

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JOHN CITTI AND LESTER YAMASHITA, Plaintiffs

AND:

ERIC A. KLEIN, EVAN L. KLEIN, KLEIN PROPERTY GROUP INC., KLEIN CAPITAL GROUP and KPG CAPITAL LP, Defendants

BEFORE: Cavanagh J.

COUNSEL: *R. Bevan Brooksbank and Daphne Chu*, for the Plaintiffs

Evan L. Klein, self-represented Defendant

Eric A. Klein, self-represented Defendant

HEARD: IN WRITING

ENDORSEMENT

Introduction

[1] The Plaintiffs, Dr. John Citti and Dr. Lester Yamashita, bring this motion for default judgment as against the Defendants, Eric A. Klein, Evan L. Klein, Klein Property Group Inc., Klein Capital Group and KPG Capital LP. The Defendants have been noted in default.

[2] In the action, the Plaintiffs claim that each of them was induced by knowingly false representations made by the Defendants generally, and Eric Klein in particular, to invest money with the Defendants, on several occasions, in what the Plaintiffs were induced to believe were legitimate real estate projects being undertaken by the Defendants. The Plaintiffs allege that the investments were not for legitimate projects and the false representations induced them to make the investments and caused them to suffer losses.

[3] For the following reasons, I grant the Plaintiffs' motion in part. In respect of some claims, I am not satisfied that default judgment should be granted and I direct that the action proceed to a summary trial where additional evidence may be tendered.

Procedural Background

[4] The Amended Statement of claim consists of 57 paragraphs and 17 pages. In addition to the allegations of fact made in the Amended Statement of Claim, the Plaintiffs rely on a three-

volume motion record including several affidavits and documents marked as exhibits comprising more than 1,500 pages.

[5] Included in this material is the affidavit of Alyssa Allen sworn April 7, 2025. Ms. Allen is a law clerk with the law firm that is counsel for the Plaintiffs. In her affidavit, Ms. Allen sets out the procedural history of this action which was commenced by a Statement of Claim issued on October 5, 2018.

[6] The Plaintiffs obtained a *Mareva* injunction on October 10, 2018 which, by order dated December 17, 2018, was continued to trial, on consent.

[7] On April 6, 2020, the Defendants served their Statement of Defence.

[8] An order holding the Defendants in contempt of the *Mareva* Order was made by McEwen J. on April 23, 2020.

[9] Ms. Allen deposes that the Statement of Claim was amended on May 3, 2019. She deposes that the Amended Statement of Claim was served on the Defendants on May 7, 2019. A copy of the Amended Statement of Claim is appended as an exhibit to Ms. Allen's affidavit.

[10] On September 18, 2020, the Defendants purported to serve an Amended Statement of Defence and Counterclaim. By endorsement dated October 16, 2020, McEwen J. directed that no further steps be taken in respect of the Defendants' amended pleading, given the ongoing contempt proceedings.

[11] On January 13, 2022, McEwen, J. rendered sanction on the contempt, and ordered the Defendants to pay a fine of \$35,000 to the Court and an outstanding \$15,474.32 costs award owing to the Plaintiffs dating from January 21, 2021, both within 60 days, failing which their Amended Statement of Defence and Counterclaim would be struck. In a subsequent costs decision, McEwen J. awarded costs in the amount of \$85,474.95 to the Plaintiffs in connection with the contempt proceedings. An appeal from this decision was dismissed by the Court of Appeal on July 4, 2024.

[12] On September 24, 2024, the Plaintiffs brought a motion to strike the Defendants' Amended Statement of Defence and Counterclaim for *inter alia* failure to comply with Orders of this Court and to pay the Fine within the 60-day timeframe.

[13] On December 4, 2024, Osborne, J. granted the Motion to Strike and awarded costs to the Plaintiffs.

[14] On January 20, 2025, the Defendants were noted in default.

[15] In her affidavit, Ms. Allen deposes that in connection with the motion for a *Mareva* Injunction, the Plaintiffs relied on certain affidavit evidence speaking to the underlying fraudulent scheme. She appends as exhibits to her affidavit copies of the following affidavits: the affidavit of Lester Yamashita, sworn September 26, 2018; the Affidavit of John Citti, Sworn September 27, 2018; the Affidavit of Alun Williams, Sworn October 1, 2018, and the Affidavit of Taras Pehinec, sworn October 3, 2018.

