Court of Appeal for Saskatchewan
Docket: CACV4261

Citation: ***Sawatzky v Prince Albert Golf and Curling Club Inc.*****, 2025 SKCA 16**
Date: 2025-02-12

Between:

Matt Sawatzky

Appellant
(Plaintiff)

And

Prince Albert Golf and Curling Club Inc. and Kelly Timmerman

Respondents
(Defendants)

Before:	Jackson, Schwann and Tholl JJ.A.
Disposition:	Appeal allowed in part
Written reasons by:	The Honourable Justice Lian M. Schwann
In concurrence:	The Honourable Justice Georgina R. Jackson The Honourable Justice Jerome A. Tholl
On appeal from:	2023 SKKB 199, Prince Albert
Appeal heard:	November 27, 2024
Counsel:	Randy Klein, K.C., for the Appellant Robert Affleck for the Respondent

Schwann J.A.

I. INTRODUCTION

[1] This appeal concerns the adequacy of pleadings in a defamation action.

[2] Matt Sawatzky was the General Manager of the Prince Albert Golf and Curling Club (PAGCC) [Club] for approximately 4 years. After the Club's board of directors terminated his employment, Mr. Sawatzky brought an action against it for unjust dismissal. His statement of claim also encompassed an action against both the Club and Kelly Timmerman for defamation. Mr. Timmerman was the chair of the board of directors of the Club at the relevant time.

[3] The Club and Mr. Timmerman applied pursuant to Rule 7-9(2)(a) of *The King's Bench Rules* to strike parts of Mr. Sawatzky's statement of claim as disclosing no reasonable cause of action. The Chambers judge who heard the matter addressed two central issues, namely whether Mr. Sawatzky had adequately pleaded a basis in fact respecting (a) Mr. Timmerman's liability for defamatory statements allegedly made in both his personal capacity and as a corporate officer of the Club, and (b) the respondents' liability for the republication of allegedly defamatory comments made by third parties. The Chambers judge found Mr. Sawatzky's statement of claim inadequate in both respects and struck six paragraphs from it, with the consequence of removing Mr. Timmerman from the claim entirely and reducing the ambit of the claim against the Club: *Sawatzky v Prince Albert Golf and Curling Club Inc.*, 2023 SKKB 199 [*Strike Decision*].

[4] In his appeal from that decision, Mr. Sawatzky argues the Chambers judge erred by failing to apply the modern approach to pleadings in a defamation action and by operating from a misunderstanding of the law with respect to the personal liability of corporate officers for intentional torts committed while simultaneously acting in their capacity as a corporate officer.

[5] I conclude that Mr. Sawatzky's appeal from the Chambers judge's decision, striking the republication claim, must be allowed. In all other respects, his appeal is dismissed, with leave to apply to amend the statement of claim to address the deficiencies in his pleadings. My reasons follow.

II. BACKGROUND

[6] Mr. Sawatzky was employed by the Club from April 25, 2016, until July 3, 2020, when he was terminated without cause and given 4 weeks pay in lieu of notice. Mr. Sawatzky commenced an action against both the Club and Mr. Timmerman, who, as noted, was the chair of the board of directors at that time. In it, he alleges that (a) he was wrongfully dismissed, (b) the Club and Mr. Timmerman concurrently falsely and maliciously defamed him, (c) the alleged defamatory statements were couched in an innuendo that he had stolen money from the Club and that he was a thief and not trustworthy, and (d) the defamatory words were republished by third parties.

[7] The facts underlying the alleged defamatory comments pertain to the Club having inadvertently overpaid Mr. Sawatzky during the course of his employment. Mr. Sawatzky claims the Club repeatedly and wrongly implied that he had stolen those funds. The innuendo is said to arise from a November 23, 2020, email from the Club to its membership, which, in part, reads as follows (quoted at paragraph 37 of the statement of claim):

> The board understands that members are concerned about the happenings over the past several months. Regarding the GM termination, issues with staff cannot be discussed or elaborated on by the board. This is confidential information and releasing it can damage the reputation and ability to procure employment for the affected person. It becomes a matter of the membership trusting the board to do what is right for PAGCC.
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> (Original emphasis omitted)

[8] Following issuance of the statement of claim, the Club and Mr. Timmerman made a demand for particulars, to which Mr. Sawatzky replied. Soon thereafter, the respondents filed a joint statement of defence in which they denied that Mr. Sawatzky had been wrongfully terminated and that they had defamed him either directly or by innuendo of wrongdoing. In their defence, they assert that the Club and Mr. Timmerman had at all times acted honestly and in good faith and, in any event, pleaded qualified privilege. While the respondents acknowledge that the Club had overpaid Mr. Sawatzky, they assert that he had agreed to negotiate repayment of that amount as part of his (ultimately failed) contract renewal process. The Club also counterclaimed for the recovery of the overpayment.

III. THE STRIKE APPLICATION

[9] The respondents jointly applied under Rule 7-9(2)(a) of *The King's Bench Rules* to strike multiple paragraphs from Mr. Sawatzky's statement of claim for disclosing no reasonable cause of action.

[10] The Chambers judge began his reasons by instructing himself on the core legal principles associated with a defamation action by reference to this Court's decisions in *Hope v Gourlay*, 2015 SKCA 27, 384 DLR (4th) 235 [*Hope*], and *Wilson v Saskatchewan Water Security Agency*, 2023 SKCA 16, 478 DLR (4th) 170 [*Wilson*], from which he understood that a claim may be allowed to stand if the pleading identifies the offending communication with sufficient precision so that a defendant or defendants know the case against them and are able to plead to it and prepare their defence.

