CITATION: Chijindu v. Public Guardian and Trustee, 2025 ONSC 4606
COURT FILE NO.: CV-24-00734010
DATE: 20250808

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CHRISTIAN C. CHIJINDU, JOY NKIRUKA CHIJINDU and IJEOMA CHIJINDU, Plaintiffs

AND:

PUBLIC GUARDIAN AND TRUSTEE, Defendant

BEFORE: Parghi, J.

COUNSEL: *Christian Chijindu*, self-represented

Joy Nkiruka Chijindu, self-represented

Ijeoma Chijindu, self-represented

Andrew Jin and *Hailey Ji*, for the Defendant

HEARD: August 5, 2025

ENDORSEMENT

[1] The Plaintiffs were previously found to have fraudulently over-encumbered two properties, one on West Shore Road in Pickering and one on Solina Road in Clarington. They misrepresented the encumbered status of the properties, registered fraudulent discharges, and granted sham mortgages to one another to frustrate their creditors.

[2] They have now commenced this action against the Public Guardian and Trustee, for the reasons discussed below. A case conference was held before me at which the Plaintiffs sought various forms of relief and the Defendant sought a dismissal of the action on the basis that it is barred under the *Public Guardian and Trustee Act*, R.S.O. 1990, c. P. 51. Both parties agreed that I could determine their substantive claims pursuant to my authority as a case conference judge and both agreed that they did not need to submit additional materials for my review before I did so.

[3] For the reasons below, I dismiss this action. As such, I do not need to consider the Plaintiffs' requests for relief. Had I considered their requests for relief, I would have found them to be without merit.

Background

[4] The Plaintiff Christian Chijindu is a former lawyer. Joy Chijindu is his wife. Ijeoma Chijindu is Christian's sister and an officer and director of an entity called YDB Investments Corp., which was found to have granted fraudulent mortgages on both the West Shore Road and Solina Road properties.

[5] After the Plaintiffs' fraud, as described above, was discovered, the two over-encumbered properties were sold under power of sale. The funds from the sales ($1,498,717.83 from the sale of the West Shore Road property and $54,107.94 from the sale of the Solina Road property) were held in court to the credit of the ongoing mortgage action.

[6] In *Rathod v. Chijindu et al*, 2024 ONSC 939 (CanLII), Woodley J. granted various creditors of the Plaintiffs summary judgment for payment on account of five mortgages formerly registered against the two properties. The sale proceeds held in court were not sufficient to cover all the Plaintiffs' debts. Woodley J. therefore had to determine the amount owed to each of the Plaintiffs' creditors and the priority of their respective claims.

[7] One of the mortgages before Woodley J. was a $200,000 mortgage granted by Christian and Joy in favour of Harsha Rathod, a former friend and client of Christian. The mortgage was registered against the Solina Road property. Joy was a joint tenant of the Solina Road property and a tenant in common with a 0.01% ownership interest in the West Shore Road property. Ijeoma held the remaining 99.9% interest in the West Shore Road property.

[8] In respect of this mortgage, Woodley J. held as follows, at paragraph 172(1)(e) of her Reasons for Decision:

> With respect to Rathod's $200,000 mortgage registered on September 12, 2016, against the Solina Road property, agreed to have been cross-registered against the West Shore property, judgment of all amounts owing thereunder is granted in favour of Rathod totaling $286,005.47, plus interest calculated from December 10, 2022 to be paid from the Solina Road property as priority #1 **with the balance owing to be paid from the West Shore property as a judgment creditor attached to Joy Chijindu**, priority to be granted as at the date of this Order as priority #6 *after* the costs of the within motion have been determined and paid) [emphasis added].

[9] Further to Woodley J.'s order, the Accountant of the Superior Court of Justice paid to Ms. Rathod $58,463.55 from the proceeds of the Solina Road property, and the entirety of the money remaining in the West Shore account after the payment of higher priority claims. That amount was $98,592.86.

[10] The Plaintiffs appealed Woodley J.'s order. The appeal was dismissed at its merits hearing on the basis that the Plaintiffs had not paid costs ordered against them.

[11] The Plaintiffs now sue the PGT, which is responsible for carrying out the duties of the Accountant and for designating an employee to hold the office of the Accountant. They sue for what they call the Accountant's erroneous interpretation of Woodley J.'s order. They assert that the Accountant should have limited payment from the West Shore proceeds to 0.01% of the amount available, given that Joy's interest was limited to 0.01%. Of course, the effect of this would have been to substantially lessen the amount actually paid to Ms. Rathod, the fraud victim, to the benefit of Ijeoma, a fraud perpetrator. The Plaintiffs had advanced the same argument in their unsuccessful appeal.

[12] The Plaintiffs do not sue Ms. Rathod, who is the one in possession of the funds that they say were wrongly disbursed. It would have been remarkable if they had sued her, given that they perpetuated a fraud against her. They would in effect have been trying to claim back from her a portion of the money she has recovered from them after they fraudulently obtained her money in the first place.

