

Court File No. CV-21-00657656-00CCL
ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE TORONTO DOMINION BANK

Plaintiffs

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Defendants

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF
THE
COURTS OF JUSTICE ACT, R.S.O. 1990 C. C.43, AS AMENDED

RESPONDING MOTION RECORD OF NEW COUNSEL ALEXANIAN LAW FIRM
(In Writing)

October 3, 2022

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Court File No. CV-21-00657656-00CCL

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

TORONTO-DOMINION BANK

Plaintiff

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Defendants

INDEX

1. Affidavit of Parisa Babadi
 - A. Emails between Mr. Alexanian and Mr. Hogan
 - B. Statement of Claim against Brad Duby

Court File No. CV-21-00657656-00CCL
ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE TORONTO DOMINION BANK

Plaintiff

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Defendants

AFFIDAVIT OF PARISA BABADI

I, Parisa Babadi, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a law clerk at Alexanian Law Firm/MK Legal, counsel for the Plaintiffs and as such I have knowledge of the matters hereinafter deposed to. Unless I indicate to the contrary, the matters to which I depose are within my personal knowledge and belief. Where information has been obtained from third parties, I do verily believe that information to be true.
2. After the unfortunate passing of Mr. Duby, our firm was retained by over 30 of Mr. Duby's former clients (the "transferred clients") in respect of their motor vehicle accident tort claims.
3. Many of the transferred clients are displeased with the service they received from Mr. Duby's office, and wish to have his account, when/if provided, assessed. Some clients

are willing to negotiate with Mr. Duby regarding his account, when/if provided. None of the transferred clients have communicated acceptance of the proposed sliding scale arrangement for Mr. Duby's fees.

4. I have detected various errors in the files of the transferred clients, including missed limitation periods and claims that have not been served despite being issued years prior. One lawsuit has been commenced against Mr. Duby so far. Attached hereto and marked as Exhibit "B" to this my affidavit is a true copy of the Statement of Claim in respect of the lawsuit.
5. I have reviewed the files and note that settlements were reached in respect of 2 of the transferred clients. Both of these transferred clients wished to review Mr. Duby's account for fees and disbursements and accordingly our office requested these from Mr. Hogan, counsel for the Receiver, on August 4, 2022. Instead of providing this required information, Mr. Hogan asked me for particulars of my fee arrangement with these clients and the particulars of settlement, neither of which are relevant to Mr. Duby's account for work done. Attached hereto and marked as Exhibit "A" is a true copy of the emails between our office and Mr. Hogan.
6. I have been able to contact most of the transferred clients to inform them of these proceedings but cannot confirm whether they are all aware of the scheduled court date in October, nor can I confirm whether they can all attend.
7. The Receiver appears, by its actions, to be attempting to bypass Mr. Duby's obligation to account to the transferred clients and to follow the procedures under the *Solicitor's Act* for dealing with his accounts by purporting to unilaterally impose a fee arrangement

on our firm with the transferred clients, so that the transferred clients' rights under the *Solicitor's Act* are no longer directly an issue.

8. From my conversations with Mr. Alexanian and review of the client files, I can confirm that our firm is unwilling to continue as a lawyer for all of the transferred clients, and if the proposed sliding scale is imposed, we cannot continue to act for all of them.
9. I have reviewed the files and spoken to Mr. Alexanian and do verily believe that the actions of the Receiver have created a conflict between Mr. Alexanian and the transferred clients. Specifically, our firm opposes the imposition of the sliding fee structure. The transferred clients have their own interests which are in conflict with the interests of our firm, since we are not prepared to continue on all of the files if the sliding fee structure is imposed, and I do verily believe that these transferred clients will have trouble securing alternate counsel, and in any event will no longer be able to be represented by our firm.
10. Due to this conflict, Mr. Alexanian cannot represent both the interests of the transferred clients at the upcoming hearing and the firms and wishes to bring this issue to the attention of this Court at the hearing.

SWORN BEFORE ME at the City of Toronto,)
the Province of Ontario this twenty-eighth day)
of September, 2022.)

Shahen Alexanian)
A Commissioner for taking Affidavits, etc.)

Parisa B.)
PARISA BABADI)

This is Exhibit "A" to the affidavit of Parisa Babadi, sworn September 28, 2022

Shahen Alexanian

A Commissioner, etc.



Re: FW: Undertaking [IWOV-HPMain.FID544296]

1 message

Shahen A. Alexanian <shahen@alexanianlaw.ca>
To: Tim Hogan <thogan@harrisonpensa.com>
Cc: Matthew Lem <matthew.lem@mnp.ca>

Thu, Aug 4, 2022 at 10:06 AM

Hi Tim:

My arrangement with my client is confidential and in any event not relevant to Mr. DUBY's account for work done. If you are having trouble reconstructing his account, I ask that you please at least give a ballpark estimate of reasonable fees based on the status of the action (which you are aware of as evidenced below) and I can seek instructions from my client regarding payment. I understand your position and am not asking you for precise dockets - just provide a reasonable fee based on the stage of the action (as well as disbursements) and I can see if my clients will agree so that we can resolve this.