[16] Although these affidavits are appended as exhibits to Ms. Allen's affidavit, rather than being filed separately, the Plaintiffs rely on these affidavits as evidence on this motion for default judgment, and I accept them as such.

Factual allegations in Amended Statement of Claim

[17] The following statements, among others, are pleaded in the Amended Statement of Claim:

- (a) The Plaintiff, Dr. Citti, is an individual currently residing in or near the City of Kingston, in the State of Pennsylvania, USA. At all material times Dr. Citti was both a client of Toronto-based Cadman Capital Inc. ("Cadman"), and the purchaser of promissory notes in various projects advertised and promoted by one or more of the Defendants. (paragraph 3)
- (b) The Plaintiff, Dr. Yamashita, is an individual currently residing in or near the City of Concord, in the State of California, USA. At all material times Dr. Yamashita was both a client of Cadman, and the purchaser of promissory notes and limited partnership units in various projects advertised and promoted by one or more of the Defendants. (paragraph 4)
- (c) The Defendant, Eric A. Klein, as far as is known to the Plaintiffs, is an individual with residences in the City of Toronto, Ontario, and the City of Montreal, Quebec. Klein is a former Cadman employee and a co-founder, directing mind, director, shareholder and/or partner of the Defendants KPG, Klein Capital, and KPG Capital. (paragraph 5)
- (d) The Defendant, Evan Klein, as far as is known to the Plaintiffs, is an individual with residences in the City of Toronto, Ontario, and the City of Montreal, Quebec. Evan Klein is a co-founder, directing mind, director, shareholder and/or partner of the Defendants KPG, Klein Capital, and KPG Capital. (paragraph 6)
- (e) The Defendant, KPG, is a corporation incorporated pursuant to the laws of Ontario, with a registered head office in Toronto. KPG purports to carry on business as a boutique real estate development and asset management firm in Toronto, Ontario and Montreal, Quebec. (paragraph 7)
- (f) The Defendant, Klein Capital, is a general partnership between the Klein Brothers, duly registered in the Province of Ontario, with an office in Toronto. At all material times Klein Capital was held out by the Klein Brothers to be engaged in the business of investing in and developing commercial real estate. (paragraph 8)
- (g) The Defendant, KPG Capital, as far as is known to the Plaintiffs, does not exist and has never been registered within the Province of Ontario or elsewhere by any of the Defendants. At all material times, however, KPG Capital was held out by the Klein Brothers (defined in the pleading to mean Eric Klein and Evan Klein) to be a limited partnership formed for the purpose of acquiring, developing, and improving commercial real estate in or near the City of Montreal. (paragraph 9)

- (h) In or about November 2016, Klein joined Cadman and transitioned to the entry role of Account Representative. In this new role, Klein was tasked with building and maintaining relationships with existing Cadman clients and, where appropriate, to bring investment opportunities to their attention. (paragraph 10)
- (i) Cadman is one of several companies in the Cadman Group of Companies (the "Cadman Group"). Cadman contacts US accredited investors to assess their interest in participating in investments with Cadman Group entities, including the purchase of promissory notes regarding UK real estate assets. (paragraph 11)
- (j) As a condition of Klein's employment with Cadman, Klein signed an employment agreement (the "Employment Agreement"). The Employment Agreement stipulated, among other things, what use Klein could make of Confidential Information (as defined therein), that Klein would be precluded from soliciting Cadman clients for a period of one year on termination of the Employment Agreement, and required that Klein provide two weeks' written notice of any voluntary termination of the Employment Agreement. (paragraph 12)
- (k) On or about September 14, 2017, Klein resigned from Cadman in an email and provided Cadman with his two weeks' notice. (paragraph 13)
- (l) On or about September 15, 2017, Klein sent further email correspondence to Cadman and resigned from Cadman effective immediately, notwithstanding the terms of the Employment Agreement. (paragraph 14)
- (m) Prior to Klein's resignation; he and his brother Evan Klein, in fact, began operating Klein Capital Management ("KCM"). Following Klein's departure from Cadman, and in direct contravention of the Employment Agreement, Klein and his brother proceeded to solicit Cadman clients for the purposes of obtaining loans for a proposed multi-family development project. The Klein Brothers also went so far as to base KCM's offering memoranda and notes on Cadman precedents, a further contravention of the Employment Agreement. (paragraph 15)
- (n) On or about September 23, 2017, one of the Plaintiffs, Dr. Yamashita, was approached by Eric Klein, acting on behalf of KCM, and induced to purchase a promissory note in the amount of \$75,000 USD at a rate of 12.5% interest over a two year term (the "First Yamashita Note"). This related to a proposed multi-family building development project in the Greater Montreal and Quebec City areas (the "Multi-Family Project"). (paragraph 16)
- (o) Shortly thereafter, on or about October 5, 2017, Eric Klein approached Dr. Citti and persuaded him to enter into a "Private Loan Agreement" in the amount of \$50,000 USD with Klein Capital in relation to the above-mentioned Multi-Family Project (the "First Citti Note"). (paragraph 17)
- (p) With respect to the Multi-Family Project, Eric Klein delivered to the Plaintiffs a promotional brochure, which outlined prospective properties to be acquired, and represented that the funds advanced by the Plaintiffs would be used to acquire and

