

15842 Horseshoe Hill Road in Caledon, Ontario (“Horseshoe Hill”) along with other investors. The intention was to make some improvements to the property, and then sell it for profit. The property was eventually sold approximately two years later. The parties disagree as to the quantum of the net sale proceeds owed to the Plaintiffs.

[2] Prior to trial, the Plaintiffs’ action was discontinued as against the Defendants 2074874 Ontario Inc. o/a Versailles Convention Centre Inc. and Satnam Khakh. At the conclusion of the trial, the Plaintiffs also withdrew their claim as against the Defendant Onkar Taggar. The three Defendants that remain in the litigation are therefore Daljit Samra, Avtar Sangha, and Balwinder Bhandal.

[3] Horseshoe Hill was purchased by a group of ten investors, which includes the parties, on March 31, 2017. On February 14, 2019, the Defendants entered into an agreement of purchase and sale to sell Horseshoe Hill. When the Plaintiffs learned of this event, they registered a caution on the property. On July 30, 2019, Barnes J. ordered that \$297,230.10 from the sale proceeds be paid into court to the credit of the action, which allowed the sale of Horseshoe Hill to proceed.

[4] Ultimately, a consent Order was obtained from Fowler-Byrne J. on September 27, 2019, that \$200,000 from the proceeds of sale be paid into court pending a further order of the court.

[5] The Defendants have also filed a Counterclaim against the Plaintiffs claiming damages resulting from the caution that the Plaintiffs registered on title.

BACKGROUND

[6] The ten investors who collectively purchased Horseshoe Hill were not all previously known to one another. There is no dispute between the parties that an individual named Gurpal (“Paul”) Saini was involved in the purchase, although there is some dispute as to the extent of his involvement. Mr. Saini was previously familiar with some of the investors, including the Defendant, Daljit Samra, and also the Plaintiff, Kamaljit Chauhan. The purchase price for Horseshoe Hill was \$1,350,000. At the time of the closing, there was a verbal agreement that the ten investors were to each contribute \$7,000 towards a downpayment. Each investor was also expected to contribute approximately \$69,000 towards the purchase of the property, leaving a balance owing of \$750,000, which was paid by way of a mortgage taken out by the Defendant, Daljit Samra, on behalf of all the investors. The investors did not all pay precisely the same amount for the purchase.

[7] Mr. Saini provided \$7,000 as a downpayment. Mr. Chauhan also provided \$7,000 as a downpayment, but his wife, the Plaintiff, Gurbir Chauhan, did not pay a \$7,000 downpayment. The balance of the investors each provided a \$7,000 down payment.

[8] There were two groups of people involved in the investment. There is no dispute that the first group was comprised of Daljit Samra, Balwinder Bhandal, Avtar Sangha, Tarundeep Devgan, and Buta Singh. There is no dispute that the second group included Kamaljit Chauhan, Dilbag Aujla, Onkar Taggar, and Harpreet Kaur Sidhu, but the parties do not agree as to the identity of the fifth investor in the second group. Mr. Chauhan claims that his wife, Gurbir Chauhan, was the fifth investor. The Defendants claim it was Paul Saini.

[9] At the time that the property was purchased, Mr. Chauhan agreed to contribute \$190,949 towards the purchase, which was intended to be his own contribution to the purchase, plus two additional purchase shares. However, Mr. Chauhan did not initially have sufficient funds to pay for these shares, so he and Mr. Saini approached Mr. Taggar to request that Mr. Taggar provide the funds for the three shares that Mr. Chauhan was going to fund. Mr. Taggar agreed to provide the purchase funds for the three shares, along with a share for himself. Mr. Taggar therefore paid four-tenths of the purchase price to allow the deal to close.

[10] On March 31, 2017, Mr. Taggar provided a bank draft for \$260,000 to the lawyer handling the real estate purchase, which he testified represented the contributions of himself, Kamaljit Chauhan, Paul Saini, and one other investor. Mr. Taggar did not identify this investor in his evidence. One week later Mr. Chauhan

provided Mr. Taggar with a bank draft for \$190,949, which was paid from a line of credit that he held jointly with his wife, Gurbir Chauhan. Mr. Chauhan testified that the payment to Mr. Taggar was for himself, his wife, and Ms. Kaur Sidhu, who was a family friend he had known for over fifteen years. Mr. Kaur Sidhu confirmed in her evidence that she repaid Mr. Chauhan \$67,000 for the money he paid for the purchase of Horseshoe Hill on her behalf. Gurbir Chauhan did not testify.

[11] At the time of purchase, the Defendants, Daljit Samra, Avtar Sangha, and Balwinder Bhandal, were placed on title to Horseshoe Hill as the owners of the property, based on a verbal agreement between the parties that these individuals held title on behalf of all the individuals who had contributed to the purchase of the property. There was no written agreement between any of the investors regarding the purchase.

