

CITATION: Latchmiah v. Durocher, 2023 ONSC 1096

COURT FILE NO.: CV-17-00586745

DATE: 20230224 **SUPERIOR COURT OF JUSTICE - ONTARIO**

RE: Ashna Latchmiah, Plaintiff **AND:**

Inc.,

Gary Durocher, Harish Patel, Robert Beard, 1387784
Ontario and Tolulope Adewumi, Defendants **BEFORE:** W.D. Black J.

COUNSEL: *Tanya C. Walker* for the Plaintiff

Kelli Preston, for the Defendant Gary Durocher

Bernard Gasee, for the Defendants Robert Beard and 1387784 Ontario Inc.

Pathik Baxi, for the Defendant Harish Patel

No one appearing, for the Defendant Tolulope Adewumi, noted in default

HEARD: November 21-25, 2022 and December 6-7, 2022

ENDORSEMENT

Overview

[1] The plaintiff, Ashna Latchmiah makes claims arising from an unusual real estate transaction or arrangement which she became involved in late 2015 or early 2016. The defendant, Gary Durocher counterclaims in respect of the same events.

[2] The defendants, Harish Patel and Robert Beard/1387784 Ontario Inc. (“138”) were also involved in the arrangement and transactions at issue, in the case of Mr. Patel as an architect of these sorts of arrangements, and in the case of Mr. Beard and his company 138, as a peripheral lender to Mr. Durocher.

[3] This case is a cautionary tale about the importance of parties engaging lawyers to assist with documenting transactions or arrangements involving any amount of complexity, including in particular, transactions or arrangements relating to real property.

Ms. Latchmiah Looking to Invest in Residential Real Estate as of 2015

[4] In 2015, Ms. Latchmiah was a school teacher (and she continues to work in that capacity). She had a steady income and some savings, and she was interested in potentially making an investment in real estate.

[5] Her then partner, Leron Baptiste was also interested in getting into the real estate market.

[6] I should note from the outset that Ms. Latchmiah undoubtedly had the means and creditworthiness that she could have entered the real estate market in the more usual and conventional way of buying a house, potentially with the assistance of a real estate agent and ultimately with a lawyer.

Introduction of Ms. Latchmiah to Mr. Patel

[7] Ms. Latchmiah and Mr. Baptiste discussing their interest in investing in real estate with their friend Rohan Tulloch, Mr. Tulloch introduced them to Mr. Patel. Ms. Latchmiah believed and testified that Mr. Patel was introduced to her as a real estate agent.

[8] Mr. Patel was not and is not a real estate agent.

[9] In fact, while Mr. Patel subsequently (in 2019) became a mortgage agent, as of 2015, 2016 and 2017 when the events at issue happened, Mr. Patel had no professional or other qualifications.

[10] It appears that in certain circles, in particular at the “low end” of the residential real estate market, he was known as someone who “knew people” and who could make introductions and arrangements to assist parties in relation to real estate problems and deals. Mr. Patel’s reputation and usual sphere of operations were not known to Ms. Latchmiah.

[11] Ms. Latchmiah, at the time of her introduction to Mr. Patel, was admittedly naïve and unsophisticated about the real estate market. It is clear that based on Mr. Tulloch’s introduction of Mr. Patel as someone with expertise and connection (whether or not he was represented to be a real estate agent), she relied on Mr. Patel to steer her to the right opportunity.

Mr. Durocher’s Circumstances as of 2014-2015

[12] The “opportunity” to which Mr. Patel guided Ms. Latchmiah related to the unfortunate circumstances, as of 2014 and 2015, of Mr. Durocher, and to a property that Mr. Durocher had purchased at 68 Cedar Grove Drive in Caesarea, Ontario on October 10, 2012 (the “Cedar Grove Property”).

[13] At the time of purchasing the Cedar Grove Property, Mr. Durocher had obtained financing from Scotia Mortgage Corporation (“BNS”), which had registered a mortgage on the title to the Cedar Grove Property (the “BNS Mortgage”).

[14] At some point in 2013-2014, Mr. Durocher lost his job, and fell into financial difficulty. He began to miss payments on the BNS Mortgage.

[15] In what appears to have been an initial stop-gap measure, Mr. Durocher obtained a loan in late January of 2014 in the amount of \$22,000.00 from Chetwynd House Holdings Limited, secured by a second mortgage registered on title to the Cedar Grove Property (the “Chetwynd Second Mortgage”).

[16] This additional funding proved to be inadequate to keep Mr. Durocher afloat, and he continued to miss mortgage payments such that at some point in 2014, BNS commenced power of sale proceedings under the BNS Mortgage.

[17] It appears that BNS obtained vacant possession of the Cedar Grove Property, and evicted Mr. Durocher. As a result, as of some time in 2014, Mr. Durocher was living in a friend's basement.

[18] There is some evidence to suggest that at the time of his eviction from the Cedar Grove Property, Mr. Durocher may have intentionally damaged the house. That evidence is not definitive, and nothing much of significance turns on it.

Introduction of Mr. Durocher to Mr. Patel

[19] While Mr. Durocher was in dire financial straits, having defaulted on the BNS Mortgage (and the Chetwynd Second Mortgage) he approached his friend Shane Charles for advice.

[20] Mr. Charles was unable, at that point, to offer direct financial assistance to Mr. Durocher.

[21] However, Mr. Charles also knew Mr. Patel, and in the circumstances, Mr. Charles introduced Mr. Durocher to Mr. Patel in the hope that Mr. Patel would be able to assist.

[22] It appears that the first meeting between Mr. Durocher and Mr. Patel took place at a McDonalds restaurant in the Toronto area in late 2014 or early 2015. Mr. Charles was also in attendance to make the introduction.

[23] Mr. Durocher came to understand that Mr. Patel had experience in locating funding for people in dire financial circumstances. There was discussion at that first meeting about Mr. Patel locating a third-party lender to assist Mr. Durocher. As a result of this initial meeting, the plan was for Mr. Patel to seek to arrange another mortgage loan for Mr. Durocher in order to allow Mr. Durocher to consolidate his debts and, hopefully, to put himself back into good standing relative to the BNS Mortgage and the Cedar Grove Property.

Mr. Patel's Introduction of Mr. Durocher to Mr. Beard

[24] In the first few months of 2015, Mr. Patel identified as a potential lender, 138 to provide additional mortgage financing for Mr. Durocher. 138's principal, Mr. Beard was known to Mr. Patel.

[25] 138, which operated as "Fast Action Finance", was a self-described short-term lender of last resort for parties who for whatever reason would not qualify for conventional first mortgage or other financing.

[26] It was suggested to Mr. Beard in his testimony, and he did not deny, that he and 138 are not concerned about how the loaned funds are spent, and that the company's motto is "you can use the funds to sell drugs to kids, just not my kids". This motto, and the nature of 138's operations

and activities in the case before me tend to confirm that 138, like Mr. Patel, carries on business at the low end of the market, and opportunistically offers services to parties who have limited or no alternatives.

