

**CITATION:** Farid v. Brunt, 2024 ONSC 2770  
**OSHAWA COURT FILE NO.:** 92841/15  
**DATE:** 20240514

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** MUHAMMAD FARID and NASEEM FARID, Plaintiffs

**AND:**

GERALD BYRON BRUNT also known as GERALD B. BRUNT, Defendant

**BEFORE:** The Hon. Madam Justice S.E. Fraser

**COUNSEL:** Muhammad Farid and Naseem Farid, Self-Represented

Robert MacDonald and Alexander Evangelista, Counsel for the Defendant

**HEARD:** May 13, 2024

**ENDORSEMENT**

**I. Introduction**

- [1] This Ruling addresses a motion to strike the jury notice brought by the Defendant at the opening of the trial of this action.
- [2] The motion to strike the jury notice was heard just prior to jury selection as two juries were being selected yesterday at the Courthouse. I heard it in advance of jury selection to make use of the court time. I reserved on the motion, and the jury has been asked to return to the Courthouse on Wednesday, May 15, 2024.
- [3] This action concerns a real estate transaction that did not close. The Plaintiffs were the Purchasers. The Defendant was their solicitor.
- [4] The Defendant makes two primary arguments in support of his motion to strike the jury notice:
- a. The Amended amended statement of claim asserts that the Defendant breached his fiduciary duty to the Plaintiffs which is a claim in equity. Section 108(2)(1)(xi) of the *Courts of Justice Act* mandates that where the relief sought is equitable relief, the issues of fact and the assessment of damages shall be tried without a jury; and
  - b. The matter is too complex to be tried by a jury.
- [5] The Plaintiffs argue that the right to a jury trial is a substantive right and that the matter is not too complex to be dealt with by a jury. They assert that I can provide the necessary assistance to them to ensure that the matter can be appropriately dealt with by a jury and that I can properly instruct the jury on how to apply the law. They acknowledge that the

*Courts of Justice Act* prohibits the jury from making findings of fact and damages relating to fiduciary duty. However, the Plaintiffs assert that I can try the issue of fiduciary duty and leave the other claims for the jury to try.

## **II. Facts and Procedural History**

### **A. *Nature of the Claim***

- [6] The Plaintiffs retained the Defendant to act for them on an Agreement of Purchase and Sale with respect to a property in Whitby, Ontario. The Plaintiffs were the purchasers. The purchase of the property was part of a litigation settlement. The purchase price was \$281,000.
- [7] The deal failed to close.
- [8] Mr. Farid commenced an action against the seller. On November 28, 2014, that action was dismissed on a motion for summary judgment, a decision which was upheld by the Court of Appeal for Ontario on June 8, 2015.

### **B. *Procedural History***

- [9] The Plaintiffs commenced this action. The Statement of Claim was issued August 21, 2015, and has twice been amended. While the Plaintiffs did not serve a jury notice before the close of pleadings, the Jury Notice was delivered after the claim was first amended on March 1, 2018. The cause of action is set out first at para. 5 of the Amended Amended Statement of Claim. It provides:

This action is brought for [actual, consequential, (emotional, pain and physical sufferings), aggravated, special, general, compensatory and punitive] damages due to the Defendant's breach of contract; breach of duty of care; breach of professional duty of care; negligence; professional negligence; misconduct; failing to supervise sub-ordinates, employees, contractors and sub-contractors; bad faith dealings; and; high-handed, malicious, wanton and reckless disregards of the plaintiff's rights; breach of (duty of care, skill, and knowledge); breach of fiduciary duty: contravening of legal duty, and contravening of legal duty owed pursuant to *Solicitors Act*, R.S.O. 1990, c. S.15, s. 6 (6) in a real estate purchase-sale transaction and the associated matters as the buyers (plaintiffs in *Farid vs. Brunt*)' real estate solicitor/solicitor, and caused damages, costs, pain, sufferings, and stress to the plaintiffs.

- [10] The Plaintiffs claim that they had specific needs in finding a property and that the property was unique and desirable. In particular, the Plaintiffs claim that the property met their unique personal, family, religious, dietary, business, health, financial and special needs.
- [11] On February 7, 2020, Justice O'Connell dismissed a motion to strike the jury notice. See: *Farid v. Brunt*, 2019 ONSC 6563. He held at paras. 11-14 that the case, being one of solicitor's negligence, was not so complex that a jury would not be able to apply the facts

as the jury finds them to be and that the trial judge will be tasked with providing the necessary assistance to the self-represented plaintiffs.

