

CITATION: Faulkner Real Estate Ltd. v. Sakto Corporation, 2025 ONSC 1158
COURT FILE NO.: CV-16-70700
DATE: 2025/02/25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Faulkner Real Estate Ltd. and Judy Faulkner)
) **Plaintiffs**) **Marc Sauvé and Alex Robineau, Counsel for**
) **the Plaintiffs**
)
– and –)
)
Sakto Corporation and Waterford Property)
Group Ltd.)
) **Defendants**) **John Melia and Kara Takagi, Counsel for the**
) **Defendants**
)
)
) **HEARD: October 21 - November 5, and**
) **December 12, 2024 (Ottawa)**

2025 ONSC 1158 (CanLII)

REASONS FOR DECISION

R. Smith J.

Overview

[1] Judy Faulkner (“Ms. Faulkner”) is a successful real estate agent in Ottawa, Ontario. She claims that she and Faulkner Real Estate Ltd. (“FRE”), her real estate brokerage, have suffered damages of approximately \$2.2 million caused by exposure to mould at her office. Her landlord was the Defendant, Satko Corporation (“Satko”) and the property manager for the building was the Defendant, Waterford Group Property Group Ltd. (“Waterford”).

[2] On or about February 2014, Ms. Faulkner observed that about two sq ft of the carpet in the southwest corner of her office was wet and that some of her documents placed on this area of the carpet may have had mould on them. A second water leak occurred around September 2014 and a third leak occurred in June 2015 in the same area.

[3] Ms. Faulkner claims that she suffered memory problems, brain fog, and fatigue as a result of breathing mycotoxins released by the mould in her office. She seeks general damages, past and future loss of income on her behalf as well as loss of income on behalf of FRE as a result of Sue Dunston, a key agent, in leaving her brokerage because she was told there was toxic mould in the office.

[4] The Defendants deny that the Plaintiffs have proven on a balance of probabilities that the air in Ms. Faulkner's office contained any mould spores or mycotoxins or that any of her symptoms were caused by exposure to mould in her office. All three air tests showed that the air in Ms. Faulkner's office space did not contain any mould greater than the amount found in fresh outside air and in amounts similar to other offices in Ottawa. In addition, the quantity of mould found in the air of Ms. Faulkner's home exceeded the amount in her office.

[5] The Defendants also deny that any of Ms. Faulkner's symptoms were caused by exposure to mould spores or mycotoxins in her office. They submit that I should accept the evidence of Dr. Markus, an expert in occupational medicine, who testified that the symptoms reported by Ms. Faulkner were not caused by exposure to mould in her office.

[6] Ms. Faulkner also claims that the landlord and property manager were negligent in finding the source and repairing the leak in the concrete wall and in remediating the drywall and carpets in the leased space to ensure that all of the mould was removed. The Defendants deny that they were negligent and submit that they took reasonable and increasingly intensive steps by retaining contractors, an engineering firm, and mould remediation experts to find and stop the water infiltration and to remediate the areas of the office that were affected by the water infiltration.

[7] Ms. Faulkner and FRE also claim for damages as a result of the landlord's negligent misrepresentation that the lab results of the initial testing for mould by Paracel were "good". One of the samples of drywall tested showed had stachybotrys mould growing on the backside of the drywall. The mould was not found growing in FRE's office space Finally, FRE claims that the landlord breached the terms of the lease by failing to provide a mould free environment and by failing to take reasonable steps to find and stop the water infiltration.

Facts

[8] Ms. Faulkner started working as a real estate agent in Ottawa for Royal LePage for 17 years. She received many awards for being a top real estate agent in Ottawa and in Canada.

[9] In July 2000, Ms. Faulkner established FRE as a real estate brokerage. FRE became a very successful real estate brokerage under Ms. Faulkner's management. FRE attracted many other real estate agents and grew to approximately 17 agents by 2015.

[10] On April 1, 2009, FRE entered into a 10-year commercial lease with Satko, for 2,750 sq ft of office space on the ground floor of 333 Preston Street, a Class A office building in Ottawa. Part of the office space was 3 to 4 feet below grade with planters outside the south wall.

[11] Waterford was the property manager for the building at 333 Preston Street during the relevant time period.

[12] The chronology of the events is based on the evidence given at trial and summarized in the Defendants' and Plaintiffs' "Chronologies". The Plaintiffs' chronology is not substantially different from the Defendants' but includes some additional information.

First Leak

[13] Ms. Faulkner testified that she believed that the first leak of water into part of the leased premises occurred sometime between the late autumn of 2013 and February 2014 but she could not recall the exact date. She testified that at that time she observed an area about 2' x 2' of damp carpet in the southwest corner of the premises. She recalled finding documents on the damp carpet which may have had mould on them. These documents were never tested for mould or given to the Defendants.

[14] Kim Reid, Waterford's former employee who is now deceased, sent an email which was part of Satko's business records advising Brian Hubbell of Pinchin Remediation ("Pinchin") that Ms. Faulkner first reported water penetration into part of her office in February 2014. The first actions to investigate the water leak were taken on February 24, 2014, when the Defendants

retained Mynott Construction (“Mynott”) to investigate the source of the water leak. I find that on a balance of probabilities the first water penetration into the leased premises occurred in February 2014.

[15] On February 24, 2014, the Defendants collectively retained Mynott to investigate the source of the water leak. Mynott took 3 samples of the drywall, approximately 2 inches in diameter, from behind the baseboard in the southwest corner of the office space and sent the samples to Paracel Laboratories (“Paracel”) for testing.

[16] On March 3, 2014, Mynott received the Paracel lab results and forwarded them to Satko. The report indicated that all 3 samples tested positive for mould and sample number #3 showed a high amount of stachybotrys spores on the back side of the drywall. Shortly after this, Barry Wilkinson verbally advised Ms. Faulkner that the Paracel report results were “good”.

