CITATION: McDougald v. Cooper, 2018 ONSC 5887
LINDSAY COURT FILE NO.: 0121/17
DATE: 20181003

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Peter McDougald Plaintiff, Responding Party on Motion	)	Mr. Peter McDougald, self-represented
– and – Susanne Cooper, Community Legal Clinic Kawartha Lakes, Maria DeSousa, Aaron Sloan and City of Kawartha Lakes Defendants, Moving Parties on Motion	)	Ms. M. Pinto, counsel for Maria DeSousa, Aaron Sloan and the Corporation of the City of Kawartha Lakes Ms. Lauren Rakowski, counsel for Susanne Cooper, Community Legal Clinic Kawartha Lakes

Heard: April 17, 2018

REASONS

H.K. O'CONNELL J.:

The Relief Sought

[1] The defendants, the moving parties ("the defendants") seek the following relief as set out in their respective motion records.

[2] In relation to the defendants, DeSousa, Sloan, and The Corporation of the City of Kawartha Lakes, an order pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*, striking out the Statement of Claim for failure to disclose a reasonable cause of action, without leave to amend; and, in the alternative, an order pursuant to Rule 21.01(3)(d) dismissing the plaintiff's action on the ground that it is frivolous, vexatious or an abuse of the Court's process.

[3] In relation to the defendants, Cooper and Kawartha Lakes, an order pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*, striking out the Statement of Claim for failure to disclose a reasonable cause of action, without leave to amend; and, in the alternative, an order pursuant to Rule 21.01(3)(d) dismissing the plaintiff's action on the ground that it is frivolous, vexatious and/or an abuse of the Court's process; and, in the further alternative an order, pursuant to Rule 20.04(2), granting summary judgment dismissing the Plaintiff's action.

[4] The moving party defendants, DeSousa, Sloan and Kawartha Lakes point out that in the style of cause the City of Kawartha Lakes is improperly named. It should read the Corporation of the City of Kawartha Lakes. Counsel for the moving party defendants, Cooper and Community legal Clinic Kawartha Lakes point out that the defendant Community Legal Clinic Kawartha Lakes, is improperly named. The proper legal descriptor is Community Legal Clinic-Simcoe, Haliburton, Kawartha Lakes.

ii) The History of this Motion

[5] This matter was first before the court on February 6, 2018 for the hearing of the motions, however it was not reached. It was adjourned to April 17, 2018 pre-emptory on the respondent, the plaintiff.

[6] The respondent had not filed any material for the date of February 6, 2018 nor did Mr. McDougald file any responding material in the interim, or attempt to file any when I heard the motion on April 17, 2018.

[7] The court advised Mr. McDougald he should have filed material, however that was not an impediment to me hearing the motion and granting him his right to a response to the defendant's motion.

[8] The court advised Mr. McDougald that it could not 'entertain' evidence from the floor of the court.

[9] When asked by the court, Mr. McDougald indicated that he had been duly served with all of the material that the defendants had served on him and filed with the court for the original motion date of February 6, 2018.

Position of Ms. Pinto for the Moving Party, Defendants: DeSousa, Sloan, and City of Kawartha Lakes

[10] Ms. Pinto noted that her motion was to strike the claim for failure to disclose a tenable cause of action and in the alternative, a ruling that the action is frivolous, vexatious and/or otherwise an abuse of process.

[11] Mr. Pinto highlighted 4 points in her submissions before the court.

Submission #1

[12] The first argument advanced was that the statement of claim falls well short of the requirements of the rules of pleadings. Ms. Pinto made reference to her brief of authorities, her factum, and the motion record.

[13] Reference was made to *Aristocrat Restaurants v. Ontario,* [2003] O.J. No 5331, (Sup. Ct) wherein the court noted that pleadings define the issues in dispute; they give notice to the other side of the case to be met; and they inform the court of the matters in issue. The pleadings also provide a permanent record of the relief sought.

[14] Rule 25.06 (1) requires that a statement of claim must contain a precise outline of the material facts that the plaintiff relies upon.

[15] This requirement necessitates that the drafting of pleadings must be done with sufficient clarity and precision to enable the defendant(s) to know the case that it will be required to meet.

[16] Ms. Pinto advised that her primary position is that her clients just simply do not know what the plaintiff is claiming against them.

[17] Ms. Pinto cited the decision in *Cohen v. Cambridge Mercantile Corp.*, [2007] O.J. No. 2305 (Sup. Ct. per: D.M. Brown, J. as he then was) in furtherance of the proposition that every pleading must contain a concise statement of the material facts upon which a party relies for a claim or defence.

