Court of King's Bench of Alberta

Citation: AR Aly Professional Medical Corporation v HealthPointe Group Inc., 2026 ABKB 798

2026 ABKB 798 (CanLII)

Date: 20261110
Docket: 2403 24532
Registry: Edmonton

Between:

AR Aly Professional Medical Corporation

Plaintiff/Appellant

- and -

HealthPointe Group Inc., Sean D. Gonzales, Curtis Hlushak, Dhiren J. Naidu, Michael J. Pappachan, Darren Gray, and HealthPointe 2 Limited Partnership by its general partner, HealthPointe 2 GP Ltd.

Defendants

- and -

Darren Gray

Respondent

Decision
of the
Honourable Justice K.A. McLeod

Overview

[1] Darren Gray is one of several Defendants named in an Amended Statement of Claim (ASOC). An Applications Judge accepted Dr. Gray's application under Rule 3.68(2)(b) to strike the portions of the claim that relate to him (AJ Decision). The Plaintiff, AR Aly Professional Medical Corporation (Aly), appeals the AJ Decision.

[2] The underlying event of the claim was a 2024 real estate deal. AR Aly is a minority and voting shareholder of HealthPointe Group Inc. (HGI), which owns part of a building. The Cameron Development Corporation used to own part of the same building. HGI and CDC had an agreement that if one of them planned to sell their portion of the building, they would first offer it to the other (Right of First Refusal). CDC sold its portion of the building to HealthPointe 2 Limited Partnership ("HP2 Partnership", which is partners with HealthPointe 2 GP Ltd., together "HP2"), and AR Aly says HGI did not receive an offer by which to exercise its Right of First Refusal before HP2 purchased CDC's part of the building, and HGI and AR Aly have experienced related losses.

[3] Dr. Gray is the Medical Director of one of the building's major tenants, and is also an investor in HP2.

[4] The corporate structure is somewhat complicated by the various memberships of individuals and individual professional corporations in multiple corporate entities. For example, some of the individual shareholders/directors of HGI, like the Defendants, Dhiren Naidu and Michael Pappachan, are also shareholders/directors of HP2.

[5] AR Aly also says that Dr. Gray, who is part of the third corporate entity HP2 (and who was also involved with a tenant in the building), engaged in tortious conduct by inducing breach of contract, interfering with contractual relations, and conspiring civilly.

[6] The central issue on appeal is whether the statement of claim fails on its face for failure to disclose any reasonable claim by the shareholder Plaintiff, AR Aly, against the defendant Dr. Gray.

Proceedings in Applications Justice Chambers and Standard of Review

[7] The Applications Justice accepted the application to dismiss the claims against Dr. Gray on September 4, 2025, on the basis that AR Aly is a shareholder of HGI and AR Aly's causes of action are properly HGI's causes of action, which cannot be pursued absent leave of the Court to do so.

[8] Appeals of AJs' decisions are heard *de novo* and the standard of review is correctness: ***Lesenko v Wild Rose Ready Mix Ltd***, 2024 ABKB 333 at paras 13-15. In ***Lesenko***, Justice Feasby extensively reviewed the standard of review that applies when AJ decisions are appealed. Though Feasby J concluded that a true appellate or deferential review standard would benefit the justice system's efficiency and parties' expectations of each other and the courts, he nonetheless concluded that without changes to the *Alberta Rules of Court* and reconsideration from the Court of Appeal, he would not apply a different standard of review to AJ decisions.

[9] I also use a *de novo* or correctness standard of review here. The present appeal was argued differently and more expansively than the original application even though the parties do not rely on any evidence. This expanded argument can largely be ascribed to the nature of these appeals that allow for robust and lengthy written and oral submissions, which are not achievable in the time constraints of regular Applications Judges' Chambers.

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Rule 3.68(2)(b)'s "Plain and Obvious" Test

[10] A Court may strike all or part of a claim under Rule 3.68(2)(b) if the claim "discloses no reasonable claim or defence to a claim." The parties do not dispute the Rule or its test, only its application to this case.

