

CITATION.: Paradigm Change Consulting Inc. et al. v. Boparai et al., 2024
ONSC 7068
COURT FILE NO.: CV-23-00001981-0000
DATE.: 2024 12 16

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: PARADIGM CHANGE CONSULTING INC.

BHANDAL, Balwant

BHANDAL, Goginder Kaur

BHANDAL, Navneet, **Plaintiffs**

AND:

BOPARAI, Navdeep Singh

LU VESTA GROUP OF COMPANIES LIMITED

VERANCE DEVELOPMENT CORPERATION

RHOMBI NORTH BAY DEVELOPMENT I LP.

RHOMBI NORTH BAY DEVELOPMENT II LP.

LOTUS NORTH BAY GENERAL PARTNER I INC.

LOTUS NORTH BAY GENERAL PARTNER II INC., **Defendants**

BEFORE: Justice Wilkinson

COUNSEL: KAMALIE, S. and KHAK, K. for the Plaintiffs

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HEARD: June 19, 2024, in person

JUDGMENT

[1] There are three motions before me. The Plaintiffs bring a motion for summary judgment seeking repayment of \$1,355,000 that they provided to the Defendant, Mr. Boparai, to invest in a private mortgage on their behalf, through his company, BLM Canada Corporation (“BLM”). When the private mortgage loan became due, the Plaintiffs re-invested their funds through Mr. Boparai in a condominium development in North Bay. The Plaintiffs also provided Mr. Boparai with \$400,000 that they believed was being placed in a family trust. Mr. Boparai submits that the \$400,000 payment was a loan to him. None of the invested funds have been returned to the Plaintiffs. The Plaintiffs seek punitive damages in addition the return of the investment/loan amounts provided to Mr. Boparai.

[2] The Plaintiffs also bring a motion to amend the Statement of Claim to seek a declaration that the second of the two investment/loan agreements between the parties is rescinded on the basis of fraudulent misrepresentation and/or material misrepresentation, and/or is unenforceable due to a lack of consideration.

[3] The Defendants bring a motion to remove the *Mareva* injunction previously ordered by Daley J. on November 8, 2023, or alternatively, to lift the *Mareva* injunction to permit them to sell the land at issue in this litigation located at 744 Lakeshore Road in North Bay, Ontario (“the Lakeshore Property”).

[4] The issues to be determined are:

- 1) Should the Plaintiffs be permitted to amend the Statement of Claim?
- 2) Should the *Mareva* injunction on the Lakeshore Property be set aside?
- 3) If the test to maintain the injunction has been satisfied, should the sale of the Lakeshore Property be permitted to proceed as an exception to the *Mareva* injunction?
- 4) Is this an appropriate case for summary judgment or partial summary judgment?

[5] At the time that this motion was argued on June 19, 2024, there was a sale for the Lakeshore Property pending on June 21, 2024. In my Endorsement released on June 20, 2024, the parties were advised that there was insufficient time prior to the scheduled June 21, 2024 closing date for me to review the approximately 6000 pages that had been filed with respect to the three motions, and deliver a judgment.

[6] Having now considered the full motion record, for the reasons set out below I make the following rulings:

- a) The Plaintiffs are permitted to amend the Statement of Claim as proposed in their motion record;
- b) The Plaintiffs have satisfied their burden to establish that the *Mareva* injunction on the Lakeshore Property should remain in place;
- c) The Plaintiffs have satisfied their burden to establish that the *Mareva* injunction on the Lakeshore Property should not be lifted to permit the sale of the Lakeshore Property;
- d) The North Bay loan/investment agreement is rescinded. The Plaintiffs are entitled to partial summary judgment as against the Defendants jointly and severally in the amount of \$1,617,679.53, broken down as follows:
 - i) Payment of \$1,272,222 with respect to the North Bay project; and
 - ii) Reimbursement for the \$400,000 advanced on November 18, 2019 plus interest at 2% totaling \$40,657.53, minus \$95,200 already received from Mr. Boparai in interest payments = \$345,457.53.

[7] Two issues shall proceed to trial: a determination of the quantum owed to the Plaintiffs for principal and interest beyond the amount contained in this judgment for the North Bay project, and a determination as to the quantum of punitive damages owed to the Plaintiffs.

Background

[8] The Plaintiff, Balwant Bhandal, is a 75 year-old man who is married to the Plaintiff, Goginder Bhandal, also in her mid-seventies. Their daughter is the

Plaintiff, Naveet Bhandal, who owns the Plaintiff Corporation, Paradigm Change Consulting Inc. (“Paradigm”).

[9] The Defendant, Navdeep Singh Boparai, is the principal Defendant in this litigation. He is also the sole owner and officer and/or director of the Defendant corporations, Lu Vesta Group of Companies Limited (“Lu Vesta”), Verance Development Corporation (“Verance”), Rhombi North Bay Development I LP. (“Rhombi I”), Rhombi North Bay Development II LP. (“Rhombi II), Lotus North Bay General Partner I Inc. (“Lotus I”), and Lotus North Bay General Partner II Inc. (“Lotus II). The primary purpose of these companies is to purchase real estate holdings for Mr. Boparai.

[10] Balwant and Goginder Bhandal first met Mr. Boparai at the wedding of their son to Mr. Boparai’s niece. Mr. Boparai was introduced to them by his wife as a successful mortgage agent who ran his own business. This meeting led to the Plaintiffs making a series of investments and/or loans to Mr. Boparai. The Plaintiffs trusted Mr. Boparai, and they treated each other like family. The Plaintiffs provide text messages that demonstrate a close relationship between the parties. In particular, Navneet Bhandal looked upon Mr. Boparai as a father figure, and he frequently referred to her as “daughter”.

[11] The Defendants oppose the Plaintiffs being permitted to amend the Statement of Claim to seek a declaration of rescission because they have not had

the opportunity to conduct cross-examinations of the Plaintiffs regarding the proposed amendments.

[12] The Defendants also take the position that given the factual issues in dispute in this litigation, the Plaintiffs' claims cannot be determined by way of a summary judgment motion. In the alternative, the Defendants argue that as the North Bay investment in which the Plaintiffs placed their funds failed, the Plaintiffs are not entitled to a return of investment funds, nor any interest from the investment.

The Wellandport private mortgage initial investment

[13] Mr. Boparai recommended that the Plaintiffs provide funds to his brokerage, BLM, to invest in a private mortgage that would provide a 10% guaranteed return on their investment. The mortgage investment had a one-year term with the option to renew, at which point the Plaintiffs were to receive their principal and all interest payments owed to them.

[14] In February 2017, Navneet Bhandal provided one cheque to Mr. Boparai from herself for \$100,000, and a second cheque for \$200,000 from her company, Paradigm, for a total contribution of \$300,000. BLM entered into a Bare Trust Agreement with Paradigm with respect to these funds. The agreement confirmed that the funds were to be used to purchase a property located in Wellandport, and in exchange, Navneet was to receive 26.5% of the net sale proceeds when the property was sold.

[15] Between April 2017 and January 2018, Ms. Bhandal and her parents provided additional funds totaling \$765,000, which included a \$200,000 withdrawal from the home equity line of credit on her parents' home. Mr. Boparai provided Balwant Bhandal with a Promissory Note dated April 5, 2017, from BLM confirming that it had borrowed \$60,000 from Mr. Bhandal, for a one-year interest-only loan at 12% per annum.

[16] The title to the Wellandport property was transferred to Mr. Boparai and his wife on May 8, 2017.

The Wellandport mortgage renewal

[17] The parties have different version of their discussions prior to registering a mortgage on the Wellandport property in 2018. Mr. Boparai claims that the Plaintiffs did not want their funds returned to them at the end of the one-year private mortgage investment. However, he provides two different reasons in two separate affidavits to explain why the Plaintiffs wished to keep their funds invested:

- 1) In his affidavit sworn January 29, 2024, Mr. Boparai claims that the Plaintiffs refused to accept the funds from him as their accountant had advised them not to show large amounts in their corporate or personal accounts.
- 2) In a second affidavit sworn March 21, 2024, Mr. Boparai states that the Plaintiffs chose to keep the funds invested as they were earning a substantial return of 18% per annum on the funds invested with the

Wellandport mortgage, although he does not produce documentation confirming an 18% rate of return on any investment.

