
Court of Appeal for Saskatchewan
Docket: CACV4626

Citation: *Yellow Quill Property Management Corp. v Saskatoon Dawah and Community Centre Inc.*, 2026 SKCA 76

Date: 2026-07-17

Between:

Yellow Quill Property Management Corp.

Appellant
(Respondent/Applicant/Plaintiff)

And

**Saskatoon Dawah and Community Centre Inc.,
Michael Grant Derbowka and Cuelenaere LLP**

Respondents
(Applicants/Respondents/Defendants)

And

**Ryan James Grieve, McDougall Gauley LLP, Carway Holdings Ltd. and
Travis Nutting**

Non-Parties
(Defendants)

Before: Tholl, Kalmakoff and Drennan JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Jerome A. Tholl

In concurrence: The Honourable Justice Jeffery D. Kalmakoff
The Honourable Justice Jillyne M. Drennan

On appeal from: 2025 SKKB 122, Saskatoon

Appeal heard: May 12, 2026

Counsel: Scott Spencer for the Appellant
Tristan Culham and Michael Marschal for Saskatoon Dawah and
Community Centre Inc.
Timothy Hawryluk, K.C., for Michael Derbowka and Cuelenaere LLP
No one appearing for the non-parties

Tholl J.A.

I. INTRODUCTION

[1] Yellow Quill Property Management Corp. [YQPM or YQPMC] purported to sell a property in Saskatoon to Saskatoon Dawah and Community Centre Inc. [SDCC]. After the possession date, but before the transfer form was submitted for registration to the Land Titles Registry, an issue was brought to the attention of SDCC and their solicitor regarding whether the sale was properly authorized by YQPMC. Nevertheless, the transfer form was submitted and the title to the property transferred to SDCC. YQPMC brought an action against, amongst others, SDCC, the solicitor acting for SDCC (Michael Derbowka), and the solicitor's law firm (Cuelenaere LLP) [collectively, "respondents"]. The claim asserted that the transfer was void ab initio and sought an order vesting the title in the name of YQPMC and damages. The asserted causes of action, if further amendments were accepted, are negligence, injurious falsehood, and a claim under s. 95(1) of *The Land Titles Act, 2000*, SS 2000, c L-5.1 [LTA].

[2] Relying on Rule 7-9(2)(a) of *The King's Bench Rules*, the respondents applied to strike the claim against them as disclosing no reasonable claim. Their applications were successful and the claim against those three defendants was struck in its entirety: *Yellow Quill Property Management Corp. v Saskatoon Dawah and Community Centre Inc.*, 2025 SKKB 122 [Chambers Decision].

[3] YQPMC appeals, asserting that the claim was struck in error, that all three causes of action are reasonable, and that, regardless of the other causes of action, a pleading that a transfer is void ab initio and the seeking of a vesting order is sufficient to maintain the claim.

[4] For the reasons set out below, the appeal should be dismissed.

II. BACKGROUND

[5] This matter arose out of a strike application under Rule 7-9(2)(a), so the facts asserted in the claim are presumed to be true. As such, except as noted, the following recitation of the facts is taken solely from the proposed further amended statement of claim and the documents referenced therein. Pledged facts that do not relate to this appeal are omitted.

[6] YQPMC is a corporation which is wholly owned by the Yellow Quill First Nation [First Nation]. YQPMC is the general partner in Yellow Quill Property Management LP, with the First Nation being the limited partner. In 2020, YQPMC purchased nine contiguous parcels of land located on 20th Street West in Saskatoon, consisting of a commercial building and an adjacent parking lot [Property].

[7] On April 27, 2023, Dennis Perillat executed a Seller's MLS Brokerage Contract with Realty Executives (Carway Holdings Ltd.) in the name of Yellow Quill Holdings Inc., which purported to list the Property for sale at an asking price of \$1,350,000. The claim does not describe who Mr. Perillat is other than to assert that he was not a director, officer, shareholder, or employee of YQPMC and to state that he had no authority to list the Property or sell it. It also does not provide any additional information about Yellow Quill Holdings Inc., except to plead that this corporation was not the owner of the Property. Travis Nutting was the real estate agent with Realty Executives.

[8] On June 1, 2023, SDCC, through its own realtor, offered to purchase the Property for \$800,000, with a closing date of August 31, 2023. There are no allegations that SDCC was anything other than an arm's-length purchaser. On June 2, 2023, Mr. Perillat executed a counter-offer for a price of \$850,000, with a closing date of July 31, 2023. By the time this counter-offer was made, one of the involved persons had noticed that the property was not owned by Yellow Quill Holdings Inc. and had substituted "Yellow Quill Property Management" as the seller. SDCC accepted the counter-offer. The pleadings do not assert a claim against Mr. Perillat and do not provide any further facts about how or why he was able to take the actions that he did.

[9] Under circumstances not described in the claim, Ryan Grieve of McDougall Gauley LLP became the solicitor retained to handle the sale and transfer of the Property on behalf of YQPMC. On July 26, 2023, Mr. Grieve emailed Bruce Slusar, who appears to have been the lawyer who generally acted for the First Nation. Mr. Grieve informed Mr. Slusar that he was doing "a land/building sale" for YQPMC, stated that he understood that the First Nation was a general partner in Yellow Quill Property Management LP, and requested a copy of the limited partnership agreement (*Chambers Decision* at para 18). Mr. Slusar replied to Mr. Grieve, asking for details regarding the transaction. In response, Mr. Grieve informed Mr. Slusar that his client was

YQPMC. Mr. Slusar then replied to Mr. Grieve raising concerns about the transaction and emphasizing that there were proper procedures that must be followed in disposing of capital assets. Further emails ensued, and on July 28, 2023, Mr. Slusar emailed Mr. Grieve stating the following:

[P]lease ensure that no process or procedure takes place in relation to the sale of any land/building involving this Yellow Quill First Nation entity, and that no such disposition shall take place pending further inquiry of this matter and receipt of particulars in order to avoid potential significant liability of those involved.

[10] In the meantime, Tyrone Peeace, one of the three directors of YQPMC, had signed a transfer authorization for the Property on July 27, 2023, along with swearing or affirming an affidavit of value. As part of signing the transfer authorization, Mr. Peeace swore or affirmed a transfer authorization (corporate entity, no seal, one signing officer) document, attesting that he was authorized to execute the transfer authorization without affixing a corporate seal. These documents were prepared by Mr. Grieve and signed in his presence. YQPMC asserts that these documents were false in that Mr. Peeace was not authorized to sign any of them. In the same manner as Mr. Perillat, the pleadings do not assert a claim against Mr. Peeace nor provide any further facts about his conduct.

[11] On July 28, 2023, Mr. Grieve sent a letter to Mr. Derbowka in the Law Society of Saskatchewan Uniform Trust Letter format with respect to the sale and transfer of the Property. The trust letter enclosed the transfer authorization with Mr. Peeace's affidavit verifying corporate signing authority attached, an affidavit of value sworn by Mr. Peeace, and a statement of adjustments. The trust conditions and undertakings were the ones necessary to conclude the transfer of the property to SDCC, with a possession date of July 31, 2023. Mr. Derbowka sent the required funds to Mr. Grieve.

[12] On July 31, 2023, Mr. Slusar again emailed Mr. Grieve advising him that the sale of the Property had not been approved by the proper authorities of the First Nation and its entities. On August 1, 2023, Mr. Slusar wrote to both Mr. Grieve and Mr. Derbowka stating the following:

As this purported sale has not been authorized or approved by the appropriate authorities, I am placing both your offices on notice that notwithstanding your trust conditions, this transaction is not to be completed until further notice, and no monies are to be disbursed or title registered given that this matter may well be void ab initio or subject to rescission.

You are both warned and will potentially be held liable should you take any further steps in relation to completing this transaction which has not been approved or authorized and would potentially result in a misappropriation of our client's property.

