

Date: 20220413  
Docket: CI 20-01-25295  
(Winnipeg Centre)

Indexed as: Winnipeg (City) v. Caspian Projects Inc. et al.  
Cited as: 2022 MBQB 81

## **COURT OF QUEEN'S BENCH OF MANITOBA**

**B E T W E E N:**

THE CITY OF WINNIPEG,

plaintiff,

- and -

CASPIAN PROJECTS INC., CASPIAN  
CONSTRUCTION INC., ARMIK BABAKHANIANS,  
SHAUN ANDRE BABAKHANIANS, JENIK  
BABAKHANIANS, TRIPLE D CONSULTING  
SERVICES INC., PAMELA ANDERSON,  
4816774 MANITOBA LTD. operating as  
MOUNTAIN CONSTRUCTION, PAUL R.  
LAMONTAGNE, FABCA PROJECTS LTD.,  
FABCA-PMG PROJECTS LTD., FABCA WARDLAW  
LTD., FABCA KING EDWARD LTD., GREGORY  
CHRISTO FIORENTINO, PETER GIANNUZZI,  
MARIA ROSA FIORENTINO, DUNMORE  
CORPORATION, OSSAMA ABOUZEID,  
ADJELEIAN ALLEN RUBELI LIMITED (also  
known as A.A.R.), PETER CHANG, GRC  
ARCHITECTS INC., PATRICK DUBUC,  
8165521 CANADA LTD. operating as PHGD  
CONSULTING, 2316287 ONTARIO LTD.  
operating as PJC CONSULTING, FSS  
FINANCIAL SUPPORT SERVICES INC., PHIL  
SHEEGL, 2686814 MANITOBA LTD., JAGS  
DEVELOPMENT LTD., BROOKE HOLDINGS LTD.,  
LOGISTIC HOLDINGS INC., JAW ENTERPRISES  
INC., ABC LTD., DEF LTD., GHI LTD., JKL LTD.,

) Counsel:

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) MICHAEL G. FINLAYSON

) GABRIELLE C. LISI

) for the plaintiff

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) ROBERT L. TAPPER, Q.C.

) for the defendants Phil Sheegl,

) FSS Financial Support Services Inc.

) and 2686814 Manitoba Ltd.

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JOHN DOE I, JOHN DOE II, JOHN DOE III, )  
JOHN DOE IV, JOHN DOE V, JOHN DOE VI, )  
JOHN DOE VII, and JOHN DOE VIII, )  
)  
defendants. )  
)  
) JUDGMENT DELIVERED:  
) April 13, 2022

**JOYAL C.J.Q.B.**

[1] In this Court’s reasons for decision delivered March 15, 2022, after finding that the \$327,200 payment constituted a civil bribe, the Court requested further submissions respecting how that payment could best be addressed as part of its award. Specifically, this Court questioned under which head of damages or as what part of the award that payment could be addressed.

[2] For the reasons that follow, I have determined that the \$327,200 payment to the Sheegl defendants should be treated as damages for breach of trust, which was a constituent part of the civil bribery committed against the City. In my view, the civil bribe received by the Sheegl defendants can be seen as having been held on constructive trust by them in favour of the City and that that amount is now payable by the Sheegl defendants to the City as the beneficiary of that trust.

[3] In determining how the \$327,200 ought to be addressed, I find that for context, the City’s Code of Conduct for Employees (the “Code of Conduct”) is of

assistance and has relevance on this issue. In particular, I note s. 4 of Part D of the Code of Conduct, which reads as follows:

4. No employee shall accept any gift, favour, commission, reward, advantage or benefit of any kind from any person who is directly or indirectly involved in any business relationship whatsoever with the City, unless it is:

- (a) a nominal exchange of hospitality among persons doing business;
- (b) a token exchanged as a part of protocol; or
- (c) a normal presentation made to persons participating in public functions.

Where an employee, as a result of the performance of his or her duties, receives or becomes entitled to receive any monetary payment, good, or service, that is outside the limits set out in this section, the employee shall turn over the monetary payment, good or service to his or her department head for such civic or charitable purposes as the department head may determine.

[emphasis added]

[4] It should be clear from my overall reasons and my penultimate determinations as found in the March 15, 2022 judgment, that the money paid as part of the civil bribe was paid and received to encourage and reward Sheegl for the breach of his duties. So while it might be true to say that Sheegl did not receive the bribe "as a result of the performance of his or her duties", it is nonetheless reasonable to have the City receive the amounts paid as they were paid pursuant to an untoward act of which the City was the victim.

[5] The City is right to remind the Court that Sheegl had a contractual duty to comply with the Code of Conduct, which duty he acknowledged in his examination. In my view, the \$327,200 payment (which is a monetary payment that would be well in excess of the nominal payments contemplated by s. 4 of the Code of

Conduct) must be turned over to the City. Sheegl was in fact, at all material times in a fiduciary relationship with the City. The requirements set out in s. 4 of the Code of Conduct are consistent with Sheegl's duty as a fiduciary to account to his or her principal for any secret profit obtained as a result of his or her position.

