

COURT OF APPEAL FOR ONTARIO

CITATION: Brar v. Harbour, 2025 ONCA 362

DATE: 20250508

DOCKET: COA-24-CV-1187

Trotter, Thorburn and Wilson JJ.A.

BETWEEN

Puneet Brar and Realtus Law Professional Corporation

Applicants (Respondents)

and

Stephen Harbour

Respondent (Appellant)

Stephen M. Turk, for the appellant

Alexander Melfi, for the respondents

Heard: May 6, 2025

On appeal from the order of Justice William S. Chalmers of the Superior Court of Justice, dated October 10, 2024, with reasons reported at 2024 ONSC 5651.

REASONS FOR DECISION

[1] After hearing the appellant's oral submissions, we dismissed this appeal with reasons to follow. These are our reasons.

A. BACKGROUND

[2] The respondent Puneet Brar is a real estate lawyer who worked at the respondent firm, Realtus Law Professional Corporation. Brar was retained to act for the appellant Stephen Harbour, first, to re-finance a property Harbour owned

(the “Property”), and when the re-financing did not proceed, to close the sale of the Property.

[3] There were seven liens registered on title to the Property by the Canada Revenue Agency (“CRA”). Harbour did not authorize Brar to directly access his CRA account to confirm the amounts owing on the liens. Rather, he provided Brar with six discharge statements, advising that two of the seven liens were duplicates.

[4] In the course of the sale of the Property, the buyers requisitioned a discharge of the CRA liens, and Brar gave a personal undertaking to obtain a good and valid discharge of the liens on the Property as soon as possible after closing.

[5] Brar also drafted a Declaration and Indemnity Agreement (the “Agreement”), which states that Harbour would indemnify and save harmless Brar and Realtus Law for any inaccuracies resulting from Brar’s reliance on the discharge statements that Harbour provided. Harbour signed the Agreement on November 30, 2020.

[6] The relevant words in the Agreement are as follows:

I confirm that I have not provided my solicitor, Puneet Brar of Realtus Law Professional Corporation, authorization and/or access to my Canada Revenue Agency account and understand that Puneet Brar is relying on the accuracy of the statements I have provided as she cannot confirm same with the Canada Revenue Agency.

I indemnify and save harmless Puneet Brar and Realtus Law Professional Corporation of any liability arising from

any inaccuracies and/or discrepancies that may arise from reliance on the discharge statements I have provided for the registered liens ...

In the event there is any errors in the discharge statements I have provided from the Canada Revenue Agency, I undertake to pay the amount outstanding in order to obtain a discharge. [Emphasis added.]

[7] The sale of the Property closed on December 1, 2020. The next day, Brar arranged for payment to CRA out of the proceeds of the sale in the amount owing based on the six discharge statements Harbour had provided.

[8] In August 2021, the buyers' counsel requested confirmation that all CRA liens had been discharged. When Brar contacted CRA, she was advised that one lien (a seventh), was still registered on title ("Lien 1100"). This lien was one of the two Harbour had identified as duplicates.

[9] Brar attempted to speak with Harbour and emailed him. She received no response. In her email, she wrote that CRA had suggested a resolution and asked Harbour to contact her immediately. CRA subsequently provided a discharge statement for the Lien 1100 in the amount of \$562,854.07 plus interest. Brar's insurer paid the amount outstanding, and the lien was discharged on December 7, 2021.

B. THE ISSUES

[10] The issues on this appeal involve the interpretation of the Agreement drafted by Brar and signed by Harbour.

[11] The appellant Harbour claims that the application judge made three palpable and overriding errors of mixed fact and law.

[12] First, he claims that the application judge erred in finding that the application did not have to be converted to action. He argues that material facts, including which discharge statements were provided to Brar and the status of Harbour's health, were in dispute.

[13] We disagree. We see no error in the application judge's conclusion that there was no need to convert this proceeding to an action because,

- a. It was agreed that Harbour did not obtain a discharge statement for Lien 1100;
- b. There was no evidence before the application judge that Harbour had health issues that would affect his ability to enter into agreements or give instructions;
- c. Brar drafted the Agreement because she was not authorized to access Harbour's CRA account and she was concerned that Harbour's representations were not accurate;
- d. There was no evidence to dispute Brar's evidence that CRA was owed money based on her communications with CRA after the buyers requested confirmation that all liens had been discharged; and

- e. It was clear from CRA correspondence that there was an outstanding lien to be discharged and Brar's insurer paid to discharge the lien.

[14] Second, the appellant Harbour claims the application judge erred in holding that, pursuant to the Agreement, Harbour is required to indemnify Brar and her firm for paying off the last lien on the Property.

[15] We see no palpable or overriding error in this holding as,

- a. Contrary to Harbour's submission, *contra proferentum* does not apply because there is no ambiguity in the Agreement. It clearly provides that Brar is relying on the discharge statements provided by Harbour and Harbour agreed to indemnify Brar for any liability resulting from her reliance on those discharge statements;
- b. The discharge statements provided by Harbour were purported to be complete, but one discharge statement was missing; and
- c. There is no evidence to suggest that Harbour did not know he could be liable for Brar's reliance on the discharge statements he provided, or that he was not careless in agreeing to this when he had another lien on the Property.

[16] Third, the appellant Harbour claims the application judge erred in finding Harbour was unjustly enriched to the respondents' detriment. This finding was responsive to the respondents' alternative position that, separate from any rights

arising out of the Agreement, they were entitled to restitution based on the principle of unjust enrichment.

[17] We see no error in the application judge's conclusion that Harbour was unjustly enriched as,

- a. The CRA letter is clear evidence that there was one remaining lien on the Property after closing, and that money had to be paid to discharge the lien;
- b. There is no dispute that Brar's insurer paid off the lien; and
- c. The discharge was solely for the benefit of Harbour; the respondents did not have any interest in the property.

[18] For these reasons, the appeal is dismissed. On the agreement of both parties, the respondents are entitled to partial indemnity costs in the amount of \$3,500.00, all inclusive.

"Gary Trotter J.A."

"Thorburn J.A."

"D.A. Wilson J.A."