[27] Mr. Beard testified that in the case of Mr. Durocher, his willingness to loan funds was premised on the perceived value of the Cedar Grove Property, and was not related to Mr. Durocher's income or creditworthiness.

[28] Specifically, Mr. Beard testified that based on comparable listings in the area, as it turns out provided by Mr. Patel's wife, who unlike Mr. Patel was a real estate agent, the Cedar Grove Property, notwithstanding that it was then in the possession of BNS and in the midst of power of sale proceedings, had sufficient equity to support an additional mortgage loan.

[29] It is not entirely clear what use Mr. Durocher proposed to make of additional funding. There was some suggestion that he might use it to pay outstanding amounts under the BNS mortgage or to pay other debts, but the amount and limitations of the 138 loan, as it transpired, would not be sufficient to make much of a dent in Mr. Durocher's plight, and in fact likely served to make his situation worse rather than better.

The 138 Loan to Mr. Durocher

[30] The loan that 138 ultimately advanced, in the amount of \$24,800.00, pursuant to a loan agreement dated April 22, 2015 (the "138 Loan"), first had deducted from it \$3,250.00, to pay 138's lender's fee.

[31] Mr. Patel also received from the 138 Loan a finder's fee or commission of \$750.00.

[32] In addition, for reasons that are not clear and were not specified in evidence, Mr. Charles and another party, Gary Gomes (details about whom were not provided), were each paid \$6000.00 from the loan proceeds. This left Mr. Durocher with something in the order of \$8,000.00.

[33] It also left Mr. Durocher with an additional debt of \$24,800.00 secured by a third mortgage to be registered against the Cedar Grove Property (the "138 Mortgage" or the "Third Mortgage") – to which Mr. Durocher was still on title at that stage, albeit not living there. The terms of that Third Mortgage included that if the full loan was not repaid by July 31, 2015, any outstanding amount would thereafter accrue interest at the rate of 25% per annum.

Initial Registration of 138 Mortgage on Title to Cedar Grove Property

[34] While presumably Mr. Beard/138's intention was to register the 138 Mortgage against the Cedar Grove Property immediately, that did not happen.

[35] Mr. Beard used, for various of his/138's business endeavors during this timeframe, the services of the defendant lawyer Tolulope Adewumi. Mr. Adewumi has been noted in default in this action and did not appear to testify or otherwise.

[36] Mr. Adewumi has also been disbarred at some point since the time of the events at issue in this case, and Mr. Beard's evidence was that, perhaps consistent with that outcome, he began to realize that Mr. Adewumi was not performing necessary services in a timely fashion.

[37] Mr. Beard maintains, and it appears evident that in this case Mr. Adewumi failed to register the Third Mortgage for the 138 Loan to Mr. Durocher against the title to the Cedar Grove Property at the time of or immediately following the loan as Mr. Beard expected.

[38] In fact, Mr. Beard learned some months later, in early 2016, that Mr. Adewumi had to that point neglected to register the charge. Mr. Beard then caused the Third Mortgage to be registered against title to the Cedar Grove Property on January 20, 2016 (approximately six months after the due date for the 138 Loan).

[39] That meant, as a result of events that took place in late 2015 and early 2016, that the 138 Mortgage remained on title, following its initial registration on January 20, 2016, for two days.

The Arrangement Structured by Mr. Patel Involving Ms. Latchmiah and Mr. Durocher

[40] The events in question related to the bringing together, primarily by Mr. Patel, of the interests of Ms. Latchmiah and Mr. Durocher, in a fashion which hurtled them both inexorably towards this lawsuit.

[41] Predictably, the 138 Loan did not get Mr. Durocher out of the woods. He remained in default of the BNS Mortgage, unable to defend the ongoing power of sale proceedings, and in fact now faced, in addition to the BNS Mortgage and the Chetwynd Second Mortgage, the 138 (Third) Mortgage. The latter was in default as of July of 2015 and accruing interest at 25%.

[42] With the effort to secure a loan having thus not alleviated Mr. Durocher's predicament, Mr. Patel next advised – perhaps through Mr. Charles, this is not clear in the evidence – that another solution would be to put the Cedar Grove Property in the name of a third party. That third party would have to be someone who could qualify for a first mortgage loan, ideally a friend or family member, and take title for a period of time until Mr. Durocher could repair his credit to the point that he himself would again qualify for such financing.

[43] When Mr. Durocher could not offer any friend or family member who fit the bill, Mr. Patel advised that an arms' length third party might be prepared to play that role in exchange for a fee. It is clear that Mr. Durocher, who at that point was desperate and destitute, was prepared to have Mr. Patel pursue that solution.

[44] It was around this same time that Mr. Patel had been introduced to Ms. Latchmiah, and he was clearly determined to offer her up as the potential saviour for Mr. Durocher, and in turn offer her the chance to earn a fee in exchange for time-limited ownership of the Cedar Grove Property.

[45] In the course of the initial meeting among Ms. Latchmiah, Mr. Baptiste, Mr. Tulloch and Mr. Patel, Mr. Patel discussed with Ms. Latchmiah the idea of obtaining mortgage financing and taking title to a property for a year in exchange for an upfront fee of \$7,000.00, while allowing the former owner to live at the property on the basis that he would pay a monthly amount sufficient to cover the monthly mortgage payment, taxes and insurance, and to pay directly for utilities.

[46] Ms. Latchmiah recalls the role of the former owner being described as that of a tenant. This characterization was a matter of ongoing contention at trial. Whatever the label, it is at least fair to describe the proposed arrangement as featuring many of the hallmarks of a landlord-tenant relationship. In particular, the essence of the relationship was monthly payments in exchange for the right to occupy the premises.

[47] When Ms. Latchmiah, (and at that stage Mr. Baptiste) expressed interest in the proposed arrangement Mr. Patel was touting, Mr. Patel next convened a second meeting, likely late in 2015, to which he brought a mortgage application for Ms. Latchmiah and Mr. Baptiste to complete.

[48] It is not contested that, in addition to sculpting the outline of the proposed arrangement, Mr. Patel also acted as the interface for Ms. Latchmiah (and at the early stage for Mr. Baptiste), with CIBC. Mr. Patel provided the mortgage application to CIBC, and CIBC ultimately provided a loan to Ms. Latchmiah, secured by a first mortgage, (the "CIBC Mortgage") to allow her to take title to the Cedar Grove Property.

[49] During this initial mortgage application phase, it became apparent that, unlike Ms. Latchmiah, Mr. Baptiste could not qualify for a mortgage loan. Accordingly, from that point onward, albeit Mr. Baptiste testified at trial and essentially corroborated the central aspects of Ms. Latchmiah's evidence, it was only Ms. Latchmiah who obtained the loan, went on title to the Cedar Grove Property, and entered into the arrangement orchestrated by Mr. Patel.

Ms. Latchmiah and Mr. Durocher's Respective Understandings of the Arrangement

[50] It is important to note here that Ms. Latchmiah and Mr. Durocher, while agreeing on many aspects of the proposed arrangement, also differed on some key provisions.

[51] It is also important to note that, until this litigation commenced, Ms. Latchmiah and Mr. Durocher never actually met in person.

