CITATION: *6071376 Canada Inc.* V. *Mahmood Khedmatgozar et al.*, 2023 ONSC 4129
COURT FILE NO.: CV-21-85549
DATE: 2023/07/10

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
6071376 CANADA INC.	)	G. James Thorlakson and Julia Dales, counsel for the applicant
Applicant	)	
– and –	)	
	)	
MAHMOOD KHEDMATGOZAR, 3966305 CANADA INC., CAPITAL DENTISTRY GROUP LIMITED, DEMETRIUS DALIOS, MARY BERESFORD and JOHN DOE	)	Charles Gibson and Ian Houle, counsel for the respondents Mahmood Khedmatgozar, 3966305 Canada Inc. and Mary Beresford
Respondents	)	Alyssa Tomkins and Romina Hassanzadeh, counsel for the respondents Capital Dentistry Group Limited and Demetrius Dalios
	)	
	)	HEARD: September 8, 2022

AMENDED REASONS FOR JUDGMENT

The text of the original decision was amended on July 11, 2023 by adding Counsel Romina Hassanzadeh for the respondents Capital Dentistry Group Limited and Demetrius Dalios.

Justice H. J. Williams

OVERVIEW

[1] The applicant 6071376 Canada Inc. has a judgment against the respondent Mahmood Khedmatgozar for more than $1.5 million.

[2] Justice Tausendfreund granted the judgment on June 25, 2019. In his reasons for decision, Tausendfreund J. found that Dr. Khedmatgozar had misappropriated investment property belonging to the applicant. Tausendfreund J. described Dr. Khedmatgozar as an "admitted liar".

[3] The applicant now submits that Dr. Khedmatgozar and the other respondents conspired to fraudulently convey assets belonging to Dr. Khedmatgozar to prevent the applicant from accessing them to satisfy its judgment.

[4] The applicant argues that Dr. Khedmatgozar's primary asset, his interest in several dental professional corporations, became unavailable to his creditors as a result of a sale to the respondent Capital Dentistry Group Limited.

[5] The applicant argues the respondents knew about its judgment.

[6] In its amended notice of application, the applicant seeks the following relief:

- A declaration that Dr. Khedmatgozar's shares in Capital Dentistry Group and the sale and amalgamation of his dental practices resulted from or came into existence as a result of a conspiracy by unlawful means;
- An order requiring the respondents to pay the applicant damages, including damages equal to the value of Dr. Khedmatgozar's shares in Capital Dentistry Group or, alternatively, to the value of the shares he sold in his dental corporations, less amounts already recovered by enforcement proceedings;[1] and

[1] At the beginning of its factum, the applicant requested damages in the amount of the judgment debt. At the end of the factum, under "orders sought", the request for damages was consistent with the relief sought in the amended notice of application. In his oral submissions, the applicant's counsel confirmed the applicant is seeking damages in the amount of the judgment debt.

> Until such judgment is paid, a permanent injunction restraining any disposition of Dr. Khedmatgozar's and the respondent Mary Beresford's shares in Capital Dentistry Group, unless authorized by the Court.

FACTUAL BACKGROUND

[7] Dr. Khedmatgozar and the respondent Demetrius Dalios are dentists who are now shareholders in Capital Dentistry Group. Before Capital Dentistry Group was incorporated on October 14, 2020, Dr. Khedmatgozar and Dr. Dalios were shareholders in joint dental practices.

[8] The respondent, 3966305 Canada Inc., is a company owned by Dr. Khedmatgozar.

[9] The respondent, Mary Beresford, is Dr. Khedmatgozar's wife.

[10] In February 2019, MCA Dental Group Limited, which is not a party to the application, approached Dr. Khedmatgozar and Dr. Dalios to discuss a possible acquisition of Dr. Khedmatgozar's and Dr. Dr. Dalios's interests in several Ottawa dental practices.

[11] In his affidavit, Ken Craig, the president of Capital Dentistry Group and MCA, describes MCA as a dental service organization "seeking to work with dentists to improve their respective practices by providing the services and capital dentists require to grow their practices."

