

CITATION: In-Store Products Ltd et al. v Waldman et al., 2026 ONSC 4618

COURT FILE NO.: CV-26-00010646-0000

DATE: 20260814

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: In-Store Products Limited, 2686570 Ontario Inc., and Michael Davidson, Plaintiffs

AND:

Peter I. Waldmann and Peter I. Waldmann Professional Corporation, Defendants

BEFORE: Mathen J.

COUNSEL: *Gavin J. Tighe and Madison McNerny*, for the Plaintiffs

Mark H. Arnold, for the Defendants

HEARD: In Writing

ENDORSEMENT

INTRODUCTION

- [1] The registrar's office referred this motion to me pursuant to rule 2.1.01(7) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, following receipt of a written request from lawyers for the Defendants, Peter I. Waldmann and Peter I. Waldmann Professional Corporation, under rule 2.1.01(6).
- [2] On July 16, 2026, I directed the registrar to give notice to the Plaintiffs in Form 2.1A that the court is considering making an order under r. 2.1.01(2).
- [3] The Plaintiffs made submissions. The Defendants complained that the Plaintiffs improperly offered "new evidence" which is inconsistent with my directions. I am not persuaded that the Plaintiffs' submissions were improper; I gave them to leave to respond to a motion against them. However, I permitted the Defendants to make additional submissions which I have considered.

DECISION

- [4] For the reasons that follow, I decline to dismiss this case under r.2.1.01.

ISSUE

- [5] The only issue is whether the Claim is duplicative of an ongoing action.

HISTORY

- [6] In 2021, the Plaintiffs sued their former lawyer, Richard Cooper, for professional negligence in relation to the Plaintiffs' purchase of IPCF Baldwin Airport. The Defendants Peter I. Waldman et al. represented the Plaintiffs in that initial lawsuit from March 22, 2021, to May 1, 2025, when the Plaintiffs terminated their relationship.
- [7] The Plaintiffs' 2026 action alleges negligent representation by the Defendants in, among other things, their examination of Richard Cooper in February 2025.
- [8] The Defendants claim that: the 2026 proceeding is duplicative of a 2021 claim and a 2025 application, the 2026 claim does not allege that the 2021 claim has resolved, and the 2021 action continues to show as active. Therefore, the Defendants say, the claims against them have not crystallized.

ANALYSIS

- [9] My findings are contained in the following analysis.

The Law

- [10] Rule 2.1.01(1) provides as follows:

The court may, on its own initiative, stay or dismiss a proceeding if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

- [11] As Myers J. writes in *Gao v. Ontario WSIB and Ontario Ombudsman*, 2014 ONSC 6100, 37 C.L.R. (4th) 1, at para. 9, the Rule is not meant for 'close calls'.
- [12] A frivolous proceeding lacks a legal basis or legal merit or is brought without reasonable grounds: Annotation to rule 2.1 in *Ontario Superior Court Practice*, the Hons. Todd Archibald, Stephen Firestone and Tamara Sugunasiri; *Van Sluytman v. Orillia Soldiers' Memorial Hospital*, 2017 ONSC 692, at para. 11.
- [13] A frivolous proceeding is readily recognizable as devoid of merit. It has little prospect of success: *Gill v. MacIver*, 2023 ONCA 776, at para. 3; *Lavallee v. Isak*, 2022 ONCA 290, at para. 19; *Pickard v. London Police Services Board*, 2010 ONCA 643, 268 O.A.C. 153, at para. 19. It will necessarily or inevitably fail: *R. v. Haevischer*, 2023 SCC 11, at para. 67.
- [14] Vexatious actions include those brought for an improper purpose other than the assertion of legitimate rights, including the harassment and oppression of other parties: *Re Lang Michener and Fabian*, 1987 CanLII 172 (ON SC). Common hallmarks of vexatious litigation include curious formatting, rambling discourse or rhetorical questions: *Khan v. Krylov & Company LLP*, 2017 ONCA 625 citing *Gao v. Ontario WSIB*, 2014 ONSC 6497, at para. 15.

- [15] Abuse of process exists when “the abusive nature of the proceeding is apparent on the face of the pleading and there is a basis in the pleadings to support the resort to the attenuated process”: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733 (CanLII) at para. 8.

Application

- [16] The impugned claim is not frivolous or vexatious on its face. It does not appear “destined to fail”. Nor does it bear the hallmarks of a vexatious proceeding.
- [17] The only issue is whether the new claim is duplicative and, thereby, an abuse of process.
- [18] I am not persuaded that this case merits the blunt action of dismissal under r.2.1 on the basis that it is duplicative.
- [19] The Defendants say that the current action “relates to and arises directly from the alleged conduct of the Defendants in the 2021 Action commenced by the Plaintiffs, 2686570 Ontario Inc., bearing Court File No. CV-21-00659169-000, which is ongoing.” That is why, they say, the claims have not yet crystallized.
- [20] The Plaintiffs say that prior action, which was against their former counsel Richard Cooper, has “concluded by way of an agreement to dismiss without costs and a Full and Final Release”. Settlement discussions are in process. The Plaintiffs say that a party who settles or dismisses an underlying action “is not barred from bringing a solicitor’s negligence claim against former counsel where that counsel’s prior negligence rendered the underlying claim unprovable”, or less amenable to damages.
- [21] The Defendants’ complaint against the current action includes that the court filing system notes the 2021 action as “active”. Given the asserted agreement to settle, which the Defendants have no evidence to dispute, I agree with the Plaintiffs that this is a “narrow” and “technical” complaint.
- [22] In their additional submissions, the Defendants point to an Application the Plaintiffs commenced against them in 2025 as further proof of duplication. The 2025 Application requests an order to assess the Defendants’ legal accounts in relation to the latter’s legal services in the 2021 Action. While it is true that some of the facts are the same, I am not persuaded that the existence of an ongoing assessment application meets the high bar for dismissal under Rule 2.1.
- [23] Based on the record for this motion, I am unable to determine whether the Plaintiffs’ complaint against the Defendants has failed to crystallize.
- [24] The Defendants say that the Plaintiffs’ complaints about the discovery of Richard Cooper can be cured by a continued discovery in the Cooper Litigation. They say that the Plaintiffs’ refusal to continue with that examination is fatal to the Plaintiffs’ current action. However, there is evidence that on November 17, 2025, and July 27, 2026, Cooper’s counsel refused to continue examinations of his client, and advised that he “would be

forwarding the revised release to be signed”. The Defendants argue that the Plaintiffs could move to compel Cooper’s attendance. Again, I find that this argument does not meet the threshold for outright dismissal.

- [25] I therefore find that, at best, it is a close call whether the 2026 action is duplicative of an ongoing proceeding. Accordingly, it would be inappropriate to invoke rule 2.1 to dismiss it.

COSTS

- [26] The Plaintiffs seek costs of this motion on a substantial indemnity basis in the amount of \$6,712 or, alternatively on a partial indemnity basis of \$5,491.
- [27] The Plaintiffs have prevailed and are entitled to their costs. I decline to consider this motion as warranting costs thrown away. The underlying dispute is complicated, and, while there may be an agreement to settle, documents have not been finally approved and signed.
- [28] The Defendants shall pay to the Plaintiffs’ costs fixed at \$5,000. I find those costs within the reasonable contemplation of the Defendants.

ORDER

- [29] In conclusion, I make the following order:
- a. The Defendants’ motion is dismissed.
 - b. Within thirty days, the Defendants shall pay to the Plaintiffs costs fixed at \$5,000.

Mathen, J.

Date: August 14, 2026