[18] In the spring of 2018, the Plaintiffs' private mortgage loan was converted to a private loan to Mr. Boparai that was secured against the Wellandport property. Mr. Boparai deposes that he arranged for a cheque for \$670,000 of the Plaintiffs' initial investment to be returned to them on March 7, 2018, payable to lawyer Monu Bansal, which was then provided to Mr. Boparai as a loan. Mr. Boparai provides a copy of this cheque, and a copy of the mortgage agreement showing a mortgage for \$1,031,800 registered against the Wellandport property on April 16, 2018 in favour of the Plaintiffs, with an interest rate payable to them of 9% per annum.

[19] Mr. Boparai's affidavits do not explain why there was a shortfall of \$33,200 from the \$1,065,000 originally received by him from the Plaintiffs.

[20] Mr. Boparai produces no letters or other documentation confirming the Plaintiffs' investment instructions from 2018.

[21] Ms. Bhandal denies that Mr. Boparai ever offered to return their investment funds to them, and states that the Plaintiffs have no knowledge of a cheque for \$670,000. She does, however, agree that the Plaintiffs agreed to have their invested funds converted to a loan to Mr. Boparai secured against the Wellandport property. She states that the Plaintiffs trusted Mr. Boparai, and did not question any of the documents they were signing.

[22] Ms. Bhandal also deposes that the Plaintiffs have never been given an explanation from Mr. Boparai as to why the amount of the charge on the property was \$1,031,800, which is \$33,200 less than the \$1,065,000 given to Mr. Boparai.

[23] Although not known to the Plaintiffs, on May 18, 2018, the Financial Services Commission of Ontario (“FSCO”) suspended Mr. Boparai’s mortgage agent license and prohibited him from dealing or trading in mortgages in Ontario. The order included several concerning findings, including:

- a) FSCO had received complaints that Mr. Boparai used false promises and deception, and signed people up for mortgages that they did not understand;
- b) Mr. Boparai was abusing his license to realize significant economic benefits for himself to his clients’ detriment;
- c) Mr. Boparai had demonstrated a propensity for deceit and posed a risk to his client and the public; and
- d) Mr. Boparai’s conduct has been fraudulent and dishonest.

[24] Mr. Boparai’s mortgage broker license was revoked on September 28, 2018, and the license of BLM was revoked on December 21, 2018.

[25] Mr. Boparai states in his affidavit that he informed the Plaintiffs about the revocation of the licenses in December 2018. He produces no written confirmation that he informed the Plaintiffs about his revoked license.

[26] Ms. Bhandal denies that Mr. Boparai ever informed her or her parents that his license was suspended.

Mr. Boparai's January 23, 2019 letter

[27] Mr. Boparai sent a letter to the Plaintiffs by email on January 23, 2019, notifying them that he had sold BLM. The letter also describes the money provided to him by the Plaintiffs as loans for his personal benefit totaling \$765,000, that had generated interest of \$72,900, resulting in \$837,900 to be paid to the Plaintiffs including principal and interest.

[28] The letter also informed the Plaintiffs that the Wellandport property had been sold, with a closing date of April 1, 2019. The letter confirms that the 26.5% interest in the Wellandport property and other interest owed to the Plaintiffs for the monies advanced, resulted in an anticipated payment owed to them of \$1,272,221.50. The letter also offered further investment options with respect to the Wellandport property, including the Plaintiffs entering into a co-ownership agreement with Mr. Boparai.

[29] Mr. Boparai also offered the Plaintiffs the option to invest their funds in a condominium opportunity in North Bay, which involved the Lakeshore Property, and another property located at 55 Thompson Ave., both of which had been previously purchased by the Defendant companies Rhombi I and Lotus I. In

addition, the Defendant companies Lotus II and Rhombi II purchased lands located at 351 Birchs Road in North Bay.

[30] There is no mention in the letter of Mr. Boparai's mortgage license being revoked.

The North Bay Investment

[31] The Plaintiffs informed Mr. Boparai that they were not willing to invest in the North Bay project until their investment from the Wellandport property was returned to them. Mr. Boparai then initiated an unusual method of distributing the investment fund returns to the Plaintiffs.

[32] Mr. Boparai sent payments to the Plaintiffs in four separate installments, and then asked them to immediately send him funds in almost the same amount to be invested in the North Bay project. The Plaintiffs provide documentation of the funds being received from Mr. Boparai and then immediately returned to Mr. Boparai on the same day to be re-invested in the North Bay project. The net result is that Ms. Bhandal and Mr. Boparai were essentially sending the same funds back and forth to each other.

[33] Ms. Bhandal states in her affidavit that a payout statement provided to her by Ms. Bansal's law firm on June 12, 2019 confirmed that \$1,354,101 in cheques had been returned to the Plaintiffs from their original investment, broken down as follows:

- a) Principal - \$1,065,000;
- b) 26.5% of bare trust return: \$124,000;
- c) 2nd mortgage payout from April 16, 2018 to current: \$120,600; and
- d) All other fees and interest on unsecured amounts: \$44,501.00.14.

[34] Ms. Bhandal provides affidavit evidence that she received telephone calls from Mr. Boparai directing her to send him an email requesting that the investment funds that she was to be receiving were to be invested in a property located at 351 Birch Road in North Bay (later discovered to be 351 Birchs Road). Ms. Bhandal sent the email to Mr. Boparai as requested. Ms. Bhandal deposes that the Plaintiffs believed at this point that their investment funds were being invested in the Birchs Road property, but that they have never received confirmation from Mr. Boparai as to the identity of the specific property in which their funds are invested.

[35] In total, the Plaintiffs sent Mr. Boparai \$1,355,000 to be invested in the North Bay property, which was \$899 more than the \$1,354,101 in cheques returned to them. Ms. Bhandal states that the Plaintiffs were told that the North Bay investment would provide a 10% guaranteed rate of return, with a two-year investment term.

[36] The parcel abstract for the Wellandport property shows that that Plaintiffs' charge on the property was discharged on July 4, 2019.

[37] As all of their investments were rolled into the North Bay investment, Balwant and Goginder Bhandal did not pay down any of the \$200,000 home equity line that they had taken out for the original investment.

[38] Mr. Boparai admitted at his cross-examination that he did not actually have the funds to return to the Plaintiffs from the Wellandport investment at the time that their funds were invested in the North Bay project.

[39] After the exchange of funds took place, Navneet Bhandal met with Mr. Boparai to sign documents related to the North Bay project. The parties do not agree as to when this meeting took place, or the content of the agreement that was signed.

[40] Ms. Bhandal deposes that she met with Mr. Boparai on August 6, 2019 at her condominium. She also provides copies of WhatsApp messages between herself and Mr. Boparai confirming that the meeting was to place at her condominium. Ms. Bhandal states that the investment agreement that she signed that day confirmed that her company, Paradigm, was the lender, and Mr. Boparai was the borrower, and Paradigm was guaranteed a 10% rate of return on the investment over a two-year term. Ms. Bhandal deposes that she requested from Mr. Boparai, but never received, a copy of the agreement signed on August 6, 2019.

[41] Mr. Boparai disagrees that the meeting with Ms. Bhandal took place on August 6, 2019. He states that the meeting took place on June 24, 2019. He produces four different documents that he says were signed by the parties on that date: a Loan Termination Agreement for the \$1,231,000 previously given to him signed by all three Plaintiffs, a Termination of Trust Agreement with respect to the Bare Trust Agreement for \$300,000 for the Wellandport property signed by Navneet Bhandal, a Satisfaction Piece for the \$60,000 loan from Balwant Bhandal identified in the Promissory Note, and loan agreement between Mr. Boparai and Paradigm allegedly signed by Ms. Bhandal. The June 24, 2019 loan agreement had several significant differences from the agreement that Ms. Bhandal believed that she had signed, none of which were favourable to the Plaintiffs.

[42] In July 2019 Mr. Boparai began paying Balwant and Goginder Bhandal monthly interest payments to assist them with the interest payments that they were making on their home equity line of credit. The agreement between the parties was that the monthly payments were to be paid by Mr. Boparai until such time as they received the return on their investment from the North Bay project. Ms. Bhandal states in her affidavit that Mr. Boparai has paid \$95,200 in interest payments to date.

