

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**RE:** CLIFFORD LLOYD, KONSTANTINE DIMAKIS and SILKPORT CAPITAL,  
Appellants

**AND:**

TIFFANY LONGARINI, Respondent

**BEFORE:** D.L. Corbett, Faieta and Shore JJ.

**COUNSEL:** *Self-represented* Applicants

*Self-represented* Respondent

**HEARD at Hamilton:** October 29, 2025

**ENDORSEMENT**

**D.L. Corbett J.**

[1] This is an appeal from the decision of Bordin J. dated February 12, 2025 (2025 ONSC 974), granting summary judgment to the Respondent Longarini in a negligence claim against the Appellants, and awarding damages of \$41,000, and the costs decision of Bordin J. dated March 13, 2025.

[2] This appeal is within the monetary jurisdiction of the Divisional Court pursuant to s. 19(1.2)(a) of the *Courts of Justice Act*, RSO 1990, c. C.43. An appellate standard of review applies: correctness for questions of law, and palpable and overriding error for questions of fact. The deferential standard of review applies to questions of mixed fact and law except in respect to extricable questions of law, which are reviewed on a correctness standard: *Housen v. Nikolaisen*, 2002 SCC 33, paras. 8, 10 and 36.

[3] The motion judge found as follows (Decision, paras. 69-70):

I find that the conduct of the parties after the execution of the agreement makes clear that they understood that the agreement between them included the defendants acting for the plaintiff in all the litigation with Mr. Huitema in which she was involved. The defendants in fact acted as the plaintiff's lawyers in that litigation, with Lloyd as the only LSO licenced lawyer representing the plaintiff in court, in court documents, and in communications with opposing counsel. Virtually all the

evidence before the court, other than bald assertions by the defendants that they were engaged in mergers and acquisitions services, demonstrates that the defendants were providing legal services in the context of, and in litigation involving the plaintiff.

Neither Silkport nor Dimakis are licenced by the LSO to provide legal services and Dimakis is neither a lawyer nor a paralegal. While it is not clear whether this was known to the plaintiff, as noted, it is clear the parties understood that Lloyd was the lawyer and would be representing the plaintiff.

[4] The record supports these findings: they do not disclose any palpable and overriding error.

[5] The motion judge found that the Appellants provided legal services to the Respondent, and found in particular:

- On May 9, 2023, Mr. Huitema’s *ex parte* motion for an injunction in the OBCA application was heard, and Henderson J. granted an interim injunction (“*ex parte* order”).
- On May 23, 2023, MacNeil J. continued the *ex parte* order with some amendments and adjourned the motion to June 9, 2023.
- The appellants worked with the respondent on a response to Mr. Huitema’s motion materials. The appellants prepared affidavits in Dimakis’ name rather than from the respondent and served them on Mr. Huitema on or about May 22, 2023.
- On June 2, 2023, the respondent was served with a statement of claim from Mr. Huitema in a defamation action.
- On June 9, 2023, Lloyd appeared for the respondent before Bordin J. with respect to Mr. Huitema’s motion on the OBCA application. In an endorsement, Bordin J. noted that the motion could not proceed as the materials uploaded were so disorganized as to be unusable to the court (Decision, para. 52).
- On June 21, 2023, Lloyd served Mr. Huitema’s lawyers with a Notice of Intent to Defend in the defamation action but did not file the documents with the court.
- On June 26, 2023, the motion for the return of the *ex-parte* order in the OBCA application was heard by Sheard J. as a hearing *de novo*. Sheard J. ordered that the *ex-parte* order, as amended by MacNeil J., should continue until the application was heard. (“Sheard J. order”) (Decision, para. 54).
- Prior to this hearing, the respondent, through Lloyd, refused to submit to examination on the motion and to have Dimakis submit to cross-examination. Mr. Huitema challenged the affidavits of Dimakis filed on the motion on the basis that Dimakis had

no firsthand knowledge of what was set out in his affidavits and failed to identify the source of his information. Sheard J. accepted these submissions (Decision, para. 75).

[6] The motion judge found that, following the June 26 hearing, Sheard J. was critical of the respondent's submissions and conduct by virtue of the appellants' conduct:

- (a) No weight could be given to any evidence in Dimakis' affidavits as they spoke to material events about which he had no firsthand knowledge and for which he failed to identify the source of his information and belief (Decision, para. 77).
- (b) Putting forward the respondent's evidence through Dimakis was "at best negligent, and at worst, improper." Relying on these affidavits all but left the respondent without any admissible evidence on which to rely in response to the motion (Decision, para. 78).
- (c) A letter from Lloyd to a witness was "'threatening' to a witness". His conduct was described as "highly improper and impugns the integrity of opposing counsel and the integrity of the administration of justice" (Decision, para. 80).

