

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:	)	
	)	
	)	
ALKA SINGH	)	K. Wise, for the appellant
	)	
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	)	
Appellant	)	
	)	
– and –	)	
	)	
	)	
	)	
AIR CANADA	)	J. Son, for the respondent
	)	
	)	
Respondent	)	
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	)	
	)	HEARD: March 9, 2026
	)	

On appeal from the judgment of Deputy Judge Harper of the Superior Court of Justice (Small Claims Court), dated February 4, 2025, with reasons reported at 2025 CanLII 8813.

REASONS FOR DECISION

SCHRECK J.:

[1] Alka Singh purchased airline tickets from Air Canada for her sister and niece so that they could travel to India for a wedding. The flight was delayed, resulting in Ms. Singh’s niece and sister having to incur hotel expenses, which Ms. Singh paid for. Ms. Singh’s sister and niece assigned any claims they had against Air Canada to Ms. Singh, who filed a Statement of Claim in the Small Claims Court seeking to recover what she had spent.

[2] Air Canada brought a motion to strike Ms. Singh’s claim, primarily on the basis that the claim had not been validly assigned and infringed the rule against champerty and maintenance. It took the position that Ms. Singh was an “officious meddler” who had no real interest in the

proceedings. A Deputy Judge of the Small Claims court agreed. She held that the claim had not been validly assigned and was contrary to the rule against champerty and maintenance. She struck the claim on the basis that it “discloses no reasonable cause of action, is a waste of time, a nuisance and an abuse of the court’s process.” Although Ms. Singh sought to amend her pleadings, she was denied leave to do so. Ms. Singh appeals the decision to this court.

[3] For the reasons that follow, the appeal is allowed. In my view, the motion judge committed a number of legal errors in her analysis. This was manifestly not a case of champerty and maintenance and there was no basis on which to conclude that the claim was a waste of time or an abuse of the court’s process.

I. EVIDENCE

A. The Delayed Flight

[4] According to the Statement of Claim, on September 2, 2023, the appellant purchased Air Canada airline tickets for her sister, Priyanka Singh, and her niece, Zara Singh, to travel from Winnipeg, Manitoba to New Delhi, India to attend a family wedding. The flight was to depart on December 3, 2023 and arrive in New Delhi the following day, with stopovers in Toronto and Munich. Once in New Delhi, they planned to fly to Varanasi on a different airline.

[5] The airport in Munich was closed on December 2, 2023 because of heavy snowfall. It resumed operations on December 3, 2023, the day on which the appellant’s relatives departed. However, their plane did not land in Munich as planned, but was instead re-routed to St. John’s Newfoundland. From there, the appellant’s sister and niece had to fly to Toronto and then directly to New Delhi. By then, they had missed their connecting flight to Varanasi and had to pay for hotel accommodation. The appellant’s relatives’ luggage did not arrive in New Delhi with them and was not delivered to them until December 12, 2023. As a result, they had to purchase a number of replacement items.

[6] A claim for compensation was denied by Air Canada, which took the position that the delay was caused by bad weather over which it had no control. The appellant and her relatives take issue with this as the bad weather and resultant closure of the Munich airport occurred prior to the departure of the flight.

B. Assignment of the Claims

[7] On February 5, 2024, the appellant’s sister and niece executed written assignments of their claims against Air Canada to the appellant for consideration of the nominal amount of \$10 per assignment. Their stated reasons for doing this was because the appellant had paid for the tickets. Notice of the assignments was provided to Air Canada. The assignments were purportedly made pursuant to the *Conveyancing and Law of Property Act*, R.S.O. 1990, c. C.34 (“CLPA”).

C. The Statement of Claim

[8] The appellant had filed a Statement of Claim in her own name on February 4, 2024, which she amended on October 16, 2024. The claim was for \$35,000 in damages for

...misrepresentation and/or negligent misrepresentation and/or negligence and/or breach of contract and/or breach of duty of good faith and fair dealing and/or misleading advertisement and/or unconscionability and/or unjust enrichment and/or out of pocket expenses and/or negligence and/or negligent infliction of emotional distress;

The Statement of Claim also included a claim of \$35,000 for “Punitive, aggravated and/or exemplary damages,” although the total amount sought for all claims was limited to \$35,000.

