

COURT OF APPEAL FOR ONTARIO

CITATION: TriDelta Investment Counsel Inc. v. GTA Mixed-Use Developments  
GP Inc., 2024 ONCA 746  
DATE: 20241010  
DOCKET: COA-23-CV-1207

Huscroft, Harvison Young and Copeland JJ.A.

BETWEEN

TriDelta Investment Counsel Inc., TriDelta Fixed Income Fund,  
TriDelta High Income Balanced Fund, 2830063 Ontario Inc.,  
2830064 Ontario Inc., 2830068 Ontario Inc., GTA-Mixed Use Developments L.P.,  
Mixed-Use Developments (Ontario) L.P. and Wasaga Developments and  
Infrastructure 2021 L.P.

Plaintiffs (Respondents)

and

GTA Mixed-Use Developments GP Inc.,  
Mixed-Use Developments (Ontario) GP Inc., Wasaga Developments and  
Infrastructure GP Inc. and U Developments Inc.

Defendants/Plaintiffs by Counterclaim (Appellants)

and

TriDelta Investment Counsel Inc., TriDelta Fixed Income Fund,  
TriDelta High Income Balance Fund, 2830063 Ontario Inc., 2830064 Ontario Inc.  
and 2830068 Ontario Inc.

Defendants by Counterclaim (Respondents)

Simon Bieber, Cameron Rempel and Emma Parry, for the appellants

Christopher P. Naudie, Lauren Tomasich, Graham Buitenhuis and Jayne Cooke,  
for the respondents

Heard: October 1, 2024

On appeal from the judgment of Justice Jessica Kimmel of the Superior Court of Justice, dated September 18, 2023, with reasons reported at 2023 ONSC 5099.

## REASONS FOR DECISION

[1] This is an appeal from the judgment of the trial judge granting declaratory relief to the respondents and dismissing the appellants' counterclaim for fees owing. The appellants also seek leave to appeal the costs order below.

[2] The facts are set out fully in the trial judge's reasons at paras. 1-51 and need not be repeated here.

[3] The appellants raised the following issues in their factum, but in oral argument focussed on the first two:

- 1) Did the trial judge err in concluding that the management agreements between the original general partners and U Developments Inc. ("UDEV") were unauthorized?
- 2) Alternatively, did the trial judge err in concluding that TriDelta was not estopped from arguing that the management agreements were unauthorized?
- 3) Did the trial judge err in concluding that TriDelta was not unjustly enriched at UDEV's expense?
- 4) Did the trial judge err in concluding that the original general partners were in default of the applicable limited partnership agreements?

**The trial judge did not err in concluding that the management agreements were unauthorized**

[4] The appellants argue that despite the text of article 8.9 of the limited partnership agreements, which permits the general partners to retain affiliates to provide goods or services to the partnership only if authorized to do so by a resolution passed by a majority of the limited partners, an earlier set of resolutions (the “general authorizing resolutions”) provided the required authorization. The appellants emphasize an article of those resolutions which states that “[t]he execution, delivery and performance of all other agreements, documents, certificates and instruments contemplated by the [applicable limited partnership agreements] ... are hereby authorized and approved”. They argue that the management agreements were among the agreements that the general authorizing resolutions referred to as “contemplated” by the applicable limited partnership agreements, and that the trial judge overlooked the relevant evidence and so failed to give effect to the intention of the parties.

[5] In essence, the appellants invite this court to remake the trial judge’s findings. That is not our role on appeal. The trial judge’s interpretation of the agreements and resolutions is subject to review only for palpable and overriding error.

[6] The trial judge carefully reviewed the surrounding circumstances. She concluded that the only commercially reasonable and consistent construction of the applicable limited partnership agreements and the general authorizing resolutions was that they approved only those agreements expressly referred to in the limited partnership agreements. Because the limited partnership agreements did not expressly refer to the management agreements, she held that the general authorizing resolutions did not authorize them.

[7] The trial judge's decision reveals no error, much less a palpable and overriding error. The trial judge's interpretation is entitled to deference.

**The respondents were not estopped from arguing that the management agreements were unauthorized**

[8] The appellants argue that the respondents treated the management agreements as valid for almost three years, and as a result were estopped from claiming that they were invalid.

[9] The trial judge held that the evidence of what management services were being provided to whom was not sufficient to estop the respondents from enforcing article 8.9's strict requirement of an authorizing resolution. She held, further, that no estoppel could arise out of silence or inaction in the circumstances of this case, absent a duty to disclose the omitted point, and that no such duty existed on these

facts. We see no error in this approach. The evidence falls well short of establishing either estoppel by representation or promissory estoppel.

### **The remaining grounds**

[10] There is no merit in the third and fourth issues raised in the factum, neither of which was pursued in oral argument.

### **The appeal from costs**

[11] The appellants seek leave to appeal the award of substantial indemnity costs by the trial judge.

[12] The award of costs is a discretionary decision that is entitled to deference. We do not accept that the trial judge made any of the factual errors alleged or that she erred in principle. Her decision to grant substantial indemnity costs in this case was entirely appropriate given the appellants' conduct in the course of the litigation. There is no basis for this court to intervene.

### **DISPOSITION**

[13] Accordingly, the appeal is dismissed. Leave to appeal costs is also dismissed.

[14] The respondents are entitled to costs on a partial indemnity basis, fixed in the amount of \$50,000 all inclusive.

“Grant Huscroft J.A.”  
“A. Harvison Young J.A.”  
“J. Copeland J.A.”