

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Singh v. Minhas*,  
2023 BCCA 7

Date: 20230106  
Docket: CA47508

Between:

**Veron Vinendh Singh and Shaileshni Mani Gounder**

Appellants  
(Plaintiffs)

And

**Gurpreet S. Minhas doing business as Gurpreet S. Minhas Notary Public  
and Hari Om Sharma**

Respondents  
(Defendants)

Before: The Honourable Mr. Justice Groberman  
The Honourable Mr. Justice Butler  
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated  
April 28, 2021 (*Singh v. Sharma*, New Westminster Docket S189003).

Counsel for the Appellants: K. Frempong

Counsel for the Respondent,  
Gurpreet S. Minhas doing business as  
Gurpreet S. Minhas Notary Public: Q.T. Duong  
J.G.M. Foster

Counsel for the Respondent,  
Hari Om Sharma: A.E. Syer

Place and Date of Hearing: Vancouver, British Columbia  
November 24, 2022

Place and Date of Judgment: Vancouver, British Columbia  
January 6, 2023

**Written Reasons by:**

The Honourable Mr. Justice Groberman

**Concurred in by:**

The Honourable Mr. Justice Butler  
The Honourable Mr. Justice Abrioux

**Summary:**

*Mr. Sharma acted as the appellants' realtor in a 2009 real estate sale. Mr. Minhas acted as their notary. Mr. Sharma also purported to advance money to the appellants and took mortgages from them to secure the funds. The appellants made payments on the mortgages until November 2011, then stopped paying. In 2017 they made a final payment to have the mortgage discharged. They commenced this action the same day. They allege that through professional negligence, breach of contract, and breach of fiduciary duty, the respondents failed to receive all the funds the appellants were entitled to on the real estate sale. They also allege that Mr. Sharma advanced no funds to them on the mortgage. They make no allegations of fraud. On a summary trial, the judge dismissed all of the claims on the basis that they had been brought after the limitation period had run. Held: Appeal allowed in part. The appellants' claims, apart from the unjust enrichment claim, were brought beyond the limitation period and were properly dismissed. The cause of action for unjust enrichment did not arise until the appellants made their payments to Mr. Sharma. Accordingly, the unjust enrichment action should not have been struck in respect of payments made to Mr. Sharma after March 2011.*

**Reasons for Judgment of the Honourable Mr. Justice Groberman:**

[1] This action was commenced in 2017. It arises out of real estate transactions that occurred in 2009. The chambers judge dismissed the action in whole on the basis that all the causes of action advanced by the appellants were governed by a six-year limitation period set out in the *Limitation Act*, R.S.B.C. 1996, c. 266 [the "former *Limitation Act*"] and preserved by the *Limitation Act*, S.B.C. 2012, c. 13 [the "current *Limitation Act*"]. She found that the limitation period expired in 2015, and that the appellants' right to advance their claims was extinguished at that time.

[2] The summary trial judgment focussed on the information available to the appellants in 2009. The judge held that they had sufficient information at that time to bring an action. She found no basis for postponement of the running of the limitation period under the former *Limitation Act*. On this appeal, the appellants do not take issue with the judge's findings with respect to the information available to them in 2009. They say, however, that the causes of action, or some of them, did not arise until 2017, when they made their final mortgage payment. They commenced this action on the same day that they made that payment.

**The Real Estate Transactions**

[3] This action stems from a real estate conveyance that closed on November 12, 2009 and mortgage transactions that were entered into in connection with the conveyance. The appellants, Mr. Singh and Ms. Gounder, were the vendors. The respondents, Mr. Sharma and Mr. Minhas, were, respectively, their realtor and their notary. Mr. Sharma also acted as a financier. He purported to lend money to the appellants to allow them to clear encumbrances from title and took mortgages to secure the loans.

[4] The appellants' claim that the respondents acted negligently in the fulfillment of their professional duties, with the result that the appellants did not receive the amounts they were entitled to on the sale of the property. They also characterize the claim as a breach of the respondents' contracts to provide professional services. In addition, the appellants allege that Mr. Sharma acted contrary to his fiduciary duties in the transaction. Finally, they allege that Mr. Sharma was unjustly enriched as a result of the mortgage payments he received. Significantly, the appellants do not allege that either respondent acted fraudulently.

