**CITATION:** Chuhan v. Soundrarajan, 2025 ONSC 3288
**COURT FILE NO.:** CV-16-552379
**DATE:** 20250610

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

KULWANT CHUHAN and JUNG BAHADUR CHUHAN

Plaintiffs

*Calvin Zhang*, for the Plaintiffs

**– and –**

POONIAH SOUNDRARAJAN, MANGALAHOWRY SOUNDRARAJAN, THIVYA SOUNDRARAJAN, THILUXAN SOUNDRARAJAN, SANDWICH BOX INC., THE SANDWICH BOX (388 RICHMOND STREET WEST) INC. and SANDWICH BOX (1200 BAY ST.) INC.

Defendants

*David Milosevic & Joella Miller* for the Defendants

**HEARD:** March 17-28, 2025

**JUSTICE POLLAK**

## REASONS FOR DECISION

### Background Facts

[1] In January and April 2012, the Plaintiffs loaned the Defendant, Sandwich Box Inc. (“SBI”), $300,000.00. As security for the loans, the Defendants, Pooniah Soundrarajan (“Pooniah”) and Abdi Ghotb (“Ghotb”), signed Promissory Notes that were not paid. In a Default Judgment dated December 15, 2015 (the “Judgment”), the amount of $657,999.87 including interest up to September 2015 was awarded to the Plaintiffs against SBI, Pooniah and

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Ghotb, plus costs post-judgment interest. The amount of the judgment is now in excess of $2 million. No payments have been made on the principal amount owing or interest by Pooniah, SBI or Ghotb. In this action, the Plaintiffs claim the Defendants have not provided any commercially reasonable explanation for the transfers of real estate, shares of SBI (388 Richmond Street West) and SBI (1200 Bay Street), and the SBI trademark, by Pooniah to some of the other Defendants.

[2] Although the parties have agreed that there are also two loans from RBC to the corporate Defendants with Pooniah as guarantor, these documents are not in evidence. On October 16, 2006, SBI obtained a loan from RBC for $225,000. Subsequently, on December 5, 2007, another entity controlled by the Defendant, 1709307 Ontario Inc., obtained an additional loan from RBC for $250,000.

[3] The Plaintiffs alleged that in March 2006, before guaranteeing either of these loans, the Defendant Pooniah transferred his interest in his matrimonial home at 69 Douglas Haig Drive to his wife, the Defendant, Mangalahowry Soundrarajan, for no consideration and without any commercially reasonable explanation.

[4] The Plaintiffs claim a series of fraudulent conveyances by the Defendant Pooniah were intended to shield assets from his creditors, including the Plaintiffs. These alleged fraudulent conveyances are:

- the transfer of his interest in the matrimonial home at 69 Douglas Haig Drive to his wife, the Defendant and Mangalahowry Soundrarajan ("Mangalahowry"), (after holding joint ownership for six years since 2000) without valuable consideration;

- the subsequent flow of sale proceeds from that property into the purchase of 89 Beckett Avenue and into the current residence at 20 Flower Crescent, which is registered in the names of Pooniah's children, Thivya Soundrarajan ("Thivya") and Thiluxan Soundrarajan;

- the transfer of SBI's registered trademark "Sandwich Box" to Mangalahowry without consideration; and

- the transfer of all of Pooniah's shares in The Sandwich Box (388 Richmond Street West) Inc. and The Sandwich Box (1200 Bay St.) Inc. to his son, the Defendant, Thiluxan Soundrarajan, without any consideration. It should be noted that pursuant to an agreement (referred to below) Pooniah is holding these shares in trust for himself, Pune and Amir.

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[5] The Plaintiffs submit that these transfers, all made within Pooniah's family and without a reasonable explanation, were intended to defeat the Judgment.

[6] On March 13, 2018, Defendant Pooniah made an assignment in bankruptcy which stayed this action, with the stay being lifted by this Court on May 22, 2018.

[7] There is a consent Certificate of Pending Litigation registered against 20 Flower Crescent.

[8] Some of the proceeds from the sale of 69 Douglas Haig were directly used for the down payment to purchase 89 Beckett Avenue, on September 8, 2012, for $898,880 by Mangalahowry and Thiluxan Soundrarajan.

[9] 89 Beckett Avenue was sold on April 28, 2014 for $1,045,000. The proceeds of sale were approximately $280,686.67 ($194,399.67 plus an additional $86,287). Approximately $194,000 of these proceeds were used for the down payment for the purchase of 20 Flower. There is no evidence on the use of approximately $90,000 of the sale proceeds from 89 Beckett Avenue.

[10] On January 9, 2014, the registered trademark "Sandwich Box" was transferred from SBI to Mangalahowry without any documented consideration. This transfer occurred after SBI entered into the loans from the Plaintiffs.