[11] The Chambers judge zeroed in on paragraph 24 of the claim, which he said contained nothing but a bare allegation that words defamatory of Mr. Sawatzky had been published by the respondents. Even though the Chambers judge found Mr. Sawatzky's claim disjointed, he concluded that paragraph 32 of the statement of claim filled in the gap by identifying "with sufficient particularity the sense or nature of the defamatory words alleged so as to permit the defendants to know the case against them and prepare their defence" (*Strike Decision* at para 22). Paragraph 32 provides as follows: "Meanwhile, TIMMERMAN, and certain other members of the Board of Directors of PAGCC, published and alleged to the remaining members of the Board and members of PAGCC, that the Plaintiff was aware of and responsible for the Extra Pay, that the Plaintiff was a thief, and that he was stealing from PAGCC".

[12] The Chambers judge turned next to the innuendo allegation grounded in paragraph 34 of the statement of claim, which states as follows:

> 34. All of the exact defamatory words written and spoken of the Plaintiff are unknown to the Plaintiff, however, the innuendo was that the Plaintiff had lied to the Board, that he is not trustworthy, that he is a thief, that he had fraudulently stolen and obtained funds from PAGCC, that he was challenged with direct questions about the Extra Pay and he lied or made misrepresentations in his answers, and that the Board misplaced its trust in the Plaintiff.

[13] The Chambers judge was satisfied that paragraphs 32 and 34, read together, supported an allegation of innuendo and provided sufficient particularity to permit the respondents to know the case against them and prepare their defence to the defamation action.

[14] The Chambers judge then turned to the respondents' application to strike the defamation part of the claim against Mr. Timmerman personally, noting that the total of the allegations against him were contained in the following paragraphs in the statement of claim:

> 5. The Plaintiff claims against TIMMERMAN for defamation.
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> …
>
> 24. PAGCC, through its officers, agents and employees, and TIMMERMAN in his personal capacity, and in his capacity as Chair of the Board of Directors and President of PAGCC, have falsely and maliciously published words defamatory of the Plaintiff.

[15] The Chambers judge began his analysis of that issue with the observation that paragraph 24 contains nothing but a bare allegation that Mr. Timmerman, in his personal capacity, had defamed Mr. Sawatzky. He went on to note that Mr. Sawatzky's claim did not provide any particulars of words that were published by Mr. Timmerman in his personal capacity as opposed to those he may have uttered as chair of the board. After alluding to Mr. Sawatzky's reply to the respondents' demand for particulars, the Chambers judge remained unpersuaded that the pleadings offered any particulars of words or actions by Mr. Timmerman that were ostensibly taken in his personal capacity as opposed to having acted as a director or officer of the Club. His assessment of this deficiency in the pleadings led him to strike paragraph 5 of the statement of claim for disclosing no reasonable cause of action against Mr. Timmerman personally as well as "any reference in the balance of the pleadings to [Mr. Timmerman] acting in his personal capacity" (*Strike Decision* at para 18).

[16] The third issue addressed by the Chambers judge related to Mr. Sawatzky's republication claim, the essence of which is that the respondents are responsible for the defamatory words repeated by third parties.

[17] The Chambers judge stated that, as a matter of law, every republication of a defamatory statement gives rise to a separate cause of action for which the person republishing is liable. He identified the following three situations or exceptions to that rule where the original publisher can be found liable as well as the republisher themselves (at para 26):

> a. where the original publisher authorized or intended the republication;
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> b. if the original statement is such that the person to whom it is made is under some moral, legal or social duty to repeat it to another and the original utter knows of that obligation; and
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> c. if the repetition or republication to a third person is in some other way the natural and probable result of the original publication.

[18] However, the Chambers judge found the statement of claim devoid of any allegation of facts capable of supporting a finding that one of those exceptions applied. That determination caused him to strike paragraphs 35, 36 and 39 from the claim.

[19] The final issue addressed by the Chambers judge concerned whether the statement of claim provided sufficient notice of the particulars of when and to whom the comments were made. At issue here was the respondents' assertion that paragraphs 25 and 26 of the statement of claim (quoted below) lacked sufficient particularity:

> 25. PAGCC, and TIMMERMAN, personally and acting in his capacity as Chair of the Board of Directors and President of PAGCC, published the words defamatory of the Plaintiff to the PAGCC staff, members of Prince Albert Golf and Curling Club, and to other residents of Prince Albert, Saskatchewan.
>
> 26. The publication defamatory of the Plaintiff was circulated and published to other persons whom the Plaintiff cannot at the present specify, but he will rely upon the publication thereof to every person to whom he may discover the same to have been published.

[20] The Chambers judge agreed with the respondents' argument and struck the phrase, "and to other residents of Prince Albert, Saskatchewan", in paragraph 25, along with the "entirety of paragraph 26" for lacking the necessary particularity (*Strike Decision* at para 33).

[21] In the final analysis, the Chambers judge struck parts of paragraph 25, the whole of paragraphs 5, 26, 35, 36 and 39 of the statement of claim, and removed all other references to Mr. Timmerman. On appeal, Mr. Sawatzky does not challenge the striking of the impugned phrase from paragraph 25 or the entirety of paragraph 26.

IV. ISSUES ON APPEAL

[22] This appeal can be resolved by answering the following questions:

(a) Did the Chambers judge err by striking portions of Mr. Sawatzky's claim for (i) pleading insufficient factual particulars of the alleged republication, and (ii) disclosing no reasonable cause of action against Mr. Timmerman in his personal capacity?

(b) Should Mr. Sawatzky be given leave to amend his statement of claim?

V. STANDARD OF REVIEW

[23] A decision as to whether a statement of claim discloses a reasonable cause of action is a question of law that engages the correctness standard of appellate review: *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 21 [*Harpold*]; *Filson v Canada (Attorney General)*, 2015 SKCA 80 at para 22, 388 DLR (4th) 66; and *Aecon Mining Construction Services v K+S Potash Canada GP*, 2024 SKCA 48 at para 16.

[24] However, the Chambers judge in this matter was not asked to determine whether Mr. Sawatzky's statement of claim disclosed a known cause of action but, rather, if that known cause of action (in this case, defamation) had been pleaded with sufficient particularity. This issue required the Chambers judge to interpret the pleadings. A judge's interpretation of pleadings is not a question of law and is therefore an issue that is subject to the palpable and overriding error standard of review: *Pfeifer Holdings Ltd. v North Battleford (City)*, 2025 SKCA 4 at para 32, and *Kelly Panteluk Construction Ltd. v Lloyd's Underwriters*, 2024 SKCA 42 at para 28, 41 CCLI (6th) 238.

