

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
FirstOntario Credit Union Limited) *Howard Reininger, for the Plaintiff*
Plaintiff)
)
- and -)
)
Kevin Carmichael and) *Philip Holdsworth, for the Defendant,*
Aria Sage Tesolin) *Aria Sage Tesolin*
Defendants)
)
) *No one else appearing*
)
)
) **HEARD:** September 9, 11 and
) 29, 2025

2026 ONSC 2688 (CanLII)

REASONS FOR JUDGMENT

MacNeil J.:

[1] The plaintiff, FirstOntario Credit Union Limited (“FirstOntario”), seeks judgment against the defendant, Aria Sage Tesolin (“Ms. Tesolin”), in respect of the transfer to her by the defendant, Kevin Carmichael (“Mr. Carmichael”), of the net sale proceeds of a condominium that he had owned, which the plaintiff asserts was a fraudulent conveyance. A trial was held and each of the parties called one witness to testify.

[2] On June 17, 2025, FirstOntario was granted a judgment against Mr. Carmichael, pursuant to Minutes of Settlement signed by the plaintiff and Mr. Carmichael, for the sum of \$666,174.15 as of May 8, 2025, plus interest after that date at the rate of 6.84% per annum until payment. Mr. Carmichael was not called as a witness at the trial.

[3] FirstOntario served a detailed Request to Admit, dated August 15, 2025. A response to same was served the day before trial on behalf of Ms. Tesolin, wherein she admitted the facts set out in the Request to Admit with the exception of five qualifications which were specified. The

facts admitted, along with the qualifications, have been accepted by the court and incorporated in the reasons below, as necessary.

BACKGROUND

[4] The plaintiff advanced the sum of \$470,960.00 to Mr. Carmichael, secured by a mortgage on terms provided therein registered against his residential condominium on November 29, 2016, in the Land Registry Office at Hamilton as Instrument No. WE116839 (“the Mortgage”), which property was municipally known as Unit 318, 200 Stinson Street, Hamilton (“the Stinson Property”).

[5] Unbeknownst to the plaintiff, on December 7, 2016, the Land Registry Office mistakenly deleted the Mortgage without the registration of a discharge of charge instrument or any reference to the registration number.

[6] Ms. Tesolin married Mr. Carmichael on May 18, 2019. She moved into the Stinson Property with Mr. Carmichael prior to their marriage. Both of them lived in the Property until its sale in August 2020, when Mr. Carmichael sold it for \$730,000.00.

[7] On August 11, 2020, Mr. Carmichael signed a Direction authorizing and directing his real estate lawyer to deposit the net sale proceeds from the disposition of the Stinson Property into Ms. Tesolin’s TD Bank account, as his spouse. Another Direction setting out the various disbursements to be paid from the balance due on closing of the sale showed no payment to be made in respect of the Mortgage and showed the amount of \$687,291.69 being directed to Mr. Carmichael.

[8] No payment was made to FirstOntario to pay off the Mortgage after the sale of the Stinson Property.

[9] On the closing date of August 12, 2020, Mr. Carmichael’s lawyer deposited into Ms. Tesolin’s TD Bank Allinclusive account the net sale proceeds relating to the Stinson Property, being the sum of \$687,291.69 (“the Stinson Proceeds”). FirstOntario asserts that this deposit was a fraudulent conveyance within the meaning of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 (“the Impugned Transaction”).

[10] After the sale of the Stinson Property, Mr. Carmichael and Ms. Tesolin moved to another property in Hamilton and continued to reside together until they separated in or around May 2021.

[11] Ms. Tesolin and Mr. Carmichael signed a separation agreement, dated January 7, 2021, for which they each acknowledged that they had independent legal advice (“the Separation Agreement”). The Separation Agreement stated that they had separated on September 1, 2020. It provided, in part, that:

- (a) Mr. Carmichael would pay Ms. Tesolin a lump sum payment of \$150,000.00 in full satisfaction of his spousal support obligation. (Para. 6.1(a))

- (b) On August 12, 2020, Ms. Tesolin received the entire net proceeds of the sale of the Stinson Property, in the amount of \$687,291.69. (Para. 9.1)
- (c) Ms. Tesolin receiving the entire net proceeds of the Stinson Property was an equalization payment in full satisfaction of all claims under Part I of the *Family Law Act*. (Para. 9.2)
- (d) Ms. Tesolin owns the property municipally known as 138 Burlington Street East, Hamilton prior to the parties' marriage, and Mr. Carmichael has no claims, rights, and interests in the property. (Para. 9.4)
- (e) Neither Ms. Tesolin nor Mr. Carmichael requested financial disclosure from the other and each was satisfied with the financial information each had about the other and waived further financial disclosure. (Para. 13.16(a))

[12] For preparation of the Separation Agreement, Ms. Tesolin provided a financial statement but Mr. Carmichael did not. As a result, the equalization payment was not a calculated amount. Rather, Ms. Tesolin and Mr. Carmichael simply agreed that the equalization payment would be equal to the sum of the Stinson Proceeds.

[13] In January 2021, Ms. Tesolin used some of the Stinson Proceeds to purchase another property located at 1166 King Street East, Hamilton.

[14] On August 19, 2021, Ms. Tesolin and Mr. Carmichael signed an "Amendment to Primary Marital Assets and Separation Agreement Terms for Kevin T. Carmichael and Aria S. Tesolin" ("the Amending Agreement"). It states that they agreed they separated on May 31, 2021; that the entire net proceeds from the sale of 1166 King Street East would be split equally between them; and that 50% of the ownership of the 138 Burlington Street East property would be gifted to Mr. Carmichael's daughter on signing with all net proceeds to be split equally between Ms. Tesolin and Mr. Carmichael's daughter after the sale. The Amending Agreement acknowledged that each of them had received independent legal advice.

[15] Despite the sale of the Stinson Property on August 12, 2020, Mr. Carmichael continued to make monthly payments on the Mortgage to FirstOntario for 18 months, until he defaulted in February 2022.

[16] On May 18, 2022, Ms. Tesolin and Mr. Carmichael signed a third agreement, "Revocation of Amending Agreement", agreeing to revoke the Amending Agreement and to reinstate the original Separation Agreement ("the Revocation Agreement"). It indicates that they both declined independent legal advice before signing this agreement.

[17] Ms. Tesolin and Mr. Carmichael were divorced on December 20, 2022.

[18] The plaintiff issued the within statement of claim on November 16, 2023.

WITNESS TESTIMONY AT TRIAL

[19] Below, I summarize only those aspects of the testimony that I find necessary to set out for the purposes of this decision. Nonetheless I have taken into consideration all of the testimony and evidence led at the trial.

Holly Hebert

[20] Holly Hebert, the Associate Vice President of Retail Credit for FirstOntario, testified as the plaintiff's witness. Ms. Hebert testified that the monthly payments for the Mortgage came out of Mr. Carmichael's FirstOntario bank account automatically in the amount of \$1,843.21. No payments towards the monthly amount owing were made after February 2022. That is when FirstOntario began investigating and discovered that the Mortgage had been deleted from title to the Stinson Property because of an error made by the Land Titles registry staff.

[21] Starting in March 2022, a number of telephone calls were made to Mr. Carmichael regarding the delinquent loan. He made a number of promises to pay. There was no indication that he was not going to continue to make the Mortgage payments. On April 14, 2022, Mr. Carmichael spoke with the collection clerk and said he would be going to the branch with \$1,000.00 and then make another \$3,000.00 - \$4,000.00 deposit on April 18, and that he would have the payments up to date in 2 weeks. Mr. Carmichael told the collection clerk that he was going through a divorce.

