

CITATION: *Younes O S Zuregat v. 12048728 Canada Inc. and Massiullah Kohgadai*, 2026 ONSC 1513
COURT FILE NO.: CV-21-00673456-0000
DATE: 20260323

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
YOUNES O S ZUREGAT) *Thaya PK Kandiah and P. Wong, for the*
) Plaintiff
Plaintiff)
)
- and -)
)
12048728 CANADA INC. AND) *Masood Fariad, for the Defendants*
MASSIULLAH KOHGADAI) Defendants
)
)
)
)
)
) **HEARD:** February 23-25, 2026

CALLAGHAN J.

REASONS FOR JUDGMENT

[1] This dispute arises from the parties’ oral agreement to enter into a business venture to sell used cars.

[2] The parties were to be 50/50 owners with equal responsibility for the capital required to purchase property for a used car lot and any costs incurred in operating the business. Similarly, the parties were to share any profits on the same scale.

[3] The defendant, Massiullah Kohgadai (“Kohgadai”), purchased property on Kennedy Road (the “Kennedy property”) for the proposed new venture. He paid the deposits and the downpayment. He arranged the mortgage and took title to the property in the name of the defendant company, 12048728 Canada Inc., of which he was the sole shareholder, officer and director. 12048728 Canada Inc. was the company that was to operate the business which was to operate as Car Nation Canada.

[4] Because of unwanted police involvement, Kohgadai sold the Kennedy property for a sizeable profit. He asserts that the plaintiff, Younes Zuregat (“Zuregat”) never contributed to either the purchase of the Kennedy property or to the business. Kohgadai takes the position that by not

contributing as agreed upon, Zuregat repudiated the oral agreement and is not entitled to any of the profit from the sale of the property.

[5] Zuregat states that he did contribute to the purchase of the property. He asserts his contributions were in cash and indirect payments by his friend, Musad Sharaf. Zuregat points to a trust declaration that Kohgadai signed months after entering the agreement to purchase the Kennedy property which states that 12048728 Canada Inc. holds 50% of the beneficial interest in the property in trust for Zuregat.

[6] Kohgadai denies receiving cash and says any payments by Sharaf do not relate to the Kennedy property. He states that the declaration was signed in anticipation of payments being made by Zuregat which were never forthcoming.

[7] The parties state that in their culture, business deals are done with honour and on a handshake. As will become apparent, the lack of documentation makes this case much more difficult than it ought to be. This Court is called upon to make findings of fact where the evidence is often diametrically opposed.

[8] For the reasons that follow I find for Zuregat.

Background

[9] Zuregat arrived in Canada in 2008. He studied agricultural science in Jordan. There was no work in that field when he arrived in Canada. He eventually opened and operated a jewelry and pawn shop operating as Gold and Cash Jewelry Inc.

[10] Kohgadai operated a used car dealership in North York. His dealership was well established. It operated as Import Motors Canada and dealt in high end vehicles. Zuregat and Kohgadai were introduced by their mutual friend, Sharaf, and eventually became friends.

[11] In mid-to-late 2019, they began discussing the possibility of going into business together and agreed to open a used car dealership in Scarborough. Scarborough was chosen as it is a high traffic area. It was agreed that each party would contribute 50% of the cost of establishing and operating the dealership and would receive 50% of the profit. They never memorialized this agreement in writing.

[12] They eventually located a property to situate the dealership, which was 1153 Kennedy Road, Scarborough (the “Kennedy property”). The Kennedy property was a former furniture store. The purchase price was \$2,300,000. The Agreement of Purchase and Sale (“APS”) was accepted by the seller on February 13, 2020. The purchaser was identified on the APS as “Massi Kohgadai for a company to be incorporated”. The APS required a \$50,000 deposit upon acceptance of the offer by the seller. A second deposit of \$50,000 was due once the conditions in the APS had been waived by the purchaser. The purchaser had 30 days to waive conditions.

[13] In this litigation, only one deposit cheque dated March 26, 2020 for \$50,000 and drawn on the account of 7718745 Canada Inc. which is Kohgadai’s company was produced. There was some issue as to whether this March 26, 2020 cheque was the first or second deposit. The reporting

letter on the transaction refers to \$100,000 in deposits which I accept as being accurate. I also accept that the March 26, 2020 cheque is the second deposit as the first deposit was due on acceptance by the seller which occurred February 13, 2020. The second deposit was to be after the waiver of conditions. There was no evidence when the waiver of conditions occurred, but the March 26, 2020 cheque is much closer in time to the waivers date. As such, I accept the March 26, 2020 cheque was, in fact, the second deposit.

