

CITATION: The Toronto Regional Real Estate Board v. IMS Incorporated, 2026 ONSC 5445
COURT FILE NO.: CV-25-00737097
DATE: 20260925

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THE TORONTO REGIONAL REAL ESTATE BOARD, Plaintiff

AND:

IMS INCORPORATED c.o.b. as RESTATS also known as REALITY, Defendant

BEFORE: Cavanagh J.

COUNSEL: *Amy Grenon, Cole Meagher and Nick Morrow*, for The Toronto Regional Real Estate Board

Alan Merskey, Jessica Zagar and Carly Valentine, for the IMS Incorporated c.o.b. RESTATS and for Leon d’Ancona

HEARD: May 1, 2026

ENDORSEMENT

Introduction

[1] In this action, the plaintiff, The Toronto Regional Real Estate Board (“TRREB”), alleges that the defendant, IMS Incorporated c.o.b. RESTATS (“IMS”), a company alleged to be providing online software to its customers, real estate professionals and brokerages, appropriated information from TRREB’s proprietary and confidential platforms (described as the TRREB MLS® System and the TRREB MLS® Content) and has used and is using this information to provide services to its customers.

[2] Leon d’Ancona is the principal and directing mind of IMS. TRREBB seeks leave to amend its existing pleading to add him as a defendant and make additional claims.

[3] There are two motions before me.

[4] TRREB moves for an order (a) granting it leave to amend the statement of claim issued February 14, 2025 (the “Original Claim”) by adding Leon d’Ancona as a defendant and making additional claims by way of filing a Fresh As Amended Statement of Claim (the “Proposed Amended Claim”); (b) if necessary, validating service of the Original Claim on IMS as having been effected August 6, 2025, or extending the time for service of the statement of claim to 10 days following determination of this motion.

[5] IMS moves for an order striking out the Original Claim pursuant to rules 21.01(1)(b), 21.01(3)(d) and 25.11 of the *Rules of Civil Procedure* on the basis that it discloses no reasonable cause of action and is otherwise an abuse of the Court's process.

[6] For the following reasons, TRREB's motion is allowed in part and IMS's motion is allowed in part.

Background Facts

[7] TRREB commenced this action against IMS by the issuance on February 4, 2025 of the Original Claim.

[8] TRREB moved without notice for an order granting it leave to amend the Original Claim to add the principal and directing mind of IMS, Leon d'Ancona, as a defendant and to make additional claims for breach of contract and inducing breach of contract. This motion was allowed by Dietrich J. by order dated July 15, 2025.

[9] The Original Claim and the Amended Claim were left on August 6, 2025 with a person who appeared to be in control and management of IMS at its place of business in Toronto. This was within six months of the issuance of the Original Claim.

[10] IMS and Mr. d'Ancona brought a motion to set aside the Order of Dietrich J. This motion was granted and the Order of Dietrich J. was set aside by Order dated December 23, 2025.

[11] TRREB brought a motion for an order granting leave to amend the Original Claim, including to add Mr. d'Ancona, by filing the Proposed Amended Claim.

[12] IMS brought a motion for an order striking out the Original Claim on the basis that it does not disclose a cause of action and is otherwise an abuse of the Court's process by notice of motion dated March 11, 2026.

[13] These two motions were heard together.

Analysis

[14] At the hearing of these motions, TRREB's motion for leave to amend the Original Claim was argued first and IMS's motion to strike out the Original Claim was argued second. I address the two motions in the same order.

Should TRREB be granted leave to amend the Original Claim?

[15] TRREB seeks to amend the Original Claim to (i) add Mr. d'Ancona as a defendant, and (ii) plead additional causes of action for breach of contract and inducing breach of contract.

[16] I set out the principles that apply on a party's motion to amend a pleading.

[17] Rule 26.01(1) of the *Rules of Civil Procedure* provides "[o]n motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

[18] Under rule 26.02 of the *Rules of Civil Procedure*, if the amendment includes the addition of a party to the action, and the consent of all parties and the consent of the person to be added or substituted as a party is not filed, a party may amend the party's pleading with leave of the court.

[19] Rule 5.04(2) of the *Rules of Civil Procedure* provides that "[a]t any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment".

[20] On a motion to add a party and amend pleadings, the court must consider whether the proposed amendments are legally tenable, comply with the rules of pleadings, abuse the court's process, or would result in non-compensable prejudice. On a motion to amend pleadings, the allegations in the pleading are taken to be true and provable. See *Schembri v. Way*, 2012 ONCA 620, at paras. 25-27.

[21] On a motion to amend, the Court must take the allegations in the proposed amended pleading as true. It is not necessary to tender evidence to support the claims, nor for the Court to consider whether the moving party is able to prove the proposed amendments. Rather, amendments shall be granted unless they are clearly bereft of success. Accordingly, amendments are read generously with allowance for deficiencies in drafting.

[22] In support of its motion for leave to amend the Original Claim, TRREB delivered the affidavit of a law clerk employed by its lawyers. The affidavit appends the Original Claim, the Proposed Amended claim, and other documents.

[23] IMS and Mr. d'Ancona oppose TRREB's motion for leave to amend the statement of claim on several grounds and ask that this motion be dismissed.

Is the Original Claim incapable of amendment without an order validating service of the Original Claim or extending the time for service of the Original Claim?

[24] Rule 16.01 provides that an originating process shall be served personally as provided in rule 16.02 or by an alternative to personal service as provided in rule 16.03. Under rule 16.02(1), where a document is to be served personally, the service shall be made on a corporation (other than a municipal corporation) by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business.

[25] On August 6, 2025, the Original Claim and the First Amended Claim were left with Mehnaz Raza, a person who appeared to be in control and management of IMS at its place of business in Toronto. This was within six months of the issuance of the Original Claim.

[26] TRREB asserts that in this manner, the Original Claim was personally served on IMS on August 6, 2025, within the prescribed six-month period, at the same time as the First Amended Claim was served.

[27] IMS and Mr. d’Ancona submit that the Original Claim was not validly served in accordance with the *Rules of Civil Procedure*. They submit that the First Amended Claim superseded the Original Claim. They submit that when the two documents were delivered together, only the First Amended Claim was capable of valid service. They submit that when the two documents were delivered together, the Original Claim had no legal effect and, for it to be capable of being served, a successful motion to validate service or extend the time for service is required.