[52] As such, their differing recollections of certain key components of the proposed arrangement were not based on divergent understandings of information delivered to the two of them at the same time at a joint meeting or meetings.

[53] Rather, they each heard details of the proposed arrangement separately, in the case of Ms. Latchmiah exclusively from Mr. Patel, and in the case of Mr. Durocher, from Mr. Patel but in part perhaps indirectly, through the filter of Mr. Charles.

[54] I find that this inherently indirect and separate means of communication about the deal makes it less surprising that the parties had different understandings of aspects of the deal than it would be if they had attended the same meeting(s) and received exactly the same information at the same time.

[55] In terms of what is common ground, both Ms. Latchmiah and Mr. Durocher understood that the initial arrangement was that Ms. Latchmiah, in exchange for a fee, would take title to the Cedar Grove Property for one year. During that year, Mr. Durocher would resume living at the property, and would pay to Ms. Latchmiah monthly amounts sufficient to cover mortgage payments, taxes and insurance, and would himself pay directly for utilities.

[56] Mr. Durocher would deposit the agreed monthly amount – as it turned out \$1,670.00 - to a bank account held by Ms. Latchmiah, and she in turn would pay the mortgage, property taxes and insurance.

[57] It was also essentially agreed, although precise deadlines and steps to be taken were fuzzy as discussed below, that as of the end of the year, the expectation was that Mr. Durocher would arrange for a replacement mortgage to take-out the CIBC Mortgage obtained by Ms. Latchmiah, and would then go back onto title as the registered owner of the Cedar Grove Property.

[58] I pause here to observe, as I implied at the outset of this endorsement, that at no point was this or any aspect of the arrangement reduced to writing, let alone in the form of a comprehensive written agreement.

[59] Not surprisingly, and in the absence of a written agreement, beyond the broad strokes described above, the parties' recollections and understanding of the deal begin to diverge.

Key Disagreement: What Would Happen After One Year

[60] Chief amongst the items of disagreement is the question of what would happen if, at the end of the one-year period, Mr. Durocher was unable to qualify for financing to allow him to re-take title. Mr. Durocher says that he was told by Mr. Patel and/or Mr. Charles that the arrangement could be extended for a further year on the basis of a further fee payment by Mr. Durocher to Ms. Latchmiah in the amount of \$5,000.00.

[61] Ms. Latchmiah says she was told no such thing. She understood that if Mr. Durocher had not taken the necessary steps to re-acquire ownership of the property by the end of the one-year period, the effect would be that he would lose the option to do so.

[62] I note here, as I alluded to above, that it is entirely possible that both Ms. Latchmiah and Mr. Durocher are telling the truth about what they were told on this score.

[63] Given that they received their respective information about the arrangement in separate meetings and discussions, and possibly from different sources, (Mr. Patel directly in the case of Ms. Latchmiah and indirectly through Mr. Charles in the case of Mr. Durocher), it is conceivable that they were told different things about the elements of the proposed arrangement.

[64] There was also no explicit direction given, to either party, as to the precise mechanics of what would happen at the end of the first year.

[65] That is, there was no specific understanding as to how, if Mr. Durocher was ready at the end of the year to re-acquire title, he would go about doing so. Was he to contact Mr. Patel directly, or was he somehow to contact Ms. Latchmiah directly, (bearing in mind that they had never met to that point and that his only “contact” with Ms. Latchmiah was by way of monthly deposits into her bank account)? It is evident that these logistics were not addressed.

Nonetheless, the Arrangement Proceeded

[66] Notwithstanding that these and other items were not clear, and despite the fact that nothing concerning the arrangement was reduced to writing, in or about January of 2016, the arrangement was set in motion.

[67] That is, as set out above, with Mr. Patel acting as “broker” for the deal, in late January of 2016, Ms. Latchmiah obtained mortgage financing in the amount of \$241,000.00, and acquired title to the Cedar Grove Property from within BNS’s power of sale proceedings. The total purchase price for the Cedar Grove Property at that time was \$20,000.00 higher than the amount of the CIBC mortgage. Mr. Durocher maintains that he was asked to, and did pay, that \$20,000.00 in cash. There is no documentation to support this claim, and it is not clear where Mr. Durocher would have accessed that cash at that time, but on the other hand it is hard to conceive of anyone other than Mr. Durocher having made up that difference at that point.

[68] Mr. Durocher, in turn, moved back into the Cedar Grove Property and commenced paying the agreed monthly amounts to Ms. Latchmiah.

[69] Ms. Latchmiah also received payment of the agreed \$7,000.00 fee. At that same time, from a total fee of \$10,000.00 that Mr. Durocher apparently paid, each of Mr. Patel and Mr. Tulloch received a payment of \$1,500.00. The \$1,500.00 for Mr. Tulloch was said to be for introducing Ms. Latchmiah to Mr. Patel, and the \$1,500.00 for Mr. Patel was said to be for assisting Ms. Latchmiah in taking title to the Cedar Grove Property and obtaining the CIBC mortgage.

[70] For a period of a year, the arrangement worked in the way that the parties hoped and expected. Mr. Durocher paid the required monthly amounts without fail, and Ms. Latchmiah in turn made the necessary payments to service the CIBC Mortgage and for property taxes and insurance.

[71] As the end of the year approached, the uncertainty of what would next happen began to manifest.

Involvement of 138/Beard With Respect to Ms. Latchmiah

[72] In the meantime, however, curious events involving Mr. Beard and 138 took place.

[73] That is, there is a series of documents that were entered into evidence before me on behalf of 138 and Mr. Beard, purporting to show that on December 30, 2015, Ms. Latchmiah signed these documents to confirm that she accepted responsibility for the 138 Loan and Mortgage.

[74] These documents seem problematic in a number of ways:

- (a) It seems odd that Ms. Latchmiah would sign documents on December 30, 2015, accepting responsibility for the 138 Mortgage on the Cedar Grove Property when Ms. Latchmiah was not the owner of the property until almost a month later;
- (b) It also seems odd that Mr. Beard would cause the 138 Mortgage with Mr. Durocher as the mortgagor, then to be registered on title to the Cedar Grove Property on January 20, 2016 (two days before Ms. Latchmiah took title, thereby extinguishing the 138 Mortgage as registered on title on January 20, 2016);
- (c) It is difficult to see any benefit that Ms. Latchmiah would receive in exchange for allowing the 138 Mortgage to be registered on title;
- (d) Mr. Beard's testimony was that he did not know that Ms. Latchmiah was purchasing, or had purchased the Cedar Grove Property until after she closed her acquisition of the property on January 22, 2016;
- (e) It is thus unclear how Mr. Beard would arrange for Ms. Latchmiah to sign documentation accepting responsibility for the 138 Loan before he knew that she was the owner (and again, almost a month before she was the owner);
- (f) The documents in question purported to be witnessed by Mr. Adewumi. Ms. Latchmiah's testimony was that she has never met Mr. Adewumi, and certainly never signed any documents in his presence;
- (g) Ms. Latchmiah presented evidence from a handwriting expert, Graham Ospreay, whose opinion was that it was highly unlikely that Ms. Latchmiah signed the Term Sheet, the Acknowledgement, and the Acknowledgement and Direction introduced as documents among those that Ms. Latchmiah allegedly signed in the presence of Mr. Adewumi;
- (h) By December 30, 2015, in anticipation of, and for the purposes of Ms. Latchmiah taking title to the Cedar Grove Property, she had retained a real estate lawyer. While that lawyer's role was very limited with respect to the closing, it seems nonetheless

noteworthy that the lawyer's report to Ms. Latchmiah on the closing makes no mention of the 138 Mortgage.

