

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

**LONDON VALLEY IV INC.,
by its Court-Appointed Receiver and Manager, KSV RESTRUCTURING INC.**

Plaintiff

- and -

**BEHZAD PILEHVER also known as BEN PILEHVER also known as BEHZAD
PILEHVAR also known as BEN PILEHVAR also known as BEN PILEVHR, MAHTAB
NALI also known as MAHTAB NALI PILEHVAR also known as MAHTAB
PILEHVAR and 2621598 ONTARIO INC. doing business as NALI AND ASSOCIATES**

Defendants

PLAINTIFF'S BOOK OF AUTHORITIES

November 5, 2025

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Defendants

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TAB 1

KeyCite treatment

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Wescom v. Minetto](#) | 2017 ONSC 249, 2017 CarswellOnt 14895, 40 C.C.L.T. (4th) 244, 283 A.C.W.S. (3d) 882 | (Ont. S.C.J., Sep 14, 2017)



Original

2001 CarswellOnt 617

Ontario Superior Court of Justice

Treaty Group Inc. v. Simpson

2001 CarswellOnt 617, [2001] O.J. No. 725, 103 A.C.W.S. (3d) 1072

**The Treaty Group Inc., c.o.b. as Leather Treaty, Plaintiff and
Beverly Simpson and Robert Dennis Simpson, Defendants**

Pardu J.

Heard: February 19-23, 2001

Judgment: February 27, 2001

Docket: 98-CU-157670CM

Counsel: *Charles E. Beall, Stephen H. Satchel*, for Plaintiff

Beverly Simpson for herself

Robert Simpson for himself

Subject: Torts; Estates and Trusts; Property; Civil Practice and Procedure

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Remedies

I Damages

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Torts --- Conversion --- Elements of right of action --- Wrongful act --- Fraud

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Damages --- Exemplary, punitive and aggravated damages --- Grounds for awarding exemplary, punitive and aggravated damages --- Fraud

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Practice --- Judgments and orders --- Interest on judgments --- Prejudgment interest --- Entitlement to

Practice --- Costs --- Particular items of costs --- Witness fees and expenses --- Expert witness --- General

ACTION for damages for fraud and unjust enrichment.

Pardu, J.:

1 Beverly Simpson was a trusted employee of Treaty Group Inc, but stole vast amounts of money from her employer. The employer claims reimbursement and also alleges that Beverly Simpson's husband, Robert Simpson, participated in the fraud, or alternatively, was enriched by the funds wrongfully taken by his wife, and claims judgment against him for the entire amount taken.

2 Donald Holmes, a forensic accountant, gave evidence on behalf of the Plaintiff, analyzing and detailing the sums alleged to have been taken. His evidence was precise, credible and reliable.

3 Beverly Simpson prepared cheques payable to "VISA" and arranged for signature of the cheques. Rather than applying the cheque to a company credit card debt, she applied the payment to the credit of her own VISA account, carrying large credit balances as a result. All but the last three of these transactions were traced directly to Beverly Simpson's credit card account. Each of the cheques she drew were missing from the Plaintiff's canceled cheques and I conclude that on the balance of probabilities the last three VISA cheques were also applied for her benefit and accept that \$172,026.40, as described in Schedule 1A to the report of Holmes was taken by this method.

4 In addition, Beverly Simpson wrote cheques to herself which were falsely recorded in the books as payments to suppliers to the Plaintiff. These were frequently deposited to her personal bank account and I find she stole a further \$23,867.33 as noted in Schedule 1B to the report of Donald Holmes. While all of these payments could not be traced to Beverly Simpson's bank account, the pattern of falsification of the general ledger, and the absence of the cheques makes deliberate falsification probable rather than error.

5 Beverly Simpson did not give evidence. There is no evidence that cheques made payable to her were applied to any corporate purpose of the Plaintiff except for the specific exceptions I have noted in these reasons. According to the falsified corporate records, equipment and software were purchased with company money, but were missing from the company inventory. It is no coincidence that the same kinds of items were found in the home shared by the defendants.