The case conference

[13] A case conference was held before me at which the Defendant sought a dismissal of the action as statute-barred, and the Plaintiffs sought an order that the Defendant produce for inspection all communications between Ms. Rathod and the Accountant relating to the $98,592.86 payment, an interlocutory order as to the correct interpretation of Woodley J.'s order regarding the payment, and an order that the Accountant pay Ijeoma $98,580.00 (which is equivalent to 99.99% of $98,592.86). The Plaintiffs say that that amount reflects Ijeoma's balance of the sale proceeds of the West Shore property.

[14] At the case conference, Ijeoma submitted that she has been wronged because money that is rightly hers has been paid instead to Ms. Rathod. She said that she was "pleading" that I grant the order the Plaintiffs sought, because she was "drained" and "tired" and "just wanted to get what is" hers so that she can "move forward" and "cut [her] losses".

[15] For the reasons below, I dismiss the Plaintiffs' action altogether. I therefore do not need to consider whether the Plaintiffs should be granted the relief they seek. If I had considered the Plaintiffs' requests for relief, however, I would have rejected them outright.

Analysis

[16] Section 5.1(1) of the *Public Guardian and Trustee Act* bars "proceeding[s] for damages" against the PGT for acts or omissions in good faith in connection with the PGT's powers and duties. The Plaintiffs have not alleged bad faith on the part of the PGT. The action therefore has no reasonable prospect of success.

[17] Nor did the Plaintiffs provide the PGT with notice prior to commencing the action, as they are required to do under section 18 of the *Crown Liability and Proceedings Act, 2019*, S.O. 2019,

c. 7, Sch 17. That notice cannot be waived or abridged by the Crown or by me. Without it, the action is deemed a nullity (*Noddle v. Ministry of Health*, 2019 ONSC 7337, at paras. 31-32).

[18] The Plaintiffs say that their Fresh as Amended Statement of Claim does not seek damages – it seeks a declaration that the Accountant owes money, rather than an order that the Accountant pay money – and that this is therefore not a "proceeding for damages" subject to the statutory ban.

[19] I disagree. The distinction between a declaration that money is owed and an order that money be paid is highly artificial. The pith and substance of the relief sought is damages (see *Harrison v. Antonopoulos*, 2002 CanLII 28725, at para. 29 (ON SC)). It is accordingly barred under the *Public Guardian and Trustee Act*.

[20] In light of the requirements of section 5.1(1) of the *Public Guardian and Trustee Act* and section 18 of the *Crown Liability and Proceedings Act*, I dismiss the action, without prejudice to the Plaintiffs' right to commence a fresh action, within 45 days, against His Majesty the King, who is vicariously liable for any torts of his servants under section 5.1(2) of the *Public Guardian and Trustee Act*.

[21] As a consequence of the dismissal of the action, I need not consider the Plaintiffs' requests for relief enumerated above. Even if I had gone on to consider them, however, I would have rejected them. They are entirely without merit.

[22] For me to accept the Plaintiffs' argument, I would have had to find that Woodley J. intended that some of the proceeds held in court were to make their way back to the Plaintiffs. I would not have been prepared to make such a finding. Woodley J.'s Reasons make clear that she found that the Plaintiffs colluded together in a common enterprise. Indeed, she relied on a common enterprise theory to find that the mortgage on the Solina Road property was cross-collateralized to the West Shore property in the first place, by Christian, even though Christian had no ownership interest in West Shore. She held (at para. 65):

> By their Statement of Defence, the Defendants, Christian, Joy, and Ijeoma, concede that Christian agreed to provide Rathod with a "collateral mortgage of $200,000" on the West Shore property but claim that this fact is "irrelevant" because Christian "had no legal right to effectuate that agreement …as he is not the owner of the West Shore property". For reasons that follow, **I find that Christian, Joy, and Ijeoma, colluded and acted together with respect to all aspects of the real property transactions for their sole benefit and to the detriment of their creditors** … [Emphasis added].

[23] Woodley J. also held (at para. 114) that the creditors "overwhelmingly proved on the basis of the record" that the Plaintiffs "colluded with one another with the shared and common intent to defraud their mutual creditors, including" Ms. Rathod, "for their personal benefit."

[24] In my view, the express language, context, and overall purpose of Woodley J.'s Reasons and order make clear that Woodley J. intended for Ms. Rathod and the other creditors to be made as whole as possible from the funds held in court, and did not intend for any of the Plaintiffs to receive any of those ill-gotten funds. The Plaintiffs' suggestion that Ijeoma is entitled to any of the money is simply nonsensical. It would yield an absurd result that would be the opposite of the one intended by Woodley J.

Costs

[25] The Defendant seeks its costs on this motion on a partial indemnity basis.

[26] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, I may consider the factors enumerated in Rule 57.01 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.

[27] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is to undertake a critical examination of the relevant factors, as applied to the costs claimed, and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable".

[28] Applying these factors here, I note, first, that the Defendant has been entirely successful. It sought to have the action dismissed, and I have dismissed the action. I also note that the Defendant has clearly communicated to the Plaintiffs since at least January of this year that it considers the action to be statute-barred and would be seeking to have it dismissed on that basis. The Defendant's position before me was that this action should be dismissed without prejudice to the Defendants' right to bring a new, and properly constituted, action against the Crown. I have so ordered. In these circumstances, I consider it appropriate to grant the Defendant its costs in the amount of $1,500.00, inclusive of all disbursements and HST. This amount must be paid within 30 days.

Date: August 8, 2025

Parghi J.