SUPREME COURT OF NOVA SCOTIA
Citation: *Wright v. Ratcliffe*, 2022 NSSC 128

Date: 20220506
Docket: Hfx No. 508338
Registry: Halifax

Between:

Alex Wright

Plaintiff

and

James Ratcliffe and Victory Seafood Limited

Defendants

DECISION

Judge: The Honourable Justice Jamie Campbell

Heard: April 26, 2022, in Halifax, Nova Scotia

Counsel: Christopher Robinson, for the Plaintiff
James Green, for the Defendants

By the Court:

[1] The defendants in this matter filed a motion for summary judgment on pleadings. They say that the claims against them are not sustainable.

[2] In a motion for summary judgment on pleadings, only the pleadings are considered. There are no affidavits or other evidence. In this case, the facts are those found in the Amended Notice of Action and the facts as alleged in that document are, for the purposes of the motion, considered to be proven.

The Facts Alleged in the Statement of Claim

[3] The plaintiff is Alex Wright. He filed a Notice of Action and Statement of Claim on August 12, 2021, against James Ratcliffe and Victory Seafood Limited.

[4] Mr. Wright and the defendant, James Ratcliffe, were officers, directors, and shareholders of Global Seafood Ltd. Global was a Nova Scotia company involved in the export and marketing of seafood to international markets. Global conducted business from August 2015 until the late spring of 2019. It was wound-up on December 31, 2019.

[5] When Global was in operation Mr. Wright lived in Northampton England. Mr. Ratcliffe lived in both the United Kingdom and Nova Scotia.

[6] Mr. Wright's role was the VP of Finance. He is a chartered accountant. He managed cashflow, supplier and customer payments, payroll, financing, and debt management. Mr. Wright owned 35% of the shares of Global.

[7] Mr. Ratcliffe did business development, purchasing and operations management. He was also the president of Global. Mr. Ratcliffe was the primary contact for Global's suppliers and customers, and he led the operational aspects of the business. Mr. Ratcliffe owned 45% of the shares.

[8] Between them, Mr. Wright and Mr. Ratcliffe owned 80% of the shares of Global. In the Amended Statement of Claim Mr. Wright says that Mr. Reginald LeBlanc paid $100,000 to purchase the other 20% of the shares. He also paid an additional $50,000. Mr. Wright says that Mr. Ratcliffe recruited Mr. LeBlanc to become an investor because Mr. LeBlanc was a significant dealer in lobster in Nova Scotia and Mr. LeBlanc would work with Mr. Ratcliffe locally. Mr. Wright says that Mr. LeBlanc's connection to Global was important because he brought credibility with other lobster suppliers.

[9] Mr. Wright says that 2018 was a difficult year for Global. Mr. Wright and Mr. Ratcliffe agreed to adjust the company's business plan by reducing staff and narrowing the customer and supply base to large accounts. Mr. Wright expanded his role by travelling abroad to get new customers and Mr. Ratcliffe spent time in Nova Scotia working with principal suppliers in preparation for the 2019 lobster season.

[10] Mr. Wright says that by early 2019 Global's supplier and customer list had been narrowed to the point that a substantial part of the company's business went through two entities: Captain's Choice Lobster Ltd., the principal supplier and First Catch Fisheries Ltd., the principal customer. Captain's Choice is based in Lower West Pubnico and First Catch is based in Hunan, China.

[11] Mr. Wright says that sometime around February 2019, Mr. Ratcliffe told him that he had been told by his contacts with Captain's Choice that they were no longer willing to supply lobster. Given that most of the lobster supply came from Captain's Choice that meant that Global could no longer continue to operate. Mr. Wright says that Mr. Ratcliffe told him that the supply of lobster could not be replaced quickly or easily, and First Catch would be lost as a customer. At about the same time, Mr. Wright says that Mr. Ratcliffe told him that he had been offered an in-house management position with Captain's Choice, the supplier. Mr. Wright says that Mr. Ratcliffe informed him that he intended to accept the offer considering the current prospects for their own company, Global. Mr. Wright agreed that it made sense to have Global wound-up.

[12] Before Global was wound-up, Mr. Ratcliffe arranged for $100,000 to be paid to Reginald LeBlanc, the 20% shareholder. Mr. Ratcliffe was the sole signatory on Global's bank account. Mr. Wright said that he objected to the payment.