[9] The Statement of Claim set out the facts outlined earlier and also stated the following:

On February 5, 2024 Priyanka and Zara assigned their chose in action against Air Canada to Alka and provided notice to Air Canada. Alka brings this action for the losses both Priyanka and Zara incurred. Alka also paid for the tickets for both Priyanka and Zara and hence suffered financial damage due to Air Canada’s conduct.

D. The Motion to Strike

[10] On August 8, 2024, the respondent filed a Notice of Motion pursuant to r. 12.02(1) of the *Rules of the Small Claims Court*, O. Reg. 258/98, for

... an Order striking out and dismissing the Plaintiff’s Claim ... for failing to disclose a reasonable cause of action as against the defendant and is otherwise a waste of time, a nuisance or an abuse of the court’s process; and costs of this motion in excess of \$100.00 because of special circumstances pursuant to Rule 15.07 of the *Rules of the Small Claims Court*.

[11] The respondent’s motion was heard on December 13, 2024. Counsel for the respondent advanced three arguments: (1) the claim did not plead a cause of action recognized by the *Montreal Convention, 1999*, which was incorporated into the law of Canada by virtue of the *Carriage by Air Act*, R.S.C. 1985, c. C-26; (2) the *CRPA* cannot apply to the assignment of the claims because “there’s no real property or land interest in the claim,” and (3) the appellant’s assigned claim is contrary to the common law rules against champerty and maintenance.

[12] During her submissions on the motion, the appellant stated that she was willing to amend her claim so that it complied with the *Montreal Convention, 1999*, including abandoning her claims for punitive damages and “emotional damages.” She proposed amending it such that she claimed only for “damages relating to the delay of the flights, any expenses incurred directly due to the delay of the flights and the delay of the baggage for my sister and my niece.” The total claim would then have been for \$18,800.

E. The Decision

[13] In written reasons released on February 4, 2025, the motion judge concluded that the assignment of the claim pursuant to the *CLPA* was invalid because “the *CLPA* governs real property and interests therein and not personal rights” (at para. 9). She also found “this to be a case savouring maintenance and champerty” (at para. 16). The motion judge concluded as follows (at para. 19):

Since I have found that the assignments by the Passengers to the Plaintiff are not valid and the claim has been improperly commenced by the Plaintiff in her own name, there is no claim by the Plaintiff to be considered for amendment or otherwise. With respect to the parties’ submissions on matters, including whether elements of the Passengers’ journey in relation to the claim and other allegations are covered by the Convention, since I have found that the assignments are not valid, there is no valid claim by the Plaintiff to consider in this regard.

II. ANALYSIS

A. Jurisdiction and Standard of Review

[14] The appellant appeals to this court pursuant to s. 31 of the *Court of Justice Act*, R.S.O. 1990, c. C.43. The ordinary appellate standard of review applies: questions of law are reviewable for correctness, questions of fact are reviewable on a standard of palpable and overriding error, and questions of mixed fact and law are also reviewable on a standard of palpable and overriding error unless there is an extricable question of law, which is reviewable for correctness: *Geem v. Lee*, 2026 ONSC 2507 (Div. Ct.), at para. 8.

B. Motions to Strike in the Small Claims Court

[15] The respondent brought its motion pursuant to r. 12.02(1) of the *Rules of the Small Claims Court*, which provides as follows:

12.02 (1) The court may, on motion, strike out or amend all or part of any document that,

- (a) discloses no reasonable cause of action or defence;
- (b) may delay or make it difficult to have a fair trial; or
- (c) is inflammatory, a waste of time, a nuisance or an abuse of the court’s process.

