CITATION: N. and G. Lazos Building Contractors O.E. v. Kapsalis-Fragaki, 2025 ONSC 6251
COURT FILE NO.: CV-24-716745
DATE: November 7, 2025

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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: N. and G. Lazos Building Contractors O.E. as represented by their partner and liquidator, George Lazos v. Maria Kapsalis-Fragaki, deceased, by her estate trustee, Athanasios Tom Kapsales also known as Tom Kapsales and Athanasios Tom Kapsales also known as Tommy Kapsales;

BEFORE: **ASSOCIATE JUSTICE C. WIEBE**

COUNSEL: Stephen Kelly *for N. and G. Lazos Building Contractors O.E. as represented by their partner and liquidator, George Lazos ("Lazos");*
Timothy Pinos *for Maria Kapsalis-Fragaki, deceased, by her estate trustee, Athanasios Tom Kapsales also known as Tom Kapsales and Athanasios Tom Kapsales also known as Tommy Kapsales;*

HEARD: October 28, 2025.

REASONS FOR DECISION

[1] Lazos brings this motion for an order granting it leave to amend its statement of claim by adding a claim for a certificate of pending litigation ("CPL") and allegations that certain instruments and an underlying trust pertaining to events concerning the subject lands that took place from May to August, 2024 be declared void and unenforceable as fraudulent conveyances and unjust preferences. The motion also claims a CPL in this regard. The subject land is a condominium unit, Unit 201, 160 Fallingbrook Road, Toronto Ontario ("the Property").

[2] To get a CPL, the moving party must prove that the action calls into question an interest in land; see *Courts of Justice Act,* R.S.O. 1990, c. C.43 ("*CJA*") section 103(1). Indeed the statement of claim in the action must include a request for a CPL; see *CJA,* section 103(4). Hence, the plaintiff's motion to amend its statement of claim.

[3] It is well established law that a claim of fraudulent conveyance of the land calls into question an interest in the land for the purpose of getting a CPL. Under the *Fraudulent Conveyances Act ,* R.S.O. 1990, c. F. 29 ("*FCA*") section 2, every conveyance of real property made with the 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 person and their assigns."

[4] The test for a CPL concerning an alleged fraudulent conveyance on a motion brought on notice, such as this one, was aptly described by the court in *Fewson v. Bansavatar et al.,* 2021 ONSC 6697 at paragraph 24. The court stated the following: "As long as there are more than bare

allegations supporting a fraudulent conveyance, a sufficiently reasonable claim to an interest in land will exist and warrant the issuance of a CPL."

[5] The court in *Fewson* at paragraph 24 went on to describe the governing three-part test on a motion for a CPL concerning an alleged fraudulent conveyance:

a) Has the plaintiff satisfied the court that there is a high probability that it will successfully recover judgment in the underlying action?

b) Has the plaintiff introduced evidence demonstrating that the impugned transaction was made with the intent to defeat and delay creditors?

c) Has the plaintiff demonstrated that the balance of convenience favours the issuance of the CPL in the circumstances of the case?

High probability of success

[6] The underlying action in this action concerns the recognition and enforcement in Ontario of three judgments the plaintiff obtained in Greece against the defendants. These will be called "the Greek Judgments" and the underlying action, "the Greek Action."

[7] The plaintiff brought the Greek Action to enforce an alleged 1984 agreement whereby plaintiff purchased certain land in Macedonia, Greece, from Charitonas Kapsales ("Charitonas"), the former husband of Maria Kapsalis-Fragaki (Maria"). The allegation was that the plaintiff paid for the land but never received the land.

[8] Charitonas died in 2001. Maria, who resided in Greece at the time, and her son, Athanasios Tom Kapsales ("Tom"), a Toronto lawyer, inherited the subject land. Maria obtained legal advice. In 2002 the Greek government took steps to expropriate the land with the compensation to be paid to Maria and Tom. On August 21, 2008 the defendants were served with legal process commencing the Greek Action. They attorned to the Greek jurisdiction and defended the Greek Action with counsel.

[9] On September 19, 2011 the Greek trial court found in favour of the plaintiff and determined that the compensation for the expropriated land was to be paid by the defendants to the plaintiff, with costs and interest. The defendants did not pay. Using counsel, they appealed the judgment to the Court of Appeal in Thessaloniki, Macedonia, Greece. Following a hearing on the merits, the appeal was dismissed on June 27, 2014, with costs.