[11] On February 13, 2014, Pooniah transferred all his shares in The Sandwich Box (388 Richmond Street West) Inc. to his son, Thiluxan Soundrarajan. Pooniah then transferred his shares in The Sandwich Box (1200 Bay St.) to his son on May 21, 2014. These transfers were made without any documented consideration and, it is alleged, when the Defendants' deteriorating financial situation was in difficulty. The Defendants allege that these transfers were made in exchange for Thiluxan's assumption of corporate debts—specifically, approximately $135,000 in debts of 388 Richmond and approximately $275,000 in debts of 1200 Bay, including loans allegedly owed to Mangalahowry and outstanding CRA debts related to payroll liabilities. Thiluxan admitted on discovery that he paid nothing for the shares and was unaware of the debt structure, and provided no documentation evidencing such assumption.

[12] Thiluxan did not pay to purchase the shares from SBI and the Defendants. The Defendants claim that Thiluxan assumed the debts of both 388 Richmond and 1200 Bay as consideration for the share transfers. The Plaintiffs submit that assumption of corporate debt cannot constitute valid consideration, as the corporation—not the shareholder—remains primarily liable for corporate debts. There is no documentation in evidence regarding any formal assumption of these corporate debts.

[13] Pooniah transferred 100% of his shares in SBI to Thiluxan. In a Memorandum of Agreement and an Acknowledgment of Trust, the parties agreed that 60% of those shares were beneficially owned by Amir Azizizi and Abdi Gant.

[14] This action was commenced in 2016 with the trial starting on March 17, 2025. The evidence in this action arises from the Agreed Statement of Facts, the testimony of two witnesses, the Plaintiff, Jung Bahadur Chuhan ("Chuhan'), and Plaintiffs' witness, Mr. Ghotb's five exhibits adduced at trial and the Plaintiffs' read-ins from the examinations for discovery of Pooniah, Mangalahowry, Thiluxan and Thivya. In the pre-trial report, the Plaintiffs indicated that they would call seven witnesses. At trial, they elected to call only two.

[15] After the close of the Plaintiffs' case, the Defendants elected not to call evidence and brought a motion for a non-suit.

[16] This action is brought under the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 ("*Fraudulent Conveyances Act*"), for an order under section 2 to have the Property Transfer declared void as against creditors, so that the Plaintiffs can enforce their Judgment against a property owned by Pooniah's wife and children, Thivya and Thiluxan.

[17] The Plaintiffs must establish that Pooniah had the requisite intent to hinder, defeat, delay or defraud creditors at the time of the Property Transfer in March 2006.

[18] With respect to the Plaintiff's claim for tracing of proceeds of "fraudulent transfers", the issue is whether the defendant Pooniah fraudulently conveyed his interest in the family home ("Douglas Haig") to his wife in 2006 to hinder, delay, defeat or defraud creditors.

[19] In addition to the primary focus on the Property Transfer and tracing of proceeds of sale on that transfer, the Plaintiffs also allege oppressive conduct by SBI and unjust enrichment of Mangalahowry, Thiluxan, and Thivya.

[20] The Plaintiffs rely on badges of fraud which can constitute evidence based on which the Court *may* draw an inference of fraudulent intent under the *Fraudulent Conveyances Act*. The burden of proof remains with the Plaintiffs to prove Pooniah's intent to defraud existing creditors or others at the time of the transfer in 2006.

[21] The plaintiff may succeed in proving the existence of one or more badges of fraud on a prima facie basis, but the court may find that even though a prima facie case has been made out, the burden of explanation does not fall on the defendant. This court is not obligated to infer fraudulent intent as a result. The court may infer fraudulent intent based upon evidence of the existence of one or more badges of fraud, but must consider whether it can make a finding of a fraudulent conveyance on a balance of probabilities.

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[22] If I infer fraud from the existence of one or more badges of fraud, the burden of proof does not shift to the defendant. That burden is always on the plaintiff. Rather, the "burden of explanation" may shift to the defendant, so that it would be prudent for the defendant to give a reasonable explanation for the inferences of fraud that may have been made.

[23] In this trial, where there has been a non-suit motion and the defendant has not led evidence to rebut the inference of the existence of a badge of fraud, the Court must still assess the evidence to determine whether the evidence supports a finding of fraudulent intent on a balance of probabilities. Justice Laskin explained the burden of proof on the Plaintiff as follows in *FL Receivables Trust 2002-A v. Cobrand Foods Ltd.*, 2007 ONCA 425, 85 O.R. (3d) 561:

> [39] The crucial question in any fraudulent conveyance action is whether the plaintiff has proved the fraudulent intent of the debtor. While the legal burden to prove fraudulent intent remains on the plaintiff throughout the trial, the plaintiff can raise an inference of fraud sufficient to put a "burden of explanation" on the defendant debtor. The plaintiff typically raises an inference of fraud by putting forward "badges of fraud". These "badges of fraud" vary from case to case. They are no more than typical and suspicious facts that may allow the court to make a finding of fraud absent an explanation from the debtor. See C.R.B. Dunlop, Creditor-Debtor Law in Canada, 2nd ed. (Toronto: Thomson Canada, 1995) at 613-15.
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> [40] The court, however, is not compelled to draw this inference of fraudulent intent from badges of fraud pleaded by the plaintiff. See Koop v. Smith (1915), 51 S.C.R. 554, [1915] S.C.J. No. 34, at pp. 558-59 S.C.R. The court may dismiss a fraudulent conveyance action because it has decided that the surrounding circumstances taken as a whole explain away the plaintiff's evidence. It seems to me that is what the trial judge did in this case.
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> . . .
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> [42] . . . Also, at para. 71, he found, "the facts which the plaintiff submits represents badges of fraud do not, on a balance of probabilities, evidence fraud". Again, he determined that Prudential failed to meet its burden.

