

CITATION: Butler v. SEBWJB Financial Inc, 2026 ONSC 529
COURT FILE NO.: CV-23-00083952-0000
DATE: 2026-01-28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Natalie Butler, Plaintiff/Responding Party

AND:

SEBWJB Financial Inc o/a Butler Mortgage, WJRW Financial Services Inc o/a Butler Mortgage, Butler Mortgage Inc o/a Butler Mortgage, David William Butler, Sharon Elaine Butler, William Joseph Butler, John Doe Corporation and John Doe, Defendants/Moving Parties

BEFORE: The Honourable Justice A. J. Ohler

COUNSEL: Sabatina A. Vassalli, counsel for the Plaintiff/Responding Party

Nikolay Y. Chsherbinin, counsel for the Defendants/Moving Parties, SEBWJB Financial Inc, Butler Mortgage Inc, Sharon Elaine Butler and William Joseph Butler

HEARD: September 5, 2025

ENDORSEMENT

- [1] Natalie Butler (the “plaintiff”) claims against the defendants damages arising from the alleged wrongful termination of her employment. The claims are made jointly and severally against all defendants.
- [2] The individual defendants, Sharon Elaine Butler (“Sharon”) and William Joseph Butler (“Will”) have filed this motion to strike the action against them on the basis that it discloses no reasonable cause of action. The defendant Will also seeks to strike allegations of discrimination made under the provisions of the *Human Rights Code*, R.S.O. 1990, c. H.19, (the “Code”) on the basis that there is no independent actionable wrong of discrimination recognized in law.
- [3] The corporate defendants, SEBWJB Financial Inc. o/a Butler Mortgage (“SEBWJB”), WJRW Financial Services Inc. o/a Butler Mortgage (“WJRW”), and Butler Mortgage Inc. o/a Butler Mortgage and individual defendant, David William Butler (“David”) did not participate in this motion.

The Parties and Background Facts

- [4] The facts below are taken from the Amended Statement of Claim (“ASC”) and Fresh as Amended Statement of Claim (“FASC”) filed on this motion.

- [5] Will is the plaintiff's husband. David is Will's brother. Sharon is the mother of Will and David.
- [6] In 2016, the plaintiff began a romantic relationship with Will. In 2017, Will suggested that the plaintiff leave her career as a real estate agent and begin working for his family business, Butler Mortgage.
- [7] In 2017, WJRW was operating under the name Butler Mortgage.
- [8] The FASC does not include any material facts as to ownership of WJRW. The FASC does not include any material facts as to Sharon, Will, or David's role at WJRW or Butler Mortgage.
- [9] In 2021, David and Sharon had a disagreement. As a result of the disagreement, SEBWJB was incorporated and began operating as Butler Mortgage.
- [10] The FASC does not include any material facts as to ownership of SEBWJB Financial Inc. or its relationship to Butler Mortgage.
- [11] The FASC does not include any material facts as to Sharon or Will's role at SEBWJB or Butler Mortgage.
- [12] The plaintiff and Will got married on September 17, 2022 and separated in October 2023.
- [13] On November 4, 2023, the plaintiff's employment was terminated.
- [14] Counsel for the plaintiff advised that family law proceedings with respect to the plaintiff and Will are ongoing.

History of Proceedings

- [15] On December 22, 2023, the plaintiff commenced these proceedings by Notice of Action. On January 22, 2024, a Statement of Claim was filed but not served on the defendants.
- [16] On March 5, 2024, an Amended Statement of Claim ("ASC") was filed.
- [17] On March 27, 2024, the defendants accepted service of the ASC and Notice of Action.
- [18] The ASC claims as against the defendants, jointly and severally for wrongful dismissal, including compensation in lieu of notice in the amount of \$533,012.77, damages for breach of human rights in the amount of \$100,000, and damages for mental distress, punitive, exemplary and aggravated damages in the amount of \$100,000.
- [19] The ASC and FASC plead that the plaintiff was employed at Butler Mortgage. In referring to the employment relationship, she refers both to "Butler Mortgage" and to her "employment relationship with the defendants." The plaintiff pleads that "the defendants were at all material times the employer and/or the directing minds and agents of the employer of the plaintiff."

