

CITATION: McConaghy v. Hetti Group Inc., 2024 ONSC 7250
COURT FILE NO.: CV-18-00606743-0000
DATE: 20241230

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Darren McConaghy, May McConaghy and Andrea McConaghy)	<i>Frank Spizzirri</i> , for the Plaintiffs
)	
Plaintiffs)	
)	
– and –)	
)	
Hetti Group Inc., Sugi Financial Services Inc., Jose Suguitan, Jordan Suguitan, Lasanta (Lance) Hettiarachichi, and Gamini Roy Da Silva.)	<i>Domenic Saverino</i> , for the Defendants
)	
Defendants)	
)	
)	
)	HEARD: November 5, 2024

2024 ONSC 7250 (CanLII)

REASONS FOR JUDGEMENT

MERRITT J.

OVERVIEW and BACKGROUND

[1] The Plaintiffs seek full summary judgment against the Defendants Hetti Group Inc., Sugi Financial Services Inc., Jose Suguitan, Lasanta (Lance) Hettiarachichi, and Gamini Roy Da Silva (the “Defendants”).

[2] The Plaintiffs in this action, Darren McConaghy (“Darren”), May McConaghy (“May”) and Andrea McConaghy (“Andrea”), loaned money to the Defendants as part of a multi-million-dollar syndicated construction loan whereby investors were to fund residential renovation or construction projects.

[3] The defendants, Lance Hettiarachichi (“Lance”), Gamini Roy De Silva (“Roy), and Hetti Group Inc. (“Hetti Group”), a corporation owned by Lance and Roy (collectively the “Hetti Defendants”), were to carry out the construction work.

[4] The defendants, Jose Suguitan (“Jose”), and Sugi Financial Services Inc. (together the “Suguitan Defendants”) sought out investors. The Suguitan Defendants were also tasked with liaising and communicating with lenders and to provide updates on the status of the projects once the loans were made.

[5] The within action is one of thirteen similar actions brought together under one case management process (the “Actions”), each of which involves different plaintiffs who loaned money to the defendants on similar facts for three specified construction projects, located at 68 Belgrave Ave. and 276 Yonge Blvd. in Toronto, and 130 Densmore Rd. in Cobourg (the “Belgrave Property”, the “Yonge Property”, the “Densmore Property” and collectively the “Projects”), pursuant to loan agreements and promissory notes.

[6] Each property had a different legal owner: the Belgrave Property was owned by Roy in his personal capacity, the Yonge Blvd. Property was owned personally by Jose and his son Jordan, and the Densmore Property was owned by Hetti Group.

[7] All thirteen actions follow the same basic fact pattern. The plaintiffs were induced to lend money to the defendants on account of one or more of the Projects. The documentation relating to the loans is substantially similar in all thirteen actions.

[8] I heard a summary judgment motion in *Perks v. Hetti Group Inc.*, 2023 ONSC 5667, aff’d 2024 ONCA 709. The motion in *Perks* was intended as a test case for the Actions. I granted summary judgment against each of the Hetti Defendants. I also pierced the corporate veil and held Lance and Roy personally liable.

[9] Justice Koehnen said in his endorsement of December 13, 2023:

4. The whole purpose of the test case would be substantially diminished if each of the other 12 actions now had to repeat exactly the same process with the same evidentiary record, similar cross examinations and similar legal arguments as the plaintiffs in the *Perks* action did. That other than increase costs and delay.

5. As a result, I relieve all parties of the deemed undertaking in rule 30.1.01 of the Rules of Civil Procedure to the extent that I allow them to use affidavits, documents, cross examinations, and discovery transcripts in the *Perks* action for summary judgment in any of the remaining 12 actions.

6. In addition, the findings of Justice Merritt in the *Perks* action will constitute findings in each of the other 12 actions unless those findings are uniquely personal to the circumstances of the *Perks* action, such as, for example, oral representations made to the plaintiffs in that action.

7. The ruling in paragraph six is without prejudice to the defendants’ ability to deliver affidavits in the remaining 12 actions which either provide additional

evidence or provide evidentiary explanations for why a finding or findings of Merritt J should not apply in one or more of the remaining actions.

8. Put another way, the effect of the ruling about Justice Merritt's findings is that on the motion for summary judgment in the remaining 12 actions, the presiding judge will be entitled to proceed on the basis that Justice Merritt's findings apply unless the defendants can persuade them otherwise.

