

# Ulterior Motive? The Court Probably Doesn't Care (And May Order Costs)

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By

Litigants (and their lawyers) often develop theories regarding a party's underlying motivation in a legal dispute. While these theories sometimes provide useful insight into a party's strategy or settlement position, such theories are, as a general rule, best left out of the pleadings. Pleading ulterior motive may lead to a costly motion to strike.

This is illustrated in a recent decision of the Court of Appeal for Ontario, in which the Court confirmed that a plaintiff's motive in bringing an action, even if improper, does not in itself provide a defence to an action and is therefore generally irrelevant. In *Huachangda Canada Holdings Inc. v. Solcz Group Inc.*,<sup>[1]</sup> Hoy A.C.J.O., Trotter and Jamal J.J.A. upheld the decision of Penny J. of the Ontario Superior Court of Justice striking out two paragraphs in the appellant's statement of defence, without leave to amend. In the paragraphs at issue, the appellant pleaded that the respondents' ulterior motive in bringing the action was to seek a purchase price adjustment under a share purchase agreement, and not to seek "genuine damages for genuine wrongs."<sup>[2]</sup>

The motion judge found that the impugned paragraphs were irrelevant to the causes of action pleaded, and therefore frivolous and vexatious under r. 25.11(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "**Rules**"). The Court of Appeal upheld the decision in its entirety.

This case stands for the proposition that allegations regarding a plaintiff's personal reasons or motives in bringing an action, however improper, do not themselves provide a defence to the action and are therefore generally irrelevant. A court will not concern itself with and will not inquire into a litigant's private motives in bringing an action.

A plea of ulterior motive in bringing an action may be permitted only where the plea is an "essential part" of a cause of action or defence, or where it is otherwise relevant, such as where it bears on a claim of abuse of process.<sup>[3]</sup> A plea of ulterior motive will not be permitted on the basis that it goes to credibility writ large.<sup>[4]</sup>

## Background

The plaintiffs/respondents asserted claims for alleged breaches of representations and warranties and fraudulent conduct arising out of a share purchase agreement.

The defendant/appellant, Solcz Group Inc. ("**SGI**"), an auto parts manufacturer, was the vendor. One of the plaintiffs/respondents, Huachangda Canada Holdings Inc. ("**HCH**"), was the purchaser. In their amended statement of claim, the respondents plead that under the share purchase agreement, HCH acquired a European auto parts manufacturing business from SGI by purchasing all issued and outstanding shares of two SGI subsidiaries, Valiant Corporation ("**Valiant**") and Winvalco Limited ("**Winvalco**"). HCH thereby became the indirect owner of several Valiant subsidiaries. The total value of the transaction, which closed in March 2017, was \$410,000,000.<sup>[5]</sup>

The amended statement of claim pleaded that SGI breached representations and warranties in the share purchase agreement by failing to disclose or by concealing serious issues with significant contracts with Porsche and Volvo. HCH asserted that it overpaid SGI for the shares of Valiant and Winvalco and sought a purchase price adjustment. The amended statement of claim also pleaded that losses suffered caused a liquidity crisis in one of the Valiant subsidiaries, placing it on the brink of insolvency.<sup>[6]</sup>

In its statement of defence, the appellant denied the allegations and stated that any losses incurred were caused by the respondents' own financial mismanagement and by the actions of HCH's principal shareholder, Huachangda Intelligent Equipment Group Inc. ("HCD"), which was not a party to the action.

At issue on the motion and in the Court of Appeal was the pleading in the statement of defence that the respondents' motive in suing the appellant was not "to recoup genuine damages for genuine wrongs", but rather to obtain an after-the-fact reduction in the purchase price because of HCH's financial and liquidity issues. The impugned paragraphs read:

8. Subsequently, the Plaintiffs commenced these proceedings raising allegations with respect to the very same disclosure and due diligence process under the [share purchase agreement]. Ultimately, the claims advanced by the Plaintiffs in this proceeding are not an effort to recoup genuine damages for genuine wrongs, but rather an effort to seek an after the fact reduction to the agreed upon purchase price established under the [share purchase agreement] for the benefit of itself and its direct and indirect shareholders, and in response to financial and liquidity issues recently and currently experienced by HCH and those shareholders.

[...]

