

**CITATION:** Clark v. Yntegrity Sales & Marketing Inc., 2025 ONSC 4662  
**COURT FILE NO.:** CV-24-00732477-000  
**DATE:** 20250813

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** ADAM JEREMY CLARK, Plaintiff

**AND:**

YNTEGRITY SALES & MARKETING INC., HYUNG CHO, RENEE CHANG,  
and MIND OVER MARKETING INC, Defendants

**BEFORE:** Parghi, J.

**COUNSEL:** *Siraat Mustafa*, for the Plaintiff

*David H. Nuri*, for the Defendants

**HEARD:** July 28, 2025

**ENDORSEMENT**

[1] This action arises from a promissory note through which the Plaintiff, Adam Clark, loaned the Defendant Yntegrity Sales & Marketing Inc. (“YSM”) \$50,000. On July 5, 2024, after YSM initially defaulted on the loan, the Plaintiff and YSM entered into a release agreement that amended the promissory note. YSM then defaulted a second time.

[2] The Plaintiff commenced this action against YSM and three other parties: Hyung Cho, YSM’s founder and director; Renee Chang, YSM’s managing partner; and Mind Over Marketing Inc. (“MOMI”), a company of which Ms. Chang is the sole director. In substance, the action is concerned with YSM’s default on the loan, although it advances several purported causes of action against all the Defendants.

[3] Mr. Cho, Ms. Chang, and MOMI now bring a motion to strike the Statement of Claim against them under rule 21.01(1)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, without leave to amend, on the basis that it discloses no reasonable cause of action against them. They say that the Plaintiff is attempting to recover on a promissory note to which they are not parties, and that the purported causes of action against them have been pleaded baldly and inadequately, and in many cases are simply untenable at law. It is therefore plain and obvious that there is no reasonable prospect that the action can succeed against them.

[4] For the reasons below, I grant the motion in part. I strike the claims of bad faith and breach of personal guarantees without leave to amend. I strike the claim that the corporate veil should be struck, with leave to amend to properly plead that YSM is a sham corporation, but without leave

to amend any claim that personal liability should be imposed because Mr. Cho or Ms. Chang acted outside the scope of their duties or contrary to YSM's best interests. I strike the claims of unjust enrichment, fraudulent misrepresentation, and improper diversion, and the claim against MOMI arising from its involvement in the alleged diversion of funds from YSM, with leave to amend. I do not strike the claims for punitive damages or damages for "opportunity costs".

### **The Statement of Claim**

[5] The Statement of Claim describes the history of the dealings among the parties, including the provision of the promissory note and loan in February 2023, the terms of the promissory note, the defaults under the promissory note, communications among the parties regarding the outstanding payments, a delayed repayment schedule proposed by Ms. Chang and agreed to by the parties in early 2024, partial repayment of the loan via cheque issued by MOMI in May 2024, the release agreement entered into in July 2024, and the subsequent defaults on the loan.

[6] In paragraph 35, the Statement of Claim pleads the following against all the Defendants:

The Defendants have been unjustly enriched and have at all times acted in bad faith by:

- a. Misrepresenting the financial situation of YSM prior to inducing the Plaintiff to provide a Promissory Note;
- b. Delaying repayment through unsubstantiated claims and misrepresentations of financial hardship;
- c. Refusal to fulfill their contractual and loan obligations without cause;
- d. Personal guarantees and representations by Mr. Cho and Ms. Chang with respect to the repayment of the Promissory Note and adherence to the Settlement Minutes;
- e. Failing to disclose financial information or provide partial payments to demonstrate good faith and adherence to the contractual terms of the Promissory Note or the Release Agreement; and
- f. Repeatedly misrepresenting their intentions to comply with the Release Agreement in order to delay the enforcement of the Promissory Note default and the Release Agreement.

[7] It further pleads, in paragraph 36, that the individual Defendants, Mr. Cho and Ms. Chang,

have abused the corporate structure of YSM to evade their obligations, as evidenced by:

- a. Diverting funds through MOMI to shield YSM's assets from creditors;
- b. Conducting business in a manner that renders YSM incapable of meeting its obligations, while continuing to make representations of solvency; and

c. Failing to provide financial transparency or evidence to substantiate claims of financial hardship, despite repeated demands by the Plaintiff to do so.

[8] As against MOMI, also a moving party, paragraph 37 alleges: “[t]he Defendant, MOMI, is used as an alter ego of Renee Chang to improperly divert and shield assets of YSM.”

