

**CITATION:** 2823373 Ontario Inc. et. al. v. Dar et. al., 2024 ONSC 4313  
**COURT FILE NO.:** CV-23-00001633  
**DATE:** 2024 08 01

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:** )  
 )  
2823373 ONTARIO INC. and DIANE ) I. Aniekwe for the Plaintiffs  
SALMAN )  
 )  
Plaintiffs )  
 )  
- and - )  
 )  
 )  
SHAFFIQ DAR and REALCORP LAW ) D. Yiokaris for the Defendants  
PROFESSIONAL CORPORATION )  
 )  
Defendants )  
 )  
**HEARD:** April 24, 2024

2024 ONSC 4313 (CanLII)

**REASONS FOR DECISION**

**L. Shaw J.**

**Overview**

[1] Two actions were commenced from disputes arising out of real estate investment transactions involving several parties and corporations. Each

transaction involved the purchase, renovation, and sale of properties, otherwise known as “flipping.”

[2] This action involves one of those real estate transactions. The dispute arises from the purchase of 4449 Rogers Road in Burlington, Ontario (the “property”) by the plaintiff 2823373 Ontario Inc. (“282”), and the resale of that property following renovation work (the “282 Project”). This motion addresses money held in a lawyer’s trust account from the sale.

[3] The plaintiffs in this action are 282 and its director, Ms. Salman. The defendants are a lawyer, Mr. Dar, and his law firm, Realcorp Law Professional Corporation. 282 retained Mr. Dar to represent it in the purchase and sale of the property. Mr. Dar is currently holding \$146,688.02 in trust from the sale of the property (the “disputed funds”). 282, through its director Ms. Salman, has requested the funds held in trust be released to 282. There is a dispute amongst 282’s shareholders about how or whether those funds should be released to 282.

[4] The defendants seek an order to pay the disputed funds into court pursuant to r. 43.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “Rules”). I shall refer to this as the interpleader motion. The defendants seek this order as they allege that Ms. Salman and the non-party shareholders of 282 have made adverse claims with respect to those funds; the majority shareholder wants the funds to remain in trust and the two minority shareholders want the funds released to 282. Mr. Dar says he is a neutral stakeholder with no beneficial interest in the

funds and therefore seeks an order to pay the disputed funds into court given these adverse claims.

[5] The plaintiffs oppose the motion and argue that the disputed funds be released to 282.

### **Background and Review of the Proceedings**

[6] Given the various connections and relationships between the parties, I will identify the various corporate entities and persons involved in the 282 Project.

[7] Ms. Salmon incorporated 282 on March 12, 2021. At that time, she was the sole director and president. Her son, Jordan Salman, was named as secretary. The current shareholders of 282 are MYSJ Properties Inc. (“MYSJ”), Proshow Homes (“Proshow”) and Jordan Salman Inc. (“JSI”). The sole purpose of 282 was the 282 Project. It is not engaged in any other business activities.

[8] MYSJ was incorporated in 2019. It became the controlling shareholder of 282 in July 2022. It owns 66% of the shares. Mr. Dar is a director and officer of MYSJ but does not own any shares. His spouse and his father-in-law are the shareholders of MYSJ. Mr. Dar’s spouse is also a director and officer of MYSJ.

[9] Diane Salman owns Proshow. Proshow owns 16.6% of the shares of 282. JSI is owned by Jordan Salman, an adult son of Ms. Salman. It also owns 16.6% of the shares in 282.

[10] Ms. Salman is a real estate broker. In addition to being the sole registered director of 282, she was also responsible for the day to day management of the 282 Project. Ms. Salman dealt with Mr. Dar and gave him instructions on behalf of 282. She signed all the real estate documentation on behalf of 282 when it purchased and sold the property.

[11] 282 purchased the property on April 8, 2021 for \$1.1 million and sold it in October 2022 for \$1.5 million. According to the Unanimous Shareholders' Agreement (the "USA") for 282, upon the sale of the property, the capital contributions of the shareholders were to be returned to the shareholders.

[12] The defendants allege that prior to the closing of the sale of the property, Ms. Salman directed Mr. Dar to disburse the capital contributions to the shareholders. The defendants also allege that Ms. Salman instructed Mr. Dar to hold the disputed funds in trust until finalization of the accounting for the 282 Project.

[13] Ms. Salmon, on behalf of 282, disputes that she authorized the disbursement of any funds to MYSJ or that any funds be held in trust by Mr. Dar.

[14] Following the sale of the property, a dispute arose between MYSJ and Ms. Salman regarding allegations of financial mismanagement of the 282 Project, and prior real estate flipping projects involving MYSJ and Ms. Salman. Ms. Salman denies any financial mismanagement.

[15] MYSJ wrote to the defendants after the dispute arose and instructed Mr. Dar not to release the disputed funds to 282 as those funds were going to be the subject of litigation.

[16] Ms. Salman and 282 commenced this action, identified as court file no. CV-23-2633 (“2633”), on May 16, 2023 seeking an order that the defendants release the disputed funds to it. No relief is sought in connection with the other funds that were disbursed by Mr. Dar when the sale of the property closed.

[17] In addition to pleading that the defendants are holding funds without lawful authorization to do so, Ms. Salman also seeks damages on behalf of herself for various alleged acts of professional negligence by the defendants with respect to other legal services provided to her in connection with her real estate business known as Daine Salman Group. In connection with those other legal services, Ms. Salman seeks damages for, amongst other things, breach of trust, professional negligence, and intentional infliction of emotional harm. Those allegations do not involve the 282 Project but other “investment schemes” in which she sought legal advice from the defendants after receiving notice that the Ontario Securities Commission (“OSC”) was investigating her.