[7] On February 20, 2024, Sheard J. settled the costs payable and relied on the following to award Mr. Huitema elevated costs payable by the Respondent (Decision, para. 95):

- (a) The decision not to put forward evidence from the plaintiff and instead to rely on affidavits from Dimakis resulted in additional work and additional time at the hearing;
- (b) The threatening letter to the witness (letter from Lloyd to Shaunna MacPhail dated June 2, 2023);
- (c) The refusal to produce Dimakis for cross-examination or to produce the plaintiff to be examined in advance of the motion;
- (d) The vitriolic and improper communications sent by the defendants to Mr. Huitema's lawyer;
- (e) Lloyd advancing irrelevant and unsustainable arguments;
- (f) Lloyd making submissions on issues that had been determined by Sheard J. earlier in the hearing, thereby lengthening the hearing from the scheduled 2.5 hours to a full day;
- (g) The late filing of the materials on May 23, 2023, leading to wasted costs; and

[8] The Appellants argued that they filed the affidavit of Dimakis, rather than of the Respondent, on the *Mareva* motion, because the Respondent was ill and unavailable to provide an affidavit. The motion judge did not accept this argument: she found that this argument "misses the point" (Decision, para. 86). This conclusion was open to the motion judge. First, it seems disingenuous: this information was not, itself, disclosed in the Dimakis affidavit, and so could not have been taken into account by Sheard J. in her assessment of the evidence. Second, it does not

explain why Dimakis failed to identify the source of his information in his affidavit, a fundamental flaw in respect to material contested evidence on an important motion. Third, it does not explain why Dimakis failed to appear for cross examination on his affidavit, and it fails to explain why the Respondent was not produced for examination as a witness on a pending motion: no evidence was provided in the *Mareva* motion that the Respondent was too ill to be examined. Fourth, it does not explain why the Appellants failed to advise the Respondent about the need for the “best evidence” (in this instance, the Respondent’s evidence) on the *Mareva* motion, and the need to agree to cross examinations and examinations when they had been sought in the *Mareva* motion. And finally, it does not explain the other unacceptable and unprofessional conduct by the Appellants, as agents for the Respondent.

### Issue on Appeal

[9] Before this court, the Appellants raised one issue: they argue that the motion judge decided the case on a “novel theory of liability” and as a consequence, that the impugned decision was “fundamentally unfair”.

[10] The Appellants submit that the motion judge erred in finding that they failed to advise the Respondent about the consequences of her not providing an affidavit setting out her knowledge of disputed events in the *Mareva* motion, and about the consequences of failing to attend for cross examinations and examinations. They submit that this issue was not raised in the pleadings or motion materials, that they were “caught by surprise” on this issue, and as a consequence they did not have a fair opportunity to place materials evidence before the court respecting the advice they provided to the Respondent. The appellants characterize this inference as an “issue or legal theory raised by the Motion Judge,” and submit that by “stepping outside of the pleadings to find liability, the Motions Judge denied [the appellants] the right to know the case they had to meet and the right to a fair opportunity to meet that case.” The appellants take issue that, in their submission, the first time the “failure to advise” issue was raised was by the Motion Judge, on his own initiative, who then restricted the appellants’ answer “to the evidence before the court only” (Appellants’ Factum, paras. 10, 13, 15).

[11] There is no merit to this argument. The issue of failure to provide competent advice was put in issue, in the pleadings, in the motion materials, and in the factum on the motion for summary judgment:

- a. Amended Statement of Claim, para. x: “The Respondents [sic] provided incorrect legal advice when he insisted it was not necessary for me to file my own affidavit, casing [sic] the court to reject all of my evidence.” [the numbering in the Amended Statement of Claim is difficult to follow, and the pages are not numbered, but there is only one paragraph “x”.<sup>1</sup>

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<sup>1</sup> The numbering in the Amended Statement of Claim is difficult to follow, and the pages are not numbered, but there is only one paragraph “x” and one paragraph “y”.