[43] Mr. Boparai states that he has made payments to the Plaintiffs totalling \$90,600, which reduces the principal amount owing under the loan agreement to \$1,540,400. He disputes that these were interest only payments.

The Family Trust Investment/Personal Loan to Boparai

[44] In addition to all the other monies advanced to the Defendants, Balwant Bhandal provided an additional \$400,000 from his home equity line of credit for Mr. Boparai to invest in a “family trust” in November 2019. At the time, Mr. Boparai’s niece was still married to Balwant and Goginder’s son, and was living with the family in the Bhandals’ home. The young couple had been experiencing marital difficulties. Mr. Bhandal deposes that Mr. Boparai encouraged him to immediately create a family trust to protect the family home from his niece if the marriage of the young couple should fail. Mr. Bhandal states he quickly followed the advice, and withdrew \$400,000 from his home line of credit that same day and sent it to Mr. Boparai to create a family trust.

[45] Upon learning later that day that her father had withdrawn \$400,000 from his home equity line, Ms. Bhandal immediately contacted Mr. Boparai, and asked for the funds to be returned to Mr. Bhandal, which is evidenced in the WhatsApp messages provided by Ms. Bhandal. Ms. Bhandal and Mr. Bhandal provide affidavit evidence that they have contacted Mr. Boparai numerous times about the status of the family trust agreement. To date, the Plaintiffs have received no paperwork from Mr. Boparai confirming that a family trust agreement has been established, nor has the \$400,000 been returned to the Plaintiffs.

[46] Mr. Boparai does not dispute that Balwant Bhandal provided \$400,000 to him, but he does not agree that it was for a family trust. His evidence is that the

\$400,000 was a personal loan offered to him by Balwant, which included interest owed at 10% per annum. Mr. Boparai states that this was a verbal agreement. He denies recommending the creation of a family trust to the Plaintiffs. He deposes that he directed the Plaintiffs to consult with a lawyer to set up a trust. However, this evidence is challenged by a WhatsApp text from him to Ms. Bhandal dated July 2, 2019, in which he references a family trust, and specifically states that he would not be involving lawyer Ms. Bansal in the family trust.

[47] Mr. Boparai states in his affidavit that after he met with the Plaintiffs in November 2019, the Plaintiffs agreed that they did not require a repayment of the loan at that time. There are no texts from Mr. Boparai or the Plaintiffs confirming that the Plaintiffs no longer wished the \$400,000 to be repaid.

[48] The Plaintiffs deny that Mr. Boparai offered them a repayment of the \$400,000. Ms. Bhandal stated at her cross-examination that she then began making Google inquiries about Mr. Boparai, and discovered the FSCO orders in December 2019, including a further order from FSCO dated December 12, 2019, in which FSCO issued a \$50,000 penalty against Mr. Boparai for trading in mortgages while his license was under suspension.

[49] Ms. Bhandal states that the June 24, 2019 North Bay loan agreement was not produced to her until August 31, 2022, after Balwant Bhandal confronted Mr. Boparai about the suspension of his license by FSCO. No explanation has been

provided by Mr. Boparai to explain the delay in producing copies of 2019 loan agreement to Ms. Bhandal.

[50] Ms. Bhandal states that the North Bay loan agreement given to her by Mr. Boparai in August 2022 contained several key differences from the agreement she says she signed on August 6, 2019:

- a) It claims for the first time that Paradigm had received a \$124,000 overpayment;
- b) The \$400,000 advanced by Mr. Bhandal for the creation of a family trust fund is listed in the agreement as a loan to Mr. Boparai, even though the agreement is dated June 24, 2019, and the \$400,000 was not paid to Mr. Boparai until almost five months later in November 2019;
- c) The loan agreement states that the loan shall be interest-free from the date of advancement;
- d) The loan agreement mentions the Defendants Lu Vesta and Verance Development Corporation distributing payment of 4% of all revenues received over and above \$3,000,000 provided that Mr. Boparai was the owner or had controlling interest in Lu Vesta and Verance, and provided further that the maximum return paid to Paradigm shall be no more than \$2,000,000; and
- e) The loan agreement states that the outstanding principal amount and accrued interest shall be due and payable five years from June 24, 2019, rather than the two-year time frame for the loan that the Plaintiffs state was the agreement.

[51] Mr. Boparai stopped making the monthly interest payments to the Plaintiffs after he was confronted by Balwant about the FSCO orders.

Litigation History

[52] The Plaintiff, Paradigm, initially filed a Statement of Claim against only Mr. Boparai in court file CV-22-3718. No other Plaintiffs or Defendants were listed in the claim. Mr. Boparai filed a Statement of Defence in response to the Statement of Claim. The Plaintiffs subsequently issued and served the Statement of Claim in the present action, without dismissing the previously filed Statement of Claim.

Mareva Injunction obtained by the Plaintiffs

[53] The Plaintiffs learned from Mr. Boparai that an Agreement of Purchase and Sale for the North Bay investment property was entered into in May 2023, with a scheduled closing date of December 1, 2023.

[54] The Plaintiffs obtained an interim *Mareva* injunction on November 8, 2023 preventing the sale of the North Bay investment project. The Plaintiffs did not disclose the existence of the first Statement of Claim to Daley J. at their *ex parte* motion. Mr. Boparai argues that the failure of the Plaintiffs to disclose the existence of the first Statement of Claim at the *ex parte* hearing is an abuse of process.

[55] On November 17, 2023, Doi J. issued an order extending the interim injunction until the final determination of the action.

[56] Mr. Boparai states in his affidavit that the intended purchaser of the Lakeshore Property in North Bay agreed to extend the closing date from December 1, 2023 to June 21, 2024. The Defendants proposed that the sale be permitted to proceed, with the net sale proceeds held in trust pending the resolution of this action. The Defendants also advise that power of sale proceedings have been commenced by the first and second mortgagees on the property. The Defendants state that if the property is sold through a power of sale, it will likely be sold at a lower price than could have been achieved on the open market.

[57] The Plaintiffs do not agree with this course of action, as they are concerned that the value of the net proceeds of sale may be less than the value of the money owed to them. The Plaintiffs seek an order by way of summary judgment for the full value of funds owed to them, noting that even if the June 24, 2019 North Bay investment agreement was accurate, the return of their investment was due in any event on June 24, 2024, which is the end of the five-year term for the loan set out in that agreement.

Sale of the North Bay lands

[58] Mr. Boparai states in his affidavit that a downturn in the real estate market and increasing mortgage interest rates did not produce the results he had hoped for in the North Bay project, and that he is selling it so that he could repay the money owed to the Plaintiffs. He provides a copy of an Agreement of Purchase and Sale dated May 16, 2023, in which the Defendants Rhombi I and Lotus I

agreed to sell the Lakeshore Property for a purchase price of \$10,000,000. He also provides a copy of a deposit cheque in the amount of \$50,000 from the purchaser, Bridgmount Development and Construction Ltd. The original closing date was December 1, 2023. Mr. Boparai also states in his affidavit that the purchaser requested an extension of the closing date, which resulted in the June 21, 2024 closing date.

[59] At his cross-examination Mr. Boparai admitted that he never publicly listed the Lakeshore Property for sale.

Issue #1 - Should the Plaintiffs be permitted to amend the Statement of Claim?

[60] Mr. Boparai's admitted at his cross-examination that he did not have the funds to return the Plaintiffs' investment to them at the time that he was exchanging funds with them prior to the North Bay investment. The Plaintiffs now seek to amend their Statement of Claim to plead that the loan agreement that formed the basis of the North Bay investment is rescinded on the basis of fraudulent misrepresentation and/or material misrepresentation. They alternatively wish to plead that the loan agreement is invalid or unenforceable due to lack of consideration.

[61] The Plaintiffs rely on the mandatory language in r. 26.02(c) of the *Rules of Civil Procedure*, R.R.O. Reg. 194, that a motion to amend the Statement of Claim

can be made at any stage of the proceeding, and that the court shall grant leave unless prejudice will result that cannot be compensated by way of costs or an adjournment.

[62] The Plaintiffs submit that the proposed amendment is not pleading a new cause of action, as fraudulent misrepresentation was already pleaded in the Statement of Claim. They therefore submit that the Defendants will not be prejudiced if the amendment to the Statement of Claim is permitted to proceed. Conversely, they submit that they will be prejudiced if they are not permitted to seek relief that stems from an admission made by the Defendant during his cross-examination.