[12] On February 20, 2019, Dr. Khedmatgozar and Dr. Dalios signed non-disclosure agreements. MCA then began to investigate the dentists' practices to determine whether it was interested in acquiring them.

[13] Justice Tausenfreund's judgment against Dr. Khedmatgozar was released in June 2019, about four months after MCA first approached Dr. Khedmatgozar and Dr. Dalios.

[14] Dr. Khedmatgozar appealed Tausendfreund J.'s decision.

[15] On November 1, 2019, MCA delivered a letter of intent outlining a proposal for the purchase of Dr. Khedmatgozar's and Dr. Dalios's practices. MCA proposed to pay cash on closing plus shares in a corporation that would be incorporated as part of the transaction.

[16] Dr. Khedmatgozar and Dr. Dalios signed the letter of intent on or about November 1, 2019.

[17] Dr. Khedmatgozar's appeal of Tausendfreund J.'s judgment was scheduled to be heard on April 2, 2020 but was postponed because of the COVID-19 pandemic.

[18] On March 19, 2020, the applicant's counsel wrote an email to Dr. Khedmatgozar's litigation lawyer, Charles Gibson, and to Harold Feder, the lawyer representing Dr. Khedmatgozar, Dr. Dalios and Ms. Beresford in the sale of the corporations. The applicant's counsel attached to his email a copy of Tausendfreund J.'s judgment, saying it was for Mr. Feder's benefit.

[19] In his email, the applicant's counsel said it had come to his attention that Dr. Khedmatgozar was in the process of selling certain dental practices. The applicant's counsel said that enforcement proceedings in respect of his client's judgment had been in abeyance pending the appeal, because of an interim preservation order and representations Dr. Khedmatgozar had made in a statutory declaration about his assets and liabilities.

[20] The applicant's counsel said that because Dr. Khedmatgozar's situation appeared to have changed, steps should be taken to protect the proceeds of the sale from being dissipated. The applicant's counsel suggested a further preservation order on consent, an undertaking by corporate counsel to withhold sufficient proceeds of sale to answer the judgment or proceeding with the appeal remotely on the basis that the pending sale made the appeal urgent.

[21] Mr. Gibson responded to the applicant's counsel's email the same day. Mr. Gibson said that Dr. Khedmatgozar was a minority shareholder who did not control the decision to sell

his shares in the practices. Mr. Gibson said there was no imminent sale, but that Dr. Khedmatgozar had agreed that the proceeds from the sale of his shares would be put into Mr. Gibson's trust account and that the only payout would be Mr. Gibson's legal fees.

[22] Mr. Gibson also noted that the applicant's counsel was aware of clauses in the practices' shareholder agreements which would reduce the price of Dr. Khedmatgozar's shares if the applicant's judgment were enforced against the shares.

[23] The applicant's counsel confirmed that Mr. Gibson's proposal was acceptable.

[24] Mr. Feder responded to the applicant's counsel's email by saying that he would respect any direction with respect to funds.

[25] Dr. Khedmatgozar's appeal of Tausendfreund J.'s decision was dismissed on June 30, 2020.

[26] On July 15, 2020, Mr. Gibson wrote to the applicant's counsel and confirmed what Mr. Gibson characterized as the potential sale and merger of some of Dr. Khedmatgozar's practices with a larger dental corporation. Mr. Gibson said that if the sale did not proceed, the other shareholders in the practices would have no interest or obligation to buy Dr. Khedmatgozar's shares. Mr. Gibson said that if the applicant forced the sale of Dr. Khedmatgozar's shares, the return would be substantially lower than what would be received from the potential sale and merger.

[27] Significantly, Mr. Gibson also said that if the sale closed, Dr. Khedmatgozar would stand to receive approximately $200,000. Mr. Gibson said Dr. Khedmatgozar had undertaken to put this money into Mr. Gibson's trust account, to be reduced only by his law firm's fees. Mr. Gibson said that Ms. Beresford would be receiving approximately the same amount and that she was willing to lend Dr. Khedmatgozar $200,000 to apply to the applicant's judgment.