[14] The purchase required a mortgage. The mortgage was advanced on June 2, 2020, to companies owned and controlled by Kohgadai, including 7718745 Canada Inc. Kohgadai had advised Zuregat that given his prior dealings with the bank, it would be easier if he alone obtained the mortgage through his companies. The mortgage was in the amount of \$1,675,000. As such, both the Kennedy property and the mortgage were under the control of companies' controlled by Kohgadai. Nonetheless, there is no dispute the agreement remained that each party was to contribute 50% to the new venture including the Kennedy property.

[15] This is where the parties' stories diverge. Kohgadai says that he paid the remaining \$625,000 for the downpayment and that he received nothing from Zuregat. Zuregat says that he paid his portion of the downpayment, partially in cash and in part through amounts paid by his friend, Sharaf.

[16] Zuregat testified that he made two payments in cash. The first payment was made in late March 2020 in the amount of \$100,000. He said it was in furtherance of his 50% contribution to the downpayment. Zuregat testified he took the money from his safe at his shop in the presence of Sharaf and counted the money. The money was in the form of \$50 and \$100 bills. They then drove together to Kohgadai's office where Kohgadai received and counted the money using an electronic counting machine. At that time, there was no receipt or other written acknowledgement from Kohgadai that he received the \$100,000.

[17] Sharaf testified and corroborated Zuregat's testimony that he paid \$100,000 in cash to Kohgadai.

[18] Kohgadai flatly denies receiving the \$100,000 as alleged.

[19] According to Zuregat, the next payment was in May 2020. This payment was in the amount of \$80,000, paid by way of two cheques of \$40,000 dated May 1 and May 4, 2020. The cheques were made out to Kohgadai's company, 7718745 Canada Inc. The amounts were drawn on two corporate accounts of companies controlled by Sharaf.

[20] Both Zuregat and Sharaf testified that Zuregat had assisted Sharaf in purchasing a condominium and that Sharaf owed Zuregat \$80,000. Zuregat asked that Sharaf repay him by paying Kohgadai the money as a contribution to the purchase of the Kennedy property. Sharaf testified the reason the amounts were paid on different dates using different accounts was simply an issue of cashflow.

[21] There is a note on each cheque with the words "Range Rover". Sharaf says that Kohgadai asked him to place the notes on the cheques. Sharaf did not ask Kohgadai why he wanted him to include the note.

[22] Kohgadai testified that the cheques were on account of Sharaf buying a Range Rover from his dealership. However, when asked, he could not provide a bill of sale or other proof of purchase or transfer of title of a Range Rover to Sharaf.

[23] On May 8, 2020, 12048728 Canada Inc. was incorporated. The only director and shareholder is Kohgadai. The head office is the municipal address of the Kennedy property. 12048728 Canada Inc. was to be the operating company of the new venture.

[1] A second cash payment, said to be in the amount of \$130,000, was made in June 2020. On this occasion, Zuregat's brother, Suhaib, was present. His brother had just recently immigrated to Canada and was being assisted by Zuregat while he acclimated to Canada. Essentially, the same process happened on this second occasion. Zuregat took the money from the safe at his shop in the presence of his brother and then it was counted. He and his brother then drove to Kohgadai's office where the money was counted and accepted by Kohgadai. Again, there was no written confirmation of Kohgadai's receipt of these funds. Zuregat's brother testified and supported Zuregat's evidence as to the payment of the second cash tranche of \$130,000. Kohgadai again flatly denies receiving the \$130,000 as alleged.

[24] The property closed on June 15, 2020. Title was taken in name of 12048728 Canada Inc.

[25] Zuregat soon became concerned that neither the operating company nor the property reflected his agreed upon 50% interest. He now wanted something in writing. Accordingly, in early July 2020, he arranged a meeting with himself, Kohgadai and a lawyer. According to both Zuregat and Sharaf, Sharaf also attended the meeting with the lawyer.

[26] At the meeting, it was recommended by the lawyer that Kohgadai sign a trust declaration regarding the ownership of the Kennedy property. Zuregat and Sharaf stated that it was arranged that Kohgadai would execute the trust declaration at a later date. Zuregat states the purpose of the document was to reflect his 50% interest and contributions for the Kennedy property and the business.

[27] Kohgadai says there was a meeting with the lawyer but states that Sharaf did not attend. He states that the lawyer was Zuregat's lawyer and that he was asked to sign the declaration which he did. He understood that the declaration was only to be effective upon Zuregat paying his 50% share for the Kennedy property. He expected a wire transfer after he signed the document. He says that Zuregat has not yet paid his share.