[22] The last entry made by the collection agency was in June 2022. At that time, because of the number of delinquencies, they tried calling Mr. Carmichael but the number was not in service so they called and left a voicemail at his place of employment. Thereafter, the matter was sent to FirstOntario's legal department and the within action was subsequently commenced.

Aria Tesolin

[23] The defendant, Ms. Tesolin, testified that she first met Mr. Carmichael when she was 22 years old. She was interviewed by him and Michael Aonso ("Mr. Aonso") on October 1, 2015 for a job at Strike Holdings Inc. ("Strike Holdings"), the company that Mr. Carmichael and Mr. Aonso started together in 2012. She understood it was a private equity fund. Ms. Tesolin was hired to do contract work for Strike Holdings as an independent contractor to test the company's algorithm which traded by way of a triple leverage. Ms. Tesolin believed Mr. Carmichael was wealthy and that he held significant value in Strike Holdings. He was married at the time they met but was having difficulties in his marriage. Ms. Tesolin began a personal relationship with him in or about June 2016.

[24] After Mr. Carmichael separated from his wife, he bought the Stinson Property. Ms. Tesolin moved into the Stinson Property with him. She testified that they had no specific conversation about Mr. Carmichael's financial status. However, she believed he paid for the Stinson Property in cash and that he told her it was fully paid for.

[25] Ms. Tesolin and Mr. Carmichael got married on May 18, 2019. Prior to the marriage, Ms. Tesolin had purchased a house for her mother at 138 Burlington Street East and she had also put a

\$19,995 deposit on a pre-construction condominium. The condominium was ready to be moved into around the time of their wedding. Since she did not need the condominium anymore, because she was living with Mr. Carmichael, Ms. Tesolin sold the property around the time of their marriage. She used the sale proceeds, around \$100,000.00, to pay bills incurred for the wedding and honeymoon, and for other general expenses. They both lost their jobs at Strike Holdings soon after they were married.

[26] Ms. Tesolin testified that, shortly before they got married, she kept asking Mr. Carmichael to withdraw some money from the Strike Holdings fund to pay for the wedding expenses. He kept telling her the transfer was delayed. During the honeymoon, she kept asking him about the withdrawal and other people were trying to withdraw from the Strike Holdings fund as well, but Mr. Carmichael kept saying that the transfers were not working or delayed. When they returned from their honeymoon, they had several meetings with Mr. Aonso and other employees of Strike Holdings. Mr. Carmichael presented to everyone that Strike Holdings' bank account should have held \$97 million but it was empty or close to empty and so there was no money to withdraw. He told them it was some sort of banking error that happened. They tried to launch an investigation into what had happened and contacted both Toronto Dominion Bank ("TD Bank") and Royal Bank of Canada ("RBC"). In the meantime, there were no funds to trade or access. Ms. Tesolin testified that she was under the impression this was a "temporary glitch" and it would be fixed.

[27] As a result of the problems at Strike Holdings, in the summer of 2019, Mr. Carmichael's bank accounts – both personal and business – at TD Bank were "shut down". When Strike Holdings had accused TD Bank of the "glitch", TD Bank said they did not believe that was the case and they closed Mr. Carmichael's bank accounts. A couple of months later, by the end of the year, RBC sent a letter shutting down his accounts there. Ms. Tesolin was aware that only one bank account of Mr. Carmichael's was not shut down and that was a chequing account with FirstOntario. She did not have access to the FirstOntario account. She assumed it was being used for daily transactions. Ms. Tesolin testified that Mr. Carmichael told her that his accounts were closed in 2019 due to suspicion of fraudulent activity.

[28] Ms. Tesolin's evidence was that, around November 2019 or perhaps slightly earlier, she realized it would take some time to fix the Strike Holdings problem because it would involve a lawsuit against TD Bank. Strike Holdings began raising capital from investors to sue TD Bank in order to get their money back. As a result, Ms. Tesolin started a new job working in hospitality to bring some money into the household.

[29] In February 2020, Mr. Carmichael and Ms. Tesolin decided to list the Stinson Property for sale in order to have some funds coming in. She testified that they did not have a conversation about how much money they could expect from the sale. While her name was never on title to the Stinson Property, since they were married at the time it was being sold, she was asked to sign the contract as well. They accepted an offer made on April 23, 2020 with a closing at the beginning of August 2020.

[30] Ms. Tesolin admitted that after the sale closed on August 12, 2020, the Stinson Proceeds were deposited into her TD Bank account. Her evidence was that she understood from Mr. Carmichael that this was because her account was with the same bank that the real estate lawyer

used, and so it was a faster deposit than if the proceeds were deposited into Mr. Carmichael's bank account at FirstOntario, which the only operating account he had as of that time.

[31] Shortly after the Stinson Proceeds were deposited, Ms. Teoslin gave Mr. Carmichael the password for her TD Bank account and then he had access to the funds as well. Ms. Tesolin testified that the initial transactions made out of the deposited funds were made by her. For example, she paid her TD Visa bill at \$30,330.00. They paid Mr. Carmichael's RBC Visa bill at \$18,000.00. They paid \$30,500.00 to Mr. Carmichael's parents to pay back a loan for one year's rent for the Hughson Street apartment Mr. Carmichael and Ms. Tesolin were renting. A payment of \$130,000.00 was made and then another \$10,000.00 went to Ms. Tesolin's RBC account but she did not recall the reasons for these. Ms. Tesolin's evidence was that she understood the Stinson Proceeds were "marital property money".

[32] On cross-examination, Ms. Tesolin testified that she knew in September 2020 that TD Bank suspected Mr. Carmichael of fraudulent activity due to the problems with the Strike Holdings account and had closed his accounts. But she testified that she believed at the time that it was just a big misunderstanding, because that is what Mr. Carmichael told her.

[33] On September 21, 2020, \$200,000.00 was transferred from Ms. Tesolin's TD Bank account into her investing account that was with the same bank.

[34] As of November 4, 2020, Ms. Tesolin's TD Bank chequing account had a balance of only \$9,396.86 left, as the Stinson Proceeds had been spent or distributed.

[35] Ms. Tesolin testified that, at the time the Stinson Property was sold, it was in the back of her mind about leaving or separating from Mr. Carmichael because he had a problem with alcoholism (which got worse during COVID), there was substance abuse, he was a "pathological liar", and he was "just a difficult person to be around". They had many fights. Her evidence was that, in September 2020, she told him that she wanted to officially leave him. She contacted a family law lawyer in October 2020 and that lawyer prepared the Separation Agreement and Ms. Tesolin produced a financial statement for that purpose. She asked her lawyer if there was any way they could speed things up because she wanted to purchase a property and move out, and she did not want Mr. Carmichael to have any stake in that property. Eventually, the Separation Agreement was signed on January 7, 2021.

[36] Ms. Tesolin testified that Mr. Carmichael did not provide any financial disclosure as part of preparing the Separation Agreement. Her evidence was that she proceeded with the separation without his information because, even if he did provide financial information, she thought it would be inaccurate because the majority of his money was tied up in Strike Holdings at the time; and while she kept asking for his financial information, Mr. Carmichael kept refusing to provide it. After some time had passed, she realized she would likely never receive the information from him and so she went ahead without the financial documents in order to move on with her life.

