Date: 20231101
Docket: CI 20-01-28994
(Winnipeg Centre)
Indexed as: 7602678 Manitoba Ltd. v.
6399500 Manitoba Ltd and Landmhel Real Estate Services Inc.
Cited as: 2023 MBKB 161

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

7602678 MANITOBA LTD,	)	Daksh Jhanji
	)	an officer of the plaintiff
plaintiff,	)	
	)	
	)	
- and -	)	
	)	No one appearing
	)	for the defendant
	)	6399500 Manitoba Ltd.
	)	
6399500 MANITOBA LTD. and	)	Andrew M. Boumford
LANDMHEL REAL ESTATE SERVICES INC.,	)	for the defendant
	)	Landmhel Real Estate
Defendants.	)	Services Inc.
	)	
	)	Judgment Delivered:
	)	November 1, 2023

McKELVEY J.

INTRODUCTION

[1] These proceedings represent an appeal from a May 12, 2023 decision of Master Patterson (now Associate Judge Patterson) which served to strike the plaintiff's statement of claim in its entirety for failure to disclose a reasonable cause of action. Leave to amend was not allowed. A notice of appeal was filed by the

plaintiff on May 25, 2023, in accordance with Court of King's Bench Rule (MR 553/88) ("Rule") 62.01. Further, Rule 62.01(13) states that the hearing of the appeal, "shall be a fresh hearing" with no further evidence adduced without leave of the judge hearing the appeal. A request for fresh evidence was not made in this case. The decision in ***Raymond v. Manitoba Public Insurance Corporation***, 2012 MBQB 201 states:

> [22] ... where a party appeals from a master, the court hearing the appeal ought to consider the reason set out by the master in order to ensure that the process before the master does not become a "meaningless exercise".

Accordingly, this is not a situation of deference, albeit in this case, the detailed and comprehensive 75-page decision of Associate Judge Patterson provides an extremely thorough, cogent and accurate analysis and determination of the issues before the court.

[2] Defendant 6399500 Manitoba Ltd. ("639") was not present at this hearing. The corporation was dissolved by the Companies Office on July 1, 2022. Representative legal counsel, not previously knowing of the dissolution, withdrew on May 25, 2023.

[3] Vibhu Raj Jhanji ("Jhanji"), the father of the plaintiff's officer appearing in court, was present and prepared the written submission put forth on behalf of the plaintiff. The circumstances preventing Jhanji from arguing the plaintiff's position relate to Associate Judge Patterson's decision dated January 24, 2023. At that time, Jhanji was struck as a personal plaintiff in these proceedings and was barred from representation of 7602678 Manitoba Ltd. Rule 15.01(2) states that, "A

corporation which is a party to a proceeding may be represented by a duly authorized officer of that corporation resident in Manitoba or by a lawyer". At the time the statement of claim was filed and appearances in court, Jhanji had been suspended by The Law Society of Manitoba (December 12, 2018) and was not an officer of the plaintiff corporation. ***The Legal Profession Act***, C.C.S.M. c. L107, states that:

> 26 No person shall employ or engage a former member or a member who is suspended from practice to perform, in any capacity whatsoever, services that constitute the practice of law, unless the employment or engagement is approved by the benchers.

Associate Judge Patterson held that Jhanji was barred from representing the plaintiff in these proceedings. Further, his ability to act on behalf of the plaintiff was not approved by the benchers. The representation decision is the subject of a pending appeal.

BACKGROUND

[4] The plaintiff filed a statement of claim on November 13, 2020, as regards a real estate transaction respecting property in Stony Mountain, Manitoba. Both defendants filed motions to strike the statement of claim on the basis that it failed to disclose a reasonable cause of action and, further, the claim's content left the defendants bereft of an ability to respond to the allegations. As indicated, Associate Judge Patterson granted the defendant's motion and struck the claim without leave to amend.

[5] The Rules with respect to pleadings are as follows:

RULES OF PLEADING — APPLICABLE TO ALL PLEADINGS

Material facts
25.06(1) Every pleading shall contain a concise statement of the material facts on which the party relies for a claim or defence, but not the evidence by which those facts are to be proved.