[9] In its prayer for relief, the Statement of Claim seeks the following:

- a. payment of the principal of the promissory note with interest (paragraphs 1 and 2);
- b. “[d]amages for opportunity costs” of \$20,000 (paragraph 4);
- c. punitive damages of \$25,000 (paragraph 5);
- d. declaratory relief piercing the corporate veil and holding Mr. Cho and Ms. Chang personally liable for YSM’s obligations due to their fraudulent misrepresentation of YSM’s financial capacity, improper diversion of funds through MOMI, “[a]cting in bad faith while knowingly failing to meet obligations under” the promissory note and release agreement, and “[p]ersonal representations and guarantees” that they made “in connection with” the promissory note and repayment schedule (paragraph 6); and
- e. declaratory relief finding MOMI jointly and severally liable for the debt owed by YSM “due to its use as a vehicle for diverting funds that should have been used to satisfy YSM’s obligations” (paragraph 7).

### **The Law**

[10] In a motion to strike under rule 21.01(1)(b), the test is whether, reading the Statement of Claim generously, and assuming that the facts in it can be proved, it is plain and obvious that there is no reasonable prospect that the action can succeed (*Frank v. Legate*, 2015 ONCA 631, 339 O.A.C. 359, at para. 36; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at p. 980).

[11] The facts pleaded in the Statement of Claim “are the firm basis upon which the possibility of success of the claim must be evaluated” under rule 21.01(1)(b). A party must plead all the facts that it must prove to establish a cause of action (*Floryan v. Luke et al.*, 2023 ONSC 5108, at para. 8).

[12] All allegations of fact pleaded are generally assumed to be true for the purposes of this analysis. However, this principle does not apply if the pleaded factual allegations are patently ridiculous or manifestly incapable of proof (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at paras. 21–22). Nor does it apply to bald conclusory statements of fact unsupported by material facts (*Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121, 136 O.R. (3d) 654, at para. 15; *Trillium Power Wind Corporation v. Ontario (Natural Resources)*, 2013 ONCA 683, 117 O.R. (3d) 721, at para 31). In this vein, the Court of Appeal for

Ontario has upheld a lower court’s decision to strike a portion of a pleading where “the brief reference to [the] tort in the pleading was so vague that a defendant who read it would have no idea what conduct was being alleged against them” (*Frank*, at para. 84).

[13] The court is to read the impugned pleading generously to allow for drafting deficiencies and the plaintiff’s lack of access to key documents and discovery information (*Transamerica Life Canada Inc. v. ING Canada Inc.* (2003), 68 O.R. (3d) 457 (C.A.), at para. 38; *Rausch v. Pickering (City)*, 2013 ONCA 740, 313 O.A.C. 202, at para. 34).

[14] The Statement of Claim refers to correspondence among the parties and other materials. Those materials are incorporated by reference into the Statement of Claim and I may read and rely on them in this motion (*Trihar Holdings Ltd. v Lambton (County)*, 2008 ONCA 360, at para. 3).

### **The Claims Against All The Moving Parties**

#### **Unjust enrichment**

[15] Paragraph 35 of the Statement of Claim alleges unjust enrichment against all Defendants.

[16] I find that this claim is not adequately pleaded and, as such, has no reasonable prospect of success. The Statement of Claim fails to plead sufficient facts in support of the allegation that the Defendants have been enriched. It does not describe any transfer of value to any of the Defendants. It does not say when or how they received these transfers or how much they were for. Given that three of the four Defendants were not beneficiaries of the loan – the loan was made to YSM alone – these are facts that cannot be inferred or presupposed. They must be clearly pleaded.

[17] Nor do any of the documents incorporated by reference into the Statement of Claim articulate any of the material facts supporting the claim of unjust enrichment.

[18] As such, even if the facts pleaded are assumed to be true, they are not sufficient to establish the cause of action of unjust enrichment. It is therefore plain and obvious that there is no reasonable prospect that the unjust enrichment claim can succeed against any of the moving parties.

#### **Bad faith**

[19] The Statement of Claim appears to plead bad faith in two ways: as against all Defendants, in conjunction with unjust enrichment, in paragraph 35, and as against Mr. Cho and Ms. Chang in particular, as a basis on which the corporate shield should be pierced, in paragraph 36.

