

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Collmann v. Rally*,
2026 BCCA 288

Date: 20260622
Docket: CA51334

Between:

Genora Ann Collmann

Appellant
(Plaintiff)

And

**David B. Rally and Beck, Robinson
& Company, Law Corporation**

Applicants/Respondents
(Defendants)

Before: The Honourable Justice Winteringham
The Honourable Mr. Justice Riley
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated
January 29, 2026 (*Collmann v. Rally*, 2026 BCSC 138,
Vancouver Docket S257901).

Oral Reasons for Judgment

Counsel for the Appellant:

O. Li

Counsel for the Applicants/
Respondents:

D. Winterton
J.C. Fu

Place and Date of Hearing:

Vancouver, British Columbia
June 22, 2026

Place and Date of Judgment:

Vancouver, British Columbia
June 22, 2026

Summary:

A judge in chambers granted an order under R. 9-5(1) of the Supreme Court Civil Rules, striking a claim in negligence against a lawyer. The appellant's mortgage had gone into default and she alleged others were responsible for her missed payments. She brought a claim against her own lawyer and the respondents (the lending institution's lawyer). She admitted the respondents did not owe her a duty of care. The respondents applied to quash the appeal. Held: Application to quash the appeal granted. The admission rendered the appeal so devoid of any arguable merit as to amount to an abuse of process.

WINTERINGHAM J.A.:**Introduction**

[1] In January 2026, a judge of the Supreme Court of British Columbia granted an order under R. 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR], striking a claim in negligence against the respondent lawyer, David Rally, and law firm, Beck, Robinson & Company, Law Corporation. On February 5, 2026, the appellant filed a notice of appeal. On May 28, 2026, the respondents filed a notice of application to quash this appeal.

Background

[2] The respondent law firm represented Capital Direct Lending Corp. ("Capital Direct") in a mortgage as part of a property conveyance to the appellant Genora Ann Collmann. In June 2024, Capital Direct approved a two-year mortgage for the appellant. The appellant was represented by Rosborough & Company ("Rosborough") for the purchase of her property and acquisition of the mortgage. The parties dispute the precise value of the mortgage but that detail is of no moment on this application.

[3] Around the same time the appellant agreed to the mortgage, she executed a Hypothecated Funds Agreement, requiring her to deposit \$23,651 into the respondent law firm's trust account. These funds were used to service the monthly payments due under the mortgage for the first 12 months. The parties disagree whether the appellant was required under the mortgage agreement to provide a void cheque or pre-authorized debit agreement ("PAD"). The appellant says that she sent

a void cheque to Rosborough in June 2024, following a conversation with one of the firm's conveyancers in which she was instructed to do so.

[4] In April 2025, Capital Direct requested that the appellant provide it with a void cheque or PAD. The appellant says she did not receive this request. In any event, Capital Direct did not receive a void cheque or payment before the hypothecated funds were depleted. Her mortgage subsequently fell into arrears.

[5] The appellant takes the position that her failure to pay the mortgage was due to clerical errors by one of Capital Direct, the respondents, or Rosborough. She says she provided a void cheque to Rosborough in June 2024. She asserts that through examinations for discovery, she will determine which party bears the fault for her mortgage falling into arrears: (1) Capital Direct for not using the information on the cheque and attempting to take money out of Rosborough's trust account instead; (2) the respondents for not giving the appellant's void cheque to Capital Direct or not requesting the void cheque or PAD from Rosborough themselves; or (3) Rosborough for not passing the void cheque onto the respondents or Capital Direct.

[6] Capital Direct filed a petition seeking to foreclose on the appellant's property because the appellant was in default of the mortgage payments (the "Foreclosure Proceeding"). Thereafter, the appellant filed a notice of civil claim to commence this action, naming the respondents and Rosborough as defendants. Capital Direct is not a defendant in this action.

[7] The respondents filed both a response to civil claim and a notice of application. In their application, they sought to strike the appellant's claim under R. 9-5(1) of the *SCCR*. That application was heard in January of 2026.

Reasons for Judgment

[8] The judge found that the claim did not disclose a reasonable cause of action against the respondents, was frivolous or vexatious, and was an abuse of process under Rules 9-5(1)(a), (b) and (c), respectively. The judge began by reviewing the

facts: *Collmann v. Rally*, 2026 BCSC 138 at paras. 3–10 (“RFJ”). On appeal, the appellant takes issue with this exercise and argues that the judge inappropriately made factual determinations.

[9] Turning to the analysis of whether a reasonable cause of action was disclosed, the judge reviewed the law, being that a lawyer does not owe a duty of care to a non-client where that duty would be inconsistent with the lawyer’s duty to their own client: see RFJ at para. 18, citing *Smolinski v. Mitchell*, 10 B.C.L.R. (3d) 366 at para. 54, 1995 CanLII 1545 (S.C.). She observed that, in the appellant’s application response, she pleaded, “[David Rally and Beck, Robinson & Company, Law Corporation] owe a duty of care to Capital Direct, but not to Ms. Collmann [herself]”. The admission of the absence of a duty of care made it plain and obvious that the appellant would not succeed in a claim in negligence: RFJ at para. 20.

