CITATION: Nedaneg Financial Corporation v. Talebzadeh, 2025 ONSC 848
COURT FILE NO.: CV-22-00684974-0000
DATE: 20250206

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
NEDANEG FINANCIAL CORPORATION	)	*Stefanja Savic* and *Behrouz Amouzgar*, for the Plaintiff/Appellant
	)	
Plaintiff/Appellant	)	
	)	
– and –	)	
	)	
PEDRAM TALEBZADEH, ARMAN TALEBZADEH, BEHNAZ ALIABADI, FOREST HILL REAL ESTATE INC. DIAMOND, DIAMOND REALTY DEVELOPERS INC., MEHDI GOL MOHAMMADI DARIAN, KAMRAN MAHDI, IRAJ MAHDI, CANADIAN IMPERIAL BANK OF COMMERCE, WINONA PARK TOWNS LTD., MOSHE EICHORN, WINONA PARK DEVELOPMENTS LIMITED, and 2819152 ONTARIO CORPORATION	)	*Christopher J. Somerville* and *Adam Casey*, for the Defendants/Respondents
	)	
Defendants/Respondents	)	
	)	
	)	**HEARD:** January 13, 2025

PAPAGEORGIOU J.

Overview

[1] The plaintiff, Nedaneg Financial Corporation ("Nedaneg"), appeals Associate Judge La Horey's dismissal of its motion for a certificate of pending litigation ("CPL").

[2] Nedaneg and Vault Capital Inc. held mortgage security over property located at 8 Grangemill Crescent, in Toronto, Ontario (the "Grangemill Property").

[3] The defendant, Pedram Talebzadeh ("Pedram"), owned the Grangemill Property.

[4] In or around February 2019, Pedram defaulted on charge payments.

[5] Nedaneg and Vault commenced power of sale proceedings.

[6] Pedram listed the property for sale with Nedaneg's consent seven times in 2019, for amounts ranging from a low of $3,888,000, to a high of $5,388,000, but his efforts failed.

[7] On September 19, 2019, the parties entered into Minutes of Settlement, whereby Pedram consented to judgment in the amount of $3,707,455 and granted Nedaneg possession of the Grangemill Property (the "Consent Judgment").

[8] Nedaneg obtained a number of appraisals. An October 17, 2019 appraisal valued it at $3,310,000. An October 19, 2019 appraisal valued it at $3,900,000. A January 20, 2020 appraisal valued it at $3,550,000.

[9] On February 10, 2020, Nedaneg sold the Grangemill Property for $3,625,000. This resulted in a recovery of $3,415,653 after expenses and a shortfall of $536,807.

[10] The sale closed on March 19, 2020. At that time, Vault assigned its entitlement to its right, title, and interest in the Grangemill Property and the Consent Judgment to Nedaneg.

[11] In or around December 2021, Pedram's lawyer wrote to Nedaneg's lawyer raising issues with his credit report because it had not been adjusted to account for the power of sale proceeds. Nedaneg's lawyer wrote a letter confirming the contents of a conversation they had which included the fact that "Pedram was working on a number of transactions" and that the credit report was "causing him problems with financing that he was trying to obtain on these transactions." The email confirmed the advice that the transactions "consisted of both purchase and refinancing transactions and advised that [it] had prepared a number of offers for Pedram that had not gone through due to the current market conditions." Pedram's lawyer replied. He disagreed with some particulars, but he still admitted that Pedram wanted to start doing things and also admitted that this "may" consist of both purchases and refinancing transactions.

[12] This alarmed Nedaneg, who suspected that Pedram may be moving assets to pay the shortfall so its lawyers began making inquiries into Pedram's assets.

[13] In or around 2022, Nedaneg discovered that Pedram's wife and son, as well as a non-arm's length company, had purchased additional development properties after the Consent Judgment, in particular, 171 Cedric Avenue (the "Cedric Property"), 464 Winona Drive and 468 Winona (the "Winona Properties"), and 139 Denlow Boulevard (the "Denlow Property") (collectively the "Properties").

[14] Nedaneg served a notice of examination in aid of execution to take place on July 8, 2022, but on the morning of the examination, Pedram advised he would not be attending.

[15] Nedaneg commenced this proceeding on August 3, 2022, making allegations that included that the Properties were beneficially owned by him despite the fact that other Respondents held title.

[16] Pedram counterclaimed, alleging that Nedaneg improvidently realized on the Grangemill Property.

[17] Nedaneg brought a motion for a CPL against the Respondents related to Pedram, in particular his wife and son and related corporations which were involved in the purchase and improvement of the Properties.

