

COURT OF APPEAL FOR ONTARIO

CITATION: Sidhu v. Jain, 2026 ONCA 151

DATE: 20260302

DOCKET: COA-25-CV-0644

Sossin, Copeland and Madsen JJ.A.

BETWEEN

Shinder Pal Kaur Sidhu

Plaintiff (Respondent)

and

Sachindra Jain*, Soneil Lincoln Inc.* and Norman Sidhu**

Defendants (Appellants*/Respondent**)

James Zibarras, for the appellants

Harinder Dhaliwal, for the respondent Shinder Pal Kaur Sidhu

Evan Moore, for the respondent Norman Sidhu

Heard: February 2, 2026

On appeal from the order of Justice Irving W. André of the Superior Court of Justice, dated May 16, 2025.

REASONS FOR DECISION

[1] The appellants appeal from the motion judge's dismissal of their summary judgment motion and finding that the respondent Ms. Sidhu's claim was not statute barred because her claim was governed by the *Real Property Limitations Act*,

R.S.O. 1990, c. L.15 (“*RPLA*”), rather than the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B (“*LA*”).

Factual background

[2] The respondents, Shinder Pal Kaur Sidhu and Norman Sidhu, were married in 2001. The appellant Sachindra Jain was business partners with Mr. Sidhu. The other appellant, Soneil Lincoln Inc. (“SLI”), is a corporation controlled by Mr. Jain.

[3] In 2004, Mr. Sidhu, Ms. Sidhu and Mr. Jain bought a property in Clinton, Ontario (“Lot 16”) together. Lot 16 was purchased under the title of SLI. Ms. Sidhu claims that the parties agreed from the time of the purchase of Lot 16 that she would have a one-third share. In 2006, Ms. Sidhu, Mr. Jain, and SLI entered an agreement (the “Agreement”) documenting Ms. Sidhu’s entitlement to a one-third interest in Lot 16. The respondents claim that the written Agreement confirms what was agreed to at the time of the purchase of Lot 16, that Mr. Jain and SLI were trustees of a one-third interest in Lot 16 for Ms. Sidhu’s benefit.

[4] On September 5, 2016, the Sidhus separated. In October 2016, Mr. Sidhu commenced a family law application. That same year, Mr. Jain and SLI sold Lot 16, without accounting for the proceeds or paying Ms. Sidhu. Ms. Sidhu claims that Mr. Jain and SLI granted a vendor take-back mortgage to the buyer. Mr. Jain and SLI deny this, but have refused to provide documentation regarding the purchase, sale, and/or mortgaging of Lot 16.

[5] On October 28, 2016, Mr. Sidhu commenced an action against Mr. Jain and SLI (“the 2016 action”) for breach of contract and unjust enrichment in relation to Lot 16 and several other properties. Ms. Sidhu did not commence her own action, believing that the 2016 action sufficed to protect her interests.

[6] In April 2022, an agreement was reached between Mr. Sidhu and Mr. Jain in the 2016 action to complete an accounting respecting Lot 16 (and several other properties).

[7] However, on October 17, 2023, Mr. Jain informed Mr. Sidhu that he was now taking the position that Mr. Sidhu did not have standing to bring the 2016 action. Mr. Sidhu’s counsel then told Ms. Sidhu’s family lawyer about Mr. Jain’s change in position.

[8] On March 4, 2024, Ms. Sidhu commenced her own action with respect to Lot 16 (“the 2024 action”). In this action, she claims that she was the beneficial owner of one third of Lot 16 and that Mr. Jain and SLI were trustees. She claims damages flowing from breach of trust following the sale and mortgage of Lot 16. She claims that Mr. Jain and SLI breached their trust and contractual obligations by failing to provide accounting and failing to pay money owed to Ms. Sidhu from the sale of Lot 16.

[9] In July 2024, counsel for Mr. Jain and SLI agreed to exchange affidavits of documents and conduct examinations for discovery pending a motion by the

Sidhus to consolidate the 2016 and 2024 actions. Mr. and Mrs. Sidhu served their respective affidavits of documents in October 2024. Mr. Jain and SLI have not served their affidavit of documents. Counsel for Mr. Jain and SLI (not Mr. Zibarras) has not provided dates for examinations for discovery.

[10] On April 26, 2024, the Sidhus moved to consolidate the 2016 and 2024 actions. At a triage court hearing in September 2024 to schedule the consolidation motion, counsel for Mr. Jain and SLI made no mention of scheduling a cross-motion for summary judgment.

[11] On November 8, 2024, Mr. Jain and SLI served a cross-motion seeking summary judgment in both actions and security for costs. They argued that that Mr. Sidhu had no standing in the 2016 action and that Ms. Sidhu's 2024 action was statute barred because it was governed by the *LA*, rather than the *RPLA*.