[18] Justice Brown in *Cohen*, at paragraph 22, stated:

> To satisfy this rule a plaintiff must make some effort to link particular material facts pleaded with a particular claim asserted. It is not sufficient to say to a defendant, "Here is my claim; you can find the relevant material facts somewhere in the rest of my pleadings: go find them." In order to know the case it must meet, a defendant is entitled to an identification of the material facts upon which a plaintiff relies in support of each specific claim.

[19] Ms. Pinto argued that in the case at bar, Mr. McDougald has completely failed to plead material facts, much less link them to the claims asserted.

[20] Ms. Pinto submitted that the Statement of Claim in the case at bar is replete with bald allegations that are identically pleaded against all of her clients, DeSousa, Sloan the Corporation of the City of Kawartha Lakes. [1]

[21] Although a claim must be read generously, failure to plead a material fact to the establishment of a cause of action precipitates the remedy of a motion to strike.

[22] Furthermore, "if the plaintiff does not, at the time of pleading, have knowledge of the facts necessary to support the cause of action, then it is inappropriate to make the allegations in the statement of claim. It is improper to allow conclusions to be pleaded baldly and without any supporting facts."[2]

[23] Ms. Pinto pointed out that the only allegations against her clients are found at paragraphs 3 through 5 of the claim.

[24] Paragraph 3(a) sets out the allegations against the defendant, Ms. DeSousa.

[25] At its core, this paragraph of the claim asserts that this defendant acted callously, and in a highhanded matter, abused her office to injure the plaintiff, and exhibited personal ill-will and targeted malice toward the plaintiff, and acted in excess of power with the knowledge that the plaintiff would probably be harmed by an abuse of office that was done to knowingly and wilfully act in excess of power of the public officer defendant.

[26] Good faith is said to have been violated by this defendant and in particular, that Ms. DeSousa acted maliciously and in bad faith.

[27] At paragraph 4(a) of the claim, the same allegations are made, verbatim, against the defendant, Mr. Sloan.

[28] Basically identical allegations are made against the City of Kawartha Lakes at paragraph 5(a) of the claim.

[29] The claims against the defendants DeSousa, Sloan and the City of Kawartha Lakes plead serious allegations such as personal ill-will, targeted malice and bad faith, however, no material facts are plead. Bald allegations are stated absent any facts to back them up.

[30] The pleadings do not inform the defendants, DeSousa, Sloan and the City of Kawartha Lakes of what the plaintiff is claiming against each of them with any reference to any material facts.

[31] Rule 25.06(1) of the *Rules* requires a concise statement of the material facts relied upon, but not the evidence by which those facts are to be proved.

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[1] Paragraphs 3 and 4 of the Statement of Claim as against Sloan and DeSousa are identical in their content. In the context of the defendant, Kawartha Lakes, the claims are not exactly duplicitous to those against DeSousa and Sloan, but are very close.

[2] *Balanyk v. University of Toronto*, 1999 CarswellOnt 1786 at paragraph 29.

[32] Pursuant to Rule 25.08, where a party alleges fraud, misrepresentation, breach of trust, malice or intent, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is inferred.

[33] In summary, Ms. Pinto submitted that the basic mandatory rules of pleadings have not been followed such that striking of the pleadings is required.

Submission #2

[34] The second submission of counsel was that even if the pleadings are taken as true, no tenable cause of action exists. The statement of claim cannot be read to allow the court to evaluate whether the plaintiff can be successful at trial.

[35] The defendants note again that the pleadings are all identical between the defendants. This is indicative of a blanket allegation which is devoid of substance.

Submission #3

[36] The third submission of counsel Ms. Pinto was that the Statement of Claim appears to be an attempt on the plaintiff's part to re-litigate Landlord and Tenant Board determinations.

[37] There are multiple references to landlord and tenant proceedings in the claim which speaks to a collateral attack on that process via this claim.

[38] This claim is not the appropriate forum for a dispute on the findings of the Landlord and Tenant Board. Counsel referenced *Metropolitan Toronto Condominium Corporation No. 1352 v. Newport Beach Development Inc.*, 2012 ONCA 850, wherein the court noted that the rule against collateral attack may be raised to "prevent a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route": *British Columbia (Workers' Compensation Board) v. British Columbia (Human Rights Tribunal*) at para. 28.