[63] The Defendants oppose the Plaintiffs' request to amend the Statement of Claim. They submit that the Plaintiffs refused to answer questions at their cross-examinations that relate to their allegations of fraudulent misrepresentation.

[64] Ricchetti J. previously made an order on April 23, 2024, that did not allow motions to be brought regarding refusals, but that refusals may be the subject of an adverse inference if the motions judge considers the refusals to have been improper. The Defendants argue that the refusal of the Plaintiffs to answer questions has caused them prejudice that cannot be compensated for by way of costs or an adjournment, as they have lost the opportunity to challenge the credibility of the Plaintiffs at this motion.

[65] The amendments to the Statement of Claim are permitted. I have reviewed the portions of the transcript of the cross-examination of the Plaintiff, Navneet Bhandal, referred to by counsel for the Defendants in his submissions. The refusals were appropriate, as the questions involved legal opinions. I find that Ms. Bhandal's knowledge of legal issues is not relevant to the issues that I must decide on the motions before me, and that additional cross-examination regarding this issue would not produce relevant information to consider on a summary judgment motion. The inclusion of a new declaratory ground of relief as set out in the Amended Statement of Claim does not prejudice the Defendants, as the allegation of fraudulent misrepresentation was already pleaded. Mr. Boparai's counsel was given a full opportunity to explore the Plaintiffs' claim of negligent misrepresentation at the cross-examination that was conducted.

Issue #2 – Should the *Mareva* Injunction on the Property be set aside?

Position of the Defendants

[66] The Defendants submit that the *Mareva* injunction should be removed from the Defendants' properties. Their primary argument in support of this position is their assertion that the Plaintiffs did not provide Daley J. with full and frank disclosure at the time that they argued the motion for the injunction without notice to the Defendants.

[67] In particular, the Defendants argue that the Plaintiffs should have disclosed the existence of the first Statement of Claim that was filed against Mr. Boparai

which only sought repayment of an amount loaned to him. The Defendants argue that the claims against Mr. Boparai in the first Statement of Claim differ from the allegations in the second Statement of Claim, as the monies advanced to Mr. Boparai are described as investments instead of loans, and that no explanation has been provided for the Plaintiffs' change in position.

[68] The Defendants also argue that the Plaintiffs failed to put relevant evidence before Daley J., which includes the following advanced by Mr. Boparai:

- 1) That the Plaintiffs directed Mr. Boparai to prepare a cheque for \$670,000 to lawyer Ms. Bansal to be given to Mr. Boparai for investment purposes;
- 2) That Balwant Bhandal offered to loan Mr. Boparai \$400,000 in November 2019 with an interest rate of 10% per annum, and that the Plaintiffs did not require the \$400,000 to be repaid immediately; and
- 3) That the Plaintiffs were aware of the FSCO orders in December 2019 but did not issue a Statement of Claim for almost three years.

[69] The Defendants take the further position that the Plaintiffs have failed to demonstrate a strong *prima facie* case in their favour, as they submit the Plaintiffs made contradictions during their cross-examinations.

[70] The Defendants also submit that as the properties in issue in this litigation are already under power of sale proceedings, there are no assets that can be removed or dissipated by the Defendants.

[71] In the alternative, the Defendants propose that the *Mareva* injunction be lifted to permit the proposed sale to proceed, and that the proceeds of sale be held in trust pending the outcome of the litigation.

Position of the Plaintiffs

[72] The Plaintiffs oppose the Defendants' request to set aside the injunction. They dispute the Defendants' assertion that they did not provide full and frank disclosure of the issues in dispute when the original injunction motion was argued before Daley J. They state that they were either not aware of the evidentiary issues that the Defendants are now putting before the court, or the factual issues the Defendants are now putting before the court were not material facts that were required to be disclosed.

[73] The Plaintiffs further submit that in the context of the FSCO fraud findings and the revocation of Mr. Boparai's mortgage broker license, there are valid questions surrounding the legitimacy of the proposed sale of the Lakeshore Property for \$10,000,000. They identify the following aspects to the sale that they say demonstrate that the sale has the hallmarks of fraud:

- 1) The Defendants never publicly listed the property for sale;
- 2) The Plaintiffs allege that the buyer under the Agreement of Purchase and Sale, Glen Bridgmohan, is the owner of the second mortgagee that has issued a notice of sale for the Lakeshore Property due to

default of the mortgage, but no litigation has been pursued against Mr. Boparai or his companies for the default;

- 3) The Agreement of Purchase and Sale was entered into after the first Statement of Claim was issued;
- 4) The deposit of \$50,000 under the Agreement of Purchase and Sale is abnormally low for a \$10,000,000 property, which represents a deposit of .005%;
- 5) All conditions (financing, due diligence, inspection, zoning, environment, appraisal conditions) were waived on July 17, 2023 without any evidence that the conditions were satisfied;
- 6) Schedule "A" of the Agreement of Purchase and Sale requires the buyer to pay an additional \$50,000 upon fulfilling all conditions, but there is no evidence that this amount was ever paid;
- 7) The inspection condition in the Agreement of Purchase and Sale states: "the seller agrees to cooperate in providing access to the structure for the purpose of an inspection", and yet there are no structures on the lands as admitted by Mr. Boparai at his cross-examination;
- 8) Section 3 of the Agreement of Purchase and Sale prohibits a realtor who acts for both parties to be the agent for either party for the purposes of giving and receiving notices, but the same realtor who represents both parties is the individual identified to receive notices on behalf of the seller;
- 9) Mr. Boparai did not disclose in his affidavits that the first mortgagee currently has possession of the property and has listed it for sale,

and he did not provide the mortgagee with a copy of the *Mareva* order, as indicated in an email from counsel for the first mortgagee dated May 6, 2024;

- 10) The email from counsel for the first mortgagee indicates that the first mortgagee is intending on lowering the public sale price to \$6,500,000, yet Mr. Boparai claims he has a buyer who will pay \$10,000,000 privately for the Lakeshore Property, even though there are no permits and no structures on the property;
- 11) If the proposed sale proceeds, Mr. Boparai stated at his cross-examination that he will still have a 25% shareholder equity in the building project, and that the buyer intends to build on the lands; and
- 12) Mr. Boparai admitted at his cross examination that he also hasn't told the second mortgagee about the *Mareva* order.

[74] The Plaintiffs also reject the Defendants' assertion that the proceeds of sale will not be dissipated if they are held in a trust account by the lawyer representing the Defendants on the sale of the property. The Plaintiffs point to the mortgage amounts owed under the two Notices of Sale dated August 2, 2023, and December 21, 2023, which have a combined total owing of \$9,209,999.89. In addition, there is a third mortgage registered on the property in favour of Olympia Trust Company for \$150,000. The total amount of mortgages owed that must be paid out of the proceeds of sale is therefore \$9,359,999.89.

[75] The Plaintiffs also note that the listing broker's commission is stated to be 2.5% plus HST, which is \$282,500. If the sale of the Property were to proceed,

once the mortgages and broker's commission is paid, there would only be \$357,500.11 to pay towards the more than \$1,700,000 the Plaintiffs claim that they are owed.

[76] The Plaintiffs also submit that the Defendants have not produced adequate documentation to establish that the mortgages that they claim are on the property are legitimate, including the interest rates, penalties, and fees that the Notices of Sale state are owing to the mortgagees. The Plaintiffs are concerned that the registered encumbrances on the land are not legitimate, and that they will be paid off before the net sale proceeds will ever make their way to a trust account for the benefit of the Plaintiffs.

[77] The Plaintiffs also submit that there has not been satisfactory evidence put forward that \$10,000,000 is a reasonable price for the Lakeshore Property as the Defendants do not provide an independent valuation for the property.

[78] The Plaintiffs submit that the Defendants have not produced any evidence at this motion to displace any of the findings and conclusions of Daley J. regarding his reasons for granting a *Mareva* order.

[79] Navneet Bhandal provides an undertaking in her affidavit that she will abide by any order of the court concerning damages if it is ultimately determined that the granting of the injunction has caused damages to the Defendants.