6 Beverly Simpson also wrote duplicate or excessive pay cheques and arranged for signing officers of the Plaintiff to sign them. These were deposited to her own bank account and I find on the balance of probabilities that the total amount taken by this method was \$16,348.92 and that these represented funds to which she was not entitled. She was paid a regular, biweekly salary and this amount represents amounts taken over and above her entitlement and as indicated in Schedule 2 to the report of Holmes, totals \$16,348.92.

7 Finally, Beverly Simpson wrote herself many cheques purporting to replenish the petty cash float of \$500.00. The Plaintiff has two complaints about these payments, firstly that there were payments for which the documentation in support did not support a valid expenditure of petty cash funds — and secondly, that there was no documentation at all supporting other petty cash expenditures. The court is asked to infer that since the cheque was payable to Beverly Simpson, in the absence of any justification for the expenditure, the court should conclude that she appropriated the funds for her own benefit.

8 Dealing with the first category of petty cash payments, described in Schedule 3 to Holmes' report, I accept that vouchers dated before Beverly Simpson's employment may have been supplied to her in January 1997 for reimbursement by a principal of the company, long after the expenses were incurred and deduct the amounts of \$41.32, \$25.24, and \$27.84 from the Plaintiff's claim.

9 There is an evident pattern of falsification of records and an attempt to support other expenditures from petty cash that were already paid by the company's credit cards or cheques. This occurs in the context of a continuous repeated and deliberate course of falsification of documents to cover up her own thefts. Similarly, where the expenditure purports to be supported by a credit card slip with a blacked out account number, I find these were amounts wrongfully taken. Beverly Simpson did run errands from time to time for the company and it is reasonably possible that these mileage claims were incurred on behalf of the Plaintiff and I delete those amounts of \$232.62 from the Plaintiff's claim leaving a balance of \$3,490.48 owing of the amounts described in Schedule 3 to the report of Donald Holmes.

10 Finally, Schedule 4 lists cheques made up by Beverly Simpson, payable to herself or petty cash. Were these funds, totalling \$47,264.05 taken by Beverly Simpson for her own benefit or were they spent for company purposes?

11 The Plaintiff concedes that the claim should be reduced by \$500.00, representing the initial petty cash float plus \$425.37 for a cheque dated March 27/97. Many of these cheques were deposited to Beverly Simpson's personal bank account. Given her repeated falsification of company records, the general ledger is no indication of how the funds were spent.

12 There is no evidence of any pattern of company principles taking money from petty cash without providing vouchers to support the expenses, although there is a pattern of thefts by Beverly Simpson. It is possible that a further \$120.00 of the amounts claimed in Schedule 4 were incurred for legitimate company expenses.

13 Excluding the amounts I have noted totalling \$1,045.37 I find, on the balance of probabilities, that Beverly Simpson also stole a further \$46,218.68 from the Plaintiff.

14 There will accordingly be a judgment in favour of the Plaintiff in the sum of \$261,951.81 against Beverly Simpson.

15 The evidence does not establish that Robert Simpson did any act which had the effect of assisting Beverly Simpson's larceny. He was not a party to the fraud. The Plaintiff argues that his failure to report his wife to her employer or to the police assisted his wife in continuing to steal. Treating failure to report as assistance would, in most cases, make "knowing assistance" indistinguishable from "knowing receipt". LaForest, J. dealt with the different treatment of these levels of participation in *Citadel General Assurance Co. v. Lloyds Bank Canada* , [1997] 3 S.C.R. 805 (S.C.C.) at p.836,

