CITATION: Vacaru v. Legge, 2025 ONSC 218
COURT FILE NO.: CV-23-5185
DATE: 20250110

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
FELICIA VACARU Plaintiff	Felicia Vacaru, In Person
– and –	
JOHN LEGGE, LEGGE AND LEGGE, TANYA PAGLIAROLI, TAP LAW Defendants	Tony Antoniou and Mariam Hanna, for the Defendants
	Mark C. Mandelker, for the Proposed Defendant, Lawyers' Professional Indemnity Company
	HEARD: October 24, 2024

REASONS FOR DECISION

DE SA J.:

[1] Ms. Vacaru has brought a motion seeking to amend her Statement of Claim and add Lawyers' Professional Indemnity Company ("LawPro") as a party on the basis that Ms. Pagliaroli and her firm, TAP Law, acted on instructions from the insurer LawPro.

[2] Ms. Vacaru's action seeks damages in the sum of $3,500,000 against her former lawyer, the Legge Defendants, and the TAP Law Defendants (who were the Legge Defendants' lawyer in the Underlying Trial Proceeding and Appeal). According to Ms. Vacaru, the Defendants all conspired to commit perjury, committed perjury and facilitated the introduction of falsified documents into evidence. Ms. Vacaru takes the position that as their employer, LawPro must or ought to have known their case. It is on this basis that she seeks to have LawPro added.

[3] The Defendants have brought a cross-motion for an Order striking the Statement of Claim, in its entirety without leave to amend, and dismissing the Action on the basis that it discloses no reasonable cause of action and is frivolous, vexatious, and/or an abuse of process pursuant to Rules 21.01(1)(b), 21.01(3)(d), and 25.11 of the Rules of Civil Procedure.

[4] The Defendants submit that it is plain and obvious that the claim cannot succeed as: 1) the Claim is an abuse of process as it seeks to relitigate issues that were already properly determined by this Court, and by the Ontario Court of Appeal; 2) the doctrine of absolute privilege bars any tort claim based on statements made in the course of court proceedings; 3) as against the TAP Law Defendants, a claim for conspiracy is legally untenable; and, 4) the action is limitation barred having been commenced beyond the basic two year limitation period. For these reasons also, the Plaintiff should not be granted leave to amend.

[5] According to the Defendants, the Plaintiff's claims are entirely devoid of merit, amount to a collateral attack on the Trial and Appeal Decisions and impugn the integrity of her former lawyer and his counsel without due cause.

[6] The Defendants also maintain that the claims relate entirely to their participation in the underlying court proceedings. Accordingly, the claims against both the Legge Defendants and the TAP Law Defendants are also barred by the doctrine of absolute privilege, which provides that no action can be brought against counsel, witnesses or parties (among others) for statements made in the ordinary course of a judicial proceeding.

[7] I agree with the Defendants that the Plaintiff's claim should be dismissed. The reasons for my decision are outlined below.

Summary of Facts

The Parties

[8] John Legge is a lawyer called to the bar of Ontario practicing law as a general practitioner in family and civil litigation through the law firm and style Legge & Legge Barristers and Solicitors (herein collectively the "Legge Defendants").

[9] The Legge Defendants were retained by the Plaintiff Felicia Vacaru (herein the "Plaintiff" or "Vacaru") to act for her in the course of her acrimonious divorce proceedings with her former spouse, Dan Purcaru (herein the "Divorce Proceedings").

[10] Tanya Pagliaroli is a lawyer called to the bar of Ontario practicing through the law firm TAP Law (herein collectively the "TAP Law Defendants"). The TAP Law Defendants represented the Legge Defendants in the Underlying Trial Proceeding and in the Appeal.

Background Facts

[11] Vacaru was involved in a bitter and acrimonious divorce with her former spouse. In the course of the Divorce Proceedings, the Legge Defendants retained Marmer Penner Inc.

(herein "Marmer Penner"), an accounting firm that specializes in business valuation and litigation accounting, to provide forensic accounting services.

[12] The Plaintiff eventually obtained judgment against her ex-husband in the Divorce Proceedings, however, Mr. Purcaru resisted all efforts to enforce the judgment, and was found in contempt of court due to multiple breaches of court orders.

[13] Vacaru was eventually able to recover approximately $1,200,000 of her award against Mr. Purcaru but was required to incur significant costs in doing so.

[14] Vacaru paid some, but not all, of Marmer Penner's account. Marmer Penner sued her for the outstanding amount and sued Legge on the basis that he had given Marmer Penner a personal undertaking to honour the fees.

The Underlying Trial and Appeal

[15] As noted above, Marmer Penner brought an action against Vacaru, and the Legge Defendants seeking payment of its outstanding professional fees (herein the "Main Action").

[16] Vacaru brought a counterclaim in which she alleged professional negligence against Marmer Penner (herein the "Counterclaim"), as well as a crossclaim against the Legge Defendants alleging solicitor's negligence (herein the "Crossclaim").

[17] A trial of Marmer Penner's action took place before Justice Chalmers beginning on March 3, 2020 and ending (after an interruption due to COVID-19), on February 17, 2021 (herein the "Underlying Trial Proceeding").