[20] With respect to the alleged breaches of her human rights, she pleads:

18. Throughout the Plaintiff's employment with the Defendants, she was in a romantic relationship with Will. Given this, Will and the Plaintiff had a working relationship marked by a heightened level of familiarity.
 19. This heightened familiarity slowly developed, throughout the Plaintiff's employment with the Defendants but particularly beginning in early 2023, into an aggressive, demeaning and abusive environment in the workplace.
 20. Will would routinely raise his voice in anger when speaking to the Plaintiff at work, refer to the Plaintiff using abusive and pejorative language at work, and expressly tied her employment to the continuation of their romantic relationship.
 21. Will made good on the express link between their romantic relationship and the Plaintiff's employment, when the two separated permanently on or around November 4, 2023, the Plaintiff's employment was immediately terminated.
 22. In his capacity as the Plaintiff's direct supervisor, the Defendant's by their agent, Will, breached the Plaintiff's Human Rights. Specifically, the Defendants discriminated [sic] against the Plaintiff contrary to section 5 of the Ontario *Human Rights Code*, on the basis of sex, marital status, and family status, and by creating a toxic work environment on the basis of such discrimination.
- [21] On April 24, 2024, the defendants served a Motion to Strike the ASC. This motion was not filed with the court or scheduled for hearing.
- [22] On April 24, 2025, counsel for the plaintiff requested an update on the filing of a Statement of Defence.
- [23] On June 2, 2025, the defendants filed a Notice of Motion to strike the pleadings as against Sharon and Will. On July 2, 2025, the defendants served and filed their factum in this motion.

Fresh as Amended Statement of Claim

- [24] On July 7, 2025, the plaintiff served a Fresh as Amended Statement of Claim ("FASC"). It was filed with the court the following day.
- [25] In paragraph 2 of the FASC, the defendant David has been struck out. There is no change to the style of cause.
- [26] The FASC adds two new forms of relief:

(d) damages in an amount to be provided at Trial representing tax penalties imposed by the CRA as a result of the conduct of the Defendants, currently exceeding \$300,000;

(e) an order for disclosure and production of all bank records, corporate financials, or personal accounts of the Defendants and any entity under their control.

[27] In support of the relief claimed, the plaintiff in the FASC pleads:

17. The Plaintiff's income greatly exceeded what a mortgage agent would earn. This is due to the fact that Will was directing increased income from SEBWJB to the Plaintiff to fund the family's lifestyle.
 18. In late 2021, Will set up a shell corporation in the Plaintiff's name. Will with Sharon's approval, directed SEBWJB to deposit funds into the shell corporation. He directed the Plaintiff to draw funds from the Corporation as commission income/dividends. This money was used to fund the family's needs including rent, vehicle expenses, groceries, credit card bills, vacations, outings, etc. Will assured the Plaintiff that Butler Mortgage would pay for any outstanding tax liabilities resulting from this arrangement.
- ...
27. The Plaintiff became aware that the Corporate account to which Will and Sharon directed funds had not been remitting taxes. The Plaintiff has tax liability to the Canada Revenue Agency in the amount of \$269,480.21, plus HST. This amount continues to accumulate interest.
 28. The directing minds of the Corporate Defendants, specifically Will and Sharon directed large sums of money from the Corporations to the Plaintiff to avoid taxation and to fund their personal lifestyle. The Plaintiff states that the quantum of the sums of money was significant and unmistakably obvious to the other directing minds of the Corporation.
 29. The Defendants have received the benefit of and have been unjustly enriched by using the corporation funds for their personal lifestyle and not remitting any of the taxes and have made the Plaintiff responsible for the tax liabilities. As such, the Plaintiff seeks to pierce the corporate veil and hold the personal Defendants personally liable for the obligations of the Corporations.