[16] Rule 12.02 has no exact parallel in the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. In *Van de Vrande v. Butkowsky*, 2010 ONCA 230, 99 O.R. (3d) 641, at para. 19, the Court of Appeal described it as being situated somewhere between a motion for summary judgment pursuant to r. 20 and a motion to strike a pleading pursuant to r. 21:

It is a motion that is brought in the spirit of the summary nature of Small Claims Court proceedings and involves an analysis of whether a reasonable cause of action has been disclosed or whether the proceeding should be ended at an early stage because its continuation would be “inflammatory”, a “waste of time” or a “nuisance”.

[17] The applicable test has been described as being whether the cause of action has “no meaningful chance of success”: *O’Brien v. Ottawa Hospital*, 2011 ONSC 231 (Div. Ct.), at para. 11; *Wurdell v. Paramount Safety Consulting Inc.*, 2024 ONSC 669 (Div. Ct.), at para. 36. Regardless of how the test is articulated, r. 12.02 should only be invoked where it is “plain and obvious” that the claim cannot succeed: *Capital One Bank (Canada Branch) v. Rodrigu*, 2017 ONSC 3536 (Div. Ct.), at para. 7. A motion pursuant r. 12.02 is not a summary judgment motion and is not the appropriate forum for a determination on the merits: *Doerr v. Sterling Paralegal*, 2014 ONSC 2335 (Div. Ct.), at para. 41.

C. Grounds of Appeal

(i) *The Validity of the Assignment Pursuant to the Conveyancing and Law of Property Act*

[18] In the Small Claims Court, the respondent argued that the assignment of the claim was invalid because the *CLPA*, pursuant to which the assignment was made, only governs real property and not personal rights. The motion judge agreed (at para. 9):

This is not a case involving a real property right or interest therein despite the Plaintiff relying on the *CLPA* to advance the claim. As set out by the Court of Appeal in *80 Mornelle Properties Inc. v. Malla Properties*, the *CLPA* governs real property and interests therein and not personal rights.

[19] It is difficult to understand why this submission was made and considered. As the motion judge recognized elsewhere in her reasons, some claims can be validly assigned in certain circumstances, so the real issue in this case was whether those circumstances existed. The purpose of the *CLPA* is to protect the other party to a claim (in this case Air Canada) if it is assigned by ensuring that the assignment extinguishes any right the assignor had against it: *Gentra Canada Investments Inc. v. Lipson*, 2011 ONCA 331, 106 O.R. (3d) 261, at paras. 59-63; *Landmark Vehicle Leasing Corp. v. Mister Twister Inc.*, 2015 ONCA 545, at para. 9-14.

[20] The conclusion that the *CLPA* only applies to real property is clearly wrong, as counsel for the respondent conceded in oral argument in this court. This is clear from s. 1 of the Act, which defines the terms in the legislation:

“conveyance” includes an assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property or on any other dealing with or for any property, and “convey” has a meaning corresponding with that of conveyance;

....

“property” includes real *and personal property, a debt, a thing in action, and any other right or interest*;

[Emphasis added].

The *CLPA* clearly applies to the assignment of “any property,” which is not restricted to real property and includes “a thing in action, and any other right or interest,” such as the claims in this case.

[21] *80 Mornelle Properties Inc. v. Malla Properties Ltd.*, 2010 ONCA 850, 327 D.L.R. (4th) 361, on which the motion judge and the respondent relied, does not stand for the proposition that the *CLPA* “governs real property and interests therein not personal rights.” The portion relied on, para. 29, reads as follows:

The application judge concluded that the provisions in real property statutes such as the *Conveyancing and Law of Property Act*, R.S.O. 1990, c. C.34 and the *Land Registration Reform Act*, R.S.O. 1990, c. L.4, apply to land and interests therein and, therefore, did not apply to the Vendor’s right in respect of the assessment appeal. I agree.

However, this has to be read in the context of the issues in that case, which was about a refund resulting from a successful appeal of a property tax assessment in relation to a building that was sold after the appeal was initiated but before it was decided. Both the vendor and the purchaser claimed entitlement to the refund resulting from the appeal. The court concluded that the refund belonged to the vendor. In para. 30, immediately following the paragraph relied on by the motion judge, the court held:

As I have explained, the right was a personal one that belonged to the Vendor. Accordingly, it did not run with the land. Put another way, the right is neither land nor an interest in land and, therefore, the legislation governing real property did not apply to cause it to be conveyed to the Purchaser.

