CITATION: 1895366 Ontario Inc. et al v. Fawaz, 2026 ONSC 1476
DIVISIONAL COURT FILE NO.: DC-24-00000707-0000
DATE: 20260316

ONTARIO

SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:	)	
	)	
1895366 ONTARIO INC., HRO FUTURE COMPANY LIMITED, and HIYAM SAMARA	)	*Evan Farrugia*, for the Appellant
Appellants	)	
– **and** –	)	
LEILA FAWAZ	)	*Evelyn Perez Youssoufian*, for the Respondent
Respondent	)	
	)	**HEARD at Toronto:** June 9, 2025

SHORE J.

REASONS FOR JUDGMENT

[1] This is an appeal of the decision of Deputy Judge Howe ("trial judge"), of the Small Claims Court, dated October 18, 2024, ordering the appellant to pay the respondent $25,000, and dismissing the appellant's claim for damages.

[2] For the reasons below, the appellants' motion for fresh evidence and the appeal are dismissed, with costs payable by the appellants to the respondent for both the motion and the appeal.

Background:

[3] The respondent, Leila Fawaz, entered into an agreement with the appellant, 1895366 Ontario Limited ("numbered company"), on June 20, 2016, to purchase its business, operating under the name "Mrs. Falafel". Mrs. Falafel operated out of 191 Baldwin Street, in downtown

Toronto. The property is owned by HRO Future Company Limited ("HRO") (also an appellant herein). Hiyam Samara, the final appellant herein, signed the agreement on behalf of the numbered company.

[4] Mrs. Falafel was purchased for $275,000, with a deposit of $55,000, and the remainder to be paid on closing. The terms of the agreement provided that the closing was to take place on June 20, 2017.

[5] The parties mutually rescinded the agreement, and by a full and final release, dated July 19, 2016, the $55,000 deposit was to be returned to the respondent. In return, the respondent released Ms. Samara and HRO, from any liability related to the purchase agreement.

[6] The respondent received four post-dated cheques, from the account of Mrs. Falafel for the return of the deposit. However, the last two cheques for the return of the deposit, in the total sum of $25,000, were returned for insufficient funds.

[7] The two women continued to discuss possible business ventures together, although they did not enter into any further agreements. Ms. Samara ended up using the space on Baldwin Street to open a cannabis dispensary.

[8] The respondent subsequently commenced a claim for $25,000 for the return of the deposit still owing to her, along with pre-judgement interest. The claim was brought against 1895366 Ontario Limited, Ms. Samara, and HRO, the appellants herein.

[9] Five months after Mrs. Falafel was dissolved, a Defendants' Claim was issued jointly by Mrs. Falafel and Ms. Samara. In their claim and defense, Mrs. Falafel and Ms. Samara justified withholding the balance of the deposit, as set off for damages, costs of renovations to the building, and rent from the respondent.

[10] Thirty days prior to trial, Ms. Samara produced a residential lease, dated June 1, 2016, signed by her, on behalf of HRO, and allegedly signed by the respondent. No one witnessed the signatures on the lease. The respondent denied signing the lease. The lease provided that the unit was to be occupied as of June 1, 2016, but the unit was clearly not ready for occupancy because it was still being renovated.

[11] The trial judge dismissed the appellant's claims. The trial judge did not accept that rent was owing. The judge found it highly unlikely that the respondent would move into a small unit in Kensington Market with her husband, when she had a home and three children in Oakville. The trial judge also found, on a balance of probabilities, that the applicant did not cause damage to the building.

[12] The trial judge accepted that the respondent was still owed $25,000, being the balance of the deposit.

[13] The final question to be determined by the trial judge was who was liable to make the payment to the respondent. The initial agreement to purchase Mrs. Falafel was entered into

between the appellant and the numbered company. The numbered company was dissolved in May 2018. The release was given to Ms. Samara and HRO. The cheques were from the account of Mrs. Falafel. The rent was allegedly owing to the numbered company for the sub-lease, but the rental agreement produced was signed by HRO.

[14] The judge found that this was an appropriate case to pierce the corporate veil – the companies were so interconnected that the court could treat them as one entity. The Court found that the numbered company and HRO were acting as one entity and acting without regard to them being separate legal entities in these circumstances. However, the case against Ms. Samara personally was dismissed. She signed the various agreements as a signing officer of the corporation and not personally. The numbered company and HRO were ordered to pay the respondent $25,000 plus interest.

[15] The appellants submit that:

a. The trial judge relied on the wrong legal test to pierce the corporate veil.
b. The trial judge erred in piercing the corporate veil and treating HRO and the numbered company as a single entity. The respondent did not make an allegation of a joint enterprise, and this was a theory only advanced by the judge when rendering the decision.
c. The trial judge erred in not enforcing the residential lease and finding that no rent was owing to HRO.

Motion for Fresh Evidence:

[16] The appellants brought a motion to introduce fresh evidence during the appeal, and specifically, that they be permitted to introduce evidence to show that the numbered company and HRO were separate entities. The appellants submit that they could not have known at the outset of the trial that this issue would be addressed by the judge. For the following reasons the motion is dismissed.