[28] The lawyer did not testify, although she was apparently on the witness list.

[29] The trust declaration was dated July 2, 2020, signed by Kohgadai and commissioned by the lawyer. The declaration referenced the Kennedy property by street name and registration particulars. It then provided (and in this form):

1. I am the Director, President and Sole Shareholder of the company 12048728 Canada Inc and as such I have knowledge of the information disposed herein;
2. Title to the above noted lands and premises is held in the following manner:

12048728 Canada Inc.
as registered owner

3. 12048728 Canada Inc holds fifty percent of the estate interest in the subject lands IN TRUST FOR, Younes Zuregat . and has no beneficial interest therein;
4. That fifty percent of all monies and other consideration utilized in the acquisition of the land registered in the company set out in paragraph 1 were beneficially owned by Younes Zuregat and the source of the funds were totally from him;
5. Younes Zuregat is the beneficial owner of the fifty percent of the lands and always has been since the date of acquisition;
6. 12048728 Canada Inc has been and will be bare trustee of fifty percent of the property; and
7. Fifty percent of all obligations, including any mortgage obligations, responsibilities, omissions pertaining to the land during the period of time it was or will be vested in me were or will be performed or omitted to be performed by Younes Zuregat.

[30] There was work done on the Kennedy property to prepare it for operating as a used car dealership. The renovations dealt with converting the existing furniture store into a sales office. The evidence regarding the extent of work required at the Kennedy property differed. Zuregat testified a significant amount of work was undertaken whereas Kohgadai indicated very little was done.

[31] Things began to unravel in February 2021 when police charged Zuregat, Kohgadai and Sharaf with various charges relating to the misappropriation of vehicles. While the charges were filed as an exhibit, the court was provided with very little detail as to the nature of the charges. There was reference to a “raid” on the Kennedy property by police but again, there was no appreciable detail provided by either party.

[32] This Court was advised that all charges were dropped. It was also advised that the underlying actions were those of Zuregat who was at the Kennedy property.

[33] There is very little the court can take from these charges given the dearth of information and the fact they were dropped. However, the charges caused Kohgadai’s bank to shutter his accounts. This prompted Kohgadai to sell the Kennedy property and to end the business venture with Zuregat.

[34] This case arises because the Kennedy property appreciated in value. The Kennedy property was sold on June 18, 2021, for \$3,220,000 yielding a sizable profit.

Issue

[35] The issue in this proceeding is whether Zuregat is entitled to 50% of the profit from the sale of the Kennedy property. Kohgadai states that Zuregat did not contribute his 50% towards the purchase of the Kennedy property and therefore was in breach of the oral agreement. It is argued that the breach was so substantial or fundamental as to amount to repudiation by Zuregat and that the oral contract came to an end. As a result, Kohgadai asserts Zuregat is entitled to nothing. There is also a claim by Zuregat that he is entitled to be reimbursed for expenses he incurred in renovating the Kennedy property.

Discussion

[36] There is no dispute that there was an oral agreement. The issue is whether Zuregat breached that agreement by failing to pay his 50% share of the downpayment. Kohgadai argues that the actions amount to a fundamental breach. I was directed to cases addressing the doctrine of fundamental breach: *968703 Ontario Ltd. v. Vernon* (2002), 58 O.R. (3d) 215 (OCA) at paras. 14-17; *Spirent Communications of Ottawa Ltd. v. Quake Technologies (Canada) Inc.* (2008), 88 O.R. (3d) 721 (OCA) at para. 27.

[37] However, the doctrine of fundamental breach was “laid to rest” by the Supreme Court of Canada after the above mentioned cases were decided: *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20, at para 70; *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, [2010] 1 S.C.R. 69.

[38] In this case, I accept that Kohgadai is not using the phrase fundamental breach as it was once used before it was “laid to rest”. Rather, he is claiming that the breach was so fundamental that it amounted to a repudiation of the agreement. In short, he argues that Zuregat simply repudiated the oral agreement by not making the required contributions to the purchase of the Kennedy property: see comments in fn 1 in *Convocation Flowers Incorporated v. Anisa Holdings Ltd.*, 2026 ONCA 145.

[39] The gravamen of Kohgadai’s argument is that he never received Zuregat’s contribution to the downpayment for the Kennedy property. To the extent that I accept that funds were advanced, there is no breach of the oral agreement by Zuregat, fundamental or otherwise. This is a factual determination in which both sides present different narratives. In this case, it comes down to a matter of fact.