Separate claims or defences
25.06(2) Where a party seeks relief in respect of separate and distinct claims, or raises separate and distinct grounds of defence, the material facts supporting each claim or ground of defence shall be stated separately as far as may be possible.

Pleading law
25.06(3) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded.

Act or regulation
25.06(4) Where a party's claim or defence is founded on an Act or Regulation, the specific sections relied on shall be pleaded.

Condition precedent
25.06(5) Allegations of the performance or occurrence of all conditions precedent to the assertion of a claim or defence of a party are implied in the party's pleading and need not be set out, and where the opposite party intends to contest the performance or occurrence of a condition precedent, the pleadings of the opposite party shall specify the condition and its pleadings of non-performance or non-occurrence.

Inconsistent pleading
25.06(6) A party may make inconsistent allegations in a pleading where the pleading makes it clear that they are being pleaded in the alternative.

Inconsistent or new claims
25.06(7) An allegation that is inconsistent with an allegation made in a party's previous pleading or that raises a new ground of claim shall not be made in a subsequent pleading but by way of amendment to the previous pleading.

Notice
25.06(8) Where notice to a person is alleged, it is sufficient to allege notice as a fact unless the form or a precise term of the notice is material.

Documents or conversations
25.06(9) The effect of a document or the purport of a conversation, if material, shall be pleaded as briefly as possible, but the precise words of the document or conversation need not be pleaded unless those words are themselves material.

Contract or relation
25.06(10) Where a contract or relation between persons does not arise from an express agreement, but is to be implied from a series of letters, communications, or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege the contract or relation as a fact.

Nature of act or condition of mind
25.06(11) Where fraud, misrepresentation or breach of trust is alleged, the pleading shall contain full particulars, but malice, intent or knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.

Presumption of law
25.06(12) A party need not plead a fact which the law presumes to be in the party's favour, or as to which the burden of proof lies on the opposite party.

Claim for relief
25.06(13) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified either simply or alternatively, and, where damages are claimed,

(a) the nature of the relief claimed, including the amount of special damages, for each claimant in respect of each claim shall be stated;
(b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be filed and served as they become known; and
(c) the amount of general damages claimed need not be stated.

Claim for general relief implied
25.06(14) A claim for general relief will be implied in any pleading where relief is claimed.

Further:

25.11(1) The court may on motion strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

(a) may prejudice or delay the fair trial of the action;
(b) is scandalous, frivolous or vexatious;
(c) is an abuse of the process of the court; or
(d) does not disclose a reasonable cause of action or defence.

[6] The decision of Chief Justice Joyal in ***Winnipeg (City) v. Caspian Projects Inc. et al,*** 2020 MBQB 129, reviewed the purposes behind pleadings and the determinations that must be considered with respect to the application of Rule 25.11. The functions of pleadings are also well set out in Associate Judge Patterson's decision (para. 94). The striking of a pleading will be used sparingly and is reserved for the clearest of cases. Further, a claim should be read in a generous and liberal fashion with the facts pleaded anticipated to be true. The claim will be struck only if it is plain and obvious that no reasonable cause of action is disclosed (Rule 25.11(1)(d)). As was stated by Associate Judge (then Master) Clearwater in ***Dowd et al v. Skip the Dishes Restaurant Services Inc. et al***, 2019 MBQB 63 ("***Skip the Dishes***"):

> [51] The legal test and process to be applied on a motion pursuant to Rule 25.11(1)(d) is long settled. Both parties accept that the motion to strike for failure to disclose a reasonable cause of action is to be considered on the face of the pleadings... The law says that it is only appropriate to strike pleadings in the clearest of cases, where the court is satisfied that it is plain and obvious that the pleadings fail to disclose a reasonable cause of action...
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> ...
>
> [53] It is also important to note on a motion to strike that, while the facts are deemed to be true for the purposes of assessing such a motion, the fundamental rules of pleading must be followed. The claim cannot be based on mere speculation, or the plaintiffs' view that discovery will uncover the necessary facts...