[10] The judge turned to the claim that the appellant was entitled to contribution or indemnity because the respondents failed to request a PAD or void cheque or provide correct banking information to Capital Direct. She found it was also bound to fail because any negligence in this regard would be attributable to Capital Direct. Such claims rightly form a defence in the Foreclosure Proceeding: RFJ at para. 22.

[11] The judge concluded her R. 9-5(1)(a) analysis by rejecting the appellant’s argument that the application to strike was premature because the appellant may still wish to apply to convert the Foreclosure Proceeding into an action. The appellant could still bring such an application, regardless of whether the notice of civil claim herein is bound to fail against the respondents: RFJ at para. 25.

[12] Under R. 9-5(1)(b), the judge reasoned that the pleadings against the respondents were unnecessary and therefore frivolous or vexatious. Where a third party claim will not lie against another person with respect to an obligation belonging to the plaintiff which the defendant can raise directly against the plaintiff by way of defence, there is no need for third party proceedings: RFJ at para. 29, citing *Adams v. Thompson, Berwick, Pratt & Partners* (1987), 15 B.C.L.R. (2d) 51, 1987 CanLII 2590 (C.A.). The alleged acts of the respondents were about the obligations of

Capital Direct and can be raised as a defence in the Foreclosure Proceeding: RFJ at para. 30.

[13] The notice of civil claim was also found to be an abuse of process under R. 9-5(1)(d). The appellant failed to plead material facts, sought relief that was unsupported by her pleadings, and included claims that are properly defences in the Foreclosure Proceeding: RFJ at para. 32. As a result, the notice of civil claim was an improper collateral attack on the Foreclosure Proceeding: RFJ at para. 33.

On Appeal

[14] The appellant filed her notice of appeal on February 5, 2026. The appeal record was to be filed by April 5, 2026. She missed that deadline but I understand from submissions this afternoon that counsel have organized a filing schedule should the appeal survive this application to quash.

Application to Quash

[15] Under s. 24(1)(c) of the *Court of Appeal Act*, S.B.C. 2021, c. 6, a division of the Court of Appeal has jurisdiction to make any orders it considers just. An appeal will be quashed where it is “so devoid of any arguable merit as to amount to an abuse of process”: see *Szopa v. Canada (Attorney General)*, 2020 BCCA 47 at para. 13, citing *Milani v. Milani*, 2019 BCCA 361 at para. 13.

[16] In *Chamberlin v. Insurance Corporation of British Columbia*, 2021 BCCA 397, Justice MacKenzie articulated the legal framework (albeit when the former *Court of Appeal Rules* governed):

[10] Under the abuse of process doctrine, a court may dismiss an action that uses the court process for improper purposes. There is no specific legal test that must be met. The doctrine remains flexible to respond to actions that “violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice”: *Krist v. British Columbia*, 2017 BCCA 78 at para. 52.

[17] The respondents say the appeal lacks any merit whatsoever. They contend the judge made no discernable legal errors. They continue by saying the appeal should be quashed because Ms. Collmann admitted in her application response

(and again during the hearing) that the respondents owe no duty of care to the appellant. The respondents say if there is no duty of care to them then the claim in negligence must fail and if there was a case against them, the respondents say it is a collateral attack and any issues with the respondents' conduct should be raised in the Foreclosure Proceeding. They say their alleged negligence forms part of Capital Direct's duty of care to the appellant and that Capital Direct's lawyers do not owe the appellant a duty of care.

[18] For the appellant's part, she argues that the appeal should not be quashed. She does so by addressing the respondent's arguments with her intended arguments on appeal.

The judge did not inappropriately find facts

[19] First, the appellant submits the judge made a legal error by making findings of fact on contested points in the application under R. 9-5(1). She did so, the appellant says, even though the facts as pleaded are assumed to be true unless they are manifestly incapable of being proven in such applications: see *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64.

[20] For context, the judge, in explaining the factual background of the case, wrote as follows:

[5] It was neither a pre-requisite to funding the Mortgage nor a term of the Mortgage that Ms. Collman provide a void cheque or signed pre-authorized debit agreement ("PAD"). When Capital Direct funded the Mortgage, it did not request or require Ms. Collman to provide a void cheque or a PAD.

[6] In April 2025, Capital Direct requested that Ms. Collmann provide it with a void cheque and a PAD to permit Capital Direct to debit her personal account to make monthly payments for the Mortgage.

