

Court strikes claim of non-party to mortgage contract against mortgagee and its lawyer (Anthonipillai v. Ghorbankhani)

Contracts | Litigation & Dispute Resolution | Mortgage

6 February 2026

Rule 21 of the *Rules of Civil Procedure* is a powerful weapon in the arsenal of a defendant. This rule permits a claim to be struck, without leave to amend it, in circumstances where the claim discloses no reasonable cause of action or is frivolous, vexatious or an abuse of process. In professional liability claims against defendant lawyers, this rule is often used to strike a claim where the plaintiff and the defendant lawyer were clearly not in a solicitor-and-client relationship. In these circumstances, the defendant lawyer generally does not owe a duty of care to the plaintiff and is not in a fiduciary relationship with the plaintiff.

In *Anthonipillai v. Ghorbankhani*, 2026 ONSC 470 (not on CanLII), lawyers representing the defendant lawyer in a mortgage transaction succeeded in striking the plaintiff's claim against her for breach of contract, negligence, and breach of fiduciary duty.

In this case, the defendant lawyer had acted for a corporation which granted a \$5.5 million construction mortgage to a borrower, who was not the plaintiff, on a property that was destroyed by arson and allegedly under-insured.

The plaintiff claimed that she had an interest in the property and that the corporate mortgagee and the defendant lawyer had breached the mortgage agreement by releasing, or allowing for the release of, the mortgage funds to the borrower and guarantor for purposes other than the construction of the property.

Furthermore, the plaintiff contended that the mortgagee and defendant lawyer failed to make sure that there was sufficient insurance on the property.

The mortgagee and defendant lawyer brought motions to strike the plaintiff's action.

The mortgagee argued that the plaintiff was not a party to the mortgage contract and therefore had no reasonable cause of action against it.

The defendant lawyer argued that the plaintiff was not her client, and therefore she did not owe her a duty of care nor a fiduciary duty. The defendant lawyer relied on well-established law that a lawyer only owes a duty of care to their client, and not to clients represented by their own lawyer. The defendant lawyer showed that at the material times, the plaintiff had been represented by her own lawyer.

Like the mortgagee, the defendant lawyer also argued that she could not be held liable to the plaintiff for breach of contract because the plaintiff was not a party to the mortgage agreement.

On a rule 21 motion, there is a presumption that all of the facts pleaded in a statement of claim are true, unless the allegations are patently ridiculous or manifestly incapable of proof.

Furthermore, the allegations are to be read generously.

If there are deficiencies in a pleading, the court is required to consider whether the plaintiff should be granted leave to amend the pleading and cure the deficiencies.

With respect to the defendant lawyer's motion, the court held that the plaintiff's claim should be struck in its entirety, without leave to amend.

The court explained that it was plain and obvious that the breach of contract allegation could not succeed because the plaintiff and the defendant lawyer were not parties to the construction mortgage. The only parties to the construction mortgage were the mortgagee and the borrower.

The plaintiff's claim for negligence and breach of fiduciary duty against the defendant lawyer also could not succeed because there was no solicitor-and-client relationship between them.

The court explained that in the absence of a solicitor-and-client relationship, the plaintiff could only succeed against the defendant lawyer if the lawyer had actual knowledge that the plaintiff was relying on her, the plaintiff in fact relied upon her, and the reliance was reasonable: see [2116656 Ontario Inc. v. Grant and LLF Lawyers LLP](#), 2019 ONSC 114 at paragraph 36.

No such facts were pleaded. On the contrary, the plaintiff admitted that the defendant lawyer was completely unaware of her alleged interest in the property.

Relying on *Hamid v. Milaj*, 2013 ONSC 2104, the court found that it had consistently been held that a lawyer acting for one party in a proceeding owes neither a duty of care nor a fiduciary duty to the opposite party.

The plaintiff's claim against the mortgagee was also struck on the grounds that the plaintiff was not a party to the mortgage contract.

In the circumstances, the court also denied the plaintiff leave to amend her statement of claim. The court explained that any deficiencies in the claim could not be cured by amendments. Any amendments could not create a duty of care or a fiduciary duty between the plaintiff and the defendant lawyer or make the plaintiff a party to the mortgage agreement. A PDF version is available to download [here](#).

Representation by Gardiner Roberts LLP

The defendant lawyer was represented by Alexander Melfi and Kevin Mooibroek.

Mr. Melfi is a partner in the Dispute Resolution Group at Gardiner Roberts LLP. Mr. Mooibroek is a senior associate in this group.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).



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

Author



Stephen A. Thiele

Partner

416.865.6651

sthiele@grllp.com



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