[5] The background to the real estate transactions is somewhat complicated. The transactions were peculiar in that ordinary business practices were not followed. Further, the documentary evidence surrounding many aspects of the transactions is limited, and it leaves many questions unanswered. The materials are, however, sufficient to deal with the limitations issues.

[6] I turn to a summary of the background facts. Ms. Gounder's mother purchased a rental property in Langley in 2006. It appears that either Ms. Gounder's parents or the appellants (or both) were experiencing financial difficulties by September 2007, and Ms. Gounder's mother listed the Langley property for sale. Although the property was on the market for about 263 days in 2007 and 2008, she failed to find a purchaser.

[7] In 2008, she transferred the property to the appellants. There is a statement in the evidence to the effect that the transfer was "for tax reasons", but there is no

explanation of what those reasons were. It is possible that Ms. Gounder's mother continued to be the beneficial owner of the property. For the purposes of the current appeal, the parties agree that nothing turns on the question of whether Ms. Gounder's mother or the appellants were the beneficial owners of the property. For the purposes of this judgment, I will assume that the appellants were the owners of the property at material times.

[8] The appellants listed the property for sale in July 2009 with an asking price of \$420,000. In September 2009, the listing was terminated, and the appellants engaged Mr. Sharma as their new realtor. The appellants had very few direct interactions with Mr. Sharma. Instead, Ms. Gounder's parents dealt with him. It is not disputed that Ms. Gounder's parents acted on behalf of the appellants and with their authority. To simplify this judgment, I will refer to interactions as being between the appellants and Mr. Sharma even where the communications took place through Ms. Gounder's parents.

[9] Almost immediately after he took the listing, Mr. Sharma introduced his son to the property. On September 28, 2009, his son and daughter-in-law made an offer to purchase it for \$438,000. The appellants agreed to Mr. Sharma acting as agent for the purchasers as well as for themselves, and they accepted the offer. The appellants say that they were not advised that Mr. Sharma's son was one of the purchasers, but Mr. Sharma asserts that he did advise them of that fact.

[10] The offer required the purchasers to pay a deposit of \$40,000 within 72 hours. Instead of the usual provision requiring the deposit to be lodged with the realtor or with the legal professionals dealing with the conveyance, the offer required that the purchaser pay the deposit directly to the vendors.

[11] The appellants say that they never received the deposit, though they do not appear to have raised that issue until several years after the transaction was completed. Mr. Sharma and his son say the deposit was paid, though they are not certain whether it was by cheque or bank draft, and they are unable to produce any documentation showing that payment was made.

[12] The sale of the property was to close on October 2, 2009. Mr. Sharma says that shortly before that date he learned that the amount due on completion would be insufficient to clear all encumbrances from title. In his first affidavit, he states:

At the time of completion, the notaries and lawyers discovered that the Plaintiffs had taken out a student loan of approximately \$72,000 and also had not paid property taxes to [the] City of Langley for over 3 years. The Plaintiffs' Parents did not know that the daughter (one of the plaintiffs) had taken a student loan and used the property as collateral for a car loan as well. A mortgage had to be given in order to complete the deal at the Plaintiffs' Parents request since they needed funds to buy then [*sic*] new property.

[13] In his second affidavit, he elaborates:

Sometime prior to the closing date, Gounder and Singh learned they would have to discharge various other debts in addition to their mortgage with Prospera Credit Union that was registered against the Langley Property, and did not have enough funds to complete the sale of the Langley Property.

In or around the same time, [Ms. Gounder's mother] came to me and begged me to help them. I agreed to loan Gounder and Singh money so they could complete the sale of the Langley Property. I loaned them \$93,600.00 (the "Loan"). I provided the Loan because I considered [Ms. Gounder's parents] to be friends, and I wanted to help their family.

[14] The documentary evidence does not completely support these assertions. There is nothing from the lawyers or from Mr. Minhas showing that they discovered unknown debts. The appellants may not have realized that their car loan and student loan were secured against the property, but even taking into account those debts, the documentary evidence shows there was ample equity in the property to cover all of the encumbrances. There were four loans secured by the property: a mortgage in favour of the credit union in the amount of approximately \$290,000; a car loan in the amount of approximately \$27,500; a student loan in the amount of approximately \$35,000; and a line of credit. The amount owing on the line of credit at the date of closing appears to have been approximately \$6,000, though the evidence is not completely clear on that point. Property taxes owing to the City of Langley were approximately \$4,000. After all adjustments and fees, it appears that there would have been \$29,600 left over for the vendors at the end of the transaction, plus (assuming it had been provided) the \$40,000 deposit that they were supposed to hold in trust.