develop real estate in Ontario and Quebec. None of the identified properties have, in fact, been acquired by any of the Defendants. (paragraph 18)

- (q) On or about December 8, 2017, Dr. Citti purchased an additional promissory note from Klein Capital for \$50,000 (the "Second Citti Note"). This investment on the part of Dr. Citti related to a proposed real estate development project located at 1746 Rue Richardson, Le Sud-Ouest, in the Pointe Saint-Charles neighbourhood in Montreal (the "Pointe Saint-Charles Project"). The funds from the Second Citti Note were converted to Canadian dollars on or about January 12, 2018. (paragraph 20)
- (r) On or about February 15, 2018, Dr. Citti purchased an additional promissory note from Klein Capital for \$50,000 USD (the "Third Citti Note"). This investment on the part of Dr. Citti also related to the Pointe Saint-Charles Project. (paragraph 21)
- (s) On or about March 2, 2018, Eric Klein, through KPG, induced Dr. Yamashita to purchase an additional promissory note for \$50,000 USD at a rate of 16% interest per annum for an 18 month term (the "Second Yamashita Note"). This investment on the part of Dr. Yamashita related to a proposed real estate development project located at 4800 Avenue Hotel-de-Ville or "Mile End" in Montreal (the "Mile End Project"). (paragraph 22)
- (t) Regarding the Mile End Project, Klein and KPG represented in promotional brochures that, inter alia, KPG would engage in the building of a condominium and retail structure. The materials also stated that KPG had engaged as a "consultative partner" the Montreal development firm Renwick Developments ("Renwick"), had secured a partnership with IPSO Facto, a Montreal investment firm, and that together with Renwick and IPSO Facto, had taken the necessary steps to ensure project approval from municipal authorities. (paragraph 23)
- (u) As set out below, representations as to partnerships with Renwick and IPSO Facto were wholly false. In addition, the Defendants have not acquired the property identified for the Mile End Project. (paragraph 25)
- (v) On or about June 6, 2018, Dr. Yamashita signed a Term Sheet (collectively with the above notes, the "Agreements") and delivered \$100,000 USD to Eric Klein for the purposes of subscribing to limited partnership units in KPG Capital, which Eric Klein represented would be formed for the purpose of acquiring, developing, and improving commercial real estate, generally, and more particularly, for the purposes of investing in a proposed development project known as the "Parc Frederic-Back Lofts" in Montreal (the "Frederic-Back Project"). (paragraph 26)
- (w) Between September 2017 and June 2018, the Plaintiffs have variously been induced by Eric Klein and the Defendants to invest approximately \$375,000 USD in a series of purported real estate investment and development projects throughout Montreal and Quebec City (the "Investments"). (paragraph 38)

Claims by both plaintiffs for damages based on the combined amounts invested by each of them

[18] In the Amended Statement of Claim, the Plaintiffs jointly claim, among other relief, damages against the Defendants, jointly and severally, in the amount of \$375,000 USD or such amount as proven at trial for fraud, fraudulent misrepresentation, conversion of property, breach of contract, and unjust enrichment.

[19] In the Amended Statement of Claim, the Plaintiffs allege that each of them made several investments with the Defendants. The total amount alleged to have been invested by Dr. Citti is \$150,000 USD. The total amount alleged to have been invested by Dr. Yamashita is \$225,000 USD. These investments total \$375,000 USD. None of the investments is alleged to have been made jointly by Dr. Citti and Dr. Yamashita.