[28] The applicant's counsel conducted a judgment debtor examination of Dr. Khedmatgozar on August 21, 2020. The applicant's counsel referred to the pending sale of the dental practices but did not ask any questions about it, saying that he was content to rely on the undertaking given by Mr. Gibson.

[29] On October 14, 2020, MCA purchased the Khedmatgozar/Dalios practices long with 14 other corporations which operated dental practices and incorporated Capital Dentistry Group.

[30] On closing, Dr. Khedmatgozar received cash plus a minority shareholding interest in Capital Dentistry Group.

[31] Later in October 2020, the applicant's counsel wrote to Mr. Gibson and Mr. Feder to say that his client had been informed that the sale of the shares in Dr. Khedmatgozar's dental practice had closed and that payments had been disbursed. The applicant's counsel requested an explanation.

[32] On October 28, 2020, Mr. Feder replied, saying that Mr. Gibson would be in touch but that in the meantime, nothing was moving.

[33] On October 29, 2020, Mr. Gibson replied, saying that he was not aware that the sale had closed but that he had requested an immediate answer from his client.

[34] On October 30, 2020, Mr. Feder informed the applicant's counsel that the transaction had indeed closed two weeks earlier and that he was holding the proceeds in his firm's trust account. The applicant's counsel wrote back, asking for confirmation of the amount of proceeds being held. On November 2, 2020, Mr. Feder informed the applicant's counsel that he was holding $81,534.62 in trust for Dr. Khedmatgozar's "net of fees."

[35] Mr. Feder sent the $81,534.62 to Mr. Gibson. On December 8, 2020, Mr. Gibson sent the applicant's counsel a cheque for $55,897.21, representing the $81,534.62 from Mr. Feder, less Mr. Gibson's firm's fees.

THE ISSUES

[36] The following issues must be determined on this application:

- Issue #1: Did the respondents engage in a conspiracy by unlawful means by participating in a fraudulent conveyance?

- Issue #2: If the answer is yes, what is the appropriate remedy?

ANALYSIS

Issue #1: Was there a conspiracy by unlawful means to participate in a fraudulent conveyance?

[37] For the respondents to be liable for the tort of unlawful conduct conspiracy, it is not necessary that the predominant purpose of their conduct be to cause injury to the applicant. There must, however, be a constructive intent derived from the fact that the respondents should have known that injury to the applicant would ensue, and damage would be suffered by the applicant. (*Agribrands Purina Canada Inc. v. Kasamekas*, 2011 ONCA 460, at para. 24.)

[38] To make out the tort of unlawful conduct conspiracy against the respondents in this case, the following elements must therefore be present:

> (a) they act in combination, that is, in concert, by agreement or with a common design;
>
> (b) their conduct is unlawful;

(c) their conduct is directed towards the applicant;

(d) they should know that, in the circumstances, injury to the applicant is likely to result; and

(e) their conduct causes injury to the applicant. (*Agribrands*, at para. 26.)

[39] The applicant argues that Dr. Khedmatgozar, his numbered company 3966305, Capital Dentistry Group, Dr. Dalios and Ms. Beresford acted in combination when they entered into the agreement that saw Dr. Khedmatgozar's interest in the dentral practices converted into cash and shares in Capital Dentistry Group.

[40] The applicant argues the respondents were aware of its judgment.

[41] The applicant submits the respondents acted unlawfully by participating in a fraudulent conveyance and that they knew or should have known that the transfer of Dr. Khedmatgozar's interest in his dental practices would injure the applicant.

[42] The applicant argues that anyone, including Mr. Craig of MCA, who read Tausendfreund J.'s decision, or the associated appeal decision, would have seen that Dr. Khedmatgozar was described as a liar whose conduct was egregious, and would have been on notice that something was amiss.

[43] The applicant also submits that Dr. Khedmatgozar's efforts to avoid paying its judgment cannot be countenanced by the court and cry out for denunciation.

