

Federal Court



Cour fédérale

Date: 20240216

Docket: T-861-23

Citation: 2024 FC 266

Vancouver, British Columbia, February 16, 2024

PRESENT: Madam Associate Judge Kathleen Ring

BETWEEN:

10066055 MANITOBA LTD.,

Plaintiff

and

PARKS CANADA AGENCY

Defendant

ORDER

[1] This is a motion in writing on behalf of the Defendant, Parks Canada Agency, for an order under Rule 221 of the *Federal Courts Rules* (“*Rules*”) striking the Statement of Claim (sometimes referred to as the “Claim”), without leave to amend, and dismissing the action. In the alternative, the Defendant seeks an Order striking out paragraphs 5 to 8 of the Claim.

[2] In the underlying Claim, the Plaintiff, 10066055 Manitoba Ltd., seeks damages against the Defendant for breach of contract relating to leasehold property purchased by the Plaintiff within Riding Mountain National Park (the “Park”) in Manitoba.

[3] The Defendant submits that the Claim should be struck out in its entirety, pursuant to Rule 221(a), on the basis that it does not plead the required material facts to establish a reasonable cause of action. The Defendant argues that the Claim also constitutes an abuse of process, and should therefore be struck under Rule 221(f), as the Plaintiff is attempting to re-litigate a claim that was previously struck out by this Court.

[4] The Plaintiff opposes the motion on both grounds. It submits that the Claim contains sufficient material facts to disclose a reasonable cause of action, and that it is not an abuse of the Court's process.

[5] For the reasons that follow, I conclude that the Defendant's motion will be granted in part. The Statement of Claim fails to plead the required material facts to establish a cause of action for breach of the duty of honest performance in contract. However, leave to amend is granted because I am not convinced that the defects in the pleadings cannot be cured by amendment.

I. **Background**

[6] The Plaintiff alleges the following facts in the Statement of Claim. In May 2020, a leasehold interest in property (the "Property") located in the Park was listed for sale on the Multiple Listing Service for \$489,900. The principals of the Plaintiff (the "Plaintiff's Representatives") saw the listing and were interested in the Property as a potential revenue property and business opportunity.

[7] The Plaintiff's Representatives obtained the Lease Information Sheet for the Property dated May 28, 2020 and created by an employee of the Defendant, Ms. Bardsley ("Bardsley"). The Lease Information Sheet indicated that: (a) the Property was subject to a 42-year perpetual lease effective

April 1, 2018 (the “Lease”); and (b) “Property Use: Purpose of a commercial building for the purpose of retail sales and services and visitor accommodation”.

[8] The Plaintiff’s Representatives also obtained from the Defendant the existing lessee’s 2019 business licence (“Licence”) issued by the Defendant. The business license described the business as including both “clothing store” and “visitor accommodation”.

[9] After reviewing the above documents, the Plaintiff’s Representatives contacted Bardsley to inform her of the details of the Plaintiff’s proposed development of the Property, which involved the construction of three, freestanding cabins, comprised of five separate rental accommodations, to be used as vacation rental properties (the “Development”). According to the Claim, Bardsley advised the Plaintiff’s Representatives that the Property would be well suited for the Development and that the assignment of the Lease was only thing required before the Plaintiff could proceed with the Development.

[10] Based on the information in the Lease Information Sheet and the License, as well the discussion with Bardsley, the Plaintiff made an offer to purchase the Property, which was accepted by the Defendant in July 2020. The Lease was assigned to the Plaintiff on October 15, 2020. The Plaintiff alleges that these documents and assurances collectively formed the “Agreement” between the parties.

[11] According to the Claim, the Agreement contained various express and/or implied terms regarding the suitability and allowable use of the Property for the Development, as described in greater detail later in these Reasons.

[12] On October 21, 2020, the Plaintiff's Representatives met with Bardsley, who advised them that the Development proposal (the "Proposal") had to be re-submitted, now that the Plaintiff was the lessee of the Property. The Plaintiff re-submitted the Proposal on December 7, 2020.

[13] Thereafter, Bardsley advised the Plaintiff's Representatives that the Development was not within the original intent of the Lease, such that the Development could not proceed, unless the Lease was renegotiated. Bardsley informed them that if the Lease was renegotiated, the 42-year perpetual term had to be removed. The Plaintiff was unwilling to renegotiate the Lease because of the value associated with the 42-year perpetual term.