[15] The parties agreed to extend the closing date to October 9, 2009, and ultimately to November 10, 2009. To cover the supposed shortfall, Mr. Sharma offered to lend the appellants \$93,600. The amount was by way of an interest-free loan. Curiously, given that its stated purpose was to allow the appellants to clear encumbrances from title, it was secured by a mortgage against the property.

[16] The appellants executed a mortgage in the amount of \$93,600 in favour of Mr. Sharma on October 8, 2009. The mortgage was payable on demand. While Mr. Minhas does not appear to have been involved in the preparation of the mortgage and gave the appellants no advice in respect of it, he was present to witness their signatures on it. That appears to have been his first involvement in the conveyancing transaction.

[17] On the following day, the appellants engaged Mr. Minhas to act for them on the sale of the property. He prepared statements of adjustments and directions to pay, and those documents were provided to the appellants.

[18] Mr. Sharma deposes that he is certain that he advanced the funds referred to in the mortgage document but is unable to identify how they were advanced, and he presents no documentary evidence in support of the assertion that the money was paid to the appellants.

[19] In his examination for discovery, Mr. Sharma was cross-examined on the issue of whether the funds were advanced. The following exchange took place:

Q So the allegation is that you claim that you lent them \$93,600 and their response is that you never lent them any money. So my question to you is did you lend them the money or you did not lend them the money?

A I lent them.

Q How did you lend them the money?

A I don't remember the exact details. It's been such a long time.

Q So my question is was it by cheque? Was it by transfer? How you give them the money?

A I honestly don't remember how this happened, but we did lend the money. I don't know the details.

...

Q I will ask you again to see if you can remember if you lent money. I'm not asking you for, at this point, any details other than whether it was a bank transfer or a cheque that you wrote.

A You know, I don't remember. We had lent the money. It's been such a long time -- ten years and it happened through the lawyers, and I don't remember what I did.

Q Now, when you say "it happened through the lawyers," do you mean that the money was given to the lawyers to give to the plaintiffs? Is that what you are saying?

A It must have been. I -- honestly, I don't remember the details. The lawyers will remember details more better with the paperwork.

Q When you say "lawyers," who are you referring to?

A Ian Burroughs.

[20] Mr. Sharma's recollection on this point is mistaken. Mr. Burroughs' files indicate that he attended to registration of the mortgage, but his reporting letter specifically confirms that "no funds were disbursed by [his law firm] with respect to this mortgage".

[21] The appellants' position is that they never received any funds from Mr. Sharma. Ms. Gounder's mother's affidavit is representative of their position:

[Mr. Sharma] told me that we were sho[r]t of money to complete the conveyance, I was in disbelief and confused by the news and did not think that we should be short of money. I thought that there should be enough money from the sale proceeds to pay everything we owed. I did not believe it but I did not challenge him and I guess I should have.

[Mr. Sharma] then told me that he will take care of it and it'll be alright and that we just have to sign the papers. I did not believe what [Mr. Sharma] was telling us nevertheless we signed whatever documents Minhas gave us to sign, I guess I still trusted him.

...

After the conveyance was completed, [Mr. Sharma] would come to our house every month and insist that we owed him money, so we would pay him about \$1,000 cash. This continued for about two years and then we came to our senses and refused to make any more payments to him.

[22] The judge considered this evidence not to be credible:

[76] I am left with serious concerns about the plausibility let alone the credibility of the evidence of Ms. Gounder and her mother denying receipt of

any mortgage proceeds or the suggestion they did not know that proceeds were not paid.

[23] It is important to recognize that the judge was not called upon to determine whether the purchasers' deposit was paid or whether the mortgage funds were actually advanced in 2009. Rather, the issue for her was whether the information provided to the appellants at that time was sufficient to allow them to know whether the funds were advanced.

[24] The evidence before the judge did not suggest that the appellants were naïve or incapable of understanding the documents that they received. The judge's finding that the appellants ought to have known, in 2009, whether the funds had been advanced was a finding supported by the evidence and was within the judge's purview. That said, the parties agree that the judge was not called upon to determine whether the deposit was paid, nor was she required to reach a conclusion on the question of whether Mr. Sharma advanced funds to the appellants. The judge might well have had difficulties with Mr. Sharma's account of matters, too, if she been called upon to assess the credibility of his evidence.