In other words, the court concluded that since the conveyance at issue in that case was in relation to real property, the *CLPA* only applied to that real property.

[22] The respondent submits in its factum that the motion judge’s conclusion that the *CLPA* did not apply to the assignment of the claim in this case because it did not involve real property is “a finding of mixed fact and law and entitled to deference.” I fail to see how this is a question of mixed fact and law. The determination of whether a statute has application in a given case is a question of law: *ter Neuzen v. Korn*, [1995] 3 S.C.R. 674, at para. 70.

(ii) *Champerty and Maintenance*

(a) Overview of the Issue

[23] Despite her view that the *CLPA* only applies to real property, the motion judge accepted that some causes of actions can be assigned. In her reasons, at para. 11, she cited *Gentra Canada Investments Inc.*, which affirmed the well established principle set out in *Fredrickson v. Insurance Corp. of British Columbia* (1986), 28 D.L.R. (4th) 414 (B.C.C.A.), aff'd [1988] 1 S.C.R. 1089, that “while a bare cause of action was not assignable, a pre-existing property interest or a legitimate commercial interest would make assignable a cause of action for a non-personal tort.” The validity of an assignment of a claim for breach of contract or a non-personal tort depends on “whether this assignment savours of maintenance,” an inference which can be negated if the assignee possesses a sufficient pre-existing financial interest: *Gentra Canada Investments*, at paras. 37-38; *Fredrickson*, at pp. 427-428.

[24] The rule against maintenance and the related concept of champerty has a long history in the common law. The terms were explained in *McIntyre Estate v. Ontario (Attorney General)* (2002), 61 O.R. (3d) 257 (C.A.), at para. 26:

Although the type of conduct that might constitute champerty and maintenance has evolved over time, the essential thrust of the two concepts has remained the same for at least two centuries. Maintenance is directed against those who, for an improper motive, often described as wanton or officious intermeddling, become involved with disputes (litigation) of others in which the maintainer has no interest whatsoever and where the assistance he or she renders to one or the other parties is without justification or excuse. Champerty is an egregious form of maintenance in which there is the added element that the maintainer shares in the profits of the litigation. Importantly, without maintenance there can be no champerty....

The courts have made clear that a person’s motive is a proper consideration and, indeed, determinative of the question whether conduct or an arrangement constitutes maintenance or champerty. It is only when a person has an improper motive which motive may include, but is not limited to, “officious intermeddling” or “stirring up strife”, that a person will be found to be a maintainer.

[25] The purpose of the doctrines is to protect the administration of justice from abuse: *McIntyre Estate*, at paras. 23, 32. It follows from this that there is no maintenance or champerty if the alleged maintainer has a legitimate reason or justification for becoming involved in the litigation and no improper motive: *Adi v. Datta*, 2011 ONSC 2496, at para. 54. Motive is, therefore, a determinative factor: *Lorch v. McHale* (2008), 92 O.R. (3d) 305 (S.C.J.), at para. 32, aff'd 2009 ONCA 161, 63 C.C.L.T. (3d) 198; *Stetson Oil & Gas Ltd. v. Thomas Weisel Partners Canada Inc.*, [2009] O.J. No. 1264 (S.C.J.), at para. 11; *McIntyre Estate*, at para. 27.

[26] The motion judge concluded that the appellant's claim was champertous for a variety of reasons but the primarily because (1) the appellant's motive was "to seek profit"; (2) the assignment was not in relation to a debt; and (3) the appellant had no prior financial interest in the matter. The appellant submits that the motion judge erred with respect to each of these.

(b) Profit Motivation

[27] The motion judge concluded that the appellant's purpose was to "seek to profit" (at para. 12):

Further, the Plaintiff failed to identify a valid reason that the assignments were prompted by a desire to advance the cause of justice, an exception to the established law that a bare cause of action was not assignable. I find rather that the Plaintiff is intermeddling for a collateral reason which is to seek to profit from a case which she paid to prosecute in her name. The Plaintiff is speculating on a personal gain in a lawsuit claiming on its face, the amount of \$35,000.00 for which she has paid \$10.00, before she submitted that she was prepared to make modifications. A plaintiff need not be a special purpose company to speculate for profit.