**<u>Non-Suit</u>**

[24] The question for this court on the Defendants' motion for a non-suit is:

a. Have the Plaintiffs put forward evidence on all elements of each cause of action alleged sufficient to establish a prima facie case?

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[25] The burden is on the Defendant to show that the Plaintiffs failed to establish a prima facie case that some evidence has been led on all elements of each claim. I can consider the pleadings, agreed statement of facts, the evidence of the witnesses and trial exhibits.

[26] I must assume all of the evidence to be true and assign the most favourable meaning to the evidence capable of giving rise to the competing inferences. I can draw reasonable inferences from the evidence to determine if there is evidence which, if accepted, would prove facts that would entitle the Plaintiffs to succeed on their claim. The central focus on the claim is on the intent of the transferor at the time of the transfer.

[27] The Defendant's argument is that the Plaintiffs have not led evidence to establish the existence of a sufficient number of badges of fraud to support an inference of fraud. There is no prima facie case of fraudulent intent raised on the evidence of the Plaintiffs. The non-suit motion should therefore be granted.

[28] The Plaintiffs rely on these alleged badges of fraud and factual misrepresentations made by the Defendants:

a. The transfer of the Douglas Haig property by Pooniah to his wife, Mangalahowry, was made without any consideration. The $50,000 debt forgiveness is unsupported by any evidence, and, it is submitted, the assumption of the $75,000 mortgage by Mangalahowry cannot constitute valid consideration, as she was already a co-owner and co-mortgagor of the property. There is no evidence that she was already making the mortgage payments. Alleged oral agreements regarding this real estate transfer is unenforceable under the *Statute of Frauds*;

b. Mangalahowry did not contribute to the equity in the Douglas Haig property with a down payment. (Both Pooniah and Mangalahowry admitted this at discovery). It is submitted that Mangalahowry's limited income at the time renders the claim implausible. However, there is no evidence on the totality of her income. As set out below, if there is any ambiguity in the evidence and competing inferences regarding this issue, the Court should resolve such ambiguity in favor of the Plaintiffs;

c. The Defendants pleaded that Thiluxan assumed debts totaling approximately $410,000 as consideration for the share transfers in 388 Richmond and 1200 Bay. However, Thiluxan admitted in discovery that he paid nothing and provided no documentation of any debt assumption. The Defendants' own pleadings stand in stark contradiction to their current assertion that these shares have no value. These issues of misrepresentation by the Defendants are not mere arguments but demonstrate the factual inconsistencies in the Defendants' position;

d. The explanation that the share transfers to Thiluxan were motivated by an internal business dispute is entirely speculative and unsupported by any evidence or witness testimony. No documents or statements have been produced to substantiate this alleged dispute; and

e. The suggestion that Pooniah transferred assets merely to free up funds for business investment lacks evidentiary support and internal consistency. Forgiveness of an alleged debt does not generate investment capital, and there is no record of such funds being used for expansion or reinvestment.

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[29] Section 2 of the Fraudulent Conveyance Act states:

**Where conveyances void as against creditors**

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[30] A selection of case law relevant to badges of fraud is reviewed in the decision in *Bank of Montreal v. Peninsula Broilers Ltd.*, [2009] O.J. No. 2129 (S.C.):

***intent***

[85] "... it is established by the authorities that in the absence of any ... direct proof of intention, if a person owing debts makes a settlement which subtracts from the property which is the proper fund for the payment of those debts, an amount without which the debts cannot be paid, then, since it is the necessary consequence of the settlement (supposing it effectual) that some creditors must remain unpaid, it would be the duty of the judge to direct the jury that they must infer the intent of the settler to have been to defeat or delay his creditors ...:" see *Sun Life Assurance Co. of Canada v. Elliott* 1900 CarswellBC 17 (S.C.C.) *per* Sedgewick J., at para. 4, quoting Lord Hatherley L.C. in *Freeman v. Pope,* 5 Ch. App. 538 at 541.

[86] "Where there is a voluntary conveyance, if the result of the transaction is to defeat the rights of the creditor, then there is an assumption that it was a conveyance to defeat the creditors": see *Atlantic Acceptance Corp. Ltd. v. Distributors Acceptance Corp Ltd.*, [1963] 2 O.R. 18 at 21 (H.C.J.).

. . .

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***where no consideration, intent need be proved only of debtor***

[88] "It is only where a conveyance is made upon good consideration that it is necessary under the statute in order to set it aside to show the fraudulent intent of both parties to it. But where a conveyance is voluntary, it is only necessary to shew the fraudulent intent of the maker of it": see *Oliver v. McLaughlin et ux.* (1893), 24 O.R. 41 at p. 51 (H.C.J.), per Armour, C.J., cited in *Solomon v. Solomon et al.* (1977), 16 O.R. (2d) 769 at 774 (H.C.J.).