[12] At the time of the Horseshoe Hill purchase, Mr. Chauhan did not owe any money to Mr. Saini. However, before the Horseshoe Hill property was purchased, Mr. Chauhan and Mr. Saini had purchased another property located at 13330 Torbram Road in Caledon, Ontario, along with another investor, Mr. Gupta. A few months after Horseshoe Hill was purchased, Mr. Chauhan sold the Torbram Road property, but did not initially distribute any net proceeds of sale to Mr. Saini or Mr. Gupta.

[13] There was no evidence before me as to when Mr. Saini learned that the Torbram Road property had been sold by Mr. Chauhan, but Mr. Saini testified that it was late 2017 to early 2018 before he began suspecting that Mr. Chauhan was not going to pay him for the sale of Torbram Road. Mr. Saini eventually sued Mr. Chauhan, resulting in a judgment on April 18, 2024 in Mr. Saini's favour.

[14] A few months after the Horseshoe Hill purchase took place, Mr. Chauhan, Mr. Saini, and Mr. Aujla wished to jointly purchase an additional property located at 77 Havelock Drive in Brampton, Ontario, on behalf of Mr. Aujla's son, Harpreet Aujla. However, they did not have sufficient funds to close on the purchase, so the Defendants jointly loaned each of them \$40,000, with Mr. Samra managing the arrangements on behalf of the lenders. Mr. Chauhan and Mr. Saini both signed promissory notes dated July 7, 2017 in favour of Mr. Samra, in the amount of \$40,000. Mr. Aujla signed a promissory note in favour of Mr. Samra in the amount of \$55,000.

[15] The promissory notes each stipulated that the principal amount of the loan was due in one year's time, on July 7, 2018, with an interest rate of 6% per annum.

[16] When Mr. Chauhan, Mr. Aujla and Mr. Saini had each not repaid their \$40,000 debt to Mr. Samra by the spring of 2018, they each signed a document

that was titled "Assignment of Beneficial Interest in Property". The key paragraph in each of the three Assignments is as follows:

I, THE UNDERSIGNED, in consideration of the sum of One Dollar (\$1.00) now paid by me, [*debtor identified*] ("Assignor"), to Daljit Singh Samra ("Assignee") and for other valuable consideration including the forbearance of the payment of a certain Promissory Note dated July 7, 2017 ("Promissory Note"), the receipt and sufficiency of which such consideration is hereby acknowledged, I assign to the Assignee irrevocably all of my right, title and interest including but not limited to my beneficial interest in the property municipally known as 15842 Horseshoe Hill Road, Caledon East, Ontario (the "Property"). Provided however that the total monetary value of the interest in the Property herein assigned by me to the Assignee shall be limited to the principal interest and costs due and owing under the Promissory Note.

[17] The parties agree that after Horseshoe Hill was purchased, Mr. Samra paid all expenses related to the property, including mortgage payments, property maintenance and repairs, lawn mowing, utilities, taxes, and insurance. The parties reached an agreement during the trial that Mr. Samra is entitled to claim reimbursement of \$189,260.69 from the net proceeds of sale for the monies he paid to manage and maintain Horseshoe Hill from the time that it was purchased until the time that it was sold.

[18] The parties also agree that after its purchase Horseshoe Hill was rented for approximately one month, and then not rented again after the tenant was evicted.

[19] Horseshoe Hill was sold on July 31, 2019 for \$1,670,000. After payment of the outstanding mortgage and closing expenses, the net proceeds of sale were \$841,235.52, which does not include payment of any taxes for capital gains. Once Mr. Samra's reimbursement of \$189,260.69 is deducted, there is \$651,974.83 remaining to be disbursed amongst the investors if the capital gains taxes are not also deducted prior to the funds being distributed.

[20] Some of the investors have received partial payment for their share of the net sale proceeds. A total of \$545,000 has already been distributed from the net sale proceeds as follows:

Mr. Singh $\$30,000 + \$30,000 = \$60,000$

Mr. Sangha $\$30,000 + \$65,000 = \$95,000$

Mr. Devgan $\$30,000 + \$15,000 = \$45,000$

Mr. Taggar $\$30,000 + \$25,000 = \$55,000$

Mr. Bhandal $\$30,000 + \$50,000 = \$80,000$

Mr. Samra $\$30,000 + \$100,000 + \$80,000 = \$210,000$

[21] The Plaintiffs did not receive any payment from the Defendants following the sale of the property. In addition, Mr. Saini, Mr. Aujla, and Ms. Kaur Sidhu have also not received any payment.