[13] Then, in June 2019, Mr. Wright became aware that in February 2019, Mr. Ratcliffe had incorporated a UK company, Victory Seafood Limited. Mr. Wright says that at a meeting in July 2019 Mr. Ratcliffe told him that Victory had been incorporated for tax purposes to allow him to flow compensation from his management job with Captain's Choice through his own company. Mr. Ratcliffe told Mr. Wright that he was making about $100,000 a year.

[14] Mr. Wright and Mr. Ratcliffe got together in December 2019. Mr. Ratcliffe then told Mr. Wright that he was trading lobster with First Catch, the Chinese company that Global had been selling to. Mr. Wright says that during the 5 years

that Global was in operation, Captain's Choice never sold lobsters directly to First Catch. The sale was always facilitated through a third party like Global.

[15] Mr. Wright says that he found out that Victory has two directors; Mr. Ratcliffe, and his spouse. The company's business is the wholesale of fish, including lobsters. The company's logistics manager is Global's former logistics manager. The company's principal supplier is Captain's Choice. The company's principal buyer is First Catch. The company's freight forwarder is Global's former freight forwarder. The company's current broker is Global's former currency broker. Mr. Wright says that during 2020 Victory had sales of about $20 million.

[16] Mr. Wright alleges that Mr. Ratcliffe, through the vehicle of Victory is operating a seafood trading business identical to that formerly operated by Global and that Mr. Ratcliffe is not, and never was, an employee of Captain's Choice. He also says that Mr. Ratcliffe has continued with his business relationship with Reginald LeBlanc, through Victory.

[17] The allegations set out in the Statement of Claim are that as a director, officer and shareholder of Global, Mr. Ratcliffe had a fiduciary duty to Global and to Mr. Wright, as a shareholder and co-director, of Global. Mr. Wright alleges that Mr. Ratcliffe had a duty to spend his time fully for the benefit of Global and its shareholders and not for the benefit of other businesses including his own. He had a duty to not convert or appropriate Global's corporate opportunities for his own personal or corporate benefit. He had a duty of good faith and fidelity to Global and its shareholders. Mr. Ratcliffe had a duty to not misuse confidential or proprietary information of Global's for his own personal or corporate benefit. He had a duty to not solicit Global's customers or suppliers for his own benefit or that of his company, Victory. Finally, Mr. Wright says that Mr. Ratcliffe had a duty to not unfairly prejudice or unfairly disregard the interests of any individual shareholder over those of any other individual shareholder.

[18] Mr. Wright says that Mr. Ratcliffe breached those duties. He says that Mr. Ratcliffe either negligently or intentionally misrepresented that Captain's Choice would no longer trade with Global. He misrepresented that he had been offered and had accepted a job with Captain's Choice. Mr. Wright alleges that Mr. Ratcliffe solicited and converted Global's corporate opportunity, being its business with trading partners, Captain's Choice and First Catch, and other customers and suppliers.

[19] Mr. Wright also claims oppression under the *Third Schedule of the Companies Act*, R.S.N.S. 1989, c. 81, as amended. He says that Mr. Ratcliffe exercised his power as a director and officer of Global in a manner that was oppressive and unfairly prejudiced and unfairly disregarded the interests of Mr. Wright.

[20] Mr. Wright alleges that Mr. Ratcliffe's misconduct caused him loss by the unnecessary winding-up of Global and the consequent damage to the value of his shares. He says that by misappropriating Global's corporate opportunities and moving them to Victory, Global lost revenue and profits. And he says that by the oppressive conduct Mr. Wright suffered loss.

[21] Those are the facts as alleged in the Statement of Claim. No other facts can be added to clarify or elaborate upon them in a motion for summary judgment on pleadings.

Summary Judgment on Pleadings

[22] The purpose of summary judgment on pleadings is to remove cases that clearly have no chance of succeeding at trial. If an action is certain to fail because it contains a radical defect it should be struck. A claim will be struck if, assuming the facts stated in the pleadings can be proven, it is still plain and obvious that the pleadings cannot succeed.

[23] The power to strike must be used with the acknowledgment that the law evolves. Courts should of course permit novel but arguable cases to proceed. But there is no reason to allow a case to slowly creep toward an inevitable but distant and costly conclusion.