Given the fundamental distinction between the nature of liability in assistance and receipt cases, it makes sense to require a different threshold of knowledge for each category of liability. In "knowing assistance" cases, which are concerned with the furtherance of fraud, there is a higher threshold of knowledge required of the stranger to the trust. Constructive knowledge is excluded as the basis for liability in "knowing assistance" cases; see *Air Canada v. M. & L. Travel Ltd.*, *supra*, at pp. 811-13. However, in "knowing receipt" cases, which are concerned with the receipt of trust property for one's own benefit, there should be a lower threshold of knowledge required of the stranger to the trust. More is expected of the recipient, who, unlike the accessory, is necessarily enriched at the Plaintiff's expense. Because the recipient is held to this higher standard, constructive knowledge (that is, knowledge of facts sufficient to put a reasonable person on notice or inquiry) will suffice as the basis for restitutionary liability. Iacobucci, J. reaches the same conclusion in *Gold*, *supra*, where he finds,

All right para. 46, that a stranger in receipt of trust property need not have actual knowledge of the equity [in favour of the Plaintiff]; notice will suffice.

16 I do find, however, that Robert Simpson either knew or was wilfully blind to the continuing misappropriation of funds by his wife.

17 Robert Simpson knew that his wife had been convicted of fraud twice, in 1992 for which she was sentenced to six months jail and two years probation, and in 1995 with a sentence of 16 months jail and three years probation together with a compensation order in the sum of \$43,793.65.

18 Each of these previous convictions had resulted from her stealing substantial amounts from her employer. Robert Simpson knew his wife had obtained employment as a bookkeeper with Leather Treaty, and at the very least he must have been willfully blind to the sudden influx of over \$260,000 into the household. When his wife began working for Leather Treaty his own annual salary was \$35,000 and he knew his wife's salary was less than his own.

19 Beverly Simpson's credit card statements revealed that she took over \$93,000 in cash advances on her credit card, spent over \$49,000 on items of a personal nature and over \$7,000 on computer or business related items.

20 Funds stolen by her were used to purchase clothing, computer equipment and accessories for her husband, (over \$7,000) to renovate and furnish the home (over \$17,000) in which they resided, and in which Robert Simpson had a one half interest.

21 On two occasions, these funds were the source of the mortgage payment on the matrimonial home. There is no evidence any of the funds remain, and there are few non-depreciable assets into which the funds can be traced. Most of the funds were likely dissipated in supporting the joint lifestyle of the Defendants, which was more luxurious than could be carried by their own resources. There is no evidence that Beverly Simpson dissipated the funds alone, on an alcohol, drug or gambling problem, although she undoubtedly argued some personal property, such as clothing or jewellery.

22 Robert Simpson turned a blind eye to the probability that his wife was again stealing from her employer. It would have been evident to him that the expenditures made by his wife of which he was aware, were beyond their means, and given his wife's criminal record and her recent employment as a bookkeeper, the source of the additional funds was apparent. Many unexplained cash deposits were made to Robert Simpson's bank account. These were not his pay cheque, nor transfers from another account. These stolen funds were frequently deposited to Robert Simpson's account. These deposits could not have escaped his notice.

23 Robert Simpson was enriched at the expense of the Plaintiff, and, "having knowledge of facts which would put a reasonable person on inquiry," (*Citadel General Assurance Co. v. Lloyds Bank Canada* , [1997] 3 S.C.R. 805 (S.C.C.), at 837) failed to inquire as to the possible misapplication of trust property. Funds stolen are held in trust by the thief for the true owner, (*Kolari, Re* , (1981), 36 O.R. (2d) 473 (Ont. Dist. Ct.), Stortini, J.)

24 The extent of Robert Simpson's enrichment cannot be determined with precision, as the defendants have frittered away the funds and know but have not disclosed how funds were dissipated. At his pre-trial examination under oath Robert Simpson refused to answer many questions which could have shed light on these issues. He has failed to produce some of his financial records for the relevant time period. The Defendants obviously both have knowledge of the lifestyle they enjoyed together while Beverly Simpson was employed by the Plaintiff.