[28] Rule 16 of the *Rules of Civil Procedure* addresses service of documents. In rule 1.03(1) of the *Rules of Civil Procedure*, the term “originating process” means a document whose issuing commences a proceeding under these rules and includes a statement of claim. The Original Claim is a document within the meaning of that term in the *Rules of Civil Procedure*.

[29] In support of TRREB’s submission that the Original Claim was validly served, TRREB cites *Hamilton v Hamilton*, 2013 SKQB 190. In *Hamilton*, at para. 28, the court held that the effect of an *ex parte* order having been set aside is that the parties are back in the same position they were in before the *ex parte* order was made.

[30] TREBB submits that the effect of the order setting aside the Order of Dietrich J. is to put the parties back in the same positions they were in before this Order was set aside. TRREB submits that the effect of the Order of Dietrich J. is that the Original Claim is restored to being the operative statement of claim. TRREB submits that since the Original Claim, the operative statement of claim, was left on August 6, 2025 with a person at IMS’ place of business who appeared to be in control or management of the place of business, service of the Original Claim was validly made on that day.

[31] IMS and Mr. d’Ancona submit that when the Order of Dietrich J. was made, the Original Claim no longer had any legal force because it was superseded by the First Amended Claim. They submit that upon and following the Order of Dietrich J., the Original Claim could not be validly served because it was a document without any legal force. They submit that it is impossible to have two statements of claim in the same action capable of valid service at the same time. They submit that the six month time frame for service of a valid claim has long since expired.

[32] No authority was cited to me which is directly on point.

[33] The effect of the submissions of IMS and Mr. d’Ancona, if accepted, would be that in circumstances where a statement of claim is amended by an order, if the order granting leave to amend the statement of claim is, as in this case, later set aside after the six month period of time for service has expired, there would be a gap in time during which there was no document which is an originating process was capable of being served.

[34] I do not accept that the rules for service in the *Rules of Civil Procedure* should be interpreted so as to result in a gap in time where it was impossible for a plaintiff to serve a document which is an originating process, in this case, a statement of claim.

[35] Rule 16 is concerned with service of documents. The Original Claim is a document. This document was left with the representative of IMS at its place of business, together with another document, the First Amended Claim, on August 6, 2025.

[36] On August 6, 2025, the Original Claim was not a document that was a nullity and incapable of legal recognition. To the contrary, the Original Claim was a document that could become the operative statement of claim. This document was capable of being served and it was served on IMS on August 6, 2025 in accordance with the rules for service of documents in the *Rules of Civil Procedure*. The objective of the rules for service of a document in the *Rules of Civil Procedure* was accomplished because upon receipt of the Original Claim and the First Amended Claim, IMS would have known the substance of the claims being made against it by TRREB and it would have known that the Original Claim could become the operative statement of claim if the order made by Dietrich J. were to be set aside.

[37] For these reasons, I conclude that the Original Claim was validly served on August 6, 2025, within the six month period of time for service of a statement of claim under the *Rules of Civil Procedure*.

[38] IMS and Mr. d’Ancona submit that if the Original Claim was not validly served, this irregularity should not be relieved against because to do so would amount to approval of the conduct of TRREB in seeking an order amending the Original Claim on a motion without notice. I disagree. There was no finding that TRREB acted in a manner that warranted disapproval by moving to amend the Original Claim without notice. By doing so, TRREB took the risk that the order made could be set aside if it were to be held that TRREB failed to provide full and fair disclosure of material facts. The Court held that TRREB, when it moved without notice for an order for leave to amend the Original Claim, failed to make full and fair disclosure of all material facts as required by rule 39.01(6) of the *Rules of Civil Procedure*.

[39] If I had not found that the Original Claim was validly served, I would have made an order pursuant to rule 16.08 of the *Rules of Civil Procedure* validating service of the Original Claim on August 6, 2025, as requested by TRREB as alternative relief in its notice of motion.

Should leave to amend the Original Claim in the form of the Proposed Amended Claim be denied because additional claims are made that are statute barred?

[40] IMS and Mr. d’Ancona submit that leave should not be granted for TRREB to amend the Original Claim to make additional claims because the Proposed Amended Claim advances claims that are statute barred under the *Limitations Act* and allowing the amendments would constitute an abuse of the court’s process.

[41] IMS and Mr. d’Ancona rely on the basic two-year limitation period from the day a claim is discovered and s. 5(1)(a) of the *Limitations Act* which provides that a claim is discovered when

a plaintiff knows or first reasonably ought to have known that injury, loss or damage had occurred and the other matters in s. 5(1)(a). Section 5(2) of the *Limitations Act* provides that a person with a claim shall be presumed to have known of the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

[42] In *Frohlick v. Pinkerton Canada Limited*, 2008 ONCA 3, at paras. 17-18, the Court of Appeal held that the expiry of a limitation period gives rise to a presumption of prejudice on a motion under rule 26.01 of the *Rules of Civil Procedure*.

[43] In the Proposed Amended Claim, TRREB pleads that “it has recently been discovered that d’Ancona has repeatedly improperly accessed the TRREB MLS® System for years in order to misappropriate and misuse confidential and proprietary information therein and provided such misappropriated information to IMS Inc.”. In TRREB’s Amended Response to Request for Particulars, TRREB responded that it became aware that Mr. d’Ancona had been repeatedly and improperly accessing the TRREB MLS® System since at least 2012.

[44] IMS and Mr. d’Ancona submit that TRREB clearly discovered its claims against Mr. d’Ancona, and its claims of breach of contract and inducing breach of contract against both defendants, at least seven or eight years ago. IMS and Mr. d’Ancona rely on TRREB’s original statement of claim in the Federal Court action (where both IMS and Mr. d’Ancona were defendants) as showing that TRREB discovered its claims against Mr. d’Ancona more than two years before its motion to amend the statement of claim in this action. The statement of claim in the Federal Court action was put into evidence on this motion as an exhibit to the affidavit of a law clerk employed by the lawyers for IMS and Mr. d’Ancona. They submit that the expiry of the limitation period bars the addition of Mr. d’Ancona as a party and otherwise gives rise to a presumption of prejudice.