[13] On August 1, 2023, Mr. Grieve replied to Mr. Slusar by email, stating as follows:

I have asked Purchaser's lawyer to delay the possession date to August 15th, requested yesterday at end of day. Vendor's realtor asked the same thing of Purchaser's Realtor. The money arrived yesterday at end of day. I just got off the phone with Purchaser's lawyer and he is going to get instructions from his client concerning the delay and let me know, should know shortly, and will let you know.

If they do not agree to delay the possession date I have to payout the tax arrears and realtor commissions in order to comply with my trust letter. The balance of funds I have no problem holding until directed.

[14] There is no assertion in the pleadings that Mr. Derbowka or SDCC had any notice prior to the possession date of July 31, 2023, regarding any problems with the authority of the persons purportedly acting for YQPMC in listing the Property for sale, accepting the counter-offer, instructing Mr. Grieve, or executing the documents required to effect the transfer of the titles.

[15] On August 4, 2023, the transfer was submitted to the Land Titles Registry by Mr. Derbowka, or others at his firm, and the titles to the Property were registered in the name of SDCC. This occurred after the warning provided by email from Mr. Slusar on August 1, 2023.

[16] YQPMC brought an action in the Court of King's Bench arising out of these circumstances and other facts regarding the other defendants, which are not relevant to this appeal. After YQPMC amended its claim by consent, the defendants were SDCC, Mr. Derbowka, Cuelenaere LLP, Mr. Grieve, McDougall Gauley LLP, Carway Holdings Ltd., and Mr. Nutting. The amended statement of claim asserted that the transfer authorization was void ab initio and invalid at law. It sought an order revoking the transfer and vesting the title to the Property in YQPMC, plus damages. Negligence was asserted against Mr. Derbowka and Cuelenaere LLP. No cause of action was set out against SDCC.

[17] Mr. Derbowka and Cuelenaere LLP jointly applied to postpone the requirement to attend mediation and to strike the claim against them pursuant to Rules 7-9(1) and 7-9(2)(a) of *The King's Bench Rules* as disclosing no reasonable cause of action. The relevant portions of Rule 7-9 are as follows:

Striking out a pleading or other document, etc. in certain circumstances

7-9(1) If the circumstances warrant and one or more conditions pursuant to subrule (2) apply, the Court may order one or more of the following:

- (a) that all or any part of a pleading or other document be struck out
- (2) The conditions for an order pursuant to subrule (1) are that the pleading or other document:
 - (a) discloses no reasonable claim or defence, as the case may be
- (3) No evidence is admissible on an application pursuant to clause (2)(a).

[18] SDCC brought a similar application, with the added feature that it also asked for an order vacating the certificates of pending litigation registered against the titles to the Property.

[19] In response, YQPMC brought an application to further amend its statement of claim to, among other things, assert two additional causes of action against certain defendants, including SDCC, Mr. Derbowka, and Cuelenaere LLP. Those are the tort of injurious falsehood and a claim under s. 95(1) of the *LTA*:

Right of plaintiff to bring action against third party

- 95(1) Any person who sustains a loss or damage with respect to a matter governed by this Act may bring an action against a person responsible for the loss other than the Registrar.
- (2) A person who brings an action pursuant to subsection (1) must notify the Registrar of the action, in writing, at the time the action is commenced.
- (3) The Registrar may apply to the court to be joined as a party in any action commenced pursuant to subsection (1).

III. CHAMBERS DECISION

[20] In his reasons, the Chambers judge described the proceedings, the applications before him, the claim, the pleaded material facts, and the remedies sought. He then detailed the proposed amendments and set out the positions of the parties. This led to an examination of the importance and purpose of pleadings, with reference to *Hollinger v SaskTel Centre*, 2024 SKKB 178, aff'd 2025 SKCA 40, and Rules 13-8 to 13-12 of *The King's Bench Rules*. The Chambers judge then turned to the Rule 7-9 applications and comprehensively discussed the well-known principles regarding applications to strike a claim for disclosing no reasonable cause of action. He noted that he must also consider whether further amendments to the claim could remedy any defect. The Chambers judge observed that, in relation to the proposed amendments in front of him, an amendment should not be allowed if it could be struck under Rule 7-9(2). With these principles set out, the Chambers judge turned to evaluating each of the asserted causes of action.

[21] Dealing first with the negligence claim against Mr. Derbowka and Cuelenaere LLP, the Chambers judge noted that the central issue was whether they owed a duty of care to YQPMC. He analyzed this issue extensively, referencing A.M. Dodek & J.G. Hoskins, *Canadian Legal Practice: A Guide for the 21st Century*, (LexisNexis Canada, 2009) (updated to release 82, Oct 2021) at paras 11-31 - 11-45, and numerous cases on negligence, in general, and solicitor negligence specifically. As a bottom line, the Chambers judge concluded as follows regarding whether Mr. Derbowka and Cuelenaere LLP, as the buyer's lawyers, could owe a duty of care to YQPMC in the circumstances pleaded (*Chambers Decision*):

[47] ... In this regard, the law has long recognized the “general rule” that practicing lawyers owe no actionable duties of care to anyone other than their clients. Having said this, the law has also recognized limited exceptions to the general rule. Whether such an exception will apply to a given case will depend on the circumstances. These circumstances may include the nature of the relationship between a lawyer and the third party, as well as the foreseeability of harm that may arise from the lawyer's act or omission. ...

...

[71] ... Having regard to the jurisprudence I have reviewed in this fiat, I am satisfied that, in the context of an application to strike under Rule 7-9(2)(a), a departure from the general rule cannot be justified without finding that the pleaded material facts are sufficient to support a duty of care according to the *Anns/Cooper* analysis. ...

[72] Turning to the inquiries at the first stage of the analysis, I am prepared to accept that the foreseeability of harm inquiry could be answered in the affirmative. In this respect, I think it would be difficult to argue that, having regard to the material facts in the pleading, it was not foreseeable that YQPM would experience harm of some kind when the transfer documents were registered in the Land Registry. ...

[73] Despite the arguable foreseeability of some harm, I am not satisfied that the pleaded material facts, if proved at trial, would come anywhere close to supporting a positive answer to the proximity inquiry. The pleaded material facts do not reveal any kind of “close and direct” relationship between Mr. Derbowka and YQPM upon which a prima facie duty of care could be said to exist. In particular, the pleadings do not include any material facts to show that: (1) YQPM had any reasonably held expectations of Mr. Derbowka; (2) any representations were given by Mr. Derbowka; or (3) there were any circumstances upon which it could fairly be said that YQPM independently relied on Mr. Derbowka. On this last point, there is no suggestion that YQPM was especially vulnerable to the harm of which it now complains. ...

[74] All things considered, I find it plain and obvious that YQPM's pleadings, to the extent that they assert negligence against Mr. Derbowka, fail to disclose material facts upon which a prima facie duty of care can be said to exist. As this is an essential element of the claim asserted against Mr. Derbowka, it follows that I must find that the pleadings fail to disclose that cause of action.

[22] Pivoting to the claim under s. 95(1) of the *LTA*, the Chambers judge noted that this section is contained within Part XII of the *LTA*, which pertains to assurance and compensation. In finding that it had no application to the claim at hand, the Chambers judge reasoned as follows:

[80] Part XII of the *LTA* is principally devoted to dealing with circumstances in which persons can pursue compensation for errors and omissions made by the Registrar of Titles [Registrar]. After defining the type of compensation that can be claimed, Part XII sets out two different frameworks for such claims, namely: (1) an administrative framework under which claims are submitted to the Registrar pursuant to s. 89 and s. 90; and (2) a litigation framework through which actions in this Court can be brought against the Registrar as a defendant pursuant to s. 91 and s. 92.

