

CITATION: Nawaz v. Vault Capital Inc., 2024 ONSC 1927
COURT FILE NO.: CV-218-00606784-0000
DATE: 20240403

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALIA NAWAZ and HAQ NAWAZ, Plaintiffs

– and –

VAULT CAPITAL INC., 2439857 ONTARIO INC., and KEITH JURIAN SZ
Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Alia Nawaz and Haq Nawaz*, on their own behalf

Chris Donovan, for the Defendant, Keith Juriansz

Julian Binavince and Shervin Rismeni, for the Defendants, Vault Capital Inc. and
2439857 Ontario Inc.

HEARD: April 2, 2024

SUMMARY JUDGMENT

[1] The Defendants move under Rule 20 of the *Rules of Civil Procedure* for an Order dismissing the action. The claim pleads solicitor’s negligence action against the Defendant, Keith Juriansz (“Juriansz”) and, in addition, seeks damages against the Defendants, Vault Capital Inc. and 2439857 Ontario Inc. (together “Vault”), their former mortgagee.

[2] I will mention at the outset that after Defendants’ counsel had completed their submissions and it was the Plaintiffs’ turn to respond, one of the Plaintiffs, Mr. Haq Nawaz, indicated that he needs an interpreter in order to make his submissions. I asked him why he had not arranged for an interpreter, to which he responded that he expected Defendants’ counsel to arrange an interpreter for him. I am not sure why that would be the case.

[3] The other Plaintiff, Dr. Alia Nawaz, indicated that she is comfortable in English. She then indicated that she would make the Plaintiffs’ submissions for both of them, and proceeded to do so. After a few moments, Mr. Nawaz intervened and continued to explain the Plaintiffs’ position in what sounded to me like perfectly fluent English. He spoke at length, going into considerable detail about the many conversations that he had with the Defendants leading up to this dispute and after the matter had seemingly settled. Dr. Nawaz also interjected additional points as Mr. Nawaz’s response went along.

[4] I also note that the Plaintiffs have both sworn two affidavits filed in this matter. Their affidavits are commissioned by a lawyer (although they are self-represented here, as is their right). Their affidavits are in English, with no indication that a translator's services were used or needed. I do note that Mr. Nawaz was cross-examined on his affidavit through an Urdu interpreter. Dr. Nawaz was also cross-examined, and although there was an Urdu interpreter present, she stated on the record that she did not need the interpreter and the cross-examination proceeded in English.

[5] I was satisfied that the Plaintiffs understood the proceedings without the need of an interpreter, and that they were both able to speak and respond comfortably in English. The motion was scheduled well in advance and all parties were aware of the date and had participated in extensive proceedings in preparation of the record. There was no indication that the Plaintiffs were prepared to retain an interpreter on their own, and there was equally no indication it would be prejudicial to proceed with the motion without an interpreter.

[6] As indicated at the outset, Vault is a lender who advanced a mortgage loan to the Plaintiffs. The loan was secured on the Plaintiffs' home at 4229 Bloor Street West, Toronto. It was for the principal amount of \$290,000 for a one-year term, with interest at the rate of 13% per annum.

[7] The Plaintiffs' monthly payments on the mortgage were \$3,142.00, payable on the first of each month. In June and July 2016, they defaulted on their payments and thereby triggered Vault's right to call the loan. Vault brought an action against the Plaintiffs seeking payment of the outstanding principal, interest and costs, as well as possession of the mortgaged property.

[8] The Plaintiffs retained Juriansz to defend the Vault lawsuit. As the Plaintiffs were clearly in default, Juriansz advised them to arrange new financing and to pay the amount required to discharge the Vault mortgage. Further, because they disputed certain fees and interest that Vault had charged, Juriansz advised them to pay the amount under protest. This advice was followed. The Plaintiffs re-financed and paid the amount owing; their protest with respect to disputed charges was made clear to Vault in writing.

[9] Juriansz's office arranged to discharge the Vault mortgage on September 13, 2016. Vault took no further steps in the action it had brought against them. The Plaintiffs kept their home and suffered no loss.

[10] The new mortgagee required a holdback of \$5,000 in order to ensure that the Vault litigation was wrapped up without any further costs. On September 22, 2016, the Plaintiffs expressed that they were dissatisfied with Juriansz's services because they were dissatisfied with the new mortgagee requiring a holdback. They instructed Juriansz to close his file and release their money.

[11] On September 27, 2016, Juriansz released the amount held in trust by his firm and confirmed that he no longer represented them in relation to the disputed charges. It is clear that by this date the Plaintiffs were fully aware of any claim they might have had against either Juriansz or Vault.