[18] The Associate Judge dismissed the motion on the basis that the equities and balance of convenience did not favour granting the CPL. She did not evaluate or consider whether Nedaneg had established a triable issue or Nedaneg's argument that it had raised a *prima facie* case of fraud.

[19] I note that by the time of the appeal before me, the Denlow Property had already been sold and the two other Properties were already under power of sale. As a practical matter, this appeal can only affect the Cedric and Winona Properties.

Decision

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

Issue

- **Issue 1: Did the Associate Judge err in law by applying the wrong test by addressing?**
- **Issue 2: Did the Associate Judge err in principle by failing to take into account the *prima facie* case of fraud demonstrated by Nedaneg?**
- **Issue 3: Did the Associate Judge exercise her discretion on wrong principles or misapprehended evidence?**
- **Issue 4: Should leave to issue the CPL be granted?**

Analysis

The Standard of Review

[21] It is well established that granting a CPL is discretionary: *Business Development Bank of Canada v. Yin*, 2023 ONSC 6159.

[22] The standard of review on an appeal is to be determined with reference to the nature of the question: *Housen v. Nikolaisen*, 2002 SCC 33. *Housen* does not address the standard of review of a discretionary decision. Appellate courts have determined that a discretionary decision is owed

great deference but may be set aside where there has been an error of law or where the discretion was exercised on wrong principles or misapprehended evidence: *Cannon v. Gerrits*, 2022 ONSC 6867, at para. 19.

Issue 1: Did the Associate Judge err in law by applying the wrong test by addressing the equities and balance of convenience?

[23] The usual test for a CPL involves consideration of whether there is a triable issue related to an interest in land and consideration of the equities and the balance of convenience: *Perruzza v. Spatone*, 2010 ONSC 841, at para. 20.

[24] Nedaneg argues that where a case involves fraudulent conveyances, the usual test does not apply. It relies upon *Fernandes v. Khalid*, 2021 ONSC 190, where the court held that where a creditor already has judgment, the only relevant consideration is whether the moving party has shown a *prima facie* case that a fraudulent conveyance has taken place. There are other lower court decisions which similarly apply the test cited in *Fernandes*: e.g. *United States (Securities & Exchange Commission) v. Boock*, 2010 ONSC 2340.

[25] The Respondents argue that the applicable test for the claims in this case is set out in on the Divisional Court's decision in *Claireville Holdings Ltd. v. Botiuk*, 2015 ONSC 694, where the court held that consideration of the equitable factors and balance of convenience still apply even if the case involves a fraudulent conveyance and even where the creditor already has judgment. See also *Business Development Bank of Canada v. Yin*, at para. 9.

[26] I agree with the Respondents that *Botiu*k is the governing authority. Therefore, I reject this ground of appeal.

Issue 2: Did the Associate Judge err in principle by failing to take into account the *prima facie* case of fraud demonstrated by Nedaneg?

[27] As correctly noted by the Associate Judge, the caselaw is clear that:

> The governing test is that the court must exercise its discretion in equity and look at all relevant matters between the parties in determining whether a CPL should be granted or vacated: *Perruzza v. Spatone*, 2010 ONSC 841 at para 20(v) citing *931473 Ontario Ltd. v. Coldwell Banker Canada Inc*., 1991 CarswellOnt 460 (Gen. Div.); *Clock Investments Ltd. v. Hardwood Estates Ltd*, 1977 CarswellOnt 1026 (Div. Ct.) at para. 9.

[28] Although the Associate Judge correctly noted the principle that the court must consider all relevant matters, she failed to review and analyze the powerful evidence that Nedaneg had mounted in support of its position that Pedram and related Respondents had deliberately arranged

for these related Respondents to hold legal title to the Properties, when in fact Pedram was the true owner, and that this was done to defeat his ability to collect the deficiency.

[29] Instead, she proceeded to consider the equities and the balance of convenience in a vacuum without any analysis of the significant evidence that Nedaneg had raised in support of its argument that there was a *prima facie* case of fraud.

[30] This constituted an in principle in how she applied the overall test. This led to further errors.

[31] Because she did not conduct the analysis, the Associate Judge failed to note that the constellation of facts here are typical of the kinds of machinations that debtors pursue to avoid paying a judgment, using layers of different entities and related individuals and corporations to shield them from judgement creditors while they continue to do business.

[32] As will be seen, among the large body of evidence that supported Nedaneg's position, there was evidence from various charge holders who say they dealt with Pedram only and that he told them that he was the beneficial owner of the Properties. These lenders also gave evidence that the monthly payments came from Pedram. Although his son submitted photocopies of checks he said he paid to one of the mortgagees on one of the Properties, there was no proof that these had been cashed and this conflicted with the mortgagee's evidence.