[81] Within Part XII, s. 95 can be seen as somewhat of an outlier provision. Instead of focusing on compensation for errors and omissions by the Registrar, this provision recognizes the right to bring an action against a person, other than the Registrar, who is said to be responsible for “loss or damage with respect to a matter governed by this Act”. The phrase “a matter governed by this Act” is not expressly defined in the *LTA*. Even so, I think it is generally understood that the *LTA* governs the operations of the Land Titles Registry, which operations are based on the Torrens system of land registration. The objects of such a system have been described as follows in Victor Di Castri, *Registration of Title to Land*, loose-leaf (2012-Rel 10), vol 1 (Toronto: Thomson Reuters, 1987) at para 13:

[13] The objects of the system are: the creation by the state of an indefeasible title in the registered owner; simplification in the transfer of land; certainty and facility in the proof of title by reference to a certificate issued by a government official and made conclusive by law; and finally, the saving to the community of the cost of a new examination of title in connection with each transfer or transaction affecting the land.

[82] There are no reported authorities that have specifically considered s. 95 of the *LTA*.
...

[84] In my view, s. 95 of the *LTA* must be read in the context of the entire statute, with special attention to the objects of the *LTA* and other provisions in Part XII. Read in this way, I am persuaded that court actions against a party, other than the Registrar, can only be pursued under s. 95 if the third party is alleged to be responsible for an error or omission that occurs within the registration process. More specifically, I am satisfied that s. 95 does not create a cause of action pertaining to the actual authority of an individual to sign a registerable instrument that, when registered in accordance with *LTA* and *The Land Titles Regulations, 2001*, RRS c L-5.1 Reg 1, results in the issuance of an indefeasible interest in land.

[85] In sum, I find it is plain and obvious that the pleaded material facts in YQPM’s further amended claim are not capable of asserting a cause of action under s. 95 of the *LTA*. It necessarily follows that this aspect of the further amended claim cannot be allowed.

[86] As a final observation to YQPM’s assertion of a cause of action under s. 95 of the *LTA*, it is noteworthy that the only remedy for success in such an action is for sustained “loss or damage”. I interpret this to mean an award for damages. It would not include a declaration that the transfer of the Property is void ab initio. This should be borne in mind in the event I am wrong in my interpretation of s. 95.

[23] Turning to the tort of injurious falsehood, the Chambers judge noted the following about the general nature of the tort:

[87] In Carolyn Sappideen & Prue Vines, *Fleming's The Law of Torts*, 10th ed, (Pymont, N.S.W.: Lawbook Co., 2011) at chapter 30, the editors identify the tort of injurious falsehood as one of the several tortious causes of action directed against wrongful interference with economic relations. In keeping with this theme, this tort has earned various labels, including “slander of goods or title”, “trade libel”, and “disparagement”.

[88] The references to words like “slander” and “libel” underscore what the editors of *Fleming's* describe as the tort's “marked resemblance” to the tort of defamation. This resemblance becomes especially clear when one considers the essential elements of injurious falsehood. In their text, Lewis N. Klar & Cameron S.G. Jefferies, *Tort Law*, 6th ed (Toronto: Thomson Reuters, 2017) at 965, the authors describe four essential elements: “(1) there must have been a statement made of and concerning the goods of the plaintiff, (2) the statement must have been false, (3) the statement must have been published maliciously, that is to say, dishonestly or with improper motive, and (4) the plaintiff must have suffered special damage”. ...

[89] A somewhat more abbreviated description of the tort's essential elements appears in the Ontario Court of Appeal judgment in *Lysko v Braley* (2006), 79 OR (3d) 721 (CA). There, at para. 133, Rosenberg J.A. cited and adopted the summary from Raymond E. Brown, *The Law of Defamation in Canada*, 2d ed, loose-leaf (Toronto, Carswell, 1994) (updated 1999). In this regard, he wrote the following:

[133] Brown summarizes the elements of the action for injurious falsehood at s. 28.1(1) as follows:

Actions for injurious falsehood involve the publication of false statements, either orally or in writing, reflecting adversely on the plaintiff's business or property, or title to property, and so calculated as to induce persons not to deal with the plaintiff. There must be a showing that the published statements are untrue, that they were made maliciously, that is without just cause or excuse, and that the plaintiff suffered special damages.

[24] Applying this test, the Chambers judge determined that the three defendants had not published a false statement about the Property because “the further amended claim does not plead specific material facts to show that either the transfer or the transfer authorization lacked essential validity” and, “even if the transfer authorization is shown to have been improper, I am not satisfied that any resulting lack of validity necessarily translates into a false statement that disparages or reflects adversely on YQPM's business or property” or that “the transfer authorization contained any commentary or observations that could objectively be expected to induce others not to deal with YQPM” (at paras 91, 92). He also found that the essential pleading of malice was absent.

[25] Lastly, the Chambers judge noted that the only available remedy for injurious falsehood would be damages and not a declaration that the transfer of the Property was void ab initio.

[26] Having found that none of the three asserted causes of action were reasonable causes of action in the context of the proposed further amended statement of claim, the Chambers judge concluded as follows:

[95] In the result, I am satisfied that the amended claim must be struck as against [SDCC] for failure to disclose any reasonable cause of action against it. With [SDCC] out of the action, I am also satisfied that there can be no basis for YQPM to assert that the transfer of the Property is void ab initio, or even voidable. Accordingly, I direct that all allegations in the amended claim, suggesting a claim against [SDCC] or alleging that the transfer of the Property is void, shall be struck ...

[96] I am also satisfied that the allegations in the amended claim must be struck as against Mr. Derbowka and Cuelenaere LLP for failure to disclose a cause of action in negligence against them. More particularly, I direct that all allegations in the amended claim suggesting or alleging negligence against the said defendants shall be struck pursuant to Rule 7-9 of *The King's Bench Rules*. ...

[97] ... To the extent [the proposed amendments] assert allegations against [SDCC], Mr. Derbowka and Cuelenaere LLP, they are not allowed.

[27] The claim was struck as against those three parties, with costs. The claim continued against the remaining four defendants.

IV. ISSUES

[28] The following issues arise in this matter:

- (a) Did the Chambers judge err in his approach to Rule 7-9(2)(a) of *The King's Bench Rules*?
- (b) Was there a reasonable cause of action pleaded against Mr. Derbowka and Cuelenaere LLP for negligence?
- (c) Was there a reasonable cause of action pleaded against SDCC, Mr. Derbowka, or Cuelenaere LLP for the tort of injurious falsehood?
- (d) Was there a reasonable cause of action pleaded against SDCC, Mr. Derbowka, or Cuelenaere LLP on the basis of s. 95(1) of the *LTA*?

- (e) If none of the three above-noted causes of action were reasonable causes of action, was the pleading that the transfer was void ab initio combined with the requested remedy of a vesting order sufficient to maintain the claim against any of the three respondents?
- (f) Should YQPMC have been given leave to propose additional amendments?

V. ANALYSIS

A. Standard of review

[29] The standard of review for striking a claim under Rule 7-9(2)(a) is correctness: *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 21 [*Harpold*]. The standard of review regarding amendments to pleadings is set out in *Aecon Mining Construction Services v K+S Potash Canada GP*, 2024 SKCA 48, as follows:

[16] Striking a pleading for failing to present a reasonable cause of action raises a question of law reviewable on the standard of correctness: *Harpold* at para 21. Refusing an amendment on this same basis would attract the same standard: *Kashuba v Wilton (Rural Municipality)*, 2022 SKCA 37 at paras 27–28, 87 CPC (8th) 264 [*Kashuba*]. ... Absent errors of this type, the decision to allow or disallow amendments is a discretionary determination that attracts deference: *Cupola* [2021 SKCA 86], *Kashuba* at para 54, and *Kot v Kot*, 2021 SKCA 4 at para 20, 63 ETR (4th) 161.