[37] Ms. Tesolin testified that the equalization sum reflected the amount of the sale proceeds from the Stinson Property. She explained that, since both of them had lost their jobs right after the marriage, her impression was that, as a spouse, she was entitled to 50% of her spouse's income

after the marriage, but not before the marriage. The majority or all of Mr. Carmichael's income occurred before they got married, then the Strike Holdings issue started after they married. The only thing she thought she would be entitled to was the matrimonial home, so that is why she asked for that sum as an equalization payment. When asked why she received the whole of the net sale proceeds, instead of 50%, Ms. Tesolin's evidence was that that was the decision she came to with Mr. Carmichael. That is, that she would not go after him later on for any monies he would receive from Strike Holdings if he gave her all of the house monies plus \$150,000.00.

[38] Ms. Tesolin testified that, while they signed the Separation Agreement on January 7, 2021, she did not move out immediately because the COVID pandemic was still going on and it was difficult to do things and leave the house. As well, she wanted to wait until she could purchase a property and be separated from Mr. Carmichael. She had a dog and was working 7 days a week. She also had a relationship with Mr. Carmichael's two children and she liked being there when they were there. Further, when she purchased the property at 1166 King Street East in January 2021, it needed renovation work and was not move-in ready. So, she did not physically leave until May 2021. She testified that Mr. Carmichael tried to reconcile a number of times with her but she did not want to. Her evidence was that, between September 2020 and May 2021, she let him know there was no chance of reconciliation.

[39] Ms. Tesolin's evidence was that, on April 15, 2021, she sent an email to Mr. Carmichael telling him that their relationship was completely over and there was no chance of reconciliation. She moved out after sending that email.

[40] Ms. Tesolin testified that, when she moved out, Mr. Carmichael became very jealous and possessive and wanted to reconcile. She had been seeing someone else from November 2020 onward. Mr. Carmichael was "incredibly upset" that she hid this from him and he demanded that she give him some money in that moment. To appease him, on April 28, 2021, she provided a bank draft from her TD Bank account made out to Mr. Carmichael in the amount of \$50,000.00.

[41] Ms. Tesolin's evidence was that, by June 2021, she was no longer living in the same residence as Mr. Carmichael. However, he still had access to her bank accounts and he asked her to open an Interactive Brokers account, which was a better platform to use for trading than the TD Bank account, which she did. She testified that she allowed him to continue using her bank accounts because all of his were shut down. He wanted to use her investing account to make some income by investing in stocks. Since September 2020, he had been using her TD Bank account to make stock trades up to June 2021 and, after June 2021, he then used her Interactive Brokers account to continue making trades.

[42] Ms. Tesolin testified that Mr. Carmichael was using the capital of her equalization payment to make more capital, so that he had an income for himself and had something to do. She believed that, before June 2021, he did make some profits. But once he began using the Interactive Brokers account, he did not make any profits.

[43] When asked why she would agree to open the Interactive Brokers account for Mr. Carmichael after they had apparently separated, Ms. Tesolin's evidence was that, up to that point in time, Mr. Carmichael told her and others that the Strike Holdings problem was a major banking

error made by TD Bank that displaced all of the company's funds. She thought he was the victim; his trading accounts had been taken away and he could not go and get a normal job in finance. She felt sorry for him. Ms. Tesolin testified that, unlike the TD Bank account where they shared a password, the Interactive Brokers account required two-factor authentication. Mr. Carmichael would receive a text to his phone when he would log in, so she could not log in to the account at all because of that.

[44] Ms. Tesolin's evidence was that she had given Mr. Carmichael her RBC debit card for him to use for daily transactions as of May or June 2021, around the time she opened the Interactive Brokers account. The Interactive Brokers account was linked to the RBC account because Mr. Carmichael could make trades in Interactive Brokers and then send money from Interactive to the RBC account. Ms. Tesolin testified that, while she was aware that Mr. Carmichael had a FirstOntario chequing account, she understood there were limitations with it. Mr. Carmichael preferred to have an account with a bigger bank to do more transactions.

[45] On August 13, 2021, Ms. Tesolin and Mr. Carmichael signed the Amending Agreement. She testified that Mr. Carmichael typed up the amendment on his computer and asked her to sign it dealing with their separation and assets. She stated that they had already been separated by that time and living apart. The amendments changed the separation date and changed the assets. Mr. Carmichael was now asking for a stake in the 1166 King Street East property Ms. Tesolin had bought in January 2021 and in the home that she had purchased for her mother at 138 Burlington Street East. She testified that she did not get legal advice on the Amending Agreement (even though it says there was independent legal advice received). Ms. Tesolin testified that she signed the Amending Agreement believing that it would not stand up in court. She stated that she did not think it had any real significance and that she intended eventually to revoke it. At that time, she would still visit Mr. Carmichael's house on the days when the children were there. He would ask her to sign the document whenever she was there. She stated that she did not know the exact reasons why he wanted it.

[46] Mr. Carmichael asked for the 1166 King Street East property to be split between them when it was eventually sold. Ms. Tesolin sold the property in early September 2021 and gave half of the net sale proceeds, around \$140,000.00, to Mr. Carmichael. To that end, on September 7, 2021, she transferred \$91,424.00 into the Interactive Brokers account which he controlled, and the other \$50,000.00 (\$35,000.00 USD) was transferred to his account in Las Vegas. Ms. Tesolin testified that she did not intend to give him the proceeds permanently, however. She still thought he had millions of dollars in Strike Holdings and that he would pay her back when he could. After she did this, she tried to have less communication with Mr. Carmichael although she would still visit occasionally when the children were with him.

[47] Ms. Tesolin testified that, at some point, she received a telephone call from W. Vanderlaan, an investigator with the Ontario Securities Commission ("OSC"). She was out of the country at the time. She received his email address from Mr. Aonso. She exchanged emails with Mr. Vanderlaan on February 1, 2022. However, she never ended up speaking to him one on one. She understood that the OSC investigation likely had to do with what was happening with Strike Holdings. She thought it continued to be a misunderstanding. She thought the involvement of the

OSC was a good thing so they could trace where the money had gone, which Ms. Tesolin believed had disappeared from the TD Bank.

[48] After Ms. Tesolin's email exchange with Mr. Vanderlaan, Mr. Carmichael sent her messages because he was extremely stressed. On February 23, 2022, he advised her that there was something wrong with his FirstOntario account. Ms. Tesolin understood that the Canada Revenue Agency had frozen his FirstOntario account. She believes Mr. Carmichael also ran out of money in the Interactive Brokers account around the same time.

[49] On March 21, 2022, Ms. Tesolin deposited \$4,000.00 into the RBC account to cover bills. Around this time, Mr. Carmichael asked her to sell the 138 Burlington Street East property to pay for bills. She asked him about the Interactive Brokers account and he told her the money had all been lost so he was depositing money from his father into the RBC account. Ms. Tesolin testified that, as of March 21, 2022, she was not aware of any charges laid against Mr. Carmichael. However, later on in March 2022, she found out that he had been charged (with fraud and other offences under the Ontario *Securities Act*) as a result of the OSC investigation into Strike Holdings.

[50] Shortly after finding out about the OSC charges, Ms. Tesolin told Mr. Carmichael that she would sell the 138 Burlington Street East property and give him some of the proceeds but, if she did this, he would have to get out of her life forever and she would take the RBC and Interactive Brokers accounts back into her control.