[11] The Court of Appeal in ***SR v Edmonton (Police Service)***, 2024 ABCA 340 considered the Rule at issue here, finding that a "pleading will only be struck under this rule if it is plain and obvious that it does not disclose a valid claim" and no evidence is admissible under this Rule (para 13). The facts as pleaded are assumed to be true and the claim (or defence) is assessed for its legal sufficiency (para 13).

Positions on Appeal

[12] The Appellant argues the AJ Decision was wrong in law since it is neither plain nor obvious that the Appellant's claims against Dr. Gray disclose no valid cause of action. The Appellant argues that the shareholder claims can be pursued through this action after they obtain leave (though they had not yet sought leave), and other claims include personal tort claims by AR Aly against Dr. Gray in civil conspiracy, inducing breach of contract, and interference with contractual relations. The Appellant argues that where personal claims are not consequential losses of the corporation, the claim must be adjudicated.

[13] The Respondents argue that the Appellant is trying to overcomplicate a straightforward situation; that AR Aly is a minority shareholder whose main claim is that HGI has suffered losses, and either the corporation itself may pursue a remedy for this (though it has chosen not to) or minority shareholder AR Aly may do so after a successful application to pursue a derivative action. The Respondents argue that all the losses complained of are consequential to the pleaded losses of the corporation and are not exceptions to the rule against shareholders unilaterally commencing actions on behalf of corporations without a court granting the ability to pursue a derivative claim under s 240 of Alberta's *Business Corporations Act*, RSA 2000, c B-9.

Analysis

[14] The issues to be determined in this appeal are whether it is plain and obvious that:

- AR Aly's claims against Dr. Gray properly belong to HGI?
- AR Aly has no other causes of action in the ASOC apart from HGI's actions against Dr. Gray?
- AR Aly must get leave to bring a derivative action against Dr. Gray?

[15] I answer all issues in the affirmative for the reasons that follow, and therefore dismiss the appeal. I start with a brief recitation of the law with respect to shareholders bringing actions that properly belong to the corporation. I then review the different kinds of claims articulated in the ASOC. Finally, I discuss AR Aly's required actions with respect to a derivative action.

A. Shareholders May Pursue Corporations' Actions Through Derivative Actions

[16] Individual shareholders cannot pursue actions that belong to the corporation, a well-established principle that dates to the 1800s in ***Foss v Harbottle***, (1843), 2 Hare 460, 67 E.R. 189. The logic of the rule comes from the fact that it is the corporation that is the legal entity and

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the purpose of the rule is to avoid a multiplicity of duplicative and potentially conflicting proceedings. The general rule from ***Foss v Harbottle*** is binding in Canada.

[17] In ***Hercules Managements Ltd v Ernst & Young***, 1997 CanLII 345 (SCC) (***Hercules***), the SCC explained that the rule is a consequence of the separate legal identity of the corporation, with the corporation being responsible for its own torts and breaches of contract and those from which it suffers. In *Hercules*, the Supreme Court cites the English Court of Appeal in ***Prudential Assurance Co. v. Newman Industries Ltd*. (No. 2)**, [1982] 1 All E.R. 354, at p. 367 with approval for both the logical rationale of the rule about corporations' legal identities and responsibilities, and the corresponding lack of legal identities and responsibilities for shareholders. Of the shareholder's role, the English Court said at p.367 that "[w]hen the shareholder acquires a share he accepts the fact that the value of his investment follows the fortunes of the company and that he can only exercise his influence over the fortunes of the company by the exercise of his voting rights in general meeting."

[18] Because of the harshness of the rule, which can exclude minority shareholders from potential recovery when they are at odds with the majority, the legislature has allowed exceptions to this general rule. Shareholders may pursue actions on behalf of a corporation through a derivative action, but leave to do so must be sought and granted under s 240 of Alberta's *Business Corporations Act*, RSA 2000, c B-9 (BCA). This is a codified exception to the general rule set out in ***Foss v Harbottle***, and is for instances where a corporation could or should be pursuing a claim but is not.

[19] To the extent that AR Aly relies on a common law derivative action separate from the provisions under the BCA, I do not find common law derivative actions are applicable here since HGI is incorporated under the BCA. Any derivative action must be brought under the provisions of the BCA (as the B.C. Supreme Court found in ***SaNOtize Research and Development Corp v Miller***, 2024 BCSC 741 at para 14).