[22] There is no dispute that Mr. Chauhan did not repay Mr. Samra the \$40,000 owed to him by the due date of July 7, 2018. There is also no dispute that the \$40,000 owed by Mr. Saini to Mr. Samra remains unpaid.

ISSUES

[23] The three main issues to be determined at this trial are as follows:

1. Is Mr. Chauhan entitled to receive payment for the net proceeds of sale for three shares of the Horseshoe Hill property?
2. Does the promissory note for \$40,000 signed by the Mr. Chauhan in favour of Mr. Samra disentitle him to any payment following the sale of Horseshoe Hill?
3. Is Mr. Chauhan entitled to receive repayment for rental income that could have been secured by the Defendants, and if so, should he receive rental income for one, two or three shares of the property?

POSITION OF THE PLAINTIFFS, KAMALJIT CHAUHAN AND GURBIR CHAUHAN

[24] The Plaintiffs take the position that they are one-third owners of Horseshoe Hill because they provided one-third of the purchase funds. As Ms. Kaur Sidhu has already paid Mr. Chauhan for her investment share but has chosen not to sue to

recover her investment, the Chauhan Plaintiffs suggest that once they recover the funds for her investment, they will address this issue directly with Ms. Kaur Sidhu.

[25] Alternatively, if it is found that Mr. Saini was a one-tenth investor in the Horseshoe Hill property, the Plaintiffs ask that Mr. Samra be directed to pay Mr. Saini's one-tenth of the net sale proceeds to the Plaintiffs, along with Mr. Chauhan's one-tenth payment, and Ms. Kaur Sidhu's one-tenth payment. They submit that Mr. Saini's evidence confirms that he only paid \$7,000 towards the downpayment of the property, and that they paid the additional \$63,000 on his behalf.

[26] The Plaintiffs also argue that the Defendants, Mr. Samra, Mr. Sangha, and Mr. Balwinder, as the owners of the property on behalf of the group of investors, were functioning as trustees on behalf of the other investors. They argue that these Defendants breached their duties as trustees for the following reasons:

- a) By failing to provide a proper accounting of the sale proceeds to the Plaintiffs;
- b) By paying proceeds from the sale of the property to themselves and other investors that ought to have been paid to the Plaintiffs;
- c) By failing to inform themselves as to the full amount of financial contribution from each investor;

- d) By failing to rent the property during the two years that they owned it to offset expenses for the property; and
- e) Mr. Sangha and Mr. Bhandal delegated all financial responsibilities to Mr. Samra and took no further action with respect to the property.

[27] The Plaintiffs also submit that they are entitled to receive reimbursement for rental income that ought to have been obtained by the Defendants for the 24 months during the period between when the Horseshoe Hill property was purchased and later sold. Although Mr. Chauhan testified that the rent paid on the initial lease was \$5,000, he asks for a finding that a more conservative rental payment of \$3,000 per month for 24 months, totaling \$72,000, should have been obtained by the Defendants. The Plaintiffs argue that one-third of this amount, or \$24,000, should be allocated to them representing the value of lost rental income that they ought to have received during the two-year period that the property was owned by the group of investors.

[28] The Plaintiffs argue that Mr. Samra's evidence that all the investors had agreed not to rent out the property after the first tenant left is contradicted by the evidence of Mr. Bhandal, Mr. Sangha, and Mr. Taggar, all of whom testified that Mr. Samra did not discuss with them the issue of renting the property a second time.

[29] The Plaintiffs also urge me to reject Mr. Saini's evidence that he was not required to make an equal contribution for Horseshoe Hill because Mr. Chauhan owed him money for the sale of Torbram Road. They argue that this evidence should not be accepted by me, or should be given little weight, for the following reasons:

- a) The introduction of the evidence offends the rule in *Browne v. Dunn*, as Mr. Chauhan was not asked about this agreement in cross-examination;
- b) The Defendants have not produced any written agreement between Mr. Chauhan and Mr. Saini in which Mr. Chauhan agrees to pay for Mr. Saini's share of Horseshoe Hill in exchange for not paying Mr. Saini for his share of the sale proceeds of the Torbram Road property;
- c) None of the other witnesses gave evidence about an agreement between Mr. Chauhan and Mr. Saini which provided for Mr. Chauhan to pay for Mr. Saini's share in Horseshoe Hill in exchange for his profit on the Torbram Road property; and
- d) None of the Defendants knew the exact amount of Mr. Saini's financial contribution to Horseshoe Hill.