[44] Having reviewed the previous decisions of this court and the Court of Appeal, including a 2021 decision of Gomery J. in a successful undertakings/production motion brought by the applicant, I am not unsympathetic to the applicant's frustration over its efforts to collect on this now four-year-old judgment.

[45] That said, while I accept that that element "(a)" of the elements of the tort of unlawful conduct conspiracy enumerated in *Agribrands* is present, in that, in respect of the

transaction that closed October 14, 2020, the respondents acted in combination, in concert, by agreement and with a common design, the evidence on the application does not persuade me that any of the other four elements is present.

[46] I will consider elements "(b)" through "(e)".

"(b) their conduct is unlawful"

[47] The applicant argues the respondents' conduct was unlawful because the sale of Dr. Khedmatgozar's shares in his dental practices was a fraudulent conveyance.

[48] Section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 provides that "[e]very conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns."

[49] That the sale of Dr. Khedmatgozar's shares in his dental practices was a conveyance of property for purposes of the *FCA* is not in dispute, nor is it in dispute that the applicant is a creditor with a lawful debt. The issue is whether the conveyance was "made with intent to defeat, hinder, delay or defraud" the applicant.

[50] In most cases, a finding concerning the necessary intention to defeat creditors cannot be made except by drawing an inference from the circumstances. (*Indcondo v. Sloan*, 2014 ONSC 4018, at para. 51.) Evidentiary rules have developed over time which, when considered in all the circumstances, may enable the court to make a finding unless the proponents of the transaction can explain away the suspicious circumstances. These evidentiary rules are known as badges of fraud. (*Indcondo*, at para. 53.) These badges of fraud include the following:

(a) the donor continued in possession and continued to use the property as his own;
(b) the transaction was secret;
(c) the transfer was made in the face of threatened legal proceedings;

(d) the transfer documents contained false statements as to consideration;

(e) the consideration is grossly inadequate;

(f) there is unusual haste in making the transfer;

(g) some benefit is retained under the settlement by the settlor;

(h) embarking on a hazardous venture; and

(i) a close relationship exists between parties to the conveyance. (*Indcondo*, at para. 52.)

[51] The legal or persuasive burden to prove the case remains on the plaintiff, but the plaintiff may raise an inference of fraud sufficient to shift the *evidentiary* burden to the defendant if the plaintiff can establish that the transaction has characteristics which are typically associated with fraudulent intent. Proof of one or more of the badges of fraud will not compel a finding for the plaintiff but it may raise a *prima facie* evidentiary case which it would be prudent for the defendant to rebut. (*Indcondo,* at para. 53.)

[52] The court is not required to draw an inference of fraudulent intent if badges of fraud are present. The court may dismiss a fraudulent conveyance action on the basis that the surrounding circumstances, taken as a whole, explain away the plaintiff's evidence. (*Bank of Montreal v. Peninsula Broilers Limited,* 2009 CanLII 25974 (ON SC), at para. 81.)

[53] The applicant argues that most of the badges of fraud identified in *Indcondo* are present in this case:

- Dr. Khedmatgozar remained in possession of the conveyed property, in that both before and after the sale of his dental practices, he had an ownership interest in a dental practice and continued to work there.

- The transaction was kept secret. The applicant says that it was required to reach out to Dr. Khedmatgozar's lawyers to obtain information about the transaction.

- The transaction took place when the applicant had a judgment against Dr. Khedmatgozar and while enforcement proceedings were underway.

- The cash component of the transaction was nominal in relation to the total value of the transaction.

- Dr. Khedmatgozar's spouse and his long-time business partner, Dr. Dalios, were involved in the transaction.

- Dr. Khedmatgozar's interest in the new corporation, Capital Dentistry Group, is encumbered by security in favour of a third-party lender, making it difficult for creditors to claim constructive trust remedies or void the transaction.

[54] Despite these assertions, the applicant has failed to persuade me that Dr. Khedmatgozar sold his shares in the dental corporations with the "intent to defeat, hinder, delay or defraud" the applicant. I find that the surrounding circumstances, taken as a whole, explain away the applicant's evidence.

