COURT OF APPEAL FOR ONTARIO

CITATION: 1417217 Ontario Inc. v. River Trail Estates Inc., 2024 ONCA 491
DATE: 20240619
DOCKET: C70102

Gillese and Copeland JJ.A. and Wilton-Siegel J. (*ad hoc*)

BETWEEN

1417217 Ontario Inc. and Musa Suleman

Plaintiffs (Respondents)

and

River Trail Estates Inc.*, 1639395 Ontario Inc., RegalCraft Homes Inc.*, Estate of Madan Sharma*, Rekha Sharma* and Meena Sharma*

Defendants (Appellants*)

Kenneth Prehogan, Kayla Theeuwen and Max Skrow, for the appellants

Alnaz I. Jiwa, for the respondents

Heard: February 8, 2024

On appeal from the judgment of Justice Eugenia Papageorgiou of the Superior Court of Justice, dated November 2, 2021, with reasons reported at 2021 ONSC 4785, and from the judgment dated April 29, 2022, with reasons reported at 2022 ONSC 2626.

Gillese J.A.:

[1] This proceeding arose from a residential real estate development joint venture that ended badly, with the parties to it accusing one another of, among other things, overpayment of profits. The trial judge had to decide issues relating

to oppression, set-off, piercing the corporate veil, the rate of pre-judgment interest to apply to monies owed to the joint venture, and costs of the action. In my view, errors were made in those matters, with the result that I would allow the appeal.

I. BACKGROUND

[2] In 2000, Madan Sharma and Musa Suleman agreed to form a joint venture to develop residential real estate in southern Ontario (the "**Joint Venture**"). The Joint Venture was governed by their informal oral agreement. Under the terms of that agreement, after repaying investors, all Joint Venture profits would be split with two-thirds going to Mr. Sharma and one-third to Mr. Suleman.

[3] 1417217 Ontario Inc. ("**141**") was incorporated to act as the legal entity through which the overall Joint Venture operations and financial affairs would be managed by Mssrs. Sharma and Suleman. Mssrs. Sharma and Suleman were 141's directors and shareholders. For each Joint Venture project, a new company was incorporated to take title to the land that was to be developed. However, 141 managed each project's financial affairs.

[4] Mr. Sharma was a civil engineer with much experience in developing residential real estate. He was responsible for the Joint Venture projects, apart from their financing and management of their financial affairs. Between 2000 and 2009, Mr. Sharma was responsible for constructing and selling hundreds of homes

across seven residential Joint Venture developments: three in Markham, one in Oakville, and three in Mississauga.

[5] Mr. Sharma owned RegalCraft Homes Inc. ("**RegalCraft**"), the company through which he built the homes for the Joint Venture. He worked out of RegalCraft premises.

[6] Mr. Suleman had experience as an accountant and businessman but no prior experience in residential real estate. His role in the Joint Venture was to raise financing for its projects and to manage 141's financial affairs, including overall accounting for each project after its completion and all tax filings.

[7] Sometime in 2008, Mssrs. Sharma and Suleman began disagreeing about the Joint Venture operations. On October 2, 2008, Mr. Sharma sent Mr. Suleman a letter in which he resigned as a director of 141, ended all relationships between 141 and RegalCraft, and resigned from the other Joint Venture companies. Thereafter, the Joint Venture stopped developing new projects and focused on completing the work necessary to sell the homes in already developed projects. Mr. Sharma continued to work for the Joint Venture until the last home was sold in May 2009.

[8] Unfortunately, Mr. Sharma died suddenly in October 2009. Mr. Sharma's estate (the "**Estate**") was named as one of the defendants in this proceeding.

[9] Meena Sharma ("**Meena**") is Mr. Sharma's daughter. She serves as his Estate trustee. Meena was employed by RegalCraft. Rekha Sharma is Mr. Sharma's widow and Meena's mother ("**Rekha**").[1]

[10] From 2000 to 2008, Mssrs. Sharma and Suleman used a dual signature control for cheques, which required one person from each side of the Joint Venture to sign or initial all cheques issued by 141. However, after Mr. Sharma resigned in 2008, Mr. Suleman had sole signing authority for all Joint Venture cheques. By the time of trial, 141 had no assets but it did have significant tax liabilities to the Canada Revenue Agency ("**CRA**"). Mr. Suleman testified that 141 could not pay any judgment the court might order against it.