B. The test under Rule 7-9(2)(a) of *The King's Bench Rules*

[30] The test for striking a claim under Rule 7-9(2)(a) of *The King's Bench Rules* has been oft-canvassed and applied by this Court. Those principles are well-settled and were aptly summarized by Schwann J.A. in *Harpold*:

[25] A useful summary of the governing principles with respect to an application to strike a pleading for failing to disclose a reasonable cause of action is found in *Swift Current (City) v Saskatchewan Power Corporation*, 2007 SKCA 27, [2007] 5 WWR 387 [*Swift Current*]:

[18] These general principles were summarized by Gunn J. in the case of *Collins v. McMahon*, 2002 SKQB 201, [2002] S.J. No. 318 (QL):

[11] The principles which apply to an application to strike a plaintiff's claim under Rule 173(a) [now Rule 7-9(2)(a)] are the following:

- (i) The claim should be struck where, assuming the plaintiff proves everything alleged in the claim there is no reasonable chance of success. (*Sagon v. Royal Bank of Canada et al.* (1992, 105 Sask. R. 133 at 140 (C.A.));
- (ii) The jurisdiction to strike a claim should only be exercised in plain and obvious cases where the matter is beyond doubt. (*Sagon*, at 140; *Milgaard v. Kujawa et al.* (1994), 123 Sask. R. 164 (Sask. C.A.));
- (iii) The court may consider only the claim, particulars furnished pursuant to a demand and any document referred to in the claim upon which the plaintiff must rely to establish its case (*Sagon*, at p. 140);
- (iv) The court can strike all, or a portion of the claim (Rule 173 [Rule 7-9(1)(a)]);
- (v) The plaintiff must state sufficient facts to establish the requisite legal elements for a cause of action. (*Sandy Ridge Sawing Ltd. v. Norrish and Carson* (1996), 140 Sask. R. 146 (Q.B.)).

As noted, see *Sagon v Royal Bank of Canada* (1992), 105 Sask R 133 (CA) at para 16 [*Sagon*]

[26] When called upon to review a claim in response to an application under Rule 7-9(2)(a), the reviewing judge is required to determine whether sufficient facts have been pleaded to establish the legal elements of a cause of action by considering the whole of the statement of claim. It is for the reviewing judge “to determine whether the combined effect of any technical pleading, together with other facts, properly plead the essential elements of the cause of action” (*Reisinger v J.C. Architect Ltd.*, 2017 SKCA 11 at para 20, 411 DLR (4th) 687 [*Reisinger*]).

[31] YQPMC submits that the Chambers judge undertook a more robust analysis of the claim than permitted by examining the pleadings “with a microscope”, by applying a more stringent test than is allowed, and by speculating as to whether YQPMC’s claim might succeed or fail. It points to the following from the *Chambers Decision* as supporting these assertions:

- (a) “Curiously, and for reasons not disclosed to the Court, the individuals who are said to have improperly authorized the sale and transfer are not named as defendants” (at para 2).
- (b) “I think it should also be noted that none of YQPM’s pleadings set out any material facts about efforts made within YQPM’s governance structure to stop or prevent the sale and transfer from proceeding” (at para 24).

- (c) “The pleaded causes of action in the amended claim and the further amended claim have become somewhat of a moving target” (at para 26).
- (d) “In his oral submissions, YQPM’s counsel simply urged the Court to make new law by extending the duty of care owed by Mr. Derbowka, as [SDCC’s] solicitor, to his client” (at para 71).

[32] In my view, the Chambers judge canvassed the law in relation to Rule 7-9(2)(a) in a complete and accurate manner and then applied it. There is no indication in the *Chambers Decision* that the impugned comments had any substantial effect on the Chambers judge’s analysis. They were simply observations about the pleadings and arguments, all of which were supported by the record.

C. No duty of care owed by Mr. Derbowka or Cuelenaere LLP to YQPMC

[33] A reasonable cause of action in negligence must plead facts that support the existence of a duty of care between the plaintiff and the defendant. In determining whether a duty of care could be found to exist, a court will examine whether there was a reasonable foreseeability of harm and whether there was sufficient proximity between the plaintiff and the defendant: *M’Alister (or Donoghue) (Pauper) v Stevenson*, [1932] AC 562 (HL (Sc)); *Anns v Merton London Borough Council*, [1978] AC 728 (HL); *Cooper v Hobart*, 2001 SCC 79; and *Nelson (City) v Marchi*, 2021 SCC 41. After determining that there was arguably foreseeability of harm, the Chambers judge examined proximity at length and concluded as follows (*Chambers Decision*):

[73] Despite the arguable foreseeability of some harm, I am not satisfied that the pleaded material facts, if proved at trial, would come anywhere close to supporting a positive answer to the proximity inquiry. The pleaded material facts do not reveal any kind of “close and direct” relationship between Mr. Derbowka and YQPM upon which a prima facie duty of care could be said to exist. In particular, the pleadings do not include any material facts to show that: (1) YQPM had any reasonably held expectations of Mr. Derbowka; (2) any representations were given by Mr. Derbowka; or (3) there were any circumstances upon which it could fairly be said that YQPM independently relied on Mr. Derbowka. On this last point, there is no suggestion that YQPM was especially vulnerable to the harm of which it now complains. This differs sharply from the situations in *Dhillon* [2012 BCCA 156] and *Robinson* [2010 ONSC 463], where the trial evidence and the pleadings respectively showed a certain level of vulnerability and/or reliance on the lawyers involved.

[34] YQPMC agrees that the general rule is that a lawyer does not owe a duty of care to persons other than their client. I note that this is particularly so when the parties are adverse in interest in litigation, but this principle also applies with vigour to solicitors involved in commercial matters: *Babatunde v Bank of Canada*, 2017 SKQB 62 at paras 90-91; *Mitchell v Candle Lake (Resort Village)*, 2022 SKKB 283 at paras 27-33; *J.L. v Shewchuk*, 2023 SKKB 253 at paras 16-20; *2116656 Ontario Inc. v Grant*, 2019 ONSC 114 at paras 32-37; and *Ahmad v Mehta*, 2024 ONSC 3778 at paras 4-5.

[35] Despite the general rule, YQPMC asserts that Mr. Derbowka and his law firm owed it a duty of care because a lawyer can be liable in negligence to third parties in certain circumstances. It relies on *Jensen v MacGregor*, 1992 CanLII 8550, 89 DLR (4th) 68 (CanLII) (BCSC) [*Jensen*], *Feschuk v Hudema*, 1994 CanLII 4846, [1995] 2 WWR 103 (WestLaw) (SKQB) [*Feschuk*], *Geo. Cluthe Manufacturing Co. Limited v ZTW Properties Inc.*, 1995 CanLII 10684, 23 OR (3d) 370, leave to appeal to ONCA refused 1995 CarswellOnt 4624 (ONSCDC), *Hatch v Cooper*, 2001 SKQB 491 [*Hatch*], and *Deloitte & Touche v Livent Inc. (Receiver of)*, 2017 SCC 63, for this proposition. YQPMC argues that there were only two parties in this real estate transaction and a warning was issued to Mr. Derbowka that the sale and transfer was not valid or properly authorized. It contends that this communication in a two-party transaction created a relationship of proximity.

[36] Mr. Derbowka and Cuelenaere LLP counter this submission by arguing that it is incompatible with a solicitor's duty to their own client to owe a concurrent duty to the party opposite. They say that Mr. Derbowka and YQPMC had the opposite of a close and direct relationship.

[37] In my view, this issue can be dealt with in a summary manner because the outcome is obvious. There is no proximity and, consequently, no duty of care.