[55] Significantly, the wheels were set in motion for the sale of the dental practices to MCA several months before Tausendfreund J.'s judgment was released. MCA approached Dr. Khedmatgozar and Dr. Dalios about a potential sale in February 2019; it was not Dr. Khedmatgozar and Dr. Dalios who approached MCA. Tausendfreund J.'s decision was not released until June 2019. Dr. Khedmatgozar and Dr. Dalios had been involved in discussions to sell the corporations before February 2019 to an MCA competitor even earlier, in the fall of 2018.

[56] I am not persuaded that the sale of the practices, which was instigated by MCA and contemplated before the judgment, was motivated by the judgment.

[57] The applicant argues that the sale to MCA was kept secret. The applicant says it had to chase Dr. Khedmatgozar for information about the sale. It is true that in March 2020, the applicant's counsel wrote to Dr. Khedmatgozar's counsel to say that it had come to his attention that Dr. Khedmatgozar was selling some dental practices and to request further information. At that time, Dr. Khedmatgozar's counsel replied by saying a sale was not imminent, but that Dr. Khedmatgozar would put the proceeds of the sale into his lawyer's trust account and that the only pay out would be his lawyer's fees. The applicant's counsel agreed with this proposal.

[58] At that time, in March 2020, the applicant's counsel would not have known that the purchase price for the practices would be made up of cash on closing plus shares and that the cash component would be significantly less than the value of the share component.

[59] However, on July 15, 2020, Dr. Khedmatgozar's counsel clearly told the applicant's counsel, in a letter, that Dr. Khedmatgozar would receive approximately $200,000 if the sale closed and confirmed that Dr. Khedmatgozar had undertaken to put this money into a trust account, to be reduced only by legal fees.

[60] In August 2020, the applicant's counsel conducted a judgment debtor examination of Dr. Khedmatgozar. The applicant's counsel did not make inquiries about the sale of the dental practices. The applicant's counsel said that he was content to rely on Dr. Khedmatgozar's lawyer's undertaking to hold the proceeds of the sale in trust and that he would "leave aside for now and adjourn" any questioning about the specifics of any pending transaction.

[61] In its amended notice of application, the applicant pleaded that if it had known that only a small fraction of the value of Dr. Khedmatgozar's interest in the dental corporations would be paid into trust, the applicant would have taken further enforcement or protective steps to prevent Dr. Khedmatgozar from putting his shares out of the reach of creditors. This is a difficult claim to accept when that the applicant's counsel knew as of July 15, 2020 that Dr. Khedmatgozar was expecting to receive only $200,000 in cash, and no such steps were taken.[2]

[62] The applicant argues that the cash component of the sale was nominal and characterizes this as a badge of fraud. This assertion appears to ignore that, in addition to the cash component of the sale, Dr. Khedmatgozar received shares in Capital Dentistry Group. The uncontradicted evidence of MCA is that: (a) it proposed to purchase the practices with

[2] Obviously, the $81,534.62 "net of fees" transferred from Mr. Feder to Mr. Gibson's firm was less than the $200,000 the applicant reasonably could have expected to receive based on Mr. Gibson's letter of July 15, 2020. This is not, however, the basis for the applicant's complaint, which is that the entire value of the sale should have been placed into trust.

consideration made up of cash on closing plus shares in the corporation that resulted from the transaction; and (b) this manner of paying the purchase price (i.e. cash plus shares) was consistent with its past practice in respect of other dental practice acquisitions. The cash and share combination was intended to limit MCA's financial obligation on closing. I am not persuaded that the breakdown of the purchase price into cash and shares weighs in favour of a finding that Dr. Khedmatgozar intended to defeat his creditors.

[63] The applicant argues that a further badge of fraud is that Dr. Khedmatgozar's spouse and his long-time business partner, Dr. Dalios, were involved in the transaction. This is true, of course, but the purchaser of the dental practices was not related to Dr. Khedmatgozar. The purchaser was MCA, and there is no evidence that MCA was anything but an arm's length and *bona fide* purchaser.