25 As noted by Laforest, J. in  *Citadel General Assurance Co. v. Lloyds Bank Canada* at page 842,

In my view, a distinction should be made between the imposition of liability in "knowing receipt" cases and the availability of tracing orders at common law and in equity. Liability at common law is strict, flowing from the fact of receipt. Liability in "knowing receipt" cases is not strict; it depends not only on the fact of enrichment (i.e. receipt of trust property) but also on the unjust nature of that enrichment (i.e. the stranger's knowledge of the breach of trust). A tracing order at common law, unlike a restitutionary remedy, is only available in respect of funds which have not lost their identity by becoming

part of a mixed fund. Further, the imposition of liability as a constructive trustee is wider than a tracing order in equity. The former is not limited to the defence of purchaser without notice and "does not depend upon the recipient still having the property or its traceable proceeds", see *In re Montagu's Settlement Trusts*, *supra*, at p.276.

26 It does not appear that the net worth of either of the Defendants was substantially different at the beginning or at the end of the 25 months Beverly Simpson worked for the Plaintiff.

27 Given the spousal relationship and the cohabitation of the parties, the dissipation of the funds and the flow of funds for the benefit of Robert Simpson, it is reasonable to conclude that he benefited by improvements to his real property, acquisition of personal property and an improved lifestyle to the extent of one half the money stolen or \$130,975.90 and the Plaintiff will recover judgment against him in that amount.

28 The Plaintiff also claims aggravated damages from both Defendants. As noted by McIntyre, J. in *Vorvis v. Insurance Corp. of British Columbia* , [1989] 1 S.C.R. 1085 (S.C.C.), at 1099.

Aggravated damages are awarded to compensate for aggravated damage. As explained by Waddams, they take account of intangible injuries and by definition will generally augment damages assessed under the general rules relating to the assessment of damages. Aggravated damages are compensatory in nature and may only be awarded for that purpose. Punitive damages, on the other hand, are punitive in nature and may only be employed in circumstances where the conduct giving the cause for complaint is of such nature that it merits punishment.

29 The three shareholders of the Plaintiff were stunned by their discovery of Beverly Simpson's fraud. They have had to spend hundreds of hours reconstructing missing financial records and poring over thousands of transactions to determine the extent of the loss. Many hours have been lost to meetings with their professional advisers. This time has diminished the time and energy they would otherwise have had to devote to increasing sales, designing products and supervising production on behalf of the Plaintiff.

30 For the first time in the history of the company sales dropped, and dropped dramatically because the proprietors could not devote the same energies and time to their usual duties. There is no evidence of the loss of profit attributable to the drop in gross sales.

31 It is the Plaintiff corporation which makes the claim for aggravated damages and not the individual shareholders and, in the absence of evidence of lost profit, I assess these compensatory damages at \$20,000.00 for which the Defendants shall be jointly and severally liable.

32 The Plaintiff also seeks punitive damages against the Defendant, Robert Simpson. Beverly Simpson will soon be sentenced for her crime and the Plaintiffs concede that no further punishment should be imposed upon her by this court.

33 According to McIntyre, J. in  *Vorvis v. Insurance Corp. of British Columbia* at p. 1107,

Moreover, punitive damages may only be awarded in respect of conduct which is of such nature as to be deserving of punishment because of its harsh, vindictive, reprehensible and malicious nature. I do not suggest that I have exhausted the adjectives which could describe the conduct capable of characterizing a punitive award, but in any case where such an award is made the conduct must be extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment.

34 Robert Simpson was not a party to the fraud committed by his wife. Given the nature of a spousal relationship, his failure to report his wife's misconduct should not attract punitive damages. His willful blindness, or failure to make inquiries when the circumstances cried out for investigation does not have the harsh, vindictive or malicious quality which would make punitive damages appropriate, particularly under circumstances where Robert Simpson will have to disgorge all benefits received and pay compensatory aggravated damages. The claim for punitive damages is dismissed.

35 Although these are not bankruptcy proceedings, I am asked to characterize the damages awarded for the purposes of section 178(1)(d) which provides that "An order of discharge does not release the bankrupt from

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity".