[51] On March 30, 2022, Ms. Tesolin asked Mr. Carmichael to change the Interactive Brokers account information so that it was no longer attached to his phone number so she would be able to log into it. He did and that was the date when she got access back to the Interactive Brokers account. She did not review in depth the Interactive Brokers details until after the 138 Burlington Street East property was sold. She testified that she never spoke to Mr. Carmichael about the Interactive Brokers transactions. But after reviewing them, she understood that all of the money withdrawn had been lost. Her evidence was that, when she reviewed the Interactive Brokers account properly, and saw the withdrawals, rate of transactions and type of stocks traded, they were almost identical to Strike Holdings. That was the first moment when she finally believed that Mr. Carmichael was likely guilty of what happened at Strike Holdings.

[52] Ms. Tesolin and Mr. Carmichael signed the Revocation Agreement respecting their separation on May 18, 2022. It revoked the Amending Agreement and reinstated the original Separation Agreement.

[53] The 138 Burlington Street East property was sold on May 27, 2022. That same day, she wired Mr. Carmichael's father the amount of \$171,000.00 and then sent a separate payment in the amount of \$1,243.50 USD to Mr. Carmichael.

[54] Ms. Tesolin's evidence was that, after the 138 Burlington Street East property sale, she told Mr. Carmichael that she did not want to talk to him anymore. He sent a couple of emails, but she did not respond.

[55] Their divorce was finalized on December 20, 2022. Ms. Tesolin did not seek spousal support because, while at first she thought Mr. Carmichael would eventually resolve the Strike Holdings situation and pay her back, later on, when completing the actual divorce, she was now suspicious of him and just wanted the divorce done and to be rid of him. She was under the impression that most of the money had been lost anyway.

[56] Ms. Tesolin testified that she only discovered that there had been a mortgage on the Stinson Property in November 2023 when she was served with the statement of claim by FirstOntario in the within action.

ISSUES

The following issues must be determined:

- (a) Was the Impugned Transaction a conveyance within the meaning of s. 2 of the *Fraudulent Conveyances Act*?
- (b) Should s. 12 of the *Assignments and Preferences Act* apply?

POSITION OF THE PLAINTIFF

[57] The plaintiff seeks judgment against Ms. Tesolin for \$666,174.15 and interest from May 8, 2025 at 6.84% per annum, the same terms it obtained in its judgment against Mr. Carmichael.

[58] The plaintiff relies on the following “badges of fraud” and asks the court to draw an inference of fraudulent intent on the part of Mr. Carmichael in relation to the transfer of the Stinson Proceeds to Ms. Tesolin: the three separation agreements; the continuation of mortgage payments for one-and-a-half years after the Stinson Property was sold; and the fact that the Stinson Proceeds were transferred to Ms. Tesolin purporting to be an equalization payment when no legitimate calculation of equalization was done, no *Family Law Act* disclosure had been given by Mr. Carmichael, and Ms. Tesolin and Mr. Carmichael were not separated.

[59] It is the plaintiff’s position that the evidence at trial is sufficient to infer, without doubt, that Ms. Tesolin had knowledge of Mr. Carmichael’s intent to delay or defeat creditors. However, the plaintiff does not need to prove that she had such knowledge since there was no consideration given for the transfer of the Stinson Proceeds to her – as it was clearly not an equalization payment – and she was not a *bona fide* purchaser for value. Ms. Tesolin has not provided an adequate explanation for the transfer of the Stinson Proceeds. Once a fraudulent conveyance is found, tracing is allowed under s. 12 of the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33.

[60] Ms. Tesolin has admitted to using the Stinson Proceeds and giving half back to Mr. Carmichael.

[61] The plaintiff asks the court to draw an inference that Ms. Tesolin knew of Mr. Carmichael’s fraudulent intent when the Stinson Proceeds were transferred to her in August 2020 because she knew at least by December 2019 that his bank accounts with TD Bank and RBC had been frozen

due to suspicion of fraudulent activity. While she may not have known that he was trying to hide the proceeds from FirstOntario, specifically, she certainly knew or should have known he was trying to hide assets from the people he defrauded and for which notice had been given to the OSC.

[62] At trial, Ms. Tesolin conceded that it was likely true that Mr. Carmichael's continuing to make the Mortgage payments after the Stinson Property had been sold was for the purpose of not putting FirstOntario on notice that the property had been sold.

[63] Although initially pleaded in its statement of claim, counsel for the plaintiff advised that the plaintiff is not relying on conspiracy, unjust enrichment, or s. 4 of the *Assignments and Preferences Act* in its action against Ms. Tesolin. It is relying only on s. 2 of the *Fraudulent Conveyances Act* and the fact that the proceeds were given for no consideration to Ms. Tesolin, and she was aware of Mr. Carmichael's intentions to delay and/or defeat creditors, including FirstOntario; and on the tracing provisions found in s. 12 of the *Assignments and Preferences Act* if it is found that the transfer of the proceeds was a fraudulent conveyance under the *Fraudulent Conveyances Act*.

POSITION OF THE DEFENDANT, ARIA TESOLIN

[64] Ms. Tesolin submits that FirstOntario has not discharged its burden. She contends that the deposit of the Stinson Proceeds into her TD Bank account represents the sum owing to her as an equalization payment under the *Family Law Act*. The conveyance to her of the Stinson Proceeds was to satisfy Mr. Carmichael's *Family Law Act* obligations to her. As a result, she argues that s. 2 of the *Fraudulent Conveyances Act* cannot apply because there was no conveyance of property made with an intent to "defeat, hinder, delay or defraud creditors".

[65] It is Ms. Tesolin's position that the plaintiff is required to show that she had knowledge of Mr. Carmichael's intent to defraud FirstOntario in order for the claim to succeed and there is no direct evidence that Ms. Tesolin had knowledge of the FirstOntario mortgage. Ms. Tesolin was not on title to the Stinson Property, she did not sign the Mortgage, she did not have access to the FirstOntario chequing account, and she was not aware that the Mortgage with First Ontario existed until the statement of claim was served on her. It was after March 21, 2022, when the OSC issued a press release announcing charges against Mr. Carmichael, that Ms. Tesolin became aware that Mr. Carmichael was the target of the investigation. By that point, they were no longer in regular contact.

[66] Mr. Carmichael's windfall was an accident because of a mistake made by the Land Titles Office Registrar. There is no evidence that Mr. Carmichael was aware the Mortgage was deleted. While there may be badges of fraud that may attach to Mr. Carmichael's conduct, they should not attach to Ms. Tesolin. Her acts were genuine and *bona fide*. She signed the separation agreements in good faith.

[67] At the time the agreement of purchase and sale for the Stinson Property was entered into, in April 2020, Mr. Carmichael had no knowledge of the error made by the Land Titles Office. It is logically impossible for him to have formed an intent to defeat, hinder or delay FirstOntario's recovery on the Mortgage based on a circumstance he did not know about in advance. There is no

evidence that he knew the Mortgage was discharged. The evidence is that he was continuing to make payments.

[68] Even if Mr. Carmichael knew he had financial problems, his dominant intent was to settle the family property rights of Ms. Tesolin. The consideration for the transfer of the Stinson Proceeds to Ms. Tesolin was the discharge *pro tanto* of undoubted debts. *Bona fide* debt payments are immune from attack under the *Assignments and Preferences Act*.

[69] Ms. Tesolin argues that the fraudulent intent must exist at the time of conveyance. Because the effect of the transfer depended on a third-party mistake unknown to Mr. Carmichael, he could not have had the requisite intent. Without debtor intent, there can be no liability under the *Fraudulent Conveyances Act*, and certainly no basis to find that Ms. Tesolin, who lacked all knowledge of the Mortgage, was “privity” to fraud.

THE LAW

[70] The action is brought against Ms. Tesolin pursuant to s. 2 of the *Fraudulent Conveyances Act* and s. 12 of the *Assignments and Preferences Act*.