[20] In my view, the claim of bad faith against the moving parties is not tenable at law. It is therefore plain and obvious that there is no reasonable prospect that the claim can succeed. “Bad faith” is not a self-standing tort. Rather, it refers to the obligation to perform contracts in good faith (*Bhasin v. Hrynew*, 2014 SCC 71, at paras. 92-93). Importantly, none of the moving parties are themselves parties to any contracts at issue in this action. The only contracts at issue are the promissory note and release agreement. The only parties to the promissory note and release agreement are the Plaintiff and YSM. The claim of bad faith in contractual performance is not

tenable against MOMI, Mr. Cho, or Ms. Chang, as a matter of law, because neither of them is a party to either contract.

[21] As such, even if the facts pleaded are assumed to be true, they are not sufficient to establish that there has been a breach of the general organizing principle of good faith contractual performance. It is therefore plain and obvious that there is no reasonable prospect that the bad faith claim can succeed against any of the moving parties.

### **Damages for “opportunity costs”**

[22] In paragraph 4, the Statement of Claim seeks damages for “opportunity costs”. The moving parties state that there is no such cause of action under Ontario law. I do not disagree. However, as I read the Statement of Claim, “opportunity cost” is pleaded as a measure of damages, not a cause of action. Counsel for the Plaintiff confirmed this in oral argument.

[23] Whether or not there is a basis in law for damages based on opportunity cost is not an issue properly before me in this motion. The motion to strike under rule 21.01(1)(b) is concerned with the viability of the causes of action asserted. It is not concerned with the legal validity of the measures of damages sought by the Plaintiff. As such, I do not strike the claim for damages for opportunity costs.

### **Punitive damages**

[24] In paragraph 5, the Statement of Claim seeks punitive damages. The moving parties assert that, as presently drafted, the Statement of Claim does not plead any facts that, if true, would demonstrate the type of conduct that properly grounds an award for punitive damages.

[25] In my view, even if that claim proves to be correct, it is not one properly advanced in this motion. As discussed above, this motion to strike is concerned with the viability of the causes of action advanced against the defendants. Whether the facts as proven ultimately support a claim for punitive damages will be a matter for trial. It is not a matter for me to consider in this motion.

### **The Claim Against MOMI**

[26] The only allegation advanced against MOMI, other than the unjust enrichment and bad faith claims discussed above, is found in paragraph 37, which pleads that MOMI was used as Ms. Chang’s alter ego “to improperly divert and shield assets of YSM.” On this basis, it is pleaded that MOMI should be found jointly and severally liable for the debt owed by YSM because MOMI was used “as a vehicle for diverting funds that should have been used to” repay YSM’s debt. This appears to form part of the claim that YSM or its representatives used MOMI to engage in an improper diversion of YSM’s funds.

[27] The facts pleaded in support of this claim against MOMI are that on May 24, 2024, Ms. Chang, the managing partner and sole director of MOMI, issued a cheque from MOMI to the Plaintiff for \$9,551.67, in partial repayment of YSM’s loan. This cheque, it is pleaded, “evidence[ed] commingling of corporate assets between YSM and MOMI.”

[28] It is not self-explanatory, nor is it explained in the pleading, how these facts, as alleged, would amount to a diversion of funds by YSM. A diversion would have to involve YSM funds being used to pay MOMI's (or someone else's) debts, *i.e.* being diverted away from YSM, not to it. Nor does the pleading explain how MOMI's payment of a portion of YSM's debt evidences a commingling of funds between the two. If anything, the fact that a cheque was issued from MOMI's bank account to pay YSM's debts would suggest that the two maintain separate accounts. The fact that MOMI paid part of YSM's debt is not on its face indicative of any wrongdoing, whether by MOMI or YSM.

[29] I am therefore of the view that even if the facts pleaded against MOMI are assumed to be true, they are not sufficient to establish the cause of action advanced against MOMI. It is therefore plain and obvious that there is no reasonable prospect that the claim against MOMI can succeed.

### **The Claims Against Mr. Cho And Ms. Chang**

[30] As against Mr. Cho and Ms. Chang, the Statement of Claim alleges unjust enrichment and bad faith in paragraph 35, and, in paragraphs 6 and 36, that they should be found personally liable for YSM's debt due to their fraudulent misrepresentation, improper diversion of funds through MOMI, bad faith, and breach of personal guarantees.

#### **Personal liability**

[31] The claim to pierce the corporate veil and impose personal liability on Mr. Cho and Ms. Chang has not been adequately pleaded, and as such has no reasonable prospect of success.