[7] Ms. Collmann did not provide Capital Direct with a void cheque or PAD before the Hypothecation Funds were depleted. Capital Direct could not debit her personal account to facilitate payment of the Mortgage. Ms. Collman says this inability to debit her personal account was due to an error on the part of Capital Direct, the Rally Defendants and/or Rosborough. After June 1, 2025, the Mortgage fell into arrears because the monthly amounts were not being paid by Ms. Collman.

[21] Specifically, the appellant says the following determinations of fact are in dispute and relevant to the Foreclosure Proceeding:

- a) Was it a pre-requisite to funding the mortgage that the appellant provided a void cheque or PAD?
- b) Did the appellant receive Capital Direct's April 2025 request for a void cheque or PAD?
- c) Did she provide a void cheque to Capital Direct before the hypothecated funds were depleted?
- d) When and why did the mortgage fall into arrears?

[22] All the impugned facts above were, in my view, irrelevant to the judge's determination that the appellant, as a matter of law, failed to provide material facts supporting a reasonable claim because she admitted that she was not owed a duty of care by the respondents.

[23] I would find that this argument has no arguable merit.

No duty of care

[24] Second, the appellant argues that the judge erred by not finding a duty of care between the respondents and the appellant. She says that this is not a "traditional solicitors' negligence claim" but rather a claim about whether the respondents owed her a duty of care to deliver her void cheque to Capital Direct once they received it from Rosborough (assuming as true that the respondents came into possession of the cheque at all). The appellant says she tried to make this claim in her notice of civil claim, as follows, but admits that it ought to have been further particularized:

5. Particulars of the fault, breaches of duty, negligence and/or breaches of contract on the part of David B. Rally and Beck Robinson include, but are not limited to the following:

...

- (e) David R. Rally and/or Beck Robinson delivered Rosborough's trust cheque to CapitalDirect, and represented to CapitalDirect that Rosborough's trust cheque was the plaintiff's own VOID cheque. This cause[d] or contributed to the failure of mortgage payments to be deduced from the plaintiff's own bank VanCity account;

...

[25] The appellant's argument is much like the one rejected by Justice Fleming in *Mattu v. Punjab Law Group LLP*, 2026 BCCA 112 at paras. 61–66. In that case, it was held that the mere action of a lawyer handling funds for a non-client does not necessarily ground a duty of care. Rather, in that case Justice Fleming relied upon *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35 at para. 32, for the proposition that a duty of care in such circumstances must be grounded in something more, such as the lawyer giving an undertaking to provide a service and the plaintiff relying upon that undertaking: *Mattu* at para. 65.

[26] Even if the appellant was attempting to claim that the respondent owed her a duty of care upon coming to possession of the cheque, she does not claim further particulars to the effect that the respondents made an undertaking to her. Her claim says the respondents made representations to Capital Direct but not any representation to her, let alone the fact that she failed to plead her reliance on any such representation.

[27] In my view, it is obvious that this argument will fail.

The appellant maintains all necessary rights

[28] Third, the appellant says that the judge erred by striking the claim because it removed her ability to subject the respondents to examinations for discovery to discern which link in the chain failed to pass the void cheque onto Capital Direct. She would not be able to do so in the Foreclosure Proceeding because the respondents are not parties. Therefore, she would not be able to properly levy her defence in that case. She says that the judge failed to grapple with this issue before striking the claim.

[29] I would find that this ground of appeal is also devoid of merit.

[30] In the Foreclosure Proceeding, the appellant may seek to convert the petition into an action. Indeed, she has already done so. If she is successful on that application, she would be able to subject Capital Direct to standard discovery procedures, including examinations for discovery. In this way, she could discern whether Capital Direct received the void cheque in support of her defence. If it is discovered that the fault lies with the respondents, then the appellant may have a valid defence to the foreclosure.

[31] In the instant action, her claim was only struck against the respondents but not against Rosborough. She may still subject representatives from Rosborough to examinations for discovery to discern what they sent or failed to send to the respondents.

[32] In other words, the appellant does not lack recourse in the way that she argues.

[33] The appellant agreed, in its application response and repeated during oral submissions, that the respondents did not owe her a duty of care. The chambers judge proceeded on that basis. I appreciate the bar is high on an application to quash for an abuse of process. However, in light of the position taken by the appellant before the chambers judge (and repeated here), I am of the view that the respondents have met that high bar. It is my view that the appeal is “so devoid of any arguable merit as to amount to an abuse of process”.

[34] With respect to the issue regarding costs, costs have not been determined and that was an issue that was raised in the notice of appeal. The respondent here agrees that should the appellant seek leave to appeal any costs order, this appeal is without prejudice to such a leave application.

Disposition

[35] I would grant the respondent’s application to quash the appeal.

[36] **RILEY J.A.:** I agree.

[37] **FRANCIS J.A.:** I agree.

[38] **WINTERINGHAM J.A.:** The application to quash the appeal is granted.

“The Honourable Justice Winteringham”