

# Exhibit#3

**CITATION:** Sekulovski v. Arkin, 2021 ONSC 439

**COURT FILE NO.:** CV-20-2184

**DATE:** 2021 01 21

## **SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Michael [REDACTED] and Christopher [REDACTED] Plaintiffs

**AND:**

Benjamin Arkin, Maria Salman, Angela Casey, Adam Giancola, Rob Levesque,  
Cory A. Gilmore, Bernadette Dietrich, David Mills, Marshall Swadron, and  
Brendan Donovan, Defendants

**BEFORE:** Coats J.

**COUNSEL:** Michael [REDACTED] and Christopher [REDACTED] Self-Represented

Mr. L. Glenn Frelick, Counsel for the Honourable Justice Corey A. Gilmore and  
the Honourable Justice Bernadette Dietrich

Mr. Lucas E. Lung, Counsel for Rob Levesque, Marshall Squadron, David Mills,  
Adam Giancola, Brendan Donovan, Benjamin Arkin and Maria Salman

**HEARD:** In chambers

## **STYLE OF CAUSE ACTUALLY USED BY PLAINTIFFS:**

**Court File No.:** CV-20-00002184-0000

in

**'Sekulovski Court'**

at

Ontario Superior Court of Justice  
491 Steeles Ave Milton, ON  
L9T 1Y7  
Ph: 905-878-7281

i:man: Michael [of [REDACTED]]  
i:man: Christopher [REDACTED]

prosecutors

# Exhibit#3

Page 2

Benjamin Arkin: [a man];  
Maria Salman: [a woman];  
Angela Casey: [a woman];  
Adam Giancola: [a man];  
Rob Levesque: [a man];  
Cory A. Gilmore: [a woman];  
Bernadette Dietrich: [a woman];  
David Mills: [a man];  
Marshall Swadron: [a man];  
Brendan Donovan: [a man];

people

## ENDORSEMENT

### Issue:

[1] Should this proceeding be dismissed against the Honourable Justice Corey A. Gilmore, the Honourable Justice Bernadette Dietrich, Rob Levesque, Marshal Swadron, David Mills, Adam Giancola, Brendan Donovan, Benjamin Arkin and Maria Salman under Rule 2.1.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, on the ground that the proceeding is frivolous, vexatious and/or an abuse of the process of the Court?

### History of Proceeding:

[2] On September 11, 2020 a proceeding was commenced in Milton, Ontario, under file number CV-20-00002184-0000. It was commenced by a NOTICE: LIABILITY and STATEMENT OF CLAIM. The Statement of Claim is 60 pages in length and from page 7 and onward consists of an Exhibit Index and Exhibits.

[3] On September 29, 2020, Mr. L. Glenn Frelick, counsel to the defendants (referred to as people in the Statement of Claim), the Honourable Justice Corey A. Gilmore and the Honourable Justice Bernadette Dietrich sent a letter pursuant to Rule 2.1.01(6) of the *Rules of Civil Procedure* to the Registrar Civil Office in Milton, requesting an order dismissing the action under Rule 2.1.01(1) on the ground that the proceeding is frivolous, vexatious or an abuse of the process of the court.

# Exhibit#3

Page 3

[4] One of the Plaintiffs, who identified himself as Christopher James [REDACTED] (referred to as prosecutors in the Statement of Claim and not Plaintiffs) wrote to the Court by correspondence dated September 29, 2020 requesting that the communication from L. Glenn Frelick be removed from the Sekulovski Court.

[5] Christopher James [REDACTED] in this correspondence refers to Mr. Frelick's letter as a trespass on the case. "Christopher" also sent a covering email dated September 29, 2020 referring to Mr. Frelick's letter as a "trespass on the case."

[6] By correspondence dated September 29, 2020, from Mr. Lucas E. Lung to the Registrar, Civil Office, in Milton, Mr. Lung advised that he represented the Defendants, Robert Levesque and Marshall Squadron. The correspondence was sent pursuant to Rule 2.1.01(6) requesting that the action be dismissed under Rule 2.1.01(1).

[7] "Christopher" responded to this letter by an email to the Court dated September 29, 2020, in which he claimed that Mr. Lung "does 'trespass on the case'." He required that Mr. Lung's letter be removed from the file.

[8] Mr. Lung wrote again to the Registrar on October 1, 2020, advising that he now represented three additional Defendants, David Mills, Adam Giancola and Brendan Donovan and asked that the action against all of the Defendants or alternatively against the 5 defendants he now represents, be dismissed pursuant to Rule 2.1.01(1).