[39] The remedy for any dispute about what happened at the landlord and tenant proceedings is not via the forum of a Statement of Claim such as that advanced here.

Submission #4

[40] The fourth and final submission of counsel, Ms. Pinto, was that the plaintiff's action, is frivolous, vexatious and/or an abuse of process.

Summary

[41] Ms. Pinto referenced the decision in *Hunt v. Carey,*[3] where the Supreme Court noted that if it is plain and obvious that the claim discloses no reasonable cause of action the claim needs to be struck. If there is a chance of success the claim must be allowed to proceed.

[42] Motions to strike address this test. In the case at bar, bald and serious allegations are made. The plaintiff has been given ample opportunity to correct this issue with the attempt to back up the allegations with the required pleading of material facts.

[43] The motion date was peremptory on the plaintiff yet he continued to proceed without the filing of a response or an attempt to constitute a proper set of pleadings.

[44] Given that the rules of pleadings have not been satisfied, this court is unable to gauge the plaintiff's chance of success as a consequence.

[45] For all of these reasons, Ms. Pinto argued that the claim as against her clients should be struck without leave to amend.

Position of Ms. Rakowski for the Moving Party, Defendants: Cooper and the Community Legal Clinic

[46] As with her colleague Ms. Pinto, Ms. Rakowski sought the striking of the claim as against her clients and further sought the remedy of summary judgment in the alternative.

[47] In seeking the striking of the claim counsel submitted that the claim fails to disclose a reasonable cause of action, is a collateral attack that is frivolous, vexatious and/or an abuse of the court's process, and finally that there is no genuine issue for trial in any event.

Submission # 1

[48] Ms. Rakowski submitted that it is plain and obvious that the claim discloses no reasonable cause of action because the plaintiff fails to plead material facts and fails to outline the elements of a cause of action. Therefore under Rule 21.01(1)(b), the claim ought to be struck.

[49] In addition, *Rule* 25.06 requires a claim to contain a concise statement of material facts upon which the plaintiff relies.

[50] The Supreme Court in the decision in *Knight v. Imperial Tobacco Ltd.*, 2011 SCC 42, highlights that pleading material facts is the only basis upon which the court can evaluate the chance of success of a claim. The Court further noted that "the power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure

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[3] *Hunt v. Carey*, [1990] 2 S.C.R. 959.

essential to effective and fair litigation. It unclutters proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go to trial."

[51] The court further noted that this promotes efficiency in the conduct of litigation and correct results.

[52] In the case at bar the allegations against all the defendants are vague and very serious, inclusive of bias, ill-will, acting in excess of power, and bad faith.

[53] The defendant, Cooper, is a licenced paralegal who assists low income tenants. Her profession is based on integrity and reputation. The plaintiff has failed to plead any material facts to support a tenable cause of action as against her or her co-defendants.

[54] Ms. Rakowski cited *Balanyk*, for the proposition that if the material facts to establish a cause of action are omitted, the remedy is a motion to strike and not a motion for particulars.

Submission #2

[55] Counsel further argued that the claim is frivolous, vexatious and an abuse of the court process. It constitutes a collateral attack against Law Society findings, and the results of a Landlord and Tenant Board ruling.

[56] The plaintiff complained twice to the Law Society against Ms. Cooper inclusive of allegations of touching the plaintiff's calendar and rubbing against his person in front of the adjudicator. The plaintiff has now re-iterated the same conduct against his person.

[57] The Law Society dismissed the complaints. The plaintiff has filed no motion materials. It is the uncontradicted evidence against Ms. Cooper that the allegations are false.

[58] The plaintiff is now attempting to re-litigate Law Society and Landlord and Tenant Board findings.

Submission #3

[59] This case does not present a genuine issue requiring a trial, such that Rule 20.04(2)(a) is invoked.

[60] As noted, no responding motion materials have ever been filed. No genuine issue for trial is identified. The evidence of the defendants is not contradicted that the allegations are false.

[61] Under Rule 20.02(2), counsel asks the court to draw an adverse inference against the plaintiff for not providing evidence of a genuine issue for trial. Ms. Rakowski referenced the decision in *Fernandes v. Carleton University,* 2016 CarswellOnt 16074 (C.A.), for the proposition that a self-represented litigant bears the same onus of providing evidence, yet at the Law Society hearings he never did.

[62] Having been provided with motion materials in January 2018 and having attended court in February 2018, Mr. McDougald has decided not to file any materials on this motion..