With respect, the motion judge's finding that the appellant was motivated by profit was unreasonable.

[28] Although evidence is permissible on a r. 12.02 motion to strike, none was adduced in this case, so the motion had to be decided on the basis of the pleadings, which the court was required to accept as true unless they were patently ridiculous or incapable of proof: *McCreight v. Canada (Attorney General)*, 2013 ONCA 483, 116 O.R. (3d) 429, at para. 29; *Cornish v. Legal Aid Ontario*, 2022 ONSC 4029 (Div. Ct.), at paras. 33-37. The pleadings clearly state that the appellant was seeking to recover her own costs rather than profit. In any event, the potential for profit is not determinative of champerty unless the assignee has no prior financial interest in the matter: *Ingle v. ACA Assurance*, 2005 CanLII 39682 (Ont. S.C.J.), at paras. 14, 17.

(c) Assignment of Debt

[29] At para. 14 of her reasons, the motion judge stated:

While the assignment of debt is not a champertous agreement and a debt is assignable pursuant to s. 53 of the *CLPA*, I do not accept that there was a debt and that it was assigned in this case. The Plaintiff was assigned a mere right of action. Therefore, the Plaintiff cannot rely on the provisions of the *CLPA* or common law to save this assignment. The Plaintiff submitted that the assignments are valid, relying on the criteria set out by the Court of Appeal's consideration of s. 53(1) of the *CLPA* in *Clark v. Werden* in which an assignment of debt is deemed not to be champertous. The Plaintiff submitted

that the assignments were absolute and unconditional, in writing and signed by the assignor and the debtor was given notice of the assignment. The Plaintiff further submitted that assignments which comply with these formalities are enforceable. However, I do not agree with the Plaintiff's submissions of the applicability of *Clarke* because one cannot create an assignment of debt where there is no debt to be assigned. There is no proof of a debt obligation, including any loan document with the Defendant and the assignments do not address any specifics of an alleged debt.

[30] The motion judge was correct that as held in *Clark v. Werden*, 2011 ONCA 619, 283 O.A.C. 313, at para. 16, the assignment of a debt is generally not a champertous agreement, although the relevance of this point is not entirely clear. The appellant never claimed that the assignment was for a debt. If the motion judge was suggesting that the assignment of any cause of action other than a debt is champertous, this is clearly not a correct statement of the law. As explained earlier, a cause of action for breach of contract or a non-personal tort is assignable if the assignee has a prior financial interest in it.

(d) Prior Financial Interest

[31] The motion judge was of the view that the appellant did not have a prior financial interest in the claim (at para. 17):

Contrary to her submissions, I find the Plaintiff's motive to be improper. In consideration of the Court in *McIntyre Estate v. Ontario*, I find that the Plaintiff has stirred up litigation, not streamlined it. In applying the definition of maintenance and champerty set out in *2770095 Ontario Inc.* [2023 ONSC 1924], the Plaintiff has no interest in the case - payment of the trip is not determinative of a pre-existing financial interest and I do not agree that the fact that the Plaintiff is related to the Passengers to be relevant in this case. This finding includes consideration that there is no reasonable justification for which the Passengers could not have advanced their own claims.

[32] I agree with the appellant that the trial judge misapplied the law. The issue was not whether the appellant's payment for the trip was "determinative of a pre-existing financial interest," but whether it was plain and obvious that she had no such financial interest. It was not. The appellant's objective in bringing the claim was to recoup her losses, which could establish a financial interest sufficient to negate any inference of maintenance: *Gentra Canada Investments*, at paras. 27-32. The fact that the appellant's relatives could have brought the claim is of no moment.