[71] Section 2 of the *Fraudulent Conveyances Act* provides:

Where conveyances void as against creditors

Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[72] Section 3 of the *Fraudulent Conveyances Act* provides:

Where s. 2 does not apply

Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

[73] Section 12(1) of the *Assignments and Preferences Act* permits a creditor to “follow” proceeds of property fraudulently transferred. It reads:

Following proceeds of property fraudulently transferred

12 (1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, that is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made has sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person

to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover belongs not only to an assignee for the general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

[74] In *Purcaru v. Seliverstova*, 2015 ONSC 6679, aff'd 2016 ONCA 610, Myers J. granted an application brought by a former wife to have the court set aside transactions between her ex-husband and his new wife, and their related companies and relatives, for fraudulent purposes. Myers J. summarized the purpose of the *Fraudulent Conveyances Act* as follows, at para. 10:

... the *Fraudulent Conveyances Act* provides that the court can declare a transfer of property void if the intention of the person who made the transfer was to defeat or delay his or her creditors. The statute is designed to stop a debtor from hiding assets from creditors by fraudulently transferring the assets to another person. If it is applicable, an order under the statute makes property that was fraudulently conveyed available for execution on behalf of the creditors of the transferor. In addition, if the transferred property has been disposed of prior to the transaction being declared void, s. 12 of the *Assignments and Preferences Act*, R.S.O. 1990, c.A-33 allows the creditors to execute against proceeds received by the transferee.

[75] At para. 11 of his decision in *Purcaru*, Myers J. explained the concept of “badges of fraud” in the following terms:

It is very difficult for an applicant to prove a person’s hidden intention to defraud creditors. Therefore, the law provides that the court can infer the existence of a transferor’s fraudulent intention to defeat or delay creditors where there are recognized “badges of fraud” associated with a transaction. The badges of fraud are facts or fact patterns that courts have held to be indicative of fraudulent transactions. Facts such as: secrecy, transfer of property when an action or execution is pending, transfer of property to non-arm’s-length parties, transfers made with undue haste, and transfers for a conspicuously insufficient price, are all recognized examples of badges of fraud. There are others such as the breach of family law orders requiring a party to preserve his or her assets pending a trial. If the court draws the inference of fraudulent intent due to the existence of badges of fraud, then an evidentiary burden will fall to the respondents to explain their conduct to try to rebut the inference of fraudulent intent. Of course the ultimate persuasive burden remains on the applicant throughout. *A&B Landscaping & Interlocking Ltd. v. Bradsil*, 1993 CarswellOnt 664 (Ont. Ct. Gen. Div.) at para 69. *Business Development Bank of Canada v. Samarsky*, [2012] ONSC 3002 at para 15. *Conte Estate v. Alessandro*, [2002] O.J. No. 5080 at para 21 and 22.

See also *Purcaru* (ONSC), at paras. 99-100.

[76] This approach was affirmed by the Ontario Court of Appeal at para. 5 of the appellate decision in *Purcaru*, 2016 ONCA 610:

The appellants argue that the trial judge erred by impermissibly shifting the burden of proof to them, requiring that they disprove the respondent's allegations. I do not accept this submission. The trial judge correctly stated the law with respect to burden of proof where there is an allegation of fraudulent conveyance. It is up to the challenger of a transaction to establish on a balance of probabilities that a conveyance was made with the intent to 'defeat, hinder, delay or defraud creditors or others', within the meaning of s. 2 of the *Fraudulent Conveyances Act*. Whether Mr. Purcaru had that intention is a question of fact, to be determined from the circumstances at the time of the transactions. If a challenger raises evidence of one or more 'badges of fraud' that can give rise to an inference of an intent to defraud, the evidential burden then falls on those defending the transaction to adduce evidence showing the absence of fraudulent intent (*Re Fancy*, (1984), 1984 CanLII 2031 (ON SC), 46 O.R. (2d) 153 (H.C.J.)), *Nuove Ceramiche Ricchetti S.p.A. v. Mastrogiovanni*, [1988] O.J. No. 2569 (H.C.J.), pp. 4, 5).

[77] In *Tsui-Wong v. Xiao*, 2018 ONSC 3315, at paras. 198-200, aff'd 2019 ONCA 756, the court affirmed that the "badges of fraud" is not "a closed list" and often includes the following factors previously identified in *Twyne's* case (1601), 76 E.R. 809:

- the donor continued in possession and continued to use the property as his own;
- the transaction was secret;
- the transfer was made in the face of threatened legal proceedings;
- the transfer documents contained false statement as to consideration;
- the consideration is grossly inadequate;
- there is unusual haste in making the transfer;
- some benefit is retained under the settlement by the settlor;
- embarking on a hazardous venture; and
- a close relationship exists between parties to the conveyance.

ANALYSIS

(a) *Was the Impugned Transaction a conveyance described in s. 2 of the Fraudulent Conveyances Act?*

[78] I turn now to the issue of whether the Impugned Transaction is a conveyance described in s. 2 of the *Fraudulent Conveyances Act*. The requisite fraudulent intent is to be assessed at the time of the Impugned Transaction on August 12, 2020: *Purcaru* (ONCA), at para. 9.

[79] In this case, I am satisfied on a balance of probabilities that the following “badges of fraud” have been established by the evidence at trial:

- (a) As of August 12, 2020, Mr. Carmichael knew of his obligations under the Mortgage and that it was a debt owing to FirstOntario.
- (b) As of August 12, 2020, Mr. Carmichael was under investigation by the OSC for misleading investors of Strike Holdings, and he had falsely told investors that the monies in Strike Holdings’ TD Bank accounts had gone missing.
- (c) As of August 12, 2020, Mr. Carmichael was facing the demise of his company, Strike Holdings, his TD Bank and RBC accounts had been frozen due to suspicion of fraudulent activities, and he was financially unable to return monies to the investors of Strike Holdings.
- (d) As of August 12, 2020, Mr. Carmichael had a viable FirstOntario bank account that was operating and that he was using and into which the Stinson Proceeds could have been deposited.
- (e) It was clear from the closing documents prepared by Mr. Carmichael’s lawyer and the amount that was deposited that the Mortgage had not been paid off out of the proceeds of the sale of the Stinson Property.
- (f) Mr. Carmichael directed the deposit of the Stinson Proceeds into Ms. Tesolin’s TD Bank account.
- (g) As of August 12, 2020, Ms. Tesolin was Mr. Carmichael’s spouse; they were living together and were not separated (a non-arm’s length transfer).
- (h) Ms. Tesolin had no legal ownership interest in the Stinson Property.
- (i) There was no consideration given by Ms. Tesolin on August 12, 2020 to Mr. Carmichael for the deposit of the \$687,291.69 into her TD Bank account.
- (j) There were three withdrawals from Ms. Tesolin’s TD Bank account on August 12, 2020, after the deposit of the \$687,291.69, including payment of a TD Visa in the amount of \$30,330.21 and of an AMEX account in the amount of \$7,385.44. (The balance in the account just prior to the \$687,291.689 deposit was \$663.97.)
- (k) As of August 12, 2020 or shortly thereafter, Ms. Tesolin gave Mr. Carmichael access to and the password for her TD Bank account into which the Stinson Proceeds were deposited.
- (l) As of August 12, 2020, Mr. Carmichael had no other assets or funds from which to satisfy payment of the Mortgage owing to FirstOntario.

- (m) On August 14, 2020, Mr. Carmichael made a payment of \$1,843.21 in respect of the Mortgage held by FirstOntario from his FirstOntario bank account.