[63] The allegation of Ms. Cooper rubbing herself against the plaintiff at the Law Society is highly improbable and not grounded in any witness seeing the allegation of this activity. It is expressly rejected in affidavit form by Ms. Cooper and the Law Society has likewise rejected the claim.

[64] No evidence is advanced before this court of a genuine issue for trial.

[65] In conclusion, Ms. Rakowski asked that the action be dismissed, or in the alternative that the claim be struck without leave to amend.

Summary

[66] The un-contradicted evidence is that the allegations are false. The defendants submit that the claim discloses no reasonable cause of action, makes a collateral attack that is frivolous and vexatious, and there is no genuine issue for trial.

Submissions of the Responding Party, the Plaintiff: Mr. McDougald

[67] I took the time to carefully listen to Mr. McDougald's submissions via the court's audio. Mr. McDougald made his submissions over some 45 minutes of court time. The Court took pains to hear him out. Many of his submissions, as will become evident, were not responsive to the motion of the moving parties.

[68] Mr. McDougald was reminded that the court only had his Statement of Claim to consider in the context of material filed.

[69] Mr. McDougald reminded the court that he was not a lawyer. He had paralegal experience. He set out his involvement in criminal law, as well as matters involving the rights of children and the need to protect them from paedophiles. He advised that he has also undertaken work with the John Howard Society.

[70] Mr. McDougald advised the court that his Statement of Claim is "a little fuzzy". Mr. McDougald advised that he *may* have evidence that the defendants, Cooper and DeSousa, manufactured evidence before the Landlord and Tenant Board.

[71] Mr. McDougald was at times emotional in his submissions. The court advised him that he should take his time.

[72] Mr. McDougald advised the court that he had evidence with him in court, unfiled. The court advised that it could not consider it as the moving parties had not seen it and had no chance to assess it.

[73] To be clear, the court did not have this 'alleged' evidence either.

[74] The court noted that no attempt was made by Mr. McDougald to file any material since the first motion date that was adjourned for lack of court time, in February 2018.

[75] Mr. McDougald set out some of the history of the landlord and tenant matter. He did so in his submissions, because as noted, I had nothing from him to consider in the material, given that he did not file anything.

[76] The court focused Mr. McDougald on the argument of the moving parties in order that he could address the court as to his argument of the tenability of his pleadings.

[77] Mr. McDougald advised that untenable equates to indefensible. He argued that in order for him to have the evidence he needed it from the City of Kawartha Lakes.

[78] He alleged that the defendant, Ms. Cooper, and he had involvement some 5 years prior in another matter.

[79] He advised the court that it was "his opinion" that Ms. Rakowski was a true and kind professional, and he thanked her for that. He advised that if he was in her or Ms. Pinto's position he would do everything he could to have this dismissed as soon as possible as the "evidence is overwhelming" in his favour.

[80] He purported to have a tape recording of Ms. Cooper and "what she was going to do."

[81] Mr. McDougald advised he did not have the funds to research the case law on this motion, although he conceded that he has has internet access and is aware of the *Rules of Civil Procedure*.

[82] He described himself as the 'father of family violence and crime prevention and education in Canada', a descriptor that attributed to him by others.

[83] Mr. McDougald went to a Justice of the Peace to try to have a charge laid against Ms. Cooper for sexual assault, but was directed to the police. He outlined that he provided the police with information. The court asked Mr. McDougald for the sake of argument, what happened with his attempt to get a charge laid. Mr. McDougald advised that the Crown took the position that there was no reasonable possibility of conviction.

[84] Mr. McDougald said he was advised that men abuse women and not the other way around.

[85] Mr. McDougald wanted his claim heard at trial, as "there is good reason for it".

[86] He submitted that evidence was manufactured before the Landlord and Tenant Board.

[87] Mr. McDougald said that he could "at any time file a notice of motion for leave to amend the statement of claim."

[88] The court asked for clarification. Mr. McDougald advised that if his claim is struck he should get leave to amend.

[89] Mr. McDougald profusely thanked counsel for their fairness with him in this proceeding.

[90] He advised the court that he has a long history of volunteering to help people.

[91] However, he said he is a victim of systemic abuse. When asked what he meant, Mr. McDougald said that he was referring to his attempts to root out corrupt civil servants in New Brunswick. He went so far as to reference a former premier of New Brunswick.

[92] Mr. McDougald went on at some length about his passion for children's rights, however the court noted that that had nothing to do with the motion before the court.