[14] The Plaintiff retained counsel to assist with resolving the matter. On January 17, 2022 the Plaintiff was advised by counsel for the Defendant that the Development could, in fact, be accommodated by the Lease. Thereafter, the Plaintiff submitted an application for a building permit. On October 12, 2022, the Plaintiff received the approval of the Development from the Defendant, as well as a building permit, and commenced the construction of the Development.

[15] Also on October 12, 2022, the Plaintiff brought its first action against the Defendant being Court File No. T-2090-22. In that claim, the Plaintiff alleged that Bardsley's erroneous interpretation of the Lease amounted to negligent misrepresentation resulting in significant delays to the Plaintiff's Development of the Property. By Order dated February 16, 2023, Justice Grammond struck out that earlier pleading on the basis that there was no reliance by the Plaintiff on the alleged negligent misrepresentations, but granted the Plaintiff leave to amend its pleading. The Court observed that "[w]hile the facts as pleaded do not disclose a cause of action in negligent

misrepresentation, they may possibly be restated so as to disclose a contractual claim”: 10066055 *Manitoba Ltd. v. Canada (Parks)*, 2023 FC 227 at para 12 (“*Parks Canada #1*”).

[16] Instead of amending its previous claim, the Plaintiff commenced this Action against the Defendant for damages for breach of contract, including loss of rental income for the 2021 and 2022 seasons, and for the increase in the cost of building materials and construction services to build the Development.

II. Does the Claim Disclose a Reasonable Cause of Action?

[17] The Court may strike a claim under Rule 221(1)(a) of the *Rules* if it discloses no reasonable cause of action. The stringent test for striking out a claim on this ground is whether, assuming that the facts pleaded to be true, it is “plain and obvious” that the pleaded claims disclose no reasonable cause of action. Another way of putting the test is that the claim has no reasonable prospect of success: *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959 at para 36 (“*Hunt*”); *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 17, [2011] 3 SCR 45.

[18] On a motion to strike a pleading, all of the facts pleaded, unless patently ridiculous or incapable of proof, must be accepted as proved. This rule does not apply, however, to allegations based on assumptions and speculation. The Statement of Claim is to be read “as generously as possible and to accommodate any inadequacies in the form of the allegations which are merely the result of drafting deficiencies”: *Hunt* at paras 33 and 34; *Operation Dismantle v. The Queen* (1985), 18 DLR (4th) 481 (SCC) at paras 14 and 27.

[19] The specific requirement to plead material facts is embodied in Rule 174 of the *Rules*, which provides that a Statement of Claim “shall contain a concise statement of the material facts

on which the party relies”. No cause of action can exist where the plaintiff has not pled the requisite material facts which are capable of giving rise to a cause of action: *Amos v. Canada*, 2017 FCA 213 at para 36; *Keremelevski v. Ukrainian Orthodox Church of St. Mary*, 2018 FC 406 at para 61.

[20] What constitutes a material fact is determined in light of the cause of action and the damages sought to be recovered. A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. The Court and opposing parties cannot be left to speculate as to how the facts might be variously arranged to support various causes of action: *Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16 and 19.

A. **Breach of Duty of Honest Performance**

[21] The Statement of Claim alleges that the Defendant breached its “duty to perform its contractual obligations under the Agreement in good faith, honestly, and/or to take all reasonable steps to perform its obligations under the Agreement” (para 13). The Defendant argues that the Claim must be struck because it does not plead the required material facts that would underlie such a claim.

[22] The duty of honest performance in contract requires that parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract: *Bhasin v. Hrynew*, 2014 SCC 71 at paras 73 and 74 (“*Bhasin*”). The duty of honesty as a contractual doctrine has a limiting function on the exercise of an otherwise complete and clear right because the duty, irrespective of the intention of the parties, applies to the performance of all

contracts and, by extension, to all contractual obligations and rights: *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 at para 53 (“*Callow*”).

[23] In *Callow*, the Supreme Court undertook an in-depth analysis of the requisite elements of a claim for breach of the duty of honest performance. First, the alleged dishonesty must be *directly linked to* the performance of the contract. It is not enough to say that, temporally speaking, dishonesty *occurred while* both parties were performing their obligations under the contract. In determining whether dishonesty is connected to a given contract, the relevant question is whether a right under that contract was exercised, or an obligation under that contract was performed, dishonestly: *Callow* at paras 30, 37, 49 and 51.