[24] That seems to be the fundamental distinction. There is a difference between a case that is destined to fail because it is barred by statute or does not actually make a claim based in any law or makes claim based on a misunderstanding of the law, and a case that may appear from the pleadings to be a bit of a long shot. Sometimes long shots change the law. Summary judgment on pleadings culls from the court docket cases that should never be allowed to see the inside of a courtroom. A summary judgment on pleadings motion is not a standard first step in defending litigation and it is not a way to prejudge the merits of arguable cases.

Fiduciary Relationship with Global

[25] Mr. Ratcliffe was a director of Global. In that capacity he was in a fiduciary relationship with the company. The fiduciary relationship between corporate director and corporation is a long established *per se* fiduciary relationship.

[26] Mr. Wright has claimed that he was harmed when the corporation, Global was harmed by Mr. Ratcliffe's actions. The rule in *Foss v. Harbottle*, (1843), 2 Hare 461, 67 E.R. 189 (Eng. V.C.), permits only the company and not individual shareholders to sue for wrongs done to the company. A shareholder cannot claim that a wrong done to the company has caused them a loss through the diminution of the value of their shares. That form of claim has consistently been found to have been precluded by the rule in *Foss v. Harbottle*.

> …[A] shareholder in a company has no independent right of action based on an allegation of diminution in the value of its shares caused by damage to the company. The shareholder does not suffer a direct loss. Its loss merely reflects the loss suffered by the company. *Meditrust Healthcare Inc. v. Shoppers Drug Mart*, 2002 CarswellOnt 3380 (C.A.), at para. 42.

[27] Mr. Wright does not have a cause of action based on damages sustained by the company in his personal capacity as a shareholder. Global, as the corporate entity that is alleged to have suffered the loss, would be the party that would be entitled to make that claim against Mr. Ratcliffe as a director.

[28] One way to avoid the rule in *Foss v. Harbottle* would be to make an application to court, under the *Third Schedule of the Companies Act*, R.S.N.S. 1989, c. 81, as amended, to permit a derivative action to be taken on behalf of the company. The company, Global, was wound-up on December 31, 2019.

[29] Mr. Wright cannot presume to bring an action on behalf of Global. In the absence of a derivative action, a claim by Mr. Wright, based on Mr. Ratcliffe's breach of his fiduciary obligations to Global, cannot be sustained.

Fiduciary Duties of Directors and Officers

[30] Mr. Wright says in his statement of claim that Mr. Ratcliffe breached the fiduciary duty that he owed to him personally, as distinct from any obligations that he owed to Global. Mr. Wright says that the breach involved misrepresentation about the status of the company's relationship with the lobster supplier and misrepresenting the trade opportunity that Victory Seafoods had with that supplier. Mr. Ratcliffe says that in law that claim is clearly unsustainable.

[31] As indicated, Mr. Wright and Mr. Ratcliff were fellow directors and shareholders in a closely-held company. Mr. Wright's claim against Mr. Ratcliffe as a corporate director is based on there being a fiduciary relationship between these two individuals. Some fiduciary relationships exist because they fall within established categories. Those are *per se* fiduciary relationships. Those would include, as noted above, the relationship between a director and a corporation, as well as a solicitor and client, partners within a firm and principals and agents. *Perez v. Galambos*, 2009 SCC 48.

[32] The relationship of directors to other directors or to shareholders is not a *per se* fiduciary relationship. If there is a fiduciary duty it would in that case be *ad hoc*. That means that it would arise as a matter of fact from the circumstances of a particular relationship. It does not depend on being within an establish category.

[33] There may then be situations in which a corporate director is found to owe a fiduciary duty to shareholder. Macdonald J.A., in *Hasse v. Vladi Private Islands Ltd*., 1990 CarswellNS 447, noted that whether a fiduciary duty may be owed by a director to a shareholder will depend on the facts of the individual case. In that case the allegation was that the company was a closely held private corporation. "This would appear to be the type of situation in which the authorities at least recognize that a fiduciary duty flowing from directors of the company to the shareholders *may* exist.", para. 21.