[40] Assessing and weighing evidence is not a science. The court may consider several factors in assessing a witness’s evidence, including: (i) whether there is independent confirming or contradicting evidence, (ii) the existence of a motive to fabricate, and (iii) the demeanour of a witness, including non-verbal cues such as body language, tone of voice, and manner of speaking, although some express caution in relying on demeanour to assess credibility. Most often, a court looks to align the evidence with the documents and the surrounding circumstances to determine which narration of events is to be accepted. That is the task in this case.

[41] In considering the testimony, the court may believe, all, none, or some of a witness’s evidence: *R. v. Kruk*, 2024 SCC 7 at para. 145. Accordingly, in assessing a witness’s evidence, it is not all or nothing. The court can accept or reject parts of a witness’s testimony or can accord

little or no weight to evidence the court has accepted: *R. v. Howe* (2005), 2005 CanLII 253 (ON CA), 192 C.C.C. (3d) 480 (Ont. C.A.), at para. 44. It is recognized that in weighing the evidence the findings as to whose evidence is credible does “not always lend itself to precise and complete verbalization”: *R. v. R.E.M.*, 2008 SCC 51, [2008] 3S.C.R.3 at para. 405.

[42] Both parties have a financial motive to fabricate so that criteria does not differentiate them. In addition, there was nothing about their demeanour or how they testified which would assist my assessment. However, I am assisted by the circumstances, the corroborative evidence and the declaration in arriving at my decision.

[43] For the following reasons, I accept that Zuregat made the contributions as he claims and that there is therefore no breach.

[44] Zuregat states that money was paid in both cash and a cheque. His evidence is supported by Sharaf and his brother. I accept that paying large amounts in cash without a receipt gives rise to questions regarding the veracity of the claim. Nonetheless, I accept that those payments were made.

[45] Here, the amount Zuregat says he paid in cash was \$230,000 in two installments without any written receipt. In an ordinary business relationship, one would expect such funds to be accompanied by some written acknowledgement upon payment. However, all parties accepted a rather casual approach to business. The business venture was never reduced to writing, although there is no dispute that there was an oral agreement to operate a used car dealership at the Kennedy property. This included the purchase of the Kennedy property, a multi-million-dollar investment. Certainly, prudent business practices would dictate such an agreement would be spelled out in a written document. Indeed, in this case, there were no emails or other contemporaneous writings either setting out the agreement or even recording the events as they unfolded. For example, work was clearly done at the Kennedy property to prepare it for use as a showroom, but no documents or work schedules were produced by either side. In short, these parties were not in the habit of reducing their dealings to writing, so the absence of a receipt for the cash is consistent with their way of doing business.

[46] I also accept that the pawn shop business gives rise to cash on hand. As such, I accept that Zuregat would have access to \$230,000 in cash.

[47] Zuregat’s evidence is corroborated. Both Sharaf and his brother witnessed the exchange of cash. Neither Sharaf nor his brother were shaken in their testimony on the substantive issue of payment of the money to Kohgadai.

[48] In terms of the \$80,000 by cheque from Sharaf’s companies, Sharaf corroborates that the money was paid to Kohgadai on account of Zuregat’s contribution. The money was owed to Zuregat as a result of a condominium transaction. Moreover, the payment was to Kohgadai’s company which is consistent with repaying the company that paid the deposits, and 12048728 Canada Inc. had yet to be incorporated.

[49] In terms of the reference to “Range Rover” on the cheques, I accept that Sharaf was told to make that notation. Had it been for the purchase of a Range Rover, I would expect Kohgadai to

produce a bill of sale or transfer of ownership, and none was produced. While the parties may have had a casual approach to their dealings, Kohgadai was running an existing business which would require proof of purchase for the auditor, along with the need to properly transfer the ownership of any vehicle sold.

[50] Finally, the declaration makes it clear that 50% of the Kennedy property was being held in a bare trust for Zuregat. The declaration is not an agreement between Kohgadai and Zuregat, but rather a declaration by 12048728 Canada Inc. As the sole director and officer of 12048728 Canada Inc. Kohgadai signed the declaration.

[51] Counsel for Kohgadai directed me to case law addressing the legal concept of a “purchase money resulting trust” as set out in *Nishi v. Rascal Trucking Ltd.* 2013 SCC 33. However, this is not a case of a purchase money resulting trust. The declaration speaks of an express bare trust.