[18] Vacaru abandoned her Counterclaim against Marmer Penner on the eve of trial, and Marmer Penner was ultimately successful in the Main Action. On May 18, 2021, Justice Chalmers released the Reasons for Judgment, granting Marmer Penner's claim against both Vacaru and the Legge Defendants and dismissing Vacaru's Crossclaim against the Legge Defendants (herein the "Trial Decision"). In addition, the Legge Defendants were awarded costs against the Plaintiff in respect to their defence of the Crossclaim.

[19] Vacaru appealed from Justice Chalmers' decision, the judgment in the Main Action, and the judgment dismissing her Crossclaim (herein the "Appeal"). Vacaru also brought a motion to adduce fresh evidence on the Appeal (herein the "Appeal Motion"). The fresh evidence related to both the Appeal in the Main Action and the appeal from the dismissal of the Crossclaim.

[20] The TAP Law Defendants represented the Legge Defendants in the Underlying Trial Proceeding and in the Appeal. Vacaru's submissions in the Appeal Motion were essentially the same allegations advanced by Vacaru in the present action.

[21] On Vacaru's motion to adduce fresh evidence on the Appeal, she submitted that the notes relating to February 7, 2008 meetings, filed by the Legge Defendants in the Underlying

Trial Proceeding, had been reordered by Legge to make it appear as though the contents of part of the notes was properly attributable to Vacaru, when in reality the notes reflected statements made by Legge.

[22] Notably, at trial, Mr. Legge had been cross-examined by Ms. Vacaru extensively on the notes at issue and Mr. Legge himself acknowledged that the order of the notes from February 7, 2008 may have been incorrect as they were not his notes, but rather were notes taken by his assistant during the interview and were disclosed by his counsel.

[23] The Court of Appeal dismissed Vacaru's motion to adduce fresh evidence finding that:

> The *bona fides* of the notes of the two meetings, especially the March 4, 2008 meeting, was litigated at trial. Ms. Vacaru's position at trial was the same as the position advanced on appeal. She maintains that the evidence demonstrated that Legge deliberately fabricated and falsified evidence by removing some of the pages referable to the March 4th meeting, and reordering the remaining pages. *Ms. Vacaru does not suggest that cross-examination on these notes had a direct impact on the substantive issues at trial. She does, however, vigorously maintain that cross-examination on the notes would severely undermine Legge's credibility on all material matters, including those relating directly to the events underlying the crossclaim.* [Emphasis added.]

[24] Vacaru's Appeal was dismissed on April 12, 2022 (herein the "Appeal Decision").

The Current Lawsuit

[25] In the current lawsuit CV-23-5185-0000, Ms. Vacaru alleges that at the Trial (March 3, 2020 - Feb 17, 2021) and motions in the Court of Appeal (June 2021 - March 28, 2022), the Defendants conspired to commit perjury, committed perjury and misled the Court causing her crossclaim to be dismissed.

[26] The allegations again relate to the two sets of notes from meetings between Ms. Vacaru and Mr. Legge on February 7, 2008 and March 4, 2008. According to Ms. Vacaru, the notes from February 7, 2008 were presented in the incorrect order and accordingly provided the trial judge with a mistaken understanding about the discussions between herself and Mr. Legge. Statements made by Mr. Legge were improperly attributed to Ms. Vacaru because of the incorrect order of the notes.

[27] Again, Ms. Vacaru maintains this was done intentionally to mislead the Court regarding the discussions between herself and Mr. Legge. According to Ms. Vacaru, the notes from March 4, 2008 would have made this clear (as they were numbered in a similar way), but the complete set of notes from March 4, 2008 were also kept from Ms. Vacaru.

[28] Ms. Vacaru takes the position that this change in the order of the notes was intentional and was for the purpose of deceiving the Court. Ms. Vacaru maintains that Ms. Pagliaroli then

intentionally lied about knowing the whereabouts of the "original notes" to conceal the fraud/deception.

[29] In her motion, Ms. Vacaru seeks to add LawPro as a party on the basis that LawPro knew and would have instructed Ms. Pagliaroli and TAP Law to conspire to commit perjury, commit perjury and introduce falsified documents into evidence. As their employer, LawPro must or ought to have known their case.

Analysis

Is the Current Claim an Abuse of Process and a Collateral Attack?