[34] In *Waxman v. Waxman*, 2004 CarswellOnt 1715, the Ontario Court of Appeal specifically found a breach of fiduciary duty as between two shareholders in a closely-held corporation. However, again, it is important to note that the underlying facts are critical. Normally, a business relationship between two businesspeople operating at arms-length from one another will not generate fiduciary obligations. In *Waxman*, the court focussed on the unique facts of the case and, in particular, the fact that the shareholders in that case were brothers who had built a lifetime of trust and interdependence. The court noted,

> …this was not a commercial transaction done at arm's length between two business people. Morris and Chester had a relationship that developed over a lifetime. It was one of complete loyalty and trust in connection with the business of IWS and their interests in it. The evidence of the fiduciary nature of this relationship was overwhelming. (at para 508)

[35] While the relationship between a director and a shareholder is not a *per se* fiduciary one, it does not appear to be a relationship in which the potential for the

existence of a fiduciary relationship is in some way foreclosed. It is, however, rare and an intensely factual legal conclusion.

Pleading Fiduciary Duty

[36] *Nova Scotia Civil Procedure Rule* 38.02 sets out the general principles that apply to pleadings. A party must, by the pleadings that have been filed, provide notice to the other party of all claims, defences, or grounds to be raised. Pleadings must be concise but must provide information to allow the other party to know the case it has to meet and must include the material facts upon which the party will rely. Evidence to prove a material fact must not be pleaded. The responding party is entitled to know the case they must meet and, more specifically, what material facts are alleged to give rise to a claim recognized at law. Simply alleging a point of law or cause of action (without supporting material facts) is insufficient.

[37] That distinction between material facts and evidence can be perplexing enough. It becomes even more so when a legal concept like the fiduciary relationship is added to the mix. The existence of that relationship is a legal conclusion, not a fact. It is drawn from facts and those facts are supported by evidence. A fact is what a party alleges to be true. Evidence is proof of the truth of the fact.

[38] Mr. Green, as counsel for Mr. Ratcliffe, argues that Mr. Wright has not pleaded the facts necessary to establish that Mr. Ratcliffe owed a fiduciary duty to Mr. Wright. If the fiduciary relationship is one that is recognized in law as being fiduciary, it would be sufficient to plead the existence of the relationship. But if the relationship is not one that is *per se* fiduciary, facts are required to support the legal conclusion that an *ad hoc* fiduciary relationship exists.

[39] In *Perez* Justice Cromwell noted that it was "fundamental" to such an *ad hoc* fiduciary relationship that there be an undertaking, express or implied, that the fiduciary would act in the best interests of the other party. Furthermore, the alleged fiduciary must have discretionary power to affect the other party's interests. That may arise from statute, agreement or undertaking. The requirement for the existence of that power in the hands of the fiduciary is not controversial. The absence of that power negates the existence of a fiduciary duty.

[40] Counsel for Mr. Ratcliffe says that the Statement of Claim does not allege that Mr. Ratcliffe stood in an *ad hoc* fiduciary relationship with Mr. Wright. The pleadings assert that there was fiduciary relationship arising from Mr. Ratcliffe's

status as a director, officer, and shareholder of Global. That is an assertion of a *per se* fiduciary relationship that does not, in law, exist. Corporate directors and officers owe fiduciary obligations to act in the best interests of the corporation. Absent very exceptional circumstances, as indicated, that duty does not extend to shareholders, creditors, or other directors. (See, *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, and *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69.)

[41] The failure to plead facts sufficient to establish that relationship between a shareholder and director will justify striking out the claims of a breach of fiduciary duty. *Budd v. Gentra Inc.*, (1998), 43 B.L.R. (2d) 27, (Ont. C.A.).

[42] Mr. Wright has pleaded that Mr. Ratcliffe had a fiduciary relationship with him. Pleading a cause of action, by itself, is insufficient. It is like a simple pleading of "negligence". These are causes of action or legal findings. They are not material facts necessary to sustain a pleading.

[43] Pleadings should be read broadly. Summary judgment on pleadings is not an opportunity to have claims summarily dismissed because those pleadings do not use the right phrases. They have to tell the other party the case they are facing. In this case the question is whether on the facts as pleaded, it is clear and obvious that a fiduciary duty could not be found to have existed.

[44] Mr. Wright has not used the term "*per se*" but the pleadings might be interpreted as indicating that the fiduciary relationship is alleged to have existed because of a unique relationship between Mr. Ratcliffe and Mr. Wright including how they divided and performed their respective duties within Global.