The Law

[80] A party seeking an interlocutory *Mareva* injunction that restrains a Defendant from dissipating assets, or from conveying away his or her own property pending the court's determination in the proceedings, must satisfy the following requirements:

- a) A strong *prima facie* case;
- b) Irreparable harm if the remedy for the Defendant's misconduct were left to be granted at trial;
- c) The balance of convenience favours granting an interlocutory injunction;
- d) The Defendant has assets in the jurisdiction; and
- e) That there is a serious risk that the Defendant will remove property or dissipate assets before judgment:

RJR-McDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311; *Wang v. Feng*, 2023 ONSC 2315, at para. 127.

[81] A strong *prima facie* case is one that will probably prevail at trial, or is likely to succeed at trial. Upon a preliminary review of the case, the judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice: *Wang*, at para. 127.

[82] The risk of removal or dissipation of assets can be established by inference. The Defendant's prior fraudulent activities and improper conduct including concealment, deception, evasion, and clandestine behavior may support an inference that the Defendant will remove or dissipate property: *Wang*, at para. 128.

[83] Where the evidence discloses a strong *prima facie* case that a Defendant has perpetrated a premeditated and substantial fraudulent scheme against innocent parties, "the law's reluctance to allow prejudgment execution yields to the more important goal of ensuring that the civil justice system provides a just and enforceable remedy against such serious misconduct": *Wang* at para. 129.

Legal Principles and Analysis

Did the Plaintiffs fail to make full and frank disclosure of material facts at the ex parte motion when the injunction was first granted?

[84] On a motion for an interlocutory injunction made without notice, there must be full and fair disclosure of all material facts, including the reasons for moving without notice. The moving party must state his or her case fairly, and must make a balanced presentation of the facts and law including any points of fact or law that favour the opposing party: *Wang*, at para. 130.

[85] Rule 39.01(6) states that a failure to provide full and frank disclosure of all material facts is in itself a sufficient ground for setting aside any order obtained on the motion or application.

[86] The reason for requiring such disclosure is based on the recognition that the judicial officer hearing a motion has only the moving party or their counsel before them. There is therefore a heavy burden on a moving party to put all relevant facts before the judge to allow the judge to obtain a reasonably balanced view of the facts that might reasonably affect the outcome of the motion. This burden includes providing the judge with relevant evidence that may not be supportive of the position of the moving party: *R.A. Fox v. R.S. Fox*, 2014 ONSC 1135 (Div. Ct.), at paras. 11-13.

[87] The Plaintiffs ought to have disclosed the existence of the first Statement of Claim to Daley J., as it is a relevant factor the judge hearing the motion should have known. However, a Statement of Claim is a pleading. It contains allegations. It is not evidence, and cannot prove facts. Parties may choose to withdraw or modify their allegations as the evidence in a case develops. There was nothing improper in the Plaintiffs' decision to issue a new Statement of Claim, and only deal with the allegations in the second Statement of Claim at their *ex parte* motion. The failure of the Plaintiffs to disclose the existence of the first Statement of Claim is therefore not a sufficient reason to set aside the injunction granted by Daley J.

[88] I disagree with the Defendants that the Plaintiffs should have advised Daley J. about the \$670,000 that Mr. Boparai claims he was authorized by Mr. Bhandal to send to lawyer Monu Bansal. There is no evidence before me to suggest that the Plaintiffs had received a copy of the \$670,000 cheque at the time that the first

injunction motion was argued, or that they were aware that Mr. Boparai was alleging they had instructed Ms. Bansal to send him that cheque.

[89] Similarly, there is no evidence before me that the Plaintiffs were aware that Mr. Boparai was claiming that the \$400,000 payment to him was a loan rather than an investment in a family trust at the time that the injunction was argued. Mr. Boparai confirmed in his affidavit that there was no written agreement between him and Mr. Bhandal regarding the \$400,000 payment by Mr. Bhandal. The Plaintiffs cannot inform a judge about evidence of which they are unaware.

[90] The fact that the Plaintiffs did not issue their Statement of Claim for three years after learning about the FSCO orders is relevant to the credibility issue to be determined on the summary judgment motion. However, I do not find that this piece of evidence is a material fact that was critical to be presented to Daley J. on the injunction motion in light of the overwhelming evidence that none of the Plaintiffs' investments had been returned to them by Mr. Boparai.

[91] Even after Ms. Bhandal was aware of the FSCO orders, she provides texts from Mr. Boparai that demonstrate that he continued to assure her that the North Bay condominium development was proceeding. Her knowledge of the FSCO orders is therefore not necessarily inconsistent with the Plaintiffs' belief that the North Bay investment was continuing, and their decision to hold off on commencing litigation against Mr. Boparai.

[92] The Defendants have therefore not established that the Plaintiffs failed to make full and frank disclosure of the issues and material facts involved in this litigation at the time that Daley J. issued the injunction.

Have the Plaintiffs established a strong prima facie case against the Defendants?

[93] Even if it was found that the Plaintiffs had failed to make full and frank disclosure of the issues before Daley J., I find on the record before me that the Plaintiffs have established a strong *prima facie* case against the Defendants.

[94] I note that in his decision in which he granted the *Mareva* injunction on an interim basis, Daley J. stated at para. 31:

There is compelling evidence demonstrating a fraudulent scheme by the Defendant to take the plaintiffs' monies, to invest them for his own benefit and to deny repayment to the plaintiffs.

[95] He also stated at para. 32:

I further find that in the event the *Mareva* injunction is not granted, the plaintiffs will suffer irreparable harm in that by far most of the funds turned over to the defendants represented the lifetime and retirement savings of the plaintiffs which may never be recovered even if the plaintiffs are successful at trial.

[96] And at para. 35, Daley J. stated:

I also find that the record demonstrates that there is a serious risk that the defendants will remove, dissipate or otherwise dispose of assets not in the ordinary course of business before judgment could be obtained by the plaintiffs. The evidence with respect to the Defendant's conduct as a mortgage broker, his loss of license and alleged fraudulent conduct involving other parties, more than amply supports the drawing of the reasonable inference that the plaintiffs could

lose any reasonable opportunity to recover their investment as a result of further fraudulent conduct by the Defendant and the defendant corporations: see *Wang* at para. 128.

[97] The additional evidence presented to me that was not before Daley J. does not materially assist the Defendants in their efforts to set aside the injunction. Mr. Boparai produces no documentation confirming the instructions that he claims came from Mr. Bhandal to prepare a cheque for \$670,000 made out to Ms. Bansal in trust. As the Plaintiffs' mortgage broker, it was his responsibility to confirm in writing the instructions he received from his clients. His failure to do so casts a great deal of doubt as to whether these instructions were ever given to him. I prefer the evidence of the Plaintiffs that these instructions were not given to Mr. Boparai.

[98] It is also noteworthy that Mr. Boparai does not dispute that he did not provide a copy of the North Bay loan document to the Plaintiffs until more than three years after he claimed they were signed, and he offers no explanation for the delay in providing copies of the documents to the Plaintiffs.

[99] The Defendants have not produced any other new evidence to address any of the concerns raised by Daley J. The evidence before me establishes that the Plaintiffs have collectively provided over \$1,700,000 to Mr. Boparai, and have had none of their investment returned to them. Mr. Boparai does not dispute that the Plaintiffs have not received the funds he owes to them, and admits that he owes them \$1,272,222 for the North Bay investment, and \$400,000 for the monies advanced to him in November 2019.

[100] The Defendants submit that the Plaintiffs have not established a strong *prima facie* case against them as they claim Ms. Bhandal has made contradictory statements. They point to text messages between the parties in 2019 and 2020 which indicate the parties were still communicating at that time about the investments, and suggest these texts contradict a rescinding of the North Bay investment project. I do not agree. The content of the text messages is consistent with the Plaintiffs' evidence that they were anxious about their investments, and were seeking reassurance from Mr. Boparai that the investments were sound.

[101] The Defendants also referred me to various passages in the cross-examination of Navneet Bhandal, and suggested that the transcript discloses contradictions in her evidence. They present their argument in a chart, which also contains information not related to potential contradictions. It is therefore somewhat challenging to locate and identify the suggested contradictions. However, having reviewed Ms. Bhandal's evidence given at her cross-examination, I am unable to identify any key contradictions in her evidence that affect the issues that I must determine.

