

Court of King's Bench of Alberta

Date:

Docket: 2304 00761

Registry: Grande Prairie

Between:

Terry Kerslake Plaintiff

- and -

Capital One Bank Defendant

To the Attention of Acting Chief Justice K.G. Nielsen

Written Submission in response to AVAP Notice
of the
Acting Chief Justice
K.G. Nielsen

[1] On November 30, 2023, the Plaintiff filed a Statement of Claim. On February 21, 2024, Counsel for the Defendant asked the Court to review the Statement of Claim under Civil Practice Note 7 ("CPN7"), because it allegedly contains pseudo-law concepts.

[2] CPN7 sets out summary procedures to be followed, using r 3.68 of the Alberta Rules of Court, Alta Reg 124/2010 for a "claim, defense, action, application, or proceeding that appears on its face to be frivolous, vexatious, or otherwise an abuse of process".

[3] The Claim in question is not Vexatious nor Frivolous due to the following underlying facts. On March 7th 2023 Terry Kerslake arranged private financing to pay his debt with CapitalOne in full. Within the Capital One Loan Agreement Capital One states very clearly they may sell their rights to the agreement without informing the Borrower, this can be found in the "assignment" clause which reads " 24. Assigning your account. At any time, we may sell, transfer or assign any, or all of our rights and obligations under this agreement or your account without telling you in advance"

Due to the Assignment clause being present in the agreement & the fact debts are bought and sold via the process of securitization everyday within the finance industry, Terry made one

reasonable payout condition for CapitalOne to fulfill in order to receive the entire amount they claimed was owed to them, Terry had simply requested CapitalOne provide him with verifiable proof they still maintained ownership of the rights to his contract by simply having a Chartered Accountant provide an affidavit that states they have checked the ledgers and can confirm CapitalOne maintains ownership of the rights to Terry's loan agreement, Due to the fact a Chartered Accountant would be the only entity with access to the ledgers to see the information needed to make that claim who would not be in a conflict of interest when doing so.

Please note the Canadian Rules Of Court is very clear that verifiable proof of ownership is a sworn affidavit from a Chartered Accountant stating he looked into the ledgers and the debt was not sold. The reason the court has this rule is because a Chartered Accountant is the only one who has access to the ledgers to make that claim and furthermore Chartered Accountants are governed by a third party who will take away their license if reporting false information.

The above request should be very simple to fulfill. Due to the fact the defendant stated they could transfer, sell or assign their rights at any time without informing the Plaintiff in advance within the agreement this is a very reasonable request. The Defendant has also failed to deem the request as unreasonable or to explain exactly why Capital One would be unable to have a chartered accountant validate the debt. It is common sense that an entity can not collect money for assets which they do not own. This would be considered misrepresentation of the facts leading to fraud.

To claim verifying ownership of an asset before a transfer of funds is "Vexatious" or a "Pseudo Law Concept" is ridiculous. Terry suffered damages when CapitalOne made "False or Misleading credit reports" as defined by the Consumer Protection Act Of Canada while he was in the middle of conveyancing & attempting to pay them out in full!

Why would the Plaintiff or anyone keep making payments when they have served them reasonable conveyance conditions and have proven funds to pay the defendant out in full but it is the Defendant who cannot produce proof of ownership, documentation they are legally obligated to produce for months?

We have put the defense to the task of Explaining exactly where they are drawing comparisons between Kerslake vs Capital One & Meads Vs Meads, Seeing as Meads vs Meads does not involve a bank nor a private lender attempting to pay out the debt in full, we fail to see any parallel between the two cases, The Defence has also failed to bring any Parallels to our attention.

This is a very straightforward business transaction. This is a private lender not a financial institution supplying the funds and this is where the defense arguments start to come apart. When a Financial Institution forwards money to another financial Institution this is considered an internal transaction due to the fact they are all part of the Central Banking System. But when a Private Lender is forwarding funds to a Financial Institution it would be considered an external transaction therefore in each situation there are different conveyance conditions that the

defense is not aware of or ignoring.