[38] Many commercial negotiations and transactions involve only two parties and their counsel. The divided loyalties that YQPMC seeks to introduce into this routine and frequent situation would make it extremely difficult for a solicitor to fulfill their duties to their own client in such circumstances. The duty to one's own client is generally irreconcilable with a duty being owed to a non-client party to a transaction. The following excerpt from *Diamond Contracting Ltd. v McDearmid*, 2006 CanLII 24444, 214 OAC 92 (CanLII) (ONCA), illustrates this point:

[3] The letters at issue in this case were an exchange of correspondence between counsel whose respective clients were adverse in interest. The general rule is that a lawyer owes no duty of care to the clients of opposing counsel in litigation or commercial matters. A lawyer acting in his or her professional capacity owes a duty of care to his or her client, not to clients represented by opposing counsel. As was noted by Lane J. in *Baypark Investments Inc. et al v. Royal Bank of Canada* (2002), 57 O.R. (3d) 528 (S.C.J.) at para. 33,

To hold otherwise would place solicitors in an untenable conflict between their duty to their client and their need to protect themselves against their client's adversary.

[39] Here, it is not a situation where a lawyer provided advice to a party who was not their own client, agreed to do something on behalf of a non-client, or accepted responsibilities toward other persons: see *Jensen* at paras 19-26, *Feschuk* at paras 24-41, and *Hatch* at paras 26-34. The matter at hand does not fall into those narrowest of situations where a lawyer could owe a duty of care to a person other than their own client. In the case at hand, each party was represented by their own counsel and the lines never blurred. Mr. Derbowka had no contact or communication with YQPMC or any of its directors, officers, or employees, except to the extent that he communicated with Mr. Grieve. Mr. Derbowka did not agree to do anything on YQPMC's behalf and, at all times, was acting only for his own client. Mr. Derbowka's client and YQPMC were on the opposite sides of a commercial transaction and were adverse in interest. There are no facts pleaded in the proposed further amended statement of claim that support there being any reliance placed on Mr. Derbowka or that YQPMC had any expectations of him. YQPMC was not vulnerable. It had its own counsel who owed it a duty to act in its interests and upon whom it was entitled to rely. The pleaded facts do not reveal a situation where YQPMC was relying on Mr. Derbowka to protect its interests in any manner.

[40] While there are situations where a duty of care to a non-client might arise, it is plain and obvious that there was no close and direct relationship between Mr. Derbowka and YQPMC on the facts of this matter. There is no basis upon which a court could conclude that there was sufficient proximity between Mr. Derbowka (and consequently Cuelenaere LLP) and YQPMC. Absent pleadings that could ground a finding of a duty of care, a reasonable cause of action in negligence was not pleaded against Mr. Derbowka or Cuelenaere LLP. The Chambers judge did not err in this regard.

D. Injurious falsehood

[41] In its proposed further amended statement of claim, YQPMC sought to plead the tort of injurious falsehood as against SDCC, Mr. Grieve, Mr. Derbowka, and the two law firms. The relevant portions of the proposed amendments were as follows (all emphasis omitted):

37.2. Further, or in the alternative, the Plaintiff states that that the Defendants Grieve, McDougall Gauley, SDCC, Derbowka, and Cuelenaere are jointly and severally liable to the Plaintiffs for the tort of injurious falsehood for sending, submitting, registering, or instructing others to submit or register the Transfer Authorization to or with the Land Titles Registry as part of an application for transfer of the Property. More particularly:

(a) Grieve and McDougall Gauley sent the Transfer Authorization to Derbowka and Cuelenaere and failed to recall, retract, rescind, or demand return of it, or take steps to prevent the Transfer Authorization from being relied upon to transfer the Property in the Land Titles Registry;

(b) SDCC directed or instructed Derbowka and Cuelenaere to submit the Transfer Authorization to or register the Transfer Authorization with the Land Titles Registry, and/or failed or declined to instruct Derbowka and Cuelenaere to cancel, revoke, rescind, or otherwise stop the application for transfer of the Property even after learning that the Transfer Authorization was invalid; and

(c) Derbowka and Cuelenaere submitted the Transfer Authorization to or registered the Transfer Authorization with the Land Titles Registry

(hereinafter collectively referred to as the “Injurious Statements”), and these actions by Grieve, McDougall Gauley, SDCC, Derbowka, and Cuelenaere constitute statements within the meaning of the tort of injurious falsehood.

37.3. The Injurious Statements were made with the knowledge or constructive knowledge that:

(a) The Transfer Authorization was invalid, and the Injurious Statements were therefore false; and

(b) The Injurious Statements would harm YQPM, and the Defendants making the Injurious Statements intended to cause that harm without lawful justification, and/or for a dishonest or improper motive, that being:

(i) In the case of Grieve and McDougall Gauley, to cover up or fail to correct a mistake;

(ii) In the case of SDCC, to advantage itself and illegitimately obtain title to the Property when it knew or ought to have known the owner of the Property had not authorized the transfer of the Property; and

(iii) In the case of Derbowka and Cuelenaere, to wrongfully gain advantage for a client, and/or to cover up or fail to correct a mistake.

37.4. YQPM, as the owner of the Property, was identified as the subject of the Injurious Statements, and has suffered and will continue to suffer loss and damage as a result of the Injurious Statements.

[42] The elements of the tort of injurious falsehood, as considered in *Lysko v Braley*, 2006 CanLII 11846, 79 OR (3d) 721 (CanLII) (ONCA) [*Lysko*], and further discussed in R.E. Brown, E. Chamberlain & K. Eltis, *The Law of Defamation (Canada, United Kingdom, Australia, New Zealand, United States)*, 2nd ed, (Thomson Reuters Canada, 2021) (updated to release 2026-02), are as follows:

- (a) “the publication of false statements, either orally or in writing, reflecting adversely on the plaintiff’s business or property, or title to property, and so calculated as to induce persons not to deal with the plaintiff”;
- (b) “the published statements are untrue”;
- (c) the published statements “were made maliciously, that is without just cause or excuse”; and
- (d) “the plaintiff suffered special damages” (Brown at s 28:2 and *Lysko* at para 133).

[43] YQPMC argues that, in Saskatchewan, the first element of the tort does not include a requirement that the publication must have been calculated as to induce persons not to deal with the plaintiff. It relies on *Activators Methods Inc. v Chiropractors Association of Saskatchewan*, 1992 CanLII 7906 at paras 26, 27, 107 Sask R 90 (SKQB) [*Activators*], where the elements of the tort were stated in a more abbreviated manner, without including this addition to the first requirement. It further relies on *Solo v Institute of Electrical and Electronic Engineers Incorporated*, 2022 SKQB 185 [*Solo*], where the elements of the tort were set out as follows:

[9] ... To support a claim for injurious falsehood, a plaintiff must plead and later prove four essential elements. They are: (1) that the defendant published words disparaging the plaintiff’s property or business; (2) that the published words were false; (3) that the words were published with actual malice; and (4) that the plaintiff sustained special damage as a result of the publication. See *Almas v Spenceley*, (1972), 25 DLR (3d) 653 (Ont CA).

[44] Urging that the elements be defined as they were in *Solo*, YQPMC argues that the Chambers judge erred by determining that sufficient facts were not pleaded for each element of the tort. YQPMC asserts that the registration of the transfer with an affidavit of value of \$850,000 was disparaging to the Property, when it had been listed for \$1,350,000. It contends that because the transfer authorization was invalid, it represented a false statement about the Property as well as its value. Malice, in YQPMC’s view, is found in the registration of the transfer, knowing that it

was invalid and not properly authorized, knowing that harm would come to YQPMC if it were registered, and, in the case of SDCC, benefitting by obtaining title to the Property knowing that the owner of the Property had not authorized its transfer and that it was obtaining the Property for a very low price. It takes issue with the Chambers judge's failure to engage with the fact that the Property was sold for half a million dollars less than the asking price and for substantially less than market value. YQPMC further notes that it has sought damages in the alternative to a vesting order, which satisfies the last requirement of the tort.