[30] The Plaintiffs take the position that the assignment of Mr. Chauhan's interest in Horseshoe Hill is limited to repayment of the \$40,000 principal advanced

to Mr. Chauhan by Mr. Samra, and interest at 6% which totaled \$16,800 as of May 28, 2024. The Plaintiffs therefore argue that the maximum that Mr. Samra should have retained from their share of the net proceeds of sale from Horseshoe Hill is \$56,800. The Plaintiffs therefore argue that they are entitled to judgment from the Defendants jointly and severally in the amount of \$207,924.94 as of May 28, 2024, which they calculate as follows:

Net proceeds of sale:	\$841,235.52
Less money owed to Mr. Samra for expenses:	\$189,260.69
Sub-total:	\$651,974.83
Divided by 3 – the Plaintiffs claim a 1/3 share:	\$217,324.94
Prejudgment interest from April 8, 2019 to May 2024 at 2%:	\$ 21,000.00
Plaintiffs’ share with prejudgment interest:	\$238,324.94
Minus \$56,800 (\$40,000 promissory note plus interest):	-\$ 56,800.00
Balance owed to the Plaintiffs:	\$181,524.94
Plaintiffs’ share of rental value for the property for 2 years:	\$ 24,000.00
Prejudgment interest from April 8, 2019 to May 28, 2024:	\$ 2,400.00
Total owed to the Plaintiffs:	\$207,924.94

[31] The Plaintiffs also ask that the Counterclaim be dismissed.

POSITION OF THE DEFENDANTS

[32] The Defendants submit that the Plaintiffs have produced no evidence to establish that Ms. Chauhan was an investment partner in addition to Mr. Chauhan, and that they have therefore failed to establish that Gurbir Chauhan is entitled to a one-tenth investment interest in Horseshoe Hill.

[33] The Defendants also argue that an adverse inference should be drawn from Ms. Chauhan's failure to testify at the trial with respect to her claim and suggest that her evidence would not have been supportive to the Plaintiffs' position.

[34] The Defendants rely on the following facts to suggest that Mr. Chauhan paid for an investment share for Mr. Saini, not Ms. Chauhan:

- 1) Mr. Saini was the one who discovered the investment opportunity at Horseshoe Hill and contacted the realtor;
- 2) The testimony of Mr. Chauhan, Mr. Samra, and Mr. Taggar confirmed that it was Mr. Saini who contacted them about the investment;
- 3) Most of the investor witnesses who testified at trial confirmed that they understood that Mr. Saini was a partner in the investment;

- 4) Although not signed by the parties, the documentation prepared by the lawyer handling the real estate transaction lists Mr. Saini as an investor and does not list Ms. Chauhan as an investor;
- 5) Mr. Chauhan and Mr. Saini approached Mr. Taggar together to request that he provide funds for the investment when there was a shortfall;
- 6) Mr. Taggar testified that when he initially provided the investment funds he was aware that he was paying for himself, Mr. Saini, and Mr. Chauhan;
- 7) Mr. Taggar testified that he would not have become involved in this investment if Mr. Saini was not involved;
- 8) When Mr. Chauhan provided the bank draft for \$190,949 to Mr. Taggar, he did not communicate that Mr. Saini was not a partner;
- 9) There is no documentation of Mr. Chauhan asserting that he was entitled to two shares of the investment proceeds prior to this litigation commencing; and
- 10) The fact that Mr. Samra had Mr. Saini sign an Assignment of Beneficial Interest in the Horseshoe Hill property demonstrates that he understood that Mr. Saini owned a one-tenth interest in the property.

[35] The Defendants submit that Mr. Saini is properly entitled to a one-tenth share of the Horseshoe Hill investment, and that any issues between him and Mr. Chauhan as to money potentially owed by Mr. Saini to Mr. Chauhan for other investments are between the two of them, and should not affect this litigation.

[36] The Defendants also submit that Mr. Chauhan has no standing in law to make a claim for Ms. Kaur Sidhu's one-tenth investment interest. They argue that Ms. Kaur Sidhu is not a plaintiff in this litigation, and that she has not assigned her interest to Mr. Chauhan.

[37] The Defendants deny that Mr. Chauhan is entitled to receive rental income for the property for the following reasons:

- 1) There was no plan or agreement between the investors to rent the property at the time that it was purchased;
- 2) Mr. Chauhan made no specific request to the titled owners of the property to rent out the property; and
- 3) Mr. Chauhan made no effort to find tenants for the property after the first tenancy failed.

[38] The Defendants accept that Mr. Chauhan is entitled to one-tenth of the net proceeds of sale, subject to the Promissory Note that he signed for \$40,000 plus interest.

[39] The Defendants deny that they had a duty to rent out Horseshoe Hill. In particular, the Defendant, Mr. Samra, takes the position that there was an agreement between the owners that the property was not going to be rented after the tenant was evicted.

[40] The Defendants made no submissions regarding their Counterclaim.