[18] There is an allegation in the pleading that Mr. Dar “blackmailed” Ms. Salman into taking no action against him for releasing funds to MYSJ from the proceeds of sale of the property based on his knowledge of Ms. Salman’s conflict with the OSC.

[19] After this action was commenced, Ms. Salman and 282 brought an urgent motion on May 23, 2023, to have the funds paid to MYSJ returned to 282's bank account on the basis that 282 did not authorize the release of those funds. Ms. Salman and 282 also sought an order that the disputed funds be released and deposited into 282's bank account. Justice Fowler-Byrne found that the motion was not urgent and ordered the matter to proceed as a regular motion.

[20] MYSJ commenced a separate action on May 23, 2023 naming Ms. Salman, 282, and Linh Hoai Do, as defendants, identified as court file no. CV-23-1717 ("1717"). In that action, MYSJ seeks declaratory relief, damages of \$300,000, an accounting in connection with three real estate transactions, including the 282 Project, and an order that the disputed funds be paid into court. In connection with the 282 Project, MYSJ seeks damages from the defendants for the renovation work.

[21] Each of the three real estate transactions identified in the claim were real estate flipping projects involving MYSJ and Ms. Salman. Mr. Do is a contractor who Ms. Salman hired to provide goods and services for renovation work in connection with these real estate transactions.

[22] In the 1717 action, 282 brought both a r. 21 motion to strike and a summary judgment motion.

[23] The defendants brought this interpleader motion in the 2633 action; it was initially returnable on November 24, 2023. At triage court held on November 29, 2023 to set long motion dates in connection with these motions in both actions, RSJ Ricchetti found that while the two actions had some claims of commonality, the motions were distinct and should be heard separately. For that reason, RSJ Ricchetti ordered separate timetables and separate motion dates for the motions.

[24] RSJ Ricchetti ordered that this interpleader motion, and the plaintiffs' cross-motion, which had not yet been filed when the matter was in triage court, be heard on April 24, 2024. He ordered that the motion to strike and summary judgment motion in the 1717 action be heard on February 28, 2024. I do not know if that motion proceeded that day. There was another motion before the court on July 31, 2024.

[25] The plaintiffs' cross motion record in this action is dated December 21, 2023. It was served after triage court and after the date for this two-hour motion was set. The relief sought in that cross motion is an order dismissing the interpleader motion and an order for summary judgment of the plaintiffs' action. In the alternative, the plaintiffs seek partial summary judgment with respect to the disputed funds and an order that those funds be returned to 282.

### **Preliminary Issues**

[26] While there is no dispute that I am to hear submissions regarding the interpleader motion, there is a dispute about what relief in the plaintiff's cross-motion record is also before me.

[27] In RSJ's endorsement dated November 29, 2023 for this interpleader motion, he noted that 282 and Ms. Salman "claim that all monies (not just those that remain in the trust account) were improperly paid out and [claims] that all the monies should be paid into court." He also noted that 282 and Ms. Salman had not yet delivered their cross motion for payment into court of the full amount.

[28] Following the attendance on November 29, 2023, the plaintiffs served their cross motion record seeking summary judgment. Despite the comments made by RSJ Ricchetti in his endorsement, the plaintiffs do not seek an order that funds be paid into court but rather seek full or partial summary judgment and that the funds be returned to 282.

[29] RSJ Ricchetti conducted a further case on March 14, 2024. In his endorsement, he noted that counsel raised various substantive issues including expanded relief for the scheduled cross-motion. According to RSJ Ricchetti, there was no evidentiary record before him on these substantive issues. He therefore ordered that his November 29, 2023 order, as amended, remain. I do not have a copy of RSJ Ricchetti's endorsement that amended the November 29, 2023 endorsement.



[30] This two-hour motion was scheduled months ago. When it was scheduled, the plaintiffs had not yet served their cross motion record. It was prepared shortly thereafter. Counsel for the plaintiffs did not advise RSJ Ricchetti that they were seeking summary judgment in their cross motion. Had counsel informed RSJ Ricchetti of that, this motion would have been scheduled for longer than two hours. The submissions for this interpleader motion alone took longer than the scheduled two hours.

[31] Based on his endorsement, counsel told RSJ Ricchetti that the plaintiffs' cross motion was for an order that all funds be paid into court, not just the disputed funds. Counsel for the plaintiffs disputes that his clients ever took the position that funds should be paid into court. Counsel points to the original motion filed by his clients in May 2023 seeking payment of the funds to 282. He argues that his clients' position has always been clear; the funds are to be returned to 282 and not paid into court. Counsel argues that if the plaintiffs' sought an order that the funds be paid into court, they would not have opposed this interpleader motion. I accept that submission. It makes sense. In all the materials filed, including the plaintiffs' initial motion seeking urgent relief, they have always sought the release of funds to 282 and not paid into court. I therefore do not find that the plaintiffs have consented to an order that the disputed funds be paid into court.

[32] I did not hear the plaintiffs' summary judgment motion. It would not have been possible to hear that motion, together with the interpleader motion, in the

scheduled two hours, particularly given the volume of documents filed for this motion. (The defendants' motion record went up to exhibit "TTT") Once a motion date is scheduled in triage court, additional relief cannot be sought when the motion is heard, as the length of the motion is fixed based on the issues that counsel identify at triage court. As the plaintiffs did not inform RSJ Ricchetti that their cross motion record would include a summary judgment motion, I did not hear that motion.