[64] Finally, the applicant argues that Dr. Khedmatgozar's interest in Capital Dentistry Group is effectively creditor-proof. The applicant submits that if it had known how little cash would be paid into Dr. Khedmatgozar's lawyer's trust account, it would have taken further enforcement or protective steps to prevent Dr. Khedmatgozar from putting his shares out of the reach of creditors. The evidence on the application has not established that the applicant's position as a creditor was negatively affected in this respect or at all by the sale to MCA. Further, the evidence is clear that the applicant did know, as of July 15, 2020, that Dr. Khedmatgozar was expecting to receive $200,000 cash on closing. Despite being armed with this information, the applicant did not step up its enforcement efforts and did not even make inquiries about the impending sale at the August 2020 judgment debtor examination.

[65] For these reasons, I find that the applicant had not shown that in selling his interest in the dental corporations to MCA, Dr. Khedmatgozar's intent was "to defeat, hinder, delay or defraud" the applicant, or that the sale to MCA was a fraudulent conveyance. The applicant has not, therefore, shown that the conduct of the respondents involved in the sale was unlawful.

"(c) their conduct is directed towards the applicant"

[66] The evidence has not persuaded me that the involvement of any of the respondents in the transfer of Dr. Khedmatgozar's interest in the corporations was in any way directed at the applicant.

[67] Significantly, and as I have already mentioned: (1) MCA had approached Dr. Khedmatgozar and Dr. Dalios (and not vice versa) about the prospective purchase of the corporations several months before the applicant obtained its judgment against Dr. Khedmatgozar; and (2) the proposed consideration for the purchase, comprised of cash and shares in a new corporation, was consistent with how MCA had structured deals in the past.

[68] I am satisfied that MCA and Capital Dentistry Group's motivation for the transaction, which included the acquisition of 14 dental corporations in addition to those of Dr. Khedmatgozar and Dr. Dalios, was to benefit MCA, and had nothing to do with the applicant.

[69] The deal with MCA offered both Dr. Khedmatgozar and Dr. Dalios cash on closing plus shares in the new corporation, Capital Dentistry Group. Dr. Khedmatgozar and Dr. Dalios had shown an interest in selling their practices as early as the fall of 2018, when they spoke with a different potential purchaser.

[70] As a non-voting shareholder in the corporations, Ms. Beresford would not have had any input into whether the sale to MCA took place.

"(d) they should know that, in the circumstances, injury to the applicant is likely to result"

[71] I am not persuaded that the respondents should have known that injury to the applicant was likely to result from the sale of Dr. Khedmatgozar's corporations to MCA. (As I explain below, under *"(e) their conduct causes injury to the applicant"*, I am also not persuaded that any injury was in fact caused.)

[72] Mr. Craig of MCA learned of the applicant's judgment on July 2, 2020. He asked Dr. Khedmatgozar about it and Dr. Khedmatgozar told him that he was in the process of resolving it with the applicant. Dr. Khedmatgozar had also informed MCA and Capital Dentistry Group that there were no proceedings pending, outstanding or threatened against him that could affect the purchase and sale of his interest in the corporations.

[73] There was no reason for MCA to have suspected that Dr. Khedmatgozar was trying to move assets beyond the reach of a judgment creditor. As I have already emphasized, MCA had approached Dr. Khedmatgozar and Dr. Dalios about the sale of their practices, not vice versa. The sale was at arm's length. Further, MCA was using a corporate and financial structure it had devised and used in the past; the combination of cash and shares on closing was MCA's idea, not that of Dr. Khedmatgozar. The impetus for the low cash-to-shares ratio was to minimize the amount of cash MCA was required to pay out on closing.

[74] I do not accept the applicant's argument that because Mr. Feder represented Dr. Khedmatgozar, Dr. Dalios and Ms. Beresford on the sale transaction, Dr. Dalios and Ms. Beresford are deemed to have had knowledge of the judgment as of the March 2020 date the applicant's counsel sent a copy of the judgment to Mr. Feder.

