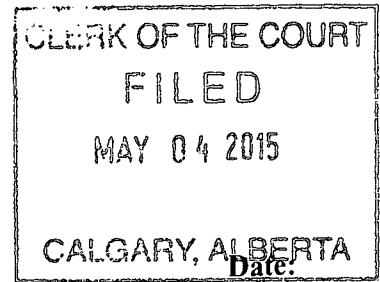


Court of Queen's Bench of Alberta



Citation: Starratt v Mamdani, 2015 ABQB 280

Docket: 1201 08069

Registry: Calgary

Between:

John Starratt, John Starratt As Representative Plaintiff, Paula Henriques, Paula Henriques As Representative Plaintiff, Colin Brown, Colin Brown As Representative Plaintiff, John Adamek, John Adamek As Representative Plaintiff, Deepak Saini, Deepak Saini As Representative Plaintiff, Warren Nelson, Warren Nelson As Representative Plaintiff, Karen Shadlock, Karen Shadlock As Representative Plaintiff, Paul Radder, Paul Radder As Representative Plaintiff, Don Dennis, Don Dennis As Representative Plaintiff, Simon Okkerse, Simon Okkerse As Representative Plaintiff, Jamie Oshipok, Jamie Oshipok As Representative Plaintiff, Barb Wilkinson, Barb Wilkinson As Representative Plaintiff, Sam Backlin, Sam Backlin As Representative Plaintiff, Dinesh Saini, Dinesh Saini As Representative Plaintiff, Siva Karatholuvu, Siva Karatholuvu As Representative Plaintiff, Peter McGraw, Peter McGraw As Representative Plaintiff, John Kindrat, John Kindrat As Representative Plaintiff, Craig Bisschop, Craig Bisschop As Representative Plaintiff, Daljit Choongh, Daljit Choongh As Representative Plaintiff, Len Grant, Len Grant As Representative Plaintiff and Charmaine Gautreau, Charmaine Gautreau As Representative Plaintiff, Colin O'Brien, and Colin O'Brien As Representative Plaintiff

Plaintiffs

- and -

Riaz Mamdani, Shariff H. Chandran, also known as S.H. Chandran, Sri Chandran and Srinivansan Chandran, Jennifer Cherry, Chitra Chandran, Opal Investment Corporation, Pewter Investment Corporation, Citi Centre Investments Inc., Multus Investment Corporation, Building 906 Investments Ltd., Venti Investment Corporation, Building 614 Investment Ltd., Lucror Investment Corporation, Deerfoot Court Investments Ltd., Barron Building Redux Ltd., Lucaya Registered Investments Ltd., Lucaya Registered Capital Ltd., Lucaya General Partnership, Lucaya Limited Partnership, Greenwich Limited Partnership, Platinum 5 Acres and a Mule Inc., 1376261 Alberta Ltd., Glenmore and Centre Retail Gp Ltd., Glenmore and Centre Ltd., Greenbriar Place Real Estate Investment Fund Limited Partnership, Greenbriar Holdings Ltd., Platinum Equities Inc., Accolade Equities Inc., Trust Haven Inc., 1623703 Alberta Ltd, Strategic Group of Companies, Strategic Equity Corp., Strategic Acquisition Corp., Strategic Financial Corp., Qualia Real Estate Investment Fund 1 Limited Partnership, Qualia Real Estate Investment Fund Ltd., Qualia Real Estate Investment Fund 11 Limited Partnership, Qualia Real Estate Investment Fund 111 Limited Partnership, Qualia Real Estate Investment Fund 1V Limited Partnership, Qualia Real Estate Investment Fund V Limited Partnership, Qualia Real Estate Investment Fund VI Limited Partnership, Oxford Capital Corp., Qualia VI Investments Ltd., Qualia Real Estate Investment Fund VII Limited Partnership, Qualia

Real Estate Investment Fund V111 Limited Partnership, Deerfoot Court Real Estate Investment Fund Limited Partnership, Deerfoot Court Registered Investments Ltd., Thorburn Capital Corporation, Glenmore and Centre Limited Partnership, Greenbriar Real Estate Investment Fund Limited Partnership, Langdon Crossing Limited Partnership, Platinum Lands Corporation, Platinum Mortgage Investment Corporation 1, Platinum Mortgage Investment Corporation 11, Platinum Investment Trust, Leben Real Estate Investment Trust, Accretive Asset Management Corp., C & N Relty Management Ltd., Fish Creek Park Limited Partnership, Barry Pritchard, Dave Humeniuk, Philip Pincus and Ryan Robertson