In ***R. v. Imperial Tobacco Canada Ltd.***, 2011 SCC 42:

> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven.

[7] The decision in ***George v. Harris,*** [2000] O.J. No. 1762 (QL), considered the test for the meaning of scandalous, frivolous or vexatious within the context

of Rule 25.11(1)(b). It was held that, "It is clear that a document that demonstrates a complete absence of material facts will be declared to be frivolous and vexatious" (para. 20).

ANALYSIS

[8] The plaintiff requests that the decision of Associate Judge Patterson be set aside and the statement of claim be permitted to stand.

[9] The defendant Landmhel ("Landmhel") submits that the statement of claim fails to disclose a reasonable cause of action under any of the headings that specifically reference it, whether those be in negligence, contract, unjust enrichment, or other causes of action.

[10] The pleadings make reference to Landmhel's listing agent, Edward Xu ("Xu"). Xu is not a named party to the action, vicarious liability has not been plead, nor have material facts been plead to support an allegation that Xu owed the plaintiff a duty of care. Xu was the listing agent for Landmhel, who was the broker for 639 as regards the property transaction (Statement of Claim, p. 8, para. 5). It is noteworthy that Landhmel acted as the broker for 639 and not for the plaintiff. Accordingly, privity of contract with the plaintiff may be absent.

[11] The statement of claim, at para. 7g(i), (ii) and (iii) (pp. 12 and 13), also references Landmhel, albeit by posing three rhetorical questions. The propounding of such questions is not proper pleading practice, nor is the fact that the legislation referenced fails to document specific sections of the statutes named (Rule 25.06(4)). This paragraph of the statement of claim is confusing, reads as

legal argument, and is conclusory. The ability to respond to the paragraph would be virtually impossible.

[12] The statement of claim at p. 16, para. 8(q), indicates that Landhmel "failed to repel" as regards a number of issues. This paragraph is, once more, confusing, unclear, and does not facilitate the finding of a duty or standard of care required by a listing agent or by Landmhel.

[13] The last specific mention with respect to Landmhel is on p. 20, para. 15(b) of the statement of claim, which states, "[t]he Listing Agent duty in mutual negotiations imposed Standard of Care, to prevent adverse impact, but not to collude by couching one-sided terms". That paragraph is, again, difficult to follow, confusing, might present a legal argument, and does not set out any material facts in support of the allegation.

[14] Throughout the statement of claim, the word "they" is utilized, presumably implicating both defendants. This creates a "lumping problem" which was referenced in the ***Skip the Dishes*** decision as follows:

> [65] One concern with lumping defendants together as one, specifically where the role of each in relation to the plaintiff is not identical, is that it will inevitably lead to a lack of clarity of pleadings. That lack of clarity leads to a higher likelihood that the pleadings may be struck, with or without leave to amend, for failing to disclose a reasonable cause of action, or as an abuse of process.

[15] The "lumping" methodology of pleading inhibits particularization, adds confusion, and creates uncertainty. The plaintiff's written submission, presented by Daksh Jhanji at the hearing, attempted to clarify the use of the word "they" by indicating it "... is identical for the transaction – 'granting the Soil Testing

Permission to complete ESA Phase 2 but prior to Closing Day for the purpose of regulatory approvals'" (Written Submissions, p. 4, para. 4). That submission in no way clarifies the pleading. Instead, it exemplifies the prolix, illogical, and confusing nature of the statement of claim and all documents filed in its support. An abuse of process and failure to disclose a reasonable cause of action is evident.

[16] The statement of claim discloses no reasonable cause of action in any area. Undoubtedly, Landmhel cannot fathom what it must respond to. Further, as, indicated in the ***George*** decision, this statement of claim exemplifies an absence of material facts and must be declared to be frivolous and vexatious. Unquestionably, the pleading lacks a concise statement of material facts on which the plaintiff relies, thereby negating the defence's ability to fashion a rational response. The language used is unfocused, repetitive, substantially incomprehensible, and incoherent. Landmhel would be unable to respond to the allegations, as material facts are not pleaded, nor are potential causes of action particularized. As was stated in ***Robertson v. Manitoba Keewatinowi Okimakanak Inc et al.,*** 2011 MBCA 4:

> 23 I. H. Jacob, *Bullen and Leake and Jacob's Precedents of Pleadings,* 12th ed. (London: Sweet & Maxwell Limited, 1975) explains the statement of claim as follows (at p. 51):
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> > The statement of claim … constitutes the document in which the plaintiff formulates the factual grounds on which he bases his claim or the relief or remedy which he seeks against the defendant …. … [T]he statement of claim must state in summary form the material facts on which the plaintiff relies for his claim …. It is not enough, however, for the statement of claim merely to state the material facts and to claim specific relief or remedy; there must be an inner connection, a legal nexus, between the facts relied on and the relief or remedy claimed. The material facts relied on must disclose a

> reasonable cause of action against the defendant, otherwise the statement of claim is liable to be struck out precisely on the ground that it does not disclose a reasonable cause of action. The statement of claim must show, on the basis of the material facts alleged, a viable legal and enforceable claim against the defendant.
>
> The basic function of the statement of claim is, therefore, to state in summary form the material facts on which the plaintiff relies which together constitute a cause of action entitling the plaintiff to the relief or remedy claimed. It is, of course, also the function of the statement of claim to state such material facts to enable the defendant to know the case that he has to meet, but its central purpose is to formulate a cause of action against the defendant. ....

[17] Without question, there is no legal nexus established in this claim between the "facts" relied on and the remedies sought. The plaintiff is seeking areas of redress that include specific performance, fair market value, remediation costs, pending litigation, unjust enrichment, negligence, contract, and other areas. That said, there is nothing in the pleading which supports the redress beyond bald conclusions, argument, and an incomprehensive narrative. The material facts are *in absentia* throughout the pleading.

[18] Associate Judge Patterson well set out the deficiencies with respect to the claim and the specific "heads of damage" commencing at para. 100 and thereafter in his May 12, 2023 decision. By way of example, I quote the following:

> [104] In addition to the above noted concerns, as well as the issues noted on behalf of the Defendants, I find that the Claim contravenes the *Rules*. In particular:
>
> a) Rule 25.06(1): the Claim is to provide material facts, concisely stated, and not the evidence to prove such facts. Unfortunately, this is not the case within a number of portions of the Claim. For instance, at paragraph 1(a) III of the Claim, it is alleged that there was a condition precedent applicable to the Offer requiring regulatory compliance, although no material facts are provided. As another illustration, at paragraph 7(h) IV of the Claim, it states that the Xu, as the listing agent, had a duty of care in favour of the Plaintiff. No material facts

are pleaded to substantiate this assertion (and the Plaintiff did not name Xu as a party to this action).

b) Rule 25.06(3): conclusions of law may only be included if the pleading also contains the material facts in support of such conclusions. Unfortunately, in many instances, the Claim does the exact opposite, advancing legal conclusions and argument without a factual underpinning. As an illustration, paragraph 1(a) IV reads, in essence, that the Defendant 639 cannot contract out of the Offer or pass environmental liability and remediation responsibility to the Plaintiff (this is tantamount to a legal conclusion, without identifying the material facts upon which this legal argument can be sustained). In addition, paragraph 1(a) XV represents a legal conclusion when, without factual basis, it reads that there is an alleged "legal controversy to invalidate the closing-date, due to self-induced faults".

c) Rule 25.06(4): if legislation is being relied upon, the section in question must be pleaded. At paragraphs 6(s), 7(g), 7(h) and 8(p) of the Claim, however, there are no sections noted from *The Environment Act*, R.S.M., 1987, c. E26 (the "*MB EA*"). As will be reviewed within the balance of this decision, there is other legislation that is arguably more applicable to this situation than the *MB EA*. In addition, *The Real Estate Brokers Act*, R.S.M., 1987, c. R20 (the "*MB REBA*") is mentioned within paragraphs 1(a) VIII and 7(g) of the Claim, but no section(s) are pleaded (the *MB REBA* has since been repealed, with *The Real Estate Services Act*, R.S.M., 2015, c.R45 (the "*MB RESA*") coming into effect as of January 1, 2022).

d) Rule 25.06(6): where alternative causes of action are pleaded, it must be done with clarity within the pleading. For instance, while paragraph 1(a)I of the Claim alleges that the Offer is voidable (at the option of the Plaintiff), it is not clearly stated as being an alternative argument to the claim for specific performance.