[102] In finding that the Plaintiffs have established a strong *prima facie* case against the Defendants, I rely upon the following:

- a) Mr. Boparai has offered no explanation as to why the amount of the loan secured against the Wellandport in favour of the Plaintiffs was \$33,200 less than the funds advanced by the Plaintiffs;

- b) At his cross-examination, Mr. Boparai admitted that he did not have the Plaintiffs' funds available to make the investment at the time that he arranged for the funds provided by the Plaintiffs to be invested in the North Bay project. This admission explains why Mr. Boparai utilized a complicated system of advancing payments to the Plaintiffs and then asking that their monies be immediately repaid to him;
- c) Mr. Boparai stopped making interest payments to Mr. Bhandal and Ms. Bhandal in July 2022 towards their line of credit costs with no explanation after he was confronted by the Plaintiffs about the FSCO orders;
- d) Mr. Boparai did not advise the Plaintiffs as to the specific location of the North Bay development project;
- e) Mr. Boparai has not returned the \$400,000 that he states he borrowed from Mr. Bhandal, nor has he paid any interest to Mr. Bhandal for using his funds;
- f) Mr. Boparai has failed to return the \$1,355,000 invested in the North Bay project to the Plaintiffs, even now, after five years have elapsed, which was the term of the loan agreement set out in the document dated June 24, 2019;
- g) Mr. Boparai did not provide the Plaintiffs with a copy of the North Bay loan agreement until three years after it was signed, and
- h) Mr. Boparai continued to hold himself out to the Plaintiffs as a mortgage broker and invest their funds after FSCO had revoked his license.

Will the Plaintiffs suffer irreparable harm if the injunction is lifted?

[103] A pattern of prior fraudulent conduct can support a reasonable inference that there is a real risk that the conduct will continue: *Sibley & Associates LP v. Ross*, 2011 ONSC 2951, 106 O.R. (3d) 494, at para. 64.

[104] I find that if the injunction is lifted, there is a real risk that Mr. Boparai's fraudulent conduct will continue, and that the proposed sale of the Lakeshore Property may not benefit the Plaintiffs. Should the Plaintiffs' interests not be properly protected when the subject lands are sold, they will suffer irreparable harm.

Does the balance of convenience favour granting an injunction?

[105] The balance of convenience favours the Plaintiffs, as they risk losing their life savings if the injunction is lifted and the sale of the Property proceeds. In addition, the Defendants provide no documentation or submissions as to any negative consequence if the *Mareva* injunction remains in place, other than the potential for the property to be sold at a reduced value through a power of sale. The balance of convenience therefore favours the Plaintiffs to keep the *Mareva* injunction in place.

Do the Defendants have assets in the jurisdiction?

[106] As noted by Daley J. at para. 35 of his decision, the record *prima facie* indicates that the Defendants have assets within the jurisdiction, particularly given Mr. Boparai's role in the Defendant corporations.

Is there is a serious risk that the Defendants will remove property or dissipate assets before judgment?

[107] Mr. Boparai's past fraudulent conduct as evidenced by the loss of his mortgage broker license supports drawing a reasonable inference that the Plaintiffs will be at risk of losing any reasonable opportunity to recover their investment if the injunction is lifted. They would also not be protected from further fraudulent conduct by Mr. Boparai and/or the Defendant corporations if the injunction is lifted.

[108] The Plaintiffs have established that the facts in their case meet the test in *RJR-McDonald* and *Wang*. It is appropriate that the *Mareva* injunction remain in place with respect to the Lakeshore Property.

Issue #3 – If the test to maintain the injunction has been satisfied, should the sale of the Lakeshore Property be permitted to proceed as an exception to the *Mareva* injunction?

[109] The Defendants argue that both parties will be harmed if the sale does not proceed. The Plaintiffs submit that I must be convinced that the sale of the Lakeshore Property is legitimate, and in the ordinary course of business before I

should lift the injunction to permit the sale to proceed. The Plaintiffs submit that the Defendants have not met their onus to establish that the sale is a provident one, and in the best interest of the Plaintiffs. I agree.

[110] The Defendants do not provide sufficient evidence to establish the reasonableness of the proposed \$10,000,000 purchase price. The Plaintiffs have successfully established that the proposed sale is suspicious, and may result in the Plaintiffs receiving substantially less than the amounts they are owed.

[111] If the sale is legitimate then it may well be true that the Plaintiffs will financially benefit from the sale proceeding, as opposed to the property being sold through a power of sale. However, given Mr. Boparai's history of deceit and dishonesty as evidenced in the FSCO rulings, it is reasonable for the Plaintiffs to have concerns regarding the legitimacy of the proposed sale, particularly given the lack of evidence from the Defendants to demonstrate the reasonableness of the sale. It is appropriate that the injunction remain in place until such time as it can be established that the sale is a legitimate sale, conducted in the ordinary course of business.

Issue #4: Is this an appropriate case for summary judgment or partial summary judgment?

Position of the Plaintiffs

[112] The Plaintiffs move for an order granting them summary judgment in accordance with Rule 20.01(1) as against the Defendants. They argue that there are no factual issues in dispute that require a trial. The Plaintiffs present three possible scenarios to be considered in this case, all of which they submit establish that there is no genuine issue requiring a trial regarding the amounts owed to them by Mr. Boparai.

[113] The Plaintiffs first submit that any agreement signed by the Plaintiffs with respect to the North Bay project is invalid due to Mr. Boparai's fraudulent misrepresentation. More specifically, they submit that Mr. Boparai has admitted that he did not have the funds from the Plaintiffs' first investment at the time that the Plaintiffs invested in the North Bay project, and that they relied on his misrepresentation when they agreed to roll their investment funds from the Wellandport investment into the North Bay project. If the North Bay agreement is deemed to be rescinded the Plaintiffs claim that their investment funds of \$1,355,000 should be returned to them, plus interest at 10% per annum as per the terms of the original investment.

[114] The Plaintiffs emphasize that given Mr. Boparai's admissions, there is sufficient evidence in the substantive motion record before me to allow me to make the necessary findings of fact without the need for additional cross-examinations to determine that rescission is an appropriate remedy under the circumstances.

[115] Alternatively, the Plaintiffs argue that even if the agreement is not rescinded, the Plaintiffs submit that their evidence should be preferred over the Defendants' evidence regarding the terms of the North Bay loan agreement.

[116] In the further alternative, the Plaintiffs submit that Mr. Boparai has already admitted that he owes the Plaintiffs \$1,272,222, and also \$400,000 plus interest. The Plaintiffs argue that the discrete issue of whether the \$1,272,222 includes interest, or whether Mr. Boparai owes additional money to the Plaintiffs for the North Bay loan beyond this amount is a matter that can proceed to trial, but should not stop the Plaintiffs from being granted partial summary judgment.

[117] The Plaintiffs also argue that the Defendants have offered no evidence to establish that the North Bay investment failed, and accordingly, they cannot now take the position that the Plaintiffs are not entitled to collect on a failed investment.

[118] The Plaintiffs further argue that the main issues in dispute including the terms of the North Bay loan agreement, and whether the funds advanced to Mr. Boparai by the Plaintiffs were a loan or an investment, do not change the fact that the funds were advanced to Mr. Boparai, and never repaid. They argue the label that attaches to the contract does not need to be determined to make a finding that Mr. Boparai owes the Plaintiffs a significant sum of money.

[119] The Plaintiffs also submit that they are entitled to punitive damages, and that the Defendants provide no argument as to why they should not receive punitive damages.

Position of the Defendants

[120] The Defendants argue that rescission of the loan agreement should not be permitted as they have not been given an opportunity to cross-examine the Plaintiffs with respect to the newly added pleading.

[121] The Defendants submit that there is a genuine issue requiring a trial. They take the position that there are credibility issues between the parties which cannot be determined on a summary judgment motion. The Defendants also submit that a finding has to be made if the payments advanced by the Plaintiffs to Mr. Boparai were investment or loans.

The Law

[122] Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, provides that, “[t]he court shall grant summary judgment if ... the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”.

[123] Rule 20.04 (2.1) sets out the powers of the judge hearing the summary judgment motion:

Powers

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

[124] Summary judgment is available to the parties when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 50.

[125] The moving party seeking summary judgment has the burden of proof to establish that there is no genuine issue for trial: *Botnick et al. v. The Samuel and Bessie Orfus Family Foundation et al.*, 2011 ONSC 3043, 71 E.T.R. (3d) 210, at para. 10.