[52] The declaration specifically states that 12048728 Canada Inc. holds 50% of the beneficial interest of the Kennedy property in trust for Zuregat. There is no qualification that funds are yet to be paid by Zuregat. Rather, the declaration speaks of funds having already been paid and confirmation that the money paid was Zuregat’s money. Paragraph 4 of the declaration expresses that all monies owing to date have been paid in respect of the acquisition and that the “money used was beneficially owned by Younes Zuregat and the source of the funds were totally from him”. Accordingly, I accept that the declaration provides corroborative evidence that Zuregat made contributions that entitled him to a 50% beneficial ownership of the Kennedy property.

[53] Kohgadai states that he signed the declaration in anticipation that Zuregat would wire his share of the downpayment in the future. However, there is no support for that contention. Rather, the declaration speaks of an existing trust relationship, not a contingent relationship or that funds were yet to be paid. There was no suggestion that the lawyer failed to follow instructions or was negligent in drafting the declaration.

[54] In my view, the plain wording of the declaration does not support Kohgadai’s claim that Zuregat had yet to pay his share. In signing the declaration, it is my view that Kohgadai not only acknowledged Zuregat’s interest in both the venture and the Kennedy property, but that Zuregat provided funds for the purchase of the property.

[55] Having accepted the evidence of Zuregat, Sharaf and Zuregat’s brother regarding the payment of the funds and having regard to the declaration, I accept that Zuregat paid \$230,000 in cash and \$80,000 via Sharaf’s cheques as his contribution toward the Kennedy property and that he was entitled to a 50% beneficial in the property which would include 50% of any realized profit on the sale of the Kennedy property.

[56] Accordingly, I reject that there was any breach or repudiation of the oral agreement by Zuregat. Zuregat is entitled to 50% of the net recovery after expenses from the sale of the Kennedy property.

[57] Zuregat also had a claim for expenses for work performed at the Kennedy property. He provided a list of expenses for work he did to ready the property as a dealership. At trial, he adjusted his claim from the statement of claim and now claims \$61,396. I accept there was some

work done at the Kennedy property. However, the explanation for much of this work was vague and documentation supporting that the claimed expenses had been paid was lacking. For example, approximately \$15,000 was invoiced for a forklift and ramp. There was no evidence that a forklift was needed and what was produced was an invoice with no proof of payment. There was also an invoice for \$29,700 for work removing carpet, painting and ramp restoration. While I heard some evidence of this type of work being performed, there is again no proof of payment. The same applies for the "Think Signs" invoice of \$16,102. It is not clear why no proof of payments has been provided as Zuregat testified that he paid these amounts by cheque, copies of which could easily be obtained from the bank. In the absence of proof of payment, I am not prepared to award any amounts for these invoices and therefore dismiss the claim for these claimed amounts.

[58] The parties provided various damage calculations. For the purpose of calculating damages, I accept the agreed statement of facts filed by the parties which state that the Kennedy property was purchased for \$2,300,000. The parties also agree that Kohgadai made the monthly mortgage payments prior to the sale of the Kennedy property. This amounted to \$97,300. Aside from the mortgage payments and deposits of \$100,000, \$625,000 was also paid by Kohgadai toward the purchase price. As I have stated, Kohgadai received \$310,000 from Zuregat

[59] The parties provided damage calculations. I accept the calculations of the defendants' counsel. The sale price of the Kennedy property was \$3,220,000. To calculate the profit, the mortgage, mortgage payments, closing expenses, deposits and downpayment are to be deducted. The net profit after deducting those amounts is \$490,987. The profit divided by two is \$245,493. When the plaintiff's contribution of \$310,000 is factored back into the equation, the plaintiff is entitled to be paid \$555,493. This amount differs slightly from the amount in the defendant's calculation as he used a figure of \$312,500 as the placeholder for the plaintiff's contribution whereas I calculate his contribution at \$310,000. Following the calculation provided by defendants' counsel, this would mean that the Kohgadai retain \$757,794, reflecting the profit on the sale of the Kennedy property and the net contributions by Kohgadai for the deposits, downpayment and mortgage payments.

[60] As a result, the plaintiff is entitled to judgment in the amount \$555,493 plus pre and post judgment interest in accordance with the *Courts of Justice Act R.S.O. 1990, c. C.43*.

[61] In terms of costs, any party seeking costs shall have 10 days from the release of this decision to serve and file a submission of no more than 7 pages and a bill of costs in respect of the claim for costs. Any party opposing the request for costs shall have 10 days thereafter to file a submission of no more than 7 pages and the party must file its own bill of costs.

Callaghan J.

Released: March 23, 2026