[33] I will make one last comment about the plaintiffs' summary judgment motion. In their statement of claim, the plaintiffs seek the return of the disputed funds. Ms. Salman also seeks damages for various acts of professional negligence by Mr. Dar in his legal representation of Ms. Salman in connection with her real estate business. Although there is an allegation in the body of the pleading that the defendants did not have authorization to release funds to MYSJ, the plaintiffs do not seek the return of those funds in their claim, as they do in connection with the disputed funds. It is unclear to me, therefore, how the plaintiffs can seek the return of funds paid to MYSJ on a summary judgment motion as they did not seek that relief. Furthermore, I do not know how 282 can seek that relief without naming MYSJ as a party to this action.

[34] To be clear, these reasons only address whether the disputed funds should be paid into court or if those funds should be released to 282.

[35] The parties filed a significant volume of material. They uploaded approximately 4,600 pages to the bundle created in Case Centre (formerly CaseLines) for this motion. While there was some duplication of the materials filed, there was still a substantial volume of material uploaded for this motion. Counsel should recognize that it is not proportionate to file that large of an evidentiary record for a two-hour motion.

[36] It was also difficult to review the substantial volume of material uploaded to Case Centre as much of the evidence was unrelated to the relief claimed but connected to the claims of professional negligence against the defendants. It took additional time to wade through the material filed to determine what evidence was relevant to the issues in dispute for this motion. The problem was compounded by the lack of hyperlinks in the plaintiffs' material. That is not acceptable.

[37] The defendants filed a motion record seeking directions regarding their continued cross-examination of Ms. Salman. The plaintiffs filed a response. As that motion was not before me, I heard no submissions with respect to that relief.

### **Position of the Parties**

[38] The defendants' position is that the disputed funds are subject to adverse claims by the shareholders of 282 and Ms. Salman. On this basis, Mr. Dar seeks to have the funds paid into court as he says he is a neutral stakeholder and has no beneficial interest in the disputed funds.

[39] In the event I find that interpleader is not available to the defendants, they urge me to use the court's inherent jurisdiction to order that the funds be paid into court as it is in the interests of justice to do so.

[40] The plaintiffs argue that 282 did not give a direction or authorization to the defendants to hold the disputed funds in trust. The plaintiffs argue that those funds should be released to 282. The plaintiffs also argue there is no dispute that the funds belong to 282 and should be deposited into 282's bank account.

[41] The plaintiffs argue that the disputed funds cannot be paid into court as the test for interpleader has not been met by the defendants. The plaintiffs argue that Mr. Dar is the controlling-mind of MYSJ and therefore not a neutral stakeholder. The plaintiffs also argue that Mr. Dar has a beneficial interest in the funds and has colluded with MYSJ making interpleader unavailable to the defendants.

### **Review of the Evidence**

[42] Given the position of the plaintiffs that the test for an interpleader order is not met, I will review the evidence regarding the nature of Mr. Dar's relationship with the parties involved in the 282 Project. I will also review the evidence regarding his role in the 282 Project, beyond acting as counsel for 282 for the purchase and sale of the property.

[43] As the plaintiffs also allege that the defendants did not have authorization from 282 to hold the disputed funds in trust, I will review the evidence regarding the sale of the property and the disbursement of the proceeds of sale.

[44] I am satisfied that the disputed funds should be released to 282 if I accept the plaintiffs' evidence that the defendants did not have instructions to hold those funds in trust. If I do not accept that evidence and find that the defendants had instructions from 282 to hold the disputed funds in trust, I will then determine whether I can make an interpleader order. If not, I will determine if I should invoke the inherent jurisdiction of the court and order the funds be paid into court. If the funds are not paid into court, the last issue is what should be done with the disputed funds pending the outcome of this litigation.

### **The Relationship between the Parties Prior to the Purchase of the Property**

[45] Ms. Salman operates her real estate business through Diane Salman Group and Proshow. There is no dispute that Ms. Salman is an experienced real estate broker. She was involved in real estate flipping transactions prior to her involvement in the 282 Project. There is also no dispute that Mr. Dar was retained by Ms. Salman numerous times prior to his involvement in the 282 Project in connection with other real estate transactions. According to Mr. Dar, he has known Ms. Salman since 2013 and was retained by her in approximately 50 real estate transactions between 2013 and 2022. According to Ms. Salman, she also referred clients to Mr. Dar.

[46] Mr. Dar's evidence is that Ms. Salman asked him in January 2019 to be a presenter at seminars she hosted entitled "Wealth Building Through Real Estate Flips". Mr. Dar's evidence is that Ms. Salman's business model was to have investors provide funds to purchase properties that she would then renovate and sell. Mr. Dar attached emails from Ms. Salman regarding these seminars which she promoted would teach people how to make significant profits through real estate flips.

[47] Mr. Dar's evidence is that after one of these seminars, he discussed Ms. Salman's business model with his wife and father-in-law as he saw an opportunity to invest in real estate through Ms. Salman's projects. Mr. Dar's father-in-law lives in London, England and his spouse works at an educational institution. There is no evidence that either were involved in real estate flipping transactions before MYSJ was incorporated in February 2019. According to Mr. Dar, MYSJ was incorporated for the purpose of working with Ms. Salmon in real estate flipping projects.

[48] According to Mr. Dar, Ms. Salman was aware that he and his wife were the directors of MYSJ and that his wife and father-in-law were the shareholders. Ms. Salman admits knowing that Mr. Dar and his wife owned and operated MYSJ which she described as a real estate business.

[49] Prior to the 282 Project, MYSJ and Ms. Salman were involved with four prior real estate flipping projects. According to Mr. Dar, for those projects:

- (a) Ms. Salman acted as a co-operating broker in the purchase of the subject property;
- (b) MYSJ would become the registered owner of the properties;
- (c) Ms. Salman would not contribute any funds towards the purchase of the properties;
- (d) Ms. Salman would act as a project manager on behalf of MYSJ in the renovation of said properties; and,
- (e) Ms. Salman would act as the listing broker in the subsequent sale of said properties.