The Banks via credit cards have been charging large compound interest rates to the Canadian public over the past two decades that now the Canadian public is naturally turning to Private Lenders due to lower rates and easy access via the internet.

These Canadian Private Lenders are just average people who have extra money to invest so obviously they want to complete their due diligence and verify they are handing their money to the right entity. For example if you were buying a car from someone but when asked to see proof of ownership of the vehicle and they said I don't have it on me right now but give me the money anyway who in their right mind would hand the money over?

Furthermore a Canadian Borrower went into the marketplace to find a Lender who can provide better rates. The Canadian Private Lender advertised better rates than Bank Credit Cards for Borrowers. These two parties have every right to participate in the contract.

Considering the 2008 financial crash the Banks openly admitted the reason for the crash was because they were selling the debt irresponsibly to the world market. Due to this fact Private Lenders have started exercising their right to obtain verifiable proof of ownership from not only other private lenders but also the Bank which they are legally entitled to do so.

In conclusion Terry's single payout condition was reasonable, as CapitalOne may no longer own the rights to the contract which they are attempting to act on, as well as the fact Terry genuinely suffered damages due to the False or Misleading Credit Reporting committed by CapitalOne while he awaited his reasonable payout condition to be met, Terry is still willing to pay CapitalOne in full should they decide to provide the requested affidavit, if CapitalOne did sell the debt Terry simply asks that CapitalOne inform him of whom the debt was sold so he may continue this transaction with the rightful owner of his debt. Terry simply asks that CapitalOne correct the False or Misleading Credit Reports while he awaits the reasonable payout condition to be fulfilled.

Terry awaits the defendant to answer the following reasonable questions, If you believe the Payout condition to be unreasonable can you please deem it as so and explain exactly why?

In detail what are the Parallels the defense is drawing from to make this unreasonable comparison of the two cases he chose listed above?

Is the Defence aware of the fact banks can sell a debt days after the contract was signed via a process called securitization?

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[4] As a result, the Plaintiff must file a Written Submission setting out why the Statement of Claim is not frivolous, vexatious, or an abuse of process. In doing so, the Plaintiff may wish to explain the underlying facts behind the alleged causes of action to show a claim that is or could

be recognized in law.

[5] The next steps are as follows:

- 1) The Clerk will file and serve this Notice on the Plaintiff.
- 2) The Plaintiff must prepare a Written Submission of no more than 10 pages. They must file and serve the Written Submission within 14 days after receiving the AVAP Notice. The Written Submission must be clearly addressed "To the Attention of Acting Chief Justice K.G. Nielsen", and it must be served on all other parties in the action.
- 3) If the Plaintiff does not file and serve a Written Submission by the deadline, the Court will make a final decision on whether the Statement of Claim should be struck out in whole or in part under r 3.68 of the Alberta Rules of Court. 4) If the Plaintiff does file and serve a Written Submission, the Defendant has seven days to provide a Written Reply of up to 10 pages. The Written Reply must be clearly addressed "To the Attention of Acting Chief Justice K.G. Nielsen" and must be served on all other parties in the action.
- 5) Once the Court receives the Plaintiff's Written Submission (if any) and the Defendant's Written Reply (if any), the Court will make a final decision on whether the Statement of Claim should be struck out in whole or in part under r 3.68 of the Alberta Rules of Court.

[6] The Alberta Rules of Court, as well as the cases mentioned above, can be accessed for free on <https://www.canlii.org/>.

[7] I encourage the Plaintiff to seek legal advice and assistance. If they cannot afford to hire a lawyer, they may wish to contact Grande Prairie Legal Guidance at (780) 882-0036. For information or assistance filing documents, they may wish to contact Court and Justice Services at 1-855-738-4747.

[8] Counsel for the Defendant will prepare and serve the Interim Order staying this Action until the CPN7 process is complete. The Plaintiff's approval of that Order is not required, pursuant to r 9.4(2)(c) of the Alberta Rules of Court.