

COURT OF APPEAL FOR ONTARIO

CITATION: Veeragathy v. Ambalavanar, 2025 ONCA 72

DATE: 20250131

DOCKET: COA-22-CV-0336

Roberts, Miller and Pomerance JJ.A.

BETWEEN

Gunalingam Veeragathy

Plaintiff (Appellant)

and

Manoranjan Ambalavanar, Balasupramaniasarma  
Thirukunanatha Sarma and  
Krishanthi Evangelene Thirukunantha Sarma

Defendants (Respondents)

Chandralal Handapangoda, for the appellant

Edward Sullivan, for the respondents

Heard: January 8, 2025

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice, dated October 26, 2022.

**Roberts J.A.:**

**A. OVERVIEW**

[1] The appellant appeals the judgment dismissing his action against the respondents for damages for alleged fraud, fraudulent misrepresentation and unjust enrichment and for wrongfully inducing the Nallur Kandaswamy Kovil-Canada Inc. Hindu Temple (“the Temple”) to breach its economic relations with the

appellant. These damages included the return of monies that the appellant advanced in relation to a failed real estate purchase transaction involving the respondents, Consult Ranjan Inc. (“Consult”) (a company solely owned and controlled by the respondent, Manoranjan Ambalavanar), and the Temple.

[2] For the reasons that follow, I would allow the appeal.

## **B. BACKGROUND**

### **(a) Parties and participants in the failed real estate transaction**

[3] The appellant and Mr. Ambalavanar are devotees of the Temple. Mr. Ambalavanar is a director of the Temple. In 2014, following most of the advances made, the appellant became a director of the Temple.

[4] The respondent, Balasupramaniya Sarma Thirukunanatha Sarma, is the head priest and a director of the Temple and the respondent, Krishanthi Evangelene Thirukunanatha Sarma, is his wife and also a director of the Temple.

[5] The particulars of the real estate transaction as found by the trial judge are set out in paragraphs 6 to 9 of the trial judge’s reasons, as follows:

From 2010 to 2014, Consult agreed to help the Temple find a new appropriate building site for a new Temple and incurred expenses in this regard. A suitable site was chosen, but the site was much bigger [than] what the Temple could afford to buy. After negotiations with the owner to try to reduce the size of the Property to be purchased, the Property was still too big for the Temple

to afford to buy it. In order to afford the Property, the Temple's plan was to buy it and sell part of it to another party.

In approximately September of 2013, the Temple and Consult agreed on a plan which had several phases. First, the Property would be sold to Mr. Ambalavanar in trust to Consult. The property would then be sold from Consult to the Temple with a significant increase in purchase price that would compensate Consult for all of the work it had performed for the Temple on the Property. The sale was conditional on Consult's ability to buy the property.

The third phase would take 10 to 12 months for the Temple to get severance of the property, which would then be sold to [the appellant's] Corporation [Rajaram Convention Centre Inc. ("Rajaram")]. This plan was evidenced by an Agreement of Purchase and Sale ("APS") between [Rajaram] and the Temple. The reason for the multi-phase transaction was that as Consult had been working on the project for approximately four years and had incurred considerable expenses for which it had not been paid, it would be compensated by the increase in the value of the property of approximately \$2 million dollars, which was the result of Consult's work.

The Temple was able to get mortgage financing but did not have enough funds for the down payment. The evidence is that [the appellant] agreed to provide the \$700,000 (as a deposit on [Rajaram's] sale), which was needed for the down payment. After the property severance, [the appellant] would pay the rest of the purchase price for [Rajaram's] land when the sale from the Temple to [the appellant] was completed.

[6] The real estate transaction did not close. The parties disagreed over why the transaction did not close. The appellant alleged that the real estate transaction was fictitious and part of a series of the respondents' fraudulent actions to

wrongfully induce him to advance monies to them. The respondents maintained that the real estate transaction was legitimate and did not close because of the appellant's failure to provide a promised \$700,000 advance which was needed for the down payment.

[7] It was not disputed at trial that the amount of \$573,500.03 was advanced by way of bank drafts and cheques, as loans (\$120,000) or as a deposit to be credited against the purchase of property (\$453,500.03), as follows:

1. May 14, 2013 – Bank Draft: \$5,000 – loan;
2. May 15, 2013 – Bank Draft: \$5,000 – loan;
3. June 3, 2013 – Bank Draft: \$10,000 – loan;
4. June 27, 2013 – Bank Draft: \$50,000 – loan;
5. July 24, 2013 – Bank Draft: \$30,000 – loan;
6. July 24, 2013 – Bank Draft: \$20,000 – loan;
7. December 27, 2013 – Cheque: \$50,000 – deposit;
8. January 6, 2014 – Cheque: \$150,000 – deposit;
9. February 4, 2014 – Cheque: \$90,000 – deposit;
10. April 2, 2014 – Cheque - \$163,500.03 – deposit.