The Position of the Defendants

- [28] The defendants argue that neither the ASC nor the FASC disclose a reasonable cause of action as against Sharon or Will. The corporate defendants did not appear on this motion and accordingly, the action will continue against those parties.
- [29] With respect to the claims against Sharon set out in the ASC the defendants argue:
 - a. although the plaintiff has named Sharon, she has not advanced any allegations of wrongdoing against her personally; the ASC mentions Sharon only once, in paragraph 2, where she is identified as one of the defendants to the action;
 - b. the plaintiff has failed to plead material facts in support of Sharon's alleged wrongdoing, including any act by Sharon that breached the plaintiff's employment contract or human rights.
- [30] In response to the claims against Will, the defendants assert that he cannot be held personally liable for any alleged breaches of the *Code* or for punitive damages stemming from the employment relationship.
- [31] With respect to the FASC, the defendants argue that the plaintiff has added two new causes of action with respect to Sharon and Will to cure the deficiencies in the ASC: (i) a claim for unjust enrichment, and (ii) breach of a guarantee of the plaintiff's tax liabilities. The defendants argue the FASC fails to plead material facts in support of a claim for unjust enrichment and that an oral, personal guarantee of a debt is statute-barred. As such, both new causes of action must be struck.
- [32] The defendants submit that the timing of the filing of the FASC is a strategic attempt by the plaintiff to defeat this motion. The defendants argue the plaintiff had notice of this motion on July 2, 2025. Five days later, the plaintiff filed the FASC.
- [33] The defendants argue that it was improper for the plaintiff to deliver the FASC after having received the defendants motion materials.

Position of the Plaintiff

- [34] The plaintiff argues that the ASC and FASC do not plead Will's discriminatory conduct as an independent cause of action; both the ASC and FASC claim wrongful dismissal in addition to a violation of the plaintiff's human rights.
- [35] With respect to claims against Sharon and Will, the plaintiff argues that there are sufficient particulars pleaded to enable the court to pierce the corporate veil and find each of them personally liable for the acts of the corporate defendants which include:
 - a. As set out at paras. 31-33, and 35 of the plaintiff's factum, the plaintiff submits:

Firstly, William set up a shell corporation in which funds from Butler Mortgage were directed, without taxation. That shell corporation was used by William to fund personal expenses.

Secondly, Sharon as a director of the company, would have authorized or been aware of the misdirection of the funds from Butler Mortgage to the shell corporation.

Both Sharon and William acted in a separate identity of interest from the corporation and were acting in self interest by misdirecting the funds.

...

Given that Sharon and William have both acted in an interest outside of the corporation and there is an allegation that funds of the corporation are being directed to personal accounts, the Plaintiff states that both Sharon and William should remain as individual Defendants in this action.

Procedural Challenges by the Defendants

- [36] Moreover, the defendants argue that the FASC strikes out David's name at paragraph 2 but does not amend the parties to the action – which would have required a motion.
- [37] The plaintiff claims that it was inappropriate for the defendants to bring this motion prior to delivering a statement of defence.
- [38] Rule 25.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides that pleadings are not closed until the plaintiff has delivered a reply to every defence in the action or the time for a reply has expired, and every defendant who is in default in delivering a defence has been noted in default. Accordingly, the plaintiff was entitled to amend pleadings, even after the defendants' materials were filed.
- [39] In *Potis Holdings Ltd. v. The Law Society of Upper Canada*, 2019 ONCA 618, at para. 14, the court confirmed that generally, a defendant should move to strike a claim as disclosing no reasonable cause of action before filing a statement of defence.
- [40] The procedural objections cannot be sustained. The plaintiff remained entitled to amend the pleading at the time the FASC was served, and the defendants' decision to bring their motion before delivering a statement of defence was neither improper nor prejudicial in a manner that would invalidate the amendment.

Law

- [41] 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.
- [42] The proper approach to a r. 21.01(1)(b) motion is well-settled. As succinctly stated in *FNF Enterprises Inc. v. Wag and Train Inc.*, 2023 ONCA 92, 165 O.R. (3d) 401, at para. 12:

[T]he facts asserted in the statement of claim are taken to be true unless patently incapable of proof: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 22. The statement of claim is to be read generously: *Operation Dismantle v. The Queen*, [1985] 1 S.C.R. 441, at p. 451. The test to be applied "is whether it is plain and obvious, assuming the facts pleaded to be true, that each of the plaintiffs' pleaded claims disclose no reasonable cause of action. Simply stated, if a claim has no reasonable prospect of success, it should not be allowed to proceed to trial": *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, 447 D.L.R. (4th) 543, at para. 14.

- [43] In *Abbasbayli v. Fiera Foods Co.*, 2021 ONCA 95, 456 D.L.R. (4th) 668, at para. 20, the court reviewed the benefit of a motion to strike:

Striking pleadings under this rule serves to "[weed] out the hopeless claims and [ensure] that those that have some chance of success go on to trial": see *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 19.