[9] By correspondence dated October 8, 2020, from Mr. Lung to the Registrar, Mr. Lung advised that he now represented two additional defendants – Benjamin Arkin and Maria Salman. Mr. Lung requested that any determination arising from his previous requests to have this action dismissed also cover Mr. Arkin and Ms. Salman.

[10] By Endorsement dated October 23, 2020, pursuant to Rule 2.1.01(3) the Court directed the Registrar to give notice to the Plaintiffs, Michael [REDACTED] and Christopher [REDACTED] that the Court is considering making an order dismissing the action. The Endorsement provided that each Plaintiff may, within 15 days after receiving the notice, file a written submission, no more than ten pages, with the Court.

# Exhibit#3

Page 4

[11] i: man Michael [REDACTED] and i: man Christopher [REDACTED] filed a response dated November 6, 2020.

[12] By Endorsement dated November 17, 2020, the Court directed the Registrar, pursuant to Rule 2.1.01(3)4 to give a copy of the Plaintiffs' submissions dated November 6, 2020 to Mr. Frelick and Mr. Lung. The Endorsement provided that within ten days of receiving a copy, counsel may file a written submission, not more than 10 pages in length, responding to the Plaintiffs' submissions, and that counsel shall give a copy of the responding submissions to the Plaintiffs.

[13] Mr. Frelick's submissions were set out in a letter from Mr. Frelick dated November 27, 2020.

[14] Mr. Lung's submissions were set out in a letter from Mr. Lung dated December 3, 2020.

[15] Michael [REDACTED] sent two further faxes to the Court, one dated November 23, 2020 and one dated December 4, 2020. These were not provided pursuant to any Endorsement or request. Both attach a Notice: Trespass. The November 23, 2020 correspondence was directed to The Honourable Lise Maisonneuve (a woman who sometimes ACTS as Ontario Chief Justice), The Right Hon. Richard Wagner (a man who sometimes ACTS as Chief Justice for Canada), Elizabeth Dowdeswell (a woman who sometimes ACTS as Lieutenant Governor) and Julie Payette (a woman who sometimes ACTS as Governor General). It includes a second notice of trespass indicating that the Registrar and I are doing "trespass of the case." The December 4, 2020 correspondence is directed to the same people as the November 23, 2020 correspondence and includes a third and final notice of trespass. The December 4, 2020 correspondence also includes the second notice sent November 23, 2020 and a notice of trespass dated November 6, 2020. The November 6, 2020 notice refers to "Trespass on the case" occurring repeatedly by people who have no standing in the "Sekulovski Court."



# Exhibit#3

Page 5

## Caselaw:

[16] The leading case on the interpretation of Rule 2.1.01 of the *Rules of Civil Procedure* is *Scaduto v. Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, leave to appeal refused, [2015] S.C.C.A. No. 488.

[17] In *Scaduto*, the Ontario Court of Appeal unanimously upheld Justice Myers' interpretation and application of Rule 2.1, as set out in the following three cases:

*Gao v. Ontario WSIB*, 2014 ONSC 6100 [*Gao 1*];  
*Gao v. Ontario WSIB*, 2014 ONSC 6497 [*Gao 2*]; and  
*Raji v. Borden Ladner Gervais LLP*, 2015 ONSC 801.

[18] The purpose of Rule 2.1 is to provide "an attenuated process to quickly review, and where appropriate, dismiss actions which are on their face frivolous, vexatious or an abuse of process." (*Raji*, at para. 7). This is meant to further access to justice by providing an efficient and affordable process to deal with patently frivolous or vexatious proceedings (*Scaduto*, at para. 12; *Gao 1*, at para. 7; *Raji*, at para. 8).

[19] There are two steps to evaluating whether an action should be dismissed under Rule 2.1. First, the court must evaluate whether the proceeding or moving party has characteristics associated with (i) vexatious litigants under s. 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, (ii) querulous litigants, and/or (iii) Organized Pseudolegal Commercial Argument litigants (OPCA litigants).