***intent to defeat future creditors***

[89] "It is not too liberal a construction of the [*Fraudulent Conveyances Act* ] to extend it to a case where the conveyance was made to defeat future creditors and it in fact defeats, delays or hinders existing creditors even though there might have been no intention to do so at the time of the conveyance": see *Petrone v. Jones,* [1995] O.J. No. 1478 (Gen. Div.) at para. 23.

***transaction between close relatives***

[90] "Where the impugned transaction was ... between close relatives under suspicious circumstances, it is prudent for the court to require that the debtor's evidence on *bona fides* be corroborated by reliable independent evidence": see *Re Fancy, ibid,* followed in *Ricchetti v. Mastrogiovanni*, *ibid* and in *392278 Ontario Ltd. (c.o.b. Group Three) v. Interopeka S.A., ibid*.

***badges of fraud***

[91] In *Solomon v. Solomon et al.*, *supra*, at p. 778, Krever J., as he then was, referring to a New Brunswick decision, accepted the following as badges of fraud:

1. Secrecy
2. Generality of conveyance, by which is meant the inclusion of all or substantially all of the debtor's assets
3. Continuance in possession by debtor
4. Some benefit retained under the settlement to the settlor

[92] "But all the circumstances surrounding the conveyance of the property must be examined to determine if there are among them some which have been termed 'badges of fraud' ": see *Solomon v. Solomon , ibid.*

[93] "... the existence of one or more of the traditional 'badges of fraud' may give rise to an inference of intent to defraud in the absence of an explanation from the defendant": see *Re Fancy, ibid,* followed in *Ricchetti v. Mastrogiovanni, ibid,* and in *392278 Ontario Ltd. (c.o.b. Group Three) v. Interopeka S.A., ibid.*

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[31] The Defendants submit that the property conveyance of the matrimonial home should not be viewed as fraudulent because it occurred years before the Plaintiffs' loan and litigation. The Ontario Court of Appeal has, however, held that a subsequent creditor may challenge a transfer made with the intention of defrauding creditors generally, whether present or future: see *Ontario Securities Commission v. Camerlengo Holdings Inc.*, 2023 ONCA 93, 478 D.L.R. (4th) 185. **The relevant inquiry is if the transferor's intention was to shield assets from a "general class of potential future creditors".** The absence of a specific debt at the time of transfer is not determinative. It is however submitted that given the substantial badges of fraud, with no credible explanation by the Defendants, an intent to defraud a "general class of creditors" should be made out. In *Camerlengo*, at para. 11, the court held:

> We agree that the motion judge did not correctly interpret or apply s. 2 of the *FCA*. The case law interpreting s. 2 of the *FCA* is clear that a subsequent creditor – **that is, a claimant who was not a creditor at the time of the transfer – can attack a transfer if the transfer was made with the intention to "defraud creditors generally, whether present or future."**: *IAMGOLD Ltd. v. Rosenfeld*, [1998] O.J. No. 4690, at para. 11; see also *McGuire v. Ottawa Wine Vaults Co.* (1913), 1913 CanLII 7 (SCC), 48 S.C.R. 44. An intent to defraud creditors generally can be made manifest by taking steps to judgment proof oneself in anticipation of starting a new business venture. To plead a fraudulent conveyance on this basis, it is not necessary that a claimant be able to identify a particular, ascertainable creditor that the debtor sought to defeat at the time of the conveyance. **It is enough, on the case law, to plead facts that support the allegation that at the time of the conveyance the settlor perceived a risk of claims from a general class of future creditors and conveyed the property with the intention of defeating such creditors should they arise. The types of facts that can support an inference of such an intention to convey property away from creditors – present or future – are often described as "badges of fraud".** [Emphasis added].

[32] The evidence of Mr. Abdi Ghotb was that Sandwich Box Inc. was experiencing financial difficulties around the "relevant period" when the company wanted to borrow money from the Plaintiffs. He testified that the company "was undergoing some financial difficulties at the time". Financial distress is a recognized badge of fraud. Mr. Ghotb testified that Pooniah was personally responsible for handling SBI's finances and that he was improperly diverting funds from SBI. The Plaintiff submits that the misappropriation of corporate funds, combined with evidence that the substantial RBC business loans went into default—as well as Pooniah's bankruptcy, demonstrates SBI was not financially stable. The evidence, it is argued, strongly suggests financial instability and insolvency, which further substantiates the badges of fraud associated with Pooniah's asset transfers.

[33] On December 1, 2000, Pooniah and Mangalahowry purchased Douglas Haig for $242,000.

[34] Six years later, on March 6, 2006, Pooniah transferred his interest in 69 Douglas Haig to Mangalahowry (the “Property Transfer”).

[35] From 2003 to 2010, Pooniah incorporated four corporations: Sandwich Box Inc. (“SBI”), 1709307 Ontario Inc., The Sandwich Box (388 Richmond Street West) Inc. (“388”), and Sandwich Box (1200 Bay St.) Inc. (“1200”).

[36] Through two promissory notes, the Plaintiffs loaned $300,000 to SBI in 2012, six years after the conveyance (the “Promissory Notes”). These notes were guaranteed by Pooniah and Abdi Gothb. No legal document was provided.