- [75] I find that Ms. Latchmiah did not execute the various documents at issue on December 30, 2015, or, in the case of most of the documents, at any time. The likely presence of Ms. Latchmiah's signature on other documents (acknowledged in Mr. Ospreay's opinion), is explained by other events discussed below.
- [76] The fact that the purported package of materials dated and allegedly signed by Ms. Latchmiah on December 30, 2015 were entered into evidence by Mr. Beard on behalf of 138, gives me considerable pause about his credibility.
- [77] While in many ways the 138 claim is a minor sideshow in these proceedings, and largely does not bear on the central dispute about ownership of the Cedar Grove Property, I am troubled by the apparent resort to fabrication or manipulation of documents to buttress 138's position.

The Parking Lot Meeting

- [78] There was a meeting between Ms. Latchmiah and Mr. Beard on January 20, 2017, in the parking lot of the school at which Ms. Latchmiah was a teacher (the "Parking Lot Meeting").

Mr. Patel was also in attendance in order to make the introduction inasmuch as it was the first time Ms. Latchmiah and Mr. Beard were meeting.

- [79] Mr. Patel advised Ms. Latchmiah in advance of the Parking Lot Meeting that Mr. Beard wanted to meet her to confirm that she was the owner of the Cedar Grove Property. In his testimony, Mr. Beard confirmed that this was indeed the reason, prompted in particular because by that time he had learned about Mr. Adewumi's erratic behaviour, and wanted to ensure that the transactions in which Mr. Adewumi had been involved were sound and did not have issues arising from Mr. Adewumi's misconduct.
- [80] At the Parking Lot Meeting, it is apparent that Mr. Beard asked Ms. Latchmiah to sign or initial certain documents. In her testimony, she recalled initialing a copy of the mortgage application (for the CIBC Mortgage). She did not recall signing an affidavit, albeit that Mr. Ospreay's opinion was that she probably did sign that document.
- [81] Ultimately Mr. Beard sent to Ms. Latchmiah and purported to rely upon an affidavit attaching the various documents comprising the collection allegedly executed by Ms. Latchmiah on December 30, 2015 (discussed above).
- [82] The affidavit was commissioned by Mr. Beard.
- [83] Ms. Latchmiah testified that Mr. Beard never told her that he was a commissioner of oaths, or that she was swearing an affidavit to attest to her knowledge, understanding and acceptance of the various December 30, 2015 documents.

[84] While based on Mr. Ospreay's opinion, Ms. Latchmiah's purported signature on the affidavit may well be genuine, I find that little else about the encounter orchestrated by Mr. Beard, with Mr. Patel's help, at the Parking Lot Meeting, was legitimate.

[85] That is, I believe that Mr. Beard somehow duped Ms. Latchmiah into signing a document which became the affidavit, and initialing the CIBC Mortgage application, and then assembled the collection of December 30, 2015 documents, none of which I believe to be genuine or to contain Ms. Latchmiah's genuine signature, in an attempt to backfill and legitimize Mr. Beard's ongoing attempt to cause the 138 Mortgage to become a valid charge on the Cedar Grove Property.

Second Registration of 138 Mortgage – Without Ms. Latchmiah's Knowledge or Consent

[86] To that end, on September 30, 2016, again pursuant to the documentation that Ms. Latchmiah had allegedly signed on December 30, 2015, Mr. Beard caused the 138 Mortgage to be registered as a charge against the Cedar Grove Property, without the consent or knowledge of Ms. Latchmiah.

[87] In my view, it is likely that Ms. Latchmiah's genuine signature on the mortgage application, that Mr. Patel presented to her and ultimately used to secure the CIBC Mortgage, was provided to Mr. Beard, presumably by Mr. Patel, and formed the basis of the December 30, 2015 collection of documents, most of which were not actually signed by Ms. Latchmiah, either on December 30, 2015 or at any time.

[88] Mr. Beard then used one or more of those documents, having never to that point met Ms. Latchmiah in person, to arrange the registration of the 138 Mortgage on title to the Cedar Grove Property on September 30, 2016 (as noted, without Ms. Latchmiah's knowledge or consent), and then contrived to meet with Ms. Latchmiah at her school parking lot on January 20, 2017, to illicitly obtain a genuine signature and at least one genuine set of initials from Ms. Latchmiah, to thereby assemble a self-serving affidavit containing a combination of genuine and fabricated signatures and initials with a view to covering his tracks in relation to the deceitful steps outlined above.

[89] One wonders why Mr. Beard would take these steps with a view to securing what was, in the scheme of things, a relatively modest sum. It may be that, operating as he does in the murky bottom of the market, Mr. Beard was simply not prepared to accept the loss of security for the loan to Mr. Durocher when title to the Cedar Grove Property transferred to Ms. Latchmiah. In any event, whatever his motives, I am troubled by Mr. Beard's methods, and place no weight whatsoever on any evidence from him.

At End of Year One of Arrangement Uncertainty and Problems Emerged [90]

Nor do I have any confidence in the evidence of Mr. Patel.

[91] As noted above, as the end of the first year of Ms. Latchmiah's ownership and Mr. Durocher's renewed occupancy of the Cedar Grove Property drew near, the consequences of the uncertainty and complete lack of documentation of the arrangement into which Mr. Patel had placed them began to emerge.

[92] At or near the end of 2016, Ms. Latchmiah contacted Mr. Patel, as both of their evidence confirms, to ask if Mr. Durocher would be exercising the option to reacquire title to the Cedar Grove Property (as everyone agrees the arrangement contemplated).

[93] The testimony of both Ms. Latchmiah and Mr. Patel confirms that in that discussion Mr. Patel told Ms. Latchmiah that Mr. Durocher was attempting to have his girlfriend apply for mortgage funding to allow Ms. Latchmiah's CIBC Mortgage to be paid out so that Mr. Durocher could go back on title.

[94] Mr. Durocher maintained, in his testimony, that in fact he had the ability in his own right to obtain funding as at early 2017 to pay out Ms. Latchmiah's CIBC Mortgage and re-assume title to the Cedar Grove Property.

Discussion of Mr. Durocher's Assertions About His Wherewithal at End of Year One

[95] While in most respects I found Mr. Durocher to be a truthful witness, I do not believe him on this fundamental point.

[96] In Mr. Durocher's statement of defence (at paragraph 13) he specifically states that he did not have the funds to discharge the mortgage after the first year of the arrangement.