The wind-down of the Joint Venture

[11] After Mr. Sharma's death, the parties agreed to sell the remaining Joint Venture lands and wind down its operations. The trial judge found there was an implicit agreement that the sale proceeds from the remaining properties would flow to 141, as had been the practice throughout the life of the Joint Venture.

[12] During the wind-down period, tensions grew between the parties. Mr. Suleman approached Rekha and Meena and demanded that they repay money allegedly overpaid to Mr. Sharma. Meena raised concerns about funds that

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[1] I refer to Rekha Sharma and Meena Sharma by their first names solely for ease of reference, given that they both have the same last name.

Mr. Suleman had not shared with the Estate, including unexplained or missing Joint Venture funds of over $1 million from the proceeds of sale of the last two homes and from sales of equipment.

The sale of the River Trail property

[13] In 2005, River Trail Estates Inc. ("**River Trail Inc**") was incorporated to hold title to property known as River Trail. However, the River Trail property was never developed. Meena was River Trail Inc's sole shareholder and director.

[14] In September 2011, River Trail Inc entered into an agreement to sell the River Trail property for $2.1 million. $500,000 of the sale proceeds were paid for sale commission. In her capacity as the sole officer and director of River Trail Inc, Meena refused to pay the remaining $1,586,584 (the "**Net Sale Proceeds**") to 141 until she received a complete accounting of the Joint Venture. The requested accounting was never provided.

[15] Meena later directed the Net Sale Proceeds to a non-Joint Venture corporation, 2132161 Ontario Inc. ("**213**"). 213 is wholly owned by Rekha. Shortly thereafter, 141 and Mr. Suleman (the "**Respondents**") launched this proceeding.

The Lawsuit

[16] In 2012, the Respondents sued the Estate, Meena, Rekha, River Trail Inc, and RegalCraft (together, the "**Appellants**"), as well as 1639395 Ontario Inc. ("**163**") for over $5 million.

[17] 163 was another Joint Venture company. It was incorporated in 2004 to hold title to a parcel of land in Fort Erie, Ontario, known as the Black Creek property. Rekha was a 50% shareholder in 163. Like the River Trail property, the Black Creek property was never developed.

[18] 163 sold the Black Creek property in January 2015. Pursuant to a court order, the net sale proceeds from the Black Creek property are being held in trust by one of the real estate lawyers involved in the transaction.

[19] In their claim, the Respondents alleged the Estate had been overpaid profits of the Joint Venture and the Appellants had improperly retained the proceeds of sale of the River Trail and Black Creek properties.

The Counterclaim

[20] Meena, in her capacity as Estate trustee, counterclaimed. The essence of the Estate's claim was that Mr. Suleman conducted the business of the Joint Venture in a manner that was oppressive to it, misappropriated funds, and failed to maintain appropriate accounting practices. The Estate sought, among other things, a complete accounting of the financial affairs of 141 and the Joint Venture by an independent accountant, damages, and the right to set off the proceeds of sale from the two properties against any amounts it was found to owe to 141.

II. THE TRIAL DECISION

[21] The trial judge found discrepancies in the accounting for the Joint Venture after 2008, when Mr. Sharma resigned from it and Mr. Suleman had sole responsibility for 141's financial affairs. She found: "Mr. Suleman's accounting records post-2008 create unfair consequences and prejudice for the Joint Venture, which includes the Estate, and as such constitutes oppression". The discrepancies the trial judge identified totalled over $4 million. No appeal has been taken from the finding of oppression.

[22] To remedy the oppression, the trial judge ordered an accounting for the period 2008 onwards to determine the final state of 141's accounts, including amounts that might be payable to, or owed by, Mr. Suleman or the Estate. However, the trial judge rejected the Appellants' set-off claim on the basis they had not proven that Mr. Suleman misappropriated funds.

[23] Mr. Suleman's son, Rahim Suleman[2], was a chartered accountant. At times, Rahim worked for the Joint Venture. Rahim produced a written analysis dated January 2008 which set out the profits, amounts owing to investors, and disbursements made by the Joint Venture to that point in time. According to

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[2] I refer to Rahim Suleman by his first name, solely for ease of reference as he and his father have the same last name.