[17] In *Barendregt v. Grebliunas*, 2022 SCC 22, [2022]1 S.C.R. 517, the SCC reconfirmed the test set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, and held that fresh or new evidence should not be allowed to be adduced where an appellant seeks to overturn an unfavourable trial outcome by adducing evidence on appeal that could have been available at first instance, had they acted with due diligence. If an appellate court allows such evidence to be adduced, it is effectively allowing the appellant to remedy the deficiencies in his trial on appeal, with the benefit, and guidance, of the trial reasons giving rise to considerable unfairness.

[18] The test as set out in *Palmer,* at p. 775 is as follows:

a. the evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases)

b. the evidence is relevant in the sense that it bears upon a decisive or potentially decisive issue;
c. the evidence is credible in the sense that it is reasonably capable of belief; and
d. the evidence is such that, if believed, it could reasonably be expected to have affected the result at trial.

[19] I have considered the test set out in *Palmer* and *Barendregt*. All of the evidence the appellants seek to introduce was available at first instance. An appeal is not an opportunity to correct deficiencies in the evidence presented at trial. The parties disagree on whether the documents are credible, but in light of my other findings herein, I do not need to address the credibility of each document. Even if I were to accept that the documents were credible, it would not change my decision on this motion.

[20] Some of the documents were available to the trial judge, and I am not convinced that the other documents would have affected the outcome of the trial. There is no dispute that the appellant companies were set up as separate legal entities. Whether the companies had their own articles of incorporation, their own HST accounts, filed taxes or ran a legitimate business, it would not change the outcome. The trial judge was very much alive to the submissions that HRO and the numbered company were two different entities. This does not change the finding of fact that they operated without regard to being separate legal entities from time to time and in their dealings with the respondent.

[21] As a result, the motion for fresh evidence is dismissed.

Standard of Review:

[22] The approach to appellate standards of review was articulated by the SCC in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 262. Errors of law are reviewed on a standard of correctness, and errors of fact and errors of mixed fact and law are reviewed on a standard of palpable and overriding error, except where there is an extricable error in law, which is subject to the standard of correctness: *Housen*, paras. 8, 10, 36.

Analysis:

No error in law:

[23] The appellants submit that the trial judge erred in law by relying on the test in *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Sup. Ct.), aff'd [1997] O.J. No. 3754 (C.A.), and by not specifically making a finding of fraud or misconduct.

[24] In *Veeragathy v. Ambalavanar*, 2025 ONCA 72, at para. 25, the Court of Appeal considered the test for piercing the corporate veil:

> The trial judge also erroneously limited her consideration about piercing the corporate veil to fraud. Unjust enrichment, breach of trust, misuse or misappropriation of funds can serve as a basis for piercing the corporate

> veil: *FNF Enterprises Inc. v. Wag and Train Inc.*, 2023 ONCA 92, 165 O.R. (3d) 401, at para. 27; *Mitchell v. Lewis*, 2016 ONCA 903, 134 O.R. (3d) 524, at paras. 14, 17, 18.

[25] The trial judge properly set out the test for piercing the corporate veil as follows:

> Courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used for fraudulent or improper purposes or improper conduct. There is a very recent case called *Alessandro v. Briggs*, [2024 Ontario Superior Court,] dealing with the issue of piercing the corporate veil, and I cite from paragraph 85:
>
> > Typically, the corporate veil will be pierced where a company is incorporated for an illegal, fraudulent, or improper purpose. However, the corporate veil may also be pierced if those "in control of" a corporation "expressly direct a wrongful thing to be done".

[26] I find no error in the law identified by the trial judge.

No palpable or overriding errors of fact:

Piercing the corporate veil:

[27] The appellants submit that the trial judge erred in finding that the numbered company and HRO acted interchangeably and wrongfully withheld the deposit. According to the appellants, the business contract was entered into between the respondent and Mrs. Falafel. Mrs. Falafel and HRO operated at arm's length. Mrs. Falafel was a restaurant/catering company, that operated out of the property, and HRO was the landlord.

[28] The appellants also submit that the respondent did not raise the argument of piercing the corporate veil, and the theory was only raised by the trial judge in the decision, leaving the appellants no opportunity to respond.

[29] The Court of Appeal in *Waxman v. Waxman,* 186 O.A.C. 201 (C.A), at paras. 296-297, defined "palpable" and "overriding" as:

> The "palpable and overriding" standard addresses both the nature of the factual error and its impact on the result. A "palpable" error is one that is obvious, plain to see or clear: *Housen* at 246. Examples of "palpable" factual errors include findings made in the complete absence of evidence, findings made in conflict with accepted evidence, findings based on a misapprehension of evidence and findings of fact drawn from primary facts that are the result of speculation rather than inference.