[97] While sometimes there is latitude for parties to equivocate to some extent, relative to versions of events and positions drafted for them by their lawyers in pleadings, Mr. Durocher's attempt to resile from such a critical admission in his pleading cannot be attributed to a misunderstanding, and instead relates to an attempt by Mr. Durocher, conscious or otherwise, to rewrite the true state of matters as at early 2017.

[98] If Mr. Durocher had sufficient funds in his own right at that time, there would have been no reason to enlist his girlfriend to attempt to secure funding.

[99] Nor is there any evidence of any attempt by Mr. Durocher, in January of 2017 or in the subsequent months, to contact a potential lender or lenders, or to obtain a commitment letter relative to available financing, let alone to tender funds or even an offer to secure the re-acquisition of the Cedar Grove Property.

[100] There is in fact no evidence whatsoever in the record before me showing that Mr. Durocher had access to funds as of early 2017 to reacquire the Cedar Grove Property. Without any such evidence to support his claim that he was ready and able to proceed to buy back the property at that time, and given his pleading and the evidence to the contrary, I find that Mr. Durocher was not in fact able to exercise his option to purchase by the end of the year-long arrangement.

[101] In addition to Mr. Patel's advice to Ms. Latchmiah that the Parking Lot Meeting had been requested by Mr. Beard in order to meet Ms. Latchmiah for the first time, Ms. Latchmiah also understood that Mr. Patel would be updating her about whatever plans were then in the works to finalize financing for Mr. Durocher to take over title to the Cedar Grove Property.

[102] At the Parking Lot Meeting Mr. Patel did not provide any updates, beyond the possibility of Mr. Durocher's girlfriend obtaining financing, relative to the Cedar Grove Property.

Ms. Latchmiah's Position and Actions in the Months Following the End of Year One

[103] Ms. Latchmiah's evidence is that therefore and thereafter she waited for someone to contact her regarding the potential exercise by Mr. Durocher of the option to repurchase the Cedar Grove Property.

[104] She testified that she was prepared to be flexible and would have been open to the option being exercised within a few months after January of 2017.

[105] However, Ms. Latchmiah did not hear from anyone regarding the Cedar Grove Property.

[106] As such, she testified, she assumed that the option would not be exercised.

[107] Mr. Durocher, for his part, notwithstanding his claim that he was ready to reacquire the property, did nothing to put that process in motion.

[108] When Ms. Latchmiah had not heard anything by mid-April, she obtained a valuation of the property, showing that the Cedar Grove Property, which as noted above, had been transferred to Ms. Latchmiah about 15 months earlier for just in excess of \$260,000.00, might now be worth as much as \$499,000.00 or more.

[109] Ms. Latchmiah then engaged a lawyer, and that lawyer prepared and sent to Mr. Durocher a letter dated May 5, 2017.

[110] The letter referred to the arrangement with "Mr. Robert Beard, Mr. Harish Patel" and Mr. Durocher concerning the Cedar Grove Property. It noted that the agreement had been that after one year Mr. Durocher was to "repurchase the property from [Ms. Latchmiah]". It noted that the one-year period had ended in January of 2017, and that not only had Mr. Durocher failed to repay the initial mortgage in full, but that a second mortgage, which was also outstanding, had been "registered in Ms. Latchmiah's name without her knowledge or consent". This reference to a "second mortgage" relates to the 138 Mortgage which was in fact registered against Ms. Latchmiah's title to the Cedar Grove Property in September of 2016 without her knowledge or consent, by 138/Mr. Beard, in the fashion described above. The letter alleged that the deal had been that if Mr. Durocher was unable to obtain a mortgage and transfer the title to the property back into Mr. Durocher's name by the expiration of the one-year period, then "Ms. Latchmiah was to become the permanent owner of the property."

[111] The lawyer's letter went on to assert that Mr. Durocher was now "trespassing" and to demand that Mr. Durocher vacate the Cedar Grove Property within 30 days.

[112] Mr. Durocher purports to have been surprised by this letter.

[113] In response, it appears that he contacted the office of the lawyer who had sent him the letter on May 15, 2017 and spoke with someone in that office about the matter. Mr. Durocher's evidence was that he told the person to whom he spoke that he was in a position to take back title to the property, and was prepared to pay an additional \$5,000.00 for a one-year extension of the deal even though his intention was to take title back.

[114] Following Mr. Durocher's contact on May 15, 2017 with someone in the lawyer's office, the lawyer sent a further letter, dated June 1, 2017.

[115] This further letter:

- (a) Acknowledged that Mr. Durocher had been in touch with a member of the lawyer's staff on May 15, 2017;
- (b) Strongly recommended that Mr. Durocher retain counsel to assist him;
- (c) Presumably in response to Mr. Durocher's claim that he was in a position to take title back, asked that Mr. Durocher forward a mortgage commitment within 30 days and closing documents within 60 days;
- (d) Required that the two existing mortgages in Ms. Latchmiah's name (i.e. the BNS Mortgage and the 138 Mortgage) would have to be discharged; and
- (e) Insisted that Ms. Latchmiah would have to be compensated, in addition to her fee for participating in the arrangement, for her inconvenience, her lost opportunity, her legal fees, and for the overall impact on her credit score. The letter suggested an amount of \$50,000.00 for these items.

Continued Inaction of Mr. Durocher After Hearing from Ms. Latchmiah's Lawyer

[116] Mr. Durocher's evidence was that he found this further letter – and in particular the demand for compensation of \$50,000.00 - to be "extortionate". Whatever the explanation, it is fair to observe that, following receipt of this letter, Mr. Durocher did nothing.

[117] He did not, even at this stage, take any steps to line up mortgage financing, including a mortgage commitment as the June 1, 2017 letter insisted he do.

[118] He also did not tender an amount of \$5,000.00, or any amount, on the purported basis that payment of such additional amount would entitle him to an extension of the original one-year term.

[119] He also did not engage a lawyer as suggested.

[120] He did not move out.

[121] Rather, he continued his occupation of the Cedar Grove Property, continued to pay the agreed monthly amounts, and waited for something to happen.

[122] What happened, eventually, was this litigation.

Discussion of Mr. Durocher's Submissions About Ms. Latchmiah's Activities in 2016-2017

[123] I should note certain submissions that Mr. Durocher makes about the May 5, 2017 letter from Ms. Latchmiah's then lawyer, (not the same lawyer representing Ms. Latchmiah at trial), and about further activities by Ms. Latchmiah in the real estate market since her initial involvement in the arrangement relative to the Cedar Grove Property.

[124] Dealing with the letter first, Mr. Durocher submits that by referring in the May 5, 2017 letter to the date of December 30, 2015, Ms. Latchmiah (via her then counsel), should be taken to be acknowledging the authenticity of her signatures on the documents assembled by Mr. Beard with which she now takes issue.

[125] I do not accept that the reference to December 30, 2015 in the letter represents the sweeping admission that Mr. Durocher alleges.

[126] Among the documents in the package of documents assembled by Mr. Beard under the affidavit he purported to obtain from Ms. Latchmiah at the Parking Lot Meeting was Ms. Latchmiah's original mortgage application. Although that document is undated, it is, in the package assembled by Mr. Beard behind the affidavit, among a series of documents dated December 30, 2015.