[93] Mr. McDougald argued that his position was tenable, he has overwhelming evidence and can prove vexatious conduct by the defendants.

[94] Mr. McDougald submitted that Ms. Cooper offered him sexual services.

[95] Mr. McDougald digressed into how he was writing a book about health and offered the court a copy when he was done.

[96] Mr. McDougald advised that the defendant, Sloan, acted to protect Ms. DeSousa. Mr. McDougald advised he did not like the way Ms. DeSousa spoke to him, which gave her a reason to be angry with him.

[97] Mr. McDougald said "lying is going on" and he has evidence of that.

Reply of Ms. Pinto

[98] Ms. Pinto reminded again that there is no tenable cause of action. She highlighted her factum at paragraph 11, noting the need to plead facts. There are no facts plead in the claim.

[99] Ms. Pinto also submitted that in relation to leave to amend, that based on the plaintiff's own submissions, his qualm is with the Landlord and Tenant Board, and the procedure in that forum. That issue is now moot. It is not fair to grant leave as additional proceedings and motions will result.

Reply of Ms. Rakowski

[100] What the plaintiff has said is an attempt to adduce evidence on the motion which is impermissible. There is furthermore no tenable basis to amend the claim nor has Mr. McDougald brought a motion to do so.

[101] Reference to matters outside of this court are not helpful on this motion. Mr. McDougald has failed to give a description of allegations in his claim. He filed no materials. The un-contradicted evidence is that the claim is untenable or in the alternative, ripe for summary judgment.

Reasons re the Moving Parties, the Defendants: DeSousa, Sloan and Kawartha Lakes

i) Should the pleadings be struck?

[102] I will deal first with the motion brought by Ms. Pinto's clients, DeSousa, Sloan and City of Kawartha Lakes.

[103] I agree completely with Ms. Pinto that the statement of claim should be stuck without leave to amend.

[104] The claims are not supported by the material facts that are necessary to meet the test for survivability on a motion to strike.

[105] In the Statement of Claim the totality of the claims as against the defendant DeSousa are found at paragraph 3. The same pleadings are levelled at the defendant Sloan. Indeed the wording of paragraph 4 of the claim is a duplicate of paragraph 3, save and except with the necessary adjustment in pronouns.

[106] As noted, Mr. McDougald did not file any material with the court. While the court recognizes that Mr. McDougald made several submissions, the vast majority were, as noted, simply not relevant to this motion.

[107] Recognizing as I must that *evidence* is not admissible on a motion to strike pleadings, I have given that word expansive meaning to see if anything in Mr. McDougald's submissions rises to a showing of material facts that may inform the pleadings.[4]

[108] They do not do so.

[109] It if further clear from Mr. McDougald's pleadings, as against these defendants, are not premised on any material facts. They are mere assertions, not framed by time or substance. Nor is there anything else in the balance of the contents of the Statement of Claim that constitutes material facts to support the alleged tortious conduct.

[110] I have read the claim generously, and even with such generosity it cannot survive its gross deficiencies.[5] It simply fails to plead the required material facts.

[111] Simply put, it is plain and obvious that the claims as against these defendants cannot succeed.

[112] Finally, I agree with Ms. Pinto, in her alternative submission, that the action is otherwise frivolous. There is not one valid pleading to substantiate this action as against DeSousa, Kawartha Lakes or Sloan.

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[4] See *Paton Estate v. Ontario Lottery and Gaming Corp.*, 2016 ONCA 458 at para. 12.

[5] I have considered the fact that " it is well established that, on a motion to strike a statement of claim, the pleadings are to be read generously allowing for inadequacies due to drafting deficiencies." See Conklin v. Ontario, 2018 ONCA 726, citing Nash v. Ontario (1995), 27 O.R. (3d) 1 (C.A.)

[113] This is yet another reason, to strike the pleadings.

ii) Should the court grant leave to amend the pleadings in respect of DeSousa, Sloan or Kawartha Lakes?

[114] Although leave to amend should not be dismissed without careful consideration, I am satisfied that there is no basis to grant such leave. This claim is devoid of the requisite ingredients to allow for its survivability.

[115] There was ample time between the first return date in court in February 2018, until I heard this motion in April 2018, for Mr. McDougald to amend his claim or at the very least to advise with substance on the motion before me what amendments he was seeking. He did not do so, save to say that he is entitled to do so.