[33] An understanding of the underlying facts and evidence is critical to the assessment of the equities and balance of convenience where a judgment creditor alleges a scheme to place assets beyond the reach of the creditor, because such conduct is inequitable in itself. The factual matrix and evidence on the underlying issues provides a relevant context for the assessment of the equities, and balance of convenience.

[34] This is what the record shows, that the Associate Judge did not take into account.

Purchase of the Properties After Nedaneg Sold the Grangemill Property

[35] The Cedric, Winona, and Denlow Properties were all purchased after the Consent Judgment which resulted in a sale of the Grangemill Property, and deficiency.

The Denlow Property

[36] Pedram's wife, Behnaz Aliabadi ("Behnaz") purchased the Denlow Property on May 19, 2022, for $4,700,000. Notably, the Denlow Property was purchased soon after Pedram's lawyer advised Nedaneg's lawyer that he was having difficulty obtaining financing for something.

[37] Although the Denlow Property has been sold it is instructive to nevertheless consider the evidence related to it.

[38] There was a first charge granted in favor of the Canadian Imperial Bank of Commerce ("CIBC") in the amount of $3,025,000, a second charge granted in favor of Iraj Mahdi ("Iraj") in

the amount of $800,000, as well as a third charge in favour of Mehdi Gol Mohammadi Darian ("Mehdi") in the amount of $1,000,000. Mehdi appears to have been the seller.

[39] Mehdi gave evidence that when the Denlow Property was purchased, Pedram dealt with Mehdi directly in relation to a shortfall. Pedram suggested that this charge initially be registered on the Cedric Property because the Cedric Property was being sold and the proceeds could be applied to the Mehdi charge. During a subsequent meeting, Pedram then advised him that the Mehdi charge would have to be registered on the Cedric Property because the CIBC charge on the Denlow Property did not permit subsequent charges.

[40] The ability to move charges among these Properties, which appears to have been at will, is inconsistent with these Properties being owned by separate entities.

The Cedric Property

[41] Pedram's then 21-year-old son, Arman Talezadeh ("Arman"), purchased the Cedric Property on January 19, 2021, for $970,000. He admitted that he did not have $200,000 for the downpayment and had to borrow it.

[42] Pedram acted as realtor on the purchase and admitted that he gifted his real estate commission to Arman at the time of the purchase, by way of rebate.

[43] There are three charges registered on title: a first charge in favour of Kamran Mahdi ("Kamran") in the amount of $945,000; a second charge in favour of Kamran in the amount of $750,000; and a third charge in favour of Mehdi in the amount of $1,000,000. This third charge indicates that it would convert to a collateral charge against the Denlow Property if after the sale of the Cedric Property, there were insufficient net funds remaining to fully pay out this third charge. Again, this is a curious arrangement, as the Respondents' position is that the Denlow Property and Cedric Property are owned by different people.

[44] Kamran gave evidence that Pedram was personally involved in obtaining the Kamran charge and paid it. Pedram also guaranteed it.

[45] Mehdi gave evidence that Pedram told him that while the Cedric Property was registered in his son's name, Pedram was the true beneficial owner. Mehdi never had any communications with Arman.

[46] Pedram Pearl Palace Inc. ("Pedram Pearl") was retained as the general contractor to design and build a home on Cedric. After construction, the home exploded, such that it is now a vacant lot.

[47] Pedram concedes that he used to own Pedram Pearl but baldly says that he transferred ownership to Behnaz sometime in October 2018. The Corporate Profile Report shows Pedram to be the only active director, the president, the secretary, and the treasurer, and there is no evidence corroborating this transfer, not even evidence from Behnaz.

[48] If the Cedric Property was indeed purchased by Arman on his own account, it is also very curious that he had little recall about it. He could not recall when it was purchased, the amount of the deposit, if he paid land transfer tax, details of the commission his father earned, the square footage of the home, details of the charges on this Property, how many charges there were, whether a loan he took out was ever repaid, and other important details that one would assume an owner to know. Critically, he knew little information about the construction he allegedly retained the contractor to complete. He was unsure if the contractor was paid in instalments or the amounts of the payments and incorrectly testified that the construction funds came from the second Kamran charge.

[49] At the time of the motion, at least one of the charges was in default and a construction lien had been registered against title.

The Winona Properties

[50] Pedram was originally named as the sole buyer on the first Agreement of Purchase and Sale ("APS") for the Winona Properties, dated September 23, 2019. However, this first APS was amended with Pedram's name crossed out and the name "Fortunate Homes" placed on the agreement instead. Pedram is shown on the corporate profile report of Fortunate Homes to be Fortunate Homes' CEO, President, and Treasurer. (First Fortunate's full corporate name is First Fortunate Homes Ltd.)