[10] Maria moved to Toronto. Enforcement process began there. The trial judgment was served on Maria and Tom in 2015. Using counsel, the defendants appealed the trial judgment and the appeal order to the Supreme Civil and Criminal Court of Greece in Athens. In August, 2021 the plaintiff succeeded in garnishing the expropriation compensation from an escrow account; however, by this point interest and costs had caused the unpaid portion of the judgment and orders to balloon. It is now about 700,000 euros. The appeal to the Supreme Court was dismissed on March 30, 2022 with costs. The defendants did not pay. There were no more appeal rights.

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[11] On March 18, 2024 this action was commenced to enforce the Greek Judgments in Ontario. On September 9, 2024 the defendants delivered a statement of defence. Their primary defence is that Greek inheritance law contravens Ontario public policy by passing on to inheritors of Greek property the assets and liabilities of the deceased and by giving such inheritors who live in Greece a period of only 4 months after the death to renounce the inheritance regardless of their lack of knowledge of the liabilities of the deceased. For inheritors living abroad the period is 12 months. The argument is that this Greek succession law denied the defendants the defence of "discoverability" of the plaintiff's claim against Charitonas, a defence the defendants argue the Supreme Court of Canada instilled into all limitation periods on the grounds of fairness; see *Kamloops v. Nielsen,* [1984] 2 SCR 2, at page 40.

[12] The defendants took this position on this motion. They argued that this point brought the plaintiff's case in this action below the threshold of "high probability of success." I do not accept that argument for the following reasons:

- The defendants' evidence of the alleged Greek law is unclear. The defendants produced what they said was an English translation of the *Greek Civil Code,* Arts. 1710 and 1846 – 1859. The English translation on its face does not make it clear that the defendant's interpretation applies. Furthermore, and most importantly, there is no expert evidence on Greek law and on this translation confirming that the translation is accurate and that it means what the defendants allege.

- The plaintiff's evidence is clear that the defendants attorned to the jurisdiction of each of the Greek courts that rendered the Greek Judgments. The defendants fought each proceeding with the benefit of Greek counsel. The subject matter of the Greek Judgments was real property in Greece and a contract made in Greece, to all of which Greek law clearly applied. This alone suggests a high probability that the Ontario court will enforce the Greek Judgments.

- The plaintiff also showed that the defendants may not have suffered the unfairness they allege. The evidence shows that within eight days of her ex-husband's death (the death was on October 23, 2001) Maria, a resident of Greece at the time, signed a Power of Attorney on October 31, 2001 appointing her Greek lawyer as her lawyer to handle all litigation in Greece on her behalf and to accept or renounce any inheritance on her behalf. She, therefore, had Greek counsel charged with the duty to investigate the liabilities in Charitonas' estate well within the alleged relevant renunciation period. The defendants provided no evidence as to what this Greek counsel did or did not do under the Power of Attorney to investigate these liabilities. However, Maria eventually not only did not renounce her inheritance, but defended it against an attack by her son, Peter, in 2003. This suggests strongly, in my view, that Maria accepted her inheritance with full knowledge of its liabilities. In any event, it appears that Maria at least had the opportunity to investigate the Charitonas estate in detail well within the renunciation period.

- Mr. Pinos admitted that there is no Canadian case on this point, one way or the other. It was undisputed that other countries, such as Germany, have a similar succession law. This indicates to me that such a law may not affront Canadian public policy to the point of

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causing Canadian courts to even consider not enforcing a judgment issued in foreign proceedings to which the defendants have clearly attorned.

[13] For these reasons, I find that the plaintiff has established that this case has a high probability of success.

Intent to defeat creditors

[14] The second part of the test requires that the plaintiff must show evidence that the impugned transaction was made with the intent to defeat and delay creditors. As stated in *Fewson*, this onus is a low one. The plaintiff must establish "more than bare allegations supporting a fraudulent conveyance."

[15] The following relevant background facts have been established by the evidence:

- In April, 2006 Maria entered into an agreement to purchase the Property, which had yet to be built. As stated above, on August 21, 2008 Maria and Tom were served with legal process in the Greek Action. In October, 2008, Maria took occupancy of the Property.

