

Claim struck against individual employee of corporate defendant (Soneri Invest v. Shell Canada)

Claim | Litigation | Litigation & Dispute Resolution | Rules of Civil Procedure

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In some claims against corporate defendants, plaintiffs may also seek to include individual representatives or employees as defendants. Before including an individual as a defendant, an assessment should be made as to whether there are proper grounds to do so. Sufficient material facts supporting the cause of action against the individual must generally be pleaded in the claim separate and apart from the claim against the corporate defendant.

In *Soneri Invest v. Shell Canada*, 2025 ONSC 1547, the Ontario Superior Court of Justice addressed a motion to strike a claim brought against an individual defendant/employee of the defendant corporation, Shell Canada, under Rule 21.01(1)(b) of the *Rules of Civil Procedure*.

The statement of claim sought damages for misrepresentation, non-compliance with the franchise disclosure obligations in the Ontario *Arthur Wishart Act* (“AWA”), breaches of Shell’s agreement with the plaintiff, and unjust enrichment.

There was no relief sought specifically against the employee separate and apart from Shell, and the claim did not identify any conduct by the employee that was tortious by itself. Further, in the body of the statement of claim, there were no references to any conduct by the employee that was tortious by itself, nor did the claim allege that the employee acted in a manner that was outside of his employment or duties as an employee of Shell.

The defendants made a demand for particulars. The details provided by the response for particulars primarily involved the claim for damages and identification of the party alleged to have made the impugned representations.

Following the response to demand for particulars, the defendants moved to strike the claim against the individual employee. The defendants’ position was that Shell was the real target of the claim but that the plaintiff had pleaded conclusory and undifferentiated allegations against the employee for tactical or discovery reasons.

The defendants argued that Shell had or would provide a written undertaking with respect to any damages that may flow from any alleged misrepresentations made by the employee, even if such misrepresentations were made recklessly, negligently, or outside the scope of his employment. Accordingly, they asserted that there was no practical or juristic reason to require the individual to remain as a defendant, except for collateral purposes.

On a motion to strike under Rule 21.01(1)(b), the onus is on the moving party to demonstrate that it is “plain and obvious” the claim does not disclose a tenable cause of action based on the allegations pleaded in the statement of claim. The court may also consider any particulars provided by the plaintiff in response to a demand from the defendant. While material facts pleaded in a statement of claim are to be taken as true for the purposes of the motion, this does not extend to statements of law or conclusory statements. Allegations in a pleading that are based on assumptions or speculation are not to be assumed to be true on a Rule 21 motion to strike.

In response to the motion, the plaintiff referred to a decision of the Court of Appeal for Ontario in *Sataur v. Starbucks Coffee Canada Inc.*, 2017 ONCA 1017 as authority for allowing a claim against a corporate employee in their personal capacity for their own negligence. In that case, the plaintiff sued a barista employed by Starbucks for injuries resulting from scalding hot water that was poured on her hands. The Court of Appeal affirmed that an employee could be sued for personal liability for their own negligence while acting within the scope of their employment.

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com

However, the motion judge rejected the broad proposition that an injured party has a right to sue another party's employee, in their personal capacity, for conduct which is alleged to have caused harm in the course of their employment. The motion judge instead accepted the defendants' argument that employees can only be held personally liable if their conduct (a) manifests a separate identity or interest from their employer, and (b) is tortious in itself: *Burns v. RBC Life Insurance Company*, 2019 ONSC 6977 at paragraph 22, aff'd 2020 ONCA 347.

The motion judge found it noteworthy that neither the statement of claim nor the response to the demand for particulars alleged that the individual defendant had acted outside the scope of his employment or that he acted without due authority. Nor was there any allegation of conduct that manifested a separate identity or interest by the individual defendant from that of Shell.

Rather, the individual was referred to throughout the statement of claim as an employee of Shell save for one statement that he was a "franchisor's associate". There was no allegation that he acted outside the scope of his employment or that he acted without due authority.

The motion judge found that the reference to "franchisor's associate" was merely an unsupported, conclusory statement of fact that was based on assumptions or speculation, and did not amount to a separate cause of action under the AWA against the individual defendant.

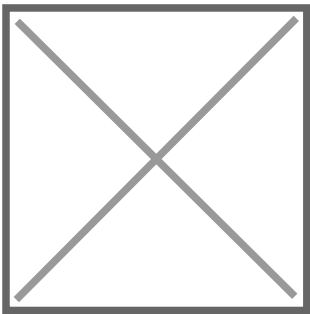
The motion judge referred to *Tran v. University of Western Ontario*, 2015 ONCA 295, in which the Court of Appeal for Ontario stated that "it is undisputed that when a plaintiff purports to sue both a corporation and individuals with that corporation (whether officers, directors, or employees), the plaintiff must plead sufficient particulars which disclose a basis for attaching liability to the individuals in their personal capacities". Undifferentiated allegations against employees are not enough. Personal liability must be specifically pleaded, and a separate claim must be stated against the individual in his personal capacity.

Overall, neither the claim nor the response to the demand for particulars provided sufficient facts to support a claim that the individual's conduct manifested a separate identity or interest from Shell or was tortious in itself. As such, the statement of claim did not establish personal liability against the individual employee and was struck against him.

Leave to amend the statement of claim was granted, however, so it remains to be seen whether sufficient allegations of fact will be subsequently pleaded to continue with the action against the individual defendant. A PDF version is available for download [here](#).

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Author



James R.G. Cook

Partner

416.865.6628

jcook@grllp.com

Gardiner Roberts

Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com