[25] When the transaction closed on November 16, 2009, there were insufficient funds to pay off the \$93,600 purportedly owing on the mortgage held by Mr. Sharma. Only \$29,600 was available, leaving an apparent shortfall of \$64,000. Mr. Sharma agreed to accept a mortgage on a different property to cover the balance. When legal expenses were added, the new mortgage was for \$64,800. Because there were concerns about the adequacy of the equity in the new property, Mr. Sharma also required the appellants to execute other security documents, including a promissory note.

[26] The replacement mortgage bore interest at a rate of 7.5%, and payments were due on the 10th of each month. It is undisputed that the appellants made several mortgage payments to Mr. Sharma. In addition to the lump sum of \$29,600 paid from the proceeds of sale of the Langley property, they made payments of \$990.26 per month between December 2009 and November 2011. They then



stopped making payments. The appellants say that they ceased making payments because they recognized that no money had been advanced on the mortgage, but they do not appear to have communicated that position to Mr. Sharma at the time, nor is there contemporaneous documentation to show that that was their reason for ceasing to make payments.

[27] On March 16, 2017, in order to obtain a discharge of the mortgage, the appellants tendered a lump sum payment of \$42,633. The money was tendered without protest, and the mortgage was discharged. Later that day, however, the appellants filed their notice of civil claim.

### **The Summary Trial Judgment**

[28] As I have indicated, the claim alleges negligence and breach of contract against both respondents, as well as breach of fiduciary duties and unjust enrichment against Mr. Sharma. The chambers judge considered that all the causes of action arose in 2009, and that the appellants had sufficient information to commence the action at that time. She dismissed the action in its entirety, holding that all causes of action were extinguished by 2015.

[29] The appellants appeal. For reasons that follow, it is my view that the unjust enrichment claim against Mr. Sharma, insofar as it relates to mortgage payments made after March 16, 2011, was not statute-barred and ought to be allowed to continue.

[30] I agree with the chambers judge that all other claims advanced in the notice of civil claim were extinguished prior to the commencement of the action. I would uphold her order insofar as it dismissed those aspects of the claim.

### **The Limitations Provisions**

[31] At the time that the original and replacement mortgages were executed, the relevant limitation period was the general limitation period of six years set out in the former *Limitation Act*.

3(5) Any other action not specifically provided for in this Act or any other Act may not be brought after the expiration of 6 years after the date on which the right to do so arose.

[32] Sections 6(4) and 6(5) of the statute provided for the running of certain limitation periods to be postponed in circumstances where the plaintiff lacked knowledge of material facts. The appellants relied on those provisions in the summary trial, but the judge rejected their arguments. They do not renew those arguments on this appeal.

[33] On June 1, 2013, the current *Limitation Act*, came into force. While s. 6 of the *Act* provides for a general limitation period of two years, the transitional provisions preserve the limitation periods of the former *Limitation Act* for claims that arose (and were discoverable) prior to the coming into force of the new act:

30(1) In this section:

“effective date” means the day on which this section comes into force;

“former Act” means the *Limitation Act*, R.S.B.C. 1996, c. 266, as that Act read immediately before the effective date;

“former limitation period” means, with respect to a pre-existing claim, a limitation period that applied to the pre-existing claim before the effective date;

“pre-existing claim” means a claim

(a) that is based on an act or omission that took place before the effective date, and

(b) with respect to which no court proceeding has been commenced before the effective date.

(2) A court proceeding must not be commenced with respect to a pre-existing claim if

(a) a former limitation period applied to that claim before the effective date, and

(b) that former limitation period expired before the effective date.

(3) Subject to subsection (2), if a pre-existing claim was discovered before the effective date, the former Act applies to the pre-existing claim as if the right to bring an action occurred at the time of the discovery of the pre-existing claim.

....

[34] For the purposes of this judgment, therefore, the appellants' claims had to be brought within six years of the dates on which they arose.

### **Analysis**

[35] The appellants' argument on this appeal is that their claims did not arise until they made the final mortgage payment in 2017, and so were not barred. Accordingly, the question on this appeal is when each of the pleaded causes of action arose.

[36] In their factum, the appellants argue that the limitation period must be considered in respect of four separate causes of action:

- Breach of Contract
- Negligence
- Rescission
- Unjust Enrichment

[37] The appellants argue that the causes of action for negligence and for breach of contract are subject to similar analyses in this case. I agree and will analyse them together. Although a claim for breach of fiduciary duty is mentioned in the factum, the appellants do not provide any specific analysis in respect of that cause of action. I am satisfied that that claim is also properly analysed in the same way as the breach of contract and negligence claims. I will treat the claims for rescission and unjust enrichment separately.