FACTUAL FINDINGS

Regarding the purchase of Horseshoe Hill

[41] None of the parties dispute that Mr. Saini was heavily involved in putting together the purchase deal for Horseshoe Hill, and that it was Mr. Saini who knew the listing agent for the property. There is no dispute that Mr. Saini and Mr. Chauhan approached Mr. Taggar together to request that he pay the \$260,000 to permit the deal to close, and there is no dispute that Mr. Taggar provided \$260,000 to close the deal. I accept Mr. Taggar's evidence that when he provided the funds, he understood that he was forwarding the purchase shares for himself, Mr. Chauhan, Mr. Saini and one other investor. I also accept his evidence that Mr. Saini was known to him before the Horseshoe Hill investment, and that he would

not have become involved with the Horseshoe Hill investment if Mr. Saini was not involved with the project.

[42] There is no dispute that the \$190,949 that Mr. Chauhan repaid to Mr. Taggar represented three shares of the Horseshoe Hill purchase.

[43] I accept Mr. Samra's evidence that Mr. Saini was always considered by him to be an investor in the Horseshoe Hill property, as he had been involved with the project from the beginning. I further accept his evidence that he had been informed by both Mr. Chauhan and Mr. Saini that Mr. Taggar's initial payment of \$260,000 had included purchase shares for Mr. Chauhan, Mr. Saini and Ms. Kaur Sidhu, and that Mr. Samra had understood that the contributions of these three people were in equal shares, although he did not know the precise amount contributed by Mr. Saini to the purchase.

[44] I accept Mr. Saini's evidence that he and Mr. Samra were the only investors who cleaned and maintained the property, including mowing the lawn, fixing the interlocking pavement, and cleaning the pool.

[45] I accept the evidence from Mr. Aujla that the intention was for Mr. Samra to be repaid for the loans that he provided to the Havelock Drive investors at the time that the Horseshoe Hill property was sold, with interest as stipulated in the Promissory Notes.

[46] There is no dispute that Mr. Chauhan, Ms. Kaur Sidhu, Mr. Aujla, and Mr. Saini have not received any net proceeds of sale from the sale of Horseshoe Hill. Mr. Samra and Mr. Chauhan agree that Mr. Chauhan was not consulted as to the distribution of the net proceeds of sale that has already taken place.

Regarding the Rental of Horseshoe Hill

[47] After the Defendants took possession of Horseshoe Hill, there was a tenant in place for approximately one month, who was later evicted. Mr. Chauhan was the only witness to provide evidence as to the quantum of rent received from the tenant, testifying that the tenant paid \$5,000. I accept Mr. Chauhan's evidence on this point.

[48] There is no dispute that after the eviction of the tenant the property was not rented again throughout the time that the Defendants held title to the property. I reject Mr. Samra's evidence that he discussed renting the property with all the investors, and that they collectively chose not to rent the property. Several witnesses testified that following the eviction the issue of renting the property again was not discussed with them. I find that Mr. Samra alone decided not to rent property. I also find that none of the other investors made inquiries with Mr. Samra about re-renting the property, nor did any of the investors make any effort to rent out the property again after the first tenant was evicted.

[49] The evidence from the other two Defendants, Mr. Bhandal and Mr. Avtar, was consistent with each other, in that neither was involved in the day-to-day management of Horseshoe Hill, and that Mr. Samra did not provide much information or updates to them as to the financial status of the property.

LEGAL PRINCIPLES

[50] The rule in *Browne v. Dunn* exists to ensure fairness for the parties at trial. The rule requires that if a party intends to impeach a witness called by the opposite party, the party who seeks to impeach must give the witness an opportunity while the witness is in the witness box, to provide any explanation the witness may have for the contradictory evidence: *Browne v. Dunn* (1893), 6 R. 67 (H.L. U.K.), at pp. 70-71.

[51] Justice Watt wrote on behalf of the Court of Appeal in *R. v. Quansah*, 2015 ONCA 237, 125 O.R. (3d) 81, at para. 77 that the rule in *Browne v. Dunn* exists for the following reasons:

i. Fairness to the witness whose credibility is attacked:

The witness is alerted that the cross-examiner intends to impeach his or her evidence and given a chance to explain why the contradictory evidence, or any inferences to be drawn from it, should not be accepted: *R. v. Dexter*, 2013 ONCA 744, 313 O.A.C. 226, at para. 17; *Browne v Dunn*, at pp. 70-71.

ii. Fairness to the party whose witness is impeached:

The party calling the witness has notice of the precise aspects of that witness's testimony that are being contested so that the party can decide whether or what confirmatory evidence to call; and

iii. Fairness to the trier of fact:

Without the rule, the trier of fact would be deprived of information that might show the credibility impeachment to be unfounded, and thus compromise the accuracy of the verdict.