Second Leak

[17] In late August 2024 to early September 2014, a second water leak occurred. FRE again reported noticing wet carpet in the southwest corner of her office.

[18] On September 24, 2014, the Defendants contacted Cleland Jardine, an engineering firm in Ottawa, to investigate the source of the water infiltration.

[19] On October 1, 2014, Cleland Jardine provided the Defendants with a proposal to investigate the source of the water infiltration. Cleland Jardine was authorized to proceed with their investigation and completed a document review as part of its investigation. During the week of October 20, 2014, Cleland Jardine performed water testing on the exterior of the building outside of Ms. Faulkner’s office. On October 27, 2014, Cleland Jardine provided their investigation report.

[20] On November 6-8, 2014, Waterford’s employees excavated the soil from the exterior area of the concrete foundation wall immediately outside the southwest corner of Ms. Faulkner’s office. Waterford hired the contractor Simluc to perform waterproofing work on the exposed concrete wall. After Simluc’s work was completed, Waterford’s employees performed water testing in the

area immediately outside of the foundation wall adjacent to Ms. Faulkner's office. Water was not observed to be leaking into Ms. Faulkner's office space at that time.

[21] On November 14, 2014, before the remediation to the indoor office space occurred, FRE retained EHS Partnerships Ltd. ("EHS") to conduct airborne mould sampling in her leased office space. Ms. Faulkner was told that the air quality in her office was satisfactory. This was confirmed by a written report on November 17, 2014. The EHS air quality report stated that it did not find any excessive mould spores in the office air. The report further stated that the types of mould in the office air were the same but the amounts were lower than the quantity of mould in outside fresh air and was similar to the amount of mould in the air of other office spaces in Ottawa. The report also stated that there were "no concerns regarding a mould contamination within the office area"

[22] On the weekend of November 15-16, 2014, Waterford's employees removed and replaced the drywall in the southwest corner of the office space. The 2' x 2' carpet tiles were cleaned but not removed.

[23] On November 28, 2014, the Defendants provided FRE with a copy of the Paracel lab results from March 3, 2014, which indicated that a high level of stachbotrys mould had been detected on the backside of the 2 inch diameter drywall sample taken by Mynott.

[24] On June 3, 2015, Ms. Faulkner attended her first appointment with Dr. Matheson, a doctor of naturopathic medicine. Ms. Faulkner complained of having memory problems, brain fog, and fatigue. Dr. Matheson diagnosed Ms. Faulkner as suffering from mould toxicity at this first meeting without conducting any blood or urine tests and significantly, she admitted that she was unaware that the office air tests were negative for mould, as they did not find any mould in amounts greater than outside air.

[25] On June 3, 2015, Dr. Matheson provided Ms. Faulkner with a letter stating that she was treating Ms. Faulkner for exposure to mould mycotoxins, which was a medical toxicity issue caused by continuous overexposure to mould in her workplace office. In her medical opinion, Dr. Matheson stated that Ms. Faulkner should not be working in this environment and needed to leave this office space as soon as possible. In addition, Dr. Matheson stated that remediation was not

possible within a reasonable timeframe. On June 8, 2015, Ms. Faulkner forwarded a copy of this letter to her landlord and asked if FRE could vacate the premises immediately without penalty.

[26] On June 4, 2015, George White of RIFDS was retained by FRE to take air and surface/subsurface samples to search for mould in her office. Mr. White has extensive experience with moulds from working at Agriculture Canada for many years, identifying various types of mould. He is a mycologist.

[27] Mr. White's air test also did not detect any mould in the office air that was greater than outside air. The results of his air testing were the same as EHS's results from November 2014, namely that no excessive airborne mould was discovered. At the time of Mr. White's visit, the carpet in the southwest corner was dry and there was no musty odour. He tested the carpet for mould and he found a few *Penicillium* and *Aspergillus* spores but he did not detect any *stachybotrys* spores on the carpet sample.

[28] On June 11, 2015, Ms. Faulkner informed the real estate agents working at her office that there was toxic mould in the office and that she was being treated for mould toxicity. However, she testified that she did not tell the other real estate agents in her office that the air quality testing performed by both Mr. White and EHS did not detect any mould in the office air greater than outside air. Ms. Faulkner offered to pay for the cost of consultations and treatment for mould toxicity with the naturopath, Dr. Matheson for any of the real estate agents in her office. Several of FRE's agents went for a consultation.

Third Leak

[29] On June 22, 2015, FRE reported a third water leak in the same location. At this time, FRE reported that there was wet carpet and mouldy documents on the floor in the southwest corner of the leased space.

[30] On June 23, 2015, the Defendants retained ("Pinchin"), a professional mould, indoor air quality investigation and remediation company, to collect air and surface samples to test for mould.

[31] On June 25, 2015, two days before the remediation work was completed by Pinchin and the office was found to be safe for occupancy, Sue Dunton, a top real estate agent with FRE, moved her team from FRE's office space.

[32] On June 27, 2015, Brian Hubble, a senior project manager from Pinchin attended at the office premises. He observed approximately 6" in² of light spotting of mould growth on the backside of the drywall next to Ms. Faulkner's office. The drywall materials were dry at the time of this inspection.

[33] Approximately two sq ft of carpet was wet at the time of the assessment along the south wall. A mould sample was taken from the wet carpet in the southwest corner. The carpet sample did not identify mould growth, but the paperwork placed on the carpeting was water damaged with visible mould growth. He expected that the carpet under the papers would have some mould **spores**. The papers were dry at the time of the inspection. The papers were sealed in a banker box and removed from the office area. Neither party tested these papers for mould. Notwithstanding the presence of some minor mould growth on the backside of the drywall and a few spores found on two carpet tiles, the indoor air quality was not affected by elevated mould spores.

[34] On June 27, 2015, after office hours, Drytech performed mould remediation work under Pinchin's supervision. A containment area was established in the corner of the office and the drywall material was removed to a height of 32 inches on the south and west walls of Ms. Faulkner's office. In addition, approximately 65 sq ft of carpeting materials were bagged and removed off-site for cleaning or replacement.