[8] At trial, the appellant testified that the monies were paid by him or at his direction by his companies or his lawyer to the respondents personally or to Consult. The appellant also claimed repayment of the amount of \$7,500 that he

paid towards the Sarmas' second mortgage that was placed on their home to assist with the financing of the real estate transaction.

[9] The respondents did not dispute that the advances had been made but challenged the nature of the advances paid, the payor and the payee. Specifically, they argued that the advances were nonrefundable amounts that the appellant's companies (and not the appellant) paid to Consult (and not personally to the respondents) for its services in the development of the real estate project, as well as for a deposit to be credited against the purchase price of the property, and the right of first refusal to purchase the property once severed. They also denied liability for the mortgage payments.

[10] Other than one \$15,000 payment by Mr. Ambalavanar, the appellant says no repayments have been made to him or his companies.

**(b) Trial judgment**

[11] The trial judge was not persuaded that the respondents had engaged in any fraud because she concluded that the real estate transaction was legitimate, finding that "there was an intent to purchase the land and construct a Temple and that there was no intent to defraud the [appellant]".

[12] Nor was she persuaded that the appellant had met his evidentiary burden to demonstrate that the respondents owed him any fiduciary or other duty or that they

had wrongfully induced the corporations that they controlled to breach agreements with him or third parties related to and affecting his purchase of the property.

[13] As she found that the respondents had not engaged in any fraud or dishonesty, the trial judge declined to pierce the corporate veil with respect to the companies that they controlled to find them personally liable to the appellant. She was not persuaded that the respondents were parties to any of the loans claimed by the appellant and therefore did not have to repay them.

[14] The trial judge summed up her reasons for dismissing the appellant's action at paragraphs 52 and 53 of her reasons, as follows:

On the basis of all of the above noted evidence and on the evidence submitted by the parties at trial, I find that the [appellant] has not met the burden of proving his claims on a balance of probabilities. Almost all of the evidence at trial was conflicting with all of the [respondents'] evidence, consistently denying the evidence of the [appellant]. It is difficult for this court to accept the [appellant's] evidence that he was permitted to unilaterally decide on extreme interest rates for the alleged loans without any knowledge or agreement on the part of the [respondents]. Although the court had reservations about accepting all of the evidence of the [respondents], the decision of this court is primarily based on the finding that the [appellant] has not convinced this court on a balance of probabilities to accept his evidence.

Further and perhaps most importantly, there is no legal basis for finding liability on the part of any of the [respondents] as they were not parties to any of the agreements with [Rajaram] and further, the [appellant] cannot claim for damages incurred by [Rajaram]. The only exception is the allegation of the [appellant] that he personally paid for three mortgage payments of \$1,500

each on behalf of the Sharma [respondents]. The evidence was, however, denied by the Sharma [respondents] and as a result of the conflict in the evidence, I find that the [appellant] has not persuaded this court of his version of the events on the balance of probabilities. This Action is therefore, dismissed.

[15] The trial judge noted that the respondents did not pursue their counterclaim at trial and found that “[t]here was no evidence to support the damages claimed”.

[16] The trial judge awarded the respondents their trial costs in the amount of \$19,724.00.

### **C. ANALYSIS**

[17] I start with the appellant’s challenge of the trial judge’s dismissal related to his claims of fraud, fraudulent misrepresentation and wrongful inducement to breach economic relations. I see no basis to interfere with the trial judge’s dismissal of these claims.

[18] While the trial judge’s reasons are brief, they explain why she concluded that the appellant had not made out these causes of action. All of these claims relate to the legitimacy of the real estate transaction. It was open to the trial judge to find that the real estate transaction was legitimate and that the respondents had no fraudulent intent with respect to the purchase of the property. In particular, it was open to the trial judge to conclude that there was nothing fraudulent about the January 11, 2014 agreement of purchase and sale between Rajaram and the

Temple and its being contingent on the Temple acquiring the property and successfully severing the parcel that Rajaram agreed to purchase.

[19] However, I reach a different conclusion with respect to the trial judge's dismissal of the claim because of the absence of the appellant's corporations, Consult, and the Temple as named parties to the proceedings, as well as her failure to properly address the appellant's unjust enrichment claim, including whether part of the monies advanced were loans that had to be repaid.

