CITATION: Judah Holdings v. Chekhter, 2026 ONSC 2641
COURT FILE NO.: CV-23-710565
DATE: 20260504

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JUDAH HOLDINGS LTD., ASPECT CREATIVE AGENCY INC., RICH POINT GROUP INC. and 2527041 ONTARIO INC.

Plaintiffs/Appellants

AND:

OLEG CHEKHTER and KATHERINE CHEKHTER

Defendants/Respondents

BEFORE: Justice Pollak

COUNSEL: *Megam Mackey*, for the Defendants/Respondents in Appeal

Kevin Sherkin & Mitchell Lightowler, for the Plaintiffs/Appellants

HEARD: March 9, 2026

ENDORSEMENT

[1] The Appellants, Judah Holdings Ltd., Aspect Creative Agency Inc., Rich Point Group Inc., and 2527041 Ontario Inc., appeal from the order of an Associate Judge dated September 15, 2025, dismissing their motion for leave to issue a Certificate of Pending Litigation ("CPL") as against the property owned by the Respondents, Oleg and Katherine Chekhter.

[2] The Appellants submit that the Associate Judge committed errors of fact and law as follows:

a. In concluding that because the Plaintiffs in this fraudulent conveyance action have not yet obtained judgment in the underlying action, where that action is not for an interest in the property, the applicable test for a CPL is as set out in *Grefford v. Fielding* (2004), 70 O.R. (3d) 371 (S.C.);

b. In finding that the Appellants did not adduce any evidence directly addressing the probability of obtaining judgment against the Defendant, Oleg, in the relevant proceedings;

c. In finding that the Appellant, Mr. Judah, did not expressly adopt or affirm the truth of the statements contained in his January 8, 2019 affidavit (the "2019 Affidavit");

d. In holding that the 2019 Affidavit was not evidence of any contested facts on the motion;

e. In restricting the admissibility of the 2019 Affidavit solely to the limited purpose described by Mr. Judah, namely, providing background information for the motion before the Associate Judge;

f. In concluding that the 2019 Affidavit was not before the Court as evidence of the likelihood of judgment;

g. In finding that the onus rests on the Appellants to show that the balance of convenience favoured granting the CPL; and

h. In failing to consider photographic evidence showing Oleg repeatedly vacationing with Katherine during the period they claimed to be separated;

[3] The decision to grant a CPL (a mixed question of fact and law) is an exercise of discretion that should not be interfered with on appeal unless there is a palpable and overriding error or an error of legal principle: see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 36.

Background

[4] The Appellants operate businesses in home decoration or renovation. They purchased commercial condominium units from Improve Inc., a condominium developer.

[5] In 2018 the Appellants sued 15 defendants seeking rescission of their commercial condominium unit purchases and over $10 million in damages for conspiracy, fraudulent and negligent misrepresentation, and oppression (the "Improve Actions"). The Respondent Oleg Chekhter is one of 11 defendants in the Improve Actions. Oleg's wife Katherine Chekhter is not a party to the Improve Actions.

[6] In 2023, the appellants brought a motion for a CPL against the Chekhters' matrimonial home. The Appellants allege that the transfer of the home to Katherine Chekhter was a fraudulent conveyance designed to defeat the appellants' interests as "creditors".

[7] On November 2, 2017, Mr. Sherkin, now counsel for the Appellants, advised that it was the Appellants' position that Oleg and the other Defendants in the Improve Actions knowingly and willingly misrepresented material facts, inducing the Plaintiffs to purchase the condominium units at issue and that Oleg had concealed material changes to the condominium declaration without giving notice to the unit holders, contrary to the *Condominium Act, 1998*, S.O. 1998, c. 19

[8] In December 2017, shortly after receiving Mr. Sherkin's letter, Oleg's evidence is that he moved out of the matrimonial home because of family issues unrelated to this litigation. He agreed to transfer title to the property into his wife's name alone as a result. Oleg directed his accountant to transfer his half interest in the property on December 11, 2017, although the transfer was not effected at that time as the accountant did not follow his instructions.

[9] The Appellants subsequently commenced the following actions against the Defendants Oleg and Improve Inc:

a. On February 12, 2018, the Plaintiffs commenced Court File No. CV-00591969-0000 by way of a Statement of Claim (the "First Action"); and

b. On June 21, 2019, the Plaintiffs commenced Court File No. CV-18-00600196-000 by way of a Statement of Claim (the "Second Action").

[10] Oleg was a minority shareholder, officer, and director of Improve Inc.

[11] On October 5, 2023, the Appellants learned that on February 11, 2020, Oleg and his wife, Katherine, were involved in a transfer of the Property whereby Oleg's half interest in the Property was transferred to Katherine for $2.

[12] The Appellant's motion for a CPL was heard on April 2, 2025. The Appellants relied on two affidavits from Mr. Judah, sworn on May 29, 2024, one of which was filed in support of a previous summary judgment motion (6 months earlier).