[35] Air testing was performed at this time by Pinchin which did not disclose any mould spore concentrations greater than outdoor air, both inside the containment area and in the office space. The area was inspected and deemed to be clean without visible mould growth anywhere and without detecting any mould spores in the office air greater than outside air after the work was completed on June 27, 2015. However, the containment area remained erect to maintain a controlled environment until the wall investigation and water testing was completed.

[36] On June 29, 2015, Dr. Matheson contacted Mr. White to inquire about his impressions of the mould in Ms. Faulkner's office. Mr. White replied to her stating that "this is a tough one to call" because he did not notice any visible mould in the office area and the area where the carpet was wet in the corner of the office was not large relative to the whole office area. He also agreed that spore dispersal was not an issue. He testified that he raised the possible Microbial Volatile Organic Compounds ("MVOCs") issue to see if there would be any reaction from the other side; he testified that he was "seeing if we strike any nerves". Mr. White never did any testing to determine if there were any MVOC's or mycotoxins in the office air. He agreed that he was acting as an advocate for Ms. Faulkner when he raised the MVOC's as a possible cause of Ms. Faulkner's symptoms and agreed that he was only putting forward a theory. Mr. White never detected a musty odour on any of his visits to the office.

[37] On June 29, 2015, the Defendants retained the engineering firm of Cleland Jardine to perform water testing on the exterior concrete wall of the leased premises. In early July 2015, Cleland Jardine performed water testing on the exterior concrete wall adjacent to Ms. Faulkner's office and on the concrete wall around the corner of the building.

[38] On June 30, 2015, Mr. Moffett from Waterford advised Ms. Faulkner that the office area was "perfectly safe" for occupancy.

[39] On July 10, 2015, Pinchin provided its investigation and remediation report. The report indicated that before the renovations were carried out, it found *Aspergillus*, *Penicillium*, and *Chaetomium* mould spores in the carpet along the south wall and a few spores of *stachybotrys*. They also discovered a heavy growth of *stachybotrys*, *Penicillium*, and *Ulocladium* mould spores on the back of the drywall on both the south and west walls in the southwest corner of the office space.

[40] On July 17, 2015, FRE retained Mr. White of RIFDS to review and comment on Pinchin's report. On July 28, 2015, Mr. White again conducted an air test for mould and tested samples materials in the problem area for the presence of mould. He did not discover any mould spores in his air test that were different from the outside fresh air. When Mr. White visited Ms. Faulkner's

office again on August 5, 2015, he testified that he was not aware of any substantial risk to any occupant's health. He testified that that if he was testifying before the Labour Board, he would have to say that there was no reason to suggest that people could not work in that space.

[41] Sometime between August 17 to 19, 2015, Sue Dunton, her assistant Jennifer Watt, and Kerri McGee resigned from FRE. In her resignation letter she stated that she had several reasons for leaving FRE that in her testimony she stated that an important reason for leaving was her belief that FRE's office was contaminated with toxic mould. She didn't feel it was appropriate to bring clients into an office space with toxic mould.

[42] From August 21 to 27, 2015, Bassi Construction performed exterior repair work to the concrete wall both adjacent to Ms. Faulker's office and around the corner under the supervision of Cleland Jardine. On August 24, 2015, Cleland Jardine confirmed to the Defendants that further water testing had been carried out and that the source of the leak had been found on the concrete wall around the corner from Ms. Faulkner's office and the leaking issue had been resolved. Cleland Jardine discovered that there was a defect in the concrete wall around the corner from Ms. Faulkner's office. The water entered through the defect in the concrete wall, went under two block concrete walls, which supported an air vent next to Ms. Faulkner's office, and under the drywall to wet approximately two sq ft of the carpet in Ms. Faulkner's office. The leak occurred occasionally depending on the amount of rainfall and the direction of the winds.

[43] On August 25, 2015, the interior remediation work was completed, and all of the work was completed in early September 2015.

[44] Between September 9 to 14, 2015, the real estate agents Suzanne Labonte, Natalie Baizana, Whitney Hamilton, and Ian Fortugo also resigned from FRE.

[45] On October 1, 2016, approximately one year later, FRE terminated its lease with Satko and on October 31, 2016, FRE paid the early termination penalty and vacated the leased premises.

Issues

[46] The following issues must be decided:

1. Were Ms. Faulkner’s symptoms of brain fog, memory loss, and fatigue caused by exposure to mould in her office space?
2. Were the Defendants negligent when repairing the water leak and in remediating the office space?
3. Was the departure of the real estate agent, Sue Dunton, caused by toxic mould in the office air, and was her departure reasonably foreseeable by the Defendants?
4. Did Satko/Waterford negligently misrepresent to Ms. Faulkner that the Paracel Laboratories mould test results were “good”; and did Ms. Faulkner or FRE reasonably rely on this misrepresentation to their detriment resulting in damages?;
5. Did Satko breach the terms of the lease?; and,
6. What damages were suffered by Ms. Faulkner and FRE?

Issue #1 - Were Ms. Faulkner’s symptoms of brain fog, memory loss, and fatigue caused by exposure to mould in her office space?

Legal Test

[47] The Plaintiffs’ claim for damages is based on the Defendants’ negligence, negligent misrepresentation, and breach of the lease. In *Hemmings v. Peng*, 2024 ONCA 318 at para. 60, the Ontario Court of Appeal set out what the plaintiff must prove to succeed in a claim for damages that are based on negligence. The components are: a) a duty of care; b) breach of the standard of care; c) damage sustained; and, d) that damages sustained were caused in fact and law by the breach.

[48] Factual causation must be shown on a “but for” basis on a robust and commonsense examination of the evidence (paras. 61-63 of *Hemmings*). In this case, the Plaintiffs must prove that their injuries would not have occurred “but for” the negligent conduct of Satko or Waterford.