[45] In TRREB’s original pleading in the Federal Court action which was commenced on August 10, 2020, TRREB pleaded that IMS and Mr. d’Ancona “have obtained unauthorized and illegal access to the TRREB MLS® System and its proprietary contents through circumventing and bypassing numerous TPMs put in place by TRREB to control access to the TRREB MLS® system and to keep its content from being accessed by parties such as the defendants.” In the Federal Court action, TRREB pleaded that “[o]n November 27, 2018, counsel on behalf of IMS, confirmed that the source of the information being used by IMS related to realtors and their transactions was, in fact, the TRREB MLS® System”.

[46] IMS and Mr. d’Ancona submit that TRREB chose not to tender evidence in support of its motion for leave to amend the statement of claim (other than a law clerk’s affidavit attaching documents) and, given the statement of claim on its face and TRREB’s pleading in the Federal Court Action, the absence of evidence is fatal to its motion. IMS and Mr. d’Ancona submit that in the absence of evidence from TRREB explaining when it learned of facts giving rise to the claims against Mr. d’Ancona, its motion for leave to amend the statement of claim should not be granted.

[47] In response, TRREB relies on the fact that its claims against Mr. d’Ancona in the Federal Court action were struck out by the Order of Case Management Judge Milczynski dated April 7, 2021. In her decision, Case Management Judge Milczynski wrote:

Finally, although not necessary for the purposes of the within motion, I would strike the individual defendant from the claim. There is only the one paragraph in the Statement of Claim (para.4) that simply identifies him. There is nothing in the Statement of Claim that alleges conduct outside the usual scope of conduct that a director or officer would engage in that would attract personal liability. For a director or officer to be liable for the company's misconduct, there must be circumstances from which it can be reasonably concluded that their purpose was not directing operations in the normal course - there must be something more - a deliberate pursuit of actions with the knowledge and intent (or indifference) that it was likely to constitute infringement (*Mentmore Manufacturing Co. v. National Merchandising Manufacturing Co.* 1978, 89 D.L.R. (3d) 195 (FCA)).

[48] TRREB submits that when it pleaded claims against Mr. d'Ancona in the statement of claim in the Federal Court Action, it did not have actual or constructive knowledge of the matters referenced in section 5(1)(a) of the *Limitations Act* in respect of the claims it now proposes to plead against him in the Proposed Amended Claim. TRREB submits that it only discovered one specific manner by which Mr. d'Ancona was accessing the TRREB system and appropriating the TRREB content in February 2025, as pleaded in the Proposed Amended Claim.

[49] TRREB submits that there is no basis for me to find that it knew or reasonably ought to have known the matters referenced in s. 5(1) of the *Limitations Act* more than two years before the Original Claim was issued.

[50] In *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, the Supreme Court of Canada addressed the standard to be applied in determining whether and when a plaintiff has the requisite degree of knowledge to discover a claim under s. 5(2) of the *Limitations Act* thereby triggering the two-year limitation period under s. 5(1)(a). The Court held, at para. 40, that the limitation period is triggered when the plaintiff discovers or ought to have discovered through the exercise of reasonable diligence the material facts on which the claim is based. The Court held, at para. 42, that a claim is discovered when a plaintiff has knowledge, actual or constructive, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn.

[51] The *Limitations Act* provides in s. 21(1) that if a limitation period in respect of a claim against a person has expired, the claim shall not be pursued by adding the person as a party to any existing proceeding.

[52] In *Morrison v. Barzo*, 2018 ONCA 979, the Court of Appeal heard an appeal from an order dismissing a motion to add defendants to a medical malpractice action. In *Morrison*, at para. 27, the Court referred to s. 21(1) of the *Limitations Act*. The Court of Appeal noted, citing *Arcari v. Dawson*, 2016 ONCA 715, at para. 7, that a clear expiration of a limitation period is an absolute bar to the addition of a party to an already existing action. The Court of Appeal, at paras. 31-32, addressed the evidentiary burden on a plaintiff seeking to add a defendant to an action after the apparent expiry of a limitation period. The Court held that the evidentiary burden requires the plaintiff to lead evidence as to the date the claim was actually discovered and as to why the claim could not have been discovered through the exercise of reasonable diligence. The Court of Appeal, at para. 61, held, citing *Mancinelli v. Royal Bank of Canada*, 2018 ONCA 544, at para. 31, that

where s. 5(1)(b) is in issue in a motion to add a defendant, the motion should not be dismissed “in the absence of evidence that the plaintiff could have obtained the requisite information with due diligence ... such that there is no issue of credibility or fact warranting a trial or summary judgment motion”.

[53] In *C & C Nestco Corporation v. Starr*, 2025 ONCA 792, the Court of Appeal heard an appeal from an order dismissing a motion to add persons as defendants in an action for lawyer’s negligence and breaches of fiduciary duty on the basis that the claims against them were statute barred. The Court of Appeal rejected the appellant’s submission that the motion judge should not have determined what was asserted to be a “contested and fact-dependent limitations issue” about when the claim against those parties was discovered. The Court of Appeal noted that there were no material contested facts where the appellant moved without any evidence to displace the statutory presumption in s. 5(2) of the *Limitations Act* that a claim is discovered “on the day the act or omission on which the claim is based took place, unless the contrary is proved”. The Court of Appeal held that it was insufficient for the appellant to simply attach the proposed amended pleading to an affidavit of the appellant’s principal. The Court of Appeal held that the paragraphs in the proposed amended pleading about when the claims were discovered were not evidence, nor did the affiant attest to the truth of those allegations. The affidavit was silent on when the claim was discovered or why it could not have been discovered earlier. The proposed amended pleading alleged acts or omissions of the proposed added parties that resulted in events with known dates. The motion judge had noted that the plaintiff (the appellant) had adduced no evidence of when it discovered its claim or that it did not discover its claim against the proposed added parties on the date it occurred or prior to the dates of the events. The Court of Appeal found no error in the motion judge’s conclusion that the motion to amend was brought more than two years after the claim was discovered according to the statutory presumption which was not rebutted. The appeal was dismissed.