[45] In this case, Mr. Ratcliffe and Mr. Wright were both shareholders. They were two of three shareholders in a small, closely-held corporation. They were both directors and officers. They divided their duties and were separated geographically. Mr. Wright was in England. He had responsibility for and oversight over Global's finances. The operational side of the company was handled by Mr. Ratcliffe in Nova Scotia. They had only one main supplier and one main customer, suggesting a significant financial vulnerability. They obviously could not afford to lose either. Mr. Ratcliffe was able to make a payment of $100,000 to Mr. LeBlanc over Mr. Wright's objections. The implication is that Mr. Wright was, in the context of a closely held company, subject to some discretionary power exercised by Mr. Ratcliffe.

[46] The pleadings do not indicate that at any time Mr. Ratcliffe gave an explicit undertaking, that he would act in the best interests of Mr. Wright, as a shareholder. However, as indicated, the absence of an express or written undertaking is not necessarily fatal to a claim for fiduciary breach. The undertaking may be by implication.

[47] Read broadly the pleadings could be interpreted as supporting the contention that by continuing to act as the operational representative in Nova Scotia in circumstances where their interests were placed in a uniquely vulnerable position and then assuring Mr. Wright that winding-up Global was the right thing to do based on that local knowledge, he was by implication affirming that he was acting in Mr. Wright's best interests and not his own. That may well be a stretching and extraordinarily generous interpretation of the pleadings. But, as indicated, summary judgment on the pleadings (as opposed to on evidence) requires that the claim be doomed to fail. It is not the proper tool for terminating even novel claims. Whether that combination of factual assertion and legal argument can be sustained is properly a matter for trial and not for summary judgment on pleadings.

Oppression

[48] If Mr. Wright has pleaded shareholder oppression.

[49] Mr. Wright cannot make a claim based on Mr. Radcliffe's fiduciary duties owed to Global. And Mr. Wright may face an uphill battle to show that a fiduciary relationship existed between him and Mr. Ratcliffe. To the extent that these legal principles create an injustice, legislation has been put in place to "temper the restrictive effect of these principles on minority shareholder rights." *Rea v. Wildboer*, 2015 ONCA 373, para. 17. The oppression remedy is designed to counteract the impact of *Foss v. Harbottle*. A complainant can apply to the court to recover for wrongs done to the individual complainant by the company or as a result of the affairs of the company being conducted in a way that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of the complainant. It is a personal claim. *Ford Motor Co. of Canada v. Ontario Municipal Employees Retirement Board*, (2006), 79 O.R. (3d) 81, at para. 112, leave to appeal refused, [2006] S.C.C.A. No. 77 (S.C.C.).

[50] The derivative action was also designed to counteract the impacts of *Foss v. Harbottle*. It gives the complainant a right to apply to the court to bring an action in the name of the company or on behalf of the company. It is a remedy intended to deal with wrongs done to the company itself.

[51] Both forms of redress, oppression, and derivative actions, are permitted by the *Third Schedule to the Companies Act*. As noted by the Ontario Court of Appeal in *Wildboer*, the oppression remedy and derivative actions often intersect. A wrongful act might be harmful to both the company and to the personal interest of a complainant. Where a complainant seeks to recover solely for wrongs done to a public corporation, the relief sought is for the benefit of the corporation and there is no allegation that the complainant's "individualized personal interests" have ben affected, the claim should be pursued by a derivative action. In cases where an oppression remedy has been permitted to proceed "even though the wrongs asserted were wrongs to the corporation" the same wrongful acts have directly affected the complainant in a way that was different from the indirect effect of the conduct on other complainants. "And most, if not all, involve small closely held corporations, not public companies." (para. 29).

[52] In *Wildboer* there was no overlap between the derivative action and the oppression remedy. The complainants did not assert that their personal interests as shareholders were adversely affected in any way other than the type of harm that had been suffered by all shareholders collectively. The oppression remedy is not available unless the harm impacts the interests of the complainant personally, giving rise to a personal action. It is not because the complainant has an interest as part of the collectivity of shareholders.

[53] The derivative action provides a remedy when minority shareholders seek to redress wrongs done in respect of the corporation.