Legal causation is the reasonable foreseeability test. There must be a real and not far-fetched risk of harm.

[49] As a result, the Plaintiffs must show that the Defendants owed them a duty of care, which is not disputed and that they breached the standard of care causing the Plaintiffs' damages. Ms. Faulkner also bears the onus of proving that her symptoms, namely memory loss, brain fog, and fatigue, were caused by exposure to mould in the leased premises.

Analysis

[50] The two main problems with Ms. Faulkner's claim that her symptoms of brain fog, memory problems, and fatigue were caused by exposure to mould or mycotoxins in her office are:

- a) All of the air tests conducted (at least three) did not find any mould spores in her office air greater than outside air; and
- b) The Defence expert in occupational medicine, Dr. Markus, testified that the above symptoms reported by Ms. Faulkner were not caused by exposure to mould spores or mycotoxins.

[51] In late 2013, Ms. Faulkner testified that she began experiencing incidents of memory loss, brain fog, and fatigue. She reported the symptoms to Dr. Comerton, her family doctor, on January 22, 2014, and again on April 9, 2014. In the same time period, Ms. Faulkner's mother, with whom she was very close, had developed dementia and had to retire from the real estate business. Ms. Faulkner testified that she was very similar to her mother as they could wear each other's clothes and her mother was a mentor to her.

[52] Ms. Faulkner was fearful that she was suffering early dementia like her mother. Dr. Comerton recommended the following:

- a) that Ms. Faulkner attend a memory clinic to establish a memory base line. Ms. Faulkner never followed this advice;

- b) that she refer Ms. Faulkner to a specialist in internal medicine to investigate the cause of her symptoms. Ms. Faulkner did not agree to have Dr. Comerton refer her to an internal medicine specialist, rather she spoke to her brother who is a medical doctor practising in the United States, who advised her to contact Dr. Cameron, an internal medicine doctor at the Ottawa General Hospital. Dr. Cameron did not examine or accept Ms. Faulkner as a patient but suggested that she consult Dr. Armstrong, a family doctor who practised in the area of “alternative or complementary medicine”;
- c) she referred Ms. Faulkner to Dr. Zave Chad, an allergist, to determine whether she was allergic to mould. Ms. Faulkner was seen by Dr. Chad on October 6, 2015. Ms. Faulkner told Dr. Chad that she had been experiencing loss of memory, depression, and fatigue but did not have any “chest, nasal symptoms and no rashes”. Dr. Chad’s medical notes stated that Ms. Faulkner had a mild allergy to an outdoor mould called *Altemaria*, and she may have had a toxic effect to *stachybotrus*, but her problems were not allergic in origin; and,
- d) finally, she performed a mini cognitive test, where Ms. Faulkner scored 29/30, indicating that she did not have any cognitive decline.

[53] Dr. Comerton testified that she was not able to provide any medical opinion on whether any of Ms. Faulkner’s symptoms were caused by a possible exposure to mould.

[54] The first water leak at Ms. Faulkner’s office occurred in February 2014 where approximately two sq ft of the carpet in the southwest corner of the office was wet. The papers that had been placed on the wet carpet may have had mould growing on them. Mynott Construction was retained to determine the cause of the water leak. Mynott took three 2 inch diameter samples of the drywall behind the baseboard in the southwest corner. The lab results indicated that it detected a high level of *stachybotrys* mould spores growing on the back side of one of the drywall samples.

[55] No remediation efforts were undertaken by the Defendants until a 2nd water leak occurred in August 2014 in the same area of Ms. Faulkner’s office. In early November 2014, the exterior of

the area outside of Ms. Faulkner's office was excavated and exterior waterproofing work was applied to the concrete wall.

[56] On November 14, 2014, before the remediation work in the interior of the office space began, EHS attended the premises and took air samples to test for mould. The air test results did not find any mould in the office air that were greater than outside fresh air and the air quality was similar to other offices in Ottawa.

[57] Two other air tests for mould were conducted on the office air. They also found the same result, namely that no mould spores were detected in the air in Ms. Faulkner's office space. An air sample was taken by Mr. White on June 4, 2015, before the third water leak occurred and by Pinchin on June 27, 2015, after remediation work had been done, with the same result.

[58] To summarize, while a small area of mould was observed on the back of the drywall in the southwest corner of Ms. Faulkner's office, all of the air tests conducted did not find any mould spores in the office air. In addition, Mr. White tested for mould in the HVAC system for the office air and did not discover any mould in that area. The HVAC system brought in 90% of outside fresh air and 10% of recycled air.

[59] The Plaintiffs did not find any evidence of any mould spores in the office air, but they rely on the theory that some moulds produce mycotoxins or MVOCs which are toxic, in particular the stachybotrys mould. They allege that mycotoxins released by the stachybotrys mould caused Ms. Faulkner's symptoms. Stachybotrys mould was detected on a small area on the back of the drywall just outside of Ms. Faulkner's office. Mr. White testified that the stachybotrys mould is found in very wet areas and that the mould spores may have been carried under the office wall and into the carpet in Ms. Faulkner's office, which was observed to be wet.

[60] Mr. White testified that he did not do any testing for mycotoxins in Ms. Faulkner's office and as a result, did not detect the presence of any mycotoxins from any mould, including stachybotrys. He testified that it was only a theory and that he raised this suggestion to see what kind of response they would receive from the landlord.

[61] Ms. Faulkner relies on the opinions of Dr. Matheson and Dr. Armstrong, a family doctor with restrictions on her medical license, to prove that exposure to mould in her office caused her symptoms. Dr. Matheson is a naturopath and not a medical doctor. She cannot prescribe any medicinal treatments to patients and can only prescribe naturopathic treatments. For example, she prescribed taking charcoal and vitamins to treat Ms. Faulkner's symptoms.

