

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

[REDACTED]

Plaintiff

– and –

Dealer Methods Incorporated, [REDACTED]  
[REDACTED]

Defendants

)  
)  
) Alexandra Monkhouse, for the Plaintiff  
)  
)

)  
)  
) Todd Weisberg, for the Defendants  
)  
)

) HEARD at Toronto: August 21, 2025

REASONS FOR DECISION

J.K. PENMAN J.

**Overview**

[1] This is a motion by the defendants [REDACTED], and [REDACTED] [REDACTED] to strike the plaintiff's, [REDACTED] Statement of Claim in its entirety or portions of it, pursuant to Rule 21.01 and 25.11 of the *Rules of Civil Procedure*.

[2] [REDACTED] was employed by Dealer Methods between May of 2019 until January 2022, when he was terminated “without cause”. [REDACTED] pursued a Ministry of Labour complaint for unpaid wages, vacation pay/vacation time and unpaid expense reimbursements. The Ministry of Labour complaint was settled, and a Release was executed releasing Dealer Methods, [REDACTED] from any claim relating to unpaid

wages, vacation pay, or reprisals that could have been raised in connection with the *Employment Standards Act* (“ESA”) claim.

[3] ██████ also issued a Statement of Claim against the defendants alleging ██████ ██████ were responsible for damages via oppression remedy for wrongful dismissal and unpaid wages.

[4] After the Ministry of Labour settlement, ██████ amended the Statement of Claim to seek damages for wrongful dismissal and breach of contract based on misrepresentations inducing him to agree to employment with Dealer Methods.

[5] Dealer Methods has since declared bankruptcy.

[6] ██████ submit that the Amended Statement of Claim discloses no reasonable cause of action against them and is an attempt to convert a straightforward wrongful dismissal action against Dealer Methods into a personal action against the officers of the corporation. They argue the pleadings are a transparent attempt to embarrass ██████, in order to seek further compensation despite the Ministry of Labour settlement.

[7] ██████ submits that the pleadings establish that the defendants made personal misrepresentations to induce ██████ employment with Dealer Methods, they engaged in oppressive conduct towards him, knowing that they could not pay him a commission on sale, and are personally liable for violations of the *Human Rights Code*. ██████ submits that the motions should be dismissed under both Rule 25.11 and 21.01.

[8] The issues for me to decide in this motion are:

- Do the pleadings disclose a reasonable cause of action as against the individual defendants?
- Are the pleadings as against the individual defendants frivolous, vexatious, or an abuse of process?

[9] For the following reasons, the answer to those questions is no. I am satisfied that the pleadings disclose a reasonable cause of action as against the defendants, and are not frivolous, vexatious or an abuse of process. The motion is dismissed.

### **Background Facts**

[10] Dealer Methods specialized in software development for vehicle leasing and asset management. [REDACTED] intended role was to sell software designed for automotive dealer management that was to be designed by the staff of Dealer Methods.

[11] [REDACTED] commenced employment with Dealer Methods in or around May 22, 2019, in the role of General Sales Manager pursuant to a written employment agreement. The employment agreement included a termination clause that allowed Dealer Methods to terminate employment upon the provision of two (2) weeks' notice plus the minimum notice required by the applicable employment standards legislation.

[12] [REDACTED] worked for Dealer Methods until the termination of his employment "without cause" on January 21, 2022. [REDACTED] was 63 years old at the time of his termination.

[13] In or around March 2022, [REDACTED] made a complaint to the Ministry of Labour for unpaid wages, vacation pay/vacation time and unpaid expense reimbursements. He also alleged that he was not provided with wage statements and that he faced reprisal because he had asked about his alleged unpaid wages.

[14] On April 18, 2023, while Dealer Methods was appealing the Ministry of Labour Claims, [REDACTED] issued the Claim. The Claim included a claim against the directors of Dealer Methods for an oppression remedy based on unpaid wages.