[116] I have considered Rule 26 of the *Rules of Civil Procedure*, and the law in relation to leave to amend, I am aware of the presumption that leave should only be denied in the clearest of cases.[6]

[117] This is one of those clear cases, for the reasons noted, where denial of the request for leave to amend is necessary.

iii) The action is otherwise frivolous, and vexatious

[118] I accept as well the argument of Ms. Pinto that the action is otherwise frivolous and vexatious, for the reasons that she submitted. This action is simply bound to fail and does not resonate with anything more than frivolous and vexatious commentary.

Reasons re the Moving parties, the Defendants: Cooper and Community Legal Aid Clinics

i) Should the pleadings be struck?

[119] My reasons as they relate to the moving parties DeSousa, Sloan and Kawartha Lakes apply equally to the moving parties Cooper and Community Legal Aid Clinics.

[120] The portions of the Statement of Claim as against Ms. Rakowski clients are found at paragraphs 1 and 2 of the claim. They are very similar.

[121] Furthermore, I have considered the totality of the Claim in my assessment as to whether the motion to strike as against these defendants, should be granted.

[122] There is nothing else in the claim that provides for the assertion of material facts that contextualizes the claims. The claims are ripe for striking.

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[6] See *Tran v. University of Western Ontario*, 2015 ONCA 295 and *South Holly Holdings Ltd. v. The Toronto-Dominion Bank*, 2007 ONCA 456. See also: *Spar Roofing and Metal Supplies Ltd. v. Glynn*, [2016} O.J. No. 2152 (C.A.) where the court sets out the presumption of amendment at any stage of the proceeding, inclusive of appeal.

ii) Should the Court grant leave to amend the pleadings in relation to these defendants

[123] Likewise, there is no basis upon which to amend the claims. No amendment was proposed to save the claim and as with the other defendants no attempt was made to suggest an amendment that would survive the rules of pleadings.

iii) Summary Judgment is otherwise appropriate

[124] In addition in the context of summary judgment, where evidence is admissible, the defendant Cooper has provided an affidavit[7]. Silence reigns from Mr. McDougald.

[125] As noted that is the only evidence on the summary judgment motion that was proffered for consideration. Evidence is admissible on a summary judgment motion, but not on a motion to strike pleadings.

[126] Mr. McDougald has not put any foot forward under this claim for relief. Nor did he file a factum as required by the *Rules*, however that is not a reason for considering whether summary judgment is otherwise appropriate or not.

[127] I would otherwise found that summary judgment should issue in favour or Ms. Cooper and Community Legal Clinics. There is simply no genuine issue requiring a trial.

[128] In this regard I find the decision of the Court of Appeal in *Kueber v. Royal Victoria Regional Health Centre*, 2018 ONCA 125, apposite to this case:

> In our view, this is precisely the type of case that summary judgment is designed to address so as to avoid putting the parties to the time and expense of a full blown trial. It is the type of case that can be fairly resolved "in line with the goal of proportionate, cost-effective and timely dispute resolution": *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 67.

iii) The Claim is otherwise frivolous and vexatious and in Relation to the Defendant, Cooper, an abuse of the Court's process.

[129] Finally I accept the argument of Ms. Rakowski that the claim is otherwise frivolous and vexatious, and as it relates to Ms. Cooper in particular an abuse of the court's process.

[130] Ms. Cooper is deemed to be saved harmless for the alleged tortious conduct given the findings of the Law Society.

Remedy

[131] Therefore the action as against all defendants is struck without leave to amend.

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[7] See Tab 2 of the motion record, Affidavit of Ms. Cooper, sworn January 29, 2018.

[132] In the alternative in relation to Ms. Pinto's clients the action is otherwise frivolous and vexatious.

[133] In the context of Ms. Rakowski's clients, the action as against Ms. Cooper and Community Legal would otherwise have been dismissed on the summary judgment footing, and in the context of both of her clients on the frivolous and vexatious footing with the added feature that it is an abuse of the court's process in the context of Ms. Cooper.

[134] Counsel for the moving parties are to serve and file their submissions on costs, totalling no more than 3 pages, exclusive of any offers to settle or bills of costs, within 2 weeks of receipt of these reasons. Mr. McDougald is to respond within 7 days of receipt on like terms, with the moving parties to reply if necessary within 5 days of receipt of Mr. McDougald's submissions.

[135] Counsel and Mr. McDougald are to file their materials at the court registry in Lindsay.

Justice H.K. O'Connell

Released: October 03, 2018