

COURT OF APPEAL FOR ONTARIO

CITATION: Perks v. Hetti Group Inc., 2024 ONCA 709

DATE: 20240925

DOCKET: COA-23-CV-1186

Hourigan, Trotter and Gomery JJ.A.

BETWEEN

Edward Perks and May McConaghy

Plaintiffs (Respondents)

and

Hetti Group Inc.*, Lance Hettiarachichi*, Lasanta Hettiarachichi*,
Sugi Financial Services Inc., Jose Suguitan and Gamini Roy De Silva*

Defendants (Appellants*)

Domenic Saverino, for the appellants

Frank Spizzirri, for the respondents

Heard: September 24, 2024

On appeal from the judgment of Justice Loretta P. Merritt of the Superior Court of Justice, dated October 12, 2023, with reasons reported at 2023 ONSC 5667.

REASONS FOR DECISION

[1] The respondents are two of several investors in Hetti Group Inc. (“Hetti Group”), a corporation owned, controlled, and directed by Lasanta Hettiarachichi and his brother-in-law, Gamini Roy De Silva (collectively, the “Hetti Appellants”). The respondents each loaned \$50,000 to Hetti Group to fund three residential renovation and construction projects. The original defendants

to this proceeding also included Jose Suguitan and his corporation, Sugi Financial Inc. (“Sugi Financial”) (collectively, the “Sugi Defendants”). The Sugi Defendants solicited investors to lend money for the renovation and construction projects and were responsible for liaising with investors.

[2] In accordance with the terms of the loans, the Hetti Group made quarterly interest payments to the respondents from 2014 through to the end of 2016. The first missed quarterly payment was in December 2016. In January 2017, Sugi Financial delivered a memo to the respondents advising them that interest payments would stop, the properties would be sold, and the lenders would be paid from the proceeds, inclusive of principal and accruing interest.

[3] The Hetti Group’s business venture collapsed in 2018. It did not complete construction work on any of the properties for which the respondents’ funds had been advanced. The properties were sold, and the respondents and other investors received no recovery of their investments. The only project that was completed was a home that Mr. Hettiarachichi’s sister, who is also Mr. De Silva’s wife, owns. Both Mr. Hettiarachichi and Mr. De Silva’s families reside at this property.

[4] On a motion for summary judgment brought by the respondents, the motion judge dealt primarily with the following issues: (1) whether the test for summary

judgment was met, (2) whether the Hetti Group's corporate veil should be pierced, and (3) whether the claim was statute barred.

[5] The motion judge concluded there was no genuine issue requiring a trial on the evidence before her. A trial was not needed to resolve credibility issues as the evidence to support the Hetti Group's defence was implausible, inconsistent with contemporaneous records or simply absent. There was no dispute as to the existence of the loans, the amount of the loans, or the interest rate, and the Hetti Group did not raise an arguable defence. The Hetti Group was found liable to repay the loans plus interest.

[6] With respect to piercing the corporate veil, the motion judge concluded that the Hetti Group was a sham corporation and Mr. Hettiarachichi and Mr. De Silva were its controlling minds. She found that the Hetti Group had no tangible or intangible operational existence, and no financial or business records, including accounting records showing how it spent the \$9 million to \$14 million it received from investors.

[7] Moreover, the motion judge found that funds were misappropriated by Mr. Hettiarachichi and Mr. De Silva in a variety of ways, including payments for personal credit cards, payments to Mr. Hettiarachichi's girlfriend and sister, and \$1.4 million in fund transfers to unspecified individuals for unknown reasons. Neither Mr. Hettiarachichi nor Mr. De Silva offered any plausible explanation as to

how these payments were made for a legitimate business purpose. The motion judge concluded that the Hetti Group's corporate veil should be pierced, and Mr. Hettiarachichi and Mr. De Silva held personally liable to the respondents.

[8] On the limitation period issue, the motion judge found that the claim was commenced within the applicable two-year period under the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, s. 4. Specifically, she found that the Sugi Defendants were tasked with communicating with investors on behalf of the Hetti Group and were therefore their agents for this purpose. Sugi Financial sent an email on October 23, 2017 to the respondents that attached a memo from the Hetti Group, which advised investors that they would receive their principal and accrued interest on the sale of one of the projects. The motion judge found that this email was a sufficient acknowledgement of liability per s. 13 of the *Limitations Act*. Given the statement of claim was issued in October 2018, it followed that the claim was not statute-barred.

[9] Three primary grounds of appeal are advanced: (1) the motion judge erred in finding that the Sugi Defendants were agents for the Hetti Group for the purpose of the October 2017 email; (2) the motion judge erred in finding that the acknowledgment of the debt was sufficient for purposes of s. 13 of the *Limitations Act*, given that no amount owing was specified; and (3) the motion judge misapprehended the evidence and erred in piercing the corporate veil. We reject these arguments.

[10] The finding of agency was well grounded in the record, which established that the Sugi Defendants had acted for several years as the Hetti Group's agents in communicating with investors.

[11] Regarding the limitations argument, the submission that, for s. 13 purposes, the amount owing must be specified has been rejected by this court: *Middleton v. Aboutown Enterprises Inc.*, 2009 ONCA 466, at para. 1. The October 2017 email was a clear and unequivocal acknowledgment of the debt, notwithstanding the fact that it did not refer to the specific amount owing.

[12] Piercing the corporate veil is an appropriate remedy when a company is incorporated for an illegal, fraudulent, or improper purpose. However, the remedy can also be utilized if the controlling minds expressly direct a wrongful thing to be done: *642947 Ontario Ltd. v. Fleischer et al.*, 56 O.R. (3d) 417 (C.A.), at para. 68; *Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (Energyshop Consulting Inc./Powerhouse Energy Management Inc.)*, 2014 ONCA 85, 372 D.L.R. (4th) 90, at para. 43. The motion judge properly found that there was "substantial evidence that the monies loaned by the Plaintiffs and other investors was misappropriated." Accordingly, it was appropriate to pierce the corporate veil and hold the controlling minds personally liable for the debts of the Hetti Group.

[13] The appeal is dismissed with costs payable to the respondents by the Hetti Appellants on a joint and several basis, fixed in the all-inclusive amount of \$5,000.

“C.W. Hourigan J.A.”
“Gary Trotter J.A.”
“S. Gomery J.A.”