[37] On January 9, 2014, Pooniah transferred the SBI trademark to Mangalahowry (the “Trademark Transfer”).

[38] On February 13, 2014, 388’s shares were transferred from Pooniah to Thiluxan and on May 21, 2014, 1200’s shares were transferred from Pooniah to Thiluxan (collectively, the “Share Transfers”).

**Badges of Fraud**

[39] In our jurisprudence, the badges of fraud are identified as:

i. the transferor has few remaining assets after the transfer;

ii. the transfer was made to a non-arm’s length person;

iii. there were actual or potential liabilities facing the transferor, he was insolvent, or he was about to enter upon a risky undertaking;

iv. the consideration for the transaction was grossly inadequate;

v. the transferor remained in possession or occupation of the property for his own use after the transfer;

vi. the deed of transfer contained a self-serving and unusual provision;

vii. the transfer was effected with unusual haste; or,

viii. the transaction was made in the face of an outstanding judgment against the debtor.

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**Transfer of Ownership of the Family Home**

[40] The transfer of the family home in 2006 to the Defendant wife is conceded as a badge of fraud. A familial relationship alone does not support a finding of fraudulent intent.

[41] Was the consideration "grossly inadequate"?

[42] The evidence of consideration was that Mangalahowry forgave a $50,000 debt and assumed half the Douglas Haig mortgage. This evidence was unchallenged. Pooniah's evidence from the read-ins was that he wanted to free up all available funds to invest in his business, which, according to Ghotb, was growing rapidly at the time.

[43] On the issue of whether assumption of a mortgage debt constitutes sufficient consideration, the Agreed Statement of Facts provides that the mortgage in 2000, when the home was purchased, was $181,000. The house was purchased in 2000 for $242,000. Therefore, based on the evidence, Pooniah forgave a loan for $50,000 and Mangalahowry assumed an additional mortgage liability of $90,000, in exchange for Pooniah's half of Douglas Haig. There was about $60,000 in equity in Douglas Haig at the time of purchase, half of which belonged to Pooniah. I agree with the Defendants that the evidence of consideration does not support an inference that the consideration was inadequate for Pooniah's small amount of equity in Douglas Haig.

[44] I also do not conclude, as the Plaintiffs submit, that "the assumption of the $75,000 mortgage cannot constitute valid consideration, as she was already a co-owner and co-mortgagor of the property." There is no evidence to establish such.

[45] The court may find that there is prima facie evidence on these two badges of fraud, but still conclude that it cannot infer fraudulent intent based on these two badges alone.

[46] The court may also infer fraudulent intent based on these two badges of fraud, and still decide that on a balance of probabilities, that fraudulent intent has not been proved.

[47] The Defendants' position is that there was no evidence to prove a sufficient number of "badges of fraud" from which an inference of improper motive can be drawn. For the reasons set out below, I agree.

[48] There is no direct evidence of Pooniah's intentions regarding the transfer of Douglas Haig, as is commonly the case.

[49] The only evidence of Pooniah's assets after the transfer of the Douglas Haig house was Mr. Ghotb's evidence that Pooniah owned 40% of the SBI businesses which were hugely successful—an "instant hit" from the inception of the business in 2003.

[50] The Chuhans' evidence was that they did not know Pooniah. They did not know about the Sandwich Box business.

[51] The connection between the Chuhans and Pooniah was through Ghotb, as he lived with the Chuhans' daughter along with others. Chuhan testified that Ghotb would "drop off their daughter every weekend." It appears from the evidence that the Chuhans advanced funds to Sandwich Box based on their relationship with Ghotb. Ghotb also provided a personal guarantee under the high interest Promissory Notes, with the January 10, 2012 note bearing interest of 36%. The December 15, 2015 Judgment on the promissory notes was against Sandwich Box Inc., Pooniah, *and* Ghotb, but the Plaintiffs did not attempt to collect on the Judgment from Ghotb.

[52] In 2012, Ghotb convinced Pooniah to guarantee high interest loans for the businesses with people he knew.

[53] Ghotb testified that a conflict between the business partners escalated, with the police being called to certain locations to resolve disputes and Ghotb accusing Pooniah of financial mismanagement.

[54] He testified that the parties entered into a Memorandum of Agreement on July 3, 2013 to settle a "dispute as to the rightful ownership and operations of the Shops and Corporations…". The relationship between the shareholders was not salvageable. The parties no longer worked together.

[55] The SBI businesses could not pay their debts to the Plaintiffs, and defaulted in repayment. The Plaintiffs obtained default Judgment on August 5, 2014. Six months after the judgment, this action was commenced.

[56] Ghotb testified that the businesses were doing so well that by December 2005, three months before the transfer of Douglas Haig, Pooniah was repaid his initial $65,000 investment in cash from receipts generated by the businesses. **There is no other evidence of Pooniah's assets following the Property Transfer.**

[57] Ghotb testified that the Sandwich Box shareholders were doing very well financially from 2003 to at least 2010. His evidence wasn't clear on whether the shareholders' dispute began in 2010 when the business was having trouble meeting some expenses. There is no evidence in the years before and after the Property Transfer that Pooniah was insolvent, or that he was entering into any risky undertaking. He had no creditors in contemplation when he transferred Douglas Haig to Mangalahowry and no realistic concern that he would have any creditors who would be put at risk by the transfer.