[62] Dr. Matheson diagnosed Ms. Faulkner to be suffering from mould toxicity from her office at their first meeting on June 3, 2015, without knowing that the air testing in Ms. Faulkner's office failed to find any mould spores greater than that in outside fresh air. A similar air test result was obtained by George White and also by Pinchin's air test in June 2015, namely that no mould spores were found in the office air greater than outside air. Dr. Matheson was also unaware that George White found that Ms. Faulkner's home had a greater amount of mould than her office. Dr. Matheson did not have any special knowledge about mycotoxins or MVOCs and she also agreed that she did not have any expertise in mould remediation. She was not qualified to testify as an expert witness but rather as a treating naturopath.

[63] Ms. Faulkner also relies on the opinion of Dr. Armstrong, a treating medical doctor, whose practice is restricted to "alternative and complementary medicine" and whose license is restricted by the College of Physicians and Surgeons of Ontario (the "College"). As a result of a complaint filed against her in 2014, all of Dr. Armstrong's patients must be a patient of another licensed medical doctor and any treatment she prescribes had to be reported to the monitoring Doctor. Dr. Armstrong was facing a further discipline hearing before the College (to be held shortly after the completion of this trial) for failing to follow the restrictions on her medical license.

[64] Dr. Armstrong had practiced in Texas, USA for 8 years from 1978 to approximately 1986. On December 4, 2015, she voluntarily agreed to surrender her Texas Medical License in lieu of further disciplinary action. She was under investigation by the Texas Medical Board after it was advised that the College of Ontario had taken disciplinary action against her. The Texas Medical Board did not recognize that Dr. Armstrong had any specialty certification from the American Board of Medical Specialties.

[65] Dr. Armstrong represented that she had special knowledge and education in the areas of environmental medicine and stated that she was “Board Certified” by the International and American Board of Environmental Medicine (the “IABEM”). In cross-examination, Dr. Armstrong was unable to identify any IABEM website, she was unable to identify a directory to verify her membership or credentials, she was unsure of the location of the IABEM other than stating that it was “somewhere in the New York State”. The only way she could contact it was by calling an individual that she claimed was part of the IABEM.

[66] Dr. Armstrong also testified that she was a member of the American Association of Environmental Medicine (the “AAEM”); however, in cross-examination, she admitted that her membership in the AAEM had lapsed prior to the 2020 pandemic and that she had not participated in any continuing education or competency assessment since then. She did not have any certification from the American Board of Medical Specialties as having any special expertise in the area of environmental medicine or in diagnosing or treating mould toxicity.

[67] Dr. Armstrong has not persuaded me that she has any special expertise or certification in environmental medicine from any American Association or from any Canadian Medical Entity. In the Province of Ontario, the designation as a specialist in occupational medicine includes environmental medicine. Dr. Armstrong is not recognized by the College in Ontario as a specialist in environmental or occupational medicine. She was not qualified as an independent expert witness in this trial, but rather testified as a treating physician.

[68] Dr. Armstrong’s opinion that Ms. Faulkner’s symptoms were caused by exposure to mould in her office was largely based on urine samples that were sent to Real Time Laboratories (“RTL”) in Texas for testing for mycotoxins in her urine. She first met Ms. Faulkner in January 2016, approximately 6 months after the interior remediation of Ms. Faulkner’s office had been completed by Pinchin (on or about the end of June 2015). The source of the exterior leak in the foundation wall was located and repaired by the end of August 2015. As a result, Ms. Faulkner was not exposed to any additional mould in her office from the end of June 2015 but certainly from the end of August 2015. Dr. Armstrong was unable to explain why the lab tests for mycotoxins in Ms.

Faulkner's urine were much higher in 2023, approximately 8 years after the remediation work had been completed in her office and when Ms. Faulkner had not been at that office for years.

[69] The RTL lab in Texas was owned and operated by Dr. Hooper, who testified that mould, and especially the stachybotrys mould, excreted a toxic organic compound, namely the mycotoxin trichothecene. He testified that the trichothecene found in Ms. Faulkner's urine, even 8 or 9 years after she had allegedly been exposed to mould, showed that Ms. Faulkner continued to suffer from mould toxicity.

[70] While Dr. Hooper expressed this opinion, he was not accepted as an expert witness namely as a pathologist for a number of reasons, including that his medical license as a pathologist had been suspended by the California Medical Board since January 2016.

[71] The California Medical Board found that Dr. Hooper had been negligent, grossly negligent, and incompetent as a pathologist based on six complaints that had been filed against him. The California Medical Board required that his work be supervised by another pathologist until he took additional training or courses. Dr. Hooper never took any additional training or courses and as a result, his medical license continues to be suspended. The Texas Medical Board imposed the same suspension of his medical license.

[72] Dr. Hooper's evidence was restricted to giving evidence about the laboratory test results when testing Ms. Faulkner's urine for mycotoxins. Dr. Hooper agreed that it was not possible to determine if any of the mycotoxins found in Ms. Faulkner's urine were due to environmental causes or exposure to mycotoxins found in food.

[73] Dr. Hooper testified that on June 1, 2016, his lab reported a level of the mycotoxin trichothecene in Ms. Faulkner's urine of 0.05 ppb. However, on September 13, 2022, approximately 6 years later, with no additional exposure to mould from her office, his lab reported that the level of trichothecene in Ms. Faulkner's urine had increased to 0.238 ppb, a much higher level (4.76 times greater). Dr. Hooper's explanation for why RTL detected much higher levels of trichothecene in Ms. Faulkner's urine some 6 years after she left the office was that the mycotoxin

had been hiding in cells in Judy's body. This explanation was not supported by any scientific study and does not make sense.

[74] Dr. Markus, the Defendants' expert witness, testified that a study that he reviewed found that the mycotoxin produced by the stachybotrys mould, trichothecene, had a half-life in the human body of between 7 to 80 minutes. This means that at its longest, half of the amount of trichothecene in Ms. Faulkner's body would be removed after 80 minutes. The amount of trichothecene in Faulkner's urine would not be increasing, as reported by Dr. Hooper's lab results, but should have decreased very rapidly unless there was some other source of the mycotoxin or his lab results were not accurate.