[127] I suspect that Ms. Latchmiah's then lawyer assumed that date was roughly the date the arrangement structured by Mr. Patel was agreed. That may or may not have been the case, but I do not find that the reference to that date somehow validates the authenticity of the various documents sent to her by Mr. Beard. Moreover, the letter also in fact takes issue with the 138 Mortgage, referring to it as having been registered against title without Ms. Latchmiah's knowledge or consent, and coupled with that allegation, the reference in the May 5, 2017 letter to the December 30, 2015 date cannot, in my view, be taken as an admission of anything.

[128] Mr. Durocher also notes that, during 2016, some months after the arrangement in connection with the Cedar Grove Property, Ms. Latchmiah entered into another very similar arrangement, also offered and orchestrated by Mr. Patel, relative to a property at 66 Richfield Square, in Darlington, Ontario.

[129] Oddly, while nothing turns on this, it emerged that the erstwhile owner whose investment she was preserving by taking title for a period of time for a fee, was none other than Mr. Charles.

[130] In any event, the arrangement for this other property proved to be short-lived, and it appears that Ms. Latchmiah earned little or nothing before that property was sold and the arrangement unraveled.

[131] However, Mr. Durocher points to this other arrangement as evidence to suggest that Ms. Latchmiah was not as constrained, financially, by the Cedar Grove Property as she alleges (particularly in relation to her alternative claim of loss of opportunity).

[132] In fact, Mr. Durocher alleges, pointing to the parallel arrangement relative to the 66 Richfield property, and to the property valuation that Ms. Latchmiah obtained for the Cedar Grove Property, that Ms. Latchmiah was becoming savvy, and was no longer the naïve neophyte she claimed to be at the time the arrangement for the Cedar Grove Property was conceived.

[133] He argues that as a result of her evolving knowledge and what he characterizes as her increasing greed, she determined, relative to the Cedar Grove Property to “lay in wait” in order to exploit to her advantage the circumstances of having her name on title to a property that seems clearly to have been increasing in value.

[134] There may be some truth to some of this, including in particular that Ms. Latchmiah was becoming better informed about the real estate market, and the opportunities it potentially offered.

[135] However, in my view, Ms. Latchmiah’s changing mindset is not important to assessing the circumstances at issue, and the determination of what the legal result of those circumstances should be.

Paramount Importance of the (Few) Documents Relative to the Arrangement

[136] In that regard, I believe I must look first to those few documents that are available, which in the absence of a detailed or any written description of the arrangement must carry considerable weight.

[137] I will also then review the parties’ positions as to what the arrangement required, and evaluate their respective conduct against their respective versions of what was to happen.

[138] The most important documentation in this case, in my view, is the documentation confirming that Ms. Latchmiah took title to the Cedar Grove Property on January 22, 2016, and the mortgage securing her financing (the CIBC Mortgage) also registered on title that day.

[139] These documents unassailably confirm, and indeed there is no dispute, that Ms. Latchmiah owned the Cedar Grove Property as of that date.

[140] As noted above, the part of the arrangement that required Mr. Durocher, in order to resume occupancy of the property, to pay a fee of \$7,000.00, and then to pay a monthly amount of \$1,670.00, from which Ms. Latchmiah would pay the carrying costs for the property, was also performed without issue.

[141] It is also common ground that the arrangement was to be in place for one year, after which Mr. Durocher was to reacquire title to the Cedar Grove Property, if at that stage he was able to obtain the necessary financing to take out Ms. Latchmiah's mortgage and replace it with his own.

Finding: Ms. Latchmiah Retains Title

[142] Notwithstanding the parties' purported differing understandings of what was to happen at the one-year mark, the evidence leads, on either version, to the result that Ms. Latchmiah retains title to the Cedar Grove Property.

[143] On Ms. Latchmiah's version, which I accept was her genuine understanding based on the description of the arrangement provided to her by Mr. Patel, when after one year (and an additional couple of months of grace period), no attempt or tender was made by Mr. Durocher to reacquire title, the property was then hers to do with as she wished.

[144] Seen through that lens, it was perfectly reasonable for her to obtain in April of 2017 a valuation to understand the value of the Cedar Grove Property which had become hers. This is also considering that at this period of time there was nothing forthcoming from Mr. Durocher other than a suggestion in late 2016 or early 2017, that his girlfriend was trying to raise funds for him to resume title.

[145] It was also reasonable, as set out in the June 1, 2017 letter from her then lawyer, to negotiate with Mr. Durocher about potential terms pursuant to which Mr. Durocher could still reacquire the Cedar Grove Property, including providing evidence of a lender's commitment to finance that reacquisition, and an additional fee to reflect the new and different circumstances which obtained as of mid-2017. I expect that the \$50,000.00 payment demanded in that letter might have proved to be negotiable, but given that Mr. Durocher made no response, that expectation must be relegated to the realm of speculation.

Further Discussion of Mr. Durocher's Assertions

[146] Viewing the matter from the perspective of Mr. Durocher's understanding of the arrangement, there is simply no indication - other than the suggestion made to Mr. Patel and passed along to Ms. Latchmiah, that Mr. Durocher's girlfriend was attempting to obtain financing - that Mr. Durocher took any affirmative steps to secure financing to reassume title. [147] Indeed, there is no tangible evidence even that Mr. Durocher's girlfriend made any such efforts on his behalf.

[148] There is no commitment letter produced showing Mr. Durocher's access to financing, nor a single document showing that he made any attempt to obtain financing.

[149] The only evidence offered by Mr. Durocher to support his suggestion that he could obtain funds to reacquire the Cedar Grove Property is in the form of a letter from his friend Mr. Charles, written in November of 2019, (and a similar note from Mr. Charles dated November of 2021), in which the author says that he could have loaned funds to Mr. Durocher as of 2018.

[150] Mr. Charles did not turn up to testify at trial, and apparently could not be located by Mr. Durocher. As such, the assertion in his letter and note were not tested and cannot carry any weight. Moreover, even if true, the willingness and ability of Mr. Charles to loan money to Mr. Durocher in 2018 does not address the circumstances in the early part of 2017 when, by his own account, Mr. Durocher was obliged to come up with financing to reacquire title to the Cedar Grove Property.

[151] Mr. Durocher's fallback position, based on his purported understanding of the arrangement, was that he was entitled to extend the arrangement for a further year by paying to Ms. Latchmiah an additional fee of \$5,000.00.

[152] As discussed above, Ms. Latchmiah maintains that she was never advised of let alone agreed to this notion. In any event, even if Mr. Durocher believed this to be his right pursuant to the arrangement, there is no evidence that he ever paid, or tendered to Ms. Latchmiah, the additional fee that he says was open to him to provide (and thereby to extend the arrangement).

[153] The closest that Mr. Durocher comes on this score, is that he maintains that in his call with a staff member of Ms. Latchmiah's then lawyer on May 15, 2017, after receiving the May 5, 2017 letter from that lawyer, he advised that he was willing to pay an additional \$5,000.00 to extend the arrangement.