[24] Instead of constraining the decision whether to exercise a contractual right, the duty of honest performance attracts damages where the *manner* in which the right was exercised was dishonest: *Callow* at paras 53 to 55. Justice Kasirer, speaking for the majority in *Callow*, observed that “[b]y focusing attention on the exercise of a particular right under a particular contract, a direct link to the performance of that contract is helpfully drawn” (para 68).

[25] Second, the defendant’s conduct must constitute dishonesty within the meaning of the duty of honest performance in *Bhasin*. The requirements of honesty in performance can go further than prohibiting outright lies. One can mislead through action, by saying something directly to its counterparty, or through inaction, by failing to correct a misapprehension caused by one’s own misleading conduct. Whether or not a party has “knowingly misled” its counterparty is a highly fact-specific determination, and can include lies, half-truths, omissions, or even silence, depending on the circumstances: *Callow* at paras 76, 77, 81, 90 and 91.

[26] Neither of the parties referred the Court to any decisions of this Court involving a motion to strike a claim framed as a breach of the duty of honest performance. Based on the principles in *Bhasin* and *Callow*, coupled with the jurisprudence of several other jurisdictions in Canada, I conclude that the Plaintiff must plead material facts that demonstrate that: (a) a contract existed between the Plaintiff and the Defendant; (b) the Defendant lied or knowingly misled the Plaintiff; and (c) the allegations of dishonesty are directly linked to the performance of the contract: *Lee v Ocean Pacific Hotels Ltd.*, 2022 BCSC 1608 at para 63; *Lee v Ocean Pacific Hotels Ltd.*, 2023 BCSC 1650 at para 82 (“*Lee #2*”); *Westeinde (FNP) Inc. v. RE/MAX Core Realty Inc.*, 2019 ONSC 133 at paras 19 and 20 (“*Westeinde*”).

[27] In this case, I find that the Plaintiff has pled some, but not all of the material facts necessary to establish its claim for breach of the duty of honest contractual performance. As for the first requirement, I conclude that the Plaintiff has pled sufficient facts in paragraphs 5 to 9 of the Claim to establish the existence of a contract between the parties. Paragraph 8 of the Claim identifies the documents, information, and assurances that the Plaintiff alleges to comprise the Agreement between the parties.

[28] The Plaintiff alleges in paragraph 9 of the Claim that the Agreement included the following express and/or implied terms:

- (a) “the Property was able to be used for the Development;
- (b) the Lease allowed for the Development;
- (c) the Defendant allowed for the Development;
- (d) the Development was well suited for the Property and Riding Mountain;
- (e) the Property was zoned for lodge accommodations, as proposed in the Development.”

[29] Paragraph 9 of the Claim does not identify any specific clauses contained in either the offer to purchase or the Lease. As such, it appears that the Plaintiff is, in effect, alleging that the terms set out in paragraph 9 are implied terms of the Agreement based on information contained within the Lease Information and the License, as well as the verbal assurances provided by Bardsley prior to the purchase of the Property.

[30] Where a cause of action relies upon an implied term, the pleading must include the factual basis for the term: *Jaffer v. York University*, 2010 ONCA 654 at paras. 45-48; *Marshall v. United Furniture Warehouse Limited Partnership*, 2013 BCSC 2050 at para. 71, aff'd 2015 BCCA 252, leave to appeal to SCC ref'd, 36584 (17 March 2016).

[31] Having considered the Claim as a whole, I find that the factual basis for the implied contractual terms in paragraph 9 of the Claim is laid out in paragraphs 5 to 7 of the Claim. The parties may disagree on the scope and content of the Agreement between the parties, and whether the alleged implied terms set out in paragraph 9 properly form part of the Agreement, but those matters are issues for trial.

[32] The Defendant argues that paragraphs 5 to 8 of the Claim should be struck out because they allege that the Defendant's actions prior to the Lease being assigned to the Plaintiff amount to a breach of the duty of honest contractual performance, and pre-contractual matters cannot be a part of the performance of a contract.