- In his affidavit, Tom states that there were "many disputes" over the Charitonas estate, including disputes from Peter, and that on her death Maria wanted the Property to pass to Tom's children outside of her will to avoid a will challenge by Peter.

- At some point Maria created a Deed of Trust with the assistance of an estates lawyer, Lindsay Histrop. This document is dated November 14, 2008 and begins with the preamble, "WHEREAS the Settlor [Maria] has assigned, transferred and delivered to the Trustees [Maria] her interest in" the Property . . ." The document then purports to create an "alter ego trust," namely a trust wherein Maria is the trustee holding the Property for the benefit of herself and wherein she remains in possession and use of the Property until her death, at which point the trust is stated to pass to a named successor trustee, Tom, to hold for the benefit of and distribution to Tom's three children. The document allows for amendments other than of the named beneficiaries. It is undisputed that such alter ego trusts are allowed by Canadian tax law for persons over 65 years of age such as Maria.

- On July 31, 2009 there was a tranfer of the Property to Maria. A Transfer was registered on title. The stated consideration is $495,233.64. In the attached statement, Maria describes herself as the "transferee." She did not check the boxes asking Maria as to whether she was "a trustee named in the above-described conveyance to whom the land is being conveyed" or "a person in trust for whom the land conveyed in the above-described conveyance is being conveyed."

- As stated above, on March 18, 2024 this action to enforce the Greek Judgments was issued. Service was attempted but could not be effected. Service on Tom was attempted through his law firm but was not successful. On July 9, 2024 the plaintiff brought a motion for substituted service on the defendants. Associate Justice McAfee granted the order. As stated above, the defendants delivered a statement of defence on or about September 9, 2024.

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- In the meantime, Maria's health declined. On April 30, 2024, with the assistance of Ms. Histrop, Maria signed a Deed of Amendment and Appointment amending the alter ego trust by appointing her granddaughter, Daphne Nicole Kapsales ("Daphne"), Tom's daughter, as co-trustee during Maria's life and sole trustee following Maria's death.

- On May 6, 2024 Maria registered a Change of Name Application changing the spelling of her last name. Also on May 6, 2024 Maria registered a Transfer transferring the Property from herself as "transferor" to herself and Daphne as "trustees" in joint tenancy for $0 consideration. In the statement attached to the Transfer, Maria checked the box that described Maria as "a trustee named in the above-described conveyance to whom the land is being conveyed."

- Maria died on July 15, 2024. On August 30, 2024 Daphne registered a Survivorship Application confirming that she had held the Property in joint tenancy with Maria and now, by right of survivorship, she was the sole trustee and owner.

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[16] The plaintiff alleges that the November 14, 2008 alter ego trust, the May 6, 2024 name change and transfer and the Survivorship Application were all fraudulent conveyances meant to defeat and delay creditors. The issue for this motion is whether the plaintiff has, to use the words in *Fewson*, established "more than bare allegations" of this assertion, namely a triable issue.

[17] The issue of fraudulent conveyance boils down to whether the plaintiff has established sufficient evidence of what are called "badges of fraud" to justify a CPL. Evidence of badges of fraud creates a triable issue justifying a CPL, as there is then a presumption of fraud that needs to be rebutted. The plaintiff relied on the decision in *Abu-Saud v. Abu-Saud et al.,* 2023 ONSC 6199 (CanLII) for a description of commonly recognized badges of fraud. This was a decision in a motion seeking to discharge a CPL. Justice Leach in paragraph 17 described the following badges of fraud: a transfer of property whereby the transferor remains in possession and use of the property; a transaction done in secret; a transfer made in the face of threatened or extant litigation; a transfer for nominal or consideration well below market value; unusual haste in the transfer; a settlor retaining a benefit under the settlement; a transfer in the context of embarking on a hazardous venture; and the existence of a close relationship between parties to the transfer.

[18] I agree with the plaintiff that there is more than sufficient evidence on this motion of the following badges of fraud:

- The defendants were aware of and involved with the Greek Action when Maria created the alter ego trust in late 2008.

- Maria remained in possession of and kept the value of the Property after she transferred it into the alter ego trust.