[50] While Ms. Salman did not deny this description of the projects, her evidence is that she “assisted” Mr. Dar and his wife in connection with these prior projects.

[51] According to Mr. Dar, Ms. Salmon was aware that his father-in-law was using his life savings for these investments and his wife was borrowing from their personal line of credit.

[52] In paras. 27 to 48 of his affidavit, Mr. Dar describes in detail the prior real estate projects involving MYSJ and Ms. Salman. Based on my review of his evidence and the details he provides, it is clear that Mr. Dar was involved in these projects on behalf of MYSJ and dealt directly with Ms. Salman on behalf of MYSJ. Mr. Dar attached several emails exchanged between himself and Ms. Salman in

connection with these prior projects from which I can infer that they were both actively involved in the flipping projects.

[53] Although I have not been requested to pierce the corporate veil and nor am I doing so, based on Mr. Dar's evidence, he was a decision-maker for MYSJ in connection with those projects in his role as a director of MYSJ and worked with Ms. Salman on behalf of MYSJ.

### **The Purchase of the Property and MYSJ's Investment in the 282 Project**

[54] On April 8, 2021, 282 entered into an agreement to purchase the property for \$1,100,000. The closing date was May 18, 2021. MYSJ was not involved in the agreement to purchase the property. 282 retained the defendants to act for it on the purchase.

[55] There is conflicting evidence about who proposed the business arrangement for the 282 Project. According to Mr. Dar, on April 12, 2021, Ms. Salman approached him and proposed that MYSJ enter into an agreement with her regarding the property. His evidence is that because the cost of the property exceeded the financial abilities of his father-in-law and his spouse, Ms. Salman proposed that this project be structured differently from the prior flipping projects. She proposed that there be a joint investment, with MYSJ investing two-thirds and she would invest one-third. After discussing it with his wife and father-in-law, Mr. Dar told Ms. Salman that MYSJ was prepared to jointly invest with her for the 282 Project.



[56] Ms. Salman's evidence is that it was Mr. Dar who made the proposal that MYSJ and Ms. Salman enter into a business agreement for the 282 Project and that she was reluctant to do so. She agrees that she proposed that Proshow and JSI would also invest in the business and that MYSJ would provide two-thirds of the investment and Proshow and JSI the remaining one-third.

[57] MYSJ contributed \$754,773.34 for the purchase of the property. Proshow and JSI invested \$359,024.68 through mortgage financing.

[58] According to Mr. Dar, in or about July 2021, he sent Ms. Salman a draft shareholders agreement for 282. Ms. Salman proposed revisions. The shareholders signed the USA on July 20, 2021. The USA included the following terms:

- At Article 2.1, that the parties agree that the agreement is a unanimous shareholders agreement within the meaning of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, and provides the shareholders "all the rights, powers and duties of the directors and all obligations and liabilities relating to such rights, powers and duties, whether arising under the Act or otherwise";
- At Article 4.1, that 282 shall maintain a bank account, and that documents requiring signature may be determined by the Shareholders (provided one such signatory is always Ms. Salman or her nominee);
- At Article 5.6(b), that no action will be taken by 282 without the written approval of all the Shareholders of any assets over \$500,000 "except for inventory which is sold or otherwise disposed of in the ordinary course of the Corporation's business";
- At Article 6.4, the parties agreed that the day-to-day management of the Project would be the sole responsibility of Ms. Salman;

- At Article 6.5, that upon the sale of the Property, the net contributions of the shareholders would be returned to the shareholders, and the net balance of the proceeds of sale would be divided among the shareholders in accordance with their proportionate share, after payment by the corporation of all applicable taxes;
- At Article 13.2, that the parties acknowledge that RealCorp Law is not acting on behalf of the shareholders, that RealCorp Law is not providing any legal, business, financial, tax and/or investment advice to any of the shareholders, that the shareholders have been advised to seek independent legal and/or financial advice, and that the shareholders each fully understand that they have the right to obtain and consult an independent lawyer and/or financial advisor.

[59] The property was listed for sale in April 2022 for \$1,749,900 after the renovation work was completed. Ms. Salman's brokerage was named as the listing agent. It was relisted in May 2022 and again in July 2022 for a reduced price of \$1,499,900.

[60] In June 2022, Ms. Salman emailed Mr. Dar a spreadsheet regarding the 282 Project. She listed MYSJ's contributions to the Project which totaled \$899,140. Mr. Dar's evidence is that one of the contributions was in error and that MSYS's contributions were \$868,012.81.

### **The Sale of the Property**

[61] In July 2022, 282 entered into an agreement to sell the property for \$1,500,000. According to Mr. Dar, 282 retained him in August 2022 to represent 282 on the sale.

[62] The defendants sent a retainer letter to 282 c/o Ms. Salman regarding the sale. According to the retainer agreement:

The net balance of the sale proceeds will then be paid out to you. Should you wish the net sale proceeds to be paid to any other person other than the registered owners, please let us know.

[63] According to Mr. Dar, he had discussions with Ms. Salman about the sale proceeds. His evidence was that they discussed that from the sale proceeds, \$899,080.06 would be paid to MYSJ, \$379,737.63 to pay the mortgage, which was Proshare's and JSI's capital contribution, \$67,8000 for realtor commissions, \$1,881.31 for legal fees, \$5,631.33 to the City of Burlington and \$147,163.86 into the defendants' trust account.