- [44] In *Fasteners & Fittings Inc. v. Wang*, 2020 ONSC 1649, at para. 68, Perell J. discussed two ways in which the failure to establish a cause of action generally arises:

(1) the allegations in the statement of claim do not come within a recognized cause of action; or (2) the allegations in the statement of claim do not plead all the elements necessary for a recognized cause of action. If the cause of action pleaded has been recognized, all of its essential elements must be pleaded.

- [45] In *Abbasbayli*, the court confirmed the need to plead material facts, at para. 20:

A pleading in a statement of claim will be deficient under this rule where it fails to plead material facts required to sustain a particular cause of action: see *Apotex Inc. v. Eli Lilly and Co.*, 2015 ONCA 305, 125 O.R. (3d) 561, at para. 21, leave to appeal refused, [2015] S.C.C.A. No. 291. The court should always consider whether the deficiency can be addressed through an amendment to the pleading: see *Tran v. University of Western Ontario*, 2015 ONCA 295, at paras. 26-27.

- [46] The task of this court is to review the FASC to determine whether the allegations come within a recognized cause of action, and the FASC pleads material facts in support of the elements necessary for the cause of action.
- [47] If it is plain and obvious that the claim could not succeed, and no amendment could rectify the pleading, it is appropriate to strike the claim without leave to amend. If a cause of action could be asserted with appropriate amendments to the pleading, leave to amend ought to be granted: *Abbasbayli*, at para. 21.

Issues and Analysis

- [48] As a starting point, there is no question that the plaintiff's claims against the corporate defendants will proceed. The only issue on this motion is whether the claims against Sharon and Will personally shall be struck, with or without leave to amend.
- [49] The plaintiff asserts that personal liability attaches to Sharon and Will through four distinct legal causes of action.
- [50] First, she pleads to have the corporate veil pierced, alleging that Sharon and Will used the corporation as a façade for improper conduct and should therefore be held personally accountable for damages.
- [51] Second, she claims that Sharon and Will were unjustly enriched at her expense, asserting that they personally received a benefit for which she was not compensated and that no juristic reason justifies their retention of that benefit.
- [52] Third, she alleges that Will violated her human rights, grounding personal liability.
- [53] Fourth, she asserts that Sharon and Will are personally liable by virtue of a breach of a personal guarantee that Butler Mortgage would pay her tax liabilities, a contractual obligation that they failed to honour.

Piercing the Corporate Veil

- [54] In *FNF Enterprises Inc.*, the court reviewed the principles for piercing or lifting the corporate veil, beginning at para. 18:

The test for piercing the corporate veil in Ontario is that set out in *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), aff'd [1997] O.J. No. 3754 (C.A.). That case set out a two-part test, at pp. 433-34: "courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct." See also *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472, 141 O.R. (3d) 1, at paras. 36, 65-71.

In *Yaiguaje*, at para. 70, the majority stated:

The *Transamerica* test is consistent with the principle reflected in the various business corporation statutes in Canada that corporate separateness is the rule. Where the corporate form is being abused to the point that the corporation is not a truly separate corporation and is being used to facilitate fraudulent or improper conduct, the law recognizes an exception to this rule.

The first element of the *Transamerica* test requires not just ownership or control of a corporation, but complete domination or abuse of the corporate

form. The second element requires fraudulent or improper conduct, and contemplates that it is that conduct that has given rise to the liabilities the plaintiff seeks to enforce. Where those two elements are present, the corporate veil will be lifted to prevent the person who engaged in that conduct from asserting that the liabilities the fraudulent or improper conduct gave rise to are those of the corporation only.

In *642947 Ontario Ltd. v. Fleischer* (2001), 56 O.R. (3d) 417 (C.A.), at para. 68, this court expanded on the meaning of "fraudulent or improper conduct":

Typically, the corporate veil is pierced when the company is incorporated for an illegal, fraudulent or improper purpose. But it can also be pierced if when incorporated "those in control expressly direct a wrongful thing to be done". [Citation omitted.]

See also *Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (Energyshop Consulting Inc./Powerhouse Energy Management Inc.)*, 2014 ONCA 85, 372 D.L.R. (4th) 90, at paras. 43-47, leave to appeal refused, [2014] S.C.C.A. No. 119.