[32] In *Libfeld v. Patuca Corporation*, 2018 ONSC 3373, this Court, observing that the courts "have set a high bar" for piercing the corporate veil to allow actions against individual directors, considered the requirements for pleading claims against corporate representatives. It held that for a corporate representative to be found personally liable for a tort asserted against the company, "there must be a basis for alleging that" they "dominated and directed the company to engage in wrongful conduct, which conduct was a kin to fraud, deceit, dishonesty or want of authority" (at para. 16).

[33] As such, a pleading against a corporate representative can plead that the corporation was used as a sham from the outset, or that the representative acted outside the scope of their duties or contrary to the best interests of the corporation in a manner that harmed the plaintiff, or acted in furtherance of their duties but their acts themselves are tortious (*Libfeld*, at para. 17). It must plead "specific, identified acts or omissions" by the representative and the facts giving rise to personal liability (at para. 18). A corporate representative cannot be found personally liable "solely because a corporation acts through human agency. [...] To properly plead a case of personal liability [...], the plaintiff must specifically plead a cause of action against the individual in his or her personal capacity" (*Aviva Canada Inc. v. Lyons Auto Body Limited*, 2019 ONSC 6778, at para. 61).

[34] These requirements are not met here.

[35] The Statement of Claim does not plead that YSM is a sham corporation. It does not plead that YSM was incorporated for a fraudulent or improper purpose or used as a shell for improper activity.

[36] Nor does it plead that Mr. Cho or Ms. Chang, as YSM's representatives, acted outside the scope of their duties or contrary to YSM's best interests. Whatever allegations are advanced against them are not made against them personally, but against them in their capacity as representatives of YSM. For instance, many of the facts pleaded in paragraph 35 pertain to representations that Mr. Cho and Ms. Chang allegedly made on behalf of YSM. Others relate to their alleged failure to comply with the requirements of the promissory note and release agreement, neither of which they were parties to in their personal capacities.

[37] Such pleadings are not enough to support piercing the corporate veil. In oral argument, counsel for the Plaintiff suggested that the fact that Ms. Chang signed the promissory note on behalf of YSM was enough to ground a finding of personal liability against her in respect of YSM's obligations under the promissory note. It is not. The Plaintiff's reasoning suggests, incorrectly, that personal liability arises "solely because a corporation acts through human agency."

[38] I therefore find that the requirements for a proper pleading of personal liability are not satisfied. Even if the facts pleaded are assumed to be true, they are not sufficient to establish personal liability on the part of Mr. Cho or Ms. Chang. It is therefore plain and obvious that there is no reasonable prospect that the claim for piercing the corporate veil can succeed.

### **Fraudulent misrepresentation**

[39] The claim of fraudulent misrepresentation against Mr. Cho and Ms. Chang is not adequately pleaded, and as such has no reasonable prospect of success.

[40] Read liberally, the Statement of Claim asserts that Mr. Cho and Ms. Chang made two sets of misrepresentations: they misrepresented the financial situation of YSM, thus inducing the Plaintiff to provide the promissory note, and they misrepresented their intention to comply with the payment obligations under the promissory note and release agreement.

[41] The Statement of Claim fails to plead all the facts the Plaintiff must prove to establish fraudulent misrepresentation. It does not specify, for either set of alleged misrepresentations, which of Mr. Cho or Ms. Chang made the representation, when they made the representation, or what they represented. Nor does it plead the material facts relating to the remaining elements of fraudulent misrepresentation, such as whether Mr. Cho or Ms. Chang had an intent to deceive the Plaintiff in making the alleged misrepresentations, whether the Plaintiff acted in reliance on the alleged misrepresentations, or what damage he suffered as a result.

[42] Nor do any of the documents incorporated by reference into the Statement of Claim assist. At their highest, the documents contain what the Plaintiff views as evidence of the alleged fraudulent misrepresentations. But they do not articulate any of the material facts supporting the claim of fraudulent misrepresentation.

[43] As such, even if the facts pleaded are assumed to be true, they are not sufficient to establish the cause of action of fraudulent misrepresentation. It is therefore plain and obvious that there is no reasonable prospect that the fraudulent misrepresentation claim could succeed against Mr. Cho or Ms. Chang, even if the claim for personal liability were properly pleaded.

### **Improper diversion**

[44] The pleading of improper diversion of funds through MOMI is likewise inadequate and therefore has no reasonable prospect of success.

[45] The Statement of Claim alleges that Mr. Cho and Ms. Chang “[d]iverted funds through MOMI to shield YSM’s assets from creditors” and “conduct[ed] business in a manner that render[ed] YSM incapable of meeting its obligations”. It does not identify which of Mr. Cho or Ms. Chang diverted the funds, when or how they did so, which of them conducted business in a manner that left YSM unable to meet its obligations, or when and how they did so.