[45] SDCC submits that the tort of injurious falsehood has no rational connection to the facts pleaded in this matter. It agrees that the elements of the tort are set out in *Solo* but says that the Chambers judge did not err by referring to other cases, such as *Lysko*, which illustrate the application of the test. Mr. Derbowka and Cuelenaere LLP also agree that the elements of the tort of injurious falsehood are properly set out in *Solo*. They argue that there is no jurisprudence that has applied the tort to a situation similar to this matter and that it has no possible application here.

[46] Courts are admonished to not decide more than is necessary in any given case. As such, I will not determine whether *the publication must have been calculated as to induce persons not to deal with the plaintiff* is a required part of the tort in Saskatchewan or whether this aspect is simply an aid in interpreting and applying the elements. I do so because YQPMC has not met the elements of this tort under the articulation of the arguably less onerous test set out in *Solo*.

[47] The Chambers judge gave multiple reasons why the tort of injurious falsehood was not properly pleaded in this matter, consisting of the following (*Chambers Decision*):

- (a) YQPMC had failed to “show that either the transfer or the transfer authorization lacked essential validity”, with the result that the respondents had not published a false statement about the Property (at para 91);
- (b) even if the transfer authorization was improper, it did not translate “into a false statement that disparages or reflects adversely on YQPM’s business or property” (at para 92);
- (c) “the transfer authorization [did not] contain any commentary or observations that could objectively be expected to induce others not to deal with YQPM” (at para 92);

- (d) there were no pleadings that could be construed as “the kind of malice contemplated by a claim for injurious falsehood” (at para 93); and
- (e) the “only available remedy” for injurious falsehood “would be a judgment for damages” and “not a declaration that the transfer of the Property” was void ab initio (at para 94).

[48] In my view, the first, second, and fourth of these reasons hold and, under the *Solo* test, are sufficient to find that it was plain and obvious that the tort of injurious falsehood was not engaged by the facts of this claim. The Chambers judge did not err in concluding that the facts as pleaded did not satisfy the required elements of the tort of injurious falsehood. It is not surprising that the elements could not be met because the tort of injurious falsehood is not meant to apply to situations such as the one at hand.

[49] The purpose of the tort is to address damages caused in situations where a person intentionally makes false and disparaging statements in a deliberate and malicious attempt to harm another person’s economic interests: see, for example, *Frank Flaman Wholesale Ltd. v Firman*, 1982 CanLII 2487, 17 Sask R 305 (SKQB), and *Activators*. YQPMC was not able to refer to any jurisprudence where conduct that was even broadly analogous to the nature of the actions pleaded here fell within the ambit of the tort.

[50] The transfer authorization and the associated documents, while pleaded as not properly authorized, do not have the character of an injuriously false statement, and they do not reflect negatively upon YQPMC’s goods, property, or business. There are no statements or commentary in these documents that could inflict the required harm. In any event, even if the transfer authorization document were to be characterized as a statement, it was made by one of YQPMC’s directors in circumstances where it was obvious that it would be transmitted further for registration in the land titles system because this registration was required by the trust conditions imposed by YQPMC’s solicitor.

[51] Additionally, while proposed paragraphs 37.3(b)(ii) and (iii) of the further amended statement of claim and YQPMC’s submissions about the conduct of the respondents and the value of the Property attempt to paint the respondents with dishonest and improper motives, these

allegations do not rise to the level of malice when the pleadings are read as a whole. The facts pleaded could not lead to the conclusion that any of the respondents acted with malice. Mr. Derbowka simply submitted the facially valid and ostensibly properly authorized transfer for registration in the land titles system – as required by his client’s instructions and in accordance with trust conditions – after the transaction had been completed and the possession date had passed without any notice of any problems. From SDCC’s perspective, the final formal step in the process of an ordinary, concluded real estate transaction occurred through the registration. The conclusory statements in the pleadings that Mr. Derbowka was trying to cover up a mistake or that SDCC was trying to take advantage of a mistake for its own gain do not flow from the rest of the facts alleged in the proposed further amended statement of claim. It was plain and obvious that the malice element was not met.

[52] The tort of injurious falsehood applies to untrue statements made, with malice, in an attempt to disparage a person’s or a company’s goods, business, or property. It pertains to situations where one party is maliciously trying to inflict economic harm through the spreading of false information. This is not the situation here. YQPMC is attempting to shoehorn this matter into a tort that has no relation to the facts of its case. Injurious falsehood does not apply to claims such as the one made by YQPMC. This ground of appeal cannot be given effect.

E. Section 95 of the *LTA*

[53] YQPMC submits that s. 95 of the *LTA* creates a stand-alone statutory cause of action that covers the situation at hand. To refresh, that section is as follows: “Any person who sustains a loss or damage with respect to a matter governed by this Act may bring an action against a person responsible for the loss other than the Registrar” (at s 95(1)).

[54] Section 95, in YQPMC’s view, creates a cause of action upon which a claim against the respondents can be based. It says it has sustained a loss or damage through the unauthorized sale and registration of the titles to the Property. YQPMC contends that the matter at hand is one governed by the *LTA* because it involves the registration of a transfer of titles that was not properly authorized. Lastly, it asserts that the respondents are persons responsible for that loss. It says that SDCC is not some remote or vague party; it is the new registered owner of the Property.

Specifically, the relevant pleadings in the proposed further amended statement of claim were as follows (all emphasis omitted):

37.1. Further, or in the alternative, the Plaintiff states that each Defendant is responsible, in whole or in part, for the Loss suffered by the Plaintiff pursuant to s. 95(1) of *The Land Titles Act, 2000*. Without limiting the generality of the foregoing, the particulars of the Defendants' responsibility for the Loss includes:

...

(c) With respect to the Defendants Derbowka and Cuelenaere:

(i) Submitting the Transfer Authorization to the Land Titles Registry as part of an application for transfer of the Property when they knew or ought to have known the Transfer Authorization was invalid; or

(ii) In the alternative, failing to cancel, revoke, rescind, or otherwise stop the application for transfer of the Property after learning that the Transfer Authorization was invalid; and

(d) With respect to the Defendant SDCC:

(i) Instructing Derbowka and Cuelenaere to submit the Transfer Authorization to the Land Titles Registry knowing that it was invalid; or

(ii) In the alternative, failing to instruct Derbowka and Cuelenaere to cancel, revoke, rescind, or otherwise stop the application for transfer of the Property even after learning that the Transfer Authorization was invalid.

[55] SDCC argues that s. 95 of the *LTA* has no application to the facts of this case. It contends that Part XII of the *LTA*, where s. 95 is located, deals with losses suffered as a result of the operation of the land titles system itself. SDCC further submits that there is no possibility that the transfer authorization could be found to be invalid, and it was legally binding on YQPMC. Mr. Derbowka and Cuelenaere LLP contend that the section is meant to address problems with the registry and persons who committed errors in the registration process as opposed to creating a private cause of action for an underlying dispute that happens to have a minor connection to the Land Titles Registry. They say that its purpose is to address system-related issues with the land registry. Additionally, the respondents submit that the indoor management rule precludes any cause of action from being reasonable in this matter.

[56] YQPMC makes several additional arguments about the added complexity in a transaction which involves land owned by a First Nation and critiques the *Chambers Decision* for not delving into these issues. However, the threshold issue is whether s. 95 of the *LTA* provides a stand-alone cause of action that applies to the facts alleged. An examination of that legal question does not

require a discussion of those aspects of this commercial transaction, so they will also not be addressed in this judgment.

[57] Section 95 came into force on June 25, 2001, when the *LTA* itself was proclaimed, and has not been amended since. Even so, there is a dearth of jurisprudence interpreting the section. In its 25-year history, it has never been referenced in a reported case in Saskatchewan. Likewise, there does not appear to be any jurisprudence citing earlier enactments: see s. 198 of *The Land Titles Act*, RSS 1978, c L-5, repealed by the *LTA* [1978 *Land Titles Act*]; s. 198 of *The Land Titles Act*, RSS 1965, c 115, repealed by the 1978 *Land Titles Act* [1965 *Land Titles Act*]; s. 185 of *The Land Titles Act*, RSS 1953, c 108, repealed by the 1965 *Land Titles Act* [1953 *Land Titles Act*]; or s. 176 of *The Land Titles Act*, RSS 1940, c 98, repealed by the 1953 *Land Titles Act*, which contain the closest equivalents in the last several iteration of the predecessor legislation to s. 95(1) of the *LTA*.