[10] Summary judgment motions proceeded before me on eight of the remaining Actions including this one.

[11] In this case, the Plaintiffs' loans relate to the funding of the renovation/construction work to be done at the Yonge Blvd. Property. Each plaintiff in this action loaned \$100,000 to the defendant Hetti Group, a corporation owned, controlled, and directed by Lance and Roy, pursuant to signed loan agreements and promissory notes.

[12] The form of the loan agreements signed by the Plaintiffs in this action was the same as the form of the loan agreements signed by other case managed plaintiffs, including the *Perks* test case, accounting for differences relating to the use of funds and interest rates, depending on the specific project into which each lender was investing along with the same form of promissory note.

[13] The Plaintiffs issued their claim against Hetti Group Inc., Sugi Financial Services Inc., Jose Suguitan, and Jordan Suguitan on October 11, 2018.

[14] I rendered my decision in *Perks* on October 12, 2023, finding Lance and Roy personally liable.

[15] On July 16, 2024, the Plaintiffs amended their claim to add Lance and Roy as Defendants.

DECISION

[16] The Plaintiffs' motion is granted against the corporate Defendants Hetti Group Inc. and Sugi Financial Services Inc. and Jose Suguitan.

[17] The Plaintiffs' motion against the individual Defendants Lance and Roy is dismissed because the limitation period expired prior to the amendment of the Plaintiffs' claim to add them as Defendants to this action.

POSITIONS OF THE PARTIES

[18] The Defendants do not oppose the Plaintiffs' motion for summary judgment against the corporate Defendants Hetti Group Inc. and Sugi Financial Services Inc. The Defendants oppose the Plaintiffs' motion against Lance and Roy because the limitation period had expired before they were sued.

[19] The Plaintiffs say the limitation period did not expire until they learned how the Defendants had misappropriated their funds which occurred when the Defendants produced documents in the fall of 2022 and the spring of 2023 and when the Defendants were cross-examined in *Perks*. The Defendants were cross-examined between April 25, 2023 and June 15, 2023, and produced answers to undertakings in April and August 2023. Their claim was amended to add Lance and Roy in July 2024. Therefore, the Plaintiffs say the limitation period had not expired when Lance and Roy were added as Defendants.

THE ISSUE

[20] There are two issues:

1. Is there a genuine issue which requires a trial?
2. Did the Plaintiffs discover their claim against Lance and Roy more than two years before Lance and Roy were added as Defendants to the Plaintiffs' claim?

ANALYSIS

Issue 1: No Genuine Issue for Trial

[21] Rule 20.04(2)(a) provides: “The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”.

[22] Rule 20.04(2.1) sets out the court’s powers on a motion for summary judgment as follows:

In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for that purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

[23] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66, the Supreme Court of Canada established a road map outlining how a motions judge should approach a motion for summary judgment:

[T]he judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides

her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable, and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability, and proportionality in light of the litigation as a whole.

[24] There is no genuine issue requiring a trial when the court is able to reach a fair and just determination on the merits of the motion. This will be the case where the process (1) allows the court to make necessary findings of fact, (2) allows the court to apply the law to the facts, and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result: *Hryniak*, at para. 49; *Moffitt v. TD Canada Trust*, 2023 ONCA 349, 483 D.L.R. (4th) 432, at para. 40.

[25] The court is entitled to assume that it has all the evidence that would be available at trial related to the matters at issue: *Portuguese Canadian Credit Union v. Pires*, 2011 ONSC 7448, at para. 11, aff'd 2012 ONCA 335.

[26] I am satisfied that I can come to a fair and just result. This matter is appropriate for summary judgment.

Issue 2: The Limitation Period Expired

[27] The parties agree that the limitation period is two years from when the claim was discovered pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (the “Act”).

[28] Section 5 of the *Act* provides as follows:

5 (1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). ...

[29] Section 13 of the *Limitations Act* provides:

13 (1) If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgment was made.

[...]

(9) This section does not apply unless the acknowledgment is made to the person with the claim, the person's agent or an official receiver or trustee acting under the *Bankruptcy and Insolvency Act* (Canada) before the expiry of the limitation period applicable to the claim.

(10) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and signed by the person making it or the person's agent.

(11) In the case of a claim for payment of a liquidated sum, part payment of the sum by the person against whom the claim is made or by the person's agent has the same effect as the acknowledgment referred to in subsection (10).