VI. FOUNDATIONAL LEGAL PRINCIPLES

[25] This appeal engages several legal principles, which are most usefully addressed at this juncture of my decision.

A. Striking pleadings

[26] Pursuant to Rule 7-9(2)(a) of *The King's Bench Rules*, a pleading may be struck for disclosing "no reasonable claim or defence"; that is, assuming the plaintiff can prove everything alleged in the claim, there is no arguable case. The test for striking a claim under Rule 7-9(2)(a) is stringent and the threshold is high: see *Atlantic Lottery Corp. Inc. v Babstock*, 2020 SCC 19 at para 90, [2020] 2 SCR 420, Karakatsanis J. in dissent (but not on this point). The question is not whether the claim might fail or even whether it is likely to fail. Judges should exercise their discretion to strike on this ground only where it is plain and obvious and they are satisfied that the case is "beyond reasonable doubt" (*Hunt v Carey Canada Inc.*, [1990] 2 SCR 959 (WL) at para 34): similarly, see *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 15, [2003] 3 SCR 263; *Sagon v Royal Bank* (1992), 105 Sask R 133 at para 16; and *Harpold* at para 35. The following was observed in *Harpold*:

> [26] When called upon to review a claim in response to an application under Rule 7-9(2)(a), the reviewing judge is required to determine whether sufficient facts have been pleaded to establish the legal elements of a cause of action by considering the whole of the statement of claim. It is for the reviewing judge "to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action" (*Reisinger v J.C. Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 [*Reisinger*]).

That point was echoed in *Wilson*, where the Court said as follows:

> [24] What, then, is sufficient to meet this requirement? As noted in *Thirsk* [2017 SKQB 66], "the focus in dealing with an application to strike all or part of a claim as disclosing no cause of action is on substance — that is, on whether the pleadings adequately serve their purpose — rather than form" (at para 21). The key purposes of pleadings include defining the real issues in dispute and giving the other party fair notice of what is claimed: *Reisinger v J.C. Akin Architect Ltd.*, 2017 SKCA 11 at paras 13–14, 411 DLR (4th) 687; *Thirsk* at paras 19–20. This is the lens through which a judge hearing such an application — including an application to strike a defamation claim — should determine whether the pleading passes muster.

[27] In *Harsch v Saskatchewan Government Insurance*, 2021 SKCA 159, [2022] 2 WWR 675, this Court said that the analysis of the question – whether the statement of claim discloses a reasonable cause of action – "must remain rooted in a consideration of the sufficiency of the plaintiff's pleadings, and not in the defences that may exist to the plaintiff's claim. To state that another way, the fact that a defence has been pleaded does not determine whether the statement of claim discloses a reasonable cause of action" (at para 39).

B. Defamation

[28] In *Grant v Torstar Corp*., 2009 SCC 61, [2009] 3 SCR 640 [*Torstar*], the Supreme Court established that, in a defamation action, the plaintiff must "prove three things to obtain judgment": "(1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff" (at para 28) – see also *Hope* at para 18.

[29] Where those essential elements are established on a balance of probabilities, falsity and damage are presumed: "The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability" (*Torstar* at para 28).

[30] To successfully plead these elements, a plaintiff is required to set out a concise statement of the material facts upon which they rely. Historically speaking, pleadings in a defamation action demanded precision. They had to contain detail of the material facts, including a verbatim recounting of the defamatory words, the time and place of publication, and the names of the recipients of the statement. Underpinning those requirements was the concern for the "serious nature of such allegations and the significance of context in assessing them" (*Catalyst Capital Group Inc. v Veritas Investment Research Corporation*, 2017 ONCA 85 at para 24, 412 DLR (4th) 241 [*Catalyst*]).

[31] Over time, a more flexible approach has emerged in Canadian jurisprudence with respect to defamation pleadings. In *Catalyst*, for instance, the Ontario Court of Appeal explored the issue of the stringency attached to defamation pleadings, concluding that they will be allowed to stand, even "where the plaintiff is unable to provide full particulars of all allegations", including "situations where the plaintiff has revealed all the particulars within its knowledge, where the particulars are within the defendant's knowledge and – importantly – where the plaintiff has otherwise established a *prima facie* case of defamation (including publication) in the pleading" (at para 25).

[32] Adopting the dicta in *Magnotta Winery Ltd. v Ziraldo* (1995), 25 OR (3d) 575 (WL) (Ont Ct J (Gen Div)) [*Magnotta Winery*], *Catalyst* also addressed what it meant by the notion of a *prima facie* case in reference to a plaintiff's pleadings:

> [50] … [The plaintiffs] have "pleaded all of the particulars available to [them] with the exercise of reasonable diligence" and, although they do not have knowledge of the names of the additional third parties to whom publication has been made, that knowledge "will become available to be pleaded by discovery of the defendant, production of a document or by other defined means …" [*Magnotta Winery* at para 14].

[33] The Ontario Court of Appeal returned to *Catalyst* in *PMC York Properties Inc. v Siudak*, 2022 ONCA 635, 473 DLR (4th) 136, leave to appeal to SCC refused, 2023 CanLII 31576 [*PMC York*], affirming the modern, flexible approach to pleadings in defamation:

> [40] … The animating principle behind the modern, flexible approach to pleadings in defamation (like the approach to pleadings in general), is that a claimant must plead in good faith and with sufficient particularity the constituent elements of the tort of defamation *so that the defendant is not left in the dark as to the case to be met*.
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> (Emphasis in original)

[34] In this province, Richards C.J.S. in *Hope* reviewed the jurisprudence in this area of law, taking note of the easing trend that had evolved. His analysis caused him to also adopt the more relaxed approach. This means, he said, that a "plaintiff must identify the exact words at the root of a claim for defamation", if known, but, when they do not, "a claim might still be allowed to stand if the pleading nonetheless identifies the offending communication with sufficient precision and particularity that the defendant knows the case against him or her and is able to plead to it and prepare his or her defence" (at para 25).