- [55] The FASC does not set out material facts regarding Sharon, Will, or David's role within the corporate defendants, i.e. as officers, directors or shareholders, or the relationship between the corporate and individual defendants.
- [56] The FASC alleges more generally that the defendants collectively "were at all material times the employer and/or the directing minds and agents of the employer of the Plaintiff."
- [57] As pleaded, the FASC does not satisfy the first element of the *Transamerica* test. It does not allege facts establishing that Sharon or Will owned, controlled, or exercised complete domination over any of the corporate defendants.
- [58] The FASC does not plead material facts to establish (i) the relationship between the corporate defendants and the plaintiff's employer, Butler Mortgage, or (ii) the relationship between the corporate defendants and the individual defendants, Sharon and Will. This is fatal to any attempt to pierce the corporate veil.
- [59] Even assuming, for the sake of analysis, that Sharon and Will were officers or directors, the second element of the *Transamerica* test would still require the plaintiff to plead fraudulent or improper conduct that gave rise to the liabilities she seeks to enforce. To pierce the corporate veil and impose personal liability on Sharon and Will, the FASC must allege that their own wrongful conduct—not merely the conduct of the corporation—caused the damages claimed. Only in those circumstances could the liabilities properly be treated as their personal liabilities rather than those of the corporation. The FASC is entirely silent on any wrongful conduct on the part of Sharon with respect to the wrongful dismissal claim. The FASC pleads wrongful conduct on the part of Will with respect to the breach of the plaintiff's human rights, but, as set out below, the liability provisions of the *Code* deem the employer – not Will – liable for damages.

Human Rights Claim

[60] Section 46.1 of the *Code* provides a civil remedy for breach of the *Code*:

- (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part 1 of another party to the proceeding, the court may make either of the following orders, or both:
 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
- (2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part 1.

[61] Section 46.3 provides:

For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.

- [62] Under section 46.3(1) of the *Code*, an employer is not automatically deemed liable for acts or omissions of its officers, official, employees or agents that violate the harassment protections set out in s. 5(2) of the *Code*. The plaintiff has not claimed harassment specifically, only poisoned work environment as a result of discrimination.
- [63] Where a poisoned work environment is found, the case law is clear that an employer will be deemed liable regardless of whether the comments or conduct found to create the poisoned work environment were reported to management, whether or not management took reasonable steps to address the conduct or whether the person responsible for the conduct were part of the directing mind of the employer or co-workers: *George v. 1735475 Ontario Limited*, 2017 HRTO 761, at para. 52.
- [64] The claim as to discriminatory termination tied to her marital status is a claim under s. 5(1) of the *Code* and there is no personal liability that falls to Will; that is a liability of the corporation as a function of the deemed liability provisions of the *Code*.

- [65] A party may not commence a proceeding based solely on an infringement of the *Code*. However, if during a proceeding, the court finds an infringement, the court may order compensation for injury to dignity, feelings and self-respect.

Unjust Enrichment

- [66] A claim for unjust enrichment requires the plaintiff to show (i) the defendant has been enriched; (ii) the plaintiff experienced a corresponding deprivation; and (iii) there is no juristic reason for the defendant's enrichment at the expense of the defendant: *Fasteners & Fittings Inc.*, at para. 147, citing *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269.
- [67] With respect to the claim for unjust enrichment, the FASC pleads that Will, with Sharon's approval, "misdirected" funds from SEBWJB to the plaintiff's corporation. The FASC does not plead material facts to show that the transfer of funds to the plaintiff's corporation constituted fraud or wrongful or improper conduct.
- [68] Even if Sharon had knowledge of or approved of the transfer of funds from SEBWJB to the plaintiff's corporation, the FASC does not plead material facts pled to establish that transfer was in Sharon's self-interest, benefitted her in any way, or was a transfer of either corporate tax liability, or Sharon or Will's personal tax liability, to the plaintiff.
- [69] Even setting aside the tax liability, the FASC fails to plead material facts in support of a claim that Sharon was unjustly enriched by the transfer of funds to the plaintiff's corporation – including that she received any of those monies, or that her needs were being met through funds drawn from the plaintiff's corporation.
- [70] The pleadings fail to disclose a link between the conduct and the liability to be imposed: *FNF Enterprises Inc.*, at paras. 26-30.
- [71] The FASC does plead that Will was enriched, namely that the money drawn from the plaintiff's corporation was used to fund their joint "lifestyle," and to meet "the family's needs." The plaintiff experienced a corresponding deprivation in that her corporation became liable for taxes owed on these funds.
- [72] However, there are no material facts pled to support a claim that Will's enrichment arose out of the plaintiff's employment arrangement with Butler Mortgage, as opposed to the domestic partnership or marriage. Put differently, the FASC does not include material facts in support of a claim that Will's enrichment is related to his role as the plaintiff's employer or supervisor, as opposed to his personal capacity as her husband and/or common law partner.

