

CANADA / JUDGMENT

Collmann v. Rally

2026 BCSC 138

COURT

Supreme Court of British Columbia

DECIDED

29 January 2026

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2026 BCSC 138 Collmann v. Rally

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Collmann v. Rally,

2026 BCSC 138

Date: 20260129

Docket: S-257901

Registry: Vancouver

Between:

Genora Ann Collmann

Plaintiff

And:

David B. Rally, Beck, Robinson & Company, Law Corporation,

and Rosborough Law Corporation

Defendants

Before: The Honourable Justice J. K. Gibson

Reasons for Judgment

Counsel for the Plaintiff:

O. Li

Counsel for the Defendants David B. Rally,

and Beck, Robinson & Company, Law Corporation:

D.J. Winterton

Place and Date of Hearing:

Vancouver, B.C.

January 21, 2026

Place and Date of Judgment:

Vancouver, B.C.

January 29, 2026

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Overview

- [1] This is an application brought by the defendants David B. Rally, Beck, Robinson & Company, Law Corporation (the "Rally Defendants") to strike the notice of civil claim brought against them by the plaintiff Genora Ann Collmann ("Ms. Collmann"). The defendant Rosborough Law Corporation took no position on the application.
- [2] For the reasons set out below, I strike Ms. Collman's claim against the Rally Defendants, without leave to amend, because it is plain and obvious that the pleading discloses no reasonable cause of action, it has no reasonable prospect of success and is unnecessary.

Background

- [3] On June 10, 2024, Capital Direct approved a mortgage for Ms. Collman for a 24-month term (the "Mortgage"). In the materials, there is dispute about the precise amount of the Mortgage. The principal amount was in the range of \$220,000-\$244,000. I find the precise amount is not necessary to determine for this application.

- [4] On June 11, 2024, Ms. Collman executed a Hypothecated Funds Agreement requiring her to deposit \$23,651 (the "Hypothecation Funds") into Beck, Robinson and Company's trust account. These funds were used to service the monthly payments due under the Mortgage for the first twelve months.
- [5] It was neither a pre-requisite to funding the Mortgage nor a term of the Mortgage that Ms. Collman provide a void cheque or signed pre-authorized debit agreement ("PAD"). When Capital Direct funded the Mortgage, it did not request or require Ms. Collman to provide a void cheque or a PAD.
- [6] In April 2025, Capital Direct requested that Ms. Collmann provide it with a void cheque and a PAD to permit Capital Direct to debit her personal account to make monthly payments for the Mortgage.
- [7] Ms. Collmann did not provide Capital Direct with a void cheque or PAD before the Hypothecation Funds were depleted. Capital Direct could not debit her personal account to facilitate payment of the Mortgage. Ms. Collman says this inability to debit her personal account was due to an error on the part of Capital Direct, the Rally Defendants and/or Rosborough. After June 1, 2025, the Mortgage fell into arrears because the monthly amounts were not being paid by Ms. Collman.
- [8] At all material times, the Rally Defendants were retained by Capital Direct to register the Mortgage in favour of Capital Direct, over a property owned by Ms. Collman legally described as PID: 004-372-221, Lot A, District Lot 1714, Kamloops Division, Yale District, Plan 29259 (the "Clearwater Property").
- [9] Capital Direct has filed a petition seeking to foreclose on the Clearwater Property because Ms. Collman is in default of the Mortgage payments (the "Foreclosure Petition Proceeding").
- [10] Ms. Collman has not named Capital Direct in her notice of civil claim.

The claims as against the Rally Defendants

- [11] The notice of civil claim filed October 20, 2025 contains claims against the Rally Defendants are that they were at "fault" or had breached a duty, were negligent or in breach of contract for:
 - a) failing to request from Ms. Collman's legal counsel, Rosborough, an executed PAD or void cheque before June 17, 2024;
 - b) failing to request or obtain a PAD or void cheque from Rosborough or Ms. Collman at the time of closing;
 - c) permitting Capital Direct to fund the Mortgage knowing they had not delivered a PAD or void cheque to Capital Direct;
 - d) sending Rosborough's trust cheque or first trust account information to Capital Direct; and

- e) an attempt by either Capital Direct or Beck Robinson to automatically debit the monthly payments on the Mortgage from Rosborough's law firm trust account;
- f) an attempt to "transfer their own responsibility, fault and liability to the plaintiff and that she failed to make July and August 2025 mortgage payments on the basis that she failed to deliver to Capital Direct a PAD or void cheque;
- g) Mr. Rally allegedly telling Ms. Collmann that Capital Direct would not have funded the Mortgage without a void cheque in the first instance; and
- h) an alleged conflict of interest on the part of the Rally Defendants in billing Capital Direct for legal fees in the matter of the foreclosure on the Clearwater Property while Capital Direct has an alleged claim against the Rally Defendants.