[35] The principle of law that emerged in *Hope* was reaffirmed in *Wilson*. Justice Barrington-Foote went on to say this (*Wilson*):

> [26] … This too accords with the focus on whether the pleadings adequately serve their purpose. It also recognizes that a plaintiff may not know or be reasonably capable of determining exactly what was communicated, when, by whom and to whom, other than in the course of the action. The pleadings may still survive, however, if it is readily apparent that the allegations in the statement of claim and particulars are sufficient to enable the defendant to identify the allegedly defamatory language and its publication to the extent necessary to enable them to plead and prepare their defence.

C. Republication

[36] As a matter of law, "every repetition or republication of a defamatory statement constitutes a new publication" and a separate and distinct libel (*Breeden v Black*, 2012 SCC 19 at para 20, [2012] 1 SCR 666 [*Breeden*]): similarly, see *Weiss v Sawyer* (2002), 217 DLR (4th) 129 (Ont CA) at para 28. In this way, the republisher is directly liable to the plaintiff. Case law establishes the principle that every person who repeats a defamatory statement bears the same liability as the person who originally published it: "It is well established in Canadian law that the tort of defamation occurs upon publication of a defamatory statement to a third party. … The original author of the statement may be held liable for the republication where it was authorized by the author or where the republication is the natural and probable result of the original publication" (*Breeden* at para 20). Another exception is said to exist in circumstances "where the person to whom it is made is under some moral, legal or social duty to repeat it to another, and the original utterer knows of that obligation" (CED 4th (online), *Defamation* "Repetition and Republication – Liability of Original Publisher" (V) at §24): also see Peter A. Downard, *The Law of Libel in Canada*, 5th ed (LexisNexis Canada, 2022) at §5.03.

D. Personal liability of a corporate officer

[37] Officers and directors of corporate entities can be held personally liable for tortious conduct in connection with acts done in the corporate name. Civil wrongdoing can result in liability for not only the corporation but also its directors and officers. This is known as the *Said v Butt* rule – [1920] 3 KB 497 – and was expressed in *Watson v TrojanOne Ltd.*, 2016 ONSC 2740, 32 CCEL (4th) 149, as follows:

> [5] The Rule in *Said v. Butt* concerns the tort of inducing breach of contract, and the rule is that in the absence of separate conduct which is *mala fide* and against the best interests of the corporation, a corporate officer or employee may not be sued for inducing breach of contract where a claim for breach of contract is available against the corporation: *Hino Motors Canada Ltd. v. Kell*, 2010 ONSC 1329 at para. 23.
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> [6] Thus, an officer of a corporation can be separately liable, if the officer engaged in his or her own tortious conduct or for his or her own purposes independent of the purposes of the corporation; *however, the pleading against the officer of a corporation must address specifically the cause of action asserted against the officer and explain why he or she is being sued separately from the corporation*: *Schembri v. Way*, [2012 ONCA 620] at paras. 29–32.
>
> (Emphasis added)

See also Gary Rossiter, *Business Legal Adviser*, loose-leaf (Rel 2024-09) (Toronto: Thomson Reuters Canada, 2020) at 1.VII §1:21.

[38] This issue arose in *Montreal Trust Company of Canada v ScotiaMcLeod Inc.* (1995), 129 DLR (4th) 711 (WL) (Ont CA) [*ScotiaMcLeod*], where the Ontario Court of Appeal provided the following often-cited summary of the law in this area:

> [25] The decided cases in which employees and officers of companies have been found personally liable for actions ostensibly carried out under a corporate name are fact-specific. In the absence of findings of fraud, deceit, dishonesty or want of authority on the part of employees or officers, they are also rare. Those cases in which the corporate veil has been pierced usually involve transactions where the use of the corporate structure was a sham from the outset or was an afterthought to a deal which had gone sour. There is also a considerable body of case law wherein injured parties to actions for breach of contract have attempted to extend liability to the principals of the company by pleading that the principals were privy to the tort of inducing breach of contract between the company and the plaintiff: see *Ontario Store Fixtures Inc. v. Mmmuffins Inc.* (1989), 70 O.R.(2d) 42 (H.C.), and the cases referred to therein. Additionally there have been attempts by injured parties to attach liability to the principals of failed businesses through insolvency litigation. In every case, however, the facts giving rise to personal liability were specifically pleaded. Absent allegations which fit within the categories described above, officers or employees of limited companies are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act or conduct complained of their own.

See also *Bhagaloo v M2 Construction & Development Ltd.*, 2021 SKCA 168 at paras 44–48, [2022] 3 WWR 179 [*Bhagaloo*]; *ADGA Systems International Ltd. v Valcom Ltd.* (1999), 168 DLR (4th) 351 (CanLII) (Ont CA) at para 7, leave to appeal to SCC refused, [2000] 1 SCR xv (note) [*ADGA*]; and *Normart Management Limited v West Hill Redevelopment Company Limited* (1998), 155 DLR (4th) 627 (WL) (Ont CA) at para 18.

[39] The point to be drawn from these authorities for purposes of this appeal is twofold:

(a) absent an allegation of fraud, deceit, dishonesty or want of authority, claims against a corporate officer for tortious conduct alleged to have been taken while ostensibly discharging corporate responsibilities are rare; and

(b) the claim needs to be grounded in precise pleadings, setting out the facts said to give rise to personal liability.

See *ADGA*; *Schembri v Way*, 2012 ONCA 620 at paras 29–32, 7 BLR (5th) 1; *The Owners, Strata Plan No. VIS3578 v John A. Neilson Architects Inc.*, 2010 BCCA 329, 323 DLR (4th) 482 [*Neilson*]; and *XY, LLC v Zhu*, 2013 BCCA 352, 366 DLR (4th) 443, leave to appeal to SCC refused, 2014 CanLII 7165 [*Zhu*]. This necessarily includes facts capable of showing that the individual's actions were tortious or that they exhibit a separate identity or interest from the corporate body (or both) so as to make the impugned act their own.

