CITATION: Ishakis et al. v. Solmon Rothbart Tourgis Slodovnick LLP et al., 2025 ONSC 5314
COURT FILE NO.: CV-22-00690719-0000
CV-23-00696816-0000
DATE: 20250918

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: YOCHANAN ISHAKIS, FAIRFAX PARTNERS CORP., FAIRFAX ORILLIA HOLDINGS LTD. and FAIRFAX MISSISSAUGA HOLDINGS LTD.

Plaintiffs/ Moving Parties

AND:

SOLMAN ROTHBART TOURGIS SLODOVNICK LLP, MELVYN SOLMON and NANCY TOURGIS

Defendants/ Responding Parties

BEFORE: Koehnen J.

COUNSEL: *Jordan Goldblatt* and *Ritika Rai*, for the plaintiffs.

Andrew Winton, for the defendants on the service and striking pleadings motions.

Jeffrey Radnoff, for the defendants on the motion for directions.

HEARD: May 22, 2025

ENDORSEMENT

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Overview

[1] There are three motions before me. The first is a motion to the extend time for service of a statement of claim; the second is a motion for directions about which solicitors' accounts can be assessed; and the third is a motion to strike portions of the statement of claim.

A. Motion to Extend Time for Service

[2] In this proceeding, the plaintiffs are suing the lawyers who acted for them in an earlier action. The earlier action was an action against the plaintiffs on a promissory note. The note in question called for no interest before default, but applied an interest rate after default. Section 8 of the *Interest Act*[1] provided at least an argument that the interest charged was a penalty and was therefore unenforceable. The defendants did not advise the plaintiff of this potential defence until four years into the litigation. The former lawyers moved to amend the

[1] *Interest Act*, RSC 1985, c I-15.

statement of defence but were unsuccessful in doing so. The claim was ultimately settled for $3.35 million without costs. The principal amount of the promissory note was $1.6 million.

[3] The present action was commenced by way of a Notice of Action on September 12, 2022. The statement of claim was filed on October 11, 2022. Rule 14.08 called for the notice of action and statement of claim to be served within six months of the Notice of Action being issued. The deadline for service would have expired on March 13, 2023. The plaintiff served the statement of claim on May 1, 2023.

[4] Plaintiffs' counsel says he inadvertently failed to serve the claim by the deadline because he believed he had six months from filing the statement of claim to serve rather than six months from issuing a notice of action. In addition, he did not serve the claim immediately because he wanted to review a number of documents to determine the best strategy.

[5] Plaintiff's counsel says he discovered the error on March 23, 2023, and advised his insurer who retained investigation and repair counsel to assist in bringing this motion. On April 24, 2023, after investigation and repair counsel was retained, instructions were given to serve the defendants with the notice of action and statement of claim. Several attempts were made to serve. Service was affected on May 1, 2023.

[6] Rule 3.02 (1) authorizes the court to extend the time for service of any document. In principle, extensions should be granted unless the opposing party will be

prejudiced by the extension.[2] The prejudice relevant to the extension of service is prejudice that arises from the date on which the statement of claim ought to have been served and the date on which it was actually served.[3]

[7] As Perell J. put it in *Rowland v Wright Medical Technology Canada Ltd*.:[4]

> …although the onus is on the plaintiff to show that the defendant will not be prejudiced by an extension of time, the plaintiff cannot be expected to speculate and the defendant has at least an evidentiary obligation to provide some details of prejudice…[5]

[8] A defendant opposing an extension of time must provide some details of prejudice. A general assertion or prejudice is not sufficient.[6] Examples of such prejudice include evidence about whether (a) material witnesses have disappeared or died; (b) relevant documents have been lost; or (c) the delay is such that it can reasonably be assumed that memories have faded.[7] Where a defendant fails to provide specific evidence of prejudice, that is a sufficient basis to conclude that there is no prejudice, even in cases where the limitation period has expired.[8]