[20] Based on the deemed admissions of pleaded allegations of fact, there is no basis for the Defendants to be held liable to Dr. Citti for more than the amount that he invested. Similarly, there is no basis for the Defendants to be held liable to Dr. Yamashita for more than the amount that he invested. The claims made by Dr. Citti and Dr. Yamashita must be considered separately and not, as the Plaintiffs submit, as joint claims.

[21] I first address the factual allegations and evidence in respect of the investments made by Dr. Citti.

[22] The Plaintiffs allege in the Amended Statement of Claim that Dr. Citti made three investments with the Defendants, each in the amount of \$50,000 USD, for a total of \$150,000 USD.

Dr. Citti's first investment

[23] With respect to the first investment, Dr. Citti pleads (paragraph 17) that this was made in relation to the "Multi-Family Project". Dr. Citti pleads that with respect to this project, Eric Klein delivered to him a promotional brochure which outlined prospective properties to be acquired, and represented that the funds advanced by the Plaintiffs would be used to acquire and develop real estate in Ontario and Quebec. Dr. Citti pleads that none of the identified properties have, in fact, been acquired by any of the Defendants.

[24] In his affidavit, Dr. Citti deposes that he spoke with Eric Klein and on September 24, 2018, received from him an email attaching a lengthy brochure entitled "Quebec Multi-Family Portfolio". He deposes that he reviewed the brochure which explained the sources of income from which the Kleins could meet their obligations. The brochure stated the Kleins' intention to acquire, develop, renovate and ultimately sell a series of four properties in Quebec City and Montreal. Dr. Citti deposes that he relied on statements made by Eric Klein concerning his experience in real estate development, and the statements made in the proposal document, and concluded that the Multi-Family Project was viable and likely to be a profitable investment opportunity. Dr. Citti wired the \$50,000 to Klein Capital Group on October 4, 2017.

Dr. Citti's Second Investment

[25] With respect to Dr. Citti's second investment (paragraph 20), the Plaintiffs plead that on or about December 8, 2017, Dr. Citti made an additional \$50,000 investment through the purchase of a promissory note which related to a proposed development project in Montreal identified in the pleading as the "Pointe Saint-Charles Project". The Defendants are deemed to admit that this investment was made. The Amended Statement of Claim does not contain a factual allegation of a representation made by any of the Defendants to induce Dr. Citti to make the second investment.

[26] In Dr. Citti's affidavit sworn September 27, 2018, Dr. Citti does not refer to this investment. He states in this affidavit that he made two investments with the defendants, each in the amount of \$50,000 USD, for a total of \$100,000 USD.

Dr. Citti's Third Investment

[27] With respect to Dr. Citti's third investment (paragraph 21), he alleges in the Amended Statement of Claim that on or about February 15, 2018, he made a further investment of \$50,000 USD through the purchase of a promissory note that was related to the "Pointe Saint-Charles Project".

[28] In Dr. Citti's affidavit, he deposes that he sent a cheque to Eric Klein on or about February 15, 2018. He deposes that this investment was made in the Mile End Project. He deposes that he does not recall receiving a brochure pertaining to the Mile End Project, but that he must have done so because he had discussed that project with Eric Klein in January and February of 2018.

[29] Dr. Citti's affidavit evidence in respect of the investment made on February 15, 2018 is inconsistent with the pleaded allegations with respect to this investment, which refer to an investment related to the "Pointe Saint-Charles Project, and not the "Mile End Project".

[30] I now turn to the pleaded allegations and evidence in respect of the investments made by Dr. Yamashita.

[31] Dr. Yamashita alleges in the Amended Statement of Claim that he invested a total of \$225,000 USD with the Defendants through three investments made in September 2017 (\$75,000 USD) (paragraph 16), March 2018 (\$50,000 USD) (paragraph 22), and June 2018 (\$100,000 USD) (paragraph 26).

Dr. Yamashita's First Investment

[32] In the Amended Statement of Claim (paragraph 16), Dr. Yamashita pleads that in September 2017 he was approached by Eric Klein acting on behalf of KCM and induced to purchase a promissory note in the amount of \$75,000 USD. He pleads that this related to a proposed development project in the Greater Montreal and Quebec City areas and is defined in the pleading as the "Multi-Family Project".

