors in their capacities as both individual residents/owners and duly elected directors of Adena Meadows.
- [5] The pith and substance of the claim is that the Plaintiff supplied water to Adena Meadows for use by its residents for over 15 years. The Defendants have failed to remit the dollar amounts it collected from the Adena Meadows residents to the Plaintiff.
- [6] The Plaintiff has broken its claim down into six components: inducing breach of contract; unjust enrichment; breach of trust; knowing receipt of trust funds; knowing assistance of breach of trust; and oppression. The Plaintiff now concedes that its claim for oppression cannot succeed. That leaves the court with five components of the claim to consider.

### **The Defendants’ Position**

- [7] The Defendants asserts that the allegations against the directors are fundamentally flawed as they fail to identify any discernible conduct by the directors which could be viewed as separate from conduct taken as directors on behalf of Adena Meadows. In addition, there are further fundamental deficiencies in other portions of the subject pleading including: a failure to plead the requisite elements of a trust; the vague and bald allegations under the “inducing breach of contract” allegations; and the non-availability of any relief for unjust enrichment against the directors in their capacity as residents.

### **The Plaintiff’s Position**

- [8] The Plaintiff asserts that the threshold test to strike pleadings is a high one. The subject pleading fulfills the requirement of a valid pleading as it sets out the case the Defendants are required to meet. The Plaintiff must necessarily await productions and discovery before it can provide greater detail in support of its allegations against the directors personally.

### **The Law**

- [9] Rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, permits a party to move before a judge to strike out a pleading on the ground that it discloses no reasonable cause of action. No evidence is permitted on the hearing of a motion under that sub-rule. The court retains the discretion to permit amendments to a claim.
- [10] The Court of Appeal has made it clear that if the claim has some chance of success, it must be permitted to proceed; as well, the threshold for sustaining a pleading is not high: see

*Trillium Power Wind Corp. v. Ontario (Natural Resources)*, 2013 ONCA 683, 117 O.R. (3d) 721; *MacKinnon v. Ontario Municipal Employees Retirement Board*, 2007 ONCA 874, 88 O.R. (3d) 269.

- [11] Rule 25.06(8) pertains, *inter alia*, to allegations of malice and breach of trust. It stipulates that, “the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.”
- [12] A claim, or portions of it, should be struck where: (a) the allegations do not give rise to a cause of action; (b) the plaintiff fails to plead a necessary element of a cause of action; or (c) the allegations in the pleading are conjecture, assumptions, or speculation unsupported by material facts: see *MacLean v National CarWash Solutions*, 2020 ONSC 6032 at para. 22.
- [13] It is well established that pleadings against directors are to be subjected to a hard look and a high level of scrutiny: see *Ghany v. Federal Express Canada Ltd.*, 2009 CanLII 41898 (ONSC) at paras. 32-33.
- [14] A claim against directors must set out allegations of conduct which takes them outside of their role as directing minds of the corporation they serve. The actions of the directors must in themselves be tortious or must demonstrate a separate identity or interest from the corporation to make the impugned actions or conduct their own: see *ScotiaMcleod Inc. v Peoples Jewellers Ltd.*, 26 O.R. (3d) 481 (Ont. C.A.) at p. 15.
- [15] There is good reason for this: historically, a corporation serves as a buffer between its directors and third-party actors. Directors enjoy protection from civil liability if, in the discharge of their duties, they are acting for or on behalf of the corporation.

### **Analysis**

- [16] I agree with the Defendants that the essence of the Plaintiff’s claim is that Adena Meadows is liable for the unpaid water invoices. This confines the nature of the claim to a contract case between two corporate entities. Any contract that existed could only have been between the Plaintiff and Adena Meadows. At the same time, the essence of the Plaintiff’s claim against the directors is that they both caused, and should be liable for, the failure of Adena Meadows to pay those invoices.
- [17] The allegations against the individual directors cannot survive scrutiny. There are no identifiable allegations pleaded against the directors which serve to differentiate their personal conduct from their conduct as directors and which could therefore serve to ground a finding of personal liability against any of them.
- [18] This finding, in and of itself, is sufficient to grant the requested relief. A fair and full reading of the subject pleading leads to the inexorable conclusion that it discloses no tenable cause of action against the directors personally. Any finding that Adena Meadows owes the invoiced amounts to the Plaintiff would be made under principles of contract law. Judgment would follow against Adena Meadows, the party to the contract, and not against

any of the directors who were not parties to the contract. This is consistent with fundamental tenants of commercial, corporate, and contract law.