[40] While there appears to be some debate about whether a person's action must be tortious *and* that they exhibit a separate entity from the corporate body, or if those qualifiers are disjunctive – see *Strata Plan LMS 2262 v Stoneman Developments Ltd.*, 2004 BCSC 828, 39 CLR (3d) 127 – the weight of authority appears to be that expressed in *Zhu*. In *Zhu*, after thoroughly reviewing the law in this area, the British Columbia Court of Appeal provided the following summary of the legal principles respecting pleadings against an employee agent of a corporation:

> [73] Nevertheless, it appears to be the law in Canada that as long as tortious conduct on the part of an employee or agent of a corporation (or any other employer) *is properly pleaded and proven as an "independent" tort by the employee or agent*, the wrongdoer can be held personally liable notwithstanding that he or she may have been acting in the best interests of (and at the behest of) the employer or principal. I see no reason in principle or policy why such liability should be restricted to cases involving physical damage (as *Said v. Butt* may have suggested in 1920), or to claims in negligence (as referred to in *London Drugs* [[1992] 3 SCR 299], *Hildebrand* [2008 BCCA 434] and *Neilson* [2010 BCCA 329]). Certainly the Ontario Court of Appeal did not so restrict it in *ADGA*. (See also *Hogarth v. Rocky Mountain Slate Inc.* 2013 ABCA 57 at para. 103; *Schembri v. Way* 2012 ONCA 620 at para. 30; *Correia v. Canac Kitchens*, 2008 ONCA 506 at paras. 86–8; and *Unisys Canada Inc. v. York Three Associates Inc.* (2001), 150 O.A.C. 49 (Ont. C.A.) at para. 11.)
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> (Emphasis added)

VII. ANALYSIS

A. The republication issue

[41] In his statement of claim, Mr. Sawatzky seeks to have the respondents held liable for any republication of their allegedly defamatory statements:

> 35. The Defamatory publications made of the Plaintiff were repeated by others, and the Plaintiff pleads, relies upon and pleads the Defendants are responsible for each republication.
>
> …
>
> 39. PAGCC, the Board and TIMMERMAN, are responsible for any re-publication of the defamatory publications complained of.

[42] The particulars of the alleged defamation and its republication known and pleaded by Mr. Sawatzky are set out as follows in his statement of claim:

> 36. Particulars of some republications known to the Plaintiff are:
>
> > (a) On or about the 30th of December, 2020 during a PAGCC Annual General Meeting … a member of PAGCC stated: "I heard many times that Matt was stealing. John Toner told me on the 15th hole that an email would be sent out why Matt was fired".
> >
> > (b) On or about the 30th of December, 2020 during a PAGCC Board Meeting, Norm Vetter stated: "As a matter of fact in the November board meeting I had asked about the negative and disparaging comments that were being made about Matt and in response I was told that I didn't have all the information and that I needed to know what was going on behind the scenes to understand some of this disparaging commentary and negative attitudes towards Matt".

[43] As mentioned above, the Chambers judge struck the aforesaid paragraphs because he found "the pleadings do not allege facts which, if proven, could support a Court finding a reasonable cause of action against the defendants for republication" (*Strike Decision* at para 28). Framed another way, he determined that Mr. Sawatzky had not pleaded any facts that could support a finding that one of the three identified exceptions to the republication rule applied.

[44] While Mr. Sawatzky concedes that, as a matter of law, a person is only responsible for his or her defamatory publications, he emphasizes that an exception to that rule can occur where the republication is the natural and probable result of the original publication. It is Mr. Sawatzky's position that that exception can be logically inferred from the pleadings. He asserts the Chambers judge fell into error by not assessing the adequacy of his pleadings on the republication issue through the lens of the relaxed, flexible approach established in *Hope* and without regard to his reply to the demand for particulars.

[45] I begin with an examination of the statement of claim in which the particulars of republication of the respondents' impugned statements are said to arise from two sources. The first is a December 30, 2020, annual general meeting of the Club where a board member is alleged to have said that Mr. Sawatzky was stealing. The second – a board meeting of the same date – transpired where another member allegedly stated that he had inquired about negative statements being made about Mr. Sawatzky and was told that he did not have all the information and that he needed to know what was going on behind the scenes "to understand some of this disparaging commentary and negative attitudes towards Matt".

[46] Paragraph 36 of the statement of claim offers no allegation of facts connecting the alleged defamatory comments pleaded in paragraph 32 – that Mr. Sawatzky was a thief and was stealing from the Club or the innuendo to the same effect spoken of in paragraph 34 – to either of the members referenced in that paragraph. While the first (a Club member) is said to have heard negative things about Mr. Sawatzky, the pleadings do not link what that member heard to either respondent; they do not explicitly state that the member heard disparaging things about Mr. Sawatzky *from either respondent*. The same point can be made about the second person identified in a paragraph 36. Simply put, it is not readily apparent from paragraph 36 that both or either respondent made the impugned statements to those individuals.

[47] Furthermore, in that paragraph of the statement of claim, Mr. Sawatzky simply asserts that a board member *heard* negative things about him. Assuming what was told to him was defamatory (again, the statement of claim is not clear on who said these things), it does not allege that the board member, as an alleged republisher, actually *said* something to anyone about the negative things he had supposedly heard.

[48] The second iteration of an alleged republication is found in paragraph 37 of the statement of claim, where Mr. Sawatzky asserts that the Club published an open email to its membership, which reads as follows (repeated here for reference):

> The board understands that members are concerned about the happenings over the past several months. Regarding the GM termination, issues with staff cannot be discussed or elaborated on by the board. This is confidential information and releasing it can damage the reputation and ability to procure employment for the affected person. It becomes a matter of the membership trusting the board to do what is right for PAGCC.
>
> (Original emphasis omitted)

[49] As a starting point, even if the email can be interpreted as containing an innuendo that Mr. Sawatzky was not trustworthy, was a thief, and had stolen funds from the Club, there is no allegation whatsoever that it was republished by a third party.