[52] Remedies for a breach of the rule in *Browne v. Dunn* can include recalling a witness or calling a new witness. Although counsel for the Plaintiffs objected to the evidence being given by Mr. Saini as to an agreement with Mr. Chauhan, counsel did not request the opportunity to recall Mr. Chauhan to give evidence on this point.

ANALYSIS

Issue #1: Is Mr. Chauhan entitled to receive payment for the net proceeds of sale for three shares of the Horseshoe Hill property?

[53] There is no dispute that Mr. Taggar initially paid for four investment shares for the Horseshoe Hill property. There is also no dispute that the Chauhan plaintiffs paid \$190,949 to Mr. Taggar about one week later, which represents three investment shares for the Horseshoe Hill property, at approximately \$64,000 per share. The question is, for whom were the three investment shares purchased?

[54] I reject Mr. Chauhan's submission that the \$190,949 payment made by him and his wife from their joint line of credit was intended to be the Horseshoe Hill investment payment for him, his wife, and Ms. Kaur Sidhu. The only evidence that Gurbir Chauhan was an investor in Horseshoe Hill came from Mr. Chauhan. Gurbir Chauhan did not testify. I infer from her decision not to testify that her evidence would not have been helpful to the position of the Plaintiffs. I also note that Ms. Chauhan's name does not appear on any of the real estate or investment documentation with respect to the sale, and none of the other witnesses identified Ms. Chauhan as one of the original investors. The fact that the payment came from the Plaintiffs' joint line of credit is not sufficient evidence to establish that there was an intention amongst the group of investors for Ms. Chauhan to have a one-tenth share in the investment, or that the Plaintiffs intended for Ms. Chauhan to have a one-tenth share in the investment.

Did Mr. Chauhan provide the investment funds for Mr. Saini?

[55] I find that when Mr. Chauhan provided Mr. Taggar with \$190,949, his intention was to provide the investment funds for himself, Mr. Saini, and Ms. Kaur Sidhu. The overwhelming evidence presented from the other investors at the trial established that it was understood between the investors that Mr. Saini was an equal investor in the property.

[56] There is no dispute in the evidence that it was Mr. Saini who found the Horseshoe Hill property, connected with the real estate agent, and brought together a number of the investors, including Mr. Samra, Mr. Taggar, and Mr. Chauhan. The fact that Mr. Saini personally only paid \$7,000 towards the purchase of Horseshoe Hill does not alter the understanding of the investors collectively that funds were paid into the investment representing his share of the investment, and that he was an equal investor in the property. The issue as to what funds may potentially be owed by Mr. Saini to Mr. Chauhan resulting from the purchase of Horseshoe Hill is not before me.

[57] Mr. Taggar's payment of \$260,000 at the time of closing was critical to ensuring that the sale proceeded. There was no dispute in the evidence that Mr. Saini and Mr. Chauhan approached Mr. Taggar together to request that he pay the \$260,000 to permit the deal to close. Mr. Taggar did not identify Ms. Kaur Sidhu as the fourth investor for whom he was fronting the purchase funds, but he was clear in his evidence that he knew he was providing funds for Mr. Saini and Mr. Chauhan. I accept Mr. Taggar's evidence that the only reason he became involved in this investment was because Mr. Saini was also involved.

[58] I also accept Mr. Samra's evidence that he was told the \$260,000 provided to him by Mr. Taggar was for the investment shares of Mr. Taggar, Mr. Chauhan, Mr. Saini, and Ms. Kaur Sidhu. Ms. Chauhan did not provide her own financial

contribution towards a share of the purchase of Horseshoe Hill. The fact that Mr. Saini signed an assignment of his interest in Horseshoe Hill supports the Defendants' position that it was understood by them that Mr. Saini had an equal share in Horseshoe Hill. The fact that Mr. Samra and the other Defendants were unaware that Mr. Saini had made no further financial contributions to Mr. Chauhan or anyone else with respect to the property does not prevent Mr. Saini from receiving an equal investment share in the property.

[59] In his testimony Mr. Chauhan did not provide an explanation as to why he paid Mr. Saini's share of the purchase of the Horseshoe Hill property. By not questioning Mr. Chauhan about a possible oral agreement between him and Mr. Saini regarding the exchange of funds pertaining to their investment properties, I find that the rule in *Browne v. Dunn* was breached when Mr. Saini gave evidence regarding the alleged agreement. I give little weight to Mr. Saini's testimony on this point, not only as a result of the breach of the rule, but also for the following reasons:

- a) There was no agreement in writing between Mr. Chauhan and Mr. Saini; and
- b) None of the other witnesses, including Mr. Chauhan, gave evidence about an agreement between Mr. Chauhan and Mr. Saini.

