

# Defendant's third party claim against plaintiff's lawyer in breach of contract case dismissed (CPCS Transcom Ltd. v. Lansdowne Office Inc.)

Civil Procedure | Litigation & Dispute Resolution

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Rule 29 of the *Rules of Civil Procedure* allows a defendant to commence a third party claim against any person who is not a party to the action in the circumstances set out under the rule, including where the third party is or may be liable to the defendant for all or part of the plaintiff's claim. Accordingly, it is common for defendants in negligence actions involving potentially multiple tortfeasors, to issue third party claims against tortfeasors who have not been sued by the plaintiff.

Third party claims have also been commenced in circumstances where a defendant believes that a plaintiff's professional advisor, who has not been sued by the plaintiff, is fully or partially responsible for a plaintiff's alleged losses. However, in these scenarios, the courts have struggled with the tenability of the third party claims, finding that some of them are legitimate and allowed to proceed, while others are struck for disclosing no reasonable cause of action. This struggle has led the courts to develop two lines or two buckets of cases to assess the efficacy of the third party claim.

If a case falls within the circumstances of *478649 Ontario Inc. v. Corcoran*, 1994 CanLII 219 (ONCA), the third party claim is allowed to continue. If a case falls within the circumstances of *Hengeveld v. The Personal Insurance Co.*, 2019 ONCA 497, the third party claim will be struck.

The *Corcoran* bucket of cases essentially permits a defendant to bring a third party claim against the opposing party's lawyer, which generally cannot be done because a lawyer acting solely for the plaintiff does not owe a duty of care to the defendant.

In *CPCS Transcom Ltd. v. Lansdowne Office Inc.*, 2026 ONSC 5522, Gardiner Roberts LLP lawyers were successful in obtaining the dismissal of a third party claim that had been brought against the plaintiff's lawyer. The plaintiff, as tenant, had retained its lawyer to assist it with the negotiation of a commercial lease.

Although the tenant believed that under the terms of the lease it had agreed to rent only 7,500 square feet of space from the landlord, the landlord claimed that under a measurement clause contained in the agreement, the landlord was entitled to recalculate the rentable area of the demised premises and recalculate the rent owing. The landlord recalculated the demised area at more than 9,250 square feet, and, accordingly, demanded that the tenant pay more rent.

The tenant disagreed with the landlord's interpretation of the lease and steadfastly maintained that it was only responsible for the payment of rent based on the demised premises being only 7,500 square feet.

Nevertheless, the tenant paid the increased rent demanded by the landlord and then sued the landlord for an overpayment of rent.

Although the tenant did not sue its lawyer for negligence, the landlord commenced a third party claim against the tenant's lawyer for contribution and indemnity for any amount it might be found to owe to the tenant in the main action.

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The landlord's third party claim pleaded that the tenant's lawyer neglected to exercise reasonable care and skill in providing advice to the tenant with respect to the lease measurement clause and that the lawyer was entirely responsible for any losses the tenant incurred.

Citing principles from *Corcoran* and *Hengeveld*, the motion judge concluded:

The allegations that [the tenant's lawyer] provided negligent advice to the [tenant] is not attributable to the [tenant]. The alleged negligent advice would not be the fault of the [tenant]; it would be the fault of the [lawyer]. It can therefore ground a third party claim for contribution and indemnity under s. 5 of the *Negligence Act*.

Accordingly, the motion judge found that the landlord's third party claim was legally tenable.

On appeal, the tenant's lawyer argued that the third party claim made no sense because the tenant's claim in the main action could only produce one of two results. If the tenant was successful in its contention that the lease only required the tenant to pay rent for 7,500 square feet of space, the tenant's lawyer could not have been negligent.

In contrast, if the tenant's claim was dismissed and the landlord's measurement and calculation was correct, the landlord would suffer no loss for which the tenant's lawyer could be liable.

The Divisional Court agreed with the tenant's lawyer, finding that the motion judge had failed to undertake an important step in his legal analysis. The legal analysis required him to ask whether the alleged negligence of the lawyer would be a basis for a finding of contribution and indemnity to the damages that could be awarded against the landlord.

The Divisional Court further noted that while the tenant pleaded its action in both contract and negligence, the quality of the lawyer's advice would have caused his client no damage if the contractual meaning of the lease conformed with the tenant's interpretation of the lease.

Moreover, the tenant's negligence claims were not claims to which the lawyer could contribute.

The negligence claims were that the landlord failed to advise the tenant of design changes to the premises and misrepresented the leased space to the tenant.

The third party claim did not allege that the tenant's lawyer advised his client on the impact of the design changes or the square footage of the demised space after those changes.

The Divisional Court expressed its key findings in the case as follows:

In simple terms, if the [tenant] wins the main claim, then either its solicitors were not negligent or, if they were negligent, it did not cause the [tenant] any damage. If the [tenant] loses the main claim, then [the landlord] will have no liability to the [tenant] to which the [lawyer] could be called upon to contribute or indemnify [the landlord].

Accordingly, it was plain and obvious that the lawyer could never be liable under the third party claim.

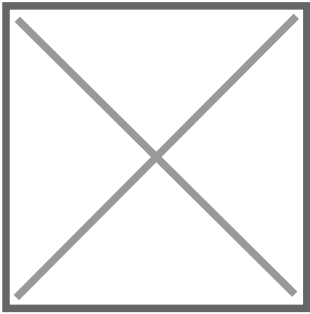
### Representation by Gardiner Roberts LLP

The tenant's lawyer was represented by Anna Husa. Ms. Husa is a partner in Gardiner Roberts LLP's dispute resolution group. Ms. Husa was assisted on the appeal by associate lawyer Christina Tassopoulos.

Stephen Thiele, the firm's director of legal research and a partner, also assisted Ms. Husa with the preparation of written submissions used to support the lawyer's appeal.

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

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