[154] There is no suggestion that Mr. Durocher paid or attempted to pay the \$5,000.00 or any amount prior to that date, and so no suggestion that he tendered payment of that or any amount within three months of the end of the one-year period contemplated in the arrangement.

[155] There is not even any suggestion that he actually took steps to tender such payment, even after offering to do so (for the first time) in his call with the lawyer's office on May 15, 2017.

[156] Instead, as noted, Mr. Durocher did nothing. He essentially put his head in the proverbial sand and waited to see what would happen.

[157] As such, even entertaining, for sake of argument, Mr. Durocher's purported understanding of the arrangement, there is no evidence that Mr. Durocher took steps to fulfil the obligations that according to his own version he had. As such, while I doubt to some extent Mr. Durocher's version of the arrangement, and certainly doubt that this version was an understanding shared by the parties, Mr. Durocher in any event failed to meet the obligations that he claims to have had. As such, I cannot uphold Mr. Durocher's position.

What Did Mr. Durocher Actually Lose?

[158] It is important also to step back and to survey what it is that Mr. Durocher has actually lost as a result of the arrangement.

[159] Recall that as of late 2015 and early 2016, when the arrangement was hatched, Mr. Durocher had defaulted on the first mortgage – the BNS Mortgage. In fact, the evidence confirms that Mr. Durocher's defaults began earlier, certainly by 2014. As a result, BNS had commenced

power of sale proceedings and had obtained an Order for possession. BNS had evicted Mr. Durocher, and Mr. Durocher was living in a friend's basement.

[160] In the ordinary course, if those events were left to unfold, Mr. Durocher would simply have lost title to the Cedar Grove Property, and BNS would have sold it through the ongoing power of sale process. It is not clear what equity Mr. Durocher had in the Cedar Grove Property at that time, but given that his ownership had only commenced in 2012, and given his ongoing defaults under the BNS Mortgage, it is hard to conclude that Mr. Durocher had any appreciable equity in the property at all.

[161] In addition to the BNS Mortgage, and his defaults thereunder, Mr. Durocher was also in default under the Chetwynd Second Mortgage.

[162] As of April 22 of 2015, Mr. Durocher also had an obligation to service the 138 Mortgage, and by the end of July of 2015, the 138 Mortgage was also in default and, under the terms of the loan, accruing interest at the rate of 25% per annum.

[163] In those circumstances, the arrangement pursuant to which Ms. Latchmiah acquired the title to the Cedar Grove Property and pursuant to which Mr. Durocher had an opportunity, if he could get himself back on his feet within a year, to reacquire the Cedar Grove Property, represented an opportunity that would not otherwise likely have been available to him.

[164] While he could perhaps have attempted to reacquire the Cedar Grove Property himself through BNS's power of sale proceedings, it seems likely that the timing would not have worked for Mr. Durocher. He would still have had to raise funds to purchase the property out of power of sale, and almost certainly would have had to do so much earlier than January of 2017.

[165] In effect, by virtue of the arrangement, Mr. Durocher, if he could raise the necessary financing, had a first right to purchase the Cedar Grove Property, and had the benefit of a longer period of time within which to secure funding to do so.

[166] Moreover, in addition to the potential to repurchase the Cedar Grove Property on a favourable and preferential basis, Mr. Durocher also got to move back into the Cedar Grove Property, and did so on the basis of monthly payments that appear to have been a very good deal for him relative to the rental market for such properties.

[167] While no evidence was led to confirm the going rate for house rentals in the area from 2016 forward, Mr. Durocher's monthly payments of \$1,670.00 per month not only seem reasonable, but did not increase, and in fact have not increased up to the current time. As such, Mr. Durocher has had the benefit of living in the Cedar Grove Property at what appears to be a very reasonable rent for upwards of seven years since his reoccupation of the property in early 2016.

[168] The one amount to which Mr. Durocher can point, and which may fairly be viewed as an amount that he has "lost" is the amount of approximately \$20,000.00, being the difference between the CIBC Mortgage and the purchase price for the Cedar Grove Property paid on closing when

Ms. Latchmiah took title on January 22, 2016. While there is no clear and cogent evidence – and again no documentation – to confirm that Mr. Durocher paid that amount, as noted above I cannot see who else would have paid it, or why. As such, I am prepared to treat that amount as an amount which Mr. Durocher paid, in addition to the fees that he agreed to pay and did pay as part of the arrangement.

Allegation of Trust in Cedar Grove Property

[169] The essence of Mr. Durocher’s argument is that Ms. Latchmiah at all times held the Cedar Grove Property in trust for him (a notion supported to some extent in the evidence of Mr. Patel, Mr. Tulloch and Mr. Beard).

[170] The difficulty with this argument again boils down to a lack of clarity about the details of this alleged arrangement.

[171] That is, assuming this was a trust arrangement, what was the period of time during which Ms. Latchmiah would hold the property in trust for Mr. Durocher? Was it a year? If so, what would happen if Mr. Durocher failed to retake title to the property at the end of that year as contemplated?

[172] Also, what exactly was the interest that Ms. Latchmiah was allegedly holding in trust for Mr. Durocher? As discussed, Mr. Durocher likely had no equity in the Cedar Grove Property at all. Was the trust in respect of an ability and option for Mr. Durocher to reacquire title? If so, again there are questions of timing and consequences of a failure to abide by the requirement to come up with financing.

[173] Mr. Durocher argues that Ms. Latchmiah provided no consideration in the arrangement, and that thus her assertion of title cannot stand.

[174] In that regard I have no trouble finding consideration. Ms. Latchmiah went on title and assumed the risk of a mortgage. Without her willingness to do so, there would have been no prospect for Mr. Durocher to resume ownership. While he ultimately failed to do so, it was not for lack of consideration from Ms. Latchmiah.

[175] This consideration seems to have been yet another item that was not clearly specified in the arrangement orchestrated by Mr. Patel, and yet another item not reduced to writing.

Allegations Against Mr. Patel

[176] Both Ms. Latchmiah and Mr. Durocher complain about Mr. Patel’s conduct and assert claims against him.

[177] Both Ms. Latchmiah and Mr. Durocher asserted at various points during these proceedings, that Mr. Patel had held himself out as a licensed agent. While Mr. Durocher retreated from that specific allegation at trial, he nonetheless maintained that Mr. Patel held himself out as an experienced and competent “agent” with significant and relevant experience in the acquisition and

financing of property. As such, both parties assert, and the evidence confirms, that they relied on Mr. Patel to guide them.

[178] Mr. Patel in fact guided them into an arrangement with complexity, and without recommending that the arrangement be reduced to writing, or that the parties obtain legal advice.

[179] They both allege that, having assumed the role of recommending that they enter into an arrangement of his design, he was obliged to meet at least a minimal standard of care, and that he failed to do so.

[180] Mr. Patel maintains that he “simply introduced the parties and helped them make an agreement and, in exchange, received a small fee.”

[181] He testified that he had never in the past put such arrangements in writing, and had never recommended that parties do so, and that no harm had ever arisen from a lack of writing.