[15] On May 31, 2023, the parties settled Dealer Methods' appeal of the claim for unpaid wages before the Ontario Labour Relations Board, on a without prejudice basis to the civil claim.

[16] On August 1, 2023, following the settlement of the Ministry of Labour Claims and the execution of the Release, ██████ issued and served an Amended Statement of Claim. It is this Amended Statement of Claim that is at issue in this proceeding.

[17] Specifically, ██████ alleges he is a creditor under the *Ontario Business Corporations Act* (“OBCA”) for wrongful dismissal damages and breach of contract as a result of misrepresentations, made prior to him becoming an employee, that the software was functional which induced him to agree to employment with Dealer Methods.

[18] The action was stayed against Dealer Methods by effect of its assignment in bankruptcy as of January 16, 2024.

[19] The pleadings allege the following causes of action against ██████:

- Misrepresentation that Dealer Methods’ software was functional, relied on by ██████ who accepted employment with Dealer Methods;
- Oppression for the breach of contract as a result of the misrepresentation that the software was functional;
- Human rights complaints relating to allegations that ██████ was treated differently than younger employees, or employees who did not have caregiver obligations.

**Issue 1: Do the Pleadings Disclose a Reasonable Cause of Action as Against the Individual Defendants?**

[20] Rule 21.01(1)(b) provides:

- A party may move before a judge to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly.

[21] The test on a motion to strike under Rule 21.01(1)(b) is, assuming the facts pleaded to be true, it is plain and obvious that the claim has no reasonable prospect of success. This does not allow for reliance, however, on “bald allegations, speculation, or the pleading of legal conclusions.”: *Deluca v. Canada*, 2016 ONSC 3865 at para. 5; *Knight v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17.

[22] It is a well-established general proposition that directors, officers, and/or employees of a corporation are protected from civil liability for the actions of the corporation they control and direct unless it can be shown that their conduct, while acting as the directing mind of the corporation, was tortious, or exhibited a separate identity or interest from the corporation.: see *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481.

[23] In *Laurier Glass Ltd. v. Simplicity Computer Solutions Inc.*, 2011 ONSC 1510 at para. 46, Perell J., acknowledged that if a director’s tortious conduct is undertaken within their authority, on behalf of the corporation, they are still personally liable. Perell J., went on to say:

However, keeping in mind that separating corporate and personal liability is an accepted norm of commercial activity, the cases in which employees and officers of companies have been found personally liable for actions ostensibly carried out under a corporate name are fact-specific and rare.

**i) Negligent Misrepresentation**

[24] I will first deal with the negligent misrepresentation cause of action as pleaded.

[25] Deception and misrepresentation are examples of tortious misconduct that can give rise to personal liability for a corporate director. The Court of Appeal in *AGDA Systems International Ltd. v. Valcom Ltd.*, 1999 CanLII 1527 (ONCA) at paragraph 18 stated the following:

The consistent line of authority in Canada holds simply that, in all events, officers, directors, and employees of corporations are responsible for their tortious conduct even though that conduct was directed in a bona fide manner to the best interests of the company.

[26] It is less common but the “case law does not preclude the extension of the principle to torts causing economic loss such as the tort of deceit or fraudulent misrepresentation in a contractual context.”: see *Chu De Québec-Université Laval v. Tree Knowledge International Corp.*, 2024 ONSC 3541 at para. 308.

[27] In order to fit within this framework, however, the claim must be specifically pleaded.: *AGDA* at para. 39.

[28] In my view, the pleadings in this case do more than make a bald or vague assertion of independent tortious conduct. The pleadings detail the following:

- [REDACTED] are senior executives of Dealer Methods and are the sole directors, officers and shareholders.
- [REDACTED] gave [REDACTED] personal guarantees of his employment earnings from the outset of his employment.
- The specifics of [REDACTED] conversations with [REDACTED] where he was offered a position as General Sales Manager to sell software.
- That both [REDACTED] assured [REDACTED] that the software would be ready to sell prior to the beginning of his employment, and that it was already installed in a dealership group.
- The conversations [REDACTED] had with [REDACTED] about his commissions-based pay structure, and their reassurances that the commissions would be lucrative and make up for the pay cut that he was taking based on his experience in the automotive industry.