[60] I therefore do not rely on Mr. Saini's evidence that he and Mr. Chauhan had an unwritten agreement that that they were going to work out the details of their three property investments at some point. I find that Mr. Saini ought not to have withheld any payments owed by him to Mr. Chauhan regarding the purchase of the Horseshoe Hill property to address any debt that Mr. Chauhan may have owed Mr. Saini for the Torbram Road property.

[61] But Mr. Saini is not a Defendant in this litigation. The fact that Mr. Chauhan did not owe any money to Mr. Saini at the time that the funds were advanced by him for Mr. Saini, and any subsequent failure of Mr. Saini to repay Mr. Chauhan for these funds, does not take away Mr. Saini's right to receive his equal share of the net proceeds of sale for Horseshoe Hill. The operation of the Promissory Note and Assignment of his Beneficial Interest in Horseshoe Hill may well be the reason why Mr. Saini received no payment for the sale of Horseshoe Hill, but that issue is not before me.

Is Mr. Chauhan entitled to receive a one-tenth portion of the net proceeds of sale on behalf of Ms. Kaur Sidhu?

[62] Mr. Chauhan is not entitled to receive Ms. Kaur Sidhu's one-tenth share of the net proceeds of sale. There is no dispute that Ms. Kaur Sidhu repaid Mr. Chauhan for the investment funds that he forwarded on her behalf. However, Mr. Chauhan has not established that he is entitled to be paid the portion of the net

proceeds of sale that Ms. Kaur Sidhu ought to have received as a one-tenth investor in the property. Mr. Chauhan produced no documentation to confirm that he was acting as agent for Ms. Kaur Sidhu, or that she assigned her claim to him. It was open to Ms. Kaur Sidhu to pursue the Defendants for repayment of her investment share. She did not do so. It does not legally fall on Mr. Chauhan to now pursue the Defendants for payment of Ms. Kaur Sidhu's share of the investment.

Issue #2: Does the promissory note for \$40,000 signed by Mr. Chauhan in favour of Mr. Samra disentitle him to any payment following the sale of Horseshoe Hill?

[63] The Promissory Note for \$40,000 signed by Mr. Chauhan does not extinguish his right to be paid any proceeds of sale from the sale of Horseshoe Hill that exceed the \$40,000 plus interest that he owes to Mr. Samra. The evidence before me is that Mr. Chauhan has still not repaid the \$40,000 owed to Mr. Samra. The interest owed on this payment at 6% per annum as set out in the Promissory Note presently totals \$17,753.42, as of November 29, 2024, resulting in a total of \$57,753.42 owed by Mr. Chauhan to Mr. Samra.

[64] There was poor communication between the Defendants and Mr. Chauhan regarding the sale of Horseshoe Hill, which led to Mr. Chauhan placing a caution on the property. The Defendants ought to have distributed a one-tenth interest in the net sale proceeds of Horseshoe Hill to Mr. Chauhan, minus the \$40,000 and

interest owed by him from the Promissory Note, at the time that the proceeds of sale were distributed to the other investors. I make no comment on the failure of the Defendants to distribute payments to Mr. Saini, Ms. Kaur Sidhu or Mr. Aujla for their share of the sale proceeds from Horseshoe Hill, as that issue is not before me.

[65] Mr. Chauhan is entitled to an equal one-tenth share of the net proceeds of sale. The parties agree that net proceeds of sale are \$651,974.83 after Mr. Samra is repaid for the operating costs of the property. One-tenth of this amount is \$65,197.48.

[66] The Defendants suggest that taxes for capital gains of \$22,484.39 resulting from the sale of Horseshoe Hill should be deducted from the net proceeds of sale before distribution of Mr. Chauhan's share. The Plaintiffs submit that each investor who received funds from the sale of Horseshoe Hill is responsible for paying his own capital gains tax for the investment.

[67] It is appropriate that each investor pay the capital gains taxes owed on his own share of the investment. Mr. Chauhan is therefore entitled to \$65,197.48 - \$57,753.42 = \$7,444.06.

[68] Mr. Chauhan is also entitled to prejudgment interest on the funds that ought to have been distributed to him at the time that the other investors received

payment following the sale. Counsel for Mr. Chauhan suggests that an appropriate rate of interest on this payment is 2% per annum, based upon the date when the Statement of Claim was issued. The Defendants made no submissions to dispute the reasonableness of this rate of interest. Accordingly, Mr. Chauhan shall receive interest on the sum of \$7,444.06 at the rate of 2% per annum from July 31, 2019, which totals \$793.76. The Defendants therefore owe Mr. Chauhan $\$7,444.06 + \$793.76 = \$8,237.82$ as of November 29, 2024.