[105] I also find that the Claim does not comply with the following applicable legal principles:

a) the Claim does not contain a concise statement of material facts, and instead provides evidence (confirmed at paragraph 22 of *Caspian*);

b) the Claim does not meet the purpose or function of pleadings (set forth at paragraph 97 of *Skip the Dishes*, which cites the Manitoba Court of Appeal decision in *Dumont,* and paragraph 4 of *Maquinay*).

[19] The statement of claim and written submissions in support of the claim set out bald conclusions, evidence, and argument without supporting facts (see:

Sarrasin v. Sokal, 2022 MBCA 67, at para. 29). I am satisfied that this pleading must be struck on the basis that it is (Rule 25.11(1):

...

b) frivolous, and vexatious;
c) is an abuse of process of the court; and
d) does not disclose a reasonable cause of action or defence.

I acknowledge that the plaintiff is a self-represented litigant; however, as was said in ***Fenton Group Investment Ltd. et al v. Riverbend Realty et al***, 2021 MBQB 150:

> [10] While some leniency may be afforded to a self-represented litigant's imperfect knowledge of rules and procedures, there must be a balanced approach to ensure the right of the other party to know the legal and factual issues that must be met. The defending party still needs to know what to respond to...

Further, the statement of claim and all written documentation in support of this motion to set aside Associate Judge Patterson's decision was drafted by counsel suspended from practice, namely, Jhanji.

LEAVE TO AMEND PLEADING

[20] This pleading cannot be afforded leave to amend. As indicated, the statement of claim is incomprehensible and prolix in all the circumstances. ***Fenton Group Investment Ltd.*** held:

> [18] I find that there is no amendment that could raise a valid, arguable point that has merit. Simply put, the claim is so deficient it cannot be rectified by an amendment. That is particularly the case where, as here, I find there is no identified or identifiable cause of action against the City based on the facts plead in the claim. As such, I am exercising the discretion afforded to me under Rule 25.11(1) to strike the claim without leave to amend.

This finding in ***Fenton*** translates well to these circumstances. All factors previously articulated demonstrate that the statement of claim is in a fatal and irreparable state. The substance is illogically interwoven and does not lend itself to an ability to amend in such a way that the pleading would become comprehensible in nature. As stated by Associate Judge Patterson in his decision:

> [117] ... I am also not inclined to exercise my discretion to grant the Plaintiff leave to amend the Claim.
>
> [118] In the circumstances, I find the Claim to be flawed to such an extent that any amendments reasonably required would be substantial. A request for provision of particulars, to my mind, is not a suitable or adequate approach to remedy the deficiencies with the Claim. In addition, further delay insofar as preliminary or procedural issues with this litigation is not in keeping with proportionality or the interests of timely justice.

There is no question that the striking of a pleading is a remedy to be used sparingly and only in the clearest of cases. However, in these circumstances, the statement of claim must be struck as leave to amend is not a realistic option, nor a possibility. As Associate Judge Patterson held, "Protracted proceedings resulting from incomprehensible pleadings does not promote efficient and timely access to justice" (para. 181).

CONCLUSION

[21] Associate Judge Patterson, as earlier indicated, engaged in a thorough and exhaustive analysis of whether the statement of claim should be struck, and well considered the appropriateness of granting leave to amend. The lengthy decision set out the law, legal principles and, without question, afforded an exhaustive analysis of every issue before the court. While this is a *de novo* hearing, the

reasons of Associate Judge Patterson must be considered. In my view, his cogent and thorough reasons are correct.

[22] I have afforded this matter a fresh hearing and, after doing so, adopt the reasons of Associate Judge Patterson in their entirety.

[23] The statement of claim is struck without leave to amend. Landhmel is entitled to an award of costs against the plaintiff.

_____J.