**(i) Proper parties**

[20] The trial judge erred in dismissing the action on the basis that the appellant could not claim a return of the monies that the respondents admitted he advanced. She failed to give effect to the respondents' admissions in their statement of defence and counterclaim that the appellant made the payments. These admissions were never withdrawn.

[21] In their statement of defence and counterclaim, the respondents admitted that the appellant made the advances with respect to the real estate transaction, only challenging the nature of the advances and arguing that they were nonrefundable. This admission is understandable as the respondents do not dispute that the appellant is the sole shareholder and directing mind and will of his corporations. The respondents did not plead that the appellant's corporations made the advances or that the appellant could not claim repayment of the

advances because they were made by his corporations. Similarly, the respondents did not plead that they were not parties to any of the impugned transactions.

[22] It was only in closing argument at trial that the respondents expressly raised the issue of whether the appellant could succeed in his action when the corporate entities that made the advances were not plaintiffs and when Consult and the Temple were not defendants. At no time did the respondents seek to amend their statement of defence and counterclaim or otherwise withdraw the formal admissions that they made in their pleadings that the appellant had made the advances in issue.

[23] If the respondents had raised these issues in their pleadings, in the course of the proceedings or earlier at trial, the appellant would have had the opportunity to move to add his corporations as plaintiffs as well as to add Consult and the Temple as defendants.

[24] It was procedurally unfair for the trial judge to dismiss the action on this basis. The respondents should have been estopped by the admissions in their statement of defence and counterclaim from denying that the appellant made the advances and is entitled to recover the funds if his action is successful.

**(ii) Piercing the corporate veil**

[25] The trial judge also erroneously limited her consideration about piercing the corporate veil to fraud. Unjust enrichment, breach of trust, misuse or

misappropriation of funds can serve as a basis for piercing the corporate veil: *FNF Enterprises Inc. v. Wag and Train Inc.*, 2023 ONCA 92, 165 O.R. (3d) 401, at para. 27; *Mitchell v. Lewis*, 2016 ONCA 903, 134 O.R. (3d) 524, at paras. 14, 17, 18. Actions of officers, directors and employees of companies that are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the acts or conduct complained of their own, even though that conduct was directed in a *bona fide* manner to the best interests of the company, may give rise to personal liability: *1417217 Ontario Inc. v. River Trail Estates Inc.*, 2024 ONCA 491, at para. 47; *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481 (C.A.), at pp. 490-91, leave to appeal refused, [1996] S.C.C.A. No. 40; *ADGA Systems International Ltd. v. Valcom Ltd.* (1999), 43 O.R. (3d) 101 (C.A.), at p. 107, leave to appeal refused, [1999] S.C.C.A. 124.

[26] While it was open to the trial judge to conclude that the respondents did not intend to defraud the appellant and that the real estate transaction with his company, Rajaram, was legitimate, she failed to address whether the respondents had misappropriated or misused the funds that were intended for the real estate transaction. The propriety and necessity of the 15 or 16 trips that Mr. Ambalavanar and Mr. Sarma took to India to look at architectural features come to mind as an example.

[27] Moreover, the trial judge failed to consider the other relief requested by the appellant. He asked for an accounting and tracing of the monies paid to

Consult and the Temple through Mr. Ambalavanar and the Sarmas. As its directing mind and will, Mr. Ambalavanar could have been ordered to require Consult to provide such an accounting and to return the funds. It is not disputed that Mr. Ambalavanar requested the payments on behalf of Consult and as a director of the Temple directed that the payments be made to his company nor that the Sarmas requested that the payments be made to Consult on behalf of the Temple.

**(iii) The unjust enrichment claim**

[28] The trial judge referenced but did not analyze the appellant's unjust enrichment claim. In paragraph 22 of her reasons, she rejected this claim on the basis that the respondents had no intent to defraud the appellant. The trial judge erred by limiting her consideration of the appellant's unjust enrichment claim to fraud. Unjust enrichment may be found to occur where there is no fraud.

[29] In *Kerr v. Baranow*, 2011 SCC 10, [2011] 1 S.C.R. 269, at paras. 31-32, the Supreme Court summarized the doctrine of unjust enrichment as follows:

At the heart of the doctrine of unjust enrichment lies the notion of restoring a benefit which justice does not permit one to retain. For recovery, something must have been given by the plaintiff and received and retained by the defendant without juristic reason. A series of categories developed in which retention of a conferred benefit was considered unjust. These included, for example: benefits conferred under mistakes of fact or law; under compulsion; out of necessity; as a result of ineffective transactions; or at the defendant's request.