[30] In *Perks* I found that the Defendants acknowledged the debt by email dated October 23, 2017, for purposes of s. 13 of the *Act*: *Perks*, at para. 70.

[31] Plaintiffs discover they have a claim when they have actual or constructive knowledge “of the material facts upon which a plausible inference of liability on the defendant’s part can be drawn”: *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, 461 D.L.R. (4th) 613, at para. 42.

[32] In assessing the plaintiff’s state of knowledge, both direct and circumstantial evidence can be used. A plaintiff will have constructive knowledge when the evidence shows that the plaintiff ought to have discovered the material facts by exercising reasonable diligence. Suspicion may trigger that exercise: *Grant Thornton*, at para. 44.

[33] More than mere suspicion or speculation is required; however, certainty of liability is not required. A plaintiff does not need to know the precise cause of their injury for the limitation period to run: *Grant Thornton*, at para. 46.

[34] The Plaintiff May McConaghy in this action was also a Plaintiff in *Perks*.

[35] In *Perks* the claim was issued on October 22, 2018. In the claim in *Perks* the Plaintiffs alleged that the Defendants made false misrepresentations, were liable for fraud, and that the Defendants converted or misappropriated their funds. The Plaintiffs said that their funds were not used for the purposes set out in the loan agreements and were misused or misappropriated. The Plaintiffs expressly pleaded fraud.

[36] The claim in this action was issued on October 11, 2018. Lance and Roy were not named as Defendants.

[37] In both *Perks* and this action the Plaintiffs were initially represented by the same lawyer, M. Michael Title.

[38] The Plaintiffs did not file evidence from Mr. Title and have not provided any explanation for not naming Roy and Lance as Defendants in this action.

[39] I find that May McConaghy knew, or ought to have known, that she had a claim against Lance and Roy by October 22, 2018, when she issued the claim against Lance and Roy in the *Perks* action.

[40] By October 22, 2018, May McConaghy knew that she had lost her investment because Lance and Roy had misappropriated her funds.

[41] Andrea and Darren admitted on their cross-examinations on this motion that May (Darren's mother and Andrea's mother-in-law) retained their lawyer Mr. Title to pursue their action and issue the claim on their behalf. Andrea said that "everything was done through" May. Darren said that he "dealt with May" who was helping him because he was in British Columbia. He knew that May had claims against "Joe and Hetti".

[42] The Plaintiffs admit they knew that the Defendants took their money and did not build the Property as agreed.

[43] It is not necessary that the Plaintiffs knew exactly how the Defendants used their funds. It is sufficient that the Plaintiffs knew that the Defendants had misappropriated their funds.

[44] I find that the Plaintiffs knew, or ought to have known, that the Defendants misappropriated their funds on October 22, 2018, when the *Perks* claim was issued. The Defendants Lance and Roy were not added as Defendants in this action until July 16, 2024, more than two years later. Therefore, the limitation period for suing Lance and Roy expired and the Plaintiffs' motion for summary judgment against them is dismissed.

DISPOSITION

[45] The Plaintiffs' motion for summary judgment for damages in the amount of \$300,000 plus prejudgment interest at the contractual interest rate of 12% per annum against Hetti Group Inc., Sugi Financial Services Inc. and Jose Suguitan is granted.

[46] The Plaintiffs are entitled to a declaration that the damages owing by Hetti Group Inc., Sugi Financial Services Inc. and Jose Suguitan were the result of fraud by these Defendants and the Plaintiffs' judgment shall survive the bankruptcy of any of them.

[47] The Plaintiffs' motion against Lance and Roy is dismissed.

COSTS

[48] I encourage the parties to agree on costs. If they cannot agree, I will consider brief written submissions. These costs submissions shall not exceed three pages in length (not including any bill of costs or offers to settle). Any party claiming costs shall file their written submissions within ten days of the date of these reasons. Any responding submissions shall be delivered within five days of receipt of the other party's costs submissions. Any reply to submissions shall be delivered within three days of receipt of responding submissions and shall be no more than two pages long. Costs submissions shall be uploaded to CaseCenter and delivered to me by way of email to my Judicial Assistant.

Merritt J.

Released: December 30, 2024

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Plaintiffs

– and –

Hetti Group Inc., Sugi Financial Services Inc., Jose
Suguitan, Jordan Suguitan, Lasanta (Lance)
Hettiarachichi, and Gamini Roy Da Silva.

Defendants

REASONS FOR JUDGMENT

Merritt, J.

Released: December 30, 2024