[126] On a motion for summary judgment, “[a] responding party may not rest on mere allegations or denials of the party’s pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial”: *Sweda Farms Ltd. v. L.H. Gray & Son Limited et al.*, 2013 ONSC 4195, at para. 27.

[127] Each party to a motion for summary judgment has an obligation to "... 'put its best foot forward' with respect to the existence or non-existence of material issues to be tried": *Ramdial v. Davis (Litigation guardian of)*, 2015 ONCA 726, 341 O.A.C. 78, at para. 27, citing *Papaschase Indian Band No. 136 v. Canada (A.G.)*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11.

[128] Partial summary judgment is appropriate where issues “may be readily bifurcated from those in the main action and that may be dealt with expeditiously and in a cost effective manner”: *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561, at para. 34.

[129] In *Malik v. Attia*, 2020 ONCA 787, 29 R.P.R. (6th) 215, at para. 62, the Ontario Court of Appeal discussed the criteria that must be addressed by the moving party in a partial summary judgment motion. The parties must:

- 1) Demonstrate that dividing the determination of this case into several parts will prove cheaper for the parties;
- 2) Show how partial summary judgment will get the parties’ case in and out of the court system more quickly;

- 3) Establish how partial summary judgment will not result in inconsistent findings by the multiple judges who will touch the divided case.

[130] Rule 51.06 of the *Rules of Civil Procedure* states:

Rule 51.06(1) Where an admission of the truth of a fact or the authenticity of a document is made,

- (a) in an affidavit filed by a party;
 - (b) in the examination for discovery of a party or a person examined for discovery on behalf of a party; or
 - (c) by a party on any other examination under oath or affirmation in or out of court,
- any party may make a motion to a judge in the same or another proceeding for such order as the party may be entitled to on the admission without waiting for the determination of any other question between the parties, and the judge may make such order as is just.

(2) Where an admission of the truth of a fact or the authenticity of a document is made by a party in a pleading or is made or deemed to be made by a party in response to a request to admit, any party may make a motion in the same proceeding to a judge for such order as the party may be entitled to on the admission without waiting for the determination of any question between the parties, and the judge may make such order as is just.

[131] The Court of Appeal dealt with the interaction of Rules 20 and 51.06 in *Ford Motor Co. of Canada v. Ontario Municipal Employees Retirement Board* (1997), 36 O.R. (3d) 384 (C.A.), where Osborne J.A. stated, at para. 50:

The relationship between Rules 20 and 51.06 remains somewhat unclear and does not have to be resolved here. All that I need say is that I think the two rules serve a similar, but not identical purpose. Rule 20's purpose is to remove actions, or distinct issues with respect to which there is no genuine issue for trial from the trial system. This advances procedural justice. Rule 51.06's purpose is to permit an appropriate order to be made as a result of a party's admission. An order made under rule 51.06 in response to an admission may or may not shorten the trial. I see no reason why a summary judgment may not be granted for part of a claim through the combined effect of rules 20 and 51.06 if there is an admission that satisfies the no genuine issue for trial test and, in the language of rule 51.06, the order sought (a partial summary judgment consistent with the admission) is an

order to which "the party may be entitled without waiting for the determination of any question between the parties" (Rule 51.06(2)).

[132] In the case of *P.P. v. D.D.*, 2017 ONCA 180, 137 O.R. (3d) 138, the Ontario Court of Appeal set out a four part test for fraudulent misrepresentation, at para. 41:

1. The representation was made by the Defendant;
2. The Defendant knew that the representation was false or was recklessly indifferent to its truth or falsity;
3. The false statement was material and by it the Plaintiff was induced to act; and
4. The Plaintiff suffered damages.

[133] A contract that results from a fraudulent misrepresentation may be avoided or rescinded by the victim of the fraud: *10443204 Canada Inc. v. 2701835 Ontario Inc.*, 2022 ONCA 745, 164 O.R. (3d) 334, at para. 20.

[134] In a case of fraudulent misrepresentation, the discretionary remedy of rescission of the contract is available "where a person would not have entered into a transaction but for the fraud, that person should be put back into the position he or she was in prior to the fraudulent inducement": *Panapers Inc. v. 1260539 Ontario Ltd.*, 2004 CanLII 48875, (Ont. S.C.), at para. 53, (rev'd on other grounds, 2007 ONCA 3, 219 O.A.C.338), citing *Doyle v. Olby (Ironmongers) Ltd.*, [1962] 2 Q.B. 158 (Eng. C.A.).

[135] Rescission is an equitable remedy for which the courts exercise a high degree of flexibility in cases of fraud: *Urban Mechanical Contracting Ltd. v. Zurich Insurance Company Ltd.*, 2022 ONCA 589, 163 O.R. (3d) 652, at para. 6.

Analysis

[136] I find that there is sufficient information before me to make findings of fact and apply the law to the facts to reach a fair and just determination on the merits of this motion for summary judgment. This summary process is a proportionate, more expeditious, and less expensive means for the parties to address the issues in dispute, which would otherwise likely be a lengthy trial.

[137] The evidence demonstrates that Mr. Boparai engaged in fraudulent misrepresentation in his dealings with the Plaintiffs. He admitted at his cross-examination that he did not have the Plaintiffs' original investment funds owed to them at the time that the Plaintiffs invested in the North Bay project. The exchange of funds that Mr. Boparai orchestrated made it appear that the Plaintiffs were receiving and then re-investing their funds in the North Bay project, when in fact they never actually received the funds.

[138] I find that Mr. Boparai knew that the representation to the Plaintiffs that he was returning \$1,354,101 to them in June 2019 was false. He knew he did not have their funds available to return to them at that time. The Plaintiffs relied upon Mr. Boparai's assurances that he was returning their investment funds to them

when they made the decision to immediately re-invest the same funds with Mr. Boparai in the North Bay project.

[139] The Plaintiffs have suffered damages as a result of the false assurances and promises that Mr. Boparai made to defraud them. Balwant and Goginder Bhandal have not had their life savings returns to them, nor has Ms. Bhandal received any of her invested funds returned to her.

[140] Mr. Boparai engaged in fraudulent misrepresentation in his dealings with the Plaintiffs. The Plaintiffs suffered damages as a result of his actions. There is a high degree of flexibility for the equitable remedy of rescission in cases of fraud. For all these reasons, the North Bay contract is rescinded.

Partial Summary Judgment is appropriate

[141] Although there are numerous disputed pieces of evidence in the record before me, Mr. Boparai admits that he owes the Plaintiff \$1,272,222. Given this admission, it is appropriate that the Plaintiffs receive judgment for this amount. However, I am unable to determine the exact quantum of funds owed by Mr. Boparai to the Plaintiffs regarding the Wellandport investment over and above the amounts admitted by Mr. Boparai to be owed. I find that a trial is required to determine this amount, and in addition, a trial is required to determine the interest rate that will apply to any amounts owed to the Plaintiffs from the Wellandport investment.

[142] Mr. Boparai also admits that he owes \$400,000 to the Plaintiffs. Although Mr. Boparai describes the money advanced to him as a loan attracting interest at 10%, the Plaintiffs do not agree that the \$400,000 was a loan to Mr. Boparai. To their credit, they submit that it is appropriate to limit the interest owed on the \$400,000 amount to 2% as set out in the *Courts of Justice Act*, R.S.O. 1990, c. C.43, reflecting the interest rate in the third quarter of 2019 when the money was advanced.

[143] Given the admission of Mr. Boparai, I do not find that there is a genuine issue requiring a trial regarding the \$400,000 payment made by the Plaintiffs. It is appropriate that the Plaintiffs receive interest on the loan at 2%, retroactive to November 18, 2019.

[144] Ms. Bhandal states in her affidavit that Mr. Boparai has paid \$95,200 in interest payments. Mr. Boparai states in his affidavit that he has only paid \$90,600. I accept the evidence of Ms. Bhandal that Mr. Boparai told Mr. Bhandal that he was using the \$400,000 payment to set up a family trust agreement. I also accept Ms. Bhandal's evidence that Mr. Boparai has paid \$95,200 in interest payments on the \$400,000. Using 2% as the interest rate, Mr. Boparai owes the Plaintiffs interest of \$40,657.53 as of December 16, 2024. The total amount owed to the Plaintiffs to reimburse them for the family trust advance to Mr. Boparai is therefore $\$400,000 + \$40,657.53 = \$440,657.53$. As Mr. Boparai has already paid \$95,200 interest to Mr. Bhandal, the net amount to be returned to the Plaintiffs by Mr.