#### **A. Breach of Contract, Negligence and Breach of Fiduciary Duty**

[38] On the face of it, any breach by Mr. Sharma or Mr. Minhas of their professional contracts, and any professional negligence occurred at the time they provided their services. Equally, to the extent that Mr. Sharma is said to have acted in breach of his fiduciary duties, that must also have occurred at the time he was acting as the appellants' realtor.

[39] The appellants' engagement of the respondents to provide professional services ended in 2009. Nothing in the appellants' factum provides any theoretical basis on which it could be held that the causes of action against Mr. Minhas arose

later than 2009. The situation is the same for the claims against Mr. Sharma insofar as those claims are against him for his services as a realtor.

[40] The appellants say, however, that they also have a claim sounding in breach of contract against Mr. Sharma as mortgagee. They say his alleged failure to advance funds on the mortgage was a “continuing breach”, and that a new cause of action arose each day that he failed to advance funds.

[41] In appropriate circumstances, courts do recognize continuing breaches of contract and allow the limitation period to be reset each day that the breach continues. Few breaches of contract, though, are properly characterized as “continuing”. Such a characterization is appropriate only where the defendant’s contractual obligations are of a continuing nature.

[42] The concept is well-illustrated in *Pickering Square Inc. v. Trillium College Inc.*, 2016 ONCA 179, a case cited by the appellants. In that case, the plaintiff and defendant were parties to a long-term commercial lease in a shopping centre. The lease required periodic payment of rent and also required the defendant to operate its business continuously. Although the defendant met the obligation to pay rent, it did not operate its business continuously. The plaintiff brought an action for damages. The defendant contended that the action was statute-barred, as more than 2 years had passed from the date that it ceased to operate its business. The plaintiff argued that the obligation was a continuing one, and that each day that the defendant failed to operate its business gave rise to a new cause of action. Accordingly, the plaintiff argued that it could obtain damages for the breach, though it would be limited to damages resulting from the failure of the defendant to operate its business in the two years prior to the commencement of the action.

[43] The Ontario Court of Appeal held for the plaintiff and, in doing so, briefly described the nature of three different types of contractual breaches:

[23] Breaches of contract commonly involve a failure to perform a single obligation due at a specific time. This sort of breach is sometimes called a “once-and-for-all” breach: it occurs once and ordinarily gives rise to a claim from the date of the breach — the date performance of the obligation was

due. Trillium's breach of s. 16.08 does not fall into this category because its obligation to operate its business was ongoing rather than single and time-specific.

[24] A second form of breach of contract involves a failure to perform an obligation scheduled to be performed periodically — for example, a requirement to make quarterly deliveries or payments. A failure to perform any such obligation ordinarily gives rise to a breach and a claim as from the date of each individual breach: see e.g., *Smith v. Empire Life Insurance Co.* (1996), 19 CCEL (2d) 171 (Ont. Gen. Div.), leave to appeal refused, [1996] O.J. No. 3113 (C.A.). That is not this case.

[25] As the motion judge found, this case falls into a third category of breach: breach of a continuing obligation under a contract. Trillium breached its covenant to operate its business continuously — “at all times” — for the duration of the lease.

[44] The case before us is not a case of continuing breach. Mr. Sharma was not required to advance funds continuously. Rather, his contractual obligation was to advance funds on a single occasion. Any failure to do so was a “once-and-for-all” breach. Since the purpose of the mortgage was to advance funds to clear the property's title prior to the sale of the property, it is evident that the obligation had to be performed prior to the closing. Accordingly, the limitation period began to run in 2009.

[45] In my view, the chambers judge made no error in dismissing the appellants' claim in contract, negligence, and breach of fiduciary duty.

### **B. Rescission**

[46] The appellants say that they were entitled to go to court to seek to have the registration of the mortgage cancelled at any time prior to its discharge. They say that their “cause of action” for “rescission” is, therefore, not time barred.

[47] The difficulty with this argument is that it confuses a remedy with a cause of action. There is no “cause of action” for rescission.

