

COURT OF APPEAL FOR ONTARIO

CITATION: Aboutaleb-Maragheh v. Khanlari, 2023 ONCA 695

DATE: 20231019

DOCKET: COA-23-CV-0176

Doherty, George and Monahan JJ.A.

BETWEEN

Hossein Aboutaleb-Maragheh

Plaintiff (Respondent)

and

Payman Khanlari and Sanam Sarah Khanlari

Defendant (Appellant)

Payman Khanlari, acting in person

Golnaz Nayerahmadi and Matthew W. Taylor, for the respondent

Heard: October 17, 2023

On appeal from the order entered by Justice Paul M. Perrell of the Superior Court of Justice, dated December 28, 2022 and reported at 2022 ONSC 7292.

REASONS FOR DECISION

[1] The plaintiff (respondent) moved for summary judgment. The motion judge dismissed the claim as against the defendant, Sanam Sarah Khanlari, but gave judgment against the defendant (appellant), Payman Khanlari, in the amount of \$300,000 (USD). The actual judgment of the court provided for payment of \$406,960 (CAN).

[2] Mr. Khanlari appeals from the judgment. There is no appeal from the dismissal of the action against Sanam Sarah Khanlari.

[3] The appellant seeks to advance an argument he expressly abandoned on the motion. He submits that he was treated unfairly because, as a self-represented litigant, the motion judge did not explain what it meant to abandon an argument in a legal proceeding.

[4] We reject this argument. The trial judge described the appellant as “intelligent, articulate and well prepared”. The appellant is clearly familiar with legal terminology and reasoning. There is no reason to believe that the appellant did not make a fully informed decision when he specifically abandoned the argument in question. It would be unfair to the respondent to allow the appellant to advance that argument in this court. This ground of appeal cannot succeed.

[5] The appellant also submits that the motion judge erred in granting summary judgment. He submits that there were credibility assessments to be made and competing factual determinations to be considered.

[6] The motion judge thoroughly addressed the principles governing summary judgment motions. His reasons reveal no error in the identification or application of those principles.

[7] The motion judge made two crucial factual findings:

- The respondent advanced the funds (\$300,000 USD) to the appellant; and

- There was no meeting of the minds as to the terms and conditions upon which that money was advanced.

[8] On those findings, the motion judge rejected the contract claim. He went on to make a finding that the appellant had been unjustly enriched by the \$300,000 payment made to him by the respondent. The trial judge's factual findings provided solid ground for the legal determination that the appellant had been unjustly enriched by the \$300,000 payment. The motion judge granted judgment in favour of the respondent on that legal basis.

[9] We are satisfied, however, that the motion judge, in quantifying the unjust enrichment claim, should have taken into account the payments admittedly made by the appellant to the respondent after the \$300,000 had been advanced. As with the payment of the \$300,000, the motion judge was satisfied the payments were made by the appellant to the respondent, but could make no finding as to the basis upon which those payments were made, or the purpose for those payments.

[10] In our view, on the trial judge's findings, the payments made by the appellant to the respondent also met the criteria for unjust enrichment, and should have been taken into account in assessing the quantum of the unjust enrichment.

[11] We allow the appeal, but only to the extent of varying the amount awarded. On the evidence of the respondent on the motion, which was the only evidence available on this issue, the appellant's payments totalled \$26,925 CAN. That

amount should be deducted from the amount of the judgment (\$406,960 CAN), leaving \$380,035. The respondent is entitled to judgment in that amount.

[12] In our view, success on the appeal was sufficiently divided to warrant an order that there should be no costs on the appeal.

“Doherty J.A.”
“J. George J.A.”
“P.J. Monahan J.A.”