[182] He went on to argue that he was “not an insurer” and that Ms. Latchmiah and Mr. Durocher “were the authors of their own misfortune”. I disagree.

Overall Findings

[183] I find as follows:

- (a) Ms. Latchmiah is entitled to retain ownership and title to the Cedar Grove Property. The only documentation put in place relative to the arrangement between Ms. Latchmiah and Mr. Durocher was the documentation confirming Ms. Latchmiah taking title and becoming a mortgagor under the CIBC Mortgage registered on title;
- (b) If there was in fact an understanding that Ms. Latchmiah held the property in trust for Mr. Durocher, that arrangement was not documented and was uncertain. I have found that Mr. Durocher failed to live up to what his own version of the arrangement required in order for him to retake title, and that he is therefore not entitled to resume ownership of the Cedar Grove Property;
- (c) Ms. Latchmiah is entitled to vacant possession of the Cedar Grove Property. Having regard to well-publicized current difficulties in the residential rental market in greater Toronto, I am prepared to give Mr. Durocher 90 days within which to vacate the Cedar Grove Property;
- (d) Mr. Patel, having assumed responsibility for bringing the parties together in an arrangement of his making, fell woefully short of meeting any reasonable conception of his duty in the circumstances;
- (e) That is, Mr. Patel did not suggest to the parties that the arrangement be reduced to writing, let alone that they seek legal advice. This meant that when the end of the first

year came, there was uncertainty on both sides as to what would happen, and differing understandings in that regard;

- (f) However Mr. Patel's specific role in structuring the arrangement is characterized, be it as an (unlicensed) agent for the parties, expert advisor, or simply as a "fixer", there is no doubt that he offered his "expertise", and was paid for his services, and that in doing so he assumed certain duties to the parties;
- (g) While Mr. Patel argues that neither Ms. Latchmiah nor Mr. Durocher led expert evidence as to the standard of care required of Mr. Patel in these circumstances, in my view the shortcomings of Mr. Patel's performance are so obvious that this is one of the rare cases in which no expert evidence is required. That is, it is self-evident in my view that without reducing their arrangement to writing, the parties were left with uncertainty and were both vulnerable and exposed to potential legal consequences. The fact that Mr. Patel was only paid a small fee does not attenuate the basic duty that he owed, and he gravely breached that duty;
- (h) In terms of damages flowing from Mr. Patel's breach of his duty and standard of care, while given my findings that Ms. Latchmiah has not ultimately suffered a loss in relation to the Cedar Grove Property, she has had to incur legal costs, which I expect have been substantial, to take this matter to and through trial. I find that Mr. Patel, as the architect of the arrangement, including the lack of clarity about what would happen at the end of year one, should be responsible for Ms. Latchmiah's costs;
- (i) As to Mr. Durocher, as discussed above, he too cannot demonstrate losses relative to the Cedar Grove Property. He had no equity at the time of the arrangement, and but for the arrangement had virtually no prospect of resuming ownership. However, as part of the arrangement orchestrated by Mr. Patel, it appears that Mr. Durocher did pay \$20,000.00 towards Ms. Latchmiah's purchase of the property, and I find that Mr. Patel is responsible for Mr. Durocher's loss of that payment and is liable to Mr. Durocher for that amount. Arguably given his circumstances Mr. Durocher should never have been steered into Mr. Patel's arrangement, but at the very least, Mr. Patel ought to have ensured that the arrangement, risks and benefits were all clearly specified;
- (j) It is not a satisfactory answer for Mr. Patel to say, as he does, that he only received a small fee, such that it is not reasonable for him to face exposure to these claims and amounts. Having taken on the role that he did, Mr. Patel necessarily assumed the duties and the risks that came with the role;
- (k) As for Mr. Beard and 138, I have found, above, that they, and Mr. Beard in particular, obtained documents in an illicit way, and/or fabricated documents with a view to saddling Ms. Latchmiah, without her knowledge, with Mr. Durocher's pre-existing obligations under the 138 Mortgage;

- (l) I believe that in fact the loan to Mr. Durocher secured by the 138 Mortgage was not calculated or likely to provide any benefit to Mr. Durocher. By the time the various fees (in some cases for unknown or unspecified services) were deducted from the loan, Mr. Durocher was left with not much money and with an additional debt which would accrue interest, in the event of default, at an unconscionable rate;
- (m) I do not find liability on the part of Mr. Beard and 138 in respect of the provision to Mr. Durocher of the 138 loan, notwithstanding it likely caused Mr. Durocher more harm than good, but I do find Mr. Beard's attempts to resurrect the registration of the 138 Mortgage against title now held by Ms. Latchmiah, and his registration of the 138 Mortgage in September of 2016 without Ms. Latchmiah's knowledge and consent, were reprehensible;
- (n) Notwithstanding Mr. Durocher's repeated evidence at trial that he – and he alone – is responsible for the 138 Mortgage, I find that the 138 Mortgage should be removed from title on the Cedar Grove Property and is of no force and effect;
- (o) I also find, given his conduct, that Mr. Beard and 138 are liable, along with Mr. Patel, to Ms. Latchmiah for her costs of this action;

[184] In light of my conclusion that Ms. Latchmiah is entitled to full title to the Cedar Grove Property, I need not consider in detail her alternate claim for loss of opportunity.

[185] The defendants argue that the evidence shows that Ms. Latchmiah has been active in the real estate market since the events giving rise to this action, and as such she has not been impeded by having funds tied up in the Cedar Grove Property.

[186] In my view, while Ms. Latchmiah has clearly made certain investments in the real estate market after her initial foray (in this case), it is also the case that a certain amount of her capital and capacity to borrow have been locked into the Cedar Grove Property, and it stands to reason that she has, as a result, lost certain opportunities to deploy and leverage that capital and borrowing capacity.

[187] However, again, given my findings I need not undertake the exercise of making calculations in that regard.

Results of Trial Motions

[188] I heard certain motions at the outset, and during the course of the trial. It will be evident at this stage, but I confirm that I have granted Ms. Latchmiah's motion at the outset of trial to amend the statement of claim, and indeed the parties proceeded on that basis at trial, addressing the issues encompassed in the amendments. I also set aside the noting in default against Mr. Patel and allowed him to participate as a party at trial. While it is clear that Mr. Patel could be liable for additional costs as a result of his conduct and lack of expedition relative to the noting in default, I am not

ordering additional costs against Mr. Patel under that head (i.e. over and above the costs that I find he is otherwise liable to pay).

Costs

[189] It does not appear that the parties have filed costs outlines. As noted, I find that Mr. Patel and 138/Mr. Beard should pay Ms. Latchmiah's costs, and I find that those costs should be split evenly between them.

[190] I encourage the parties to discuss and hopefully agree on costs. If they are not able to do so within 20 days of today's date, Ms. Latchmiah may deliver her costs outline together with written submissions not to exceed five pages in length. Within a further period of 20 days, Mr. Patel, and Mr. Beard/138 may deliver responding submissions, also not to exceed five pages in length. They may, if they wish also file costs outlines.



W.D Black J.

Date: February 24, 2023