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[2] *Chiarelli v. Wiens*, 2000 CanLII 3904 at para. 12 (ONCA); *Richter Inc. v. Wing at al*., 2023 ONSC 3325 at para. 50 (S.C.J. [Commercial List]), quoting *Rowland v. Wright Medical Technology Canada Ltd.*, 2015 ONSC 3280 at para. 16 (S.C.J.).
[3] *Bargain Club Inc. v. Co-Operators General Insurance Company*, 2018 ONSC 3402 at para. 16. See also: *Chiarelli v. Wiens*, 2000 CanLII 3904 at para. 16 (ONCA); *Rowland v. Wright Medical Technology Canada Ltd.*, 2015 ONSC 3280 at para. 18 (S.C.J.).
[4] *Rowland v Wright Medical Technology Canada Ltd.*, 2015 ONSC 3280.
[5] *Rowland v Wright Medical Technology Canada Ltd.*, 2015 ONSC 3280 at para. 19.
[6] *Chiarelli v. Wiens*, 2000 CanLII 3904 at para. 14 (ONCA).
[7] *Rowland v. Wright Medical Technology Canada Ltd.*, 2015 ONSC 3280 at paras. 17 and 19 (S.C.J.).
[8] *Boodoo v. Merrick*, 2020 ONCA 52 at paras. 3 and 8; *Kuner v. Nguyen*, 2015 ONSC 730 at paras. 14, 23, 36, and 42 (S.C.J).

[9] Courts have considered a variety of factors when assessing prejudice. The factors are not exhaustive, nor must each be satisfied to grant an extension.[9] Those factors were summarized as follows by Howard J. in *Tookenay v. O'Mahony Estat*e:[10]

(a) the length of the delay

(b) the evidence filed that explains the delay,

(c) whether the evidence regarding the explained delay is sufficient,

(d) whether or not the plaintiff moved promptly for an extension of time after the period expired,

(e) whether or not the delay in serving the claim resulted from the direction, participation, or involvement of the plaintiff personally in the service of the claim,

(f) the extent to which the defendants, themselves, bear some or all of the responsibility for the delay,

(g) whether or not it was reasonable for the defendants to infer from all the circumstances that the plaintiffs had abandoned their claim,

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[9] *Howe v. Solart LLL Corp.*, 2018 ONSC 3169 at paras. 90-92; *Chiarelli v. Wiens*, 2000 CanLII 3904 at para. 17 (ONCA).
[10] *Tookenay v. O'Mahony Estate*, 2024 ONSC 709.

(h) whether the applicable limitation period for the action has already expired,

(i) whether the defendant had notice before the expiry of the limitation period that the plaintiff was asserting a claim against the defendant, and

(j) whether the defendant would suffer prejudice if the motion is granted.

[10] A consideration of these factors leads me to grant the extension.

[11] The period of delay was short, approximately 7 weeks.

[12] The defendants submit that the plaintiffs waited one month after discovering the missed deadline before attempting to serve without providing any explanation for why they took so long. I disagree. Plaintiff's counsel has explained that he advised his insurer, the Lawyers' Professional Indemnity Company ("Lawpro"), who retained investigation and repair counsel. While the details of the activities of investigation and repair counsel are not set out in the affidavit, that is understandable. Doing so would risk waving privilege over the advice of investigation and repair counsel which would be unnecessary and inappropriate. Anyone with any experience with Lawpro knows that it takes time to open a file, appoint counsel, have counsel investigate and make recommendations which then require approval by Lawpro. If anything, the time it took here for those steps to occur was minimal.

[13] The plaintiff moved promptly to extend the time for service.

[14] The defendants have tried to suggest in their factum that the plaintiffs played a role in delaying service of the statement of claim. The defendants say the plaintiffs were hands-on clients who followed up on matters. The plaintiff Ishakis stated in his affidavit in support of the motion that he relied on his counsel with respect to the timing for issuing and serving the statement of claim. I accept that explanation. Almost all clients would do just that.