[33] The Plaintiffs plead that with respect to the Multi-Family Project, Eric Klein delivered to the Plaintiffs a promotional brochure which outlined prospective properties to be acquired and represented that the funds advanced by the Plaintiffs would be used to acquire and develop real

estate in Ontario and Quebec. The Plaintiffs plead that none of the identified properties have, in fact, been acquired by any of the Defendants.

[34] In his affidavit, Dr. Yamashita deposes that he received an email from Eric Klein attaching numerous documents including a proposal for the Multi-Family Project. He deposes that he spoke with Eric Klein who described his intention to use investor capital to acquire the properties in the proposed portfolio. Dr. Yamashita deposes that he relied on the information presented to him, including in the brochure and in *pro forma* financial projections. He made an investment of \$75,000 USD through a cheque he sent to Eric Klein on September 23, 2017.

Dr. Yamashita's Second Investment

[35] In the Amended Statement of Claim, Dr. Yamashita pleads (paragraph 22) that on or about March 2, 2018, Eric Klein, through KPG, induced Dr. Yamashita to purchase an additional promissory note for \$50,000 USD. This investment related to the "Mile End Project".

[36] Dr. Yamashita pleads (paragraph 23) that regarding this project, Eric Klein and KPG represented in promotional brochures that KPG would engage in the building of a condominium and retail structure and that KPG had retained as a "consultative partner" the Montreal development firm Renwick Developments, and had secured a partnership with IPSO Facto, a Montreal investment firm, and that, together with these firms, KPG had taken the necessary steps to ensure project approval from municipal authorities. Dr. Yamashita pleads that representations as to partnerships with Renwick and IPSO Facto were wholly false.

[37] In his affidavit, Dr. Yamashita deposes that he received an email from Eric Klein attaching a brochure that described the Mile End Project. He deposes that he was impressed by the fact that the Klein brothers had entered into significant partnerships with established professionals in the Montreal real estate business, Renwick and IPSO Facto. He deposes that he read about IPSO Facto in the brochure and saw this as proof that the Klein brothers had credibility because they were working with an established and competent company.

Dr. Yamashita's Third Investment

[38] In the Amended Statement of Claim, Dr. Yamashita pleads (paragraph 26) that on or about June 6, 2018, Dr. Yamashita signed a Term Sheet and delivered \$100,000 USD to Eric Klein for the purposes of subscribing to limited partnership units in KPG Capital, which Eric Klein represented would be formed for the purpose of acquiring, developing, and improving commercial real estate, generally, and more particularly, for the purpose of investing in a proposed development project known as the "Parc Frederic-Back Lofts" in Montreal.

[39] Dr. Yamashita pleads (paragraph 27) that the "KPG Capital Fund Package" brochure provided by KPG to Dr. Yamashita stated that KPG had "also acquired the duplex behind the project for renovation". He pleads that the brochure also identified five prospective acquisitions in Montreal and Toronto. Dr. Yamashita pleads that the representation as to ownership of the duplex was false and that none of the Defendants have acquired any of the properties identified for the Frederic-Back Project or, for that matter, the five prospective development properties set out in the KPG Capital Fund Project.

[40] In his affidavit, Dr. Yamashita deposes that in May 2018, he spoke with Eric Klein about a new project which he identifies as the “Frederic-Back Project”. Eric Klein told Dr. Yamashita that his investment would be in a specific unit or units in a building and that each unit would cost \$50,000. He deposes that Eric Klein told him that they had acquired a property that they were going to renovate and sell for a profit, and that Dr. Yamashita would receive his *pro rata* share of the profits when units were sold. Dr. Yamashita deposes that he understood that he would be investing on this basis. He deposes that he relied on these representations and his trust in the Klein brothers and decided to invest \$100,000 with KPG Capital LP.

Plaintiffs’ Pleadings of Liability of the Defendants

[41] In the Amended Statement of Claim (paragraph 38), the Plaintiffs plead that they have “variously been induced by Eric Klein and the Defendants to invest approximately \$375,000 USD in a series of purported real estate and development projects throughout Montreal and Quebec City”.

[42] The Plaintiffs plead (paragraph 41) that the Defendants, and Eric Klein and Evan Klein in particular, have repeatedly fraudulently misrepresented and/or concealed various material facts from the Plaintiffs, including, but not limited to, those pleaded in the sub-paragraphs that follow. This paragraph does not plead with particularity when these alleged misrepresentations were made or whether they, or any of them, were relied upon when Dr. Citti or Dr. Yamashita made their investments.