[54] According to TRREB’s Proposed Amended Claim and the particulars provided, the acts on which the claim against Mr. d’Ancona is based took place beginning in 2012 or earlier and continued from that time. According to s. 5(2) of the *Limitations Act*, TRREB is presumed to have known of the matters in s. 5(1)(a) in 2012 or earlier unless the contrary is proved. TRREB has not provided evidence on when it first knew of the matters in s. 5(1)(a). TRREB’s pleaded assertion that “it has recently been discovered that d’Ancona has repeatedly improperly accessed the TRREB MLS® System for years in order to misappropriate and misuse confidential and proprietary information therein and provided such misappropriated information to IMS Inc.” is not evidence. The law clerk did not attest to the truth of this pleaded assertion.

[55] TRREB has failed to prove that it did not discover its claim against Mr. d’Ancona in 2012 or earlier when the acts he is alleged to have committed allegedly began. TRREB’s motion to amend the Original Claim in this action was brought by notice of motion dated March 11, 2026, more than two years after 2012 when TRREB is presumed to have discovered its claim against Mr. d’Ancona.

[56] TRREB submits that if it is determined that it discovered its claim against Mr. d’Ancona more than two years before it moved to amend the Original Claim, leave for it to add Mr. d’Ancona

as a defendant and plead a claim against him should not be denied where it makes a claim for breaches of contract by Mr. d’Ancona which, it alleges, are continuing.

[57] TRREB pleads in the Proposed Amended Claim that Mr. d’Ancona’s conduct “was ongoing and expanded over time” and that each of the acts he is alleged to have committed is “continuous and ongoing”. TRREB points to its pleaded claim based on Mr. d’Ancona’s agreement made on February 21, 2025 to be bound by TRREB’s AUA when he agreed to be bound by REALM Terms and Conditions (the terms and conditions for TRREB’s REALM platform through which its MLS® System is accessible). TRREB submits that no limitation period could have expired in respect of its proposed claim based on a breach of the REALM Terms and Conditions made in February 2025.

[58] In support of these submissions, TRREB relies on *Pickering Square Inc. v. Trillium College Inc.*, 2016 ONCA 179. In *Pickering Square*, the Court of Appeal referred to a category of breach of contract where there is a breach of a continuing obligation. The Court of Appeal, at paras. 37-38, held that the accrual of fresh causes of action sets the clock running for a new two-year limitation period which commenced each day a fresh cause of action accrued and ran two years from that date.

[59] Mr. d’Ancona submits that the Proposed Amended Claim does not plead the material facts required to allow the Court to conclude that TRREB makes claims for continuing breaches of contract. He submits that on the face of the proposed Amended Claim, it is not possible to characterize the nature of the breaches at issue because TRREB has not pleaded each contract at issue, the contractual terms allegedly breached, or when those breaches of contract allegedly occurred. He submits that without such pleaded allegations, the court cannot determine the nature of the alleged breaches.

[60] Mr. d’Ancona submits that TRREB should not be granted leave to amend the Original Claim in the form of the Proposed Amended Claim, even for claims founded on acts or omissions that occurred after the motion to amend was brought, because it discloses no reasonable cause of action against him and, therefore, does not plead a tenable claim.

Should leave to amend the Original Claim be denied because the Proposed Amended Claim discloses no reasonable cause of action?

(a) Claim for breach of contract

[61] A proper pleading of a claim for breach of contract must provide sufficient particulars to identify: (a) the nature of the contract, (b) the facts supporting privity of contract between the parties, (c) the terms of the contract that were breached, (d) the conduct giving rise to the breach, and (e) the damages that flow from the breach. See *Pine Glen v. Rolling Meadows*, 2024 ONSC 1464, at para. 26.

[62] In the Amended Claim, TRREB proposes to plead that Mr. d’Ancona executed at least one Brokerage Administrator Application (BAA Agreement) by which he agreed to only use the access credentials for administration of the brokerage and not for any other purpose. TRREB produced

one BAA Agreement signed by Mr. d’Ancona in response to a demand for particulars. The Authorized User Agreement (AUA) is found at Part D of this BAA Agreement where the terms are shown including section 4 dealing with “Restrictions on Use” of the MLS database and section 10 dealing with “Conditions and Restrictions on Use” of the MLS database.

[63] TREBB proposes to plead that Mr. d’Ancona induced at least one TRREB broker to permit him to use contractual administrator credentials to access the TRREB system in breach of the contractual provisions for brokerage access to the TRREB system. TRREB proposes to plead that Mr. d’Ancona agreed to be bound by TRREB’s AUA on several occasions including on February 12, 2024 and February 21, 2025 when he agreed to be bound by the REALM Terms and Conditions. TRREB proposed to plead that Mr. d’Ancona accessed the TRREB system repeatedly, contrary to the terms of the BAA Agreement, the AUA and the REALM Terms and Conditions to scrape TRREB content for use by IMS. TRREB propose to plead that Mr. d’Ancona and IMS have continued to engage in the pleaded activities including since the migration of the Stratus platform to the Matrix and REALM platforms.

[64] TRREB submits that the requirements for a claim against Mr. d’Ancona are satisfied in relation to its proposed claim for continuing breaches of contract against Mr. d’Ancona. TRREB submits that it has sufficiently pleaded which contracts were and are being breached by Mr. d’Ancona, and by specifying the terms and conditions alleged to have been breached. TRREB relies on its response to a demand for particulars in which it produced ‘click through’ contracts that must be entered into prior to an individual (here, Mr. d’Ancona) accessing the TRREB system.

[65] I am satisfied that TRREB has pleaded with sufficient particularity the nature of the contracts alleged to have been breached by Mr. d’Ancona, the facts supporting privity of contract with TRREB, the terms of the contracts alleged to have been breached involving misuse of TRREB’s systems and data for unauthorized purposes, the conduct giving rise to the alleged breaches and the damages that flow from the alleged breaches. TRREB’s pleading of its claim for breach of contract in the proposed Amended Claim is not limited to one BAA Agreement but, read generously as it must be, pleads the existence of other BAA Agreements that Mr. d’Ancona is alleged to have executed and breached.

[66] TRREB has alleged that d’Ancona’s alleged breaches are continuing. TRREB has sufficiently pleaded claims for continuing breaches of contract which sets the clock running for a new two-year limitation period which commenced each day a fresh cause of action accrued and ran two years from that date.