[12] More than two years later, on October 11, 2018, the Plaintiffs started this action. The action is therefore time barred under the applicable two-year limitation period in section 2 of the

Limitations Act, 2002, S.O. 2002, c. 24, Sched. B. The Plaintiffs offer no cogent explanation for having waited so long in issuing a claim. For this reason alone, the action must be dismissed.

[13] Furthermore, the Plaintiffs have failed to identify any error, omission, or other basis for claiming that Juriansz's conduct fell below the standard of care of a reasonably competent lawyer. In their affidavits filed in this motion they indicate that they were dissatisfied with Juriansz's tardy responses to them, but that does not appear to have caused them economic loss.

[14] The Plaintiffs also indicate that they expected him to file a defense to the Vault action on their behalf, but they do not indicate what the grounds of defense to their two missed mortgage payments might have been. In following Juriansz's advice to pay the mortgage monies owing and to reserve their rights with respect to any charges or fees with which they disagreed, they took the legally advisable approach to the matter.

[15] As indicated, Vault never took any action in relation the lawsuit in which Juriansz had been hired to represent the Plaintiffs. As a consequence, although the Plaintiffs may have suffered adverse financial consequences as a result of having to re-finance the property, have not experienced any damages or suffered any prejudice as a result of Juriansz's representation of them.

[16] The Plaintiffs' claim also seeks some \$500,000 in damages against Vault, although their pleading nowhere explains with any clarity what those damages are meant to compensate. The fees and charges that the Plaintiffs disputed were for considerably lesser amounts. The Plaintiffs have put forward no evidence that any charges or fees were improperly charged to them. At the hearing they seemed to be more focused on whether the two months of default were really in default. Apparently, their cheques were returned marked NSF, but they were of the view that they did have sufficient funds in their account.

[17] Mr. Nawaz is of the view that Juriansz's advice to pay the amounts owing caused them to incur a higher interest rate on the new mortgage that they were able to arrange. As Juriansz's counsel explains it, the higher interest rate on the new mortgage was imposed by the new mortgagee, a lender that is unrelated to the Defendants. The higher interest rate appears to have been due to the fact that the Plaintiffs had defaulted on the Vault mortgage.

[18] The new mortgagee apparently assessed the Plaintiffs as being an increased risk, having already defaulted on an earlier mortgage. Consequently, the new lender charged a somewhat higher interest rate. Although that is an economic hardship that the Plaintiffs have had to endure, it cannot be blamed on the Defendants; it is an economic reality and a consequence of their current situation and the new lender's risk assessment.

[19] The Plaintiffs contend that this series of events has caused them great financial hardship that continues until today. In their affidavit material and in their oral submissions at the hearing, they indicated that they had lost \$80,000 in having to arrange for the new mortgage. They also indicated that they had at one time had plans to develop the property commercially, and that re-financing at a higher rate and eventually selling the property in order to out from under that new mortgage burden had caused them to lose in the range of \$500,000. They fault both sets of Defendants for these consequential losses.

[20] In addition to all of this, Mr. Nawas indicates in his affidavit that he has suffered health issues as a result of the pressure all of these events have put him under.

[21] I have great sympathy for situation that the Plaintiffs have found themselves in. But, as indicated, I see no negligence in Juriansz's representation of them. The alleged negligence of Juriansz is of a non-technical nature, and there is no need for his counsel to produce expert evidence showing that he did not fall below a reasonable standard of care for a lawyer in these circumstances: *Gunraj v. Cyr*, 2012 ONSC 1609, at para. 65. The evidence shows that the advice he gave the Plaintiffs was logical and sound. There is nothing in the record to suggest otherwise.

[22] As for Vault, there is no real cause of action against it. The Plaintiffs are upset that they had to re-finance at a rate they could ill afford and that they may have lost some potential profit from the property. But nothing in the record suggests that the fault for that lies with Vault (or, for that matter, with Juriansz). The Plaintiffs' default on the Vault mortgage which prompted the chain of events is well established in the record, with nothing to contradict or counter it.

[23] The Plaintiffs have a lengthy explanation for their current economic situation, but none of it supports a legal claim against the Defendants. There is no issue requiring a trial against either set of Defendants: *Hryniak v. Mauldin*, [2014] 1 SCR 87.

[24] The action is dismissed.

[25] Both sets of Defendants seek costs. Juriansz's counsel request partial indemnity costs, including disbursements and HST, in the amount of \$29,757.61. Vault's counsel request partial indemnity costs, also including disbursements and HST, in the amount of \$18,174.70.

[26] The Plaintiffs have not made any costs submissions. I would like to hear from them in respect of costs before making any determination in that regard. I would ask the Plaintiffs to send my assistant, by email and with a copy to Juriansz's lawyers and Vault's lawyers, their written position on costs within two weeks of today. This written submission is to be no longer than 3 pages.



Date: April 3, 2024

Morgan J.