- [19] The component allegations against the directors are in any event rife with inadequacies and flaws. Under the “inducing breach of contract” sub-heading (paras. 22-28), the pleading does not comply with r. 28.06(8) which requires full particulars or allegations of alleged malicious action (para. 28). Moreover, there are insufficient particulars of the personal and unknown agenda which is said to have motivated and characterized the conduct of the various directors, and which would serve to separate them from their role as directors at Adena Meadows.
- [20] Under the sub-heading “breach of trust”, at paras. 33-37, there is further non-compliance with rule 28.06(8). The particulars demanded by that rule have been said by this court to be “the when, what, by whom and to whom” of a breach of trust: see *Balanyk v. University of Toronto*, 1999 CanLII 14918 (ON SC) at para. 28. Such particulars are lacking in the subject pleading.
- [21] The “knowing receipt of trust funds” allegations at paras. 38-39 of the subject pleading cannot be sustained: the Plaintiff has failed to set out any material facts of how the directors “received” the trust funds (separate and apart from how the funds were received by Adena Meadows); how they used those funds for their own benefit; or used them for a purpose inconsistent with the interests of Adena Meadows. There is woefully insufficient detail in these allegations.
- [22] The “knowing assistance of breach of trust” allegations against the directors also cannot survive. Like the “inducing breach of contract” set of allegations, they fail to detail any conduct engaged in by the directors which would serve to detach them from their role as directors and which could ground a finding of personal liability against any of them.
- [23] The “unjust enrichment” portion of the claim as against the directors both as directors and as residents must similarly be struck. A claim for unjust enrichment can only be made out where there is a direct nexus between the enrichment of the named defendant and the deprivation of the plaintiff; a claim for indirect or incidental enrichment against a defendant cannot be maintained because it would permit the possibility of double recovery from an entity who received the benefit directly and against a person who reaped an indirect benefit: see *Singer v. Schering-Plough Canada Inc.*, 2010 ONSC 42 at paras. 111 and 112.
- [24] Thus, in seeking unjust enrichment against both Adena Meadows and its constituent members, the subject pleading offends the indirect benefit prohibition.
- [25] The flaw in the allegations of unjust enrichment against the directors as residents is manifest at paras. 19 and 20 of the subject pleading. Those allegations lack sufficient detail of how the directors would have “personally benefitted” from the use of the water services any more than other residents of Adena Meadows.

- [26] When read in the context of what the claim is about (a breach of contract action against Adena Meadows) the subject pleading suggests that the Plaintiff is merely using the unjust enrichment allegations as a path to the directors directly. This is highly improper.
- [27] For the foregoing reasons, the relief sought by the Defendants must be granted. Any allegations or claims against the directors of Adena Meadows are therefore struck.

**Leave to Amend**

- [28] It remains for me to determine whether leave should be granted to the Plaintiff to amend its subject pleading.
- [29] On the one hand, the court must be careful not to convert a motion to strike pleadings into a summary judgment motion; the latter demands a consideration of whether, based upon an evidentiary record, there is a genuine issue requiring a trial. I remain mindful of the guidance given by the Court of Appeal that a claim with even a small chance of success should be permitted to proceed. There is no evidentiary basis for the court to review here; the suggestion by the Plaintiff that it should be permitted to conduct discovery to uncover evidence which would serve to undergird those allegations is, on its surface, not unreasonable.
- [30] On the other hand, the court is obliged to give pleadings against directors a hard look. The law is clear that conjecture, assumptions, or speculation are insufficient to ground a cause of action and maintain a pleading. Material facts must be pleaded. The Plaintiff has had three “cracks” at getting the pleading right, the subject pleading being the third iteration of the same basic claim. A breach of contract claim between two corporate entities would seldom, if ever, give rise to personal liability of directors on either side of such a dispute. The undue influence and breach of trust allegations are fatally flawed.
- [31] It is of fundamental importance that the substance of the claim be considered. The essence of the dispute is non-payment for goods and services supplied under a contract. I am unable to envisage a scenario in which any director would be found personally liable to the Plaintiff in these circumstances. To allow an amendment of the pleading would be fruitless and a waste of time. Any claim by the Plaintiff against the individual directors has no chance of success and no amendment or additional pleading is going to change that.
- [32] The *modus operandi* of the Plaintiff in this case can be entirely gleaned from its notice letter on October 14, 2021, which not only was sent to every resident of Adena Meadows but also contained a threat to name the residents personally. I am persuaded that the allegations brought against the directors personally are nothing more than a brazen but transparent tactic designed to frighten them into believing that they face some personal exposure. This might serve to make the directors be more malleable on resolution than they might otherwise be; after all, the directors will be responsible for deciding how and when to resolve the case. This tactic may also constitute a means to expand the scope of oral discovery beyond one representative of the corporate entity. It would almost assuredly

place the directors in a conflict of interest with the residents of Adena Meadows, forcing some to resign or seek independent counsel to protect their respective interests.

- [33] Whatever the Plaintiff's motives, this tactic constitutes litigation by intimidation which should always be frowned upon by the court. Like nearly all condominium boards staffed by members and residents, the position of director is not a paid one. In my view, public policy considerations have a place in the court's scrutiny of this type of pleading; if residents were under the impression that they might face personal exposure should they volunteer to act as a director of a condominium corporation, all but the bravest or most foolhardy would surely decline to serve. This chilling prospect would greatly encumber the ability of condominiums to function independently.
- [34] This court should not exercise its discretion to grant leave to amend such a flawed pleading where there is no reason to believe that the Plaintiff's case could be improved further by amendment: see *Twelve Gates Capital Group v. Mizrahi Development Group*, 2018 ONSC 7656 at para. 33. And that is what I find. This is a breach of contract claim between to corporate entities; I am unable to envisage any tenable allegations that would give rise to a cause of action against the directors, either as directors or members, and which could survive the type of scrutiny applied above.
- [35] Leave to amend the pleading must be denied.

**Disposition**

- [36] Having considered the law and rules which govern pleadings and afforded the subject pleading the hard look it deserves, I have concluded that the subject pleading does not disclose a valid cause of action against the individual directors. The allegations in the subject pleading against Rick Irons, Judson Whiteside, Cynthia Mitchell, Richard Mangat, Nino Campoli and John or Jane Doe are struck without leave to amend the subject claim.
- [37] The Defendants have prevailed on the motion. Should the parties be unable to agree on the issue of costs or upon other matters arising from these reasons, I would invite them to take out an appointment to appear before to address these issues through the trial coordinator at Newmarket.

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McCarthy J.