Boparai regarding the family trust agreement is $\$440,657.53 - \$95,200 = \$345,457.53$.

[145] Partial summary judgment is appropriate in this circumstance as it reduces the quantum of the issues in dispute between the parties, and reduces the evidence that will need to be presented at the trial of this action to establish what additional funds, if any, are owed by the Defendants to the Plaintiffs. This partial summary judgment award will not result in inconsistent findings at the trial, as Mr. Boparai has already admitted that he owes to the Plaintiffs the amounts awarded in this judgment.

[146] The Plaintiffs are therefore awarded partial summary judgment against the Defendants for the amount of $\$1,272,222$ plus $\$345,457.53 = \$1,617,679.53$ as of December 16, 2024. There is a genuine issue requiring a trial with respect to the quantum that the Defendants owe the Plaintiffs over and above $\$1,272,222$ with respect to the Wellandport investment, and the quantum of interest owed by Mr. Boparai.

If the June 24, 2019 North Bay agreement was not rescinded

[147] If I am incorrect, and the North Bay agreement ought not to be rescinded, I find that there is a genuine issue requiring a trial with respect to which version of the North Bay loan agreement binds the parties. I find, however, that a trial can be avoided in this case by relying upon my enhanced fact-finding powers under Rule

20.04(2.1) of weighing the evidence, evaluating the credibility of the deponents, and drawing reasonable inferences from the evidence.

[148] Having reviewed the affidavits of the parties and also their transcripts from cross-examination, I find that Mr. Boparai's version of the agreement signed on June 24, 2019 is unreliable and unenforceable.

[149] I prefer the evidence of Ms. Bhandal over Mr. Boparai that the June 24, 2019 North Bay investment agreement before the court has been altered. I make this finding for the following reasons:

- 1) Although the return on the original investment as identified in the mortgage documents following the sale of the Wellandport property was \$1,354,101, the June 24, 2019 loan agreement states that it is for \$1,631,000. Mr. Boparai was unable to adequately explain this difference at this cross-examination. I infer that the amount listed as owing to the Plaintiffs in the June 24, 2019 document includes the \$400,000 advanced in November 2019, thereby making the June 24, 2019 date inaccurate;
- 2) I accept the Plaintiffs' evidence that as they were in their mid seventies, Balwant and Goginder Bhandal were not interested in risky investments, and had previously generally invested in banks and other reliable lower risk investments;
- 3) It does not make sense that the Plaintiffs would agree to tie up such a significant amount of money in an interest-free investment lasting five years that only had a return of 4%;

- 4) The two-year term of the loan agreement that Ms. Bhandal says she signed with a 10% interest per annum provision is consistent with the interest that was earned on the Wellandport property;
- 5) Mr. Boparai's credibility is marginal given the FSCO findings that he was dishonest, had demonstrated a propensity for deceit, and posed a risk to his clients and the public, and further, that he continued to invest the Plaintiffs' funds when FSCO has also revoked his license;
- 6) Mr. Boparai was unable to establish any significant contradictions in the Plaintiffs' cross-examination evidence; and
- 7) Mr. Boparai didn't produce a copy of the agreement to the Plaintiffs until almost three years after it was allegedly signed.

[150] As I have found that the evidence of Ms. Bhandal is preferred over the evidence of Mr. Boparai, if the North Bay contract was not rescinded Mr. Boparai would owe the Plaintiffs \$1,272,222, plus 10% interest per annum from April 1, 2019 when the Wellandport sale closed to the present, in addition to \$400,000 plus interest at 2% retroactive to November 18, 2019.

The Defendant's version of the June 24, 2019 North Bay Investment

[151] Even if the content of the June 24, 2019 agreement were accepted by me, the agreement provides for the repayment of the funds within five years, which became due on June 24, 2024. Therefore, even if I had accepted Mr. Boparai's evidence that the June 24, 2019 loan agreement was the correct agreement

governing the contract between the parties, the investment funds of \$1,631,000 ought to have been returned to the Plaintiffs by June 24, 2024. This did not happen.

North Bay Loan vs. North Bay Investment

[152] Both parties have a responsibility to put their best foot forward on this summary judgment motion. The Defendants argue that the monies advanced by the Plaintiffs to the Defendants were investment funds, as opposed to a loan, and that they accordingly are not required to return the funds to the Plaintiffs as the investment failed. The Defendants made no oral submissions addressing the specifics of the alleged failure of the investment, and do not provide sufficient evidence to establish that the investment has failed.

[153] The Defendants also point to the flexible use of the term “loan” vs. “investment” in the Plaintiffs’ motion materials to suggest that the Plaintiffs’ evidence is unreliable with respect to the nature of the financial agreements between the parties. As the Defendants have not established that the investment failed, I find that it makes no difference if the monies advanced by the Plaintiffs to the Defendants were in the form of a loan or an investment that had a guaranteed rate of return. The Defendants owe the same amount of money to the Plaintiffs no matter what label is attached to the monies that were advanced.

[154] The Defendants have failed to establish that there is a genuine issue requiring a trial regarding the \$1,272,222 that Mr. Boparai admits that he owes the Plaintiffs, plus the \$400,000 advanced to Mr. Boparai on November 18, 2019.

Are the Plaintiffs entitled to Punitive Damages?

[155] Punitive damages are awarded in cases where a Defendant is guilty of oppressive and high-handed conduct that offends the court's sense of decency. Mr. Boparai's behaviour is deserving of condemnation from this court. Mr. Boparai engaged in arranging a loan agreement and/or investment agreement with the Plaintiffs in the summer of 2019 when his mortgage broker license had already been revoked by FSCO. He used his close familial relationship with the Plaintiffs to entice them into investing their life savings with him.

[156] The governing rule in determining the quantum of punitive damages is proportionality: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, at para. 74. I therefore decline to fix a quantum for punitive damages until the full amount owed by the Defendants to the Plaintiffs has been determined at the trial of this action.

Conclusion

[157] The *Mareva* injunction registered against the Lakeshore Property shall remain in place.

[158] The Plaintiffs are permitted to amend their Statement of Claim to plead fraudulent misrepresentation against Mr. Boparai.

[159] The North Bay loan agreement between the parties is deemed rescinded due to Mr. Boparai's admission that he did not have the Plaintiffs' funds to invest in the project at the time that he told the Plaintiffs the funds were being invested, resulting in a fraudulent misrepresentation to the Plaintiffs by Mr. Boparai.

[160] In the event that I am incorrect regarding the rescission of the North Bay agreement, I find that there is a genuine issue requiring a trial as to which version of the North Bay loan agreement binds the parties. However, I rely upon my enhanced fact-finding powers under Rule 20.04(2.1) to find that the evidence of the Plaintiffs is more credible on a balance of probabilities than the evidence of Mr. Boparai, and that Ms. Bhandal's version of the North Bay investment agreement is in fact the loan agreement that was agreed to between the parties, which involved a two-year term at 10% interest.

[161] The Plaintiffs shall have partial summary judgment against the Defendants for \$1,617,679.53.

[162] The issues that remain in dispute that will be determined at the trial of this action before me are as follows:

- 1) What additional amount, if any, is owed by Mr. Boparai to the Plaintiffs beyond the amount of this judgment?

- 2) The quantum of punitive damages to be paid by the Defendants to the Plaintiffs.

[163] The parties are to contact the trial office to schedule a case conference before me to determine the next steps and to address costs.

Wilkinson J.

Released: December 16, 2024

CITATION.: Paradigm Change Consulting Inc. et al. v. Boparai et al., 2024
ONSC 7068

COURT FILE NO.: CV-23-00001981-0000

DATE.: 2024 12 16

**SUPERIOR COURT OF JUSTICE -
ONTARIO**

RE: Paradigm Change Consulting Inc.
et al. v. Boparai et al.

BEFORE: Justice Wilkinson

COUNSEL: S, Kamalie and K, Khak

for the Plaintiff

A. Duggal, as agent for S, Bhangu

for the Defendants

RULING ON MOTION

Wilkinson J.

Released: December 16, 2024