[58] In Alberta, a comparable but distinct provision – s. 171(2)(a) of the *Land Titles Act*, RSA 2000, c L-4 – was considered in *Alberta (Registrar, South Alberta Land Registration District) v Clark & Associates Surveys*, 2004 ABCA 258. The section in question reads as follows:

Registrar as defendant

171(1) In an action for the recovery of loss or damage arising only through an omission, mistake or misfeasance of the Registrar or the Registrar's officials, the Registrar shall be sole defendant.

(2) If the action is brought for loss or damage

(a) arising only from the fraud or wrongful act of some person other than the Registrar and the Registrar's officials, or

(b) arising jointly through the fraud or wrongful act of such other person, and the omission, mistake or misfeasance of the Registrar or other official,

then the action shall be brought against both the Registrar and the other person.

[59] However, although the Alberta Court of Appeal turned its attention to interpreting aspects of the section, it was dealing with a narrow question related to costs. The substance of the case did not address the issue that presents itself to this Court. Given that this is the closest precedent from another province, there are no influential or informative authorities interpreting a legislative enactment equivalent to s. 95(1) of the *LTA*.

[60] Without any binding case authority on the point in question, the exercise must engage the principles of statutory interpretation as set out in s. 2-10 of *The Legislation Act*, SS 2019, c L-10.2, and described in *Regina Bypass Design Builders v Supreme Steel LLP*, 2021 SKCA 82 at paras 23-28. I will apply these principles, but they are so frequently cited that there is no utility in repeating them here.

[61] Turning first to the grammatical and ordinary sense of the words in s. 95(1) of the *LTA*, this matter turns on an interpretation of whether the loss or damage was sustained *with respect to a matter governed by the Act*. The *LTA* does not contain any other provisions that specifically address the meaning of this phrase. On a plain reading, the wording seems very broad. Read in its ordinary sense, the phrase potentially captures a variety of matters; but, in my view, the loss or damage alleged here was not related to a matter governed by the *LTA*. This is seen in an examination of the words when read in their context and harmoniously with the object and scheme of the *LTA*. The purpose, or object, of the *LTA* was described in *Dunnison Estate v Dunnison*, 2017 SKCA 40, as follows:

[75] In summary, the purpose of our land titles legislation is to provide certainty of title and to protect persons who acquire an interest in land bona fide, for value and in reliance on the register from unregistered or hidden claims. In our view, however, that is not its only purpose. The legislation also establishes a predictable method of registering interests in land within an established framework. A series of legislative and regulatory provisions create a system upon which persons rely daily to search the registry and make personal and business decisions.

[62] The land titles system is built upon the principle of indefeasibility of title. In rare circumstances, the operation of the *LTA* can deprive rightful owners of their property rights resulting from the application of the indefeasibility principle. *Hermanson v Schmidt Estate*, 1986 CanLII 3241, 33 DLR (4th) 12 (SKCA) [*Hermanson*], a case decided under the 1978 *Land Titles Act*, is illustrative of such a result. In that case, Mr. Schmidt and Ms. Hermanson divorced but did not resolve their property issues. This included the disposition of the family home, which was registered under their names as joint tenants. Unbeknownst to Ms. Hermanson, Mr. Schmidt sold the house and, at his behest, an imposter signed the transfer on Ms. Hermanson's behalf. A transfer of the title for the house was submitted to the Land Titles Registry and title registered in the name of the innocent purchaser. Two mortgages were registered against the title at the same time: a first mortgage with a financial institution as mortgagee and the second with Mr. Schmidt as mortgagee.

A few years later, Mr. Schmidt died and Ms. Hermanson made inquiries about the home, leading to her discovery of the fraud. Ms. Hermanson sued and sought, among other forms of relief, a declaration that the transfer of the land was void and that it be vested in her sole name. In a judgment granted on an agreed statement of facts, the purchaser was found to have had nothing to do with the fraud, and the judge made a declaration that the purchaser had good title to the land and that the financial institution's mortgage was valid. Ms. Hermanson's recourse was against Mr. Schmidt's estate and, in default, against the Registrar. These determinations were upheld on appeal, illustrating the strength of the indefeasibility principle as a dominant feature of the *LTA*.

[63] Saskatchewan has long recognized assurance fund claims and private remedies against persons responsible for a claimant's loss. Saskatchewan's early land titles legislation contained provisions expressly authorizing actions for damages against persons who benefitted from fraudulent or erroneous registrations. For example, s. 148 of *The Land Titles Act*, SS 1906, c 24, permitted a person deprived of land through fraud, error, omission, or misdescription to pursue damages against the person responsible for the impugned registration. However, that does not mean that s. 95 of the in-force *LTA* creates its own cause of action in circumstances such as those at hand.

[64] Turning to the context of s. 95(1), as mentioned, it is contained in Part XII, "Assurance and Compensation", of the *LTA*, which generally addresses assurance and compensation where a party suffers a loss as a result of the operation of the Land Titles Registry. The other sections contained in Part XII, being ss. 84–96.1, are focussed on compensation for errors that have occurred within the Land Titles Registry itself. Those provisions, inter alia, determine eligible categories of loss, provide instructions for procedural requirements to make a claim to the Registrar, and outline the options available to a claimant in the event a claim is denied by the Registrar.

[65] It would be unusual for the Legislature to choose to create a new stand-alone private cause of action – that can be brought not on the assertion that there is an error in the Land Titles Registry itself but that there is a problem in the underlying commercial transaction that resulted in the registration of an otherwise valid transfer – and then tuck it away within Part XII. Rather, its placement within Part XII suggests s. 95 was intended to operate alongside the compensation provisions of the *LTA*.

[66] This is the conclusion reached by the Chambers judge, as seen in the following excerpts (repeated here for reference, *Chambers Decision*):

[80] Part XII of the *LTA* is principally devoted to dealing with circumstances in which persons can pursue compensation for errors and omissions made by the Registrar of Titles [Registrar]. After defining the type of compensation that can be claimed, Part XII sets out two different frameworks for such claims, namely: (1) an administrative framework under which claims are submitted to the Registrar pursuant to s. 89 and s. 90; and (2) a litigation framework through which actions in this Court can be brought against the Registrar as a defendant pursuant to s. 91 and s. 92.

[81] Within Part XII, s. 95 can be seen as somewhat of an outlier provision. Instead of focusing on compensation for errors and omissions by the Registrar, this provision recognizes the right to bring an action against a person, other than the Registrar, who is said to be responsible for “loss or damage with respect to a matter governed by this Act”. The phrase “a matter governed by this Act” is not expressly defined in the *LTA*. Even so, I think it is generally understood that the *LTA* governs the operations of the Land Titles Registry, which operations are based on the Torrens system of land registration. The objects of such a system have been described as follows in Victor Di Castri, *Registration of Title to Land*, loose-leaf (2012-Rel 10), vol 1 (Toronto: Thomson Reuters, 1987) at para 13:

[13] The objects of the system are: the creation by the state of an indefeasible title in the registered owner; simplification in the transfer of land; certainty and facility in the proof of title by reference to a certificate issued by a government official and made conclusive by law; and finally, the saving to the community of the cost of a new examination of title in connection with each transfer or transaction affecting the land.

