

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Cheema v. Shums*,
2025 BCCA 400

Date: 20251112
Docket: CA49676

Between:

Ishwant Singh Cheema and Navjyot Kaur Cheema

Appellants/
Respondents on Cross Appeal
(Plaintiffs)

And

Ayyaz Shums

Respondent/
Appellant on Cross Appeal
(Defendant)

Before: The Honourable Chief Justice Marchand
The Honourable Mr. Justice Grauer
The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated
January 29, 2024 (*Cheema v. Toor*, 2024 BCSC 130,
New Westminster Docket S218241).

Oral Reasons for Judgment

Counsel for the Appellants/Respondents on
Cross Appeal:

R. Davidson

Counsel for the Respondent/Appellant on
Cross Appeal:

D.J. Taylor

Place and Date of Hearing:

Vancouver, British Columbia
November 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia
November 12, 2025

Summary:

In reasons pronounced in January 2024, a judge found the respondent, a mortgage broker, liable for fraudulent misrepresentation and the borrowers liable for breach of contract, in respect of a private loan transaction. The judge limited the award against the respondent mortgage broker to interest charges incurred by the appellants on the line of credit they used to fund the loan. The appellants and respondent jointly submit the judge erred in not awarding damages against the respondent in an amount that would put the appellants in the position they would have been in had the fraudulent misrepresentations not been made. Held: Appeal allowed. The judge erred by limiting damages payable by the respondent to the interest charges incurred by the appellants on their line of credit.

[1] **MAYER J.A.:** In September 2017, Ishwant and Navjyot Cheema agreed to lend Devinder, Sukhbir and Simrandeep Toor \$100,000 to purchase a residential property. This private loan was arranged with the assistance of Ayyaz Shums, a mortgage broker. To fund the loan, the Cheemas withdrew funds from their home equity line of credit, which resulted in interest costs. Ultimately, the Toors' residential property purchase did not proceed and they defaulted on the loan, having paid back only \$16,000 in principal and \$12,000 in interest between September 2017 and May 2019.

[2] In August 2019, the Cheemas commenced an action against the Toors and Mr. Shums alleging, in summary, breach of the loan agreement by the Toors and fraudulent misrepresentation by Mr. Shums. A trial took place in June and July 2023. In reasons pronounced January 29, 2024, the trial judge found the Toors and Mr. Shums knowingly made fraudulent misrepresentations regarding the Toors' financial situation to the Cheemas, which the Cheemas relied upon to their detriment. The judge awarded the Cheemas damages against the Toors in the amount of \$182,038.36, comprised of the outstanding \$84,000 in principal plus \$98,038.36 in contractual interest. The judge awarded damages against Mr. Shums in the amount of \$14,849.88, being the interest charges on the \$100,000 the Cheemas withdrew from their home equity line of credit. She declined to find Mr. Shums liable for the \$84,000 in outstanding principal on the basis that making such an award would "enrich" the Cheemas.

[3] The Cheemas appeal the judge's award against Mr. Shums contending the judge erred by limiting the award to the interest charges on the Cheemas' line of credit. Mr. Shums has filed, but not pursued, a cross-appeal.

On Appeal

[4] In a joint letter to this Court dated November 7, 2025, the Cheemas and Mr. Shums advise they agree the trial judge erred in principle when she awarded damages of \$14,849.88 against Mr. Shums. In summary, they submit that the judge erred in not awarding damages against Mr. Shums for fraudulent misrepresentation, in an amount which would put the Cheemas in the position they would have been in had the misrepresentations not been made.

[5] These parties jointly submit that the correct measure of damages, as against Mr. Shums, ought to be calculated as \$100,000 (representing the loan principal), plus \$14,849.88 (representing the line of credit interest), less \$28,000 (representing the payments made by the Toors to the Cheemas), for a total of \$86,489.88. They also submit that the judgments against Mr. Shums and the Toors ought to be stated to be joint and several, to clarify that the Cheemas are not entitled to double recovery as against those parties.

Discussion

[6] The legal basis of the judge's award against both the Toors and Mr. Shums was fraudulent misrepresentation. This is made clear by the judge's ruling "as a result of their fraudulent misrepresentations, I order that the Toors pay the Cheemas \$182,038.36 in damages, and that Mr. Shums pay the Cheemas \$14,849.88 in damages". Despite this finding, it is apparent that the judge measured damages against the Toors based on a breach of the loan agreement. This is consistent with the legal basis for the Cheemas' claim against the Toors, set out in their notice of civil claim. Although the judge's basis for the award against the Toors and the assessment of damages are incongruous, that award is not the subject of this appeal, and we will not disturb it.

[7] I agree the judge erred in principle by limiting the damages payable by Mr. Shums to the amount of interest incurred by the Cheemas on their line of credit. There was no principled basis for doing so given the judge's conclusion that Mr. Shums was equally responsible for the fraudulent misrepresentations which induced the Cheemas to loan money to the Toors.

[8] As was stated in *Satnam Education Foundation v. MB Dream Construction & Supplies Ltd.*, 2020 BCSC 1089:

[101] The measure of damages in a case of fraudulent misrepresentation is the amount of money required to put the plaintiff in the position that it would have occupied had the statement not been made: *Battrum*, at para. 31; *C.R.F. Holdings Ltd. v. Fundy Chemical International Ltd.*, [1982] 2 W.W.R. 385, 33 B.C.L.R. 291, at para. 17.

[9] In this case, in the absence of Mr. Shums' fraudulent misrepresentations, the Cheemas would not have lent any money to the Toors and would not have incurred any interest charges on their line of credit. They are therefore entitled to the return of the outstanding principal of the loan plus the interest incurred on their line of credit. The parties to this appeal submit, and the evidence supports, the damages that would accomplish that end is \$86,489.88.

Disposition

[10] For all of these reasons, I would allow the appeal and substitute \$86,849.88 for the judge's award of \$14,849.88 against Mr. Shums, with costs to the appellants at Scale A.

[11] To avoid double recovery, any amount over \$95,188.48¹, which is recovered by the Cheemas on their judgment against the Toors, shall be set off against the judgment against Mr. Shums. As well, any amount which is recovered by the Cheemas on their judgment against Mr. Shums, shall be set off against their judgment against the Toors.

¹ \$182,038.36 - \$86,849.88 = \$95,188.48

[12] Finally, I would dismiss Mr. Shums' cross-appeal as abandoned.

[13] **MARCHAND C.J.B.C.:** I agree.

[14] **GRAUER J.A.:** I agree.

[15] **MARCHAND C.J.B.C.:** The appeal is allowed on the terms set out by Justice Mayer and the cross-appeal is dismissed as abandoned.

“The Honourable Justice Mayer”