[46] It does provide particulars that on May 24, 2024, Ms. Chang issued a cheque from MOMI to the Plaintiff for \$9,551.67, acknowledging partial repayment for YSM’s loan obligations “and evidencing commingling of corporate assets between YSM and MOMI”. This language implies that MOMI funds were used to pay YSM’s debt. However, I am not certain how this amounts to a diversion, which would have to involve YSM funds being used to pay MOMI’s debts, *i.e.* being diverted away from YSM, not to it. Nor does this pleading explain what the alleged “evidence of commingling” is. The fact that MOMI may have paid part of YSM’s debt does not point to any comingling and is not on its face indicative of any wrongdoing by any of the moving parties.

[47] Nor do any of the documents incorporated by reference into the Statement of Claim assist. Again, they contain what the Plaintiff views as evidence of the alleged improper diversion of funds. But they do not articulate any of the material facts supporting the claim of improper diversion.

[48] As such, even if the facts pleaded are assumed to be true, they are not sufficient to establish the cause of action of improper diversion. It is therefore plain and obvious that there is no reasonable prospect that the improper diversion claim against Mr. Cho or Ms. Chang could succeed, even if the claim for personal liability were properly pleaded.

### **Bad faith**

[49] My analysis of the bad faith claim is set forth above.

### **Breach of personal guarantees**

[50] The claim that Mr. Cho and Ms. Chang made and breached personal guarantees is untenable at law and has no reasonable prospect of success.

[51] The Statement of Claim pleads that the defendants made “personal guarantees to pay” and that Mr. Cho and Ms. Chang provided personal guarantees in respect of repayment and compliance with the release agreement. It is implied that they did not honour these guarantees. However, it is

not clear exactly what the “personal guarantees and representations” at issue are, which of Mr. Cho or Ms. Chang made them, when they were made, or what exactly was guaranteed or represented. The facts that must be proven to demonstrate a breach of the guarantees are accordingly not pleaded.

[52] In oral argument, counsel for the Plaintiff submitted that Mr. Cho and Ms. Chang made oral guarantees that the loan would be repaid, and written guarantees to that effect in the form of text messages. He also suggested that their conduct in offering a repayment schedule constituted a personal guarantee. None of these alleged oral, text message-based, or conduct-derived guarantees are identified clearly in the Statement of Claim.

[53] In any event, a guarantee must be written to be enforceable (*Entry Point Investments v. Invis Inc.*, 2015 ONSC 2009, at para. 6, aff’d 2015 ONCA 701, at para. 10). This flows from section 4 of the *Statute of Frauds*, R.S.O. 1990, c. S. 19, which provides:

[n]o action shall be brought [...] to charge any person upon any special promise to answer for the debt, default or miscarriage of any other person, [...] unless the agreement upon which the action is brought, or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some person thereunto lawfully authorized by the party.

[54] As such, even if the Statement of Claim were amended to provide particulars of the alleged oral personal guarantees and representations, there would be no reasonable prospect of success for the claim that either Mr. Cho or Ms. Chang provided an enforceable oral guarantee. Likewise, even if the Statement of Claim particularized the allegation that they provided personal guarantees through their conduct, that claim would not be tenable at law. As such, the claims relying on the alleged oral and “implied by conduct” guarantees have no reasonable prospect of success.

[55] What remains are the personal guarantees allegedly contained in Mr. Cho’s and Ms. Chang’s text messages. The Statement of Claim, although it incorporates these text messages by reference, does not indicate that they constitute personal guarantees. Indeed, the Statement of Claim contains no reference at all to any written guarantee, whether by way of text or otherwise.

[56] As such, even if the facts pleaded are assumed to be true, they are not sufficient to establish the cause of action of breach of personal guarantee. It is therefore plain and obvious that there is no reasonable prospect that the breach of personal guarantee claim could succeed as against Mr. Cho or Ms. Chang, even if the claim for personal liability were properly pleaded.

### **Whether To Grant Leave To Amend**

[57] Pleadings “should not lightly be struck without leave to amend” and such leave “should only be denied in the clearest of cases when it is plain and obvious that no tenable cause of action exists on the alleged facts and there is no reason to expect that” amending the pleading can cure its deficiencies (*Burns v. RBC Life Insurance Co.*, 2019 ONSC 6977, at para. 21). As the Court of

Appeal put it in *Miguna v. Ontario (Attorney General)* (2005), 2005 CanLII 46385 (ON CA), 205 O.A.C. 257 (C.A.), at para. 22, “[i]t is only where it is clear that the plaintiff cannot allege further material facts that he knows to be true to support the allegations that leave to amend will be refused.”