[48] It is true that under the *Land Title Act*, R.S.B.C. 1996, c. 250, a landowner has the right to seek cancellation of a mortgage. In appropriate cases, courts will order mortgages to be discharged where no amount is owing: see, for example *Shuey v. Muller* (1992), 74 B.C.L.R. (2d) 326 (C.A.).

[49] As long as the mortgage remained on title, the appellants could have brought an application to have its registration cancelled. If they had been able to demonstrate that no amount was owing on the mortgage, a court might well have granted the application. Such an application, however, is statutory in nature and does not constitute a cause of action. Further, the appellants' claim for damages cannot be equated with an application to cancel the registration of a mortgage.

### C. Unjust Enrichment

[50] The appellants' claims for unjust enrichment stand on a different footing from their other claims. They say that because no funds were advanced by Mr. Sharma, they did not owe him anything. He was unjustly enriched when they paid him. They say that their right to sue for unjust enrichment did not accrue until such time as they paid Mr. Sharma amounts that were not owed to him. Accordingly, they say that their claim to be reimbursed for the final mortgage payment of \$42,633 is not time-barred.

[51] In my view, the appellants' argument has merit. The three elements that must be present in an unjust enrichment claim are well-established: an enrichment of the defendant; a corresponding deprivation of the plaintiff; and an absence of a juristic reason for the enrichment (see *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at para. 30). The cause of action for unjust enrichment only arises when the enrichment takes place.

[52] In this case, the appellants say that the enrichment occurred only when they made their payments to Mr. Sharma. On the other hand, Mr. Sharma suggests that the enrichment occurred when he was granted the mortgage, not when the payments were made.

[53] I am not persuaded that the enrichment occurred when the mortgage was granted. In British Columbia, a mortgage is registered as an encumbrance on title and constitutes the land as "collateral" for a loan (see *Shuey and Gill v. Bucholtz*, 2009 BCCA 137). However, the fact that a mortgage exists, does not, in and of itself, entitle the mortgagee to recover funds. The mortgagee must show that money was advanced:

The mortgagor is liable only to pay the principal amount actually advanced. The principal amount required to be paid is the amount advanced to the mortgagor, or an agent of the mortgagor. An acknowledgment of receipt for the amount claimed to be advanced is not sufficient to estoppe the mortgagor from providing evidence that the amount has not in fact been advanced. The mortgagor can raise a claim that moneys were not advanced even if the mortgagor paid interest during the currency of the mortgage based on the amount stated in the mortgage.

[Footnotes omitted.]

William M. Traub (ed.), *Falconbridge on Mortgages*, 5<sup>th</sup> Edition (Toronto: Thomson-Reuters) (loose-leaf edition, updated to 2022 release 4 (December)), at §31.3.

See also *Dass v. Rumball*, 2015 BCSC 343.

[54] Even though they had executed the mortgage document, then, the appellants had no legal obligation to make payments if, as they allege, Mr. Sharma had not advanced funds to them. Payments would constitute enrichments of Mr. Sharma. Subject to a full analysis of the circumstances at trial, the requirements for a claim in unjust enrichment might be met.

[55] In my view, the limitation period for unjust enrichment began to run only when each payment was made. Accordingly, the claim for unjust enrichment in respect of the March 16, 2017 payment had not expired when the action was commenced that same day.

[56] While the appellants concentrated on the 2017 payment in their argument, the same analysis would apply to other mortgage payments made by the appellants. For payments made prior to the coming into force of the current *Limitation Act*, the limitation period is six years. Accordingly, the appellants' claim for unjust enrichment in respect of their monthly payments for the period from April 2011 through to November 2012 also appear not to be statute-barred.

[57] This appeal, of course, concerns only the limitation period and not whether the appellants will be able to succeed in their unjust enrichment claim. Nothing in this judgment should be taken as an assessment of the merits of the appellants' claim or the likelihood that it will succeed.

**Conclusion**

[58] I would affirm the judge’s decision to dismiss the claims as against Mr. Minhas. He is entitled to his costs of the appeal as against the appellants.

[59] I would allow the appeal to the extent of allowing the unjust enrichment claims against Mr. Sharma to proceed insofar as they relate to mortgage payments made after March 2011. The appellants are entitled to their costs of the appeal as against Mr. Sharma. Mr. Sharma and the appellants should each bear their own costs in the court below.

“The Honourable Mr. Justice Groberman”

I AGREE:

“The Honourable Mr. Justice Butler”

I AGREE:

“The Honourable Mr. Justice Abrioux”