- That [REDACTED] knew the software was not functional and intentionally misrepresented the functionality of the software to [REDACTED]
- That the representations made by [REDACTED] that the software was functional was material to [REDACTED] decision to accept the position.
- [REDACTED] relied in good faith on the representations [REDACTED] made and could not have known the software was not functional nor would be functional by the time he was to commence employment.

[29] The statement of particulars provided for in the Plaintiff's responding motion record provides specifics as to dates of the misrepresentations, specifically that the software would be available for client sale/installation immediately on the start of [REDACTED] employment.

[30] [REDACTED] argue that there is nothing in the claim to suggest that they were doing anything other than acting on behalf of Dealer Methods but rather were simply engaged in the ordinary function of officers and directors.

[31] In *TSSC Corporation No. 2123 v. Times Group Principals*, 2018 ONSC 4799 the plaintiff, a condominium corporation, alleged construction deficiencies in its building, including issues with plumbing, fire sprinklers, mechanical systems, and structural elements, which caused significant damage. The Plaintiff claimed that the corporate defendants and their individual principals were responsible for these deficiencies due to breaches of statutory duties, fiduciary duties, contracts, and tortious misconduct, including fraudulent and negligent misrepresentation. The court found, relying on *ScotiaMcLeod*, that the pleadings did not contain particulars of any acts committed by the principals that were in themselves tortious or exhibited a separate identity. The alleged wrongs by the principals as pleaded created liability for the corporation but not themselves personally.: see para. 65.

[32] In contrast, the allegations in this case as pleaded are not vague, lack particularity, or improperly rely on conjunctive or disjunctive language to extend liability to the individual defendants.

[33] They detail that the representations at issue were made specifically by [REDACTED] regarding the fitness of the software. They detail that the existence and fitness of the software and [REDACTED] role in selling it was the crux of his employment with Dealer Methods, as negotiated by [REDACTED]. It is pleaded that the defendants knew this was untrue and intentionally misrepresented the functionality of the software to [REDACTED] and continued to do so even after he commenced working at Dealer Methods. [REDACTED] accepted the position, expecting to earn commission income based on the defendants' assertion that the software was fit for use.

[34] In addition, [REDACTED] were the only shareholders, officers and directors of the corporation. They were the corporation.: see *Burns v. Sharan Sohi et al.*, 2012 ONSC 2414, aff'd *Burns v. Sohi*, 2016 ONCA 478. As pleaded, they stood to benefit directly or indirectly from the labours of the plaintiff.

[35] As our Court of Appeal said in *AGDA* at para. 39, referring to *ScotiaMcLeod*:

The operative portion of this paragraph is the final sentence which confirms that, where *properly pleaded*, officers or employees can be liable for tortious conduct even when acting in the course of duty. [emphasis added].

[36] Importantly at this stage the pleadings are to be read broadly and not to be struck unless plain and obvious the case cannot succeed. The defendants' argument may well have merit, but at this stage I am not persuaded that the defendants have met the plain and obvious threshold.

**ii) Oppression**

[37] The defendants argue that the only claim that would have allowed an oppression remedy to proceed against ██████████ would have been related to unpaid wages, which was already addressed by the Release. They argue that ██████████ is not a creditor under s. 248 of the OBCA and the action therefore must fail.

[38] Section 248 of the OBCA states that to establish oppression the conduct complained of must be oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder, creditor, director or officer of the corporation. Section 245 of the OBCA states that a “complainant” for the purposes of the section includes “any other person who, in the discretion of the court, is a proper person to make an application under this Part.”