Canadian law, however, does not limit unjust enrichment claims to these categories. It permits recovery whenever the plaintiff can establish three elements: an enrichment of or benefit to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment. By retaining the existing categories, while recognizing other claims that fall within the principles underlying unjust enrichment, the law is able "to develop in a flexible way as required to meet changing perceptions of justice". [Citations omitted.] [Emphasis added].

[30] Moreover, as earlier noted, the appellant's claim for unjust enrichment, if successful, may have permitted the appellant to pierce the corporate veil of Consult and the Temple.

[31] The question that the trial judge should have considered is whether the respondents were unjustly enriched by retaining the appellant's advances after the real estate transaction failed to close, to the detriment of the appellant, without any juristic reason for the enrichment or the deprivation. She erred in failing to address this question.

[32] There is no question that the respondents were enriched by the advances and that their retention of the monies is to the detriment of the appellant. The question is whether the respondents had any juristic reason for retaining the monies.

[33] The respondents argue that there were juristic reasons for them, Consult or the Temple retaining the monies. First, with respect to the \$200,000 paid as a deposit, the respondents maintain that it was the appellant's and not the Temple's

fault that the real estate transaction did not close, thus the deposit was non-refundable. Second, they say that with respect to the balance of the funds advanced, the appellant had agreed that the monies could be used for other purposes, specifically to pay Consult for its services with respect to the real estate transaction.

[34] The difficulty with the respondents' first position is that the trial judge rejected it. She found that there was no evidence to support the respondents' counterclaim which they did not pursue at trial. Their counterclaim depended chiefly on their allegations that the appellant made negligent misrepresentations with respect to the provision of the \$700,000 deposit "which was to be provided to the Temple in their endeavour to purchase the [property]. Furthermore, the same is connected directly to the lost opportunity of the Temple to obtain the [property] and realize a profit thereto". The trial judge did not find that the appellant was responsible for the failure of the transaction to close. Accordingly, the respondents cannot rely on the appellant's alleged responsibility for the failed transaction as a juristic reason to keep the advances.

[35] With respect to the respondents' second argument, the trial judge did not make any concrete findings as to whether any of the monies advanced were a loan or a deposit related to the January 11, 2014 agreement of purchase and sale between Rajaram and the Temple. With respect to the bank drafts paid on December 27, 2013 and January 6, 2014 totalling \$200,000, which the appellant

testified were advanced as part of the deposit, she found that “[t]he bank drafts were not provided in trust to Consult and there is no evidence that they were identified as such when they were provided to either Priest Sharma on behalf of the Temple or from him to Consult”.

[36] The trial judge’s findings with respect to these bank drafts were flawed. First, her findings ignored the respondents’ pleaded admissions in their statement of defence and counterclaim at paragraphs 17 and 22 that “the amounts connected to December 27, 2013 and January 6, 2014, were part of the \$700,000 Proposal amount that [the appellant] was going to make as a down payment” for the purchase of the property. Moreover, her findings ignored the provisions of the January 11, 2014 agreement of purchase and sale between Rajaram and the Temple that she found was legitimate. The January 11, 2014 agreement of purchase and sale provides that there would be a deposit of \$200,000 and that the deposit would be held in trust:

DEPOSIT: Buyer submits: See Schedule "A".  
\_\_\_\_\_ Dollars (CDN\$) by negotiable  
cheque payable to \_\_\_\_\_ "Deposit Holder" to be held in  
trust pending completion or other termination of this  
Agreement and to be credited toward the Purchase Price  
on completion. For the purposes of this Agreement,  
'Upon Acceptance' shall mean that the Buyer is required  
to deliver the deposit to the Deposit Holder within  
24 hours of the acceptance of this Agreement. The  
parties to this Agreement hereby acknowledge that  
unless otherwise provided for in this Agreement, the  
Deposit Holder shall place the deposit in trust in the  
Deposit Holder's non-interest bearing Real Estate Trust

Account and no interest shall be earned, received or paid on the deposit. Buyer agrees to pay the balance as more particularly set out In Schedule A attached. [Emphasis added.]

[37] Schedule A provides for the return of the deposit to the buyer under the following circumstances:

13. DEPOSIT The parties acknowledge that the Buyer has submitted a deposit to the Seller totaling Two Hundred Thousand (\$200,000.00) Dollars which such deposit is non-refundable to the Buyer, **unless the transaction fails to close due to the default of the Seller.** The Seller acknowledges and agrees that on Closing the Buyer shall be credited the full amount of the deposit towards the Purchase Price. [Emphasis added.]