Issue #3: Is Mr. Chauhan entitled to receive repayment for rental income that could have been secured by the Defendant owners of the property?

[69] The only evidence before me regarding the quantum of rent paid at Horseshoe Hill comes from Mr. Chauhan, who testified that the property was rented for \$5,000 for approximately one month. This evidence was not contradicted. Mr. Chauhan suggests on a conservative basis that the property could have received a rental income of \$3,000 per month in the 24 months that elapsed between the date of purchase and the date of sale. However, the Plaintiffs did not provide evidence from a realtor or other professional as to the fair market value of the rental income for the property.

[70] Although Mr. Chauhan testified that the rental income received from this tenant was \$5,000, he provided no documentary evidence confirming this income.

In addition, Mr. Chauhan testified that he did not inquire with Mr. Samra about renting the property again after the first tenancy failed.

[71] The Plaintiffs have therefore failed to establish the quantum of rental income that they say are owed.

[72] In the event that I am wrong about this issue, and it is found that the evidence of Mr. Chauhan was sufficient to establish the quantum of rental income that could have been generated with the property, I further find that the Defendants did not have a fiduciary duty to the other investors to rent the property until the time that it was sold.

[73] The evidence at trial was that the first tenants created issues which led to their eviction. I reject Mr. Samra's evidence that the investors jointly agreed not to rent the property after the first rental attempt failed. Mr. Taggar, Mr. Sangha, and Mr. Bhandal all testified that they did not have a discussion with Mr. Samra about whether the property should be rented. However, there is no evidence before me that Mr. Chauhan or any of the other investors requested that the Defendants attempt to rent the property until such time as it was sold. The evidence from all the witnesses that testified was that the intention had been to attempt to sell the property quickly after its purchase.

[74] The evidence does not suggest that renting the property was a priority to any of the investors, including Mr. Chauhan, who provides no evidence of efforts he made to rent the property again after the first failed tenancy, or that he made requests to the Defendants to rent the property.

[75] The Defendants are not required to repay the Plaintiffs any sum for lost rental opportunities at the property.

CONCLUSION

[76] Kamaljit Chauhan is entitled to a one-tenth share of the net sale proceeds of Horseshoe Hill. Gurbir Chauhan is not entitled to a share of the net sale proceeds of Horseshoe Hill.

[77] The Defendants shall pay to the Plaintiff, Kamaljit Chauhan \$7,444.06 for his share of the net sale proceeds of Horseshoe Hill, plus \$793.76 prejudgment interest which totals \$8,237.82 as of November 29, 2024.

[78] The Defendants do not owe any money to the Plaintiffs for lost rental income pertaining to Horseshoe Hill.

[79] The Defendants ask that any payment owed to Mr. Chauhan be stayed until the accounting ordered by Barnes J. in *Gupta v. Chauhan* has been completed. I decline to stay the payment owed to Mr. Chauhan. The Plaintiffs in

Gupta v. Chauhan are not parties in the action before me. I see no reason to delay Mr. Chauhan receiving the payment owed to him by the Defendants in this litigation. The payment owed to Mr. Chauhan by the Defendants is accordingly ordered to be paid out of the \$200,000 held in the court for the action.

[80] There will be no further distribution from the funds held by the court until the issue of costs for this action has been determined.

[81] Each of the ten shares from the net sale proceeds of Horseshoe Hill is worth \$65,197.48. Any capital gains taxes applicable on the individual shares shall be paid by each investor individually.

[82] The Defendants' Counterclaim is dismissed.

COSTS

[83] The parties are encouraged to agree upon the costs to be paid for this litigation. If the parties are unable to agree upon costs, the Defendants are to file and serve a cost submission no longer than three pages double spaced by December 9, 2024. The Plaintiffs are to file and serve a responding cost submission no longer than three pages double spaced by December 19, 2024. The page limits for the cost submissions do not include Offers to Settle or Bills of Costs. There will be no reply submission unless requested by me. All cost submissions are to be emailed to my judicial assistant at

Bihara.wijewardena@ontario.ca. If cost submissions are not received by these deadlines, I make no order as to costs.

M.C. Wilkinson J.

Released: November 29, 2024

CITATION: Chauhan et al. v. 2074874 Ontario Inc. et al., 2024 ONSC 6685
COURT FILE NO.: CV-19-00001483-0000
DATE: 2024 11 29

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CHAUHAN, Kamaljit
CHAUHAN, Gurbir

Plaintiffs

- and -

2074874 ONTARIO INC.,
KHAKH, Satnam,
TAGGAR, Onkar,
SAMRA, Daljit,
SANGHA, Avtar,
BHANDAL, Balwinder

Defendants

JUDGMENT

M.C. Wilkinson J.

Released: November 29, 2024