[51] However, Winona Park Towns Ltd. ("Winona Park") is the entity who completed the purchase of the Winona Properties on March 2, 2021, for a combined purchase price of $7,500,000. When cross-examined, Pedram refused to produce a copy of the details of any consideration between Winona Park and Fortunate Homes for any assignment of the APS to Winona Park on the basis of relevance.

[52] Winona Park was incorporated on August 19, 2020.

[53] Pedram is listed as the only Director on the Corporate Profile Report. The address for service is noted to be Pedram at his residence. Pedram is the president, secretary, and treasurer of Winona Park. The only other individual listed on the Corporate Profile Report is Arman, and he is listed to be the "Chief Officer" or "Manager."

[54] The sole owner of Winona Park is Diamond Realty Developments Inc ("Diamond Realty").

[55] Pedram says that Behnaz is the sole owner of Diamond Realty. However, a Canada Revenue Agency filing by Diamond Realty dated December 31, 2021, shows that Pedram and Behnaz are 50 percent owners of Diamond Realty. Pedram says he transferred his interest to Behnaz, but there is no evidence other than his bald statement.

[56] Mehdi, the third mortgagee on the Cedric Property, gave evidence that during a meeting with Pedram in April 2022, Pedram told him that the Winona Properties belong to him and that as a result, he was in a very strong financial position. Pedram offered him an interest in two of the

townhouses that were to be constructed on the Winona Properties in exchange for curing a default under the Kamran charges on the Cedric Property. Again, this makes no sense if these Properties are truly owned by separate entities.

[57] Pedram also executed a Reservation Agreement with Iraj for a yet to be constructed townhouse at the Winona Properties, which was allegedly paid for by way of the Iraj charge on the Denlow Property. Although the Respondents take the position that the lawful owner of the Winona Properties is Winona Park, the Reservation of Rights is from Diamond Realty as "vendor" and is signed by Pedram. The Reservation of Rights noted that the Reservation Fee was paid by way of a second charge registered on the Denlow Property, which is also odd if it is actually separate entities owning the Properties.

[58] Diamond Realty was retained to do the construction work on the Winona Properties. As noted above, Pedram was noted to be a 50 percent shareholder of Diamond Realty on a CRA report, although he denies that he is a current owner.

[59] At the time of the CPL motion, Diamond Realty had registered a construction lien in the sum of $6,780,000. Pedram was the agent of the lien claimant authorizing the lien. There is also a lien by another contractor.

[60] Additionally, with respect to all charges except for the CIBC charge, the chargees indicated that all of their dealings were with Pedram.

[61] The timing is also important. The Consent Judgment in respect of the Grangemill Property is dated September 19, 2019. Several of the corporations involved in the Properties – in particular, Fortunate Homes, Diamond Realty and Winona Park – were all incorporated after the Consent Judgment, on September 30, 2019, October 24, 2019, and August 19, 2020, respectively.

Pedram's Explanation

[62] When cross-examined, Pedram's explanation for all of his continued involvement with the Denlow, Cedric, and Winona Properties was that after the Consent Judgment, his wife, Behnaz, was upset and so he entered into a verbal agreement with her whereby she would have control of the family business and finances. Their agreement prevented him from owning anything or having personal earnings or making any financial decisions with respect to their businesses. Their agreement permitted him to act as the general contractor for the family's real estate businesses but that Behnaz would own all future real estate businesses. If he earns any commissions as a real estate agent, they have to go to his wife pursuant to this agreement. He works in the family business, it takes up all his time, and he has no ability to earn any other income.

[63] He said, "what I receive is a very luxury office, is [sic] luxury positions, is [sic] as full control over business, luxury car, everything at the very high end and level but nothing of the ownership, just with power to use these facilities for the business and that's enough for me, and I'm not obligated to pay any expenses for the house or anything."

[64] There was also evidence in the record that Pedram refused to produce various records of Diamond Realty, Pedram Pearl, Fortunate Homes, and Winona Park. These included Pedram Pearl's Minute Book, Fortunate Homes' Minute Book, the T2s, and Schedule 50s filed with the CRA that would show who the shareholders were for Winona Park, Diamond Realty, and Pedram Pearl. Again, this evidence was in the context of a case where the allegation made is that Pedram is in fact the individual behind these companies. Notably, these refusals were not based on any allegation that Pedram did not have access to such records.

The Triable Issues/Strong Prima Facie case

[65] The Associate Judge failed to recognize that the constellation of facts, including the evidence of admissions Pedram made to the chargees that these were in fact his Properties and the evidence that he paid the charges, supports a strong *prima facie* case that Pedram is the true beneficial owner by way of resulting trust, and that he has simply arranged for other parties to be the titled owners to defeat his creditors.