[80] I find that these “badges of fraud” support an inference of an intent on the part of Mr. Carmichael to defraud his creditors, including FirstOntario, of the Stinson Proceeds. Given this finding, it falls to Ms. Tesolin to defend the deposit of the Stinson Proceeds and adduce evidence to show the absence of fraudulent intent.

[81] Ms. Tesolin argues that the transfer to her of the Stinson Proceeds was in satisfaction of Mr. Carmichael’s obligations under the *Family Law Act* to pay her an equalization payment, in order to resolve their matrimonial dispute. I reject this argument and find that the Impugned Transaction did not constitute or represent an equalization payment owing to Ms. Tesolin by Mr. Carmichael under the *Family Law Act*, based on the following:

- (a) Ms. Tesolin and Mr. Carmichael were not separated as of August 12, 2020, the date of the conveyance, and so no equalization payment could have been owing to her as of that date.
- (b) Ms. Tesolin testified that she understood from Mr. Carmichael that the Stinson Proceeds were deposited into her TD Bank account on August 12, 2020 because it was with the same bank that the real estate lawyer used, and so it was a faster deposit than if the proceeds had been deposited into Mr. Carmichael’s bank account at FirstOntario.
- (c) After the deposit of the Stinson Proceeds, Ms. Tesolin gave Mr. Carmichael access to her TD Bank account and funds therein were used to benefit him (as well as Ms. Tesolin), including by paying off debts he chose to pay such as his RBC Visa in the amount of \$18,000.00 on August 14, 2020.
- (d) As of the end of November 4, 2020, Ms. Tesolin’s TD Bank account, into which the Stinson Proceeds in the amount of \$687,291.69 had been deposited, showed a balance of only \$9,236.46.
- (e) Ms. Tesolin and Mr. Carmichael were not separated as of January 7, 2021, the date the Separation Agreement was signed.
- (f) Mr. Carmichael did not provide to Ms. Tesolin any financial disclosure for the preparation of the Separation Agreement and did not provide a sworn Financial Statement as required by the *Family Law Act*. Without financial disclosure from Mr. Carmichael, it was not possible to properly calculate what equalization payment, if any, was owing to Ms. Tesolin.
- (g) As of January 7, 2021, when the Separation Agreement was signed, the Stinson Proceeds had effectively been disbursed and spent by both Ms. Tesolin and Mr. Carmichael, and Mr. Carmichael purportedly had no property, assets or income. There was nothing upon which to genuinely calculate an equalization payment

owing to Ms. Tesolin by Mr. Carmichael anywhere close to the amount of \$687,291.69.

- (h) Ms. Tesolin and Mr. Carmichael did not separate until after April 15, 2021.
- (i) The September 1, 2020 separation date set out in the Separation Agreement was untrue.
- (j) Ms. Tesolin transferred monies to Mr. Carmichael for him to pay bills and continue investment trading even after they were separated.
- (k) In May/June 2021, Ms. Tesolin gave Mr. Carmichael access to and control of her RBC bank account and then opened an investment account with Interactive Brokers, at his request, and ceded control of it to him.
- (l) Ms. Tesolin used a portion of the Stinson Proceeds as a down payment for her purchase of the 1166 King Street East property in January 2021. When she sold that property in early September 2021, she gave Mr. Carmichael approximately \$140,000.00, being half of the net sale proceeds.
- (m) When Ms. Tesolin sold the 138 Burlington Street East property in late May 2022, she gave Mr. Carmichael approximately \$175,000.00, being half of the net sale proceeds, including by wiring \$171,000.00 to Mr. Carmichael's father for Mr. Carmichael's benefit.
- (n) Ms. Tesolin did not separate her banking and finances from Mr. Carmichael until March/April 2022 when she took back control of her RBC and Interactive Brokers accounts.

[82] In my view, the timing of Ms. Tesolin going to meet with a lawyer in October 2020, and instructing them to prepare a separation agreement with a separation date of September 1, 2020, after the Stinson Proceeds had been deposited into her TD Bank account on August 12, 2020, is most questionable.

[83] The fact that Mr. Carmichael continued to make payments to FirstOntario towards the Mortgage, after the Stinson Property had been sold in August 2020, until February 2022 and the fact that he did not inform FirstOntario that he had sold the property after he defaulted in February 2022, instead maintaining the ruse and asking for more time to make a payment and then transferring monies into his FirstOntario account to make further payments under the Mortgage, all support a finding that Mr. Carmichael was intent on misleading FirstOntario into believing that he still owned the Stinson Property so it would not enforce on the Mortgage.

[84] There was no need for Ms. Tesolin to share her bank accounts with Mr. Carmichael after May 2021, after she had informed him that she wanted to separate on April 15, 2021. Nor does it make sense that she would have done so if they had been truly separated and if she had truly wanted to be rid of him from her life. Instead, her actions of giving him access to her bank accounts and

creating an Interactive Brokers trading account for him, and transferring moneys to him and his parents, served only to further entangle herself with him. It is also not believable that she would give him this access to her accounts and then not monitor them for the length of time she did if she truly wanted to separate her life from Mr. Carmichael's. There is no indication of Ms. Tesolin tracking the supposed amounts that Mr. Carmichael was to pay back to her. She never made a claim for the return of any amounts that she transferred to him. Rather, it appears that everything she did served to enable and facilitate him in keeping moneys shielded and inaccessible to FirstOntario and other creditors, including by paying monies to his father even after she knew about the OSC's media release, dated March 31, 2022. I am not persuaded that Ms. Tesolin was the innocent and trusting person wholly manipulated by Mr. Carmichael, as her defence seemed to be.

[85] The majority of Ms. Tesolin's purported rationales for the movement of funds between herself and Mr. Carmichael lack common sense. Her account that she loaned Mr. Carmichael monies to invest on her behalf made no sense, especially in light of her evidence that, by the time the Stinson Property had been sold on August 12, 2020, she believed him to be a "pathological liar", she did not trust him, and she knew that his bank accounts had been frozen and/or shut down by TD Bank and RBC because of suspicion of fraudulent activity. It makes no sense that she would give over access and control of her bank accounts and her own monies in light of these circumstances. It also makes no sense that Ms. Tesolin would split the net proceeds from the sale of 1166 King Street East and 138 Burlington Street East if she was truly separated from Mr. Carmichael. In my view, the only logical conclusion to be reached from all this is that Ms. Tesolin was not loaning her own funds to Mr. Carmichael, but rather, she was giving back to him in various ways his own money that she had helped shelter. For these reasons, I do not find much of Ms. Tesolin's evidence to be credible.

[86] I infer from the evidence before the court that Mr. Carmichael intended to commit a fraud when the Impugned Transaction occurred and that he intended to protect the Stinson Proceeds from claims by his creditors. He caused the Stinson Proceeds, property which was the proper fund for the payment of the mortgage debt owed to FirstOntario, to be transferred to Ms. Tesolin, without FirstOntario's knowledge, and he had no other funds from which to pay that debt.

[87] Ms. Tesolin has not rebutted the inference of fraudulent intent. I am not persuaded that the Impugned Transaction was made for the purpose of Mr. Carmichael fulfilling his obligations to her under the *Family Law Act*. Accordingly, I find that the August 12, 2020 transfer was done for no good consideration. The transfer of the Stinson Proceeds to Ms. Tesolin was simply Mr. Carmichael trying to put monies that came into his control out of reach of FirstOntario and/or other creditors.