[13] The Associate Judge held that the *Grefford* test applied to the motion. In *Grefford*, the Court reviewed the relevant jurisprudence and articulated the test as follows:

> [26] ... in order to obtain a CPL in an action claiming to set aside an alleged fraudulent transfer pursuant to the *Fraudulent Conveyances Act* [R.S.O. 1990, c. F.29], (i) before obtaining judgment in the main action, and (ii) where the claim in the main action does not concern an interest in the land allegedly fraudulently transferred, the following legal tests should be met:
>
> (i) The claimant must satisfy the court that there is high probability that they would successfully recover judgment in the main action; and
>
> (ii) The claimant must introduce evidence demonstrating that the transfer was made with the intent to defeat or delay creditors; evidence that the transfer was for less than fair market value lightens the burden; and
>
> (iii) The claimant must demonstrate that the balance of convenience favours issuing a CPL in the circumstances of the particular case.

[14] The Associate Judge found the appellants met the second part of the *Grefford* test and that there was a triable issue with respect to an intention to defeat or delay creditors. He held this part of the test "presents a low bar" and a triable issue existed because Oleg stayed at the property on and off and did not start identifying himself as separated on his tax returns until 2019.

[15] However, the Appellants did not meet parts one and three of the *Grefford* test. For the first part, the Associate Judge held that the appellants failed to establish there was a "high probability" of obtaining the judgment against him, as required by the first step of the *Grefford* test, because the Appellants did not advance evidence that they would successfully recover judgment against Oleg in the Improve Actions. The only evidence filed regarding the Improve Actions was a 600-page affidavit sworn in 2019, which did not claim that the Appellants would obtain judgment against the Defendants. For the third part of the test, he held that the Appellants had not met their onus to demonstrate that a balance of convenience favoured granting the CPL.

[16] Further, the Associate Judge made a factual finding that the appellants would need to pierce the corporate veil to find the Defendant Oleg personally liable in the Improve Action. In the Improve Actions, the appellants do not allege that Oleg acted for his own personal benefit – an allegation necessary to pierce the corporate veil and obtain judgment against Oleg personally. There is no evidence to support a finding that he was acting outside of his capacity as a director or officer of Improve Inc. during the marketing and sale of the condominium units sold to the appellants.

Analysis

[17] The Appellants submit that, by determining that the test set out in *Grefford* applied, the Associate Judge applied the incorrect test and imposed a higher burden on the Plaintiff than other case law on the very same issue. I disagree. The Superior Court has repeatedly held that *Grefford* should be applied when the plaintiff has not yet obtained judgment in the underlying action, as is the case in this appeal: see e.g. *Jodi L. Feldman Professional Corporation v. Foulidis*, 2018 ONSC 7766, at para. 11; *Fewson v. Bansavatar et al*, 2021 ONSC 6697, at para. 24.

[18] Secondly, the Appellants submit that the Associate Judge erred in law when he found that the 2019 Affidavit of Mr. Judah was not properly before him. An affidavit filed in a separate proceeding is generally not admissible evidence in a current proceeding unless it is properly authenticated and sworn by the person within the current proceedings.

[19] Instead, the Associate Judge concluded that "[I]n my view, as an affidavit sworn over six years ago for a different purpose for another proceeding, is not properly before me as evidence of any contested facts on this motion" and that "[I]t is not properly before me as evidence of the likelihood of judgment in the Improve Action." As stated above, there was no evidence in that affidavit which supported the likelihood of success in the main action.

[20] The Defendants' evidence was that title to their matrimonial home was supposed to be transferred into Katherine's name pursuant to a separation agreement dated December 2017. The

transfer only took place on February 2020, because of their accountant's failure to carry out their instructions.

[21] The Appellants rely on jurisprudence which is not relevant. For example, they submit that in *Gerger Mechanical v. Salvarinas*, 2012 ONSC 5348, a CPL was granted "where the defendant husband had transferred his interest in the property to his wife for nominal consideration". However, the moving parties already had judgment and therefore had an interest in the property because they were creditors trying to enforce a judgment. In this case, there are no judgments against Oleg in the Improve Actions.

[22] The Appellants further rely on the case of *Fernandes v. Khalid*, 2021 ONSC 190 wherein the motion judge found "prima facie" evidence of fraud, and held that the moving parties also met the *Grefford* test supporting their argument that they are entitled to a CPL.

[23] The Appellants also rely on the case of *Transmaris Farms Ltd. v. Sieber* (1999), 30 C.P.C. (4th) 369 (Ont. Gen. Div.) for the proposition that a CPL should be granted "where there is sufficient evidence to establish a reasonable claim to an interest in the land based on the facts, and on which the plaintiff could succeed at trial": *Transmaris Farms*, at para. 62. The CPL was granted in that case because of the overwhelming evidence of fraud.

[24] Finally, the appellants did not establish that the balance of convenience favours granting a CPL. There is no evidence of any prejudice the Appellants might suffer if the CPL is not granted. Katherine's evidence was that she would be prejudiced if a CPL were registered because it would restrict her ability to deal with her assets in her discretion as advised by her professional advisors. The allegation that the transfer was made with the intent to prejudice a Plaintiff does not qualify as evidence that the Appellants would be prejudiced.

[25] I find that the Associate Judge applied the right test and exercised discretion appropriately. As a result, I cannot find that there was any palpable and overriding error or an error of legal principle.

Conclusion

[26] For the above noted reasons, the Appeal is dismissed.

Costs

[27] The parties agreed on costs at the hearing of this Appeal. As the successful party on this appeal, the Respondent is awarded $6,000 to be paid by the Appellant.

Justice Pollak

Date: May 4, 2026