[66] This factual matrix is sufficient to satisfy the first part of the test for granting a CPL: *Wong v. Smith*, 2017 ONSC 2721, at para. 17. See also *Snook v. Royal Stone Interlocking Concrete Ltd*., 2021 ONSC 3476, where Dunphy J. granted leave to issue a CPL on the basis of a claimed interest in land where there was a triable issue as to whether the defendant held the property in question by way of resulting trust. The defendant in that case had used funds that the plaintiff claimed an interest in to purchase real property in the name of the corporations that were not affiliated with the plaintiff.

[67] Additionally, because she did not address Nedaneg's argument that he had established a *prima facie* case of fraud, she failed to make a variety of findings available to her with respect to the potential applicability of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29, and with respect to the badges of fraud alleged.

[68] Section 2 provides that every conveyance of property with the intent to defeat creditors is void as against such persons and their assigns.

[69] In *Conte v. Pettle*, 2023 ONSC 3881, 54 R.P.R. (6th) 135, at para. 58, citing the Supreme Court's decision in *Royal Bank of Canada v. North American Assurance Co*, [1996] 1 S.C.R. 325, the court noted that the *Fraudulent Conveyances Act* has been given a large and liberal construction because it is remedial in nature. Its purpose is to ensure that creditors may set aside a broad range of transactions where the intent was to defeat their legitimate claims.

[70] In *Conte*, the court referenced the Court of Appeal's decision in *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757, at para. 52, which cited various cases setting out that where impugned transactions are among close relatives under suspicious circumstances, this may give rise to an inference of intent in the absence of explanation from a defendant, including transactions being between close relatives under suspicious circumstances. This is exactly the situation here, close transactions among close relatives.

[71] I reject the Respondents' argument that because these Properties were purchased in the first instance in the name of Pedram's wife, son, and Winona Park, respectively, there could be no "conveyance" that can be set aside. The definition of "conveyance" is much broader than that and should be interpreted by a court to be of assistance.

[72] Section 1 of the *Fraudulent Conveyances Act* defines a "conveyance" to include any of the following:

> gift, grant, alienation, bargain, charge, encumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise

[73] The definition of "conveyance" does not simply mean a "transfer" and since the word "include" is used, it could include more types of transactions than enumerated. Taking into account the remedial nature of the *Act*, a court could find that the definition is broad enough to encompass an agreement with non-arm's length third parties that they will purchase properties in trust for a debtor, in order to defeat that creditor's interests.

[74] It must be remembered that the Cedric and Winona Properties were purchased for development purposes. Although heavily charged, the ultimate reason why a developer spends money on land development is that they expect that the property will have significant equity once completed. Even if fully mortgaged, a court could find that purchasing the Properties in this way prevented Pedram's creditors from executing upon any ultimate equity that may have existed after development. If any such agreement is set aside or found to be void, then a court could order that the legal title vests in Pedram's name in conjunction with the resulting trust argument.

[75] The Associate Judge also failed to appreciate that the oral agreement Pedram alleges he entered into with Behnaz could be found to be an admission by Pedram that following the consent judgment, he entered into an arrangement with his wife that would essentially prevent him from having title to any properties purchased in the family's development business and also prevent him from keeping his income. This arrangement is itself evidence that could be found to be a fraudulent arrangement designed to defeat creditors' interests, because he admits he gave her money that his creditors would otherwise have access to. He prevented himself from earning any income in his name, which income his creditors could otherwise seize.

[76] Furthermore, she failed to recognize that the evidence that Pedram paid the charges on these Properties and gave up his real estate commission to his son is also evidence of fraudulently conveyed gifts of money that went directly into the Properties, such that Nedaneg may trace these funds into the Properties.

[77] As set out in *Conte v. Pettle*, transfers of funds to a spouse (or another) in circumstances where that spouse owes money to creditors, even if they are gifts, runs afoul of the *Fraudulent Conveyances Act*. Debts must be paid before gifts can be made: at para. 86. The court referenced Myers J.'s decision *in Purcaru v. Seliverstova et al.*, 2015 ONSC 6679, 69 R.F.L. (7th) 388, aff'd

2016 ONCA 610, where he was faced with a similar situation. The respondent had gifted money to his spouse, which was found to be void. Justice Myers concluded that the proceeds of disposition of the fraudulently conveyed cash were in the titles to three properties, so he issued judgment binding the respondents' interests in the title to those properties and authorizing the sheriff to take possession and sell them.