36 The damage award against Beverly Simpson arises directly out of fraud, embezzlement and misappropriation committed by her. The damage award against Robert Simpson arises out of the same acts of his wife and the fact that he was willfully blind to the likelihood of fraud by her.

37 Counsel claim prejudgment interest at the rate prescribed by the *Courts of Justice Act*, but ask that it be compounded daily from the date Beverly Simpson left her employment on September 26, 1998.

38 An award of prejudgment interest is to compensate for loss of use of money and should not be used as a penalty for misconduct.¹ Daily compounding of interest could result in substantial over compensation depending on the time required to satisfy the judgment. The portion of the judgment dealing with amounts stolen, but not the aggravated damages will bear prejudgment interest at the rate of 7.5% per annum for 880 days to February 22, 2001 being \$47,366.13 against the Defendant, Beverly Simpson and one half that amount, or \$23,683.063 against the Defendant, Robert Simpson.

39 The compensatory, aggravated damages shall bear prejudgment interest at the same rate. They are not covered by [section 128\(2\) of the Courts of Justice Act](#) which provides a different interest rate for "damages for non-pecuniary loss in an action for personal injury." [Section 128\(4\)](#) provides that prejudgment interest shall not be awarded "(a) on exemplary or punitive damages".

40 Many judgments have referred to the confusion in terminology as between aggravated, exemplary and punitive damages. Ordinarily, one would not expect a rule to contain two synonymous words where one would convey the same meaning, and one might assign a broader meaning to "exemplary" than punitive. On the other hand, as a matter of principal, damages which are compensatory should bear prejudgment interest and "exemplary" should not be interpreted so as to include "aggravated" damages on this basis. There is a judicial history of using "punitive", "exemplary", and "punitive or exemplary" as synonymous terms (*Denison v. Fawcett* , [1958] O.R. 312 (Ont. C.A.) at p. 321) and I conclude that the preferable course is to treat them as synonymous and allow prejudgment interest on the aggravated damages in the sum of \$20,000 from September 26, 1999 to February 22, 2001 at the rate of 7.5% per annum, in accordance with the *Courts of Justice Act*, namely \$2,116.49. I have delayed the commencement date for one year as the losses for which this compensation has been allowed did not arise until after Beverly Simpson left her employment.

41 Payment by Robert Simpson towards the amounts owing should be credited against the liability of Beverly Simpson. That can be accomplished by granting judgment against Beverly Simpson in the total sum of \$331,434.43 including damages, aggravated damages and prejudgment interest of which she shall be jointly and severally liable with Robert Simpson to the extent of \$176,775.45 thereby awarding judgment against Robert Simpson for the same items in the sum of \$176,775.45.

42 The Plaintiff had to retain a forensic accountant to analyze Beverly Simpson's actions, reconstruct the records and calculate the losses. The trial would have been much longer without his evidence. Beverly Simpson did not concede that she owed any money until she admitted to liability for \$250,000 or \$260,000 in her closing submissions, although she had pleaded guilty to defrauding the Plaintiff of \$195,000 thirty-five days before this trial.

43 An order will issue as asked for full reimbursement for all reasonable costs incurred by the Plaintiff for the investigation and expert report of Donald Holmes, served upon the Defendants as required by the *Evidence Act* and also for full reimbursement of all reasonable costs actually incurred by the Plaintiff for the attendance of Holmes at trial.

44 Written submissions as to costs may be directed to Justice G. I. Pardu, c/o Trial Co-ordinator, 426 Queen Street East, Sault Ste. Marie, Ontario P6A 1Z7 within 30 days.

Action allowed.

Footnotes

- ¹ *Oakville Storage & Forwarders Ltd. v. Canadian National Railway*  (1991), 5 O.R. (3d) 1 (Ont. C.A.) *Graham v. Rourke* 
(1990), 75 O.R. (2d) 622 (Ont. C.A.)
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