The Defendant's Expert Evidence

[75] The Defendants called Dr. Michael Markus, who was qualified by the court to give expert opinion evidence in the areas of occupational medicine and on the causation of symptoms that occur as a result of exposure to mould in the workplace.

[76] Dr. Markus graduated from the University of Toronto medical school in 2001. After graduating from medical school, he completed the five-year occupational medicine residency program at the University of Toronto in 2006. On August 9, 2006, he obtained his Board certification recognizing him as a specialist in occupational medicine by the College. He was a member of the Royal College of Physicians and Surgeons of Canada's examination committee to approve medical doctors as specialists in occupational medicine from 2012 to 2020. He has been the Chair of this examination committee from 2021 to the present. He testified that in Canada, the specialty in occupational medicine includes environmental medicine. In addition, he has lectured on occupational medicine at the University of Ottawa's Department of Medicine from 2017 to the present.

[77] Dr. Markus testified **that the symptoms reported by Ms. Faulkner were not associated with or caused by exposure to mould.** He testified that symptoms associated with mould exposure were a runny nose, a tickle in the throat (similar to hay fever), skin rashes, itchy eyes, and asthma. These symptoms typically go away if the exposure to mould stops. In severe cases,

mould exposure could manifest as hypersensitive pneumonitis, an inflammatory lung condition, and in the case of immune-compromised individuals, could result in a bacterial infection requiring intensive hospitalization. Ms. Faulkner did not report having any of the symptoms that are associated with mould exposure as she complained of having memory problems, brain fog, and fatigue.

[78] Dr. Markus also testified **that urine mycotoxin testing did not have any role in diagnosing mould exposure**. He stated that the reason why urine mycotoxin testing cannot be used as a diagnosing tool was because:

- a) for a bodily fluid to be used to monitor a health condition, there must be sufficient data and evidence to correlate the test results and symptoms. There is insufficient scientific evidence regarding a connection between mycotoxins in urine and human health and what an unsafe threshold for mycotoxins would be; and
- b) it is not currently possible to determine whether the presence of mycotoxins in urine is due to environmental or dietary exposure (i.e. mycotoxins in food).

[79] Dr. Markus also relied upon several authoritative texts to come to the above conclusions, including:

- a) the Morbidity and Mortality Weekly Report dated February 20, 2015 from the US Centre for disease control and prevention, which warned that un-validated laboratory tests for mycotoxins in human urine were being used to purportedly diagnose health issues and that mycotoxin levels that predict disease have not been established;
- b) an article in the Clinical Review of Allergy and Immunology Journal dated December 2019, which stated that measuring mycotoxins in urine was a disreputable practice; and,

- c) Research into the half-life of mycotoxins, including a study which showed that trichothecene, the mycotoxin produced by *Stachybotrys*, had a half-life of only 7 to 80 minutes.

[80] I accept the expert evidence of Dr. Markus and prefer it over the evidence of the naturopath Dr. Matheson and Dr. Armstrong for the following reasons:

- a) Dr. Markus is a properly qualified expert in the area of occupational medicine, which includes the causation of symptoms from exposure to mould in the workplace. He is designated by the Royal College, as a specialist in occupational medicine, which includes environmental medicine in Canada. In addition, he is the Chair of the Royal College's examination committee to approve medical doctors as specialists in occupational medicine and has been a member of this committee since 2012. Furthermore, he lectures in the area of occupational medicine at the Ottawa University's medical school and has done many consultations in this area from 2012 to the present;
- b) I find that the evidence of both Dr. Matheson and Dr. Armstrong was not as reliable as that of Dr. Markus because: i) unlike Dr. Markus, they did not have any recognized specialty designation in occupational or environmental medicine in Ontario. Dr. Armstrong was not designated as a specialist in environmental medicine by the American Board of Medical Specialties, which is the American equivalent to the Royal College of Physicians and Surgeons; ii) Both Dr. Matheson and Dr. Armstrong were not aware that the air tests for mould spores in Ms. Faulkner's office did not find any evidence of mould different from the outside air. In addition, Dr. Armstrong's notes reported that Ms. Faulkner advised her that she had been exposed to *stachybotrys* spores in the air of her office, which was not accurate as mould spores were never detected in the air in her office; and iii) Dr. Armstrong had seen the Paracel's report but believed it was an air sample, which was not the case as it was a sample from the back of the drywall wall;

- c) Dr. Markus was not shaken in cross-examination other than being presented with several papers that supported urine testing for mycotoxins. Dr. Markus testified that he only referred to scientific publications that he determined were relevant and reliable;
- d) Dr. Hooper's evidence was unreliable because his medical license had been revoked due to negligence and incompetence. Dr. Armstrong's medical license is subject to restrictions imposed by the College. In order for Dr. Armstrong to prescribe any treatment, the patient must also be a patient of a licensed medical doctor to whom Dr. Armstrong must report any treatments that she prescribes. Finally, Dr. Matheson is not a medical doctor but a doctor of naturopathic medicine. She is unable to prescribe any medical treatments. She can only prescribe naturopathic treatments;
- e) I further find that Dr. Matheson's diagnosis that Ms. Faulkner was suffering from mould toxicity caused by exposure to mould in her office on her first appointment on June 3, 2015, was not reliable because Dr. Matheson was not aware that the air tests conducted by EHS in November 2014 and by George White on June 4, 2015 did not discover any mould spores in Ms. Faulkner's office air greater than outside air; and,
- f) Dr. Matheson also stated in her letter that remediation would not be able to be completed in a timeframe conducive to Ms. Faulkner regaining her health. However, she admitted in cross-examination that she had no expertise with respect to mould remediation.