- b. Amended Statement of Claim, para. y: “The Respondent’s [sic] legal and strategic advice was incompetent and without knowledge or understanding of the law.”
- c. Amended Notice of Motion of the Respondent, para. 19: “The Respondent [sic] provided incorrect legal advice when he insisted it was not necessary for the Appellant [sic] to file her own affidavit, casing [sic] the court to reject all of her evidence.”
- d. Amended Notice of Motion of the Respondent, para. 20: “The Respondent’s [sic] legal and strategic advice was incompetent and without knowledge or understanding of the law.”
- e. Submissions in the Respondent’s factum on the motion for summary judgment:
  - i. “The Defendants failed to inform the plaintiff of the need to file her own affidavit and appear at hearings as noted by Justice Sheard in her Endorsement June 26, 2023.”
  - ii. “I have established that “but for” the defendant’s failure to meet the requisite standard of care, in particular, their failure to inform me of the need to submit an affidavit on my own behalf, I would have my evidence admitted by the court.”
  - iii. “In the matter at bar, the evidence demonstrates that but for the defendants’ negligent conduct in failing to adequately represent me and fulfill their professional obligations, I had a significant chance of successfully resolving the shareholder dispute and selling my shares in 2669200 Ontario Inc. Specifically, the defendants’ failure to prepare, file, and serve critical legal documents, such as the cross-application for oppression, as well as their neglect in advising me about the necessity of submitting my own affidavit, directly hindered my ability to present my case effectively. This negligence not only led to missed deadlines and a lack of necessary documentation but also resulted in adverse cost awards against me totaling \$42,925.10, which I would not have incurred had the defendants performed their duties competently.”

[12] The Appellants had notice of the issue (in the pleadings and the Notice of Motion), and the issue was addressed in the Respondent’s evidence and written argument. There is no substance to the Appellants’ submission that this was a new issue raised by the motion judge that caught them by surprise.

[13] Further and in any event, the general allegations of negligence encompassed an alleged failure to provide legal advice in respect the Respondent’s defence of the civil proceedings against her. With respect, the bases on which the motion judge found the Appellants’ representation of the Respondent to fall below the applicable standard of care were obvious deficiencies in the work done by the Appellants. When a client is intent on a course of action that is contrary to her legal interests, it is axiomatic that the lawyer must advise her of the likely risks. Failure to document

such advice properly is a basis to draw an adverse inference that the advice was not, in fact, given, especially where the client testifies unambiguously that the advice was never given. The Appellants defended these claims by asserting that the Respondent instructed them to take these steps. Establishing that the Respondents properly advised the Respondent before accepting her instructions was a necessary (though perhaps not sufficient) aspect of the Respondents' defence, not a new issue raised by the Respondent or a "novelty" raised by the motion judge.

[14] The Appellants rely on a series of cases that address the requirement for particularized pleadings in cases alleging intentional torts such as fraud or breach of trust: *Ceballos v. DCL International Inc.*, 2018 ONCA 49, para. 12; *Lysko v. Braley* (2006), 79 OR (2d) 721, para. 144 (CA). This was not a pleadings motion, and the heightened particularity required in pleadings for intentional torts does not apply to claims in negligence. The negligence claims in this case were particularized (filing an inadmissible affidavit, threatening a witness, not attending examinations and cross examinations, etc.).

### **The Costs Decision**

[15] The Appellants purport to appeal the motion judge's costs decision (awarding a total of \$1,606.54 in costs to the Respondent). The costs order may not be appealed on its merits without first obtaining leave to appeal, which was neither sought nor granted. Had leave been sought, it surely would not have been granted: the costs awarded are modest, in the circumstances, and well within the motion judge's discretion.

### **Other Issues**

[16] No issue was raised on this appeal about the principles relating to motions for summary judgment, and in particular, whether there are triable issues such that summary judgment should not be granted. The trial judge found that summary judgment was available and was a proportional and practical way in which to proceed. I see no error in this conclusion. The Respondents undertook to represent the Appellant in legal proceedings, and their work fell well below the standard expected of a competent solicitor. The Appellant suffered losses as a result and was entitled to recoup some of the fees she paid to the Respondents. Given the amounts reasonably at issue (the judgment falls below the current monetary jurisdiction of the Small Claims Court), it was appropriate for the motion judge to "rollup her sleeves and get to the bottom of" this matter, as she did.

### **Disposition**

[17] For these reasons I would dismiss the appeal, with costs payable from the Appellants, jointly and severally, fixed at \$2,500, inclusive, payable within thirty days of the oral decision provided to the parties on October 29, 2025.

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"Corbett"

D. L. Corbett J.

I agree: \_\_\_\_\_ "Faieta"  
Faieta J.

I agree: \_\_\_\_\_ "Shore"  
Shore J.

**Released:** May 27, 2026