Analysis

General principles with respect to a motion for default judgment

[43] Under rule 19.02(1)(a) of the *Rules of Civil Procedure*, a defendant who has been noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim.

[44] Pursuant to Rule 19.05(1) of the *Rules of Civil Procedure*, where a defendant has been noted in default, the plaintiff may move before a judge for judgment against a defendant on the statement of claim in respect of any claim for which default judgment has not been signed. A motion under subrule (1) shall be supported by evidence given by affidavit if the claim is for unliquidated damages.

[45] Under rule 19.05(3), on a motion for judgment under subrule (1), the judge may grant judgment, dismiss the action or order that the action proceed to trial and that oral evidence be presented. Where an action proceeds to trial, a motion for judgment on the statement of claim against a defendant noted in default may be made at the trial.

[46] Under rule 19.06, a plaintiff is not entitled to judgment on a motion for judgment or at trial simply because the allegations in the claim are deemed to be admitted; the facts must entitle the plaintiff to judgment.

[47] The Plaintiffs cite the decision of D.M. Brown J., as he then was, in *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062, as authority for the test to be applied on a motion for default judgment. In

Elektra, Brown J., at para. 14, wrote that on a motion for default judgment the inquiry undertaken by the court is the following:

- (a) What deemed admissions of fact flow from the facts pleaded in the claim?
- (b) Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgment on the claim?
- (c) If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgment on the pleaded claim?

[48] The Plaintiffs submit that the facts deemed to have been admitted by the Defendants pursuant to rule 19.02(1)(a) and the facts established by the affidavit evidence entitle the Plaintiffs to judgment.

Claims for damages for civil fraud and fraudulent misrepresentation

[49] The Plaintiffs rely on the causes of action of civil fraud and fraudulent misrepresentation.

[50] Civil fraud is made out when a representation which is false is made knowingly, without belief in its truth, or recklessly and careless as to whether it is true or false. See *Citizens Bank of Canada v. Pastore*, 2005 CanLII 63799, at paras. 60-61.

[51] A fraudulent misrepresentation is a false representation, made with the knowledge that it is false, or without an honest belief in its truth, or recklessly without caring whether it is true or false, with the intent that it be relied upon. To establish fraudulent misrepresentation, a plaintiff must prove that:

- (a) The defendant made a false representation of fact.
- (b) The defendant knew the statement was false or was reckless to its truth;
- (c) The defendant made the representation with the intention that it would be acted upon by the plaintiff;
- (d) The plaintiff relied upon the statement; and
- (e) The plaintiff suffered a damage as a result. See *Samine LLC v. Digital Shovel Holdings Inc.*, 2023 ONSC 3786, at para. 41.

[52] I have considered the deemed admissions of allegations of fact in the Amended Statement of Claim. I have also reviewed the affidavit evidence, including the affidavits of Dr. Citti and Dr. Yamashita in respect of the investments made by each of them which are pleaded in the Amended Statement of Claim.

Claims against Evan Klein

[53] I first observe that the Plaintiffs seek default judgment against both Eric Kein and Evan Klein, as well as against the other Defendants. There are no allegations of fact made in the

Amended Statement of Claim that Evan Klein had direct dealings with the Plaintiffs and personally made representations of fact to them upon which they relied when they made their investments. The evidence shows that Eric Klein and Evan Klein were in business together, but there is no evidence, or deemed admissions, of direct communications by Evan Klein to the Plaintiffs, orally or by email. There are no allegations of fact in the Amended Statement of Claim about Evan Klein's day-to-day role in the business, other than, generally, as a "directing mind", or about his actual involvement in preparing promotional materials for the business.

[54] I am not satisfied that the deemed admissions, supplemented by the affidavit evidence of Dr. Citti and Dr. Yamashita, allow me to make the necessary findings of fact to ground a judgment in deceit or fraudulent misrepresentation, or other causes of action pleaded, against Evan Klein. In respect of the claims against Evan Klein, I conclude that the action should proceed to trial.