Disposition of Issue #1

[81] For the above reasons, I accept the expert evidence of Dr. Markus, a specialist in occupational medicine, which includes environmental medicine, that the symptoms reported by Ms. Faulkner (namely brain fog, memory problems, and fatigue) were not caused by mould or mycotoxins in her office. Dr. Markus' opinion was not contradicted by any other expert witnesses, and I accepted his opinion as being more persuasive than the evidence of Dr. Armstrong and the naturopath, Dr. Matheson. In addition, his opinion was supported by the evidence that all three of

the air tests for mould in Ms. Faulkner's office found no evidence of mould greater than outside fresh air.

Issue #2 - Were the Defendants negligent when repairing the water leak and in remediating the office space?

[82] The test to be applied in claims of negligence was set out in *Hemmings* referred to at paras. 47 and 48 of this decision. The Plaintiffs must prove that the Defendants owed the Plaintiffs a duty of care, breached the standard of care, that damages were sustained, and that the damages were caused in fact and law by the breach.

[83] There is no dispute that the Defendants owed the Plaintiffs a duty of care. Whether the Defendants breached the standard of care when trying to find the source of the water leak and in remediating the premises is disputed. On issue #1, I have found that Ms. Faulkner's symptoms were not caused by mould in her office space as there was never any mould or mycotoxins detected in the office space air.

[84] Even if it is assumed that the Defendants breached the required standard of care in the manner in which they repaired the water leak and remediated the office space, the Plaintiffs must prove that their injuries would not have occurred in the absence of the Defendants' breach of the standard of care: the "but for" test. The injuries complained of by Ms. Faulkner, namely suffering from mould toxicity, were not caused by any breach of the standard of care by the Defendant, because the Plaintiffs failed to prove that there was any mould or mycotoxins in the office air or that any mould or mycotoxins caused the symptoms complained of by Ms. Faulkner.

[85] Vas Kanellos testified that the cause of the water ingress is the responsibility of the property owner to correct or to engage appropriate specialized experts to do so. The Defendants did engage contractors but waited until the fall of 2014 to attempt to repair the water leak. They also retained the engineering firm CJ to investigate the cause of the leak.

[86] Mr. Kanellos was never advised that the source of the leak was a defect in the concrete wall around the corner from Ms. Faulkner's office and that the water had leaked from there under

two concrete block walls and under the office wall. The leak was also intermittent and had not occurred during the first 5 years of the lease and each leak was separated by several months. I am not persuaded that the engineering firm of Cleland Jardine was negligent in failing to locate the leak in the fall of 2014 but rather was caused by a defect in the concrete foundation wall around the corner from her office.

[87] I also find that the Defendants took reasonable steps to locate the source of the leak and to repair the leak by retaining a competent engineering firm to supervise contractors to do the work. The Defendants delayed conducting the repair work until the fall of 2014 when the first leak had occurred in February 2014 and a second leak occurred in August 2014. This delay may have amounted to a breach of the standard of care but it did not cause any damages because the air test performed by FRE in November 2014 did not detect any mould in the office air. As a result, no damages were caused by the delay in effecting the repairs.

[88] After the leak occurred on June 22, 2015, CJ was again retained and this time acted promptly and located the source of the leak as a defect in the concrete wall around the corner from Ms. Faulkner's office, which was repaired by Bassi Construction between August 22 to 27, 2015.

Disposition of Issue #2

[89] For the above reasons, I find that the Defendants were not negligent when repairing the water leak and in remediating the office space. In any event, if they breached the standard of care in effecting the repairs, it did not cause any damage to the Plaintiffs because they failed to prove that there was any mould or mycotoxins in the office air and failed to prove that the symptoms complained of by Ms. Faulkner were caused by mould or mycotoxins present in her office.

Issue #3 - Was the departure of the real estate agent, Sue Dunton caused by mould in the office air and was her departure reasonably foreseeable by the Defendants?

[90] I have previously held that the Plaintiffs have failed to prove that there was any mould or mycotoxins in the office air and failed to prove that Ms. Faulker's symptoms were caused by exposure to mould in her office. As a result, the presence of mould in the office air was not the

reason that Sue Dunton left FRE. Even though the air testing of the office space air did not detect any mould or mycotoxins, Ms. Faulkner believed that there was mould in the office air that caused her symptoms based on her diagnosis by the naturopath, Dr. Matheson. Ms. Faulkner shared her diagnosis by Dr. Matheson that she was suffering from mould toxicity caused by exposure to mould in her office with her other real estate agents in her office, including Sue Dunton. However, Ms. Faulker did not advise Sue Dunton or any of the other real estate agents that the air test tests that had been conducted in the office did not discovered any mould in the office air, different from outside fresh air.

[91] Sue Dunton testified that she left FRE for a number of reasons including that Ms. Faulkner's behaviour had changed dramatically at that time and she did not feel it was safe or appropriate to bring clients into her office if it was contaminated with toxic mould. Sue Dunton and her team moved out of the office on June 25, 2015, after the third water leak had occurred. This was two days after Drytech International had performed mould remediation work at the office and the source of the water leak had been detected in early July 2015.

[92] I find that the major factors causing Sue Dunton to leave FRE were (1) a false belief that the office air was contaminated by toxic mould, when the air tests did not detect any mould different from outside air; (2) that Ms. Faulkner shared her diagnosis and her belief that she was suffering from mould toxicity caused by exposure to mould in her office; (3) Ms. Faulkner's offer to pay for the costs of treatments with the naturopath, Dr. Matheson; and finally (4) Ms. Faulkner's offer to all of the agents that they were free to leave FRE if they so desired.