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[58] The only evidence of liabilities that Pooniah had at the time of the Property Transfer was half of the mortgage liability for Douglas Haig, which he transferred to his wife as part of the consideration for the transfer of the house, and a $50,000 debt to his wife, which she waived as consideration for the transfer.

[59] Mr. Ghotb also testified SBI obtained a $225,000 small business loan from Royal Bank of Canada on October 16, 2006 and 1709307 Ontario Inc. obtained a $250,000 small business loan from RBC on December 5, 2007. There was no evidence that these businesses had any difficulty paying these loans. The evidence is that at least before 2010, the Sandwich Box businesses were growing rapidly and were financially stable and successful.

[60] The burden is on the Plaintiffs to provide evidence from creditors of Pooniah to establish any indebtedness and inability to pay his debts. The Plaintiffs did not do so.

[61] According to Pooniah, he transferred Douglas Haig to Mangalahowry in 2006 to maximize the cashflow he could put into his prospering business.

[62] In light of the absence of such evidence regarding Pooniah's potential financial difficulties or any evidence whatsoever on his financial position, it is not possible to find any basis for a prima facie case to establish the existence of a sufficient number of badges of fraud to support an inference of fraud. There is no prima facie case of fraudulent intent raised on the evidence. The submission regarding tracing of Beckett and Flower Crescent are not relevant, without proof of fraudulent funds that were used for the purchase of Beckett and Flower Crescent. The non-suit motion should therefore be granted, with respect to the claim regarding the matrimonial home and for the right to trace proceeds of the sale of that property to subsequent purchases by the Defendants. The same reasoning applies to the finding I would have made at trial, had I not found that the non-suit motion is granted with respect to these claims.

[63] As referred to above, it was not improper for Pooniah to "[reorder] his affairs to isolate his personal assets from future, as opposed to present, liabilities to creditors generally provided he did not have reason to believe at the time of the transfer that his creditors would or within the near future, in respect of a specific risk or risky enterprise, cease to be able to look to this asset."

[64] There is no evidence that Pooniah had any intention to defeat creditors at the time of the conveyance in 2006, or that he had any creditors or potential creditors.

[65] There was also no evidence regarding Pooniah's place of residence after the transfer or regarding the deed of transfer.

[66] The Plaintiffs also submit that the court should draw an adverse inference from the Defendants' failure to call any witnesses.

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[67] The Defendants submit that it was the deficiency of the Plaintiffs' case that prompted a non-suit motion. The Plaintiffs could have had creditors testify to prove any indebtedness of Pooniah or his inability to pay his debts. They did not do so.

[68] The Plaintiffs decided not to call five of their own witnesses. The Defendants submit that an adverse inference should be drawn from the failure to call five business associates of Pooniah who were originally scheduled to testify, and that perhaps they would testify in support of Pooniah's position that he had no financial challenges or unmet obligations in the years before and following the transfer of Douglas Haig in 2006.

[69] The cases relied on by the Plaintiffs consistently affirm that:

> "adverse inferences are appropriate where key individuals with first-hand knowledge of impugned transactions are not called to testify, especially when those individuals are within the exclusive control of the party **and no explanation is given for their absence**. [Emphasis added.]"

[70] In this action, the reason for not calling the Defendants' witnesses is that an election was made not to respond to the Plaintiffs' case with further evidence because the Defendants were of the opinion that the Plaintiffs had not made out a prima facie case.

[71] The Defendant is entitled on a non-suit motion to an election on whether to call witnesses. In this trial, the Defendants elected not to call evidence. The closing arguments following the non-suit motion are based on the same evidentiary record as the non-suit motion. I decline to draw an adverse inference on this non-suit motion or in the trial, based on a defendant's election not to call witnesses.

[72] To summarize, there was no evidence on the circumstances surrounding the transfer of the property other than the date on which it occurred and the consideration that was provided. I find that the non-suit motion for the claims regarding the transfer of the property, and the tracing claims for the proceeds of the sale of the property, must succeed as the Plaintiffs have not adduced evidence on all elements of each cause of action alleged sufficient to establish a prima facie case. In the event that I have erred in granting the non-suit motion, I would have dismissed these claims on the trial of this action of the Plaintiffs for the same reasons.

[73] On this motion for non-suit, the burden is on the Plaintiffs to adduce sufficient evidence of a prima facie case. I find that, with respect to this claim, they did not do so. In the Court of Appeal case of *FL Receivables Trust 2002-A (Administrator of) v. Cobrand Foods Ltd*, 2007 ONCA 425, 85 O.R. (3d) 561, the court stated:

> The trial of this issue has been made more difficult by the limited evidence before the Court, as described above. The defendants did not testify on their own behalf

> and **the plaintiff did not attempt to examine them as adverse witnesses even after it became clear they would not otherwise appear at trial** and therefore, be no evidence before the Court as to their respective intentions in entering into the Transfer Agreement unless the plaintiff itself subpoenaed the defendants. [Emphasis added.]