[78] In *Conte v. Pettle*, the court further elaborated on the transfer of funds, at para. 105:

> A debtor cannot avoid the operation of the FCA by transferring property that is then sold by the recipients for cash, nor by transferring cash that is used by the recipient to purchase other property. Just as proceeds from the sale of a property fraudulently conveyed may be traced and recovered by the creditor: ... so too, if cash is fraudulently conveyed, any property purchased with cash can be traced and recovered by the creditor.... [Internal citations omitted].

[79] Thus, the ability to trace such funds into the Properties is also a basis for issuing a CPL.

[80] Therefore, in failing to consider all relevant matters between the parties, which matters are set out above, she erred in principle and deprived herself of the ability to consider the equities and balance of convenience in the relevant context.

Issue 3: Did the Associate Judge exercise her discretion on wrong principles or misapprehended evidence?

[81] The Associate Judge's error in failing to analyze Nedaneg's argument that he had established a *prima facie* case of fraud, was compounded when she focused her analysis of the equities on certain factors primarily derived from cases where a plaintiff actually seeks recovery of a particular piece of property for itself as owner, without taking into account the fact that this case is not like those cases.

[82] In doing so, she exercised her discretion on wrong principles and misapprehended evidence.

[83] The usual equitable factors are commonly referred to as the "*Dhunna* Factors": *Perruzza*, at para. 20. These factors typically include the following: whether the plaintiff is a shell corporation; whether the land is unique; the intent of the parties in acquiring the land; whether there is an alternate claim for damages; the ease or difficulty in calculating damages; whether damages would be a satisfactory remedy; the presence or absence of a willing purchaser; and the harm to each party if the CPL is not granted (the balance of convenience): *Perruzza*, at para. 20.

[84] In my view, in all cases, the court is required to assess the particular relevance of these factors in the particular circumstances and not simply apply them as rote criteria applicable to all cases with equal force.

[85] Some of these factors do not have a clear and strong relevance to claims by judgment creditors of this nature, which includes allegations of arrangements to defeat creditors post judgment. This may be why some cases cited by Nedaneg (i.e., *Fernandes* and *United States (Securities & Exchange Commission) v. Boock*) have never applied the equitable factors or balance of convenience at all in fraudulent conveyance actions and have focused primarily on whether there was a *prima facie* case of fraud, although as I have noted, this approach was overruled by *Botiuk.*

[86] While equitable factors and the balance of convenience are certainly relevant in such cases, as per the court's ruling in *Botiuk*, not all of the *Dhunna* Factors will necessarily be relevant in a case like this. Because the Associate Judge did not address and therefore appreciate the underlying facts and evidence, she failed to appreciate the irrelevance, or lesser relevance, of some of the factors she relied upon.

[87] The Associate Judge also did not sufficiently consider and account for Nedaneg's position and evidence with respect to the matters she cited.

[88] Due to these errors, she made her decision based on wrong principles and misapprehended evidence.

[89] In that regard, I will address some of the *Dhunna* Factors below that she took into account and how the failure to analyze and appreciate the nature of the case before her, drove errors in her consideration of these factors.

Damages Would be Adequate

[90] The Associate Judge concluded that damages would be an adequate remedy and are easy to quantify. In a case where a plaintiff seeks recovery of a particular piece of property, this is a very relevant consideration because if damages are adequate, the CPL is not required to protect the plaintiff.

[91] However, in this case, there is no request for monetary damages. Nedaneg already had a specific judgment. Damages will not be an adequate remedy here; the reason why the creditor is suing is because it was awarded monetary damages but it cannot recover these damages because of the debtor's alleged actions in placing assets out of their reach and Pedram's admitted agreement with Behnaz.

[92] Furthermore, and in any event, damages would not actually be an adequate remedy in this case absent the CPL that would permit execution if Nedaneg succeeds, because Pedram's position is that he has no assets and cannot hold any assets in the family's real estate business due to his arrangement with Behnaz. Given the strong *prima facie* case that these parties arranged their affairs to try to defeat Nedaneg's interest, there is good reason to conclude that these Respondents will simply re-arrange their affairs again to defeat any damages award, even if it were claimed.

[93] I acknowledge that s. 103 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, sets out a number of factors that the court may take into account regarding issuance of a CPL. The factors include a consideration that the claim is for a sum of money in place of or as an alternative to an interest in land. However, I note that this is a factor that the court "may" take into account. The court is still obliged to consider and weigh the relevance and importance of this factor in the context of the case before it.

The Properties Are Not Unique

[94] The Associate Judge concluded that the Properties are not unique. It is not clear why the uniqueness matters at all when the reason for the lawsuit is not that the plaintiff seeks to recover property in which it claims an interest but rather seeks to have the property vest in the debtor's name so that it can execute upon it. It really doesn't matter how unique the Property is in these circumstances.