[64] It is not in dispute that Ms. Salman signed the real estate closing documents on behalf of 282. One of the documents prepared by Mr. Dar for the closing was a document entitled "Statement of Receipts and Disbursements" which set out the payments listed above. Ms. Salman initialled the document. The following is the contents of that document:

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

RE: 2823373 Ontario Inc. (the "Vendor") s/t Teka Bahta and Biritawit Asfaw (the "Purchaser")

4449 Rogers Road, Burlington, Ontario L7L 1R2 (the "Property")  
Closing Date: October 4, 2022

Our File No: S045/5562

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Paid NGHI NGUYEN HOLDINGS INC.      \$ 379,737.63

Paid Keller Williams Real Estate Associates –

Diane Salman Group	\$ 67,800.00
Paid RealCorp Law Professional Corporation	
for our Statement of Account	\$ 1,881.31
Paid City of Burlington	\$5,631.33
Paid MYSJ Properties Inc.	\$899,080.06
Received balance due on closing	\$1,471,294.19
Received Deposit(s)	\$ 30,000.00
Net balance in trust.	\$ 147,163.86

[65] Following the sale, Mr. Dar sent a reporting letter dated October 4, 2022 to 282, via Ms. Salman. That reporting letter attached several documents, including a Trust Statement showing the payments made from the proceeds of sale, as described above, and a trust balance statement showing a balance of \$146,755.06.

[66] Attached to Mr. Dar's affidavit were a series of emails he exchanged with 282's accountant, Mr. Ebrahimjee, following the closing of the sale of the property to deal with the final accounting for the 282 Project. In one of those emails dated October 11, 2022, Mr. Dar writes, "As discussed with Diane, RealCorp is hold [sic] the amount of \$146,755.06 in trust pending the finalization of the corporate accounting". Mr. Dar sent a copy of that email to Ms. Salman. She did not respond nor dispute the contents of the email that Mr. Dar was to hold the disputed funds in trust.

[67] Ms. Salman does not deny receiving the reporting letter from the defendants after the closing of the sale of the property or a copy of the email to the accountant.

[68] Although Ms. Salman does not dispute signing the sale closing documents, she denies that she authorized funds to be released or held in trust on behalf of 282. Her evidence is that Mr. Dar waited until the last minute before sending her the closing documents as she did not receive them until 3:00 pm on October 3, 2022, the day before closing. Her evidence is that Mr. Dar did not set up a meeting to review the documents, as he promised. Her evidence is that he pressured her to sign the closing documents and threatened that the sale would fall apart if she did not sign the documents.

[69] Mr. Dar's evidence is that all closing documents were executed using Adobe Sign. According to the report generated by Adobe Sign, and using the proper time zone, the closing documents were sent to Ms. Salman at 10:45 am on October 3, 2022, she viewed them at 8:26 pm that evening, and then signed them at 9:01 on October 4, 2022.

[70] Mr. Dar's evidence is that in the 30 days prior to the closing of the sale of the property, Ms. Salman virtually signed closing documents that he prepared in connection with three other real estate transactions using Adobe Sign.

[71] Ms. Salman's evidence is that she did not fully appreciate what she was signing when she signed the closing documents for the sale. She also alleges that

Mr. Dar “snuck” in the Statement of Receipts and Disbursements for her to initial. She says she did not appreciate the full impact of that document.

[72] According to Mr. Dar, he spoke with Ms. Salman on October 2, 2022 and reviewed the general nature of the closing documents and the nature of the payouts. He also confirmed with her that the Statement of Receipts and Disbursements was prepared in accordance with her oral instructions. According to Mr. Dar, Ms. Salman confirmed that she understood the document.

[73] Mr. Dar’s evidence is that he did not meet Ms. Salman in person to review the closing documents as she directed that client meetings be held virtually and not in person. It is also his evidence that following the pandemic, his practice was to conduct client meetings virtually and not in person.

### **The Dispute Following the Sale of the Property**

[74] According to Mr. Dar, following the sale of the property and after funds were disbursed, MYSJ raised concerns regarding the renovation costs for the 282 Project. Approximately six weeks after the property was sold, on November 20, 2022, Mr. Dar’s spouse, on behalf of MYSJ, sent Mr. Dar an email and advised that it retained counsel to represent it in a dispute with Ms. Salman regarding the 282 Project. In that email, Mr. Dar was directed not to release the funds he held in trust. Based on the evidentiary record before me, this was the first document/email sent on behalf of MYSJ by Mr. Dar’s spouse.

[75] In correspondence from MYSJ's counsel to Ms. Salman dated November 24, 2022 and November 29, 2022, several issues were raised regarding the renovation work, including the authenticity of several invoices for the 282 Project. Ms. Salman was also told that an investigation was going to be undertaken with respect to the four other real estate flipping projects.

[76] According to Mr. Dar, Ms. Salman's first demand to release the disputed funds was only after the letter dated November 24, 2022 raising concerns with the 282 Project.

[77] On November 29, 2022, counsel for MYSJ wrote to Mr. Dar confirming that there was a dispute regarding the disputed funds and directed him not to release the funds except as agreed to in writing by all three shareholders.

[78] On December 13, 2022, counsel for Proshare and JSI requested that the disputed funds be released to 282.

[79] In correspondence dated January 26, 2023, MYSJ requested that its representative be added as a signatory to 282's bank account. If that were done, MYSJ indicated that it would then consent to the disputed funds being transferred to 282's bank account. Alternatively, MYSJ proposed that the funds be paid into court.

[80] The plaintiffs did not accept the proposal and four months later they commenced this action.

[81] Ms. Salman says MYSJ's claims about the renovation work are baseless and spurious. She describes the 1717 claim as an abuse of process and an attempt to obstruct justice.