[67] In my view, and in light of *Hermanson*, s. 95 of the *LTA* likely has a somewhat wider ambit than this excerpt from the *Chambers Decision* would suggest. However, s. 95 is not meant to create a statutory cause of action against a party that can be pursued as part of a much broader dispute simply because a title to land underlying the dispute has been registered in the Land Titles Registry. Section 95 does not address underlying commercial disputes that happen to culminate in an otherwise valid registration. It permits a claim to be made by a person suffering loss arising from how the land titles registration system operates, but there must be some nexus between the loss and the system.

[68] Under the *LTA*, in addition to claiming against the Registrar for compensation under Part XII, an aggrieved person can choose to make a claim against a third party who is alleged to be responsible for the loss. *Hermanson* is a case in point: the initiating claim was made against her ex-husband’s estate (fraudulent party), the new owner, and the Registrar because it was the system itself that permitted the loss by virtue of the operation of the indefeasibility principle. The new

owner, innocent of fraud, received an indefeasible title. Ms. Hermanson, having been defrauded, was deprived of her interest in the land. Her claim, however, was sustained first against her ex-husband's estate (because of his fraud) and, if the judgment could not be satisfied from that source, recourse could be had against the Registrar – or, in other words, against the assurance fund: see paragraph 17 of *Hermanson*.

[69] However, s. 95(1) does not create a stand-alone private cause of action against any person alleged to have caused a loss simply because there is any connection, no matter how minor or tenuous, to the registration of land. Here, there is no error in the registry itself or an assertion of an error that has emanated out of the operation of the registry, e.g., the acquisition of a title in circumstances that would not be recognized in Saskatchewan if there were no land titles regime. In short, the proposed further amended statement of claim does not contain a claim for loss or damage *with respect to a matter governed by the LTA*.

[70] This ground of appeal cannot be given effect.

F. No other reasonable claim

[71] YQPMC has further claimed that the transfer authorization was void ab initio and that it is entitled to an order vesting the titles in its name. It points to the purposes of the land title registry and the indefeasibility doctrine and asserts that it is reasonable to conclude that the *LTA* provides a remedy for improper or invalid registrations or transfers. YQPMC relies on ss. 15(2), 107(1), and 109 of the *LTA* for these submissions:

Exceptions to conclusive title ...

15(2) Every title is subject to alteration or revocation or removal from the registered owner by:

- (a) a correction made in accordance with section 97;
- (b) a Registrar's order made pursuant to section 101;
- (c) a court order; or
- (d) any procedure authorized by this Act or any other Act.

...

Application to court

107(1) Any person may apply to the court for an order with respect to:

- (a) the operation of:

- (i) the land titles registry; or
- (ii) this Act or the regulations;
- (b) any decision of the Registrar with respect to any action that the Registrar is required or authorized to take pursuant to this Act;
- (c) any order, decision or correction of the Registrar pursuant to section 101, 101.1, 169 or 202;
- (d) any application respecting land or an interest in land; or
- (e) any application respecting a transaction or contract relating to land or to an interest in land.

...

General jurisdiction of court

109(1) In any proceeding pursuant to this Part, the court may make any order the court considers appropriate, and in so doing may direct the Registrar to, or authorize any person to apply to the Registrar to:

- (a) register, discharge, amend, postpone or assign an interest; or
 - (b) transfer title or make changes to a title.
- (2) The court may seek assistance from the Registrar in any proceeding pursuant to this Part.
- (3) On an application to the court pursuant to this Part, if the judge hearing the application considers it appropriate to do so, the judge may make an order:
- (a) directing that a title be vested in any person; and
 - (b) either:
 - (i) directing the Registrar to transfer title or to make changes to a title; or
 - (ii) authorizing any person to apply to the Registrar to transfer title or to have changes made to a title.

[72] I agree with YQPMC that these sections provide the authority for a person to make an application to the Court of King’s Bench and for that court to revoke a transfer of title and make a vesting order in appropriate situations. In *Burnouf v Burnouf*, 2022 SKCA 6, this Court described s. 109 as a curative provision that “may be employed to rectify errors and, generally speaking, permits a court to make any order considered appropriate” (at para 42). However, this does not give a court carte blanche to make any order in any application. The legal concepts underlying the *LTA* must be considered as well: *Melville (City) v Keller*, 2024 SKKB 25 at para 76, aff’d 2025 SKCA 14. In circumstances such as the one at hand, this includes the requirement that there be a valid cause of action or some other legal right arising out of the *LTA* that could result in a revocation of the transfer of the titles and a vesting order being granted. There is no free-standing right to bring an action and seek revocation and a vesting order without a legal basis for doing so.

Because there is no valid cause of action disclosed by the proposed further amended statement of claim, these remedies could not be granted even if YQPMC were to prove all the facts it has pleaded. This argument does not assist YQPMC.

[73] Further, simply pleading that the transfer was void ab initio does not mean the Chambers judge should have accepted this as a fact and found that a vesting order could ultimately be granted under s. 109 of the *LTA*. Whether an instrument or similar document is void ab initio is a legal conclusion, not a fact. If the underlying facts supporting a cause of action were not pleaded, the statement in the proposed further amended statement of claim that the transfer was void ab initio was not particularly relevant. Here, the transfer authorization was signed by a director of YQPMC, who attested to his authority to do so. There is no scope for finding that the transfer authorization was void ab initio.

[74] Lastly, in this regard, YQPMC argues that SDCC must remain a party to the action because a vesting order of the titles that are currently in SDCC's name is one of the remedies claimed. While this assertion might be correct in some situations, the Chambers judge effectively determined that a vesting order could no longer be sought in the matter at hand:

[95] ... With [SDCC] out of the action, I am also satisfied that there can be no basis for YQPM to assert that the transfer of the Property is void ab initio, or even voidable. Accordingly, I direct that all allegations in the amended claim, suggesting a claim against [SDCC] or alleging that the transfer of the Property is void, shall be struck

Given the reasons set out above in this judgment, there are no grounds to interfere with the Chambers judge's determination. A vesting order is no longer a possible remedy in this matter. SDCC is not required to remain a party on this basis.

[75] Further, this issue does not have any relevance to the claims against Mr. Derbowka and Cuelenaere LLP. None of the three asserted causes of action as against them are reasonable, so there is no basis for a claim to be maintained against these two parties.

G. Additional amendments

[76] In its factum, YQPMC submits that once the Chambers judge determined that the proposed further amended statement of claim disclosed no reasonable cause of action, leave should have been given for a further "opportunity to amend its claim for purposes of addressing the deficiencies

in its pleadings, as identified by the Chambers judge”. I agree that, in appropriate cases, a judge may exercise their discretion and give leave to a plaintiff to make reasonable amendments: *Atlantic Lottery Corp. Inc. v Babstock*, 2020 SCC 19 at para 90, and *Sawatzky v Prince Albert Golf and Curling Club Inc.*, 2025 SKCA 16 at para 84.

[77] Here, YQPMC has already substantially amended its statement of claim once and applied to amend it again in the face of the strike applications. Further, YQPMC does not, in its factum, identify any amendments that it would now propose. When asked by the panel during oral argument, counsel indicated only that YQPMC could also plead that SDCC gave instructions to Mr. Derbowka to register the transfer after being aware of Mr. Slusar’s email of August 1, 2023. In my view, this amendment would not change the result. After two sets of substantial amendments were made or proposed and other further amendments could not be identified in argument that would save the claim as against the respondents, it is difficult to see how the Chambers judge could have erred by not providing YQPMC a further chance to amend its pleadings. There is no merit in this submission.

VI. CONCLUSION

[78] The appeal should be dismissed with one set of costs for the appeal payable from YQPMC to SDCC and one set of costs for the appeal payable from YQPMC to Mr. Derbowka and Cuelenaere LLP, both calculated on Column 4 of the Tariff of Costs.

“Tholl J.A.”

Tholl J.A.

I concur.

“Kalmakoff J.A.”

Kalmakoff J.A.

I concur.

“Drennan J.A.”

Drennan J.A.