[88] Since the Impugned Transaction was made for no good consideration, it is not necessary for the plaintiff to also prove a fraudulent intention on the part of Ms. Tesolin for the purpose of s. 2 of the *Fraudulent Conveyances Act*.

[89] Since the Impugned Transaction was made for no good consideration, s. 3 of the *Fraudulent Conveyances Act* is of no assistance to Ms. Tesolin.

[90] Ms. Tesolin argues that *bona fide* matrimonial settlements are protected, as held in *Royal Bank v. Morrison*, 1992 CanLII 13976 (ON SC), at paras. 41, 49, 52. In that case, the bank claimed \$39,208.93 as against the wife on the grounds that the husband had fraudulently conveyed the interest in the family residence to his wife or had conveyed that interest in preference to a claim for outstanding personal debt owed by the husband to the plaintiff and other creditors. However, in that case, the court found that the separation agreement represented a *bona fide* compromise or resolution of the matrimonial dispute. Counsel for the bank conceded that the release of all future claims to child support and arrears owed constituted valuable consideration for the transfer of the husband's interest in the matrimonial home. The court ultimately held that evidence that the separation agreement had been negotiated at arm's length, that the husband's wages had been garnished for the benefit of the wife and that the divorce negotiations had been "heated", all supported a finding that the husband acted in good faith when negotiating the matrimonial dispute settlement. Accordingly, the bank had not discharged its onus to prove fraudulent intent on the part of the husband. Further, the court accepted the wife's evidence that, even though she knew her husband owed his creditors, she believed him when he told her that he would pay his personal debts. She knew that he was receiving severance pay and that he was expecting to secure a new job, which he did within two weeks of executing the separation agreement. The court also believed the wife's testimony that she wanted a lump sum payment of child support because she wanted to avoid the collection problems that his former wife had experienced. The court held that the bank did not discharge its onus of proving the wife's intent to defeat, delay, hinder, or defraud the husband's creditors.

[91] In my view, *Morrison* is distinguishable from the within case as the court there found that the release of all future claims of child support and arrears owed was good consideration given for the transfer of the interest in the home. Here, I have held that there was no good consideration given for the transfer of the Stinson Proceeds to Ms. Tesolin.

[92] For the same reason, I also find that *Austin Marshall Ltd. v. Bennie*, [1985] W.D.F.L. 2026, 1985 CarswellOnt 200 (Ont. Supr. Ct.), another case relied on by Ms. Tesolin, is distinguishable. In *Austin Marshall Ltd.*, the court held that the subject transaction – the conveyance of the matrimonial home to the wife – came about as a result of *bona fide* negotiations, conducted at arms' length, in settlement of the matrimonial dispute and that it was not done with the intent to give the wife an undue preference. The judge found that the main consideration given by the wife was "the giving up of her claim for support in the future" and that that was good and valid consideration for the deed of conveyance.

[93] The decision in *Kisluk v. B.L. Armstrong Co. Ltd.* (1983), 40 O.R. (2d) 167 (Ont. H.C.J.) concerns the effect of ss. 4 and 5 of the *Assignments and Preferences Act* on the subject transactions. And in *Krates v. Crate*, 2018 ONSC 2399, the applicant made a motion for orders vesting it with legal ownership of four properties to reflect beneficial ownership and further submitted that a mortgage was void as an improper assignment or preference pursuant to s. 4 of the *Assignments and Preferences Act*. Since the plaintiff in the within action is not relying on s. 4 of the *Assignments and Preferences Act*, neither of these cases is relevant.

[94] In *Mariani v. Lemstra*, 2004 CanLII 50592 (ON CA), the court was dealing with a claim based on a fraudulent misrepresentation, which is not a claim made by the plaintiff in this action.

In *R. v. Prokofiew*, 2008 PNCA 585, the Court of Appeal discussed the evidence necessary to establish a claim of conspiracy, but this plaintiff has advised that it is not relying on conspiracy in this action. And in *Moore v. Sweet*, 2018 SCC 52, the case involved an unjust enrichment claim and which of a former spouse or a new common law spouse was the rightful beneficiary of the proceeds of a life insurance policy owned by their partner who died. However, the plaintiff here is not relying on an unjust enrichment in its claim against Ms. Tesolin. So, none of these cases are relevant either.

[95] I conclude that the plaintiff has met its burden of establishing, on a balance of probabilities, that the Impugned Transaction was a conveyance made with the intent to “defeat, hinder, delay or defraud creditors or others”, within the meaning of s. 2 of the *Fraudulent Conveyances Act*.

(b) Should s. 12 of the Assignments and Preferences Act apply?

[96] The plaintiff seeks a tracing order to determine the ultimate recipient of the funds that were originally given to Mr. Carmichael and secured by the Mortgage.

[97] In accordance with my ruling above, I am satisfied that FirstOntario was an outstanding creditor of Mr. Carmichael’s at the time he transferred the Stinson Proceeds to Ms. Tesolin and that transfer was made with the intent to defeat FirstOntario. The law does not permit the transfer to be effective as against those creditors which it defeats.

[98] In *Westinghouse Canada Ltd. v. Buchar* (1975), 9 O.R. (2d) 137, 1975 CarswellOnt 93 (Ont. C.A.), at para. 15, the Ontario Court of Appeal held that the requirement that a transaction be “invalid against creditors” in s. 12 of the *Assignments and Preferences Act* includes a conveyance that is found to be void under s. 2 of the *Fraudulent Conveyances Act*. As a result, the tracing provisions of the *Assignments and Preferences Act* are available to the plaintiff in this case. As the Court of Appeal stated in para. 15:

... A remedial statute for the protection of creditors’ rights should receive a fair, large and liberal interpretation to ensure the attainment of its object; the plain intention of the statutes [the *Fraudulent Conveyances Act* and *Assignments and Preferences Act*], to be read together, is to constitute the fraudulent transferee a trustee of the proceeds replacing the lands, for the benefit of the defrauded creditors.

[99] In *Allen v. Hennessey* (1997), 107 O.A.C. 69, 1997 CarswellOnt 4456 (Ont. C.A.), the Ontario Court of Appeal confirmed a plaintiff’s right to “trace” proceeds of a sale of property that was acquired through a fraudulent conveyance. In that case, the defendant-wife had transferred to her defendant-husband the matrimonial home “for \$2.00 and natural love and affection” three days prior to her being served with the plaintiff’s claim. The trial judge found the conveyance to be a fraudulent conveyance made with the intent to deprive the plaintiff of funds to satisfy its judgment. The husband had sold the matrimonial home and bought another property which he also sold. The trial judge granted the plaintiff judgment for the proceeds from that subsequent sale. At para. 6 of its decision, the Ontario Court of Appeal upheld the trial judge’s ruling that the proceeds from the sale of the second property, which had been conveyed to an innocent purchaser for value, were held in trust for the creditors, stating that the creditors were:

... entitled to the proceeds of the subsequent disposition and to obtain a monetary judgment therefor against the transferee in lieu of an order setting aside the fraudulent conveyance which was no longer an available form of relief.