[82] In Ms. Salman's affidavit, she addresses the claims she has advanced against Mr. Dar in connection with the other legal services he provided for her with respect to the notice from the OSC and the other legal services he provided. I do not intend to review that evidence in any detail as it has little relevancy to the issues on this motion. One allegation made by Ms. Salman that has some relevancy is that when she demanded that Mr. Dar return the funds to 282, he used his knowledge of her issues with the OSC to "blackmail" her so that no other investor would do business with her.

[83] These allegations are denied in detail by Mr. Dar in his reply affidavit.

### **The Applicable Legal Framework**

[84] Pursuant to r. 43.02(1), a person may seek an interpleader order if:

(a) two or more other persons have made adverse claims in respect of the property; and

(b) the first-named person,

(i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and

(ii) is willing to deposit the property with the court or dispose of it as the court

[85] Rule 43.03(1) sets out the following requirements for an interpleader order:



1. If no proceeding has been commenced in respect of the property, the person shall make an application naming the claimants as respondents.
2. If a proceeding has been commenced in respect of the property, the person shall make a motion in the proceeding on notice to the claimants.
3. The notice of application or notice of motion shall require the claimants to attend the hearing to substantiate their claims.
4. The application or motion shall be supported by an affidavit identifying the property, containing the names and addresses of every claimant of whom the deponent has knowledge, and stating that the applicant or moving party,
  - i. claims no beneficial interest in the property, other than a lien for costs, fees or expenses,
  - ii. does not collude with any of the claimants, and
  - iii. is willing to deposit the property with the court or dispose of it as the court directs.

[86] In *Canadian Imperial Bank of Commerce v. Costodian Inc. et. al*, 2018 ONSC 6680, at para. 26, Justice Hainey summarized the following principles that apply to an interpleader application:

- a) The applicant is not required to prove competing claims have actually been filed against it;
- b) The applicant is only required to demonstrate that there is a real foundation for the expectation of competing claims; and
- c) The applicant is not required to establish that competing claims are valid or likely to succeed only that they are not frivolous.

### **Analysis**

#### **Did 282 Instruct Mr. Dar to Hold the Disputed Funds in Trust?**

[87] I will start first with the dispute about whether the defendants were given instructions to hold the disputed funds in trust.

[88] There is significant conflicting evidence about the 282 Project and the various claims that have arisen since the property was sold. There is conflicting evidence about what instructions Ms. Salman gave to Mr. Dar on behalf of 282 regarding how the proceeds of sale were to be disbursed.

[89] Although there is conflicting evidence about what instructions were given, there is no evidence that anyone other than Ms. Salman gave instructions to Mr. Dar on behalf of 282.

[90] The documentary evidence supports Mr. Dar's evidence of the instructions he received from Ms. Salman. This includes the closing documents that Ms. Salman acknowledges signing including the Statement of Receipts and Disbursements, her receipt of the reporting letter from Mr. Dar following the sale and his email to the accountant confirming that he was holding \$146,755.06 in trust.

[91] In my view, it stretches credulity that Ms. Salman did not appreciate or understand the closing documents she signed given her extensive experience and involvement in the real estate industry. She was not an inexperienced individual who was taken advantage of by Mr. Dar. Rather, based on her evidence, she was a sophisticated and experienced real estate broker who had closed over 50 real estate transactions with Mr. Dar as counsel, including several in the month before the closing of the sale of the property. Ms. Salman also gave seminars promoting

her business model. She was clearly a sophisticated and savvy businessperson who understood the nature of real estate transactions.

[92] Even if the closing documents were sent to Ms. Salman at the last minute, or if she did not understand the Statement of Receipts and Disbursements document, there is no evidence that she raised any issue with the disbursement of the proceeds of sale after she received the reporting letter from Mr. Dar or the email to 282's accountant. Had she not agreed that the shareholders were to receive repayment of their capital or that the disputed funds were to be held in trust, it is reasonable to infer that she would have contacted Mr. Dar and raised the issue with him after receiving the reporting letter or email to the accountant. Based on the evidentiary record before me, the first time a demand was made for the funds to be paid to 282 was only after issues were raised by MYSJ regarding the 282 Project, as well as concerns with the other real estate transactions completed prior to the 282 Project.

[93] I also have difficulty accepting Ms. Salman's evidence that she did not understand the Statement of Receipts and Disbursements, given her sophistication and extensive experience in the real estate industry. I included the exact terms of this document in para. 64 above as it demonstrates that it was drafted in a manner that clearly set out how the funds were to be disbursed, including payment to Ms. Salman for her own fees. I find that it is not a document that someone such as Ms. Salman, with her experience, would have any difficulty

understanding. I reject her evidence that she did not understand the documents she was signing.

[94] While the defendants' retainer letters says that the sale proceeds would be paid to 282, it also clearly states that 282 was to advise if the funds were to be paid to any other person. Based on the documentary evidence, I am satisfied that Ms. Salman, on behalf of 282, instructed Mr. Dar to disburse the proceeds of sale as per the Statement of Receipts and Disbursements and as set out in the Trust Statement.

[95] The plaintiffs also argue that 282 did not give a written direction to Mr. Dar regarding how the proceeds of sale were to be paid. I am satisfied, however, that Ms. Salman's initial on the Statement of Receipts and Disbursements confirmed her oral instructions to Mr. Dar regarding to whom the proceeds of sale were to be paid and that the disputed funds were to be held in trust.

[96] Based on the evidentiary record before me, I am satisfied that Ms. Salman, on behalf of 282, instructed Mr. Dar to hold \$146,755.06 in trust.

### **Can Interpleader be Ordered?**

[97] Having made that finding, the next issue is whether an interpleader order can be made regarding the disputed funds.

