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## [Civil Litigation](#)

### Civil Litigation - Civil procedure - Pleadings - Amendment of - Striking out pleadings or allegations - Grounds - Failure to disclose a cause of action or defence

Thursday, January 12, 2017 @ 7:00 PM

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Appeal by the plaintiffs, Mitchell and his companies, from an order striking portions of their statement of claim in their action against the defendants, Global Learning Group and related entities and individuals. The plaintiffs alleged the defendants breached their payment obligations under a consulting agreement. The plaintiffs further alleged that the individual defendants guaranteed the company's payment obligations, and that the company agreed to hold monies owed in

trust for the plaintiffs, with three properties held in trust as security for the funds. The plaintiffs alleged that the individual defendants fraudulently converted the funds at issue for their own use. The plaintiffs sought damages for breach of contract, breach of trust, breach of fiduciary duty, fraud, fraudulent misrepresentation, conversion, conspiracy and unjust enrichment. The motion judge struck all but the claims for breach of contract and, in part, for breach of trust, and refused leave to amend the pleadings. The plaintiffs appealed.

HELD: Appeal allowed in part. The motion judge erred in limiting the breach of trust claim to go forward against one individual defendant rather than the corporate entity that owned the properties impressed with the alleged trust. To properly plead the breach of trust claim, it was necessary to plead it against the owner of the lots. The motion judge did not err in finding insufficient material facts pled to support the claims for unjust enrichment, conspiracy, conversion, fraudulent misrepresentation, and fraud based on the alleged breach of trust. The struck claims pled bald allegations and lacked sufficient particularity. They were based on an alleged oral trust unsupported by material facts. There was no error in refusing leave to further amend those claims. With respect to the claims of fraudulent diversion of funds and unjust enrichment against the individual defendants, the motion judge took an overly restrictive view to piercing the corporate veil in instances involving sham corporations. The plaintiffs were granted leave to further amend their pleading to include sufficient particulars of the claim. The order was amended accordingly. Appeal by the plaintiffs, Mitchell and his companies, from an order striking portions of their statement of claim in their action against the defendants, Global Learning Group and related entities and individuals. The plaintiffs alleged the defendants breached their payment obligations under a consulting agreement. The plaintiffs further alleged that the individual defendants guaranteed the company's payment obligations, and that the company agreed to hold monies owed in trust for the plaintiffs, with three properties held in trust as security for the funds. The plaintiffs alleged that the individual defendants fraudulently converted the funds at issue for their own use. The plaintiffs sought damages for breach of contract, breach of trust, breach of fiduciary duty, fraud, fraudulent misrepresentation, conversion, conspiracy and unjust enrichment. The motion judge struck all but the claims for breach of contract and, in part, for breach of trust, and refused leave to amend the pleadings. The plaintiffs appealed.

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