[15] The defendants then argue that the plaintiffs' reliance on counsel for matters of service puts their state of mind at issue, demonstrates that they relied on legal advice which waives privilege and allows the defendants to probe that legal advice. The defendants then ask me to draw adverse inferences from the fact that certain questions were refused on the grounds of privilege during cross-examinations of Ishakis. I do not accept that the plaintiffs waived privilege. Case law has established that one factor to look at when considering motions to extend the time for service is whether the delay in serving the claim resulted from the direction, participation, or involvement of the plaintiff personally in the service of the claim. The plaintiffs' properly address that by saying that they relied on counsel with respect to matters of service. Almost all clients do. The fact that a client says they relied on counsel in response to a specific test relevant to the motion does not waive the privilege over solicitor-client communications. Especially not in the face of an affidavit from counsel which explains why service was delayed. To hold otherwise would put any client into a Catch-22 situation on any motion to extend the time for service. If one factor to consider is whether the client participated in

the delay in serving, it may be necessary for a client to provide evidence to that effect. In almost all cases the client will say they had nothing to do with service and left it to their lawyers. If making that statement waives privilege, then the legal test would require waiver of privilege in almost all cases. That cannot be the intended effect of this factor.

[16] Moreover, privilege and legal advice are not the main issues on a motion to extend service. The principal issue is whether the opposing party has suffered prejudice from the delay in service.

[17] The defendants note that Ishakis did not deny instructing his counsel to hold off on serving the statement of claim but said on cross-examination that he did not recall certain points about service that defendants' counsel raised on cross-examination. The defendants ask me to be sceptical of these "alleged memory failures". I do not accept those suggestions. Plaintiffs' counsel has delivered an affidavit explaining the circumstances surrounding the delay. I accept that explanation. Clients would rarely have any role in service of documents. Discussions about service are also not topics that clients would be likely to remember because they are usually quite tangential to the case.

[18] I accept that the defendants have no responsibility for the delayed service.

[19] There is no reasonable basis for the defendants to infer that the plaintiff had abandoned his claim as a result of a seven-week delay in service.

[20] The defendants submit that they are prejudiced by the expiry of a limitation period. They say the limitation period expired in either September 2022 or February 2023.

[21] As noted earlier, the notice of action was issued September 12, 2022. The statement of claim was filed on October 11, 2022. The *Rules* required service by March 13, 2023. Service was affected on May 1, 2023. Extending the time for service does not affect the defendants' ability to assert a limitations defence.

[22] Moreover, the expiry of a limitation period is not in and of itself grounds to refuse to extend service. In *Chiarelli v. Wiens*, the Court of Appeal for Ontario extended the time for service where the motion to do so arose more than six years after the expiry of the limitation period.[11]

[23] With respect to the final and most important factor, prejudice, the only evidence the defendants have introduced is a statement in the affidavit of Ms. Tourgis to the effect that "there will be significant prejudice to us, as we intend to rely on a limitation period defence." Extending the time for service does not affect the defendants' ability to rely on a limitations defence. Moreover, there is no allegation that the limitation period expired during the seven-week delay in service. The simple assertion of a limitations defence is not sufficient to prevent an order to extend the time for service.[12]

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[11] *Chiarelli v. Wiens*, 2000 CanLII 3904 at paras. 2, 4, 7, and 17 (ONCA). See also: *Nash Estate v. Schell Estate*, 2013 ONSC 4813 at para. 19 (Div. Ct.); *YMCA of Greater Toronto v. RBC et al.*, 2021 ONSC 8510 at para. 25 (S.C.J.).
[12] *Chiarelli v. Weins*, 2000 CanLII 3904 at paras. 16-17.

[24] The Defendants have not directed me to any evidence to demonstrate that they changed their position as a result of the alleged expiry of the limitation period. By way of example, there is no evidence to which I have been led that suggests that the defendants (a) believed that the Plaintiffs were abandoning their claims; (b) deleted, destroyed, or otherwise lost relevant documents; or (c) failed to take any key steps that they otherwise would have, such as interviewing witnesses.