- The defendants were aware of the Greek Judgments when the May 6, 2024 name change and transfer and August 30, 2024 Survivorship Application were registered.

- There was evidence that the defendants evaded service of this action and hastily initiated the 2024 transfer.

- The transfers were made for no or nominal consideration.

- Maria remained in possession and use of the Property after the May 2, 2024 transfer.

- The Property was Maria's only asset capable of satisfying the Greek Judgments.

- There was a close family relationship between the transferor and transferees in both transfers.

[19] I add a comment about the alter ego trust. The plaintiff described it as a "sham." I am not prepared to go that far. However, the evidence as to when the trust was created is not clear. Ms. Histrop's affidavit indicated that she met Maria on October 15, 2008, but she does not say she was present when the document was signed. Tom's affidavit states that Maria signed the document on November 14, 2008, the date on the document. But he does not say that he was present and witnessed the signature. There is, therefore, no affidavit of someone who witnessed Maria's signature, namely an affidavit that confirms the date the trust was settled.

[20] Furthermore, in preparing these reasons I noted that in the statement attached to the July 31, 2009 transfer Marie did not identify herself as either a trustee or a beneficiary for whom the land was transferred. She identified herself as the "transferee." This contrasts interestingly with the statement attached to the May 6, 2024 transfer wherein Maria and Daphne clearly identified themselves as trustees who were receiving the Property pursuant to the alter ego trust as amended. This indicates that the alter ego trust may have been created after the July 31, 2009 transfer. This last point was just an additional observation from the evidence and did not merit recalling counsel for further argument.

[21] Mr. Pinos made several arguments. His first argument was that the Property was at all material times beneficially owned by the trust, not by Maria, and that she, therefore, could not and did not effect a "conveyance" of the Property for the purposes of the *FCA*, as such a conveyance must involve the conveyance of the beneficial interest. He provided authority for the proposition that a prospective debtor must convey the beneficial interest in property to be subject to an attack under the *FCA*; see Houlden, Morawetz and Sarra, *Bankruptcy and Insolvency Law of Canada,* 4th Ed., 9:3 at fn.4.

[22] I do not accept this argument. First, the deed creating the alter ego trust clearly made Maria the sole beneficiary of the Property during her lifetime. She is expressly named as a beneficiary. There may indeed be an argument that the trust itself created a "conveyance" for the purpose of the *FCA* by causing a transfer of Maria's beneficial interest to her grandchildren upon her death for no consideration.

[23] Second, there is also evidence that Maria obtained the legal and beneficial title to the Property in the first place and then subsequently transferred these interests to the trust. The preamble of the trust deed describes such a transfer. There is also the July 31, 2009 transfer

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document wherein Maria describes herself as nothing more than a transferee and neither as a trustee nor a beneficiary of a trust. There is also the statement attached to the May 6, 2024 transfer wherein that transfer is described as a "Tranfer from Settlor to Trustees for NIL consideration pursuant to the provisions of the Alter Ego Trust Agreement," not the result of an amendment to the alter ego trust, as asserted by the defendants. A transfer by Maria to the trust may be a "conveyance" for the purpose of the *FCA*. At least, the evidence shows that this is a triable issue.

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[24] Mr. Pinos also argued that the evidence was clear that Maria's intention in creating the alter ego trust and executing it, was to pass the Property to her grandchildren on her death outside of her will, and not to defeat creditors. He pointed to the decision of Justice Branch of the British Columbia Supreme Court in *Lau v McDonald*, 2021 BCSC 1207 (CanLII). This was a decision on an application to determine, amongst other things, whether there had been a fraudulent conveyance concerning the inheritance of certain shares through an alter ego trust. Justice Branch found that there was no intention to defeat creditors. In paragraph 148 the judge commented that the badges of fraud fit poorly into a determination as to whether an alter ego trust is a fraudulent conveyance, as such trusts commonly are made for the benefit of close family members, involve the transfer of all or most of the assets of the transferor, and often involve a lack of consideration.

[25] I do not find this case helpful to the defendants. The *Lau* decision was a final determination on the issue of a fraudulent conveyance. The issue before me is an interlocutory motion for a CPL pertaining to an alleged fraudulent conveyance. On such a motion, the onus of proof, as stated earlier, is quite low. I have found that several badges of fraud have been established. That is enough to create a triable issue as to the fraudulent intent.