[39] Typically, wrongful dismissal itself does not justify a finding of oppression, but claims have been asserted successfully by non-shareholder employees where a director’s conduct has prevented the corporate employer from paying wages or wrongful dismissal damages.: *Abbasbayli v. Fiera Foods Company et al.*, 2021 ONCA 95 at para. 42. It is a fact-driven analysis.

[40] A non-shareholder employee has been found to be a complainant under the oppression remedy, where internal corporate maneuvering was used to defeat the employee’s claim to damages, for example, by winding up the corporate employer and transferring the corporation’s assets out of the company, leaving the corporation unable to satisfy the claims of the employee.: *Abbasbayli*, 2022 ONSC 1968 at para. 28.

[41] Particularly relevant to this case is *El Ashiri v. Pembroke Residence Ltd.*, 2015 ONSC 1172, where the corporate director was found personally liable for oppression in connection with a wrongful dismissal. In that case no after-the-fact corporate maneuvers were alleged, but there, the sole officer and director of two corporations misled the plaintiff employees into working and continuing to work without ever being paid what they were due, even from the outset. The individual defendant was the sole controlling officer and

director of the corporation, and he benefitted directly or indirectly from the labours of the plaintiffs.

[42] The court concluded that the plaintiffs were entitled to damages against the defendant director pursuant to the OBCA oppression remedy, concluding that the plaintiffs' expectations of payment were "eminently reasonable.": see para. 23.

[43] This is analogous to the situation before me. It remains to be seen whether the bankruptcy was a maneuver designed to frustrate ██████ claim for damages, or whether the company was simply a business that eventually failed. However, the defendants were the sole directors and officers of the corporation who promised ██████ that he would earn commission income, all the while knowing that this was not possible because they had no product capable of being sold. The oppressive conduct as pleaded occurred both before and during the course of ██████ employment.

[44] In addition, the Statement of Claim pleads, and the Defendants are deemed to admit, that ██████ engaged in conduct from which they derived a personal benefit as follows:

████████████████████ benefitted directly from ██████ work, ██████ work enabled Dealer to remain a functioning company that developed software for which ██████ claimed SRED (Scientific Research and Experimental Development) credits from the Canadian Government.

[45] In *Halupa v. Sagamedica Inc.*, 2019 ONSC 7411 wrongful dismissal damages were awarded personally against the corporate director. The court acknowledged that, "[N]ot every wrongfully dismissed employee is considered an appropriate creditor for the purposes of this section, courts have recognized employees as proper creditors where the oppressive conduct is initiated after dismissal "to disappoint the reasonable expectation of the employee who has become or will become a creditor of the corporation.": see para. 43. The court found, however, as the sole director of the

companies, he was personally liable having benefitted personally from the mistreatment of the plaintiff.

[46] As in *El Ashiri* and *Halupa*, Dealer Methods is a closely held company. [REDACTED] [REDACTED] are the sole officers and directors and had total control over the corporation. It has been pleaded that [REDACTED] benefitted directly from the oppressive conduct.

[47] On a motion under Rule 21.01 the facts alleged by the Plaintiff are assumed to be true. It may well be that the defendants' argument that [REDACTED] is not a proper creditor under the oppression remedy provisions will succeed. At this stage and on the pleadings as drafted, however, I am not persuaded that it is plain and obvious the claim cannot succeed.

**Issue 2: Are the pleadings as against the individual defendants frivolous, vexatious and/or an abuse of process?**

[48] [REDACTED] seek to strike the claim in whole or in part as frivolous, vexatious and/or an abuse of process under Rule 21.01(3)(d) or Rule 25.11(b) and (c). They submit that the pleadings contain baseless and embarrassing allegations only included for the purpose of extracting further compensation despite the Ministry of Labour settlement.