[58] Whether the defendant would be prejudiced is a factor to be considered when deciding whether to grant leave to amend a pleading (*South Holly Holdings Limited v. The Toronto-Dominion Bank*, 2007 ONCA 456, at para. 6). I am of the view that no prejudice would result to the moving parties if amendments to the Statement of Claim were permitted. The moving parties claim no such prejudice and there is no evidence before me of such prejudice.

### **Bad faith**

[59] I strike the claim of “bad faith” against the moving parties collectively and Mr. Cho and Ms. Chang specifically, without leave to amend. This claim cannot be cured via amendment. It is not tenable at law. The moving parties are not parties to either the promissory note or the release agreement and therefore cannot be found to have acted in bad faith in respect of either contract.

### **Breach of personal guarantees**

[60] I strike the claim that Mr. Cho and Ms. Chang made and breached personal guarantees to repay the YSM loan, without leave to amend. The claim that they made such guarantees orally or impliedly through their conduct cannot be cured via amendment. It is not tenable at law, because to be legally enforceable, a guarantee on a loan must be in writing. The claim that they made such guarantees in writing is not pleaded. Nor could it be pleaded, based on the facts known to be true. In oral argument, counsel submitted that the text messages that are incorporated by reference into the Statement of Claim contain written personal guarantees by Mr. Cho and Ms. Chang. But these text messages do not in fact contain any personal guarantee of the type claimed by the Plaintiff. As such, they do not offer a factual basis for the claim that Mr. Cho or Ms. Chang made written personal guarantees. I am therefore of the view that this pleading cannot be cured via amendment. There are no additional material facts that are known to be true and which could be added to the pleading to “save” it.

### **Breach of claim for personal liability**

[61] I strike the claim to pierce the corporate veil and impose personal liability on Mr. Cho and Ms. Chang, with leave to amend to properly plead that YSM is a sham corporation, incorporated for a fraudulent or improper purpose or used as a shell for improper activity. In my view, it is not clear that the Plaintiff cannot allege further material facts known to be true in support of this allegation.

[62] However, I do not grant leave to amend in respect of the claim that personal liability should be imposed because Mr. Cho or Ms. Chang acted outside the scope of their duties or contrary to YSM’s best interests. It is clear that there are no further facts that could be alleged in support of this claim. Not a single fact alleged in the Statement of Claim or contained in the documents

incorporated into it by reference suggests that they ever acted in such a manner. In oral argument, questioned on this point, counsel was only able to point me to actions that Mr. Cho or Ms. Chang clearly undertook in their corporate roles. As such, I am of the view that this basis of the claim for imposing personal liability cannot be cured via amendment. There are no additional material facts that are known to be true and which could be added to the pleading to “save” it.

### **Other claims**

[63] The claim of unjust enrichment against the moving parties, the claim of fraudulent misrepresentation and improper diversion by Mr. Cho and Ms. Chang, and the claim against MOMI arising from its involvement in the alleged diversion of funds from YSM, are struck with leave to amend. In my view, it is not clear that there are no additional material facts that could be added to these pleadings.

[64] I do not strike the claims for damages for opportunity costs or punitive damages.

### **Additional comments**

[65] I order that any amendments to the Statement of Claim be made within the body of the amended pleading itself. The sufficiency of the pleading shall be evaluated with regard to only what is expressly pleaded in the body of the amended pleading and not the content of any documents incorporated by reference into the Statement of Claim.

[66] The Plaintiff shall serve any Amended Statement of Claim within 30 days of this Endorsement.

### **Costs**

[67] Although I have granted leave to amend some of the claims pleaded, in my view, the moving parties have been clearly successful on this motion. The Plaintiff maintained the position, up to and including in oral argument, that the pleading is adequate and that there is no need to amend. He has taken this position throughout, including in response to the Defendants’ Request for Particulars, which simply refused to provide particulars and insisted that the Statement of Claim was adequate as drafted.

[68] The moving parties are accordingly entitled to their costs on a partial indemnity scale of 60%, fixed in the amount of \$10,000.00 inclusive of taxes and disbursements. This amount is to be paid within 30 days.

**Date: August 13, 2025**

---

Parghi J.