Rahim's analysis, both Mr. Sharma and Mr. Suleman had been overpaid management fees, in the amounts of $2,424,712 and $1,368,195 respectively.

[24] The trial judge accepted Rahim's report, saying its sole deficiency was that it was current only to January 2008, and that the Joint Venture had continued winding down after that date.

[25] The trial judge noted the Estate's acknowledgment that the Net Sale Proceeds of the River Trail property should be "credited against it" in any reconciliation of amounts owed. Nonetheless, she found Meena personally liable for the Net Sale Proceeds of the River Trail property for two reasons.

[26] First, the trial judge said that Meena, "in her capacity as [Estate] Trustee, breached her contractual obligation to use her position as director of [River Trail Inc] to ensure that it complied with its contractual obligation [to remit the Net Sale Proceeds to 141]".

[27] Second, the trial judge said she would "lift the River Trail [Inc] corporate veil to hold Meena accountable for River Trail [Inc's] wrongful conduct". She recognized that piercing the corporate veil was a different concept – albeit related – from the personal liability of directors and officers. She held that Meena could not be found personally liable for River Trail Inc's conduct on the basis that she was its director because such a claim must be particularized and the Respondents' pleadings failed to do that. Rather, the trial judge said, she was piercing River Trail

Inc's corporate veil and fixing Meena with personal liability because Meena used River Trail Inc "as a puppet" with respect to the Net Sale Proceeds. She gave these reasons for piercing the corporate veil: "(a) Meena was the sole director and shareholder; (b) it was a single purpose corporation to hold land for [141]; (c) there was no evidence that there was anyone else directing River Trail [Inc's] conduct with respect to the proceeds; (d) indeed, the only evidence of anyone involved (other than Mr. Suleman who[m] she consulted with) was that Meena negotiated the sale, sold the property and then made the decision to transfer the proceeds to [213]; (e) [Meena] provided no legitimate corporate reason why River Trail [Inc] would pay such funds to [213] in circumstances that call for an explanation; and (f) while there is usually more evidence of control, in this case there was sufficient evidence because on the record before me River Trail [Inc] is a single purpose corporation that did not do anything but own and then receive funds from the sale of the River Trail [property]" (the "**Reasons**").

[28] The trial judge also pierced the corporate veil of 213 to hold Rekha personally liable for receipt of the Net Sale Proceeds. 213 was not a party to the litigation.

[29] The trial judge further found that *ad hoc* fiduciary relationships existed among Mr. Suleman, Mr. Sharma, 141, and the various holding companies associated with the Joint Venture. For that reason, she found that River Trail Inc had a fiduciary obligation to hold the Net Sale Proceeds of the River Trail property

in trust for 141 and it breached that obligation by paying it to 213, a non-Joint Venture corporation.

[30] By judgment dated November 2, 2021, the trial judge ordered, among other things: the Estate, River Trail Inc, Meena, and Rekha jointly and severally liable to 141 for the amount of the Net Sale Proceeds; that the net proceeds of sale of the Black Creek property, plus any accrued interest, be paid to 141; that Mr. Suleman's accounting records post-2008 constitute oppression; and, that an accounting pursuant to rr. 54 and 55 of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194, be undertaken before an Associate Judge, to determine the final state of accounts of 141, including a determination of who owes whom what and how much (the "**Judgment**").

[31] By judgment dated April 29, 2022, the trial judge dealt with interest on the Net Sale Proceeds and costs of the action (the "**Interest and Costs Judgment**"). The Interest and Costs Judgment made the Estate, River Trail Inc, Meena, and Rekha jointly and severally liable for both pre-judgment interest of $932,986.42 on the Net Sale Proceeds and for costs of the action of $280,000, payable within 30 days.

[32] The trial judge used a rate of 8% for pre-judgment interest. She did so on the basis that Meena, as Estate trustee, knew or ought to have known that 141 was contractually obliged to pay an 8% interest rate to investors. She awarded

costs on a substantial indemnity scale “as a form of chastisement for the [Appellants’] conduct”, reduced to reflect the parties’ mixed success. The trial judge said there was no reason to defer payment of the costs until after the accounting was completed.