37. HCH's recovery efforts resulted, in part, from direct or indirect pressure placed on HCH to recoup portions of the Purchase Price in order to help address financial difficulties caused by extensive management, regulatory, financial, and liquidity issues experienced by HCD in or around this time. HCD was involved in disputes with its former Chairman of the Board, President, and controlling shareholder, Mr. Hua Yan, including with respect to alleged debts in the approximate amount of CNY 3,000,000,000 and Mr. Yan's ultimate resignation, and faced multi-month suspensions in the trading of its stocks in or around both April 2017 and October 2017. [Emphasis added.]<sup>[7]</sup>

### The Motion Judge's Decision

The motion judge struck out the underlined portions of the above paragraphs, without leave to amend. With respect to paragraph 8 of the statement of defence, the motion judge found that it was improper because it "pleads ulterior motive, which is irrelevant to the causes of action asserted in the statement of claim". With respect to paragraph 37, the motion judge concluded that it was "a pleading of motive underlying the plaintiffs' issuance of the statement of claim" and that it was "not, on its face, a pleading that relates to causation of the damages or the alleged liquidity problems suffered by [the subsidiaries]".<sup>[8]</sup>

The motion judge refused to strike out other paragraphs from the statement of defence because he found that they addressed the issue of causation (i.e. the defendants alleged that the losses were caused by internal mismanagement, and not by the defendants).<sup>[9]</sup>

### The Court of Appeal's Decision

This case provides a useful overview of the application of r. 25.11(b) of the *Rules*, which states:

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

[...]

(b) is scandalous, frivolous or vexatious;

The Court of Appeal confirmed that a pleading “that raises irrelevant or superfluous allegations that cannot affect the outcome of an action is scandalous, frivolous or vexatious, and should be struck out.”<sup>[10]</sup>

The appellant argued that the motion judge erred in applying the principles for three reasons:

- 1) The motion judge cited no authority and there is no general rule that any pleading touching on motive is “necessarily and irredeemably bad”;<sup>[11]</sup>
- 2) The motion judge should have refused to strike out paragraphs 8 and 37 because they are relevant to the respondents’ credibility regarding the appellant’s claim that the respondents suffered from buyer’s remorse;<sup>[12]</sup> and
- 3) Paragraph 37 is relevant to the issue of causation: whether the respondents’ alleged losses were caused by its own mismanagement and financial difficulties, rather than by any misrepresentations under the share purchase agreement.<sup>[13]</sup>

The Court rejected all three arguments.

The Court of Appeal found that there was ample authority to support the motion judge’s decision and that the motion judge applied the principles in the case law correctly.<sup>[14]</sup>

Further, the Court of Appeal rejected the notion that a plea of improper motive should be allowed on the basis that it is relevant to credibility writ large, without otherwise being relevant to an issue in the action. This would be inconsistent with a large body of authorities precluding, as a general matter, a plea of improper motive in bringing an action.<sup>[15]</sup> The Court of Appeal also rejected the notion that “buyer’s remorse” is part of a cause of action or defence.<sup>[16]</sup>

Finally, the Court of Appeal did not accept the appellant’s relevance argument in respect of paragraph 37 and found that paragraph 37 did not address the cause of the alleged loss, but rather the respondents’ alleged ulterior motive in bringing the action.<sup>[17]</sup>

The appellants also challenged the motion judge’s refusal to grant leave to amend. The Court of Appeal reiterated that a motion judge’s decision as to whether to grant leave to amend was discretionary and was entitled to deference on appeal, unless there was palpable and overriding error. The Court of Appeal further stated that interference was warranted only if the motion judge erred in principle or acted unreasonably in the exercise of his or her discretion. The Court of Appeal concluded that there were no grounds for interfering with the motion judge’s exercise of discretion in this regard: the appellant’s plea of ulterior motive was irrelevant and improper, such that it could not be cured by amendment.<sup>[18]</sup>

## Takeaway

The decisions of Justice Penny and the Court of Appeal in *Huachangda* offer an important reminder about avoiding clutter in pleadings. Counsel must think carefully about including allegations of ulterior motives to avoid the risk of a costly motion to strike.

<sup>[1]</sup> 2019 ONCA 649 [*Huachangda*].

<sup>[2]</sup> *Ibid* at para. 2.

[3] *Ibid* at para. 3.

[4] *Ibid* at para. 24.

[5] *Ibid* at para. 7.

[6] *Ibid* at para. 8.

[7] *Ibid* at para. 10.

[8] *Ibid* at para. 11.

[9] *Ibid* at para. 12.

[10] *Ibid* at para. 15.

[11] *Ibid* at para. 17.

[12] *Ibid* at para. 23.

[13] *Ibid* at para. 26.

[14] The Court cited *E.O.E. Group Inc. v. Konica Minolta Business Solutions (Canada) Ltd.*, 2012 ONSC 197 (Master); *BMO Nesbitt Burns Inc. v. Shortt*, 2013 ONSC 1873 (Master), and *Davis v. City of Toronto*, 142 CarswellOnt 170 (H.C.); *Huachangda*, *supra* note 1 at paras. 21-22.

[15] *Huachangda*, *supra* note 1 at para. 24.

[16] *Ibid* at para. 25.

[17] *Ibid* at para. 27.

[18] *Ibid* at paras. 29-31.

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