[50] In my view, having regard to the standard of review, the flaws in the statement of claim identified above provided a sufficient basis for the Chambers judge to strike paragraphs 35 and 36, as well as Mr. Sawatzky's failure to plead an exception to the republication rule: "The general rule about republication is that [a respondent] is not liable for republication of any defamatory statement he may have made unless it falls within one of the exceptions to that rule. The exception must be specifically pleaded" (*Davidson v Hoskin*, 2019 ONSC 3112 at para 78).

[51] All of that said, the Chambers judge was obliged to also consider Mr. Sawatzky's reply to the demand for particulars, which contains the following paragraph, where the natural consequence exception is pleaded (reply to the demand for particulars at para 2):

> d. … In particular, *inter alia*, Mr. Timmerman published the defamatory remarks to [3 specific people]. Mr. Timmerman also published remarks defamatory of the Plaintiff, the particulars and innuendo of which is set out in the Statement of Claim. As pleaded, the Plaintiff relies upon each and every publication *and re-publication that is the natural consequence of any initial publication to which he is presently unaware, but of which he discovers particulars prior to trial*. Some members of the PAGCC Board, and general members for that matter, after hearing of the publications by Mr. Timmerman, repeated the defamatory publications. Where particulars of the republications are known to the Defendant, they are set out in the Statement of Claim. The Plaintiff relies upon and pleads each and every republication which becomes aware of prior to trial. *To the best of the Plaintiff's knowledge to date, [2 members] republished the defamatory remarks, however the Plaintiff is currently unaware of the exact dates of the republications, to whom the republications were made, and the exact words used, however, the Plaintiff is aware that the republications were made to the Board Members listed above*.
>
> (Emphasis added)

[52] As this Court discussed in *Hope*, in undertaking the analysis called for under Rule 7-9(2)(a), "a court may consider only the statement of claim itself, any particulars furnished pursuant to a request for particulars and any document referred to in the claim upon which the plaintiff must rely to establish his or her case" (at para 17): similarly, see *Wilson* at para 22.

[53] The Chambers judge's failure to consider Mr. Sawatzky's reply in connection with the republication issue amounts to an error in principle. The question that remains is whether Mr. Sawatzky's reply satisfactorily addressed the absence of proper pleadings regarding this aspect of his claim.

[54] This part of the reply is not as precise as one might expect. It provides no facts explaining how the republication by others is the natural and logical consequence of the initial defamatory remarks allegedly made by the respondents. With respect, that is not a statement of fact but a legal conclusion. Although the reply identifies who repeated the impugned statements (with a list of names provided), it does not specify the dates or to whom the impugned statements were made and does not provide the exact words used.

[55] Notwithstanding these shortcomings, I am not persuaded that the republication claim should have been struck. My conclusion hinges on three considerations.

[56] First, the *plain and obvious test* for striking a pleading under Rule 7-9(2)(a) is stringent, which, in my view, although a close call in this case, has not been met.

[57] Second, the principle of law established in *Catalyst*, *PMC York* and *Hope* must surely extend to pleadings respecting an allegation of republication. This means that Mr. Sawatzky should not be penalized for being unaware of the precise words alleged to have been repeated by third parties. The strike application had to be assessed through the lens of the modern, more flexible approach to such matters. Employing that lens provides a means to resolve "the tension between the need to prevent fishing expeditions … and the injustice of permitting defendants to escape liability for serious defamations on the other" (*Magnotta Winery* at para 11): similarly, see *Catalyst* at para 35.

[58] Finally, I find it noteworthy that the Chambers judge did not conclude that Mr. Sawatzky was proceeding in bad faith or that his republication claim was a mere fishing expedition. Further, the reply statement identifies at least 2 specific people as the republishers of the defamatory remarks. The impugned remarks clearly relate to the specifics set out in paragraphs 32 and 35 of his statement of claim. Although the dates on which the republished remarks were made are not stipulated, it can logically be inferred they occurred sometime between the meetings on December 30, 2020, and March 20, 2021, when the statement of claim was filed.

[59] To conclude, applying the more relaxed approach for defamation pleadings to Mr. Sawatzky's reply, I am not persuaded that it was plain and obvious that this part of his statement of claim should have been struck. Accordingly, I would allow Mr. Sawatzky's appeal on this issue and set aside the order striking paragraphs 35, 36 and 39 from the statement of claim.

B. The claim against Mr. Timmerman

[60] Relying on this Court's decision in *Bhagaloo*, Mr. Sawatzky asserts the Chambers judge erred by striking the defamation action against Mr. Timmerman because the law permits a plaintiff to bring a claim in tort against both a corporation and an officer or director of that corporation in their personal capacity. It is his contention that officers and directors of a corporate entity can publish malicious and defamatory publications in their personal capacity, even while doing so as part of their corporate responsibilities.

[61] For the purposes of his pleadings, Mr. Sawatzky submits that it was sufficient for him to have alleged that Mr. Timmerman acted with *malicious* intent when he published defamatory words that he knew were untrue. It is his position that the words, occasion and recipients were pleaded with sufficient particularity, and where they were not, the innuendo captures the description of the meetings and occasions when the alleged defamatory words were spoken.

[62] The Club does not dispute that, as a matter of law, in certain circumstances, an individual can be held personally liable for tortious actions committed in the exercise of their function as a board member or as part of a corporation. However, the issue here, it says, is not the Chambers judge's failure to appreciate the law but a question of the sufficiency of the pleadings: that is to say, Mr. Sawatzky failed to plead foundational facts capable of supporting the allegation that Mr. Timmerman took such actions in his personal capacity. Simply asserting that Mr. Timmerman made the impugned statements in his personal capacity does not, it contends, identify any scenario, circumstance or context in which Mr. Timmerman did or said anything other than as the chair of the board of directors of the Club. In short, the Club asserts that, without particularization of Mr. Timmerman's alleged defamation, the Chambers judge did not err by striking the claim against him.