[20] As AR Aly notes, the general rule that shareholders may not pursue causes of action has exceptions. If the shareholder can show that it has a distinct individual loss, separate from the corporation's alleged loss, that shareholder could make a claim in its own capacity and without approval of the court through a derivative action under the BCA. This exception would be for something other than the corporation's loss.

[21] Below, I examine the ASOC's claims and conclude that none of the claims against Dr. Gray survive as exceptions to the application of the rule in ***Foss v Harbottle*** or otherwise demonstrate a reasonable cause of action on the part of AR Aly.

B. AR Aly's Claims Against Dr. Gray Belong to HGI

i. Most of the Claims in the ASOC Are Between AR Aly and HGI Directors

[22] Most of the claims in the ASOC are the following (except the ones that were more specifically argued as personally-held claims, as analyzed below):

> Breaches of fiduciary and statutory duties
>
> i. These duties are alleged to be owed by HGI's Board of Directors to HGI shareholders and do not involve Dr. Gray.

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Directors of HGI induced breach of contract

ii. Two of the individual directors of HGI are alleged to have engaged in this tort with respect to the contract between HGI and CDC. The claim of inducement by the Directors of HGI does not involve Dr. Gray (see below for the analysis of this claim against Dr. Gray).

Oppressive and Unfair Conduct of HGI and its Board of Directors

iii. These claims are with respect to the actions of and relationship between AR Aly and HGI and do not involve Dr. Gray.

[23] None of these claims involve Dr. Gray at all. They are intra-corporation disputes that do not involve any claim against Dr. Gray.

ii. AR Aly's Claims Against Dr. Gray Belong to HGI

[24] The Applications Justice found, and I also find, that the ASOC's claims against Dr. Gray are HGI's claims against CDC, Dr. Gray, and others.

[25] The ASOC's specific pleadings alleged against Dr. Gray, aside from the tortious conduct alleged and discussed below, are as follows:

a) As a directing mind of HP2, Dr. Gray was involved in purchasing CDC's portion of the building that AR Aly says HGI should have had the opportunity to purchase;

- This claim is HGI's against CDC.

b) As a directing mind of HP2, Dr. Gray received information from CDC that CDC should have given to HGI;

- This claim is HGI's against CDC.

c) With the Defendant Dr. Naidu, Dr. Gray received material from CDC with respect to the sale when CDC understood they were acting for HGI.

- This claim is HGI's against Drs. Naidu and Gray.

d) Drs. Gray and Naidu should have given CDC's material regarding the building sale to HGI.

- This claim is HGI's against Drs. Naidu and Gray.

[26] The above are all complaints that underscore the main complaint, which is that HGI was improperly excluded from the opportunity to purchase CDC's portion of the building. This is HGI's claim to make and AR Aly requires an approved derivative action to pursue those claims.

iii. Claim of Civil Conspiracy

[27] AR Aly says the facts pled support its claim that Dr. Gray engaged in civil conspiracy as against AR Aly directly, separate from its status as a shareholder. AR Aly argues in the alternative that this claim does not solely belong to HGI and therefore does not require a derivative claim.

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[28] To have a successful claim of civil conspiracy in the context of the corporate relationships between the parties, AR Aly must show injury resulted to it directly, and show the defendant conspirators, including Dr. Gray:

a) Acted in combination, by agreement or with common design;

b) Conducted themselves in an unlawful manner;

c) Acted unlawfully in a manner directed towards the Plaintiff(s);

d) Knew that injury to the Plaintiff(s) was likely to result; and

e) Their conduct caused injury to the Plaintiff(s).

Agribrands Purina Canada Inc v Kasamekas, 2011 ONCA 460 at para 25.

[29] Each conspirator must have acted unlawfully: ***Bank of Montreal v Tortora***, 2010 BCCA 139. Unlawful conduct in the tort of civil conspiracy can mean conduct that is actionable, quasi-criminal, or in any event "wrong in law": ***Agribrands***, paras 29-39.