[98] During submissions, I asked counsel if 282 would consent to an order that the disputed funds be frozen if they were released to 282's bank account. I thought

that might be a compromised resolution. Counsel indicated that his clients did not agree that the funds be frozen if released to 282 as 282 intended to use the funds to pay legal fees in connection with the legal proceedings that have been commenced in connection with the 282 Project.

[99] One of the requirements for an interpleader order is that there must be adverse claims to the funds in question. I am satisfied that there are adverse claims to the disputed funds. Mr. Dar has received correspondence from counsel for the majority and minority shareholders who take adverse positions on whether he should release the funds to 282. MSYJ has also commenced a claim which seeks an order that the funds be paid into court. Conversely, Ms. Salman, has instructed Mr. Dar on behalf of 282 to release the funds.

[100] The defendants rely on *Savage v. First Canadian Financial Corp.* (1996), 27 B.C.L.R. (3d) 21 (S.C.), in support of their position that there are adverse claims where there is a dispute amongst shareholders. In *Savage*, a financial institution sought interpleader for money on deposit in a bank account and the contents of a safety deposit box that were in the name of the corporate respondent. The corporate defendant argued that there were no competing claims as the property in dispute belonged to the corporation and not either faction of shareholders. That is the same argument made by 282.

[101] The court accepted that the property held was that of the corporation and not of any of the shareholders. The court found that the financial institution had to

take instructions from those who had authority to manage the affairs of the company. While the court noted that there may be no issue about who had legal ownership of the property, there was a dispute about which group had the right to manage the assets. The court found that therefore there was an adverse claim to the property by the shareholders. The court granted the interpleader order.

[102] At para. 11, the court found that the interpleader rule is designed to permit an “uninterested” person who has possession of property that is the subject matter of dispute between two or more persons to extricate themselves from the dispute so that they do not have to incur potential liability or legal fees spent in effort to avoid that liability.

[103] In this case, Mr. Dar points to the USA whereby all shareholders have the rights, powers, and duties of directors. He argues that the shareholders can therefore give instructions to him, as a director, as did Ms. Salman. As the shareholders have given him competing instructions, he argues that there is an adverse claim to the disputed funds.

[104] While there is no dispute that the funds belong to 282, I am satisfied that there are adverse claims to the funds given the different instructions Mr, Dar has received from the shareholders and 282.

[105] The plaintiffs argue that interpleader cannot be ordered as the defendants are not neutral stakeholders or uninterested parties, and because Mr. Dar has a beneficial interest in the disputed funds.

[106] Rule 43 permits the payment of funds into Court for the determination of the respective interest in those funds where there is an ongoing proceeding and a dispute between two or more parties about ownership of the funds, which are held by a third party who has no beneficial interest in the funds: *East West Investment Management Corporation v. Higgins et al.*, 2023 ONSC 5077, at para. 26. Interpleader is not available to a party who has a beneficial interest in funds and is not a disinterested stakeholder: *Marks & Marks LLP v. The Galetta Renewable Energy & Environmental Network Co-operative Corporation (Green)*, 2008 ONCA 291, at paras. 1-2.

[107] I agree with the plaintiffs that much of Mr. Dar's affidavit regarding the 282 Project appears to be written by someone on behalf of MYSJ, including how and why MYSJ invested and became a shareholder, the renovation work done and the disputes that arose when the property was sold. Mr. Dar was the person dealing with the 282 Project on behalf of MYSJ as he was a director of the company, although not a shareholder. He was aware of MYSJ's concerns with the renovation work. It is his evidence that he met with Ms. Salman, at his office, on November 15, 2022 to discuss the alleged problems and overcharging for the 282 Project and concerns with the general contractor, Mr. Do.

[108] Although there was no evidence about the decision to commence a claim against 282, in my view, it is likely that Mr. Dar was involved in that decision given his involvement in the 282 Project.

[109] Mr. Dar was not an uninterested party who was only retained as a lawyer to act for 282 on the purchase and sale of the property. His involvement went far beyond that role. He was actively involved in the entire project as a director for MYSJ. He has an interest in the outcome of the litigation regarding the renovation work as presumably MYSJ will argue that it is owed more than what it was paid from the proceeds of sale. I suspect that MYSJ does not want the disputed funds released to 282 as it will be a source of funds to pay it in the event it is successful in its claim about the disputed renovation work.

[110] Mr. Dar will likely be a witness at the trial involving the dispute between MYSJ and 282 regarding the renovation work as based on the evidentiary record before me, he was dealing with the 282 Project on behalf of MYSJ.

[111] In my view, Mr. Dar is not a neutral or uninterested third party who was caught in the crossfire between two parties who have competing claims to the disputed funds. Rather, he has an interest in the litigation and whether the disputed should be released to 282.

[112] Mr. Dar argues that he does not have a beneficial claim to the funds held in trust as he is not a shareholder of MYSJ. Furthermore, he is not seeking an order



that he be absolved of any liability if the interpleader order is granted. Often, a party seeking an interpleader order also seeks such an order on the basis that it is a neutral stakeholder and has not claims to the funds in dispute. In this case, Mr. Dar is prepared to have the issue of his liability in connection with the matter to remain a triable issue.

[113] I find that despite not being a shareholder, Mr. Dar has a beneficial interest in the disputed funds based on his evidence that the source of his spouse's investment was from their joint personal line of credit. I note that there is an absence of evidence about whether that joint line of credit was paid from the money MYSJ received from the proceeds of sale.

[114] A beneficial interest means that although the money may be owed to MYSJ, Mr. Dar will enjoy the benefit from it as it will pay the joint line of credit. As his spouse used a share of his personal funds to fund MYSJ's investment, if money is found to be owing to MYSJ, he will receive a financial benefit although the money is owing to MSJY.