[33] I cannot accept this argument. It is clear from the Claim that paragraphs 5 to 8 allege facts relating to the existence and terms of the Agreement between the parties, not the Defendant's

alleged acts of dishonesty in the performance of the Agreement. The facts relating to the alleged breach of the duty are set out in paragraphs 11 to 13 of the Claim.

[34] As regards the second requirement, I find that the Plaintiff has failed to plead adequate material facts to demonstrate that the Defendant was dishonest or “knowingly misled” the Plaintiff. When pleading bad faith, it is not enough to assert, baldly, conclusory phrases such as “deliberately or negligently,” “callous disregard,” or “by fraud and theft did steal”: *Merchant Law Group v Canada (Revenue Agency)*, 2010 FCA 184 at paras 34 and 35. The cause of action alleged by the Plaintiff requires a particular state of the mind of the Defendant. Rule 181(1) of the *Rules* requires particularization of the allegations of dishonest or misleading behaviour of the Defendant: *Lewis v. Canada*, 2012 FC 1514 at paras 17 and 24; *Westinde* at paras 11 and 22.

[35] In this case, paragraph 13 of the Claim contains a set of broad conclusory allegations regarding the alleged breach of duty of honest contractual performance by the Defendant, but does not provide any material facts for those conclusions. For example, the Plaintiff baldly asserts that the Defendant breached its duty by “knowingly or recklessly misleading the Plaintiff as to the terms of the Agreement regarding the Development”, and by “failing to meet its obligation to correct the false impression created by the actions and/or comments of Bardsley on behalf of the Defendant”.

[36] The only facts pleaded by the Plaintiff regarding the Defendant’s post-contractual behaviour are that following receipt of the Development proposal on December 7, 2020, Bardsley advised the Plaintiff’s Representatives that “the Development was not within the original intent of the Lease, such that the Development could not proceed, unless the Lease was renegotiated” (Claim,

para 11). Thirteen months later, on January 17, 2022, the Plaintiff was advised by counsel for the Defendant that the Development could be accommodated by the Lease (Claim, para 12).

[37] The Statement of Claim does not comply with Rules 174 and 181, as it is not particularized and does not set out the material facts in support of the bald allegations that the Defendant “knowingly or recklessly misled” the Plaintiff, or that the Defendant “failed to correct the false impression created by the actions and/or comments of Bardsley on behalf of the Defendant”.

[38] As to the third requirement, the Plaintiff must plead material facts to directly link the Defendant’s alleged failure to act honestly to the Defendant’s performance of the Agreement. This must include some identification of the specific contractual terms that have been breached, the manner in which those terms have been breached, and how the Defendant’s misleading behavior is connected with the performance of those contractual terms: *Westeinde* at paras 19, 20 and 27.

[39] Based on my review of the Claim, I conclude that the Plaintiff failed to plead sufficient material facts to directly tie the Defendant’s alleged dishonest conduct to the performance of specific contractual obligations under the Agreement. The Court and the Defendant are left to speculate as to how the facts might be variously arranged to support the cause of action.

[40] For these reasons, I conclude that the Plaintiff has failed to plead sufficient material facts to support a cause of action for breach of the duty of honest contractual performance.

B. ***Breach of Duty to Exercise Contractual Discretion in Good Faith***

[41] At paragraphs 28 and 29 of its written representations, the Plaintiff argues that the Defendant breached its duty to exercise contractual discretion in good faith, citing the Supreme Court’s decision in *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 (“*Wastech*”). The Plaintiff contends that the Defendant holds the authority to allow or deny how an owner uses their property. According to the Plaintiff, the Defendant “failed to exercise this discretion reasonably when it first indicated the Development was permitted under the Lease, in fact stating same was ‘well suited’ for the Property, then reversing that position once the Lease was assigned to the Plaintiff, only to reverse that position once again, a year later” (para 29).

[42] The Defendant does not squarely address the Plaintiff’s argument in its reply representations.

[43] While the duty to exercise contractual discretion in good faith (alleged in the Plaintiff’s written representations) and the duty of honest performance (alleged in the Plaintiff’s Statement of Claim) may share a common methodology, by fixing on the wrongful exercise of a contractual prerogative, they are two distinct manifestations of organizing principle of good faith: *Callow* at paras 45 and 51. Careful reference to the specific doctrine at issue in each case is critical: *Wastech* at para 52.