[25] In the foregoing circumstances I grant an order *nunc pro tunc* extending the time for service of the notice of action and statement of claim until May 1, 2023.

B. Assessment of Accounts

[26] The plaintiffs wish to assess all of the accounts that the defendant law firm issued in the promissory note litigation. The law firm raises two objections to the assessment: (i) each of the accounts they rendered was a final account which had to be assessed within 30 days of its issuance; and (ii) the notice of assessment that the plaintiff served referred to only one account being assessed.

i. Final or Interim Accounts

[27] The plaintiffs wish to assess all the accounts that the defendant law firm issued since the inception of the promissory note action in 2014. The law firm says the plaintiffs are not entitled to such an assessment because each of the accounts rendered was a final account in respect of which the plaintiffs would have had to have initiated an assessment within one month pursuant to s. 3 (b) of the *Solicitors*

Act.[13] Part of the issue here turns on the different and ambiguous meanings of the words final and interim.

[28] The layperson tends to use the terms final and interim in the temporal sense. That is to say, final means the last account rendered in a file and an interim account is one in a series of accounts that is expected to be rendered on the file over the course of time. In the context of an assessment, final and interim can have a different meaning. In the assessment context, final and interim can refer to monetary finality which is to say that the account is final if it is not subject to any further changes and must be paid.[14]

[29] Whether an account is interim or final is a question of fact which depends on the intentions of the parties.[15]

[30] In my view, the parties here intended that the accounts that the defendant law firm issued over the course of the proceeding were interim accounts, except the last account which was a final account for assessment purposes.

[31] The retainer agreement that the law firm had the plaintiff sign on April 11, 2014 stated:

> I/we agree that I/we shall provide you a financial retainer with this executed retainer agreement in the amount of $25,000 which shall be held in trust by you and applied against your accounts at your sole discretion and is intended

[13] *Solicitors Act*, RSO 1990, c S. 15 s. 3 (b).
[14] *Fiset v. Falconer*, 2005 CanLII 33783 at para. 25.
[15] *Enterprise Rent-A-Car Co. v. Shapiro, Cohen, Andrews, Finlayson*, 1998 CarswellOnt 707 at para. 13.

> to be held by you as security for the payment of your final account. I/we agree that you may, in your sole discretion, pay your interim disbursements and legal fees out of this financial retainer, in which case I/we agree to replenish your financial retainer.
>
> I/we understand that you will send me/us interim accounts from time to time which will be paid in full prior to or upon being rendered …

[32] In my view, the retainer that the law firm drafted used interim and final in the temporal sense as any layperson would. If the law firm had intended to use interim and final in a technical, less intuitive sense, it should have stated so clearly.

[33] The retainer agreement goes on to state that among the factors on which fees will be based are "the results achieved." This suggests that at the very end of the file, the law firm can reassess what it was charging throughout the file and change its fee for work already performed based on the results achieved. That suggests that the law firm was sending out interim accounts even on the more technical meaning of "interim" in the assessment context. A final account in the assessment context is one which can no longer be changed. An interim account of the assessment context is one that can be subject to change.

[34] By reserving for itself the right to bill based on results achieved, the firm retained the ability to reassess past billings at the end of the file. That makes those earlier bills "interim" even in the technical assessment sense of the word.

[35] Each of the bills the law firm issued also suggests that they are interim accounts. Although the bills themselves do not state whether they are interim or final, each account bore a footer stating:

> This invoice may include charges relating to prior billing periods that were posted to your account after the preparation of previous invoices.

[36] In other words, whatever account the law firm issued, it reserved the right to charge additional fees in respect of the work charged on that account.

[37] When the law firm sent its last account, it stated in its covering letter:

> Enclosed please find our final account for services rendered with respect to the above-noted matter.

[38] In *Enterprise Rent-A-Car Co. v. Shapiro et al.*,[16] the Ontario Court of Appeal observed that among the factors to consider in determining whether an account is interim or final is whether the accounts relate to a single action or matter and form part of a continuum in that single file.[17] The accounts at issue here fall within that description.