(without prejudice)

(/without prejudice)

Please let me know, thanks,

Shahen A. Alexanian
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On Thu, Aug 4, 2022 at 9:52 AM Tim Hogan <thogan@harrisonpensa.com> wrote:

Shahen

On both matters, please advise the terms of the settlement amounts and what your firm/MK Legal's fee will be as new counsel?

Pursuant to your previous email of 14 March 2022, the status of the Mate file when transferred was that discoveries were completed. This file was advanced by BDPC.

Once we have the above information in hand we can review and respond.

From: Shahen A. Alexanian <shahen@alexanianlaw.ca>
Sent: Tuesday, August 2, 2022 12:33 PM
To: Tim Hogan <thogan@harrisonpensa.com>
Subject: Undertaking

[EXTERNAL EMAIL]

Mr. Hogan:

I have settled the tort files for Tsintadze and Mate. At this time, I ask for your statement of account. Thanks. Regards,

Shahen A. Alexanian
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This is Exhibit "B" to the affidavit of Parisa Babadi, sworn September 28, 2022

Shahen Alexanian

A Commissioner, etc.

Court File No:



ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RANDY REID

Plaintiff

-and-

BRADLEY DUBY and BRAD DUBY PROFESSIONAL CORPORATION

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defense in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer, or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another Province or Territory of Canada, or the United States of America, the period for serving and filing your Statement of Defense is forty days. If you are served outside Canada or the United States of America, the period for serving and filing your Statement of Defense is sixty days.

Instead of serving and filing a Statement of Defense, you may file a Notice of Intent to Defend in form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days in which to serve and file your Statement of Defense.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

✓

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the Court.

Date _____, 2022

Issued By: _____

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Toronto, ON M6G 1J9

TO: BRAD DUBY PROFESSIONAL CORPORATION
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CLAIM

RELIEF CLAIMED

1. The Plaintiff claims against the Defendants for the following:
 - a) General and special damages in the sum of \$500,000.00;
 - b) Pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - c) His costs of this action and the Harmonized Sales Tax on costs; and
 - d) Such further and other relief as this Honorable Court deems just.

THE PARTIES

2. The Plaintiff resides in the City of Toronto, the Province of Ontario.
3. The Defendant, Bradley Duby, was at all material times a lawyer licensed to practice law in Ontario and has an office address in the City of Toronto, the Province of Ontario.
4. The Defendant, Brad Duby Professional Corporation, is a law or legal services professional corporation incorporated pursuant to the laws of Ontario having an office address in the City of Toronto.

THE INCIDENT AND ITS AFTERMATH

5. The Plaintiff was injured in a motor vehicle accident on or around January 21, 2017 (the “MVA”) and claimed long-term disability benefits from his insurance carrier, Industrial Alliance (IA).
6. The Plaintiff retained the Defendants to commence a lawsuit against the parties at fault for the MVA and against IA for denial of his long-term disability benefits, which denial of benefits occurred on or around March 3, 2017 (the “Denial Date”).

7. In March 2020, three years after the Denial Date and outside of the limitation period, the Defendants issued a Statement of Claim against IA. The Defendants did not at any time disclose to the Plaintiff that they had missed the applicable limitation period.
8. A few months later, the Plaintiff retained a new lawyer, who after receiving a copy of the file of the Defendants discovered that the limitation period had been missed in August 2020. The Plaintiff was not aware that the limitation period was missed until August 2020, when his lawyer discovered the error.

ALLEGATIONS OF NEGLIGENCE

9. The Plaintiff states that the Defendants, in discharging their duties to the Plaintiff, failed to meet the standard of care expected of a lawyer in the circumstances. Specifically, but without limiting the generality of the foregoing, the Plaintiff alleges that the Defendants was negligent in the following respects:
 - (a) they failed to issue the lawsuit against IA within the applicable limitation period.

DESCRIPTION OF LOSSES

10. As a result of the negligence of the Defendants, the Plaintiff has been unable to recover disability benefits from IA for the injuries he sustained in the MVA since he has lost his right to sue. Mr. Reid has not returned to work as of the date of issuance of this action and claims all lost disability benefits from the Defendants.
11. As a result of the negligence of the Defendants, the Plaintiff has suffered other pecuniary damages up to the present and will continue to suffer pecuniary damages in the future, the full particulars of which are not known at this time.
12. The Plaintiff further seeks a disgorgement of any legal fees charged by the Defendants in the performance of their work for the Plaintiff.

PLEADING STATUTES

13. The Plaintiff pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N-1, as amended.

PLACE OF TRIAL

14. The Plaintiff proposes that this action be tried at the City of Toronto, in the Province of Ontario.

DATED: _____, 2022

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Counsel for the Plaintiff

Court File No.

REID
Plaintiff

- and - DUBY et al.
Defendants

SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF CLAIM

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Counsel for the Plaintiff

TORONTO DOMINION BANK
Plaintiffs

and BRAD DUBY PROFESSIONAL
Defendants

Court File No. CV-21-00675656-00CCL

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

AFFIDAVIT OF PARISA BABADI

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