[30] The Rules provide that a party may move under Rule 21.01(3)(d) or Rule 25.11(b) and (c) to strike out or expunge all or part of a pleading, with or without leave to amend, for being scandalous, frivolous, vexatious, or an abuse of the process of the court.[1] The analysis on a motion under these rules considers whether it is plain and obvious that the claim cannot succeed. [2]

[31] On a motion under Rules 21.01(3)(d) or 25.11, the facts pleaded in the Statement of Claim must be taken as true and assumed to be proven unless patently ridiculous or incapable of proof. [3] Evidence is admissible on whether the claim is frivolous, vexatious, or an abuse of process, but the court is not to weigh evidence going to the merits. [4]

[32] Rule 25.11(b) provides that the court may strike out or expunge all or part of a pleading, with or without leave to amend, on the ground that the pleading is "scandalous, frivolous or vexatious." As the Ontario Court of Appeal in *Abbasbayli v. Fiera Foods Company* found: [5]

> Rule 25.11(b) provides that the court may strike out or expunge all or part of a pleading, with or without leave to amend, on the ground that the pleading is "scandalous, frivolous or vexatious". A scandalous pleading includes those parts of a pleading that are irrelevant, argumentative or inserted for colour, and unfounded and inflammatory attacks on the integrity of a party. […]

[33] The Defendants maintain that the Plaintiff's claim is frivolous and vexatious, an abuse of process, and discloses no reasonable cause of action as against the Defendants. In

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[1] *Luo v. Fulton Development Inc*, 2023 ONSC 6262, at para. 3 .
[2] *Luo*, at para. 3; *Miguna v. Toronto Police Services Board*, 2008 ONCA 799, at para. 21.
[3] *Guergis v. Novak*, 2013 ONCA 449, at paras. 7 and 21; *Ang v. Premium Staffing Ltd.*, 2015 ONCA 821, at para. 5; *Miguna*, at para. 20.
[4] *Dosen v. Meloche Monnex Financial Services Inc. (Security National Insurance Company)*, 2021 ONCA 141, at para. 28; *Baradaran v. Alexanian*, 2016 ONCA 533, at para. 15.
[5] *Abbasbayli v. Fiera Foods Company*, 2021 ONCA 95, at para 49.

particular, the allegations of conspiracy, perjury, and misleading the court are scandalous, vexatious, and an abuse of process, and ought to be struck.

[34] The Defendants submit that the Action is also an abuse of process as it seeks to collaterally attack the Underlying Trial and Appeal Decisions.

[35] As noted above, in the current lawsuit CV-23-5185-0000, Ms. Vacaru alleges that at the Trial (March 3, 2020 - Feb 17, 2021) and motions in the Court of Appeal (June 2021 - March 28, 2022), the Defendants conspired to commit perjury, committed perjury and misled the Court causing her crossclaim to be dismissed.

[36] The allegations again relate to the same two sets of notes from meetings between Ms. Vacaru and Mr. Legge on February 7, 2008 and March 4, 2008 and the alleged misrepresentations in relation to those notes. Ms. Vacaru maintains that Ms. Pagliaroli then intentionally lied about knowing the whereabouts of the "original notes" to conceal the fraud/deception.

[37] Ms. Vacaru made essentially identical submissions before the Ontario Court of Appeal.

[38] As noted above, Ms. Vacaru's Appeal was ultimately dismissed on April 12, 2022.

[39] I am satisfied that Ms. Vacaru's present claim raises the same issues that were raised before the Court of Appeal. She has merely added to the allegations by including the subsequent representations made by counsel at the Court of Appeal. The underlying basis for the complaint remains the same.

[40] I agree with the Defendants that the entire action is a collateral attack on the underlying Trial and Appeal Decisions and is merely an attempt to re-litigate the issues that were already thoroughly addressed at the underlying Trial and Appeal.

[41] It is settled law that an "order made by a court with jurisdiction is binding and conclusive unless set aside or lawfully quashed." [6] As stated by the Supreme Court of Canada in *Wilson v. The Queen,* and repeated in *Toronto (City) v. C.U.P.E., Local 79*, the rule against collateral attack: [7]

> has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally — and a collateral attack may be described as an attack made in proceedings other than those

[6] *Toronto (City) v. CUPE, Local 79*, 2003 SCC 63, at para. 33.
[7] *CUPE* at para 33 citing *Wilson v. The Queen*, 1983 CanLII 35 (SCC), [1983] 2 SCR 594, at p. 599.

> whose specific object is the reversal, variation, or nullification of the order or judgment.

[42] A challenge to an order that is brought other than by appeal or appropriate review process is an impermissible collateral attack that will constitute an abuse of process.[8]

[43] In any event, most of Vacaru's claim is based on attacking statements made by the Legge Defendants and the TAP Law Defendants in the underlying court proceedings. Accordingly, the claims against both the Legge Defendants and the TAP Law Defendants would also be barred by the doctrine of absolute privilege, which provides that no action can be brought against counsel, witnesses or parties (among others) for statements made in the ordinary course of a judicial proceeding: See *Amato v. Welsh*, 2013 ONCA 258; *Tewari v. Sekhorn*, 2024 ONCA 123, at para. 3; *Said v. University of Ottawa*, 2013 ONSC 7186, at para. 41.

[44] I will grant the Defendants' request for an Order striking the Statement of Claim in its entirety, without leave to amend and dismissing the Action on the basis that the claim discloses no reasonable cause of action, and is frivolous, vexatious, and/or an abuse of process.

[45] I will receive costs submissions from the Defendants within 3 weeks of this decision. The Plaintiff will have 2 weeks thereafter to respond.

Justice C.F. de Sa

Released: January 10, 2025

[8] *Luo*, at para. 5; *De Bousquet v. Jarrett*, 2023 ONSC 3545, at para. 11.

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