[75] There was no evidence that Mr. Feder informed Dr. Dalios or Ms. Beresford about the judgment. For the knowledge of an agent, such as a lawyer in Mr. Feder's position, to be attributable to the principals, the knowledge must be relevant to the transaction in respect of which the agent is employed and there must be a duty on the agent to communicate the notice to his principal: G.H.L. Fridman, *Canadian Agency Law*, (2017: LexisNexis Canada), at s. 10.10. In this case, on the same day that Mr. Feder received the judgment from the applicant's counsel, Dr. Khedmatgozar's lawyer, Mr. Gibson, wrote to the applicant's counsel, with a copy to Mr. Feder, to say that the judgment was stayed and the proceeds from the sale of Dr. Khedmatgozar's shares would be put in Mr. Gibson's trust account. The applicant's counsel replied, with a copy to Mr. Feder, to say that that arrangement would be acceptable. I am not persuaded that, in these circumstances, Mr.

Feder would have believed the judgment was relevant to the transaction in respect of which he had been retained or that the judgment had any relevance on an objective basis.

[76] I find that Dr. Dalios did not know about the applicant's judgment until January 2021, about three months after the sale to MCA closed.

[77] Ms. Beresford's evidence was that she did not know anything about the applicant's judgment against Dr. Khedmatgozar. I have already made reference to Ms. Beresford status as a non-voting shareholder; she had no input into the sale to MCA.

"(e) their conduct causes injury to the applicant"

[78] I have already noted that the evidence on the application has not established that the applicant's position as a creditor was negatively affected by the sale to MCA. [79] Dr. Khedmatgozar could not have transferred his shares in his dental practices to the applicant. Shares in dental corporations in Ontario may only be owned by members of the Royal College of Dental Surgeons of Ontario or their family members. (O. Reg. 665/05: Health Profession Corporations under *Business Corporations Act,* R.S.O. 1990, c. B.16, s. 3.) Further, the shares in Dr. Khedmatgozar's corporations were subject to several restrictions. For example, under the corporations' shareholder agreements, in the event of a forced sale of a shareholder's shares, the other shareholders were accorded a first option to purchase at a substantial discount. A forced sale could, therefore, have had the effect of significantly lowering the value of the shares.

[79] Prior to the transaction, Dr. Khedmatgozar was a practising dentist and a minority shareholder in a number of dental corporations. Post-transaction, Dr. Khedmatgozar is continuing to practise dentistry and is a minority shareholder in a larger dental corporation.

[80] A notice of garnishment has been served on Capital Dentistry Group and it is honouring the notice.

[81] For these reasons, the applicant has not persuaded me that enforcement of its judgment became more difficult as a result of the sale of Dr. Khedmatgozar's and Dr. Dalios's practices to MCA or that the applicant suffered injury as a result

Conclusion with respect to Issue #1

[82] For these reasons, the applicant has not satisfied me that the respondents engaged in a conspiracy by unlawful means to participate in a fraudulent conveyance.

Issue #2: What is the appropriate remedy?

[83] As the applicant has not satisfied me that the respondents engaged in a conspiracy, it is not necessary for me to consider Issue #2.

COSTS

[84] The parties have filed costs outlines.

[85] They are strongly encouraged to settle the costs of the application.

[86] If they are unable to do so, the respondents may deliver brief written submissions to supplement their outlines within two weeks of the date of this decision. The applicant may then deliver brief written submissions in reply within two weeks of the date by which it has received the outlines of both respondents.

[87] Submissions are to be filed in the usual way and sent to my attention by email at scj.assistants@ntario.ca

Justice H. J. Williams

July 10, 2023

CITATION: *6071376 Canada Inc.* V. *Mahmood Khedmatgozar et al.*, 2023 ONSC 4129
COURT FILE NO.: CV-21-85549
DATE: 2023/07/10

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

6071376 CANADA INC.

Applicant

– and –

MAHMOOD KHEDMATGOZAR, 3966305 CANADA INC., CAPITAL DENTISTRY GROUP LIMITED, DEMETRIUS DALIOS, MARY BERESFORD and JOHN DOE

Respondents

REASONS FOR JUDGMENT

H. J. Williams J

Released: July 10, 2023