[33] There is, as well, authority which calls into question the motion judge's conclusion that the fact that the appellant was related to the passengers had no relevance. In *Banglar Progoti Ltd. v. Ranka Enterprises Inc.*, [2009] O.J. No. 1470 (S.C.J.), at para. 17, the court held that "there can be no maintenance if the alleged maintainer has a justifying motive or excuse. Familial

relationships may constitute such a motive or excuse.” See also *Carlson v. Chambers*, [1947] 2 D.L.R. 667 (Sask. K.B.).

(iii) *Conclusion on Striking of the Claim*

[34] The central basis on which the claim was struck was that it ran afoul of the rule against champerty and maintenance. It was neither plain nor obvious that it did so, nor was the motion the appropriate forum in which to making findings about the appellant’s motive. While I express no opinion on the likelihood that the appellant will be successful, this claim was manifestly not a waste of time, a nuisance or an abuse of process.

(iv) *The Appellant’s Request to Amend Her Pleadings*

[35] As noted earlier, the appellant requested permission to amend her statement of claim so that it was only for “damages relating to the delay of the flights, any expenses incurred directly due to the delay of the flights and the delay of the baggage.” In my view, such an amendment would have been appropriate as it is doubtful that any claim for “emotional distress” was assignable. The motion judge did not consider this request until after she had concluded that the pleadings should be struck, and then denied the request because “there is no claim by the Plaintiff to be considered for amendment or otherwise.”

[36] The proper approach on a motion to strike a statement of claim was described in *PMC York Properties v. Siudak*, 2022 ONCA 635, 473 D.L.R. (4th) 136, at para. 31:

...[T]he pleadings should be read generously, accommodating any drafting deficiencies because cases should be determined on their merits based on the evidence presented before judges at trial. The court should always consider whether the deficiency can be addressed through an amendment to the pleadings and leave to *amend should be denied only in the clearest of cases*. See: *Hunt [v. Carey Canada Inc.]*, [1990] 2 S.C.R. 959, at p. 980; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at paras. 17, 22; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, 447 D.L.R. (4th) 543, at paras. 87-88; *Tran v. University of Western Ontario*, 2015 ONCA 295, at paras. 16, 26-27; *Abbasbayli v. Fiera Foods Company*, 2021 ONCA 95, at para. 20. [Emphasis in original].

While this was said in relation to a motion pursuant to r. 21.11 of the *Rules of Civil Procedure*, the same approach applies to r. 12.02 motions in the Small Claims Court. It follows that the motion judge erred by failing to consider the request to amend the pleadings prior to concluding that they should be struck. This was not one of the clearest of cases in which amendment would be inappropriate.

III. DISPOSITION

[37] The appeal is allowed, the order striking the pleadings is set aside, and the matter is remitted to the Small Claims Court. The appellant is granted leave to amend her statement of claim.

IV. COSTS

[38] The appellant seeks partial indemnity costs in the amount of \$9,625.00. Ordinarily, I would view this as excessive for an appeal of this nature. However, in the Small Claims Court, the respondent took the position that it was entitled to costs of \$7,655.00, far in excess of the presumptive amount of \$100 set out in r. 15.07, because there were “special circumstances,” including that the appellant acted “unreasonably” in resisting the motion to strike, that she failed to accept the respondent’s offer to settle (which entailed a dismissal of the action without costs), and that she “ought to have known better” because she apparently had some training as a paralegal, although she was not licensed as such. While the motion judge did not award the amount sought, she did order costs of \$1800.00.

[39] The reasonable expectations of the losing party is a relevant consideration in determining costs, and the respondent’s aggressive and unforgiving stance on the issue of costs in the court below is an indication of its expectation of how the issue should be approached. In all the circumstances, I fix costs at \$7,000.00, inclusive of taxes and disbursements, to be paid by the respondent to the appellant within 30 days.

Justice P.A. Schreck

Released: May 22, 2026

CITATION: *Singh v. Air Canada*, 2026 ONSC 2983
COURT FILE NO.: DC-25-00000175-0000
DATE: 20260522

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

ALKA SINGH

Appellant

– and –

AIR CANADA

Respondent

REASONS FOR DECISION

Schreck J.

Released: May 22, 2026