

COURT OF APPEAL FOR ONTARIO

CITATION: Wasim Investments Ltd. v. Ranganathan, 2024 ONCA 505

DATE: 20240621

DOCKET: COA-23-CV-1346

Coroza, Monahan and Madsen JJ.A.

BETWEEN

Wasim Investments Ltd.

Plaintiff
(Appellant)

and

Vijaya Prabakaran Sree Ranganathan and Keerthana Raguraman and Saaral
South Indian Restaurant Corp. o/a Saaral South Indian Restaurant

Defendants
(Respondents)

Darrell Paul, for the appellant

Preetmohinder Singh Wadhwa, for the respondents

Heard and released orally: June 20, 2024

On appeal from the order of Justice Renu Mandhane of the Superior Court of Justice, dated November 17, 2023.

REASONS FOR DECISION

[1] Wasim Investments Ltd. (“Wasim Investments”) appeals the dismissal of its statement of claim in court file CV-22-1213 (the “1213 Action”), in which it sought to enforce a mortgage (the “Mortgage”) against the individual respondents, along with a corporation they own.

[2] The motion judge dismissed the 1213 Action on the basis that it was duplicative of a separate action (the “544 Action”) commenced by the individual respondents against Azhar Wasim (the owner of the Wasim Investments) in which the individual respondents seek an order that a Mortgage they had entered into with Mr. Wasim is void and unenforceable.

[3] The motion judge found that the two actions dealt with the same subject matter (namely the enforceability of the Mortgage). The motion judge further found that the 1213 Claim was in essence an attempt by Mr. Wasim to avoid personal liability on the Mortgage and shift that liability onto Wasim Investments. She dismissed the 1213 Claim on the basis that there is a clear risk of an abuse of process if the same Mortgage were to be interpreted inconsistently in two separate actions. The motion judge nevertheless noted that the issues that Mr. Wasim wished to raise in the 1213 Action could be addressed by bringing a motion to add Wasim Investments as a third party in the 544 Action.

[4] Wasim Investments appeals the motion judge’s order on the basis that the Mortgage funds provided to the respondents came from its bank account and it was therefore a party to the Mortgage and/or the associated promissory note. This evidence was put before the motion judge and considered by her, who noted that nowhere in the Mortgage documents is there any indication that Wasim Investments was a party to the transaction.

[5] Wasim Investments essentially seeks to relitigate the findings of the motion judge, which are entitled to deference. We see no error in her factual findings or in her conclusion that the 1213 Action was in substance duplicative of the 544 Action and should be dismissed as an abuse of process. Any issues regarding liability for the Mortgage, including whether the lender was Mr. Wasim personally or Wasim Investments, must be addressed in the context of the 544 Action, whether through a motion to add parties or otherwise.

[6] The appeal is therefore dismissed.

[7] The respondents are entitled to their costs in the all-inclusive amount of \$5,000.

“S. Coroza J.A.”

“P.J. Monahan J.A.”

“L. Madsen J.A.”