(b) Claim for inducing breach of contract

[67] The elements of inducing breach of contract are: (a) the defendant had knowledge of the contract between the plaintiff and the third party; (b) the defendant's conduct was intended to cause the third party to breach the contract; (c) the defendant's conduct caused the third party to breach the contract; and (d) the plaintiff suffered damage as a result of the breach. See *Correia v. Canac Kitchens*, 2008 ONCA 506, at para. 99.

[68] In the Proposed Amended Claim, TRREB proposes to plead:

34B. As described above, d'Ancona knowingly induced at least one brokerage and TRREB Member to breach their contractual obligations owed to TRREB by inducing them to improperly designate d'Ancona as a brokerage "administrator" in order for d'Ancona to obtain the Improper Brokerage Credentials through which d'Ancona accessed the TRREB MLS® System and misappropriated TRREB MLS® Content for use by IMS Inc. TRREB believes d'Ancona and/or IMS employees knowingly induced an as of yet unknown number of other brokerages to similarly provide (or to facilitate obtaining improper credentials for) d'Ancona and/or IMS employees through which d'Ancona and/or IMS employees accessed the TRREB MLS® System and misappropriate TRREB MLS® Content for use by IMS Inc. d'Ancona's inducement and IMS employees' inducement of TRREB Members to improperly provide (or facilitate the provision of) improper credentials, including the Improper Brokerage Credentials, to d'Ancona and IMS employees caused damage to TRREB. d'Ancona and IMS employees used these improperly obtained credentials, including the Improper Brokerage Credentials, to repeatedly access the TRREB MLS® System and misappropriate TRREB MLS® Content for the Defendants' own commercial gain.

[69] Through this pleading, TRREB alleges that Mr. d'Ancona knowingly intended to induce, and did induce, brokerages with brokerage contracts with TRREB to breach the brokerage contracts. TRREB specifically identifies one such contract within in its knowledge identifying the brokerage. TRREB's pleading is an allegation of the same conduct by Mr. d'Ancona in respect of other brokerage contracts between TRREB and other unnamed brokerages. TRREB pleads the same allegations against IMS founded on the pleaded actions of Mr. d'Ancona, who is alleged to be the directing mind of IMS.

[70] I am satisfied that the Proposed Amended Claim sufficiently pleads the elements of a claim against Mr. d'Ancona for inducing breach of contract and that this claim is tenable.

[71] TRREB has alleged that d'Ancona's alleged acts to induce brokerages to breach brokerage contracts breaches are continuing. TRREB has sufficiently pleaded claims based on continuing acts that were intended to cause brokerages to breach their brokerage contracts, which sets the clock running for a new two-year limitation period which commenced each day a fresh cause of action accrued and ran two years from that date.

[72] TRREB's motion for leave to amend the Original Claim in the form of the Proposed Amended Claim is allowed, provided that leave is not granted for TRREB to amend the Original Claim to make claims against Mr. d'Ancona founded on acts or omissions that occurred more than two years before TRREB's motion to amend the Original Claim was brought.

[73] TRREB proposes to plead claims against Mr. d’Ancona for other causes of action that were already pleaded against IMS in the Original Claim. I address whether these claims disclose no reasonable cause of action when I address the motion by IMS to strike out the Original Claim.

Should leave to amend the Original Claim be denied because there is no cause of action against Mr. d’Ancona personally?

[74] Mr. d’Ancona submits that it is plain and obvious that he is not a proper defendant because the Proposed Amended Claim does not plead facts capable of establishing his personal liability. Mr. d’Ancona submits that the Proposed Amended Claim pleads facts that show that he was only directing IMS’s affairs and, in so doing, allegedly entering into any contracts with TRREB and otherwise accessing the TREB MLS System on IMS’s behalf.

[75] Mr. d’Ancona relies on the principle that individuals who direct corporations, such as officers and employees, cannot be held liable for the corporation’s actions unless they themselves engage in tortious conduct or "exhibit a separate identity or interest from that of the company," making the complained of conduct their own. In other words, there needs to be some activity that "takes them out of the role of directing minds of the corporation." See *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.*, 1995 CanLII 1301 (ON CA), at p. 15; *ADGA Systems International Ltd. v. Valcom Ltd.*, 1999 CanLII 1527 (ON CA), at paras. 38-39.

[76] In *ADGA*, the Court of Appeal, at para. 18, wrote that the consistent line of authority in Canada holds that officers, directors, and employees of a corporation are responsible for their tortious conduct even though that conduct was directed in a *bona fide* manner to the best interests of the company, subject to the exception in *Said v. Butt*, [1920] 3 K.B. 497.

[77] TRREB submits that it has properly and sufficiently pleaded claims against Mr. d’Ancona.

[78] TRREB’s claims for breach of contract are made only against Mr. d’Ancona personally and not against IMS.¹ TRREB’s claim for breach of contract is not pleaded as a claim against him as a representative of IMS for the purpose of directing its affairs. TRREB pleads that Mr. d’Ancona’s actions in breach of contract were to misappropriate TRREB confidential information for use by IMS. It is not plain and obvious from this pleading that Mr. d’Ancona’s alleged acts in breach of contract were committed only in the role as the directing mind of IMS and acting *bona fide* within the scope of his authority.

[79] TRREB’s claim against Mr. d’Ancona for inducing breach of contract is pleaded as a claim against him personally. He is alleged to have induced brokerages to falsely obtain and maintain credentials on his behalf so that he could access TRREB’s MLS System and enter into contracts with TRREB personally, posing as an employee of the brokerage and not as a representative of IMS. It is not plain and obvious from the Proposed Amended Claim that TRREB’s claim against

¹ TRREB acknowledges that it left in the Proposed Amended Claim what it calls “stray references” which refer to “the Defendants” being liable for causes of action pleaded. This is a clear error in respect of the claim for breach of contract.

Mr. d’Ancona for inducing breach of contract is made only in his role as the directing mind of IMS and acting *bona fide* within the scope of his authority.