[12] On September 29, 2022, Justice Woodley granted leave to the Plaintiffs to amend the Amended Statement of Claim on terms. See: *Farid v. Brunt*, 2022 ONSC 5563. The amendments added a new claim of breach of fiduciary duty and added approximately 40 pages to the Amended Statement of Claim. In granting leave to amend the Amended Statement of Claim, Justice Woodley directed the Plaintiffs to revisit the jury notice and granted leave to the Defendant to bring a motion before or at trial to strike the jury notice. She left to the trial judge, the issue of whether the claim for breach of fiduciary duty was statute barred.

[13] Justice Woodley also noted at paras. 65-66 that there is “a great amount of redundancy and repetition” in the pleadings. The Amended Statement of Claim in her view was already “rife with redundant and repetitive information”. In permitting the amendments, she held at para. 67:

While I am of the view that the amendments merely clutter an already overly cluttered claim - I am content to allow the remaining amendments to proceed, on the condition that the Plaintiffs reconsider having the matter tried by jury. Further, given the complexity of the proceeding and the over cluttered and complicated Amended Statement of Claim, and soon to be Amended Amended Statement of Claim - in the event the Plaintiffs do not agree that the jury should be struck, leave is granted to the Defendants to bring a motion either prior to trial before any judge or before the trial judge to strike the jury. It is my non-binding view that the Amended Amended Statement of Claim places too great of a burden upon any trial judge to adequately and concisely explain the contents therein to a jury within the confines and timelines of a trial. Further, the Amended Amended Statement of Claim is overly complex and is best suited for a judge alone trial.

[14] The Plaintiffs did not agree that the jury notice should be struck, and this motion was brought.

### ***C. Plaintiffs are Self-Represented Parties***

[15] Mr. Farid is an educated man having obtained multiple Masters of Science and a degree in Mechanical Engineering. He has done his work to prepare for this trial.

[16] Mrs. Farid does not intend to present the case herself. She intends to present her case by adopting whatever Mr. Farid presents to the court. She will require assistance since her husband is not a lawyer and cannot represent her in court. An interpreter will assist her on an as needed basis in accordance with my Endorsement yesterday.

### **III. Issues**

[17] The issues on this motion are:

- a. Does s. 108(2)(1)(ix) operate to bar a trial of this action by jury? Embedded in this question is whether the issue of fiduciary duty can be tried separately by me?
- b. Is this claim too complex to be tried by a jury? This requires me to examine whether justice is better served by discharging or retaining the jury.

#### **IV. Law and Analysis**

##### **A. Law**

- [18] The right to a trial by jury is a substantive right as stated many times by the Court of Appeal for Ontario. See among many: *Aitken v. Forsell*, (1991) 81 D.L.R. (4<sup>th</sup>) 542, 1991 CanLII 8356 (ON CA), *Sloane v. Toronto Stock Exchange*, (1991) 5 O.R. (3d) 412, *Cowles v. Balac*, (2006) 83 O.R. (3d) 660, *Kempf v. Nguyen*, 2015 ONCA 114 and *Penate v. Martoglio*, 2024 ONCA 166. It should not be denied prematurely. The right is not absolute, and it is subject to the power of the court.
- [19] As noted in *Penate v. Martoglio, supra*, at para. 18, this is a “fundamental substantive right, meaning that the justice system protects it because it is inherently important and is not merely a procedural means to a verdict”.
- [20] The moving party bears the onus, and the onus is substantial. See *Hunt (Litigation Guardian of) v. Sutton Group Incentive Realty Inc.*, (2002) 60 O.R. (3d) 665, at para. 73.