III. THE ISSUES

[33] The Appellants submit the trial judge erred in:

1. her choice of oppression remedy;
2. dismissing the Estate’s set-off claims prematurely;
3. holding both Rekha and Meena personally liable for the Net Sale Proceeds from the River Trail property; and,
4. finding that River Trail Inc owed 141 a fiduciary duty.

[34] In relation to the Interest and Costs Judgment, the Appellants submit that the trial judge made errors which include: applying a pre-judgment interest rate of 8% to the Net Sale Proceeds; and, ordering costs on a substantial indemnity basis, payable within 30 days. I deal with the alleged errors in respect of the Interest and Costs Judgment collectively, as Issue 5.

ISSUE 1 The trial judge did not err in ordering an accounting to remedy the oppression she found

[35] A trial judge has a broad discretion to make “any interim or final order it thinks fit” to remedy a finding of oppression: *Business Corporations Act*, R.S.O.

1990, c. B. 16, at s. 248(3). An appellate court reviewing that exercise of discretion, may interfere only where it has been established that the lower court erred in principle or its decision is otherwise unjust: *Naneff v. Con-Crete Holdings Ltd*. (1995), 23 O.R. (3d) 481, at pp. 486-87; *Murray v. Pier 21 Asset Management Inc.*, 2021 ONCA 424, 156 O.R. (3d) 197, at para. 34. The purpose of the oppression remedy is to rectify the oppression as found by the trial judge.

[36] In the present case, no appeal has been taken from the trial judge's finding of oppression. Rather, the Appellants argue that the remedy does not rectify the oppression because: Mr. Suleman has not produced records or documents to substantiate the millions of dollars of transactions which the trial judge found called for explanation and he will not or cannot do so; the trial judge misapprehended 141's financial position – it has no assets and any money it might receive must be paid to the CRA; and, at trial, Mr. Suleman testified that he will not be able to pay any amounts he is ordered to pay. In the circumstances, the Appellants ask that this court simply dismiss the Respondents' claim in full.

[37] The Appellants also complain about the orders in the Interest and Costs Judgment requiring them to make payments prior to the completion of the accounting. As I explain below, I agree that those orders must be set aside. As I further explain, the Appellants' set-off claims must be considered as part of the accounting.

[38] As for the accounting remedy, I see no basis justifying appellate intervention with it. In this case, the trial judge found that deficiencies in Mr. Suleman's accounting records post-2008 created prejudice for the Joint Venture and, therefore, were oppressive. She ordered an accounting to rectify the oppression that she had found. She made no error in principle nor is the remedy unjust. Without an accounting, the claim and counterclaim cannot be fairly decided. This point is underscored by that fact that, at trial, both the Respondents and the Appellants sought an accounting. In the circumstances, it scarcely lies in the Appellants' mouths to find fault with the trial judge for ordering an accounting.

[39] It will be for the Associate Judge who conducts the accounting to determine how to deal with the records that Mr. Suleman has produced or failed to produce.

ISSUE 2 The trial judge erred in prematurely dismissing the Estate's claim for set-off

[40] The trial judge found discrepancies in Mr. Suleman's bookkeeping for the Joint Venture that created a "circumstance of prejudice". On behalf of the Estate, Meena advanced claims for set-off. As those claims may be proven on the accounting, it was an error for the trial judge to have dismissed them.

ISSUE 3 The trial judge erred in finding Rekha and Meena each personally liable to 141 for the Net Sale Proceeds

Rekha

[41] The trial judge found Rekha liable to 141, in her capacity as 213's sole director and shareholder, for the Net Sale Proceeds of River Trail. In so doing, she erred in law.

[42] 213 was a non-party to the litigation and no wrongful actions were pleaded against it. The pleading that Meena and Rekha "improperly retained, or caused the defendant corporations to retain, the full proceeds from the sale contrary to the agreement" is not sufficient to implicate 213 because 213 is not a defendant corporation.

[43] It was not open to the trial judge to pierce the corporate veil of a corporation that is a non-party to the action and against whom no wrongdoing was alleged in the pleadings. As the trial judge did not have the authority to order relief against 213, she erred in ordering relief against Rekha in her capacity as 213's sole director and shareholder based on piercing the corporate veil.

Meena

[44] The trial judge gave two reasons for finding Meena personally liable for the Net Sale Proceeds. Both are wrong in law. Before explaining why, it is important to recall the context in which those findings were made: namely, that the Estate

had acknowledged its contractual obligation to 141 for the Net Sale Proceeds, subject to its right of set off.