[44] In *Wastech*, the Supreme Court provided clarity on the contours of the duty to exercise discretion in good faith. The Court held that “... the duty to exercise contractual discretion in good faith requires the parties to exercise their discretion in a manner consistent with the purposes for which it was granted in the contract, or, in the terminology of the organizing principle in *Bhasin*, to exercise their discretion reasonably” (para 63) [emphasis added]. To determine whether a party

breached this duty, one must ask: “was the exercise of contractual discretion unconnected to the purpose for which the contract granted discretion? If so, the party has not exercised the contractual power in good faith” (para 69) [emphasis added].

[45] It is apparent from the above-quoted passages of *Wastech* that the duty to exercise contractual discretion in good faith is predicated on a discretionary power being conferred by the contract. In fact, the Court states at paragraph 72 that: “Sometimes, the text of the discretionary clause itself will make the parties’ contractual purpose clear. In other circumstances, purpose can only be understood by reading the clause in the context of the contract as a whole” [emphasis added].

[46] Although the Plaintiff may take the position in its written representations on this motion that the Defendant has breached its duty to exercise contractual discretion in good faith, it is plain and obvious on the face of the Statement of Claim itself that the Plaintiff has not pled the necessary material facts to ground a cause of action on this basis.

[47] In particular, the Plaintiff does not plead the material facts necessary to establish that the Defendant’s alleged discretionary power was conferred by the Agreement (i.e. the Claim contains no reference to a specific discretionary clause in the Agreement). Further, the Plaintiff does not plead facts as to the purpose for which that discretion was granted, or how the Defendant’s exercise of discretion exceeded the purposes for which it was granted in the Agreement: *Lee #2* at paras 78 and 79.

[48] Indeed, the core of the Plaintiff’s case, as currently pled, is that the Agreement contained an express or implied term that the Property was able to be used for the Development, and the

Defendant breached its “duty to perform its contractual obligations under the Agreement in good faith, honestly, and/or to take all reasonable steps to perform its obligations under the Agreement” (Claim at para 13) [emphasis added]. The Plaintiff’s new assertion that the Defendant had a *discretion* as to whether to “allow or deny how an owner uses their property” is at odds with its current pleadings, which allege the Defendant had a contractual *obligation* to allow the Development. As such, the Plaintiff’s new allegations would only be permitted under Rule 180 if the Plaintiff amends the existing pleading accordingly.

[49] For the foregoing reasons, I conclude that it is plain and obvious that the Statement of Claim fails to plead the material facts to disclose a reasonable cause of action, and must therefore be struck out pursuant to Rule 221(1)(a) of the *Rules*.

III. **Is the Claim an Abuse of Process?**

[50] Rule 221(f) provides that the Court may strike out a claim at any time on the ground that the claim is an abuse of the process of the Court. The doctrine of abuse of process engages “the inherent power of the Court to prevent the misuse of its procedure, in a way that would bring the administration of justice into disrepute”: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at para 37 (“*C.U.P.E.*”), citing *Canam Enterprises Inc. v. Coles* (2000), 194 D.L.R. (4th) 648 at para. 55.

[51] Courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice: *C.U.P.E.* at para. 37.

[52] In this case, the Defendant argues that the Claim constitutes an abuse of process, and should therefore be struck under Rule 221(f), as the Plaintiff is attempting to re-litigate the same facts alleged in its claim of negligent misrepresentation, which was previously struck out by this Court in *Parks Canada #1*. According to the Defendant, this is a veiled attempt by the Plaintiff to relitigate its negligent misrepresentation claim.

[53] The Plaintiff submits that the present Claim is not an abuse of process as the Judgment of Justice Grammond striking out the Plaintiff's prior claim did not make a determination as to whether the Plaintiff had a claim for a breach of contract. To the contrary, the Plaintiff says that the Court "invited the Plaintiff to bring forward their claim in breach of contract".