##### **B. Issue One: Fiduciary Duty**

- [21] As noted above, s. 108(2)(1)(xi) of the *Courts of Justice Act* mandates that where the relief sought is equitable relief, the issues of fact and the assessment of damages shall be tried without a jury.
- [22] I accept that the breach of fiduciary duty claim is a claim for equitable relief on the plain reading of s. 108. I have no discretion in this regard. The breach of fiduciary duty cannot be tried by the jury. However, I must assess whether I could try that issue and leave the balance of the claim for the jury. See: *Montpellier v. Montpellier*, 2003 CanLII 38289 and 447927 *Ontario Inc. v. Pizza Pizza Ltd.*, 1987 CarswellOnt 404, [1987] O.J. No. 166, 16 C.P.C. (2d) 277, 3 A.C.W.S. (3d) 267.
- [23] It is instructive to look where this claim is at today. The Amended Amended Statement of Claim is 109 pages long. There are approximately 20 heads of damages. The claim is for \$3.8 Million dollars. I contrast that with the value of the property at issue, \$281,000. Fourteen requests to admit have been served. The Amended Amended Statement of Claim now contains a breach of fiduciary claim, something that was not before Justice O’Connell. I do not accept, as Mr. Farid argued, that Justice O’Connell was alive to the issue of fiduciary duty when the matter was before him as it was not specifically pleaded.
- [24] The issue of fiduciary duty is interconnected with the issue of solicitor’s negligence and the other claims made by the Plaintiffs. I cannot carve out the equitable rights in issue from the duties owed by virtue of the solicitor/client relationship. In cases such as this, this Court

has struck the jury notice. See: *Calvin Forest Products Ltd v. Tembec Inc.* (2004), 73 O.R. (3d) 114 (Sup Ct J) and *Moffatt et al v. Tolhurst et al*, 2011 ONSC 2069.

- [25] In this case, there are significant factual overlapping issues relating to the legal duties alleged to be owed by the Defendant to the Plaintiffs that cannot be easily separated. In the Amended Amended Statement of Claim, at para. 404 for example, the Plaintiffs allege a breach of a legal duty by the Defendant in reference to the “legal duties set out above”, which could encompass all the legal duties in the preceding paragraphs of the claim. There are other parts of the claim where the tort and the equitable issues are interwoven. It is therefore neither practical nor workable to have the equitable issues tried by me and to leave the rest to the jury given the factual overlap and the overlapping claims of damages.
- [26] Because I have found that s. 108 mandates a judge alone trial for the equitable relief claimed, and that it is not practical to try the equitable claims separately, I strike the jury notice.

**C. Issue Two: Complexity**

- [27] In assessing whether the complexity requires a judge alone trial, I must assess whether justice to the parties will be better served by dismissing or retaining the jury. See *Girao v. Cunningham*, 2020 ONCA 260, at para. 162, quoting *Kempf, supra*, at para. 119.
- [28] In assessing this question, context matters. I agree with Justice O’Connell that alone, a solicitor’s negligence claimed could be tried by a jury. However, additional facts and claims have been made in the Amended Amended Statement of Claim.
- [29] The known context in this trial raises concerns about whether justice could best be served by a jury trial. Part of the context is the nature of the claim set out above and addressed in the decision of Justice Woodley. In addition, I note that the proposed draft questions filed by both parties are unwieldy at present, the claims as set out above need to be further understood, and that there are numerous facts which have been agreed upon. I expect to receive from the parties the facts which have been agreed upon resulting from the Requests to Admit. I pause to note that the Defendant has brought a motion to withdraw certain admissions which has yet to be heard.
- [30] Care would have to be taken to ensure that the claims are well understood and that the jury can be properly instructed. This would be a challenge to be sure. However, I am presumed to know the law and to be able to explain it to juries. Juries are presumed to follow the law.
- [31] Other context includes the Plaintiffs’ intention to call the Defendant as a witness. He has been served with a summons. The Plaintiffs estimate that his evidence will take 8 to 9 days. Counsel for the Defendant has undertaken to call him such that Rule 53.07(4)(b) operates to prevent the Plaintiffs from calling the Defendant as part of their case. I have provided guidance to the Plaintiffs about the operation of that Rule, and we will be having a further discussion about its operation.
- [32] I have some concerns about the Plaintiffs as self-represented litigants and the fairness of the trial process. The Plaintiffs have worked hard to prepare for trial. Despite this work, it

is clear to me that they will require substantial assistance. In advance of this trial, I have provided them with the CJC Civil Law Handbook and my own instructions about the trial process both orally and in writing.

- [33] If I had not struck the jury notice on the equitable issues, I would be concerned that my duty to provide assistance might lead to an unfairness toward the Defendant, even if I were to attempt to prevent this with jury instructions. This is recognized as a factor that can add to the complexity of a matter. See: *Girao v. Cunningham, supra*, at paras. 170-171. Had I not determined the issues as I have above on the question of fiduciary duty, I would have engaged in a wait and see exercise, recognizing that sometimes the fundamental right to a jury must yield to practicality.

**V. Conclusion**

- [34] I hereby strike the jury notice and the trial of this action will proceed by judge alone. The jury will be discharged.



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Justice S.E. Fraser

**Date:** May 14, 2024