[39] In *Price v. Sonsini*,[18] the Ontario Court of Appeal held that the limitation period for an assessment "begins to run from the date of the final account, even if some of the interim accounts have been paid."[19] The court went on to note:

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[16] *Enterprise Rent-A-Car Co. v. Shapiro, Cohen, Andrews, Finlayson*, 1998 CarswellOnt 707.
[17] *Enterprise Rent-A-Car Co. v. Shapiro, Cohen, Andrews, Finlayson*, 1998 CarswellOnt 707 at para. 14.
[18] *Price v. Sonsini*, 2002 CanLII 41996 (ON CA).
[19] *Price v. Sonsini*, 2002 CanLII 41996 (ON CA) at para. 15.

> A rule that required clients to move for immediate assessment of interim accounts would force clients into the invidious position of straining, if not rupturing, the solicitor-client relationship before the retainer has ended. Clients should not be forced to choose between harming the solicitor-client relationship and foregoing the right to have an interim account assessed. Rather, under s. 3, clients should be entitled to move for an assessment of an interim account within one month of delivery of the final account.[20]

[40] The defendant law firm submits that the plaintiffs have not introduced evidence of their intentions because they base their motion on the affidavits of two secretarial assistants who have no knowledge of the litigation and no knowledge of the intentions of the plaintiffs. In my view, that is irrelevant. Contractual intentions are to be determined from the words of the contract and, in certain circumstances, the surrounding circumstances. It would have been inappropriate for the plaintiffs to introduce evidence of their own subjective intentions.

ii. Assessment of One Account or All Accounts

[41] The last bill was delivered to the plaintiffs on October 23, 2022. The law firm notes that the plaintiffs' requisition for assessment referred only to that last account. Given that more than one month has passed since delivery of the earlier accounts, any assessment in respect of those earlier accounts is out of time.

[42] The plaintiffs note that they attached to the account of October 23, 2022 the entire trust ledger statement for the history of the action which included references to all

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[20] *Price v. Sonsini*, 2002 CanLII 41996 (ON CA) at para. 15.

of the accounts rendered and all the payments made from which they say the law firm ought to have inferred that all accounts were in dispute.

[43] It appears from subsequent correspondence from the plaintiffs' lawyers to the defendant law firm that the plaintiffs no longer had all of the accounts rendered throughout the course of the action.

[44] The plaintiffs rely on *Javornich v McCarthy*[21] where a client was able to assess all accounts in a proceeding even though she attached only the last account. In that case, however, the client indicated in a handwritten note on the requisition form that she intended to have all her accounts assessed. There is no such handwritten note on the plaintiffs' requisition form.

[45] I nevertheless permit the plaintiffs to assess all the accounts relating to the promissory note action. The law firm takes the position that the plaintiffs are entitled to assess only the last account rendered. That account, however, wrote off all the time the lawyers had incurred since the previous account and issued an account for only $2,360.43 for a disbursement. The defendant law firm could not have reasonably believed that the plaintiffs would go through the time and cost of an assessment over a relatively small disbursement. To the extent that the defendant law firm was truly misled by the notice of assessment, the issue was clarified on the first attendance. The law firm has not demonstrated any prejudice

[21] *Javornich v Mccarthy*, 2006 CanLII 6579.

that arose because of their late appreciation that the plaintiffs sought to have all accounts assessed. If the law firm reserved for itself the right to charge fees based on the results achieved, the client should also have the right to assess fees based on results achieved. Results achieved can only be assessed at the end of the matter.