[38] The trial judge did not determine whether the transaction failed to close due to the default of the Temple or the respondents. She was not persuaded that the respondents interfered with the economic relations between the appellant's corporations and the Temple, on the basis that there was no fraud by the respondents. As noted above, she also did not find that the appellant was responsible for the failure of the transaction to close. However, she did not determine the basis on which the transaction did not close. I would remit this issue for a trial.

[39] The trial judge rejected the appellant's evidence concerning the interest payable on the loans claimed by the appellant. I would not disturb her finding on this issue which was open to her on the record. However, the trial judge failed to determine specifically whether the bank drafts in the amount of \$120,000 were

loans, if so, to whom they were made, and whether the cheques dated February 4, 2014 and April 2, 2014 were deposits to be credited against the purchase price.

[40] With respect to the other bank drafts in the amount of \$120,000, the trial judge found that “none of the bank drafts were made out to Consult in trust. [The appellant] did not make the drafts payable to Consult in trust.” However, it was not necessary for the appellant to do so. They did not have to be impressed with an express trust. If the respondents, Consult or the Temple lacked any juristic reason to keep the funds, they had to return them. If they were loans, they had to be repaid.

[41] The difficulty here is that the trial judge did not make any finding as to whether the respondents, Consult and/or the Temple had a juristic reason for keeping the monies paid. While there is no dispute that at the respondents’ and the Temple’s request, advances were made by the appellant or through his corporations or lawyer directly to Consult, there is a dispute as to the purpose for and the nature of those advances. The evidence of the appellant and the respondents is at odds: the appellant claims they are loans that had to be repaid; the respondents argue the appellant agreed they were nonrefundable in payment for Consult’s services on the real estate transaction. This discrepancy gives rise to the need for credibility and reliability determinations. In consequence, the resolution of these issues requires a trial.

**(iv) The second mortgage payments**

[42] With respect to the \$7,500 payment made to the Sarmas' mortgagee on their behalf, the trial judge indicated that: "[The respondents] have not repaid [the appellant] for any of the payments he made to Global Investment Holdings Inc. as they deny any liability for such amounts." She seems to have based the denial of this part of the appellant's claim simply on the denial by the Sarmas and "a conflict in the evidence" without identifying the latter.

[43] To state there was a conflict in the evidence is insufficient. It was incumbent on the trial judge to explain why she rejected the appellant's evidence that he had made five \$1,500 payments on behalf of the Sarmas to their mortgagee. There is no question that Global Investment Holdings Inc. was the Sarmas' mortgagee with respect to the second mortgage. There is also no question that the appellant produced an email from Global indicating that the monies had been paid. The respondents did not object to the authenticity or production of this email nor the reliance that the appellant placed on it. While in their statement of defence and counterclaim, the respondents deny the paragraphs in which the allegations of the \$7,500 in payments are made, their pleading is otherwise silent. Nor, contrary to the trial judge's finding, did Mr. Sarma deny in his testimony at trial that the appellant had made these payments on their behalf. Mr. Sarma stated that he was unaware whether payments had been made or not.

[44] As a result, I conclude that the trial judge erred in dismissing the appellant's claim for \$7,500 for the mortgage payments made on the Sarmas' behalf.

### **Disposition**

[45] I would allow the appeal and set aside the judgment, including the costs award.

[46] I would order that the respondents, Balasupramaniasarma Thirukunanatha Sarma and Krishanthi Evangelene Thirukunanatha Sarma, are jointly and severally liable to pay forthwith to the appellant the amount of \$7,500 plus prejudgment interest pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43.

[47] I would order a trial of the appellant's unjust enrichment claim with respect to the remaining advances made as the alleged loans and deposit, including whether the respondents or their corporations, including the Temple, were responsible for the January 11, 2014 agreement of purchase and sale failing to close.

[48] I would also order that the issue, if pursued, of adding as necessary parties the appellant's corporations, Consult and/or the Temple, be remitted to the Superior Court.

[49] I would award the appellant his appeal costs from the respondents in the agreed upon, all-inclusive amount of \$12,500, which includes the \$2,500 cost

award made by Simmons J.A. in her January 19, 2024 order extending the time for the perfection of the appeal.

[50] Given my proposed disposition to remit certain issues to the Superior Court of Justice for a trial, I would leave the disposition of the costs of the first trial to the judge hearing the trial.

Released: January 31, 2025 “L.B.R.”

“L.B. Roberts J.A.”  
“I agree. B.W. Miller J.A.”  
“I agree. R. Pomerance J.A.”