

COURT OF APPEAL FOR ONTARIO

CITATION: Furney v. Hazan, 2025 ONCA 73

DATE: 20250131

DOCKET: COA-24-CV-0620

Hourigan, Favreau and Dawe JJ.A.

BETWEEN

Maryam Furney and Alex Aidan Furney

Plaintiffs (Appellants)

and

Steven Hazan, Ambassador Mortgage Solutions Inc.,
Dominion Lending Centres Inc.* , 2380376 Ontario Limited,
Ian Minton, Samir Chhina*, Paulina Diaco Carlile
and Simon A. Hildyard or Simon A. Overton

Defendants (Respondents*)

Maryam Furney and Alex Aidan Furney, acting in person

Sahil Kesar, for the respondent, Dominion Lending Centres Inc.

Julia Wilkes and Jocelyn Howell, for the respondent, Samir Chhina

Heard: January 23, 2025

On appeal from the order of Justice R. Lee Akazaki of the Superior Court of Justice,
dated May 21, 2024.

REASONS FOR DECISION

[1] The appellants brought a claim against eight defendants seeking various forms of monetary relief related to mortgage transactions. Two defendants, Samir Chhina and Dominion Lending Centres Inc. (“Dominion”), brought motions

to strike the appellants' claim against them under r. 21.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Both were successful.

[2] The claim concerns two mortgage funding commitments allegedly issued by the defendant 2380376 Ontario Limited. The appellants approached the defendant Steven Hazan, a mortgage broker, in November 2020, after obtaining the commitments in July 2020. They allege that Mr. Hazan represented to them that \$580,000 had been placed in trust with his lawyer, Mr. Chhina. They state that subsequently funds were removed from the trust account and used for purposes unknown to them. There is also an allegation that Mr. Hazan instructed Mr. Chhina to register a collateral mortgage without the appellants' consent, which blocked the financing of certain properties.

[3] The appellants allege that the breach of the funding commitment and the unlawful mortgage caused them to lose a property via power of sale, and the unlawful collateral mortgage placed on another property caused them harm. The total claim for damages and/or specific performance amounts to between \$8 and \$9 million.

[4] The motion judge struck the appellants' claim as against the moving parties without leave to amend. He also ordered the appellants to pay substantial indemnity costs of \$25,000 to Dominion and \$15,000 to Mr. Chhina.

Claim against Dominion

[5] We see no reason to interfere with the order of the motion judge regarding Dominion. We concur with his finding that the pleadings did not reveal a factual connection between the appellants' claim and Dominion, given that 2380376 Ontario Limited, and not Dominion, was identified as the lender.

[6] We also agree that leave to amend should be denied. Amending the pleading would not address the fundamental problem that there is nothing connecting Dominion to the underlying events. There is no basis to grant leave to amend on what would be a doomed claim.

[7] Finally, there is no reason to intervene in the motion judge's costs award against Dominion. The appellants' actions in pursuing an unmeritorious claim warranted the imposition of costs on a higher scale.

Claim against Mr. Chhina

[8] It is worth emphasizing that rule 21 motions are different from summary judgment motions. Notably, rule 21 motions generally preclude a consideration of evidence. The court must read the pleadings generously and accept as true the material facts as pleaded, except if they are patently ridiculous or manifestly incapable of proof: *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at paras. 17-22; *Paton Estate v. Ontario Lottery and Gaming Corp.*, 2016 ONCA 458, at para. 12. It is with these principles in mind that we turn to the issues before us.

[9] We do not agree that on the appellants' pleading against Mr. Chhina, this is an appropriate case for a rule 21 motion. There are two allegations in the pleading that lead us to this conclusion: (i) the allegation that Mr. Chhina registered a collateral mortgage to block the appellants' mortgage financing; and (ii) the allegation that Mr. Chhina was involved in removing funds from his trust account that were reserved for closing on the appellants' behalf. These allegations must be accepted as true for the purposes of a rule 21 motion, and, on the face of the claim, they appear to have been asserted within the relevant limitation period. Mr. Chhina may well have a valid defence, but such a defence will require evidence to be adduced at trial or on a motion for summary judgment.

[10] We find that the motion judge made two errors in dismissing the claim against Mr. Chhina. First, we reject the motion judge's conclusion that Mr. Chhina was insulated from liability because he was acting under instructions from his client. There is a general rule that a lawyer in a commercial transaction owes no duty of care to any party other than their client: *Diamond Contracting Ltd. v. MacDearmid* (2006), 214 O.A.C. 92 (C.A.), at para. 3. However, where the allegation is, as in this case, that the lawyer knowingly participated in a fraud or was reckless or wilfully blind to a fraud, the lawyer is not immune from liability simply on the basis that he was acting on instructions from a client: see for example *Canbook Distribution Corp. v. Borins*, 45 O.R. (3d) 565 (S.C.) at paras. 18-22.

[11] Second, we conclude that the motion judge erred in finding that the claim against Mr. Chhina was *res judicata*. He relied on Centa J.'s decision in *Furney et. al. v. Downie et. al.*, 2024 ONSC 2632 to conclude that the appellants are estopped from pursuing any of the defendants, including the respondents. In the earlier decision, Centa J. dealt with whether an order should issue under rule 2.1.01 regarding litigation involving the appellants, Dominion and Mr. Chhina. Centa J. concluded that the action was frivolous, vexatious, and an abuse of the court's process. He relied on the following reasons:

- There was no identifiable cause of action and this is “not the first time that the Furneys’ pleadings have been criticized for this problem”;
- Some of the defendants were lawyers which is a common feature of a vexatious pleading;
- The claim “is a collateral attack on judgments obtained in other proceedings”;
- The Furneys’ comments about a prior decision are “manifestly inappropriate and are indicative of a vexatious approach to litigation”;
- The Furneys’ submissions that any prior endorsements bear on whether this action is frivolous are not relevant.

[12] We are not satisfied that Centa J.'s decision renders the current action against Mr. Chhina *res judicata*. On reading the earlier decision, it is unclear whether there are sufficient similarities to the causes of action in the current case.

The doctrine of *res judicata* prevents the re-litigation of previously adjudicated and finally decided matters. It applies where the basis of the cause of action was argued or could have been argued in a prior action, the same parties were involved, and the underlying decision is final: *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, at paras. 50-51. Here, the same parties were involved and the decision is final. However, it is not apparent that the same cause of action was argued. Further, it is unclear what “collateral attacks” are being referred to.

[13] Given our conclusion, it is unnecessary to address whether leave to amend should have been granted. To be clear, we make no comment on the sufficiency of the appellants’ pleadings and whether further particulars may be required.

Disposition

[14] The appeal against Dominion is dismissed. During the hearing, counsel for Dominion requested partial indemnity costs of \$20,000 for the appeal. We are of the view that a smaller quantum of costs is warranted in this case. The appellants are ordered to pay the costs of the appeal to Dominion of \$10,000, all-inclusive.

[15] The appeal against Mr. Chhina is allowed. The order of the motion judge is set aside as it relates to Mr. Chhina. The costs order of the motion judge in relation to Mr. Chhina is also set aside.

[16] We invite the parties to make written submissions about the costs below and the costs of this appeal, not exceeding five pages. The appellants will have seven days from the release of these reasons to serve and file their submissions. Mr. Chhina will then have a further seven days from the receipt of the appellants' submissions to respond. The appellants will have 3 days from the receipt from Mr. Chhina's submissions to make reply submissions.

"C.W. Hourigan J.A."

"L. Favreau J.A."

"J. Dawe J.A."