[46] I am mindful here of the Ontario Court of Appeal's warning in *Price v. Sonsini*[22]

> Public confidence in the administration of justice requires the court to intervene where necessary to protect the client's right to a fair procedure for the assessment of a solicitor's bill. As a general matter, if a client objects to a solicitor's account, the solicitor should facilitate the assessment process, rather than frustrating the process. See Orkin, *The Law of Costs*, 2nd ed. (2001), at p. 3-13. In my view, the courts should interpret legislation and procedural rules relating to the assessment of solicitors' accounts in a similar spirit. As Orkin argues, "if the courts permit lawyers to avoid the scrutiny of their accounts for fairness and reasonableness, the administration of justice will be brought into disrepute". The court has an inherent jurisdiction to control the conduct of solicitors and its own procedures. This inherent jurisdiction may be applied to ensure that a client's request for an assessment is dealt with fairly and equitably despite procedural gaps or irregularities. […][23]

[47] The law firm further submits that the assessment should not occur until the action for solicitor's negligence has been dealt with. I disagree. An assessment need not be deferred until a solicitor negligence action has been resolved.[24]

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[22] *Price v. Sonsini*, 2002 CanLII 41996 (ON CA) at para 19.
[23] *Price v. Sonsini*, 2002 CanLII 41996 (ON CA) at para 19.
[24] *Couper v. Adair Barristers LLP*, 2020 ONCA 372 at para 8.

[48] Finally on this issue the law firm points to the recent decision of the Ontario Court of Appeal in *Crosslink Bridge Corp. v. Fogler, Rubinoff LLP*,[25] which it submits changes the judicial interpretation of interim and final accounts. I do not agree. The court in *Crosslink* applied the same principles as those outlined earlier in these reasons. The factual matrix of that case, however, led to the conclusion that the accounts were final. In *Crosslink*, the invoices related to a number of different matters.[26] The motion judge found that the request for an assessment was not genuine and arose after receipt of an unfavourable result, the risk of which counsel had made clear to the client.[27] In those circumstances it was open to the judge to find that the accounts were final.

[49] As a result of the foregoing, I order that the plaintiffs be entitled to have all the accounts in the promissory note action assessed.

C. <u>The Motion to Strike</u>

[50] The defendants move to strike out the statement of claim on the grounds that it joins as defendants, both the law firm and two of its partners. In addition, the defendants submit that the claims must be struck out because they lump all three defendants together and do not distinguish between the acts that any of the three committed.

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[25] *Crosslink Bridge Corp. v. Fogler, Rubinoff LLP*, 2024 ONCA 230.
[26] *Crosslink Bridge Corp. v. Fogler, Rubinoff LLP*, 2023 ONSC 3466 at para. 10
[27] *Crosslink Bridge Corp. v. Fogler, Rubinoff LLP*, 2023 ONSC 3466 at paras. 7 and 38.

i. Joining Firm and Individual Partners

[51] The defendants submit that the *Rules of Civil Procedure* allow a plaintiff to bring an action against a partnership or against named partners, but not both. In doing so, they rely on *Canadian Imperial Bank of Commerce v. Deloitte & Touche*,[28] where the Divisional Court affirmed the motion judge's decision to strike portions of the statement of claim stating:

> In my view, the motions judge correctly determined that there was no cause of action properly pleaded against the individual partners and employees. He was correct in his conclusion that "when all the verbiage is cut away, the cause of action reduced to its lowest common denominator is a claim in respect to the provision of the Financial Information arising out of the opinions of Deloitte and not those of the individuals". This is a case where the elements of tortious conduct alleged to have been committed by the individuals, separate from the conduct of Deloitte, have not been properly pleaded. Therefore, it is plain and obvious that there is no reasonable cause of action against them.[29]

[52] The plaintiffs submit that the statement of claim here suffers from the same defect. I disagree.

[53] In *CIBC*, the claim alleged that certain financial statements that the defendants had prepared contained misrepresentations. The financial statements were all signed by the firm, not by individual partners. There were no allegations that any of the plaintiffs were the subject of misrepresentations by individual partners of

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[28] *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2003 CanLII 38170 ["*CIBC*"].
[29] *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2003 CanLII 38170., at para 18.

Deloitte. The nature of the claim itself was one that precluded an action against individual partners.