Claims by Dr. Citti against Eric Klein

[55] In respect of the first investment of \$50,000 USD made by Dr. Citti, the deemed admissions establish that Dr. Citti made this investment after having received a promotional brochure from Eric Klein which included the representation that the funds advanced would be used to acquire and develop real estate in Ontario and Quebec. Dr. Citti deposed that he relied on this representation when he made his investment. The Defendants are deemed to admit the pleaded allegation that Dr. Citti was told that the invested funds would be used for this purpose and that, contrary to this representation, the invested funds were not so used. The Defendants are deemed to admit that none of the properties identified by Eric Klein has, in fact, been acquired by any of the Defendants.

[56] Dr. Citti has established the requirements for his claim in fraudulent misrepresentation in respect of his first investment, as against Eric Klein. I am satisfied that default judgment should be granted in respect of this investment.

[57] The second investment by Dr. Citti was made on December 8, 2017, based on deemed admissions of allegations in the Amended Statement of Claim. There are no pleaded allegations of fact in respect of representations made to him in respect of his second investment. As I have noted, his affidavit does not include evidence in respect of this investment.

[58] Dr. Citti submits that it should be inferred from the facts in evidence that this investment was similarly made on the basis of false representations by Eric Klein and Evan Klein. In the absence of pleaded allegations of fact concerning Dr. Citti's reliance on false representations made in respect of his second investment, I am not satisfied that the requested inference should be drawn on the materials before me. Dr. Citti's claim for damages in respect of the second investment should proceed to trial.

[59] With respect to his third investment, the Amended Statement of Claim does not include a factual allegation that this investment was made in reliance on a representation by any of the Defendants. Dr. Citti's affidavit does not refer to this investment in the Pointe Sainte-Charles Project. Dr. Citti has not established on the record before me that he relied on a knowingly false representation by Eric Klein, or other Defendants, when he made this investment. Dr. Citti's claim in respect of the third investment should proceed to trial.

Claims by Dr. Yamashita against Eric Klein

[60] With respect to Dr. Yamashita's first investment, Dr. Yamashita has established that he was induced to make this investment by a false representation by Eric Klein, through statements made in the same brochure that was provided to Dr. Citti. Dr. Yamashita provided affidavit evidence that he relied on statements made in the brochure when he made this investment.

[61] Dr. Yamashita has shown the requirements for his claim in fraudulent misrepresentation are satisfied.

[62] With respect to Dr. Yamashita's second investment, the Defendants are deemed to admit that Eric Klein made the representations in promotional brochures that KPG had retained reputable partners for their development business, and that this representation was false. Dr. Yamashita deposed that he relied on this false representation when he made his investment.

[63] Dr. Yamashita has established the requirements for his claim in fraudulent misrepresentation in respect of this investment are satisfied.

[64] With respect to Dr. Yamashita's third investment, the Defendants are deemed to admit that Eric Klein, through the "KPG Capital Fund Package" brochure, represented to Dr. Yamashita that KPG had acquired the duplex behind the project for renovation, and that Eric Klein had identified five prospective acquisitions for development. The Defendants are deemed to admit that the representation as to ownership of the duplex was false. Dr. Yamashita deposes that he relied on the representations in the KPG Capital Fund package in making this investment.

[65] Dr. Yamashita has established the requirements for his claim in fraudulent misrepresentation in respect of his third investment.

[66] I am satisfied that default judgment should be granted in favour of Dr. Yamashita in respect of his three investments based on his claim for fraudulent misrepresentation.

[67] The Plaintiffs move for default judgment against all of the Defendants. For reasons I have given, I decline to grant default judgment against Evan Klein.

[68] The Defendants Klein Property Group Inc. is defined as "KPG" in the Amended Statement of Claim. The Defendant Klein Capital Group is described as a general partnership between the Klein brothers. The Plaintiffs plead that the Defendant named as "KPG Capital LP" does not exist, but was held out to be a limited partnership formed for the purpose of acquiring, developing, and improving commercial real estate in or near the City of Montreal.

[69] The false representations upon which the Plaintiffs rely were made by Eric Klein orally or through documents he provided to the Plaintiffs. The Amended Statement of Claim alleges that Eric Klein was the directing mind of Klein Property Group Inc., Klein Capital, and KPG Capital LP. The Defendants are deemed to admit this fact. I am satisfied that default judgment based on false representations made by Eric Klein should also be granted against Klein Property Group Inc. and Klein Capital Group.

The Plaintiffs' claim for punitive damages

[70] The Plaintiffs move for default judgment for punitive damages.

[71] On a motion for default judgment, the court has jurisdiction to award punitive damages if the combination of the deemed admissions and the evidentiary record support the award. See *John Howard Society of Peel-Halton-Dufferin v Pennock*, 2023 ONSC 2839, at para. 41.