[49] A scandalous proceeding includes allegations that are irrelevant, argumentative, simply inserted for colour, or to impugn the behaviour or character of the other party unrelated to the issues in the litigation. "The pleading is struck out because it serves no purpose other than to add colour or argument and to disconcert or humiliate the opponent.": see *Fastener & Fittings Inc. v. Wang*, 2020 ONSC 1649 at paras. 61-62.

[50] Our Court of Appeal stated the following in *Currie v. Halton Regional Police Services*, 2003 CanLII 7815 (ON CA), "It is apparent there is a degree of overlap in the meaning of the terms frivolous, vexatious, and an abuse of process. What I take from the authorities is that any action for which there is clearly no merit may qualify for classification as frivolous, vexatious, or an abuse of process.": see para. 17.

[51] The Court of Appeal also stated, “when the court invokes its authority under Rule 21.01(3)(d) or pursuant to its inherent jurisdiction to dismiss or stay an action, it does so only in the clearest of cases.”: see para. 18.

[52] The difficulty with the defendants’ argument is that what has been pleaded is relevant and necessary to the claim that the defendants engaged in conduct that was tortious and oppressive. The Court of Appeal in *Huachangda Canada Holdings Inc. v. Solcz Group Inc.*, 2019 ONCA 649 stated that, “a fact that is relevant to a cause of action cannot be scandalous, frivolous or vexatious. On the other hand, a pleading that raises irrelevant or superfluous allegations that cannot affect the outcome of an action is scandalous, frivolous or vexatious, and should be struck out.”: see para. 15.

[53] The plaintiff’s allegations as pleaded detail the conduct or business practices employed by the defendants, including misrepresentations by them personally about the software, not paying ██████ from the “get go”, not paying ██████ commissions, and that ██████ made payments from his personal bank account to ██████ for wages owed. This is part of the conduct that forms the basis of the allegations of misrepresentation and tortious conduct. While it may be “embarrassing” for the defendants, this does not take away from their relevance to the plaintiff’s claim that the defendants are personally liable to him due to their oppressive and tortious conduct.

[54] I do not accept that the pleadings are such that they are incapable of proof or incapable of affecting the outcome of the proceeding, nor do I accept that they were “designed solely for the purposes of atmosphere or to cast the opposing party in a bad light.”: see *Fastener & Fittings* at para. 57.

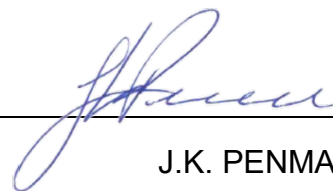
[55] Rule 21.03(3)(d) can be used to strike out a pleading that amounts to an abuse of process on the ground that the plaintiff “promised not to maintain such an action in a release given to another.”: see *IAP Claiming H-15019 v. P. James Wallbridge*, 2019 ONSC 1617 at para. 11, aff’d 2020 ONCA 270, leave to appeal refused 2020 CanLII 94499 (SCC).

[56] I am not persuaded, however, that on the facts of this case the plaintiff is attempting to relitigate issues related to unpaid wages and expenses in the Amended Statement of Claim. While some of what is pleaded refers to conduct around unpaid wages which is covered by the Release, it is clear these references are included not for a claim for wages under the ESA, but for damages relating to misrepresentation, oppression and human rights damages. This does not constitute an abuse of process.

[57] The motion is dismissed.

### **Costs**

[58] I would encourage the parties to try to settle costs of the motion. If they cannot, the plaintiff may serve and file written cost submissions within 20 days of the release of these Reasons for Decision, followed by the defendants' written cost submissions within a further 15 days. The costs submissions shall not exceed three pages in length, excluding the Bill of Costs.



---

J.K. PENMAN J.

**Released:** September 15, 2025

**COURT FILE NO.:** CV-23-00698123-0000  
**DATE:** 20250915

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

[REDACTED]

Plaintiff

**- and -**

Dealer Methods Incorporated, [REDACTED]  
[REDACTED]

Defendants

---

**REASONS FOR DECISION**

---

J.K. PENMAN J.

**Released:** September 15, 2025