Defendants

**Reasons for Judgment
of the
Honourable Mr. Justice A.D. Macleod**

[1] This is a certification application brought on behalf of all persons who held investments with any of the Defendants, by way of limited partnership participation directly, or holding limited partnership interest through a corporation when using registered funds, or holding shares and/or units in other trusts and corporations between 2002 and 2012. The Representative Plaintiffs request an order certifying 21 sub classes of class members dealing with 21 investments over approximately 10 years since 2002. The Amended Statement of Claim lists many Defendants (nearly 2 pages) chief among them being Riaz Mamdani, Shariff H. Chandran, Chitra Chandran, the Strategic Group of Companies, the Platinum Group of Companies together with other corporate investment vehicles and various other employees and associates who are alleged to have been conscripted into a scheme to defraud many investors out of millions of dollars.

[2] Typically the investments were in limited partnership units subscribed for pursuant to an offering memorandum. A small number were set up as trusts. Chandran entities were usually the general partners. The real estate investments were commercial developments and, in a few cases, consisted of undeveloped land. In most cases the properties were acquired from the Strategic Defendants. The Amended Statement of Claim is 83 pages in length and sets out a litany of allegations against the Defendants which include conspiracy, misrepresentation, breach of fiduciary duty, breach of trust, fraud, failure to comply with the *Securities Act* (Alberta), RSA 2000 cS-4, violation of the *Partnership Act*, RSA 2000, c P-3, preferential treatment, and oppression.

[3] A Representative Plaintiff is put forward for each of the investments. There are 26 affidavits filed, 21 by the Representative Plaintiffs. Examinations took place on 3 of the affidavits. No evidence was filed on behalf of the Defendants.

[4] Paragraph 6 of the application document sets out as follows:

6. The Plaintiffs request an Order stating the nature of the claims as follows:
 - (a) The Defendants, Shariff H. Chandran, Riaz Mamdani, Jennifer Cherry, Chitra Chandran, Philip Pincus, Dave Humeniuk, Barry Pritchard and Ryan Robertson, conceived of, structured and administered the Platinum Investments, as described above;
 - (b) The Defendants promoted the Platinum Investments by advertising through television, radio and print media;
 - (c) The Defendants promoted the Platinum Investments as available for registered or non-registered funds. Investors generally subscribed for a number of \$50,000.00 units in particular investments;
 - (d) The individual investments making up the Platinum Investments were marketed as opportunities for individuals to invest in commercial real estate, with high returns;
 - (e) Initial investment documents for the Platinum Investments were clear on how the particular investment was to be managed, the amount for which a particular investment property would be purchased, the amount of mortgage(s) that would be registered against that particular investment property and that each particular investment would have its own distinct bank account and money, kept separate and apart from other investments;
 - (f) The Defendants did not abide by the representations contained in the investment documents for the Platinum Investments. First and foremost, there were not distinct bank accounts for individual investments, and the money and assets of individual investments were comingled among the individual investments making up the Platinum Investments and Chandran and Mamdani took fees that were not disclosed to investors;
 - (g) Further, buildings in individual investments were first purchased by the Defendants, then transferred at inflated prices into an individual investment. These increases in price, known as “lifts”, were not disclosed to investors, nor were the non arms-length nature of the sales;
 - (h) Further, buildings in the individual investments were burdened with mortgages in higher amounts than was disclosed in the investment documents without further agreement by investors;
 - (i) Further, the manner in which investor funds were collected and distributed was not consistent with the investment documents and the Defendants have provided no explanation or accounting for such funds. Financial documents provided by the Defendants to the Plaintiffs were inconsistent with the actual financial situation and

were therefore misrepresentations. Values of properties in the individual investments have been vastly over-stated;