[12] The motion judge rejected the appellants' argument that Ms. Sidhu's claim was statute barred. He concluded that the *RPLA* was the applicable limitation regime, rather than the *LA*, because the claim was related to an ownership interest in land. To the extent that the claim sought damages, it was as a remedy for the alleged breach of Ms. Sidhu's contractual and trust interest in Lot 16. This was because it may not be possible to grant a one-third ownership interest, if she prevails in the claim, due to the sale of the property. Under ss. 4 and 23 of the *RPLA*, the applicable limitation period is 10 years. He further found that the fact

that Lot 16 had been sold before Ms. Sidhu's action was commenced did not oust the application of the *RPLA* to her claim, relying on this court's decisions in *1250140 Ontario Inc. v. Bader*, 2022 ONCA 197, at para. 17, and *Studley v. Studley*, 2022 ONCA 810, at para. 35.

[13] The motion judge also found that Mr. Sidhu had standing to bring the 2016 action, consolidated the two actions, and dismissed the motion for security for costs. None of these aspects of the motion judge's decision are subject to appeal.

Analysis

[14] The appellant frames the appeal around several asserted errors. The crux of all of them is the appellant's argument that the motion judge erred in finding that the *RPLA*, rather than the *LA*, applied to Ms. Sidhu's claim. The appellant argues that the motion judge failed to consider whether Ms. Sidhu had performed her obligations under the Agreement in his assessment of whether the *RPLA* applied. According to the appellant, if Ms. Sidhu did not perform her obligations under the Agreement, she did not establish an interest in land and her claim cannot be characterized as a claim to recover an interest in land.

[15] The difficulty with this argument is that it was not advanced before the motion judge.

[16] The appellants' motion sought summary judgment solely on the ground that Ms. Sidhu's claim was statute barred as brought outside the applicable limitation

period. The appellants did not raise the substance of Ms. Sidhu's claim to a one-third interest in Lot 16 in their motion. Further, the manner in which the appellants pursued the limitation argument did not raise any issue about whether Ms. Sidhu has fulfilled her obligations under the Agreement. Neither the notice of motion, the factum, nor the affidavit filed by the appellants before the motion judge made that assertion. Rather, the basis on which the appellants advanced the limitation period argument on the motion was that Ms. Sidhu's claim was not for recovery of real property, but was for monetary recovery.

[17] The appellants argue that their statement of defence and counterclaim in the 2024 action pleads that Ms. Sidhu did not fulfil her obligations under the Agreement, and thus did not have an interest in Lot 16. It is true that this is pleaded in the statement of defence. But it was not raised in the summary judgment motion. A party bringing a summary judgment motion is free to frame the issues on which summary judgment is sought as they choose. But not having raised a particular issue, the party cannot fault a motion judge for failing to address that issue. It is not surprising that the motion judge did not consider the issue of whether Ms. Sidhu has fulfilled her obligations under the Agreement since it was not raised before him. It was not an error for the motion judge not to consider an argument not made before him.

[18] An appeal from a failed summary judgment motion is not an opportunity for the party who brought the motion to advance new arguments not made to the

motion judge. To permit this would undermine the efficiency and cost-saving goals of summary judgment. It would also be unfair to the responding party, who was denied notice of the issues and an opportunity to put its best evidentiary foot forward before the motion judge.

[19] In *McConnell v. Huxtable*, 2014 ONCA 86, 118 O.R. (3d) 561, this court held that a trust claim over real property is “an action to recover any land” within the meaning of s. 4 of the *RPLA*. The court further held that an alternative claim for monetary compensation based on a trust entitlement to real property was also within the scope of s. 4 of the *RPLA*. Ms. Sidhu’s claim as pleaded falls within this definition.

[20] We see no error in the motion judge’s conclusion that the *RPLA* applies because Ms. Sidhu’s claim was for an interest in land – a one-third interest in Lot 16 or damages in lieu of that interest.

[21] In oral submissions, the appellant raised the concern that by deciding that the *RPLA* applies to Ms. Sidhu’s claim, and thus deciding the limitation issue conclusively against the appellant, the motion judge had also implicitly decided that Ms. Sidhu had performed her obligations under the Agreement such that she had a valid interest in land – the one-third interest in Lot 16.

[22] This concern is misplaced. The motion judge did not decide this issue because, as noted above, it was not raised before him. The questions of what

obligations Ms. Sidhu was required to perform under the Agreement to be entitled to the one-third interest in Lot 16 and whether she fulfilled those obligations were not decided by the motion judge. They remain open issues for the eventual trial in this matter.

Disposition

[23] The appeal is dismissed. The respondent Ms. Sidhu is entitled to her costs of the appeal in the amount of \$10,000. The respondent Mr. Sidhu is entitled to costs of the appeal in the amount of \$8,000. The appellant is entitled to his costs of the stay motion in the amount of \$5,000. All amounts are inclusive of disbursements and applicable taxes.

“L. Sossin J.A.”
“J. Copeland J.A.”
“L. Madsen J.A.”