[100] This approach was also affirmed by the Ontario Court of Appeal in *Pilot Insurance Co. v. Foulidis* (2005), 199 O.A.C. 391 (Ont. C.A.), wherein the plaintiff, an insurance company, commenced an action against the defendant-husband, after obtaining a judgment against his wife for overpaid insurance benefits, seeking to have the defendant-husband held liable in damages for a portion of that judgment. The defendant-husband and his wife had transferred title of their jointly owned matrimonial home to the defendant-husband for nominal consideration. He then sold the home to a *bona fide* purchaser and, several months later, gave his wife the amount of her one-half interest in the net sale proceeds. The plaintiff alleged that this transfer of the matrimonial home was made with the intent to defeat its ability to enforce the judgment against the wife. The trial judge agreed and found that title to the home had been transferred with the intent of defeating the plaintiff's judgment under s. 2 of the *Fraudulent Conveyances Act*. He ordered the defendant-husband to pay damages in an amount equal to the judgment the plaintiff had obtained against the wife. The Ontario Court of Appeal dismissed the defendant-husband's appeal. Among other things, the Court of Appeal rejected his argument that he should not be held liable because he had transferred his wife's share of the sale proceeds to her. At para. 40, the Court of Appeal stated:

Section 12 refers to the conveyance of "any property". Had the legislature wished to limit the scope of s. 12 to property owned solely by the debtor, it could easily have said so. The absence of such limiting language, coupled with the remedial nature of the legislation and its objects, as discussed in *Buchar* and quoted above, lead me to conclude that the intent of s. 12 is to capture any property in which the debtor has an interest. As already noted, the conveyance to John Foulidis was invalid against Pilot, as creditor, by virtue of the trial judge's finding that it was made with fraudulent intent. Section 12 goes on to provide Pilot with the right to recover "the money" from the appellant because, had the property remained in Filomeni Foulidis and John Foulidis's [the wife and husband's] joint possession, Pilot would have been entitled to seize and sell the property and realise upon that portion attributable to the debtor, in satisfaction of its judgment.

[101] And at para. 44 of *Pilot Insurance*, the Court of Appeal held, in relation to the defendant-husband:

John Foulidis received the proceeds of sale, at least up to the amount of Filomeni Foulidis's interest in those proceeds, in trust for Pilot as creditor. Payment to the person who made the original fraudulent conveyance could not amount to a discharge of his obligations as trustee. Payment of those funds to anyone other than creditors amounts to a breach of trust for which he is liable.

[102] I also accept and adopt the approach taken by the court in *Tsui-Wong v. Xiao*, 2018 ONSC 3315, at paras. 171 and 290, aff'd 2019 ONCA 756, wherein the court held that a divorce settlement cannot be used as a shield to protect the parties from fraud. In that case, an action for fraudulent conveyance was brought against four family members of Daniel Xiao after judgment

had been granted against him for \$230,289.40 arising from a shareholder dispute between the plaintiff and Xiao and it was not paid. The plaintiff alleged that Xiao and his former wife fraudulently conveyed a property to the wife's parents and then to third parties to avoid the plaintiff being able to collect on a pending judgment. The plaintiff sought against the former wife a tracing and accounting for funds fraudulently received by her from her acquisition of another property in Vancouver registered in her name. She acknowledged that the funds to acquire that property had come from Xiao. That property had been sold and the former wife owned other property. In that case, the court found that it was unusual for the former wife's mother to grant a loan to Xiao after the divorce. Xiao's address for the promissory note given to the wife's mother was the property where the wife and children resided after the divorce. The court held that it did not make sense for the mother to loan funds to Xiao and the former wife to arrange the loan unless there was an ongoing existing relationship between Xiao and his former wife. The court also found it unusual for the wife to testify that she repaid the loan out of the sale proceeds of that property, post-divorce, and held that this was more indicative of Xiao having a continuing interest in the property and the parties continuing their relationship. The court held that it was appropriate to order the proceeds from the sale of the Vancouver property, registered in the wife's name, to be traced to other properties owned by the wife to satisfy the plaintiff's judgment (para. 252).

[103] I come to a similar conclusion in this case. Ms. Tesolin accepted a voluntary conveyance of property in fraudulent circumstances. She received the proceeds of sale of the Stinson Property up to the amount of Mr. Carmichael's interest in those proceeds in trust for the plaintiff. Had the Stinson Proceeds remained in the possession of Mr. Carmichael, FirstOntario would have been entitled to seize the funds to satisfy the amounts owing to it under the Mortgage.

[104] I conclude that s. 12 of the *Assignments and Preference Act* should apply in the circumstances of this case and a tracing order made.

[105] The plaintiff shall have judgment against the defendant, Ms. Tesolin, in the amount of \$467,945.69, plus prejudgment and postjudgment interest. However, I do not grant FirstOntario's request that the rate of interest be the rate set out in the terms of the Mortgage. Ms. Tesolin did not sign the Mortgage. I also find that Ms. Tesolin has not had the full benefit of the Stinson Proceeds since August 12, 2020. In this regard, the decision in *Mitchell Jenner & Associates Inc. v. Saunders*, 2012 ONCA 290, is applicable wherein the Ontario Court of Appeal stated, at paras. 11-12:

11 We do not accept in the circumstances of this case, however, that the interest rate applicable as between the respondent and Mr. Saunders is the appropriate benchmark for interest on the judgment against Mrs. Saunders. What is being restored by the judgment is an asset against which the respondent may seek to recover. There is nothing to indicate that that asset could have, or should have grown at the rate of interest agreed to between the respondent and Mr. Saunders in the commission contract, to which Mrs. Saunders was not a party. While there may be other cases on different facts, on the facts of this case, we think that prejudgment interest and post judgment interest should be fixed at the rate of 3.3% per annum, the applicable rate under the *Courts of Justice Act*.

12 Moreover, interest should be recalculated from December 5, 2007, as that is the date from which the respondent sought interest in its statement claim, and not April 1, 2005.

[106] I conclude that prejudgment and postjudgment interest should be in accordance with ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

CONCLUSION

[107] For the foregoing reasons, the following orders are made:

- (a) Mr. Carmichael’s transfer of \$687,291.69 to Ms. Tesolin on August 12, 2020 is declared to be void as being contrary to s. 2 of the *Fraudulent Conveyances Act*.
- (b) Ms. Tesolin shall pay the sum of \$467,945.69, together with prejudgment interest in accordance with s. 128 of the *Courts of Justice Act*, from October 1, 2023 to judgment, and postjudgment interest in accordance with s. 129 of the *Courts of Justice Act*, to the plaintiff.
- (c) A tracing order is made in favour of the plaintiff to determine the ultimate recipient of the funds that originated with the plaintiff and were obtained by the defendants.

Section 178 of the *Bankruptcy and Insolvency Act*

[108] In the statement of claim, the plaintiff claimed a declaration that all monies due and owing to it by the defendants is a debt resulting from obtaining property by false pretences and obtained by fraud and falls within the provisions of s. 178 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3. However, at trial and in counsel’s closing submissions, this claim was not pursued by the plaintiff and so I make no determination regarding same.

Ms. Tesolin’s Crossclaim against Mr. Carmichael

[109] No submissions were made with respect to Ms. Tesolin’s crossclaim against Mr. Carmichael. Accordingly, I make no determination regarding same.

COSTS

[110] I would urge the parties to agree on costs. If they are unable to do so, then costs submissions may be made as follows and submitted to the Sopinka Judicial Assistants to my attention:

- (a) By May 25th, 2026, the plaintiff shall serve and file its written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers; and
- (b) The defendant, Ms. Tesolin, shall serve and file her responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, by June 1st, 2026; and

- (c) The plaintiff's reply submissions, if any, are to be served and filed by June 8th, 2026 and are not to exceed two pages.
- (d) If no submissions are received by June 8th, 2026, the parties will be deemed to have resolved the issue of the costs and costs will not be determined by me.

[111] If the parties are able to settle the question of costs or if a party does not intend to deliver submissions, counsel are requested to advise the court accordingly.

MacNEIL J.

Released: May 5, 2026