[63] There are two interrelated threads to Mr. Sawatzky's argument.

[64] First, Mr. Sawatzky asserts that the Chambers judge's analysis was tainted by a misunderstanding of the law, which in turn led to a flawed analysis of the issue. A failure to identify the proper legal criteria governing the exercise of discretion or the misapplication of that criteria raises a question of law that is subject to the correctness standard of review: *British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 43, [2003] 3 SCR 371.

[65] The allegations in the statement of claim against Mr. Timmerman, personally, are limited to the following paragraphs:

> 3. KELLY TIMMERMAN ("TIMMERMAN") resides in the City of Prince Albert, in the Province of Saskatchewan, and at all material times was the Chair of the Board of Directors, Vice President, and, commencing the fall of 2018, president of PAGCC.
>
> …
>
> 24. PAGCC, through its officers, agents and employees, and TIMMERMAN in his personal capacity, and in his capacity as Chair of the Board of Directors and President of PAGCC, have falsely and maliciously published words defamatory of the Plaintiff.

[66] In relation to paragraph 24, the Chambers judge noted that, while it contains a bare allegation that Mr. Timmerman had defamed Mr. Sawatzky, the statement of claim did not set out "any allegations or particulars of words he published in his personal capacity, *as opposed to as an officer of PAGCC*" (emphasis added, *Strike Decision* at para 13). The Chambers judge went on to review Mr. Sawatzky's reply for any indication of particular words or actions in connection with the alleged defamation that could be attributed to Mr. Timmerman personally but found it equally wanting.

[67] I address the question of sufficiency of pleadings below. However, for purposes of assessing Mr. Sawatzky's first argument, he points to the following reasons in the *Strike Decision*:

> [17] If at all material times Timmerman was acting in his capacity as a director or officer, I am unable to find a basis in logic or law to conclude that at the same time and in the same circumstances he is also acting in a personal capacity. Counsel provided *no legal authority* for the proposition that a person, while acting as a director or officer, can also be held responsible personally for his or her actions while so acting.
>
> (Emphasis added)

[68] It is Mr. Sawatzky's position that this passage demonstrates legal error because it illustrates the Chambers judge's failure to grasp the law in this area.

[69] I respectfully disagree with Mr. Sawatzky's interpretation of the Chambers judge's reasons. If the Chambers judge had struck the claim against Mr. Timmerman on the footing that the law prohibits a plaintiff from bringing a tort action against a corporation *and* its corporate officer personally, that would have been an error of law. As discussed above, individual officers and directors of corporate defendants can be held liable for tortious conduct if such conduct causes damage to a plaintiff, even though they are acting in the course of their corporate duties: *London Drugs Ltd. v Kuehne & Nagel International Ltd*., [1992] 2 SCR 299. However, that was not the foundation for his decision. The Chambers judge struck the action against Mr. Timmerman because he found Mr. Sawatzky's pleadings were deficient in that regard.

[70] If I were to focus solely on paragraph 17 of the *Strike Decision*, with particular attention paid to the emphasized words above, there is a superficial attraction to Mr. Sawatzky's argument. However, more is required when reviewing the reasons of a judge. An appellate court must take a functional and contextual approach and not "finely parse the trial judge's reasons in a search for error" (*R v G.F.*, 2021 SCC 20 at para 69, [2021] 1 SCR 801): similarly, see *R v Chung*, 2020 SCC 8 at para 13, [2020] 1 SCR 405.

[71] Taking a functional and contextual approach requires me to consider the balance of the Chambers judge's reasons on the matter. For instance, in his conclusory statement to this issue in paragraph 17 of the *Strike Decision*, the Chambers judge said this: "The *pleadings* allege no facts that would justify a conclusion that [Mr. Timmerman] was *also* acting, in the circumstances, in a personal capacity" (emphasis added). The Chambers judge did not stop there. He went on to assess whether Mr. Sawatsky's reply provided any particulars or words or actions by Mr. Timmerman that could support a reasonable cause of action against him in tort personally.

[72] Cutting to the bottom line, when the reasons are examined holistically and not parsed for error, I am satisfied that the Chambers judge struck the claim against Mr. Timmerman because he found the pleadings deficient, not because he operated from a misunderstanding of the law.

[73] That brings me to Mr. Sawatzky's second argument: his pleadings against Mr. Timmerman were sufficient and should not have been struck. Here, Mr. Sawatzky places singular reliance on the words *malice* and *maliciously*, which he claims were sufficient to distinguish Mr. Timmerman's personal actions from those he took as the face of the Club.

[74] Based on my review of the statement of claim and Mr. Sawatzky's reply, I see no basis for appellate intervention.

[75] As a starting point, contrary to Mr. Sawatzky's position, the decision in *Hope* does not absolve a plaintiff from the need to craft proper pleadings. While case law from this Court and elsewhere has adopted a more relaxed approach to defamation pleadings, that change did not eliminate the need to plead material facts on which a party relies to support their claim or defence. This requirement is codified in Rule 13-8(1)(c) of *The King's Bench Rules*. Proper pleadings serve to define the issues in dispute, provide notice to the defendant, and (in the case of a defamation action) allow a court to determine whether the alleged defamatory statements meet the legal threshold for actionable defamation.

[76] Further, as *Wilson* underscores, the *adequacy* of pleadings in a defamation claim "is the lens through which a judge hearing such an application – including an application to strike a defamation claim – should determine whether the pleading passes muster" (at para 24).