[93] I also find that Sue Dunton's and the other real estate to agents' decision to leave FRE was not reasonably foreseeable by the Defendants based on three incidents of wet carpet in one corner of a 2,750 sq ft office over a 16-month period. The remediation work was performed either on the exterior of the building or during non-business hours. After the 3rd water leak a tarp containment area, was erected during the remediation work in July 2015, which affected a maximum of 6% of the total office area for approximately two months. Throughout the 16-month time period, the air tests all confirmed that the air in the office space was not affected by mould and was therefore safe for occupancy. It is unfortunate the that the information that the office air was not affected by

mould spores and was similar to outside fresh air and was safe for occupancy, was not shared with Sue Dunton and the other real estate agents who ultimately left FRE. Even Mr. White, the mycologist, who was retained by Ms. Faulkner to investigate for mould in her office, testified that if he was testifying before the Labour Board, he would have to say that the office space was a safe workplace. This was after Pinchin had completed the remediation work in July to August 2015.

Disposition of Issue #3

[94] For the above the reasons, I find that the departure of Sue Dunton from FRE was not caused by the presence of any toxic mould in the office air but rather by a mistaken belief that there was toxic mould in the office air.. This mistaken belief was based on Dr. Matheson’s diagnosis without being aware that all of the air tests for mould in the office air were negative and on Ms. Faulkner’s belief that her office air was toxic because she believed her symptoms were caused by of the presence of mould spores or mycotoxins in the office air. I also find that the departure of Sue Dunton and the other real estate agents from FRE was not foreseeable by the defendants given that all of the office air tests did not detect any mould spores and the defect in the concrete wall, which caused the leak was repaired.

Issue #4 - Did the Defendants negligently misrepresent to Ms. Faulkner that the Paracel Laboratories mould test results were “good” and did Ms. Faulkner or FRE reasonably rely on this misrepresentation to their detriment resulting in damages?

[95] I find that describing the initial Paracel test results as “good” was a general statement of Mr. Wilkinson’s opinion which did not provide Ms. Faulkner with a complete picture of the situation. The appropriate answer would have been to provide a copy of the Paracel test results to Ms. Faulkner. The Paracel test results detected a high level of stachybotrys mould on the back of a 2 inch diameter piece of the drywall in the southwest corner of Ms. Faulkner’s office but the premises were dry on inspection and there was no visible mould in the office interior.

[96] I find that even if Mr. Wilkinson’s statement was misleading and was relied on by Ms. Faulkner, there are no consequences from it because the leased premise was in fact in a “good”

state and fit for occupancy as was confirmed by the air quality testing which confirmed that there were no mould spores in the office space air.

Disposition of Issue #4

[97] For the above reasons, I find that the statement that the Paracel mould tests results were “good” was incomplete and was relied on by Ms. Faulkner, but the leased premises were in fact in a good state and fit for occupancy as confirmed by the air testing which did not find any mould in the air greater than outside fresh air.

Issue #5 - Did Satko breach the terms of the lease?

[98] For the same reasons given in issue #4, I find that Satko did not breach the terms of the lease as the premise was always fit for occupancy based on the air tests, which did not disclose any toxic mould spores in the office air.

Issue #6 - What damages were suffered by Ms. Faulkner and FRE?

[99] If liability had been proven against either of the Defendants, then I would have assessed damages as outlined below.

[100] I find that the calculation of the loss of profits on the commissions received by Andrew Carter and Sue Dunton should be tied to Andrew and Sue’s anticipated departure or retirement age and not the retirement age of Ms. Faulkner.

[101] I also agree with the Defendants’ submission that FRE had an obligation to mitigate the damages caused by Sue Dunton’s departure. To mitigate her damages, Ms. Faulkner may have been required to change her business structure to attract established realtors to replace the lost commission income caused by Sue Dunton’s departure.

[102] I assess the following amount of damages:

- a) I do not award any amount for general damages because Ms. Faulkner has failed to prove that her symptoms were caused by exposure to mould in the leased office space;

- b) I do not award any amount for out-of-pocket expenses or the early termination penalty because Ms. Faulkner failed to prove liability and chose to terminate the lease after the water leak issues had been resolved. I find that the three minor water leaks over a period of 16 months, affecting approximately two sq ft of carpet did not give rise to a right of early termination of the lease;
- c) I do not award any amount for loss of leasehold improvements because Ms. Faulkner has failed to prove any liability or causation. The leasehold improvements are surrendered at the end of the lease pursuant to its terms;
- d) I award a reduction of rent for 2 months for the period when the tarp containment area was installed at the beginning of July 2015 until the remediation and repairs to stop the source of the water infiltration were completed by the end of August 2015. The tarp containment area covered approximately 6% of the office space but amounted to an inconvenience and reduced the value of the rental space for seeing clients. I will reduce the rent by \$2,000 per month for two months due to the loss of the area and the inconvenience occasioned by having a tarp containment area installed in the office. This amounts to damages of \$4,000; and,
- e) I do not award any damages for Ms. Faulkner's past medical care, future medical care, OHIP subrogated claim, or for past or future loss of income by Ms. Faulkner because Ms. Faulkner has not proven causation or liability for any of these claims. I also do not award any damages to FRE's past or future loss of profits as it has failed to prove liability, namely causation, for any of these damages because it failed to prove that there was any mould or mycotoxins in the office air and failed to prove that Ms. Faulkner's symptoms were caused by exposure to mould in her office.

Disposition of Damages

[103] For the above reasons the plaintiff is awarded \$4,000 as a reduction of rent for a period of two months, namely for July and August 2015. All other claims for damages are dismissed.

Costs

[104] The Defendants shall have 10 days to make submissions on costs, the Plaintiff shall have 10 days to respond, and the Defendants shall have 7 days to reply.

Date: February 25, 2025

The Honourable Justice Robert Smith

CITATION: Faulkner Real Estate Ltd. v. Sakto Corporation, 2025 ONSC 1158
COURT FILE NO.: CV-16-70700
DATE: 2025/02/25

ONTARIO

SUPERIOR COURT OF JUSTICE

Faulkner Real Estate Ltd. and Judy Faulkner

Plaintiffs

– and –

Sakto Corporation and Waterford Property Group Ltd.

Defendants

REASONS FOR DECISION

The Honourable Justice Robert Smith

Released: February 25, 2025