[54] The statement of claim before me is different. It alleges that the firm and the individually named defendants were negligent in that they: (i) failed to recognize in a timely manner the viability of the section 8 *Interest Act* defence; (ii) failed to advise the plaintiffs to lead evidence to explain the reason for the delay in adding the s. 8 defence; (iii) failed to advance the appeal to the Supreme Court of Canada; and (iv) failed to advise the Plaintiffs to seek independent legal advice until after the Supreme Court denied leave to appeal.

[55] Those were decisions of individual lawyers on the file who were specifically named in the retainer agreement and identified in the claim as the service providers on the file. It is, however, also appropriate to join the firm as a defendant in this case because there were also other service providers involved in the matter whose conduct may have contributed or led to the alleged negligence.

[56] A number of cases have held that a firm and individuals can be named where the individuals are alleged to be the wrongdoers.[30] In *CIBC*, the court noted that "a plaintiff may choose to bring a proceeding in the name of a partnership or in the name of the individual partners, but it is improper to do both, unless there is independent tortious conduct alleged against the individual partner." That is the

[30] *CIBC*, at para. 18; *General Electric Capital Canada Inc. v. Deloitte & Touche LLP*, 2002 CanLII 30158 (ON SC) at para. 36.

very case here. The plaintiff alleges that the individually named partners were negligent.

ii. Allegedly Lumping Allegations Together

[57] The defendants further submit that the statement of claim is improper because it lumps the defendants together and does not distinguish between the allegedly tortious acts of each of the three defendants.

[58] In doing so, the defendants rely on *CIBC* and on *ACI Brands Inc. v. Aviva Insurance*,[31] in which Justice Morgan stated with respect to corporate defendants:

> It is not sufficient to simply add the individual employee's name, or to combine it with the phrase “and/or” with every claim made against the corporate defendant. With respect, that form of pleading “does little more than ‘window dress’ the suggestion of a separate identity or interest of the named [individual] from that of [the corporation]”[32]

[59] Those cases, however, turn on their facts. I have already addressed *CIBC* above. In *ACI Brands* the Court found that it was “impossible” to discern from the statement of claim whether the broker was the “primary contact with the Plaintiff or simply a name that the Plaintiff came across in examining a list of the Broker’s staff.”[33] In the claim before me the individual partners are identified as persons whom the plaintiffs retained and relied on.

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[31] *ACI Brands Inc. v. Aviva Insurance Co. of Canada*, 2014 ONSC 4559 [“*ACI Brands*”].
[32] *ACI Brands Inc. v. Aviva Insurance Co. of Canada*, 2014 ONSC 4559 at para. 5.
[33] *ACI Brands Inc. v. Aviva Insurance Co. of Canada*, 2014 ONSC 4559 at para 7.

[60] There is no stand-alone basis to dismiss a claim simply because allegations against defendants have been lumped together.[34] The Court of Appeal has noted that such an approach is overly technical. Instead, the Court of Appeal observed that a review of a statement of claim must be governed by the underlying principle that pleadings must disclose to each individual defendant the case being made against them.[35] Here, the statement of claim makes clear to both the firm and the individuals what the case is that is being made against them. It simply happens to be the same case against all three.

[61] In *General Electric Capital Canada Inc v Deloitte & Touche LLP*, Epstein J. (as she then was) found that counsel "attempted to make the pleading more efficient by using terms that may have blurred the separation of the allegations against the partners from those against [the partnership]." This did not mean that the pleading was improper. The critical factor was to determine whether the partners were being joined simply because they were partners of Deloitte, or because they directly participated in the torts alleged.[36] In the case at bar, the individual defendants directly participated in the torts alleged.