[80] TRREB’s claims against Mr. d’Ancona for breach of confidence, intrusion upon seclusion, and interference with economic relations are made against both Mr. d’Ancona and IMS. TRREB does not plead that Mr. d’Ancona committed the alleged acts only in the role as the directing mind of IMS or that he acted *bona fide* within the scope of his authority when the acts alleged to have been tortious were committed.

[81] It is not plain and obvious from the facts pleaded in the Proposed Amended Claim that the claims against Mr. d’Ancona are made against him only in his role as the directing mind of IMS. I do not deny TRREB’s request for leave to amend the Original Claim on this basis.

Motion by IMS to strike out the Original Claim

[82] IMS moves to strike out the Original Claim on the grounds that (i) it was not served within the time required by the *Rules of Civil Procedure*, (ii) the Original Claim fails to plead the constituent elements of each cause of action and the material facts to support these claims, (iii) there are material limitation period issues and defences that arise on the face of the Original Claim and the procedural history between the parties requires the Court to exercise its gatekeeping function at the pleadings stage where it is plain and obvious that all or some of TRREB’s claims are statute barred under the *Limitations Act*, and (iv) the Original Claim is duplicative of TRREB’s claim in the Federal Court and is an abuse of process.

[83] For reasons already given, I have concluded that the Original Claim is a document that was served on IMS in accordance with the rules for service of an originating process under the *Rules of Civil Procedure*. If I had not reached this conclusion, I would have made an order validating service on IMS.

Does the Original Claim fail to plead the constituent elements of each cause of action and the material facts to support these claims?

(a) Claim for breach of confidence

[84] The elements of a breach of confidence claim are: (a) information or documents with the necessary quality of confidence; (b) imparted in circumstances giving rise to an obligation of confidence; and (c) unauthorized use of the information or documents. See *RH20 North America et al v. Bergmann et al.*, 2023 ONSC 2378, at para. 39.

[85] A defendant is entitled to know with particularity what confidential information the defendant is alleged to have taken and how it was taken.

[86] In the Original Claim, TRREB pleads that the “TRREB MLS& System and TRREB MLS Content are proprietary and confidential to TRREB. To this point, the TRREB MLS& System operates as a secure and restricted platform. Access to the TRREB MLS& System (and the TRREB MLS® Content within it) is restricted to TRREB Members through the implementation of various measures”. TRREB pleads that the confidential and proprietary content alleged to have been taken

by IMS through unauthorized access to the MLS System and TRREB Content includes personal information of TRREB members.

[87] TRREB pleads that “[t]he TRREB MLS® System is an extensive curated online system for use only by TRREB Members, and TRREB's partner real estate boards' members. The TRREB MLS® System provides TRREB Members access to more than 100 services, including active real estate listings, current and historical real estate sales content, detailed distinctive property descriptions, archival information, photography, detailed neighbourhood descriptions, mapping, school location and community features, as well as other curated information related to real property. Services offered to TRREB Members via the TRREB MLS® System include "Market Reports & Information", "MLS, Collaborate & Related Services", "Professional Development", "Commercial Services", "Communications & Public Affairs", "Arbitration, Professional Standards & Compliance", "Live Stream Open Houses", and the "Ontario Conservation Authorities Resource Centre".

[88] TRREB pleads that “[t]he TRREB MLS® Content includes personal information, real estate listings and searchable content, market reports, curated information, presentations, guides, TRREB's ongoing research, online help guides, ancillary resources, and other proprietary and confidential content generated by TRREB solely for TRREB Members.”

[89] TRREB pleads that IMS has obtained unauthorized access to the TRREB MLS® System, including via the Matrix and REALM platforms (previously the Stratus platform) by circumventing and bypassing numerous measures put in place by TRREB to control access to the TRREB MLS® System and to prevent any of the TRREB MLS® System from being accessed by unauthorized parties such as IMS. TRREB pleads that the precise way IMS has accessed and continues to access the TRREB MLS® System is known to IMS but unknown to TRREB.

[90] TRREB pleads that IMS, using the confidential and proprietary information from the TRREB MLS® System and including the TRREB MLS Content, publishes and/or distributes market reports, performance analysis, market intelligence and other materials relating to the sale of residential real estate and other activities of real estate professionals and brokerages to its customers, for its own commercial gain. TRREB pleads that IMS has engaged and continues to engage in these activities for the purpose of generating substantial revenue for the Defendant through the commercial use of unauthorized content wrongfully obtained from the TRREB MLS® System, to the detriment of TRREB.

[91] In its Amended Response to Demand for Particulars, TRREB responds that the confidential information is dynamic and continuously changing such that it is not practical to further particularize the information for the purpose of pleading. TRREB responds that the confidential information is sufficiently particularized. TRREB adds that, as an example, confidential information contained in the TRREB MLS® System and TRREB MLS® Content conveyed to TRREB Members in confidence includes information relating to offers, conditional sales, sales, and personal information of sellers of residential real estate listings.

[92] IMS submits that the Original Claim does not specify what information is confidential and what is not and, therefore, this pleading is deficient and should be struck out. IMS submits that

TRREB does not plead in the Original Claim what confidential information was taken or when. IMS submits that the Original Claim does not contain the minimum level of material fact disclosure necessary to properly plead that IMS misappropriated and misused TRREB's confidential information.

[93] The Original Claim includes highly descriptive and precise statements of the information in the TRREB MLS® System and TRREB MLS® Content, all of which TRREB alleges is confidential information. TRREB's pleading in the Original Claim sufficiently pleads the information which it alleges was confidential information. Whether this information is or is not confidential and was or was not taken without authorization and misused by IMS are matters to be determined in the action. TRREB has sufficiently pleaded the circumstances in which this information was kept which, it pleads, give rise to an obligation of confidence.

[94] TRREB has pleaded that IMS obtained unauthorized access to this alleged confidential information and its has pleaded how IMS is making unauthorized use of the information.

[95] TRREB has sufficiently pleaded the elements of a claim against IMS based on the cause of action of breach of confidence.

(b) Claim for intrusion upon seclusion

[96] The elements of a cause of action in intrusion upon seclusion are: (a) intentional (including reckless) conduct of the defendant; (b) invasion, without lawful justification, into the plaintiff's private affairs; and (c) that a reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish. See *Jones v. Tsige*, 2012 ONCA 32, at paras. 70-71.