[20] These characteristics are as follows (*Gao 2*, at paras. 14-16; see also *Meads v. Meads*, 2012 ABQB 571, Alta. L.R. (5th) 1):

- Common vexatious litigant attributes;
  - Bringing multiple proceedings to try to redetermine an issue that has already been determined by a court of competent jurisdiction;
  - Rolling forward grounds and issues from prior proceedings to repeat and supplement them in later proceedings, including bringing proceedings against counsel who have acted for or against them in earlier proceedings;

# Exhibit#3

Page 6

- Persistent pursuit of unsuccessful appeals;
- Failure to pay costs awards of prior proceedings;
- Bringing proceedings for a purpose other than the assertion of legitimate rights, including to harass or oppress others; and
- Bringing proceedings where no reasonable person would expect to obtain the relief sought;
- Hallmarks of querulous litigant behaviour;
  - Curious formatting, including the following:
    - Very lengthy submissions;
    - Odd or irrelevant attachments, all usually extensively annotated;
    - Multiple methods of emphasis including various colours of highlighting, underlining, and capitalization;
    - Repeated usage of punctuation ("", ???, !!!);
    - Numerous footnotes and marginal notes;
  - Questionable content, including the following:
    - Rambling discourse characterized by repetition and a pedantic failure to clarify;
    - Rhetorical questions;
    - Repeated misuse of legal, medical, and other technical terms;
    - Referring to self in the third person;
    - Inappropriately ingratiating statements;
    - Ultimatums;
    - Threats of violence to self or others; and
    - Threats of violence directed at individuals or organizations; and
- Hallmarks of OPCA litigants, as described in *Meads*, particularly at paras. 199-255.

# Exhibit#3

Page 7

[21] Second, “there should generally be a basis in the pleadings to support the resort to the attenuated process of rule 2.1”, as opposed to one of the processes available under Rules 21.01(3)(d), 25.11(b), and/or 37.16.

[22] The Court of Appeal in *Scaduto* noted, at para. 8, that “the rule should be interpreted and applied robustly so that a motion judge can effectively exercise [their] gatekeeping function to weed out litigation that is clearly frivolous, vexatious, or an abuse of process.”

[23] However, the Ontario Court of Appeal most recently commented on the application of Rule 2.1 in *Khan v. Krylov & Company LLP*, 2017 ONCA 625, 138 O.R. (3d) 581. The court noted at para. 7, quoting from *Gao 2*, at para. 18, that:

[E]ven a vexatious litigant can have a legitimate complaint. It is not uncommon for there to be a real issue at the heart of a vexatious litigant’s case.... Care should be taken to allow generously for drafting deficiencies and recognizing that there may be a core complaint which is quite properly recognized as legitimate even if the proceeding itself is frivolously brought or carried out and ought to be dismissed.

## Analysis:

[24] All of the Defendants are represented either by Mr. Frelick or Mr. Lung, except for Angela Casey. Rule 2.1.01(1) provides that “[t]he Court may, on its own initiative, stay or dismiss a proceeding if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the Court.” Although Ms. Casey has not requested a dismissal of this proceeding against her, the Court will consider the claim against her on its own initiative, such that this decision will apply to the claims against all of the Defendants. The claim against Ms. Casey is very similar in nature to the claims against the Defendants represented by Mr. Lung. There is no basis to differentiate the claims against Ms. Casey. It appears that Ms. Casey is a lawyer somehow involved in the estate matter, similar to some of the other Defendants.

[25] Having considered the submissions received and the initiating pleadings consisting of the NOTICE: LIABILITY, STATEMENT OF CLAIM and Exhibit Index and Exhibits #1 to #6 inclusive, the Court has determined that this proceeding is on its face frivolous, vexatious and an



# Exhibit#3

Page 7

[21] Second, “there should generally be a basis in the pleadings to support the resort to the attenuated process of rule 2.1”, as opposed to one of the processes available under Rules 21.01(3)(d), 25.11(b), and/or 37.16.

[22] The Court of Appeal in *Scaduto* noted, at para. 8, that “the rule should be interpreted and applied robustly so that a motion judge can effectively exercise [their] gatekeeping function to weed out litigation that is clearly frivolous, vexatious, or an abuse of process.”

[23] However, the Ontario Court of Appeal most recently commented on the application of Rule 2.1 in *Khan v. Krylov & Company LLP*, 2017 ONCA 625, 138 O.R. (3d) 581. The court noted at para. 7, quoting from *Gao 2*, at para. 18, that:

[E]ven a vexatious litigant can have a legitimate complaint. It is not uncommon for there to be a real issue at the heart of a vexatious litigant’s case.... Care should be taken to allow generously for drafting deficiencies and recognizing that there may be a core complaint which is quite properly recognized as legitimate even if the proceeding itself is frivolously brought or carried out and ought to be dismissed.