[30] The Respondent claims that the Amended Statement of Claim contains no allegation that Dr. Gray conspired with others to commit an unlawful act and the facts as pled do not support the tort. The Appellant responds that the facts pled make out the tort which is sufficient, but if the Court requires the specific words of "civil conspiracy" to be included, the ASOC could be further amended.

[31] I find it is unnecessary to decide the issue about whether the failure to name "civil conspiracy" in the ASOC is harmful to the claim, because I do not find that the ASOC supports the allegation that Dr. Gray acted unlawfully in a manner to support the claims of tortious conduct.

[32] AR Aly claims that the allegations to support a tort of civil conspiracy were pled at paras 21, 22, 45, and 63-65 of the ASOC. Many of these paragraphs describe Dr. Gray's actions, but none of the actions by Dr. Gray are alleged to be unlawful except in the resultant deprivation of HGI's opportunity to purchase CDC's portion of the building.

[33] The claims that Dr. Gray received information from CDC, did not provide that information to HGI, participated in purchasing the building portion from CDC as part of HP2, all allege apparently lawful conduct. That Dr. Gray is alleged to have "threatened the lease" of one of the building's major tenants could be lawful or unlawful conduct. It would be lawful if Dr. Gray threatened not to renew the lease in accordance with its provisions, or threatened to exercise a contractual right. It would be unlawful if Dr. Gray breached the lease without cause, repudiated the lease, or failed to abide by its terms or similar actions, because this would be actionable conduct. However, even if the allegations against Dr. Gray were unlawful conduct as in the latter examples, these wrongs would also belong to HGI and/or the building landlord. None of the allegations are unlawful conduct directed toward AR Aly.

[34] The facts as pled do not support Dr. Gray taking part in a tort of civil conspiracy as directed towards AR Aly, and this claim is therefore not an exception to the ***Foss v Harbottle*** rule. This appeal only relates to Dr. Gray, and I therefore make no conclusion on whether this tort is made out on the pleadings with respect to any of the other Defendants.

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iv. Claim of Tort of Inducing Breach of Contract

[35] The Plaintiff claims a personal claim against Dr. Gray for inducing breach of contract between HGI and CDC. The elements of this tort are:

a) The existence of a contract.

b) Defendant's knowledge of the contract.

c) Defendant's intent to cause a breach of the contract.

d) Defendant's conduct induced the breach.

e) Damage.

f) No justification for the defendant's conduct.

[36] The Amended Statement of Claim states that Dr. Gray knew of the contract between CDC and HGI, which contained the Right of First Refusal provision requiring either party to offer their ownership share of the HP building to the other first before offering to sell to anyone else. The Amended Statement of Claim also states that Dr. Gray improperly colluded with other Defendants to induce CDC to make an offer to sell to HP2 rather than HGI in breach of its obligations to HGI.

[37] Assuming the facts as pled in the ASOC are true, the main contract that is alleged to have been breached is between CDC and HGI, and AR Aly is not a party to that contract. As AR Aly argues in its brief at p 12-13, that wrong is against HGI. AR Aly argues at p 13 of its brief that this tort led to damage suffered by HGI: "HGI suffered a direct financial loss in terms of loss in the value of the HP Building, as well as opportunity cost." However, neither the facts in the ASOC nor the argument identify how AR Aly's losses are separate from HGI's.

[38] AR Aly further argues that, because it held a shareholder's loan, its losses are beyond those of a plain shareholder, citing cases such as ***Midland Resources Holding Ltd v Shtaif***, 2017 ONCA 320 and ***Walsh v TRA Company Ltd***, 2023 NLCA 23. However, the damages claimed against Dr. Gray do not include the shareholder loan (the value of which is claimed against HGI in the ASOC). The damages claimed against Dr. Gray in the ASOC are only for loss of value/interest in the building, and punitive damages resulting from those losses.

[39] In argument, the Appellant submitted that HGI's Unanimous Shareholder Agreement ("USA") is another contract that was breached and is captured by this tort. However, the ASOC does not plead that Dr. Gray knew of the USA's terms, and does not plead that Dr. Gray induced the USA's breach. This is a contractual dispute between AR Aly and its fellow signatories to the USA.