[95] Notably, the Associate Judge appeared to place significant weight on her conclusion that damages would be an adequate remedy and that the Properties were not unique. In the paragraph where she made these conclusions she stated, "These factors militate against the granting of a CPL." A similar statement was not made with respect to the other factors that she cited and so it appears that these factors were the most significant in her analysis.

Delay

[96] The Associate Judge referenced Nedaneg's delay in seeking to enforce its judgment against Pedram. It obtained its judgment in September 2019, filed the writ shortly thereafter, and sold the Grangemill Property in March 2020. In reliance on *2254069 Ontario Inc. v. Kim*, 2017 ONSC 5003, the Associate Judge considered this delay to be analogous to whether the plaintiff had moved to prosecute the proceeding in question (this one) with reasonable diligence.

[97] Delay is relevant to the ordinary case where a plaintiff seeks to remove a CPL from title, because courts wish to discourage parties from registering a CPL and then not taking any further steps. Delay is specifically mentioned in s. 103 of the *Courts of Justice Act* as a factor to consider on motions to discharge a CPL. Delay is also considered on motions to register a CPL because in such situations, the concern is whether the motion was commenced quickly enough after the action was commenced to minimize any collateral impact that the CPL could cause.

[98] Here, the delay in enforcement had no impact on Pedram because Pedram's position is that he has no assets. It would have made no difference had Nedaneg sought to take steps to enforce the judgment sooner. Nedaneg's explanation, which the Associate Judge failed to give sufficient weight to, is that its principal had open heart surgery after it obtained the judgment and was told to avoid stress. The events in question were also in the middle of the COVID crisis.

[99] Further, the Associate Judge failed to give sufficient weight to the fact that once Nedaneg suspected Pedram's interest in the Properties, it moved swiftly. It commenced the action immediately and then served the motion requesting the CPL within days of commencing the

proceeding. Finally, she failed to take into account the fact that Pedram failed to attend when he was served with a notice of his judgment debtor examination.

[100] While delay is relevant here, it is not a strong factor.

Statement of Account in Respect of the Power of Sale

[101] The Associate Judge also referenced the fact that Nedaneg delayed in providing a statement of account in respect of the power of sale, such that the whole amount of the judgment was still reflected on Pedram's credit report.

[102] Again, it is unclear why this is relevant, since Pedram's position is that he has no assets as a result of his alleged agreement with Behnaz. It is not as if he is saying he would have been able to pay the balance if only Nedaneg had advised him earlier that the amounts were still owed or that this impacted his ability to do business.

[103] Although Pedram gave an undertaking to provide alleged email correspondence from the seven or eight mortgage agents he says he tried to satisfy as to the amount owing on the judgment, he subsequently indicated that he "cannot find these documents at this time." Although Pedram also gave an undertaking to provide copies of the mortgage applications allegedly denied because of Nedaneg's failure to update the amount owing, he said he "cannot find these documents at this time."

[104] It is also curious that his lawyer raised issues as to Pedram's credit report, given his alleged agreement with Behnaz, which prevented him from owning anything in their family business. Why would lenders be interested in his credit statement in such circumstances?

[105] Since Pedram's evidence related to this issue was an entirely bald statement, and questionable at that, this is not a strong equitable factor.

[106] Also, Pedram is a real estate agent with access to MLS, which discloses the amount the Property was listed for, as well as the sale price. It is not believable that Pedram did not know the deficiency because of the delay in the accounting. When cross-examined, he admitted that as soon as the sale of Grangemill Property became firm, and before its closing, the price was reflected on MLS and he accessed it. He also testified that he was aware of the shortfall at that time.

Interest Accrual

[107] During the time that Nedaneg did not pursue the judgment, interest accrued at 11.99 percent and the balance is now higher. I agree that this is relevant, but the Associate Judge failed to take into account that Pedram is entitled to raise this delay in the context of the litigation as a defence to the accrual of interest during any period where there was delay.

[108] As such, in my view it is not a strong equitable factor.

Registration of Cautions

[109] I agree that Nedaneg's registration of two successive cautions on the Winona Properties, that the Land Titles Registry ordered deleted on the basis that they were invalid was a valid equitable factor. However, the Associate Judge failed to give sufficient weight to Nedaneg's motivation, which was to preserve its interest pending its ability to obtain a date for a CPL motion in circumstances where Nedaneg had good reason to be concerned that the Properties would be sold or further encumbered before any motion date could be secured or argued.