[77] In my view, the Chambers judge was alert to the question of whether the pleadings contained allegations of fact capable of supporting Mr. Sawatzky's assertion that Mr. Timmerman's actions were tortious and outside the scope of his authority or that he was not acting in the best interest of the Club. Although the Chambers judge did not say so specifically or refer to the law in this area, he can be understood to have concluded that a properly framed action in tort against a corporate officer, personally, required Mr. Sawatzky to plead sufficient particulars of the specific tortious acts allegedly committed by Mr. Timmerman and how they were independent or outside the scope of his authority. Put another way, according to the dicta in paragraph 66 of *Neilson* and paragraph 73 of *Zhu*, Mr. Sawatzky had to plead facts capable of supporting an action in defamation against Mr. Timmerman personally. Like the Chambers judge, I am not satisfied that he did so.

[78] In coming to this conclusion, I am cognizant of the fact that the allegations of defamation against Mr. Timmerman are *identical* to those made by Mr. Sawatzky against the Club. The statement of claim alleges that the words spoken by Mr. Timmerman *and* the Club were false, malicious and vindictive, that both the Club and Mr. Timmerman published the defamatory statements (knowing them to be untrue), and that those actions caused the same damages to Mr. Sawatzky. In short, the pleadings do not differentiate between the two defendants. Mr. Sawatzky says that was sufficient; however, as the British Columbia Court of Appeal cautioned in *Neilson*, "It is not enough to plead undifferentiated allegations against the corporation and its directors and employees" (at para 71). This deficiency in Mr. Sawatzky's statement of claim is precisely why the Chambers judge struck his claim against M. Timmerman.

[79] Neither do I find Mr. Sawatzky's argument that use of the word *malice* or the adverb *maliciously* in his pleadings was sufficient to craft a claim against Mr. Timmerman.

[80] With reference to *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1130, *The Law of Libel in Canada* defines malice in the following way: "Malice in law is a dominant and improper motive on the part of the defendant, comprising a desire to injure the claimant, intentional dishonesty, reckless disregard for the truth or any ulterior motive that conflicts with the interest or duty created by the occasion" (at §9.04[2][a]).

[81] That said, stating the words *malice* and *maliciously* in isolation, and without more, is of little assistance to Mr. Sawatzky because they are devoid of context or explanation. To repeat, he was obliged to plead facts and provide particulars to establish the basis for an action in defamation against Mr. Timmerman personally apart from his claim against the Club. Simply stating that Mr. Timmerman was acting in both his personal capacity and as a director or officer of the Club is not enough. The pleadings do not provide context, nor do they explain how, in the words of *ScotiaMcLeod*, Mr. Timmerman's "actions are themselves tortious or exhibit a separate identity or interest from [the Club] so as to make the act or conduct complained of [his] own" (at para 25). Moreover, the malicious motivation allegation is not attributed solely to Mr. Timmerman, but to *both* him and the Club, as seen in paragraphs 24 and 40 of the statement of claim. As I note above, it is not enough to plead undifferentiated allegations against the corporation and its directors. Once again, the pleadings do not distinguish Mr. Timmerman's actions as an individual from those taken in his role as a corporate officer of the Club.

[82] Mr. Sawatzky also asserts that it was Mr. Timmerman who was the driving force behind the malicious words defaming Mr. Sawatzky. Not only was he the mouthpiece of the board of directors, but Mr. Sawatzky claims the Club was dragged into the lawsuit by Mr. Timmerman's imprudent actions. While that may well be the theory of Mr. Sawatzky's case, it is not obvious from his pleadings.

[83] To conclude, Mr. Sawatzky has not persuaded me that the Chambers judge operated from a misunderstanding of the law or that his assessment of the sufficiency of the pleadings is tainted by the deferential palpable and overriding standard of appellate review. Accordingly, I would not give effect to this argument.

C. Amending the statement of claim

[84] Where a statement of claim discloses no reasonable cause of action, a court has the discretion to permit amendments to cure the defects, and "where feasible a plaintiff should be given an opportunity to amend their pleadings to correct deficiencies before those pleadings are struck" (*Yashcheshen v Teva Canada Ltd*., 2022 SKCA 49 at para 43, [2022] 8 WWR 60). This is so because striking a pleading is a final remedy that "deprives the plaintiff of their day in court" (at para 43).

[85] Although Mr. Sawatzky did not apply to amend his statement of claim – and the Chambers judge did not make an order to that effect on his own motion – there is authority for the proposition that a plaintiff should be given an opportunity to amend if it is apparent that doing so would correct the defect: "a judge or a court may, on its own initiative, decide to allow a plaintiff to make amendments when a claim is struck, i.e., in circumstances where the plaintiff has not even sought such relief" (*Taheri v Buhr*, 2021 SKCA 9 at para 80, 456 DLR (4th) 306): see also *Wilson* at para 20 and *Thirsk v Saskatchewan (Public Guardian and Trustee)*, 2017 SKQB 66 at para 11.

[86] To place this in context, it is important to remember that, although the respondents had also applied to strike paragraphs 32 and 34 of the statement of claim (which contained the core of Mr. Sawatzky's defamation allegations against the Club), the Chambers judge rejected that part of their application, concluding that the defamatory words alleged in those paragraphs were identified with sufficient particularity. As discussed above, he found the pleadings defective only with respect to the claim against Mr. Timmerman and the republication issue.

[87] Therefore, given that the statement of claim discloses the particulars of a cause of action, albeit not to the scope and extent that Mr. Sawatzky had initially intended, fairness dictates that he should be given the opportunity to amend his claim for purposes of addressing the deficiencies in his pleadings. The respondents do not suggest otherwise.

VIII. CONCLUSION

[88] For the reasons set out above, the appeal is allowed on the republication issue, and the order striking paragraphs 35, 36 and 39 from the statement of claim is set aside. In all other respects, the appeal is dismissed. Mr. Sawatzky is granted leave to apply to amend his statement of claim to address the deficiencies noted by the Chambers judge in connection with his claim against Mr. Timmerman.

[89] Given the mixed result, there will be no order as to costs.

"Schwann J.A."

Schwann J.A.

I concur. "Jackson J.A."

Jackson J.A.

I concur. "Tholl J.A."

Tholl J.A.