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**Share Transfers**

[74] The Plaintiffs also submit that the transfer of shares in 388 Richmond Street West Inc. and 1200 Bay Street Inc. were fraudulent conveyances transferred to Thiluxan without consideration.

[75] The Share Transfers occurred *before* the Chuhans commenced their claim for default under the Promissory Notes.

[76] The Defendants submit that the Share Transfers also occurred around the same time as the dispute about ownership of the "Shops and Corporations" as described in the Memorandum of Agreement.

[77] Ghotb testified about the shareholders dispute that led to the Memorandum Agreement that the intent of the share transfer by Pooniah to Thiluxan. The Defendants submit that the share transfers appear to possibly have been part of the battle between the shareholders and had nothing to do with defeating creditors arose as a result of the fact that the shareholders were attempting to exclude each other from the various Sandwich Box locations.

[78] Pooniah's evidence regarding the share transfers has been referred to above in the read ins of the Defendants. His explanation for the share transfer was not consistent with the explanation regarding the dispute between the business partners. It was not, however, contradictory. Apart from the background circumstances of the Share Transfers and that they occurred before the action was commenced by the Plaintiffs, there is no evidence regarding Pooniah's intent or his other creditors or the terms of the transfer.

[79] There is no documentation regarding the transfers of the shares of 388 and 1200.

[80] Other than the read ins of Pooniah, there is no other evidence to support the suggestion that the share transfers from Pooniah to Thiluxan are not motivated by internal business disputes between Pooniah and his former Sandwich Box partners. It is not possible to draw any clear conclusions from the evidence of Mr. Ghotb. This Court may consider all relevant evidence and draw reasonable inferences from the evidence to see if a prima facie case has been established.

[81] On this motion for non-suit, it is not the role of the Court to resolve conflicting interpretations of the evidence. Ghotb's evidence does not conflict with evidence of any party.

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The reasonable inference from his evidence is that the partners were in a dispute. A Memorandum of Agreement described the parties being in a "dispute about ownership". It could be reasonable to infer that Pooniah transferred the shares to Thiluxan because he did not believe they belonged to Ghotb or Azizi or because of a dispute with those parties. However, the most favourable inference that can be drawn for the Plaintiffs is that the transfer was intended to keep the shares from the business partners and the Chuhans. The evidence regarding the claim for the fraudulent share transfers, in all the circumstances, can support a prima facie case of intent to defraud creditors. The non-suit motion for this claim is therefore dismissed.

**Trademark**

[82] The Plaintiffs' position is that the Trademark Transfers were fraudulent and oppressive because they were done with the intent to defeat the Plaintiffs' Judgment.

[83] No evidence was adduced by the Plaintiffs regarding SBI's or Pooniah's (as its controlling mind) intent at the time of the Trademark Transfer.

[84] No evidence was adduced that Pooniah's intent at the time of the Trademark Transfer was to defeat the Judgment.

[85] The Trademark Transfer took place before the date of the Judgment and the date this claim was commenced. I find that on this non-suit motion, the basis of the evidence and the lack of a reasonable explanation by the Defendants, the most favourable inference to be drawn in favour of the Plaintiffs is that the transfer was intended to keep the assets away from SBI. There was no evidence on the value of the SBI trademark.

[86] As there is a lack of reasonable explanation for all of these transfers, I find that the Plaintiffs have met their burden on the non-suit motion.

[87] I find that there is a *prima facie* case for the claim regarding the trademark transfer. The non-suit motion for this claim is dismissed.

[88] As a result, I must decide if the Plaintiffs have met their burden of proof on these claims and, if so, decide on the appropriate remedy. With respect to the claims for oppression, the Plaintiffs are proper complainants under the OBCA because they were security (debt) holders of 388 and 1200's affiliate, SBI. The three corporations were affiliates because they were all controlled by the same person. As well, Section 248(3) of the *OBCA* provides for a finding of oppression against individuals who are not themselves guilty of oppression but are knowingly in receipt of benefits from the oppression. No evidence was adduced of Thiluxan nor Mangalahowry's knowledge of the promissory notes provided by the plaintiffs to SBI, or knowledge that the Plaintiffs were creditors of SBI or Pooniah. There is no evidence that Thiluxan or Mangalahowry could have knowingly received benefits of the alleged oppressive

conduct. Based on the evidence, I cannot conclude that Thiluxan and Managalahowry could have known the conduct was oppressive at the time of the Share Transfers and Trademark Transfer.

[89] In alternative, the Plaintiffs seek a declaration that Mangalahowry, Thiluxan, and Thivya were "unjustly enriched by the transfers of assets and business interests for which they gave no consideration, and that the Plaintiffs were correspondingly deprived".

[90] A finding of Unjust enrichment requires evidence of (1) enrichment of the defendant; (2) a corresponding deprivation suffered by the plaintiff; and (3) the absence of a juristic reason for the enrichment.

[91] For Mangalahowry, Thiluxan, and Thivya to have been enriched, they must have received "something of value" or a "tangible benefit".

[92] No evidence was adduced that the trademark or transferred shares had any value. The motion for non-suit on the oppression claims must therefore be dismissed as the most favourable inference to be drawn based on the timing of the transfers is that a *prima facie* case has been established for a finding of oppression.