> An "overriding" error is an error that is sufficiently significant to vitiate the challenged finding of fact. Where the challenged finding of fact is based on a constellation of findings, the conclusion that one or more of those findings is founded on a "palpable" error does not automatically mean that the error is also "overriding". The appellant must demonstrate that the error goes to the root of the challenged finding of fact such that the fact cannot safely stand in the face of that error[.]

[30] I find that there is no palpable and overriding error in the trial judge's findings with respect to piercing the corporate veil, based on the entirety of the evidence at trial.

[31] There was ample evidence before the trial judge on which they could make a finding of treating the entities as one and piercing the corporate veil. Ms. Samara was the director, officer and signing body for both entities. Part of the defence was that Mrs. Falafel was dissolved and therefore could not pay the outstanding deposit. Several months after Mrs. Falafel was dissolved, this joint claim was issued by Mrs. Falafel and Ms. Samara in her personal capacity. HRO was not included in the joint claim, although it was included as a respondent in the initial proceedings. In the claim, Mrs. Falafel and Ms. Samara jointly sought damages and unpaid rent for property owned by HRO. They used the unpaid rent and damages to the property owned by HRO as justification for keeping the balance of the deposit owed by Mrs. Falafel. Although the initial agreement was between Mrs. Falafel and the respondent, the release was for HRO. The cheques for the return of the deposit were signed and amended by Ms. Samara.

[32] Further, it was open to the trial judge to prefer evidence of some witnesses over others. It was open to the trial judge to find that the release was given to HRO, notwithstanding Ms. Samara's evidence that this was a mistake.

[33] An appellate court cannot overturn a trial judge's decision if there was some evidence upon which the trial judge could have relied upon to reach that conclusion. The appellants may not agree with the facts, but that does not mean the judge made a palpable or overriding error. As set out above, I find there was evidence before the trial judge on which to find that the entities being used to deny the return of the deposit owing to the respondent were controlled by Ms. Samara.

[34] As to the submissions that the judge did not address all of the evidence, a judge is not required to refer to every piece of evidence before them.

[35] I find the trial judge's decision is well reasoned and supported by the evidence, as highlighted in the decision.

[36] The appellants submit that they did not have notice that the Court was considering piercing the corporate veil. The issue of piercing the corporate veil was a live issue throughout. On the first day of trial, counsel for the appellants made submissions as follows:

> At no time did HRO or Ms. Samara personally engage in any tortious or fraudulent behaviour, and we will present that Ms. Samara cannot be held personally liable and there's no evidence of wrongdoing on her part. **In this case there's absolutely no grounds to pierce the corporate veil whatsoever**. (See transcript – page 92, line 5) (emphasis added)

[37] I therefore find no basis to grant the appeal on this basis.

The residential lease:

[38] The appellant submits that the judge failed to provide adequate reasons why the residential lease was not enforced, and erred in finding that no rent was owing. The respondent's evidence was that she did not sign the lease and had never seen it before. The appellant submits the onus was on the respondent to prove it was forged and the judge acknowledged that there was no handwriting analysis produced at trial.

[39] The appellant submits that the judge erred in not enforcing the lease and then relying on the lease as evidence that Ms. Samara acted on behalf of HRO in signing the lease.

[40] I find no palpable or overriding error in the findings of fact. It was open to the trial judge, on the evidence to find that there was no residential lease. The judge preferred the evidence of the respondent to that of the appellant.

[41] Further, there is nothing inconsistent about not finding the lease valid but still finding that the lease was signed by Ms. Samara acting on behalf of HRO. The lease itself could be invalid for a number of reasons, but that does not negate it having been signed on behalf of HRO.

[42] This ground of the appeal is dismissed.

[43] Having found no errors of law and not palpable or overriding errors of fact, the appeal is dismissed.

Costs:

[44] In court, the appellants submitted that costs of $6,500 to the successful party is reasonable, being $1500 for the motion and $5,000 for the appeal.

[45] As the successful party, the respondent is seeking costs of $3,800 (on a partial indemnity basis) for the motion and $15,000 (on a partial indemnity basis) in costs for the appeal.

[46] The respondent was successful on both the motion and the appeal. She is entitled to her costs. The respondent was required to respond to the motion, and review all of the documents that the appellant sought to introduce and I find costs of $3,000 on the motion are reasonable.

[47] With respect to the appeal, I have considered the total costs incurred, the time spent, the lawyer's year of call, the issues on the appeal, the position of the parties, and the success on the appeal. I find $15,000 to be reasonable in the circumstances.

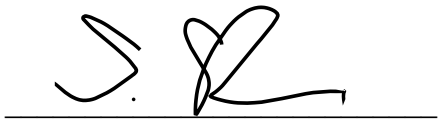
Order:

[48] The appeal is dismissed.

[49] The appellants shall pay the respondent costs of the motion in the sum of $3,000 inclusive.

[50] The appellants shall pay the respondent costs of the appeal in the sum of $15,000 inclusive.

[51] The appellants are jointly and severally liable for the costs.



Shore J.

Released: March 16, 2026

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