> The corporation will be injured when all shareholders are affected equally, with none experiencing any special harm. By contrast, in a personal (or "direct") action, the harm has a differential impact on shareholders, whether the difference arises amongst members of different classes of shareholders or as between members of a single class. It has also been said that in a derivative action, the injury to shareholders is only *indirect*, that is, it arises only because the corporation is injured, and not otherwise. (Jeffrey G. MacIntosh, "The Oppression Remedy: Personal or Deriviative?", (1991) 70 Can. Bar Rev. 29, cited in *Wildboer*, at para. 36.)

[54] Mr. Wright has pleaded the oppression remedy. He has not made an application for leave to file a derivative action on behalf of Global, which no longer exists as a company. The issue is whether Mr. Wright has pleaded that he has suffered a loss that is distinct from the loss suffered by Global itself.

[55] The oppression remedy requires a broad and flexible approach to its application. It provides for a broad and flexible form of relief. It does not allow for an open ended approach that disregards the limits and distinctions between the oppression remedy and derivative actions. In this case, practically, it matters that Global was a closely held, private company. There were three shareholders: Mr. Wright, Mr. Ratcliffe and Mr. LeBlanc. The value of the shares of each of them was affected the same way. But the result was not the same for all three. Mr. LeBlanc was repaid at least in part for his investment. The allegation is that Mr. Ratcliffe started another company and moved the business of Global, its suppliers, and customers, over to the new company, Victory. The allegation is that it was Mr. Wright who lost and that he was the only one who lost. His loss was not felt by the shareholders as a group but by him, alone, and personally.

[56] It is not obvious or plain that, in principle, Mr. Wright's claim for relief under the concept of shareholder oppression will fail.

***Limitation of Actions Act,* SNS 2014, c. 35**

[57] Mr. Ratcliffe argues that the general two year limitation period applies to the oppression claim. The payment of $100,000 to Reginald LeBlanc was made before Global was wound-up on December 31, 2019. Mr. Wright filed his Notice of Action and Statement of Claim on August 12, 2021. The oppression claim was not made. The Amended Notice of Action and Statement of Claim which make the oppression claim, were filed on February 7, 2022. That was more than two years after the payment to Mr. LeBlanc and the winding-up of the company.

[58] Section 22 of the *Limitation of Actions Act* deals with situations in which a party seeks to add a new claim after the expiry of the limitation period. That can be done if the added claim is "related to the conduct, transaction, or events described in the original pleadings".

[59] In *Krishna v. Gauthier*, 2018 NSSC 305, the plaintiff was a passenger in a vehicle driven by a coworker. The plaintiff claimed against the driver and vicarious liability against the employer. The plaintiff then brought a motion to amend the statement of claim to include claims with respect to how her employer dealt with her disabilities and the workers' compensation process. Justice Wood (as he then was), found that the new claims were not related to the claims in the original pleading.

[60] Mr. Wright has added the oppression remedy. It is based on the same circumstances that were originally pleaded. Mr. Wright is claiming that Mr. Ratcliffe lied to him. He says that Mr. Ratcliffe convinced him to wind-up their company. He says that Mr. Ratcliffe then started operating essentially the same business, with the same suppliers and customers, and started making a profit, with Mr. Wright out of the mix. Whether it is characterized as a breach of fiduciary duty or oppression, the complaint is based on the same circumstances. The oppression claim is not out of time.

Conclusion

[61] This is not a case that should be dismissed summarily because it is doomed to fail.

[62] Mr. Wright's claim that he should recover damages based on Mr. Ratcliffe's breach of the fiduciary duty that he owed to Global cannot succeed. That claim should be struck.

[63] Mr. Ratcliffe was a shareholder, director and officer of a small closely held company. He did not owe a *per se* fiduciary duty to Mr. Wright, as a director and shareholder. The pleadings can be interpreted in a way that would allow for the finding of an *ad hoc* fiduciary relationship.

[64] Mr. Wright has made a claim for relief for shareholder oppression. The claim is not out of time. It is an additional form of relief arising out of the same facts that were set out in the original Statement of Claim that was filed within the two year limit. The damages alleged to have been suffered by Mr. Wright are personal to him. While the loss in Global's share value would apply to all shares, Mr. Wright's situation was unique among the three shareholders. The oppression claim should not be struck on a motion for summary judgment on pleadings.

Costs

[65] Costs are awarded to Mr. Wright as the successful party on the motion, in the amount of $750.

Campbell, J.