[72] I am satisfied that the conduct of Eric Klein, based on the deemed admissions and the evidence, in making knowingly false statements to the Plaintiffs for the purpose of inducing them to advance money for purportedly legitimate real estate investments qualifies as egregious and malicious conduct that is deserving of censure through an award of punitive damages.

[73] The Plaintiffs claim an award of punitive damages in the amount of \$187,500 USD which is roughly 50% of the amounts claimed. In support of this submission, the Plaintiffs cite *Gennett Lumber Co. v. John Doe a.k.a. Milton Harvey et al.*, 2019 ONSC 1345 where Sossin J., as he then was, noted the need for awards of punitive damages in relation to fraud to properly reflect the goals of retribution, deterrence, and denunciation, and held that an award of punitive damages of 50% of the actual losses suffered by the plaintiff would be rational and proportionate and would sufficiently reflect these goals in the context of the facts of that case.

[74] Eric Klein knowingly made a number of false statements to the Plaintiffs by which they were misled and induced to advance large amounts of money, which was lost. I am satisfied that an award of punitive damages is justified on the basis of the deemed admissions and the evidence. I award punitive damages in favour of Dr. Citti against Eric Klein in the amount of \$12,000 USD and in favour of Dr. Yamashita against Eric Klein in the amount of \$55,000 which represent approximately 25% of the total amount for which default judgment is granted against each Plaintiff. These awards are, in my view, justified based on the conduct shown by the deemed admissions and the evidence.

Costs of this motion

[75] The Plaintiffs seek costs of this motion, and the action as a whole, on a substantial indemnity scale.

[76] The Plaintiffs provided a Costs Outline with a claim for fees on a substantial indemnity scale in the amount of \$276,952.05 calculated based on hours spent at 90% of actual rates. The fees claimed are for (i) Preliminary Matters and *Mareva* Motions (\$206,881.65), (ii) Amended Pleadings/Further Investigations (\$48,722.85), (iii) Default Judgment Motion (\$21,347.55).

[77] As a result of my disposition of this motion for default judgment, the action has not ended and there are claims which remain to be adjudicated.

[78] I request that the Plaintiffs provide additional written submissions as to the amount to be awarded for fees based on work related to this motion, and not the action as a whole, having regard to the result. It is not necessary for the Plaintiffs to repeat submissions concerning the scale of costs. These submissions should be made within 30 days.

Disposition

[79] For these reasons, I order that:

- (a) Default judgment is granted in favour of Dr. Citti against Eric Klein, Klein Property Group Inc. and Klein Capital Group and they are ordered to pay damages to Dr. Citti, jointly and severally, in an amount in Canadian currency sufficient to purchase \$50,000 USD calculated on the day before that amount is received by the Plaintiffs, in accordance with section 121(1) of the *Courts of Justice Act*.
- (b) Dr. Citti's motion for default judgment in respect of Dr. Citti's second and third investments shall proceed to an undefended trial at which additional evidence may be received.
- (c) Default judgment is granted in favour of Dr. Yamashita against Eric Klein, Klein Property Group Inc. and Klein Capital Group is granted and they are ordered to pay damages to Dr. Yamashita, jointly and severally, in an amount in Canadian currency sufficient to purchase \$225,000 USD calculated on the day before that amount is received by the Plaintiffs, in accordance with section 121(1) of the *Courts of Justice Act*.
- (d) The Plaintiffs' motion for default judgment against Evan Klein shall proceed to an undefended trial at which additional evidence may be received.
- (e) Eric Klein is ordered to pay punitive damages to Dr. Citti in an amount in Canadian currency sufficient to purchase \$12,000 USD calculated on the day before that amount is received by the Plaintiffs, in accordance with section 121(1) of the *Courts of Justice Act*.
- (f) Eric Klein is ordered to pay punitive damages to Dr. Yamashita in an amount in Canadian currency sufficient to purchase \$55,000 USD calculated on the day before that amount is received by the Plaintiffs, in accordance with section 121(1) of the *Courts of Justice Act*.
- (g) The Plaintiffs are asked to provide additional written submissions in support of their claim for costs of this motion, within 30 days.

[80] A case conference should be arranged with me to address further steps in this action.

Cavanagh J.

Date: March 5, 2026