Rule 9-5(1)(a) - Does the claim disclose a reasonable cause of action?

[12] Rule 9-5(1) of the British Columbia Supreme Court Civil Rules, B.C. Reg. 168/2009 provides:

At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence, as the case may be,
- (b) it is unnecessary, scandalous, frivolous or vexatious,

... or

- (d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[13] The test for striking a claim as disclosing no reasonable claim under Rule 9-5(1)(a), set out in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, is whether it is "plain and obvious," assuming the facts pleaded are true, that the claim discloses no reasonable cause of action, has no reasonable prospect of success, or that the action is "certain to fail" (see also *Willow v. Chong*, 2013 BCSC 1083 at para. 18). On an application under Rule 9-5(1)(a), the Court must assume the pleaded, material facts are true, and the application to strike must fail if there is a chance that the plaintiff might succeed.

[14] Evidence is not admissible on an application under Rule 9-5(1)(a): *Imperial Tobacco* at para. 11; *Willow* at para. 18.

[15] While material facts in a notice of civil claim must be taken to be true on a Rule 9-5(1)(a) application, allegations based only on assumption and speculation, and those "incapable of proof", need not be taken as proven and should be subjected to a sceptical analysis: *Willow* at para. 19.

- [16] If insufficient material facts have been pleaded to support every element of a cause of action, then that cause of action is bound to fail. A claimant may not rely on the possibility that new facts may turn up as the case progresses. The facts pleaded are the basis upon which the prospect of success of the claim is evaluated: *Skybridge Investments Ltd. v. Metro Movers Ltd.*, 2006 BCCA 500 at para. 9; *Imperial Tobacco* at para. 22.
- [17] The negligence and "breach of duty" claims against the Rally Defendants would require Ms. Collman to prove a legal duty between the Rally Defendants and Ms. Collman. The existence of a fiduciary duty or a duty of care is a conclusion of law and not a factual allegation: *Crooks v. Manolescu*, 1995 CanLII 1818 (BC SC) at para. 8.
- [18] A lawyer does not owe a duty of care to a non-client where that duty would be inconsistent with the lawyer's duty to their client: *Smolinski v. Mitchell*, 1995 CanLII 1545 (BC SC) at para. 54. Where an allegation is made of a duty of care owed by a lawyer to a non-client, it must be supported by facts about the relationship and the circumstances from which the duty arose: *Crooks* at paras. 10-12.
- [19] These findings apply here, where the Rally Defendants are the solicitors for Capital Direct. Ms. Collman was not and is not the Rally Defendants' client. The Rally Defendants' duties to their client, Capital Direct, may well be inconsistent with Ms. Collman's position.
- [20] The parties agree that the Rally Defendants did not owe a duty of care to Ms. Collman. Specifically, Ms. Collman's response to application contains her position that the Rally Defendants owe a duty of care to Capital Direct, but not to Ms. Collman. The admission of the absence of a duty of care between the Rally Defendants and Ms. Collman makes it plain and obvious that Ms. Collman would not succeed in a claim in negligence or breach of any legal duty to her by the Rally Defendants. Without the existence of a duty owed by the Rally Defendants to Ms. Collman, she cannot succeed in the negligence or "breach of duty" claims against them. For the same reason, those claims cannot be saved by amendment.
- [21] Ms. Collman also claims that she has an entitlement to a claim for contribution and indemnity from the Rally Defendants for any judgment or award found owing by her to Capital Direct in the Foreclosure Petition Proceeding. She also seeks a declaration that any loss, damage or expense found to have been suffered by Capital Direct in those proceedings was caused by the Rally Defendants.
- [22] Ms. Collman's claim that she is entitled to some contribution or indemnity because of the Rally Defendants' alleged (i) failure to request a PAD or void cheque and (ii) provision of incorrect account information to Capital Direct, is also bound to fail. The alleged conduct of the Rally Defendants falls within the scope of their retainer with Capital Direct. If there was any negligence on the part of the Rally Defendants, which they deny, it would be attributable to Capital Direct. Ms. Collman can raise those negligence allegations as a defence in the Foreclosure Petition Proceeding.