[62] At this stage early stage, however, the particulars of which defendant did or omitted to do what, are unknown to the plaintiffs. Just because the plaintiffs are not aware

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[34] *Europro (Kitchener) Limited Partnership v. Dream Office Real Estate Investment*, 2018 ONSC 7040 at para 32.
[35] *Europro (Kitchener) Limited Partnership v. Dream Office Real Estate Investment*, 2018 ONSC 7040 at paras 34-36 citing *Jevco Insurance Co v Pacific Assessment Centre Inc*, 2014 ONSC 2244 at para 59 and *Lysko v Braley*, [2006] OJ No 1137 (Ont CA) at paras 32-34.
[36] *General Electric Capital Canada Inc. v. Deloitte & Touche LLP*, 2002 CanLII 30158 (ON SC) at para 36.

of the specific work allocation between the three defendants does not deprive them of a claim. It is a cardinal principle when reviewing pleadings on a motion to strike that the pleading should be read generously. Only the defendants know how they allocated responsibility between themselves. The statement of claim discloses exactly what the plaintiffs' complaint is. Each defendant therefore knows what case they have to meet. In a case like the one before me, the next stage is for the defendants to distinguish their conduct from each other in a statement of defence, should they choose to defend on that basis.

[63] In the foregoing circumstances, I dismiss the defendants' motion to strike out the statement of claim.

Conclusion and Costs

[64] For the reasons set out above, I grant the plaintiffs' motion to extend the time for service, order that the plaintiffs are entitled to assess defendants' accounts for the entire promissory note action, and dismiss the defendants' motion to strike out the statements of claim. As noted earlier, there are two statements of claim. I presume that the parties will proceed with the earlier of the two. I will leave it to the parties to determine how to dispose of the second action. If there is any disagreement about how to dispose of that action, the parties can deliver brief written submissions to me directly.

[65] Each side had delivered separate cost submissions for each of the three motions.

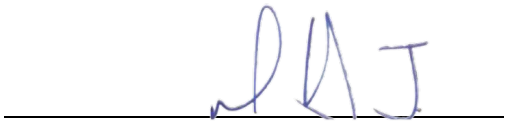
[66] With respect to the motion to extend the time for service, the plaintiffs' bill of costs on a partial indemnity scale comes to $28,589.57. The defendants' partial indemnity costs come to $6,480.29. My strong sense is that the defendants are posting a lower than usual hourly rate for their counsel, Mr. Winton. Mr. Winton was called in 2007 and is claiming an actual hourly rate of $275 or $165 on a partial indemnity scale. Based on my previous experience with Mr. Winton's firm, this strikes me as a heavily discounted rate for a particular client. As a result, the two bills of costs do not reflect an apples-to-apples comparison. The hourly rates listed in the plaintiffs' bill of costs are more commensurate with what one might expect. They reflect partial indemnity rates of $540 and $450 per hour for lawyers called in 2005 and 2013 respectively. There does, however, appear to be duplication in the plaintiffs' bill of costs. I note that both Mr. Goldblatt and Mr. Reid Ellis participated in cross-examinations and a case conference. I disallow Mr. Reid Ellis's time on those two matters. That would reduce the partial indemnity costs to approximately $25,000 including disbursements and HST. While that is still materially higher than the defendants' bill of costs, the issue of extending the time for service was of considerably greater importance to the plaintiffs than to the defendants. I am satisfied that $25,000 reflects a reasonable a cost award for a motion of this significance and fix the plaintiffs' costs at $25,000 on a partial indemnity scale, including HST and disbursements.

[67] With respect to the motion for directions, the plaintiffs have filed a bill of costs which sets partial indemnity fees and disbursements at $36,754.15. Actual costs come

to $60,220. Mr. Radnoff's costs for the defendants come to $13,438.62 on a partial indemnity scale. In his cost submissions, Mr. Radnoff has pointed out various areas of concern with respect to the plaintiffs' bill of costs. I share those concerns. I fix the plaintiffs' costs on a partial indemnity scale for the motion for directions at $20,000.

[68] With respect to the motion to strike, the defendants' partial indemnity costs come to $2,888.29. Their actual costs come to $4,673.32. Mr. Winton's actual rate continues to be recorded at $275. The plaintiffs' fees on a partial indemnity scale come to $8,641.11 with actual costs being $14,401.85. Those strike me as being realistic for the motion at hand. I therefore fix the plaintiffs' costs on the motion to strike at $8,641.11 on a partial indemnity scale, including disbursements and HST.

Date: September 18, 2025



Koehnen J.