[54] In my view, even if the doctrine of abuse of process could be extended to the present case, it would create unfairness to strike out the Plaintiff's Claim on this basis in the particular circumstances of this case. In *C.U.P.E.*, the Supreme Court observed that there are various circumstances in which relitigation does not result in an abuse of process:

52 ... [R]elitigation carries serious detrimental effects and should be avoided unless the circumstances dictate that relitigation is in fact necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole. There may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system, for example: (1) when the first proceeding is tainted by fraud or dishonesty; (2) when fresh, new evidence, previously unavailable, conclusively impeaches the original results; or (3) when fairness dictates that the original result should not be binding in the new context... [citations omitted]

[55] Having regard for the discretionary factors discussed in *C.U.P.E.*, I find that fairness dictates that I should not strike out the Plaintiff's Claim on the ground of abuse of process in the unique circumstances of this case. Specifically, the Judgment of this Court striking out the Plaintiff's prior claim for negligent misrepresentation explicitly permitted the Plaintiff to amend

its pleading because the facts pled “may possibly be restated so as to disclose a contractual claim”:

Parks Canada #1 at para 12. Justice Grammond stated that:

[12] A statement of claim can be struck without leave to amend if the defect is not one that can be cured by amendment: *Simon v Canada*, 2011 FCA 6 at paragraph 8. On the limited record before me, it appears the nature of the dispute between the parties is contractual. For this reason, the plaintiff may well have a contractual claim against Parks Canada, possibly on the basis of the principles set out in cases such as *Bhasin v Hrynew*, 2014 SCC 71, [2014] 3 SCR 494; *CM Callow Inc v Zollinger*, 2020 SCC 45; *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7. While the facts as pleaded do not disclose a cause of action in negligent misrepresentation, they may possibly be restated so as to disclose a contractual claim.

[56] In light of the above, in the exercise of my discretion, I conclude that the administration of justice is better served by permitting the Plaintiff’s Claim to go forward. Accordingly, the Defendant’s motion to strike out the Plaintiff’s Claim as an abuse of process is denied.

IV. **Should the Plaintiff be Granted Leave to Amend the Statement of Claim?**

[57] After determining that the Statement of Claim will be struck, I am required by Rule 221 to consider whether to permit the Plaintiff to file an amended Statement of Claim. The general rule is that leave should be granted unless it is plain and obvious that the defect in the pleading cannot be cured by amendment. This is a low bar for the Plaintiff: *Canada (National Revenue) v. Sharp*, 2022 FCA 138 at para 88; *Enercorp Sand Solutions Inc. v. Specialized Desanders Inc.*, 2018 FCA 215 at para 27.

[58] In *Ochapowace v. Canada*, 2019 FC 1288 at para 31, Justice Grammond observed that Courts have been reluctant to dismiss claims raising issues of contractual interpretation,

implication of terms or good faith on a motion to strike, as they have recognized that an evidentiary background is often necessary to determine how a contract applies to a specific fact situation.

[59] Having carefully considered the Statement of Claim as a whole, I am of the view that the defects in the Claim are potentially curable by amendment and that, if properly amended, the Plaintiff's pleading may disclose a reasonable cause of action. Accordingly, the Plaintiff is granted leave to file an amended Statement of Claim in accordance with these Reasons within 30 days of the date of this Order.

[60] It is important, however, to caution the Plaintiff that any further pleading must comply with the *Rules* and jurisprudence governing pleadings. Failure to comply with those *Rules* would expose the amended Statement of Claim to the risk of being struck out.

V. **Conclusion**

[61] For these reasons, I conclude that the Statement of Claim shall be struck, but with leave to amend.

[62] The Defendant seeks an order for costs of the motion. As the Defendant was successful on the main relief sought in this motion, I exercise my discretion in favour of awarding costs to the Defendant. Costs are hereby fixed in favour of the Defendant in the amount of \$850.00, inclusive of disbursements and taxes.

THIS COURT ORDERS that:

1. The Defendant's motion to strike is granted in part.

2. The Statement of Claim is struck out, but with leave to amend in accordance with these Reasons.
3. The Plaintiff shall serve and file any amended statement of claim by no later than 30 days from the date of this Order.
4. This Order is without prejudice to any objection that the Defendant may wish to raise with respect to the new amendments.
5. The Defendant is granted an extension of time to serve and file its Statement of Defence to thirty (30) days from the date of service of an amended statement of claim.
6. The Plaintiff shall pay to the Defendant its costs of the motion, hereby fixed in the amount of \$850.00, inclusive of disbursements and taxes.

"Kathleen Ring"
Associate Judge