[45] The first reason the trial judge gave was that Meena was acting in her capacity as the Estate trustee when she directed the Net Sale Proceeds to 213, rather than to 141. That cannot be correct: Meena was acting in her capacity as River Trail Inc's sole officer and director throughout the sale process, including payment of the Net Sale Proceeds to 213.

[46] The second reason the trial judge gave was that she pierced River Trail Inc's corporate veil to fix Meena with personal liability for the Net Sale Proceeds. Recall that the trial judge held that Meena could not be found personally liable for her conduct as River Trail Inc's sole officer and director because the Respondents failed to particularize their claim against Meena, as an individual, indicating how their claim against her differed from their claim against River Trail Inc or how her actions were tortious. I agree with the trial judge on this point.

[47] *ScotiaMcLeod Inc. v. Peoples Jewellers Ltd.* (1995), 26 O.R. (3d) 481, at pp. 490-91, makes it clear that officers and employees are protected from personal liability unless it can be shown "that their actions are themselves tortious or exhibit a separate identity or interest from the company so as to make the act or conduct complained of their own". Cases in which employees and officers have been personally liable for actions ostensibly carried out under a corporate name are

fact-specific and the facts said to give rise to personal liability must be specifically pleaded.

[48] Piercing the corporate veil, on the other hand, typically occurs when the company is incorporated for an illegal, fraudulent, or improper purpose or where the corporate entity "is completely dominated and controlled and being used as a shield for fraudulent or improper conduct". [3]

[49] The Reasons given by the trial judge for piercing the corporate veil simply do not satisfy these requirements. River Trail Inc was incorporated for a legal, proper purpose: to hold title to the River Trail property. And River Trail Inc was not used as a shield for fraudulent or improper conduct. It was entitled to sell the River Trail property. As River Trail Inc's sole officer and director, Meena was obliged to deal with the Net Sale Proceeds in accordance with her obligations as a director. She may have violated those obligations, in which case a claim may lie against her personally. However, as I explain above, the Respondents' pleading failed to particularize such a claim.

[50] Accordingly, the trial judge erred in piercing River Trail Inc's corporate veil to find Meena personally liable.

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[3] *642847 Ontario Ltd. v. Fleischer* (2001), 56 O.R. (3d) 417 (C.A.), at para. 68, citing *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.,* (1996), 28 O.R. (3d) (Gen. Div.), at pp. 433-34, aff'd [1997] O.J. No. 3754 (C.A.).

ISSUE 4 The trial judge erred in finding that River Trail Inc owed 141 a fiduciary duty

[51] In my view, the trial judge also erred in finding that an *ad hoc* fiduciary relationship existed between River Trail Inc and 141.

[52] For an *ad hoc* fiduciary relationship to arise, the alleged fiduciary must undertake to act in the best interests of the alleged beneficiary; the duty must be owed to a defined person or class of persons who are vulnerable to the fiduciary in the sense the fiduciary has a discretionary power in respect of them; and, the fiduciary's power may affect the legal or practical interest of the alleged beneficiary: *Elder Advocates of Alberta Society v. Alberta*, 2011 SCC 24, [2011] 2 S.C.R. 261, at paras. 30, 33, 34.

[53] While River Trail Inc had a contractual duty to 141, the trial judge pointed to no evidence to ground the leap from River Trail Inc owing a contractual duty to 141 to it becoming a fiduciary in respect of 141. On the record, I see no basis for such a finding. Reference alone to the interconnectedness of Mr. Sharma, Mr. Suleman, 141, and the Joint Venture's various holding companies is insufficient to ground a finding that each separate legal entity could exercise discretionary power over the others and had undertaken to act in the best interests of each and every one of the others.

ISSUE 5 The Interest and Costs Judgment must be set aside

[54] The trial judge ordered that an Associate Judge conduct an accounting to determine the final state of 141's accounts, including any amounts that might be payable to Mr. Suleman or the Estate, and any amounts that each might owe to 141. Because it is unknown what monies, if any, one or more of the parties may owe 141, the trial judge erred in ordering the immediate payment of the Net Sale Proceeds by the Estate, and other of the Appellants, to 141. The unfairness of such an order is clear: since 141 has significant tax liabilities and no assets, if the order is complied with and the accounting proves the Estate's set-off claims, there is no realistic possibility that any monies now paid will be recoverable.