## Analysis:

[24] All of the Defendants are represented either by Mr. Frelick or Mr. Lung, except for Angela Casey. Rule 2.1.01(1) provides that “[t]he Court may, on its own initiative, stay or dismiss a proceeding if the proceeding appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the Court.” Although Ms. Casey has not requested a dismissal of this proceeding against her, the Court will consider the claim against her on its own initiative, such that this decision will apply to the claims against all of the Defendants. The claim against Ms. Casey is very similar in nature to the claims against the Defendants represented by Mr. Lung. There is no basis to differentiate the claims against Ms. Casey. It appears that Ms. Casey is a lawyer somehow involved in the estate matter, similar to some of the other Defendants.

[25] Having considered the submissions received and the initiating pleadings consisting of the NOTICE: LIABILITY, STATEMENT OF CLAIM and Exhibit Index and Exhibits #1 to #6 inclusive, the Court has determined that this proceeding is on its face frivolous, vexatious and an



# Exhibit#3

Page 8

abuse of the process of the court. The proceeding is dismissed against all Defendants for the reasons set out below.

[26] The claim is vexatious. The Plaintiffs would not reasonably expect to obtain relief against Justices Gilmore and Dietrich. As judges of the Superior Court, they enjoy absolute immunity from civil suit (see *Morier and Boily v. Rivard*, [1985] 2 S.C.R. 716). The claims set out in this proceeding are based on decisions Justices Gilmore and Dietrich made in an estate proceeding in the Superior Court in Toronto.

[27] Additionally, the proceeding is vexatious in a broader sense. The proceeding is a collateral attack on previous judicial decisions made in the estate matter. The Plaintiffs' allegations are against parties, lawyers and judges who have been involved with the Plaintiffs in previous proceedings. The Plaintiffs' claim is that these Defendants trespassed by being involved in the administration of the estate property. Issues from the estate litigation have been rolled forward to the current proceeding. This is a general characteristic of vexatious proceedings (see *Lang Michener Lash Johnston et al. v. Fabian et al.* (1987), 59 O.R. (2d) 353 (H.C.)).

[28] The court filings in this proceeding include several legal and stylistic elements common to OPCA litigants, as set out in *Meads*. The NOTICE: LIABILITY and the STATEMENT OF CLAIM contain many common OPCA themes, including the following:

1. The Plaintiffs identify themselves as "i:man:Michael [REDACTED] and "i:man:Christopher [REDACTED]. The Plaintiff (i:man:Michael) claims to be legally distinct from the fictional person MICHAEL MIKE SEKULOVSKI named on the Birth Certificate, filed as Exhibit #2. The Plaintiff states in the STATEMENT OF CLAIM that MICHAEL MIKE SEKULOVSKI is a "fiction/legal person/identity theft" created without consent;
2. The STATEMENT OF CLAIM is commenced in the "Sekulovski Court" at Ontario Superior Court of Justice, 491 Steeles Ave Milton, ON. The STATEMENT OF CLAIM provides that the "Sekulovski Court" is "a court of record moving under the common law". The STATEMENT OF CLAIM does not purport to be filed in the Superior Court. The STATEMENT OF CLAIM makes clear that "Sekulovski Court" is operating using the

# Exhibit#3

Page 9

public courthouse in Milton. By the Plaintiffs' own position set out in the STATEMENT OF CLAIM, this proceeding was never intended to be a proceeding in the Superior Court of Justice. The references in the STATEMENT OF CLAIM to the Superior Court of Justice in Milton are merely references to the courthouse building and not to the judicial institution of the Superior Court;

3. The STATEMENT OF CLAIM makes clear that "[t]his is not a legal [jurisdiction] court filing or proceeding." The filing of a Claim in the building that houses the Superior Court in Milton, for another court, the "Sekulovski Court", while stating that the claim is not a legal court filing or proceeding, is frivolous and an abuse of process;
  4. The initiating documents make clear that the *Rules of Civil Procedure* do not apply to any man or woman and do not apply to the "Sekulovski Court";
  5. The Statement of Claim identifies the jurisdiction of the "Sekulovski Court" as "LAND [COMMON LAW OF THE PEOPLE]";
  6. The STATEMENT OF CLAIM states, at page 6, subparagraph e, that "legal jurisdiction does not apply to a man or woman [people] only lawful [Common law]", and at page 6, subparagraph d, that "Contract [obligation] makes the law between people";
  7. The STATEMENT OF CLAIM includes a claim that "Any/All court orders or actions to date are null and void by these "people" without jurisdiction";
  8. The NOTICE: LIABILITY includes a statement that no woman or man at the courthouse can administer the Plaintiffs' property (filing) without right or deny a right of the people;
  9. The CLAIM: TRESPASS portion of the STATEMENT OF CLAIM sets out that enforceable obligations require the Plaintiffs' agreement and that the source of the obligations must be produced on demand in the form of written evidence the Plaintiffs can verify; and
  10. The NOTICE: LIABILITY and STATEMENT OF CLAIM are marked rather than signed, in a manner indicative of OPCA documents. There are thumbprints in ink.
-