[97] In the Original Claim, TRREB pleads:

40. By circumventing and bypassing measures in place by TRREB and engaging in the activities described above, the Defendant intentionally intrudes upon TRREB's seclusion, invading upon personal information, and proprietary content contained within the TRREB MLS® System without consent. The Defendant has engaged and continues to engage in these activities without lawful justification.

41. The activities of the Defendant, specifically accessing and using personal information of TRREB Members, are highly offensive, distressful, and humiliating. TRREB has received numerous complaints from TRREB Members regarding the unauthorized disclosure of their personal information by the Defendant, injuring TRREB's credibility and the trust that TRREB Members have in the secure TRREB MLS® System.

[98] IMS submits that IMS, as a corporation, is incapable of enjoying personal privacy. IMS submits that TRREB does not plead what information is personal to TRREB or what personal information was taken by IMS. IMS submits that the invasion of privacy alleged in the Original

Claim may not be TRREB's privacy but that of its Members which may not be personal information at all because the alleged personal information is not defined in the pleading.

[99] TRREB submits that the Original Claim pleads the required elements for the tort of intrusion upon seclusion. It submits that it pleaded intentional conduct by IMS. TRREB submits that its Members' personal information which is given to TRREB in confidence qualifies as information of TRREB's own private affairs. TRREB submits that it has pleaded that its own proprietary and personal information in the TRREB MLS® Content, which was the product of decades of innovation, design, development, collection, organization, and selection, has been invaded and appropriated by IMS, without lawful justification..

[100] The final element of this tort is that that a reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish. TRREB submits that a reasonable person would regard the alleged invasion as highly offensive causing distress, humiliation or anguish. TRREB notes that it has pleaded that the conduct of IMS has damaged TRREB's integrity and the trust TRREB has with its members and business partners which, it submits meets the threshold of distress, humiliation or anguish

[101] In *Jones*, the Court of Appeal addressed the limitations of this cause of action, having regard to the elements. The Court of Appeal, at para. 72, observed that the elements make it clear that recognizing this cause of action will not open the floodgates. The Court went on to write: “[c]laims from individuals who are sensitive or unusually concerned about their privacy are excluded: it is only intrusions into matters such as one's financial or health records, sexual practises and orientation, employment, diary or private correspondence that, viewed objectively on the reasonable person standard, can be described as highly offensive” [emphasis added]. Although not stated in these terms, this passage, in my view, shows that the Court of Appeal regarded this cause of action as one available to individuals and not corporations.

[102] It does not follow from TRREB's allegation that its reputation for integrity and the trust it has with its members was damaged by the alleged invasion by IMS that a reasonable person would regard the alleged invasion as highly offensive causing distress, humiliation or anguish. I regard it as uncontroversial that an entity having legal personhood such as a corporation or an entity such as TRREB is not an individual and does not experience distress, humiliation or anguish.

[103] I conclude that TRREB has failed to plead facts that if proven would satisfy the fourth element of this cause of action.

[104] TRREB's claim based on the cause of action for intrusion upon seclusion is struck out. It is impossible for TRREB to properly plead a claim against IMS based on this cause of action and, for this reason, leave to amend the Original Claim to plead this cause of action is not granted.

(c) Claim for interference with economic relations

[105] The elements of a cause of action for interference with economic relations is the intentional infliction of economic injury on the plaintiff by the defendant's use of unlawful means against a third party. The core of this tort captures the intentional infliction of economic injury on C (the

plaintiff) by A (the defendant)'s use of unlawful means against B (the third party). See *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, at para. 23.

[106] The Court in *A.I. Enterprises*, at para. 26, held that the unlawful conduct must be an actionable civil wrong or conduct that would be actionable if it had caused loss to the person at whom it was directed.

[107] In the Original Claim, TRREB pleads:

42. The Defendant is unlawfully interfering with TRREB's business relationships with TRREB Members and with its licensed content providers.

43. The Defendant improperly interferes with TRREB's economic relations by circumventing and bypassing TPMs in place by TRREB, thereby gaining unauthorized access to the TRREB MLS& System and the Matrix and REALM platforms (previously the Stratus platform) and by taking content therefrom. The Defendant continues to engage in these activities, despite being put on notice by TRREB of the Defendant's misconduct.

44. The Defendant unlawfully and intentionally interferes with the normal administration of TRREB's interests, harming the integrity of TRREB and the trust of its membership through the Defendant's wrongful conduct, including accessing and data scraping TRREB Members' personal information from the TRREB MLS® System without consent.

45. These actions cause TRREB harm, including loss of revenue, damaging relationships with TRREB Members and business partners of TRREB, and causing reputational damages to TRREB.

[108] IMS submits that TRREB's pleading does not disclose an actionable wrong to a third party that is intended to harm TRREB. IMS submits that TRREB has failed to plead with clarity and precision the overt acts that are alleged to have been done by IMS in furtherance of the intentional interference with economic relations.

[109] TRREB submits that the unlawful means used by IMS against TRREB's Members by gaining unauthorized access to TRREB's system and platforms and taking the Members' information therefrom is a civil wrong done to them which would be actionable by them as the tort of intrusion by seclusion if the unlawful conduct had caused loss to the Members.

[110] As I have noted, the elements of a cause of action in intrusion upon seclusion are: (a) intentional (including reckless) conduct of the defendant; (b) invasion, without lawful justification, into the plaintiff's private affairs; and (c) that a reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish.

[111] I accept that TRREB has sufficiently pleaded facts that satisfy the elements of the tort of interference with economic relations because it has pleaded facts which would give rise to a plausible claim by Members against IMS for intrusion upon seclusion. TRREB has pleaded that it suffered a loss as a result.

[112] I decline to strike out TRREB's claim based on the cause of action of interference with economic relations.

Should the Original Claim be struck out because TRREB's claims against IMS are statute barred and abusive?

[113] IMS submits that TRREB's claims against it as pleaded in the Original Claim are statute barred. IMS brings this motion under rule 21.01(1)(b) to strike out the Original Claim on the ground that it discloses no reasonable cause of action and under rule 21.01(3)(d) of the *Rules of Civil Procedure* on the ground that the action is an abuse of process of the court. No evidence is admissible on a motion under rule 21.01(1)(b).