[115] The plaintiffs argue that another basis to not grant interpleader is because the defendants have colluded with MYSJ, one of the claimants to the funds. The plaintiffs argue that Mr. Dar and counsel for MYSJ have colluded and that he is not coming to court with clean hands seeking to be absolved of the responsibility of holding funds in his trust account when another party seeks an order that the funds be released.

[116] Mr. Dar argues that there was no collusion in connection with the disputed funds as he holds those funds based on instructions he received from Ms. Salman.

[117] I agree that there was no collusion given my finding that Ms. Salman instructed the defendants to hold the disputed funds in trust. Those instructions changed only after conflict arose between MYSJ and 282.

[118] MYSJ did not file any material for this motion. Counsel for MYSJ attended at the hearing and informed the court that his client agreed with the relief requested by the defendants. To be clear, MYSJ's support of the defendants' position is not an act of collusion.

[119] An allegation of collusion is serious. In the Merriam-Webster dictionary, collusion is defined as a "secret agreement or cooperation for an illegal or dishonest purpose". In my view, an allegation of collusion, as an allegation of fraud, should not be made casually as it suggests deliberate conduct for an illegal or dishonest purpose. Care should also be taken when such an allegation is made about the conduct of a lawyer.

[120] The plaintiffs argue that an example of collusion is that counsel for Mr. Dar and counsel for MYSJ copied each other on emails. That is not collusion as MYSJ was supporting the defendants' interpleader motion. It is also not an act of collusion for Mr. Dar's affidavit to include evidence of MYSJ's involvement in the 282 project.

The extent of his involvement has led me to conclude that he is not a neutral stakeholder, but that does not mean that there was any act of collusion.

[121] Ms. Salman makes allegations about Mr. Dar's alleged negligent conduct as her lawyer involving other matters. Those issues are not relevant for this motion; I make no findings in that regard. Those alleged acts, such as disclosing confidential information, are not related to any actions of alleged collusion with respect to the disputed funds.

[122] There is insufficient evidence to make a finding of collusion with respect to the disputed funds based on the evidentiary record before me.

[123] Based on my finding that Mr. Dar is not a neutral stakeholder, and that he has a beneficial interest in the disputed funds, I deny the defendants' request to pay the disputed funds into court as they have not met the test for interpleader.

**Should the Court Invoke its Inherent Jurisdiction if Interpleader is not Available?**

[124] The defendants argue that in the event I do not grant the interpleader order. I should use the inherent jurisdiction of the court to order the disputed funds paid into court. The defendants rely on Justice Osborne's decision in *East West* in which he found the court had inherent jurisdiction to order that funds be paid into court after finding that r. 43 did not apply.

[125] At para. 34, Justice Osborne noted that the court could draw on its inherent jurisdiction where it is just or equitable to do so.

[126] *East West* involved unique circumstances where an investment manager was seeking an order for funds to be paid into court that may constitute proceeds of crime. Justice Osborne found that r. 43 did not apply as there was no dispute amongst the parties as to the beneficial ownership of the funds. The party who had deposited the funds into an investment account were not opposing the relief claimed.

[127] In this matter, the defendants have not met the test for interpleader. That is not a basis to invoke the court's inherent jurisdiction. Indeed, it would be a slippery slope to invoke the court's inherent jurisdiction simply because a test for the relief sought is not met.

[128] I do not need to invoke the inherent jurisdiction of this court with respect to the disputed funds as the adverse claims of the claimants to those funds can be litigated in the 1717 action. In that action, MSYJ can seek whatever interim relief it considers appropriate with respect to the disputed funds.

[129] I therefore am not prepared to invoke this court's inherent jurisdiction simply based on my finding that the defendants have not met the test for interpleader.

### **What Should be done with the Disputed Funds?**

[130] 282 instructed the defendants to hold the disputed funds in trust. Those instructions were provided by Ms. Salman, a director of 282. Ms. Salman has now instructed Mr. Dar to release those funds. She was the instructing party on behalf of 282. Mr. Dar, as counsel for 282, must follow those instructions. Accordingly, the defendants are to release the disputed funds to 282 by September 30, 2024.

[131] If MYSJ as a disputing shareholder does not agree with the release of the disputed funds to 282, it can seek whatever relief it considers appropriate regarding those funds in the action it has commenced.

### **Costs**

[132] 282 was the successful party and, depending on offers to settle, may be entitled to its costs. If the parties cannot agree on costs, the party seeking costs must file their bill of costs, offers to settle, and submissions, of no more than two pages, double spaced using 12 pt font by August 23, 2024. The responding party must file their bill of costs, offers to settle, and submissions, of no more than two pages, double spaced using 12 pt font, by September 6, 2024.

[133] Ms. Salman is presumptively not entitled to costs as her claim regarding the defendants' alleged acts of professional negligence involving other real estate matters was not relevant to this motion. If she seeks costs, she must serve and file

a bill of costs, any relevant offers to settle and submissions, of no more than two pages, double spaced using 12 pt. font by August 23, 2024.

L. Shaw J.

**Released:** August 1, 2024

**CITATION:** 2823373 Ontario Inc. et. al. v. Dar et. al., 2024 ONSC 4313  
**COURT FILE NO.:** CV-23-00001633  
**DATE:** 2024 08 01

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

2823373 ONTARIO INC. and DIANE  
SALMAN

Plaintiffs

**- and -**

SHAFFIQ DAR and REALCORP LAW  
PROFESSIONAL CORPORATION

Defendants

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**REASONS FOR DECISION**

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L. Shaw J.

**Released:** August 1, 2024