[93] Ghotb testified that the shares of 388 and 1200 were worthless. There is no evidence of the value of the Trademark. There is, therefore, no evidence that the Defendants were enriched or that the Plaintiffs were correspondingly deprived with respect to the Trademark Transfer and the Share Transfers.

[94] There is no evidence to make inference on regarding Pooniah's intent on all of these transfers. The Plaintiffs were required to raise prima facie evidence of reasonable potential creditors, hasty and secret transfers, knowledge of strained financial circumstances with respect to that transaction and the subsequent right to trace the funds resulting from the sale of the matrimonial home.

[95] Following the guidance of the court in the *Cobrand* case, I have applied the principles discussed above and concluded that the Plaintiffs have put forward some evidence on all of the elements of the claims made with respect to the share and trademark transfers and oppression. I have also given the most favourable meaning to the evidence of the Plaintiffs. I have assumed all of the Plaintiffs' evidence is true. I have not considered any competing inferences available to the Defendants to determine whether the Plaintiffs have put forward a *prima facie* case.

[96] I dismiss the Defendants' non-suit motion with respect to the claims regarding the share and trademark transfers and the claim for oppression. The burden remains on the Plaintiffs to establish their case against the Defendants, even though the Defendant has elected to adduce no evidence.

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[97] I must rule on whether the Plaintiffs have met their burden of proof on these claims and, if so, on the appropriate remedy.

[98] The relief requested by the Plaintiffs for their claim regarding the share and trademark transfers is a finding by this court that these transfers were void as against the Plaintiffs, as they are fraudulent conveyances. Also, that these transfers constituted oppressive conduct within the meaning of the OBCA as the transfers were "made with the intent to defeat the Plaintiffs judgment, and were therefore contrary to the reasonable expectations of the Plaintiffs as creditors and stakeholders".

[99] On the question of an appropriate remedy for the oppression by way of damages, the Plaintiffs made no submissions, rather "leaving the issue in the hands of the court". The evidence at trial was that the shares are worthless. This court therefore has no rational basis upon which to determine an appropriate award of damages, particularly in the absence of any requested amount of damages by the Plaintiffs. The Defendants have the right to know what the damages claimed are at the beginning of the trial.

[100] Similarly, with respect to the allegations regarding the transfer of the trademark to the Defendant wife Mangalahowry, there was no evidence on the value of the trademark. There is no evidence with respect to the motivation behind the transfer, which also took place around the same time as the transfer of shares I have referred to above. Both of these transfers were made before the date of judgment, and before this action was commenced.

[101] On the basis of the evidence, I am able to draw an inference, as a result of the absence of a reasonable explanation by the Defendants for the transfers of the shares and trademark, that the transfers were intended to defeat the claims of the Plaintiffs and are fraudulent conveyances pursuant to the act.

[102] For the same reasons that I have referred to above, on the basis of my findings and the inferences I have made on the basis of the limited evidence, applying the judicial guidance discussed with respect to the Plaintiffs' claims I conclude as follows:

- This court declares that the transfer of shares of the Sandwich Box (388 Richmond Street West) Inc. and Sandwich Box (1200 Bay Street) Inc. to Thiluxan and the transfer of SBI Trademark to Mangalahowry are fraudulent conveyances and are void against the Plaintiffs.

- Further, I find that the Sandwich Box Inc. has acted oppressively by making the transfers of shares and the SBI trademark to defeat the Plaintiffs' claim, contrary to the reasonable expectations of the Plaintiffs, which was directed by Pooniah.

**Costs**

[103] As the parties were jointly successful in this Action, I order that they bear their own costs as submitted during the hearing, which I find are appropriate and reasonable. However, if the parties are unable to agree on the issue of costs that arise as a result of the rules of **Offers to Settle**, the Plaintiff may make submissions of no more than two pages, double spaced, sent to the Defendant, uploaded to CaseLines, and with a copy sent to my assistant Roxanne Johnson at Roxanne.stammers@ontario.ca by June 19, 2025. The Defendant may make submissions of no more than two pages, double spaced, sent to the Plaintiff, uploaded to CaseLines, and with a copy sent to my assistant by June 30, 2025. No reply submissions will be accepted. If no submissions are received by June 30, 2025, costs will be deemed to be settled.

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Pollak J.

**Released:** June 10, 2025

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**CITATION:** Chuhan v. Soundrarajan, 2025 ONSC 3288
**COURT FILE NO.:** CV-16-552379
**DATE:** 20250610

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

KULWANT CHUHAN and JUNG BAHADUR CHUHAN

Plaintiffs

**– and –**

POONIAH SOUNDRARAJAN, MANGALAHOWRY SOUNDRARAJAN, THIVYA SOUNDRARAJAN, THILUXAN SOUNDRARAJAN, SANDWICH BOX INC., THE SANDWICH BOX (388 RICHMOND STREET WEST) INC. and SANDWICH BOX (1200 BAY ST.) INC.

Defendants

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**REASONS FOR DECISION**

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Pollak J.

**Released:** June 10, 2025

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