[55] For similar reasons, the trial judge erred in making an order as to costs of the action at this time in the proceeding. The result in the proceeding and any offers to settle are the foundation for a trial judge's exercise of discretion in awarding costs: r. 57.01 of the *Rules*. Until the accounting is completed, the results of the claim and counterclaim are unknown and offers to settle cannot be properly considered. Further, the trial judge could not decide the scale of costs because the parties' conduct could not be fairly assessed absent the results of the accounting.

[56] The trial judge further erred in ordering that pre-judgment interest at the rate of 8% be paid on the Net Sale Proceeds. There was no proven contractual basis for a given rate of interest and no specific evidence that interest would be

calculated in that manner[4]. Moreover, whether pre-judgment interest should be ordered – and, if so, at what rate – cannot fairly be decided until after the accounting is completed. As s. 130(2)(e) of the *Courts of Justice Act*, R.S.O. 1990, c. 42 stipulates, in deciding those matters, the court "shall" take into account, "the amount claimed and the amount recovered in the proceeding". The latter cannot be known until the accounting is completed. Accordingly, in my view, the Associate Judge who conducts the accounting should determine whether pre-judgment interest should be payable and, if so, at what rate.

[57] Moreover, for the reasons given on Issue 3 above, neither Meena nor Rekha can be held personally liable for any amounts found owing in relation to the Net Sale Proceeds. Thus, in addition to wrongly ordering them liable for payment of the Net Sale Proceeds, the trial judge erred in making Meena and Rekha jointly and severally liable for costs.

[58] In my view, costs of the action should also be fixed by the Associate Judge who conducts the accounting. In so doing, I would direct the Associate Judge to make findings on the parties' conduct afresh, without regard to the trial judge's factual findings on that matter. Some of those findings were made without the benefit of the accounting and must be considered in light of the determinations

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[4] Contrary to the trial judge's reasoning, evidence that Meena knew 141 was obliged to pay interest to the investors at the rate of 8% is not evidence specific to the rate of interest to be applied to amounts the parties might owe to 141.

made in it. Other findings are the result of palpable and overriding error. For example, one reason given by the trial judge for ordering costs on a substantial indemnity scale was that the Appellants had raised “a completely new theory of misappropriation at trial” in relation to certain transfers. In fact, the transfers in question had been questioned on discovery and falsely or inadequately explained in answers to undertakings. And, while the trial judge was correct in identifying other impugned payments as having been raised for the first time at trial, that occurred because the Respondents made mid-trial productions. The Appellants cannot fairly be faulted for questioning payments disclosed by the Respondents, for the first time, mid-trial.

IV. DISPOSITION

[59] For these reasons, I would grant the appeal with costs to the Appellants, fixed at the agreed-on sum of $25,000, all inclusive.

[60] In relation to the Judgment, I would order that:

1. paragraph 1 be struck;
2. paragraph 2 be amended to read as follows:

> **THIS COURT ORDERS AND ADJUDGES** that the proceeds from the sale of the land located at 3837 Black Creek Road, Fort Erie, Ontario (**“Black Creek Property”**) held in trust, with any accrued interest, shall be paid as ordered by the Associate Judge who conducts the accounting ordered by para. 4 of the Judgment.

3. paragraph 4(a) be amended to add the following words at its end: “including the Estate’s acknowledged contractual obligation to account for the Net Sales Proceeds to 141, subject to its right of set off”;
4. paragraph 4(c) be amended by deleting the words “flow into 1417217 Ontario Inc.” in the third line;
5. paragraph 5 be struck;
6. paragraphs 6 and 7 be set aside and replaced with an order directing the Associate Judge who performs the accounting to determine:

    a. the rates of pre- and post-judgment interest, if any, to be paid on amounts found to be owing by the parties, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. 42;

    b. costs of the action; and

    c. costs of the accounting.

[61] I would further set aside the Interest and Costs Judgment in whole.

Released: June 19, 2024 “E.E.G.”

“E. E. Gillese J.A.”
“I agree. J. Copeland J.A.”
“I agree. Wilton-Siegel J. (*ad hoc*)”