- (j) Some buildings in the individual investments have been sold, with approval of investors by way of written special resolution, however the proceeds of sale have not been paid out in accordance with the particular special resolutions or at all. Some investors have received payments equivalent to their proper pro rata proceeds from sale, however in each case such payments did not come from proceeds of sale, but rather came from other sources. As such, sale proceeds have not been properly distributed;
- (k) Investor questions have gone unanswered;
- (l) The Defendants, Shariff Chandran, Riaz Mamdani, Ryan Robertson, Phillip Pincus, Barry Pritchard, Chitra Chandran and Jennifer Cherry, all conspired to keep the true nature of the investments, and all actual information about the investments, from the Plaintiffs;
- (m) Those same Defendants, specifically including Shariff Chandran and Riaz Mamdani, conspired to defraud investors of their investment funds as follows: The conspiracy followed a consistent pattern of Mamdani directly or indirectly acquiring a building at fair market value (sometimes with Shariff Chandran as the purchaser), often secured with a mortgage at commercial value, based upon a proper and commercially reasonable appraised value. In order to manipulate the value of the building, leases were then negotiated or renegotiated in order to create an alleged cash flow projection for the building to modify the capitalization rate and thus artificially inflate the market value of the building. Shariff Chandran and Mamdani would then propose to sell the building into an individual investment, packaged by them and/or at their instruction, but at a highly inflated price as compared to its acquisition price and/or at a price in excess of commercially reasonable or market value. In doing so, they caused deliberate and intentional misrepresentations to be made about the value and nature of the investment project. An independent commercial valuation would not support the inflated values attributed to land projects put forward for limited partnerships or individual investment, Mamdani caused the sale of properties to limited partnerships to be secured by mortgages taken, either as separate mortgages purported to be from arms-length financial corporations, or as vendor take back mortgages, or mortgages taken through corporations controlled by Mamdani, or as wrap mortgages over commercially reasonable mortgages, on vending the property to the particular limited partnership. In all instances, Chandran agreed to the value and terms of such mortgages, which included exorbitant fees and guarantees none of which were disclosed,

authorized or approved by investors. Then misrepresentations were made, predominantly by Shariff Chandran, in documents prepared for presentation to potential investors, including that the projects are arms-length, fair market value and reasonable transactions, while the true nature of the distorted values of prices and mortgages, and relationship between Mamdani and Chandran, were not disclosed. All investors were misled about the true nature and reasonableness of the investment project, as they relied on the misrepresentations in being enticed to invest.

- (n) Further, the Defendants issued T5 and T5013 slips to Plaintiffs in cases where the Plaintiff investor had not received the funds referenced in such slips;
- (o) Further, the Defendants registered mortgages against certain properties, where the proceeds of such proceeds did not go to that investment, or the investors in that investment, but rather were comingled to other Defendants; and
- (p) The Defendants violated the relevant securities legislation in its distribution of securities.

[5] In short then, it is alleged by the Representative Plaintiffs that Shariff H. Chandran, Chitra Chandran and Riaz Mamdani orchestrated a long standing scheme to defraud investors with a great deal of success. Along the way they enlisted the help of associates, employees and many corporate vehicles who all allegedly played a part in the fraud.

[6] The application for certification has been vigorously opposed. Briefs were filed on behalf of Mr. Mamdani and a number of corporations including the Strategic Group of Companies, a number of the individuals and the Lebin Real Estate Investment Trust.

[7] Class actions have become well established and in most provinces mandated by statute in order to provide procedurally for an efficient mechanism to deal with a large number of claims which involve common issues. Among the advantages which have been cited include judicial economy, access to justice, behavioral modification, avoiding inconsistent results, case management, minimizing adversity and increasing the likelihood of reaching a fair and equitable result.

[8] As has been said by our Supreme Court of Canada in *Hollick v Toronto (City)*, [2001] 3 SCR 158 at para. 16:

The certification stage is decidedly not meant to be a test of the merits of the action...rather the certification stage focuses on the form of the action. The question that the certification stage is not whether the claim is likely to succeed, but whether the suit is appropriately prosecuted as a class action...

[9] I note here that much of the argument on behalf of the Strategic Group was related to the merits. Furthermore, the Strategic Group argues that the Alberta Securities Commission in its investigation made no findings against the Strategic Group. But of course the Alberta Securities Commission was not investigating the Strategic Group.

Requirements of Section 5(1)

[10] Section 5(1) sets out the matters of which the court must be satisfied to grant the certification order. I am satisfied that each of the requirements are met.