Breach of Personal Guarantee

- [73] In *Clark v. Ynegrity Sales & Marketing Inc.*, 2025 ONSC 4662, Parghi J. recently struck pleadings claiming an oral guarantee of a promissory note, at para. 53:

In any event, a guarantee must be written to be enforceable (*Entry Point Investments v. Invis Inc.*, 2015 ONSC 2009, at para. 6, aff'd 2015 ONCA

701, at para. 10). This flows from section 4 of the *Statute of Frauds*, R.S.O. 1990, c. S.19, which provides:

[n]o action shall be brought [...] to charge any person upon any special promise to answer for the debt, default or miscarriage of any other person, [...] unless the agreement upon which the action is brought, or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some person thereunto lawfully authorized by the party.

- [74] A claim that Sharon, Will – or ‘Butler Mortgage’ – ought to be held personally liable for the tax liabilities of the plaintiff on the basis that Will personally guaranteed Butler Mortgage would cover the taxes is doomed to fail. The FASC does not plead that Will’s personal guarantee was given in writing. There is no reasonable prospect that an action based on breach of the guarantee could succeed.
- [75] The motion to strike the claims against Sharon and Will is granted.

Leave to Amend

- [76] The law is clear that leave to amend pleadings should be denied in only the clearest of cases: *Chowdhury v. Exquisite Bay Development*, 2024 ONCA 852, at para. 8.
- [77] The plaintiff argues that if the pleadings are deficient, the appropriate course of action would be to grant the plaintiff leave to amend her pleadings; for the plaintiff, it would be unfair to dismiss the claims against Sharon and Will personally at this early stage of proceedings. The plaintiff argues that much of the information required to advance the action is within the knowledge of the defendants, such that the claims will crystalize after delivery of a Statement of Defence and examinations for discovery.
- [78] I am satisfied that this is an appropriate case in which leave to amend should not be granted.
- [79] The ASC was served and filed in March 2024. Despite having the benefit of the defendant’s motion record and factum, the plaintiff has failed to plead material facts in support of the causes of action claimed.
- [80] I am not persuaded that the information necessary to plead material facts is within the unique knowledge of Sharon and Will.
- [81] For instance, the officers and directors of the corporate defendants is a matter of public record; the structure that gave rise to the plaintiff’s tax liability is within *her* unique knowledge. As pled, there are no material facts to support a claim that the “commissions/dividends” the plaintiff drew out of her own corporation were “really” liabilities owed by Sharon or Will.
- [82] Moreover, as of July 2025, a year and a half after her employment ended, the plaintiff was unable to provide material facts in support of a claim that Sharon was unjustly enriched, or

that Will's enrichment at the plaintiff's expense was related to her employment with Butler Mortgage.

- [83] Finally, an amendment to the pleadings cannot cure the claim for breach of guarantee.

Costs

- [84] If the issue of costs cannot be resolved between the parties, the defendants shall serve and file written submissions of no more than two pages, double-spaced and in 12-pt font, with case law hyperlinked, plus a detailed bill of costs and copies of any offers to settle attached within 14 days of release of these reasons. The plaintiff's submissions of no more than two pages, double-spaced and in 12-pt font, with case law hyperlinked, plus a detailed bill of costs and copies of any offers to settle attached, shall be served and filed within seven days thereafter. If a party does not meet these deadlines, there shall be no costs payable to that party. In the event there are no submissions filed in accordance with these timelines, costs shall be deemed resolved. A copy of the submissions shall be sent to my attention at St.Catharines.SCJJA@ontario.ca in addition to being filed with the court.



A. J. Ohler, J.

Date Released: January 28, 2026