# Exhibit#3

Page 10

Underneath the thumbprints the Plaintiffs are identified in the manner set out in subparagraph 1 above. The Plaintiffs refer to themselves in the STATEMENT OF CLAIM as "prosecutors" and to the Defendants as "people".

[29] In the Statement of Claim, the Plaintiffs allege that the Defendants ("people") trespassed by administering property (the estate of the Plaintiffs' father) without right and engaged in "barratry, constructive fraud and theft." It is alleged that Justices Gilmore and Dietrich accepted the trespass to property and controlled the vexatious estate litigation. The Plaintiffs seek "the immediate restoration of property" and that "all costs associated with this and other legal filings are to be returned post haste" and that "fair and just compensation [punitive]" be decided by a jury of the Plaintiffs' peers. No material facts are pleaded to support any of the Plaintiffs' allegations. The STATEMENT OF CLAIM provides a list of bold assertions unsupported by any particulars. A pleading that contains only bold allegations and provides no material fact disclosure, is frivolous and vexatious (see *Aristocrat Restaurants Ltd. v. Ontario*, [2003] O.J. No. 5331, at paras. 18-21 (Ont. S.C.)).

[30] It is difficult to discern from the pleadings and the attachments what the Plaintiffs' specific complaints are. They appear to relate, as set out above, to the conduct of an estate matter in the Superior Court of Justice in Toronto. The Defendants appear to have been involved in that matter as judges, lawyers, a mediator, and in the case of Mr. Levesque, as estate trustee during litigation. The Plaintiffs claim that the Superior Court has no jurisdiction to deal with the estate, and the defendants (the "people") have "trespassed" on the property of the estate. Challenges to the jurisdiction of the Superior Court to deal with the estate proceeding should have been brought in the estate proceeding. A new action to collaterally attack orders that were made in another proceeding is an abuse of process (see *Wilson v. The Queen*, [1983] 2 S.C.R. 594, at p. 599).

[31] For the reasons laid out above, there is a basis in the pleadings to support the resort to the attenuated process of Rule 2.1.01. The initiating pleadings have many of the hallmarks of frivolous, vexatious and abuse of process claims. This is "on the face" of the pleadings. It is patently obvious. As explained by Myers J. in *Ei v. Morlog*, 2016 ONSC 4476, at para. 3:



# Exhibit#3

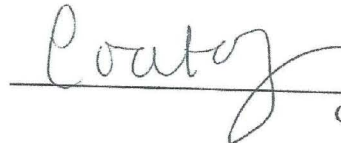
Page 11

All litigants are entitled to be treated with respect and with simple human decency before the court. The OPCA positions that they adopt are not. In my view, it is more respectful to OPCA plaintiffs to truthfully tell them that they are engaged in a despicable enterprise that cannot be tolerated than to pretend that there is some merit which deserves academic debate and response. In my view, precious judicial time should be spent on resolving real matters. Simply taking judicial time to respond seriously to OPCA claims gives the claimants a measure of success in advancing their improper purposes.... In my view, not another moment of judicial resources or party expense should be invested on OPCA claims. They should be summarily nipped in the bud with reference to *[Meads]* and no more...

## Conclusion and Costs:

[32] For all of the reasons set out above, the NOTICE: LIABILITY AND STATEMENT OF CLAIM (this proceeding) is dismissed against all Defendants.

[33] Both Mr. Frelick and Mr. Lung shall file brief written submissions as to costs, limited to 2 pages each, with a bill of costs attached to each submission, to be served and filed within 10 days of today. The Plaintiffs shall serve and file brief written submissions as to costs, limited to 4 pages (2 pages to respond to Mr. Frelick's submissions and 2 pages to respond to Mr. Lung's submissions), for each Plaintiff, to be served and filed within 20 days of today.

  
Coats J.

Date: January 21, 2021