[11] The Defendants/Respondents complain at length about the Plaintiff's Statement of Claim. They complain that they are convoluted and it is difficult to ascertain the case they have to meet.

[12] I agree that the Statement of Claim is long and not always concise. It does not always provide specific dates and, with respect to some of the transactions, not a great deal of detail. This is overcome somewhat by the affidavits filed which do exhibit the various subscription agreements, offering memoranda etc. Moreover, much if not all of the Defendants' complaints here can be satisfied by answers to demands for particulars or answers to questioning. The Statement of Claim does reveal in detail the allegations relating to most transactions. I also agree that with respect to the more minor individual players in the alleged conspiracy it is difficult to know which allegations are applicable to each individual defendant. However, I do not view that as fatal to the application but as something which can be managed.

[13] The Plaintiffs allege that the allegation of misrepresentation is not suitable to a class action because of the difficulty in establishing reliance by the entire class. That may be true in other cases but here misrepresentation is just one of the many allegations which are alleged in support of an overall scheme of fraud in the sense that the investors' interests were disregarded and the proceeds utilized in a manner which suited the principal defendants who enlisted the help of the other defendants.

[14] It is also alleged that the claim of conspiracy as pleaded cannot be certified. I agree that the general allegation of conspiracy in para 122 is rather vague but in reading the entire Statement of Claim the allegation is clear that the Chandrans and the Mamdani Defendants controlled their corporations and employees to pursue a common design to defraud the investors of their investment for the purpose of the plaintiffs. Any imperfections in the pleadings can be remedied.

[15] I do not see that there can be a serious question that the pleadings disclose a cause of action and it is not arguable that it is plain and obvious that that action will not succeed if the allegations are established.

[16] With respect to each investment there is an identifiable class of two or more persons.

[17] The basic allegations of conspiracy and fraud are common. It is true that they have different impacts on different plaintiffs depending on the structure of their particular investment. Furthermore, it is alleged that some plaintiffs were treated preferentially and to the extent that that is so, those treated preferentially will not stand in the same place as those who were not. The case law is clear that it is not essential that the class members be identically situated vis-à-vis the opposing party. There may well be non common issues. I am satisfied however, that the class action plaintiffs share substantial common issues which justifies the class action.

[18] The Plaintiffs allege that there was substantial comingling of funds notwithstanding that under the investment documents each investment was to be held discretely. Had that been done, the Plaintiffs acknowledge that it may well be that this could be better handled by 21 different class proceedings. Indeed, a related action, *Harnam v Chandran*, 2013 ABQB 600, has been

separated out from this omnibus action and certified separately. The Plaintiffs there do not allege comingling of funds.

[19] However, here it is alleged that there has been a substantial amount of comingling and, accordingly, the Plaintiffs have proposed that this action proceed with 21 different representative Plaintiffs for each sub class with no overall representative Plaintiff for the entire action.

[20] If there is substantial comingling, as alleged, it is better that the 21 sub classes resolve their differences in the context of an omnibus class action than it would be in the context of 21 different class actions.

[21] While this may give rise to complex case management issues as the litigation proceeds, I agree with the proposal of the Plaintiffs. Moreover, as the Plaintiffs pointed out, the Defendants do not offer any meaningful alternative.

[22] I am satisfied that the plaintiffs have adequately addressed the matters in s. 5(1)(e). Accordingly, the application certification is granted in accordance with the relief sought in paragraph 90 of the Plaintiff's brief. The Plaintiffs are entitled to costs.

Heard on the 2nd day of December, 2014

Dated at the City of Calgary, Alberta this 4th day of May, 2015.



A.D. Macleod
J.C.Q.B.A.

Appearances:

Kevin P. McGuigan/Byron W. Nelson
McGuigan Nelson LLP
for the Plaintiffs

J. Eamon, Q.C./John Cusano
Gowling Lafleur Henderson LLP
for the LLP Defendants

Sean Smyth/Laurie Baptiste
McCarthy Tetrault LLP
for the Strategic Defendants

Sylvia Carruthers
Clive O. Llewellyn Professional Corporation
for the Platinum Defendants

Ivan B.J. Derer, Q.C.
Derer Law
for the Defendant Robertson