[110] As well, she failed to recognize that although Pedram gave an undertaking to provide the names of the seven or eight mortgage agents who he said he contacted but who would not provide financing as a result of the cautions, he indicated that he could not "recall these names at this time." She should have questioned why he was seeking mortgage financing since his position is he cannot own any real estate assets in the family business.

[111] The evidence as to the difficulty this caused Pedram is bald, questionable, and is therefore also not a strong equitable factor.

Balance of Convenience

[112] The Associate Judge placed significant weight on alleged financing concerns that the Respondents would have if leave was granted to register a CPL. In doing so, she failed to sufficiently take into account the fact that at the time of the motion, some charges were in default, there were construction liens, and at least one CPL was already filed.

[113] These would already have had a significant impact on the Respondents' ability to obtain financing.

[114] With respect to the Cedric Property, she acknowledged that it was blown up, and considered that Arman would require financing to rebuild, but there was no concrete evidence of plans to rebuild or attempts to find financing for that. Arman provided only bald evidence that the registration of a CPL on the Cedric Property would have a detrimental impact on it without any supporting evidence.

[115] As referenced by the Associate Judge, mere days before Behnaz's scheduled cross-examination, her counsel wrote saying she would not be available because of her anxiety disorder. Counsel provided an undated doctor's note and when asked if he would also provide an affidavit from the doctor who provided the note, he indicated that he would not. Counsel offered to permit her to be examined via written interrogatories. Nedaneg noted that allegations of fraud had been made and that in the circumstances, she should make herself available in person to be examined. I cannot disagree that written interrogatories would be insufficient in this case given the constellation of facts and evidence.

[116] Because the Associate Judge correctly noted that she could not take into account Behnaz' affidavit, there was insufficient direct evidence from the alleged owner of the Winona or Denlow

Properties that she could have taken into account regarding the impact of any CPL. Allegations relating to financing concerns over the Denlow and Winona Properties were bald and unsupported.

[117] The Associate Judge also did not follow her own previous decision that a bald allegation of hardship due to a loss of financing is not sufficient. Real and tangible proof of said financing must be produced: *Dhaliwal v. 2581576 Ontario*, 202 ONSC 8247, at para. 52.

[118] In the context of the overall evidence, there is good reason for Nedaneg to be concerned that in the absence of CPLs, the Properties would be further encumbered or sold, such that there would be no equity left by the time of any trial. In my view the balance of convenience favoured Nedaneg.

[119] All of the above shows that she exercised her discretion on wrong principles and misapprehended evidence.

Issue 4: Should leave to issue the CPL be granted?

[120] I will not repeat the analysis, but for all the reasons set out above, Nedaneg should be granted leave to issue a CPL.

[121] I am satisfied as to the fact that Nedaneg has raised a triable issue to an interest in land and indeed a strong prima facie case, and that the equities and balance of convenience favour granting leave to issue CPL's on the Winona and Cedric Properties.

Conclusion

[122] The Associate Judge determined that fairly modest equitable factors and weak evidence in respect of the balance of convenience disentitled Nedaneg to a CPL, without considering and taking into account the context and evidence which established a strong *prima facie* case that Pedram is the true beneficial owner and that these parties had engaged in agreements and transactions intended to defeat Nedaneg's ability to collect its judgment. In doing so, I am satisfied that the Associate Judge erred in principle and exercised her discretion on wrong principles and misapprehended evidence.

[123] Thus, the appeal is allowed and I grant leave to Nedaneg to register a CPL on the Cedric and Winona Properties.

[124] I strongly encourage the parties to settle costs. If they cannot do so they may make submissions as follows no longer than 5 pages each: Nedaneg within 5 days and the Respondents within 5 days thereafter.

Papageorgiou J.

Released: February 6, 2025

CITATION: Nedaneg Financial Corporation v. Talebzadeh, 2025 ONSC 848
COURT FILE NO.: CV-22-00684974-0000
DATE: 20250206

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

NEDANEG FINANCIAL CORPORATION

Plaintiff/Appellant

– and –

PEDRAM TALEBZADEH, ARMAN TALEBZADEH, BEHNAZ ALIABADI, FOREST HILL REAL ESTATE INC. DIAMOND, DIAMOND REALTY DEVELOPERS INC., MEHDI GOL MOHAMMADI DARIAN, KAMRAN MAHDI, IRAJ MAHDI, CANADIAN IMPERIAL BANK OF COMMERCE, WINONA PARK TOWNS LTD., MOSHE EICHORN, WINONA PARK DEVELOPMENTS LIMITED, and 2819152 ONTARIO CORPORATION

Defendants/Respondents

REASONS FOR JUDGMENT

Papageorgiou J.

Released: February 6, 2025