[26] Finally, Mr. Pinos argued that the ultimate limitation period applied here and rendered the claim of fraudulent conveyance concerning the alter ego trust statute-barred. Section 15(2) of the *Limitations Act, 2002,* S.O. 2002, c. 24 ("*LA*") states that no proceeding shall be commenced in respect of any claim after the 15th anniversary of the day on which the act or omission on which the claim is based took place. The argument is that, as the alter ego trust was established on November 14, 2008, any claim that the trust was a fraudulent conveyance became statute-barred 15 years later on November 14, 2023. The defendants have the onus to prove that there is no triable issue concerning this defence.

[27] I also do not accept this argument. As I stated earlier, the actual date the trust was established is unclear. That alone creates a triable issue on this point. But I also note that *LA* section 15(4)(c) excludes the application of the ultimate limitation period where the person against whom the claim is made "willfully concealed" the act or omission and the injury, loss or damage from the claimant. That may have happened here. As discussed earlier, if the trust was established on November 14, 2008, Maria may have purposefully concealed that fact from creditors or future creditors (such as the plaintiff) in the July 31, 2009 transfer by describing herself as nothing more than a transferee and not a trustee or beneficiary of a trust. That also is a triable issue.

[28] For these reasons, I find that the plaintiff has established sufficient evidence for the purpose of this motion of a fraudulent conveyance justifying a CPL.

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Balance of convenience

[29] There was no argument on this issue. The Property remains unencumbered and under the ownership of Daphne for over a year. There has been and is no present attempt to deal with the Property. The CPL, therefore, would not disturb the *status quo*. I find that the plaintiff has satisfied this part of the test.

Pleading amendment

[30] Rule 26.01 of the *Rules of Civil Procedure* requires the court to grant leave to amend a pleading unless prejudice would result that cannot be compensated in costs. There was no evidence of such non-compensable prejudice arising from the proposed amendments. The amendments deal with the alleged fraudulent conveyance and the CPL. For the reasons stated, I find that these amendments present a tenable claim concerning a fraudulent conveyance and a CPL. I grant leave to the plaintiff to make the requested pleading amendments.

Costs

[31] The plaintiff filed a bill of costs showing $33,368 in partial indemnity fees and $55,613 in full indemnity costs. The bill shows $634.43 in disbursements. The defendants filed a costs outline showing $7,288.50 in partial indemnity costs and $10,941.23 in substantial indemnity costs.

[32] At the close of the argument, I asked for brief costs submission depending on the outcome. In the event of the plaintiff's success, the plaintiff wants its partial indemnity fees of $33,368 whereas the defendant argued that the award in favour of the plaintiff should be no more than its own partial indemnity claim of $7,288.50.

[33] I was not advised as to any offers to settle. Therefore, I am prepared to make my order as to costs now. The plaintiff was successful and deserves costs. The quantum of the costs is the issue.

[34] Not insignificant work went into this motion on both sides. But, in the end, it was no more than a short motion for 90 minutes. There were no cross-examinations. I find that the amount of time spent by more expensive plaintiff's counsel on this motion (over 42 hours) not justified, despite the fact that he swore the main affidavit. It was Mr. Kelly who after all argued the motion. Furthermore, the plaintiff did not examine the alter ego trust as thoroughly as it should have.

[35] I also take into consideration the reasonable expectation of the unsuccessful parties, Maria's estate and Tom, and proportionality. The defendants' costs outline does not properly reflect their reasonable expectation in the event of a defeat, as it shows that most of the work was done by junior counsel with Mr. Pinos only doing the argument. This motion was important to both sides as the Property was Maria's largest asset and there were complexities concerning the alter ego trust.

[36] Considering all of these factors, I find that a reasonable and fair award of costs in favour of the plaintiff is **$15,000**, which must be paid by the defendants, Maria's estate and Tom, to the plaintiff within thirty (30) days.

Result

[37] For these reasons, I grant the motion and order that Maria's estate and Tom pay the plaintiff $15,000 in costs within thirty (30) days from today.

DATE: November 7, 2025

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ASSOCIATE JUSTICE C. WIEBE

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