- [23] There is no duty of care owed by the Rally Defendants to Ms. Collman, nor any contractual or other relationship between them, even assuming the pleaded material facts are true, that could establish a claim for contribution and indemnity.
- [24] Ms. Collman also claims that the Rally Defendants have a conflict of interest with Capital Direct such that she is entitled to special costs and aggravated or punitive damages. The Rally Defendants are the solicitors for Capital Direct. They have never been the solicitors for Ms. Collmann. There is no conflict of interest between Capital Direct and the Rally Defendants. In any event, such an allegation could not ground a successful claim in damages or special costs for Ms. Collmann based on the facts pleaded.
- [25] In her response to application, Ms. Collman argued that this application was premature because she may wish to apply to have the Foreclosure Petition Proceeding converted into an action. I disagree. Ms. Collman could still bring such an application in the Foreclosure Petition Proceeding, and it would not alter my conclusion that the notice of civil claim herein is bound to fail as against the Rally Defendants.
- [26] Ms. Collman also made an argument about "indivisible injuries" that I find does not apply here. Ms. Collman did not file pleadings that contain the material facts to ground a successful negligence claim. On the law, there is no duty of care between the Rally Defendants and Ms. Collman. Her claim is bound to fail.
- [27] On these bases I find that the Notice of Civil Claim should be struck under Rule 9-5(1)(a).
- Rule 9-5(1)(b) - Is the pleading frivolous or vexatious?
- [28] Under Rule 9-5(1)(b), a pleading is frivolous or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the Court's time and public resources: *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, 1999 CanLII 5860 (BC SC), [1999] BCJ No. 2160 (SC); *Skender v. Farley*, 2007 BCCA 629 at para. 64.
- [29] In *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2012 BCCA 22, the B.C. Court of Appeal considered the substantive law of contribution between tortfeasors, codified in the Negligence Act, RSBC 1996, c 333 and procedural aspect in the court rules governing third party notices. The Court referred to the first branch of the Adams rule, taken from *Adams v. Thompson, Berwick, Pratt and Partners*, 1987 CanLII 2590 (BC CA), for the proposition that where a third party claim will not lie against another person with respect to an obligation belonging to the plaintiff which the defendant can raise directly against the plaintiff by way of defence, there is no need for third party proceedings. This is because the defendant will have their full remedy against the plaintiff by raising the defence.

[30] The first branch of Adams applies here. There is a client-solicitor relationship between Capital Direct and the Rally Defendants. The alleged acts of the Rally Defendants upon which Ms. Collmann seeks to found this claim are about alleged obligations of Capital Direct which can be raised as a defence in the Foreclosure Petition Proceeding. I find it is unnecessary for Ms. Collman to bring this claim and so the notice of civil claim should also be struck under Rule 9-5(1)(b).

Rule 9-5(1)(d) - Is the pleading an abuse of process?

[31] Abuse of process under Rule 9-5(1)(d), or the Court's inherent jurisdiction, is a flexible doctrine. It allows the Court to prevent a claim from proceeding where to do so would violate principles of judicial economy, consistency, finality and the integrity of the administration of justice.

[32] Ms. Collman has an obligation to clearly plead the material facts upon which she relies in making her claim. She has failed to do so, has sought relief that is unsupported by her pleadings and has included claims that are properly defences that can be raised in the Foreclosure Petition Proceeding. Ms. Collman also took the position that this proceeding was necessary to attempt to gain a costs award she thought would be unavailable in the Foreclosure Petition Proceeding. Bringing a claim that is bound to fail as an attempted end run around the costs process in another proceeding is problematic.

[33] This claim is an abuse of process because no valid claim is articulated against the Rally Defendants and it appears to be brought for the improper purpose of collateral attack on the Foreclosure Petition Proceedings brought by Capital Direct.

Conclusion

[34] Ms. Collman's notice of civil claim as against the Rally Defendants is struck under Rules 9-1(1)(a), (b) and (d), without leave to amend.

[35] I find it unnecessary for me to consider whether the claim should be struck under Rule 9-5(1)(c).

Costs

[36] The Rally Defendants took the position that the issue of costs should be reserved to be addressed after the determination of this application on the merits.

[37] If parties are unable to resolve the costs issue by consent, the parties have leave to submit written submissions on costs on the following schedule:

- 1) the Rally Defendants shall serve their submission on costs on counsel for Ms. Collman within seven days of the date of these reasons;
- 2) Ms. Collman shall serve her responding submissions within seven days of receipt of the Rally Defendants' submission;

- 3) The Rally Defendants will then have three days to serve any reply to the responding submissions; and
- 4) The parties shall deliver their respective written costs submissions to Supreme Court Scheduling for my attention by no later than 21 days from the date of these reasons.

"Gibson J."

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