[114] IMS submits that on the face of the Original Claim (and TRREB's Response to Demand for Particulars) and having regard to TRREB's pleading in the Federal Court action (which was introduced into evidence as an exhibit to the affidavit of a law clerk at IMS's lawyers), TRREB's failure to provide evidence of when it first knew of the facts in s. 5(1)(a) of the *Limitations Act* which would show when TRREB discovered the claim against IMS is fatal and shows that the limitation period for TRREB's claims against IMS passed before the Original Claim was issued. IMS submits that since TRREB pleaded the Federal Court action, the pleadings in that action are incorporated into the Original Claim by reference.

[115] In the Original Claim, TRREB pleads that IMS wrongfully appropriated TRREB's proprietary and confidential information and is using it for its own commercial gain. TRREB pleads that the acts alleged against IMS are continuous and ongoing. TRREB pleads that upon becoming aware of IMS's activities, TRREB sent numerous letters to IMS demanding that it cease and desist from further accessing the TRREB system.

[116] TRREB does not plead in the Original Claim the date or year when IMS began to wrongly appropriate TRREB's confidential information. In TRREB's Amended Response to Demand for Particulars, TRREB responded that it became aware after February 19, 2025 that d'Ancona had repeatedly and improperly been accessing the TRREB MLS® System since at least 2012.

[117] TRREB's position is that the limitation issue must be decided after a statement of defence has been delivered on a full evidentiary record. TRREB also relies on its pleading that IMS's wrongful conduct is continuous and each new tortious act raises a fresh cause of action with a new limitation period.

[118] In *Clark v. Ontario (Attorney General)*, 2019 ONCA 311, the Court of Appeal heard an appeal from an order dismissing a motion under rule 21.01(1)(a) of the *Rules of Civil Procedure* to strike out a statement of claim on the ground that it is barred by the expiry of the limitation period. Rule 21.01(1)(a) of the *Rules of Civil Procedure* provides for the determination of a

question of law raised by a pleading. The motion judge dismissed the motion to strike based on the limitations issue. On the appeal, at para. 38, the Court held that an argument that a claim is barred by operation of the *Limitations Act* is a defence to a claim, and as such it must be pleaded in a statement of defence. The Court of Appeal, at para. 40, held that rule 21.01(1)(a) is not applicable because the application of the *Limitations Act* is not a matter of law.

[119] The Court in *Clark* cited *Beardsley v. Ontario*, 2001 CanLII 8621 (ON CA) where the Court had held that it would be “unduly technical” to require a statement of defence to be delivered if “it is plain and obvious from a review of the statement of claim that no additional facts could be asserted that would alter the conclusion that a limitation period had expired”. The Court in *Clark* held that to the extent this caution created an exception, it was extremely limited in scope. The Court noted that although the Court of Appeal has not categorically precluded the use of r. 21.01(1)(a) on limitations matters in subsequent cases, in several cases it has sought to discourage its use. The Court cited *Salewski v. Lalonde*, 2017 ONCA 515, at para. 45, where the panel stated that because the basic limitation period is now premised on the discoverability rule, the application of which raises mixed questions of law and fact, the panel questioned “whether there is any circumstance in which a limitation issue under the Act can properly be determined under rule 21.01(1)(a) unless pleadings are closed and it is clear the facts are undisputed”. The Court of Appeal in *Clark* held, at para. 48, that *Salewski* is the controlling authority and limitations issues are not properly determined under rule 21.01(1)(a) unless pleadings are closed and the facts are undisputed.

[120] In my view, IMS’s motion under rule 21.01(1)(b) or rule 21.01(3)(d) to strike out the Original Claim because it is statute barred is not properly brought. IMS’s argument that TRREB’s action is statute barred is a defence and, as such, following *Clark*, it must be pleaded in a statement of defence.

[121] I decline to strike out the Original Claim on the grounds that, because it is statute barred, it discloses no reasonable cause of action or it is an abuse of process.

Should the Original Claim be struck out as an abuse of process because it is duplicative of the Federal Court action?

[122] IMS submits that the Original Claim should be struck out as an abuse of process because the claims overlap with issues or facts in the Federal Court action and the claims should have been brought in the Federal Court action. IMS submits that allowing TRREB to relitigate its claims against IMS in this Court would violate the principles of judicial economy, consistency, and finality in the judicial process since the underlying factual matrix for the Original Claim is the same as that for the Federal Court action.

[123] By Order dated April 7, 2021 in the Federal Court action, TRREB’s claims against IMS, the Court struck out TRREB’s claims for breach of confidentiality and other claims in contract or tort for lack of jurisdiction, with leave to amend. This order was not appealed.

[124] TRREB submits that its claims against IMS in this action are not identical to claims that were made in the Federal Court action and they are properly brought in this action and are within

the jurisdiction of this Court. TRREB submits that the claim that is proceeding in the Federal Court action is a distinct claim for copyright infringement.

[125] I do not accept the submission by IMS that TRREB's action against it is an abuse of process because the claims are properly brought in the Federal Court action. Claims, other than the copyright claim, were struck out of TRREB's pleading in the Federal Court action for lack of jurisdiction. The copyright claim was also struck out, but was restored on appeal. This Court has jurisdiction over the claims made in this action.

[126] I decline to strike out the Original Claim on the ground that it is an abuse of process because the claims should properly have been brought in the Federal Court action.

Disposition

[127] For these reasons:

- (a) TRREB's motion for leave to amend the Original Claim in the form of the Proposed Amended Claim is allowed, provided that leave is not granted for TRREB to amend the Original Claim to make claims against Mr. d'Ancona based on causes of action founded on acts or omissions that occurred more than two years before TRREB's motion to amend the Original Claim was brought.
- (b) IMS's motion to strike out the Original Claim is allowed in part. TRREB's claim founded on the cause of action of intrusion upon seclusion is struck out on the ground that it discloses no reasonable cause of action. IMS's motion is otherwise dismissed.

[128] I ask counsel to provide me with an approved form of Order that is consistent with this endorsement.

[129] If the parties are unable to resolve costs, they may make written submissions in accordance with a timetable, and with reasonable page limits, to be agreed upon by counsel and approved by me.

Cavanagh J.

Date: September 25, 2026