[40] The ASOC lacks a link between AR Aly's claimed losses and Dr. Gray's alleged wrongdoing. As alleged in the ASOC, the wrongs against AR Aly are those as minority shareholder either through a derivative claim on behalf of HGI or within HGI, and do not establish an exception to the rule in ***Foss v Harbottle*** supporting a cause of action by AR Aly against Dr. Gray.

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v. Claim of Tort of Interference with Economic or Contractual Relations

[41] The Plaintiff claims a personal claim against Dr. Gray for interfering with economic or contractual relations.

[42] This tort contains the following elements:

a) The Defendant must have intended to injure the Plaintiff's economic interests;

b) Interference must be by unlawful or illegal means;

c) The Plaintiff must have suffered economic loss or harm.

[43] In ***AI Enterprises v Bram Enterprises***, 2014 SCC 12, the Supreme Court extensively reviewed this tort and its multiple names, as well as the various kinds of treatment this tort received in the courts. Ultimately, the SCC kept a narrow interpretation of the tort, finding that for this tort, the conduct that is the "unlawful means" must give rise to a civil cause of action by the third party or would do so if the third party had suffered loss as a result of that conduct.

[44] The ASOC claims that Dr. Gray tortiously interfered with HGI's economic interests because HGI had an economic interest in the building purchase and the tortious conduct caused both HGI and AR Aly losses. However, it is not pled that the tortious losses under this tort are different between HGI and AR Aly. It is not pled that Dr. Gray engaged in a tort against AR Aly. The wrongs against AR Aly are those as shareholder and do not establish an exception to the rule in ***Foss v Harbottle***.

C. AR Aly Must Get Leave to Pursue Actions on Behalf of HGI

[45] The Amended Statement of Claim sets out why AR Aly, a minority shareholder of HGI, seeks redress. HGI is alleged not to have received the benefit of a previously negotiated Right of First Refusal, excluding it from an apparently lucrative real estate deal. AR Aly's principal tried mightily to rectify the situation in late 2024, and the ASOC lays out in some detail the special meetings, votes, and deals that are the backdrop for the lawsuit.

[46] A close reading of the Amended Statement of Claim, however, reveals that all of the alleged wrongdoing and causes of action lead back to AR Aly's potential rights, benefits, or losses as a shareholder, and are not personally-held claims. Personally-held claims can be exceptions to the general rule that shareholders may not pursue the claims of the corporate entity without leave.

[47] The Plaintiff states in the ASOC under a heading titled "Derivative Action" that the claim ought to have been commenced by HGI, and includes as an alternative remedy that the Plaintiff be granted permission to commence a derivative action on behalf of HGI. In Justice Chambers, AR Aly argued it may be bringing an application to commence a derivative action on behalf of HGI. However, AR Aly had not yet sought leave from the court to bring a derivative action on behalf of HGI by the time this matter was argued in either Applications Judge or Justice Chambers.

[48] In her AJ Decision, the AJ asked if any authority allowed a would-be party bringing a derivative action to proceed through the litigation steps in advance of getting leave under s 240 of the BCA. She was provided no authority on that point, and I agree with the effect of her comments which is to note that an application for a derivative claim must be successful prior to a shareholder being able to continue litigation steps on behalf of the corporation. To allow a

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shareholder to proceed through litigation steps without leave would defeat much of the purpose of the general rule.

[49] AR Aly posits whether the AJ Decision was in error by requiring it to commence "a separate action" for a derivative claim. In my view, the decision to dismiss the action against Dr. Gray was correct, and that is the total effect of the AJ Decision. The AJ was not deciding how derivative actions must be commenced in all circumstances or even generally. She dismissed the claims against Dr. Gray as not disclosing a reasonable cause of action, and I agree.

Heard on the 13th day of March, 2026.
Dated at the City of Edmonton, Alberta this 10th day of November, 2026.

K.A. McLeod
J.C.K.B.A.

Appearances:

Pascal Visentin
for the Plaintiff/Appellant

Marco Poretti
for the Respondent

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