[6] The idea that the principal and/or victim of a civil bribe should receive damages in an amount equivalent to the bribe has been recognized in the jurisprudence. In that connection, I note the judgments in ***Enbridge Gas Distribution Inc. v. Marinaccio*** at both the appellate level (***Enbridge Gas Distribution Inc. v. Marinaccio***, 2012 ONCA 65) and lower court level (***Enbridge Gas Distribution Inc. v. Marinaccio***, 2011 ONSC 2313). In the appellate judgment, the Ontario Court of Appeal had occasion to address as one of the grounds of appeal the lower court's award of damages for bribery. The court noted at paragraph 43 of its reasons that "the measure of damages for bribery is generally the amount of the bribe or secret commission paid to the agent". I also note that in ***Enbridge*** at first instance, the Ontario Superior Court of Justice found that the appropriate remedy for bribery was to require those doing the bribery to pay to the victimized principal an amount equivalent to the bribe paid by the "bribers" to the principal's agent for which the two "bribers" were jointly and severally liable (see paragraph 33). In the present case, I adopt the City's earlier submission concerning the joint and several liability of the co-conspirators, Sheegl and his companies and Katz and his companies, who collectively received the \$327,200 payment.

[7] I also find guidance in the British Columbia Court of Appeal's decision in ***Insurance Corp. of British Columbia v. Dragon Driving School Canada Ltd.***, 2006 BCCA 584. In that case, in determining that the funds in question paid as a bribe took on the characteristic of a constructive trust, the British Columbia Court of Appeal also found that a principal whose agent had received a bribe or secret commission had a proprietary claim not only against the agent but also, for future reference, against the briber for the amount of the bribe.

[8] In opposing the City's submission with respect to the \$327,200 payment, the Sheegl defendants made a number of submissions respecting how the City's claim for damages could be affected by a potential contrary determination in a subsequent trial involving amongst others, Armik Babakhanians. In this connection, I will say only that it was the Sheegl defendants themselves who successfully moved for severance. In making their arguments for severance, they would have confidently addressed the potential issues and dangers raised at that time by the City respecting potential inconsistent verdicts, uncertainties and what might later be seen as incongruous findings. While I make no new comment with respect to my decision to grant severance or the City's initial objections to severance, it should be obvious that the Court can only address those parties that are currently before it by appropriately applying the governing law to the facts as the Court found them on the evidence presented in a given case. In that connection, this Court will not suspend or otherwise upend its own findings and

determinations based upon the conjectural and speculative submissions made by the Sheegl defendants concerning what might happen in a subsequent trial.

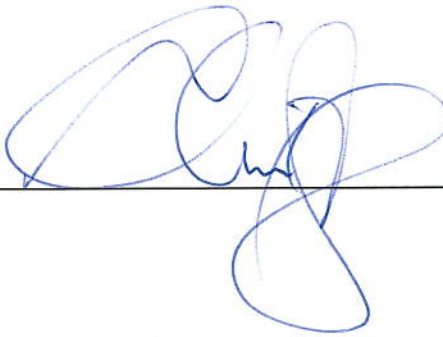
[9] Insofar as an argument has been raised by the Sheegl defendants with respect to Armik Babakhanians's interest in the property in question and how that may or should pre-empt an award of damages in respect of the amount in question, I say only that my determinations with respect to the land deal were clear and stark. I found the alleged land deal as it was put forward by the Sheegl defendants to be a falsehood. I also noted in my initial reasons as I will note now, that Armik Babakhanians has nowhere stepped forward and expressed on the record any interest in the land in question.

[10] As it relates to the \$327,200 payment, the Sheegl defendants have also raised an issue with respect to the exchange rate. In that connection, they argue that the payment was in U.S. dollars at a time when the U.S. dollar was essentially the same as the Canadian dollar and accordingly, say the Sheegl defendants, any sum paid, should now be paid in Canadian funds. I disagree.

[11] I have already indicated that in my view, the bribe received by the Sheegl defendants should properly be seen as having been held on constructive trust by them in favour of the City. I have also already noted that that amount is now payable by the Sheegl defendants to the City as the beneficiary of that trust. The City insists that as trustees of that money, the Sheegl defendants ought to pay \$200,000 in Canadian funds and \$127,200 in U.S. funds. I agree. If it is valid to conceive of the monies in question as having been held on constructive trust (as I

have determined it is), the City is correct in maintaining that there is no reason why the Sheegl defendants should receive any advantage in respect to current currency calculations of the value of funds or exchange rates.

[12] In the result, the \$327,200 payment to the Sheegl defendants (held on constructive trust by them in favour of the City), which was a constituent part of the civil bribery committed against the City, should be treated as damages for breach of trust and the payment of those damages should be made as identified above in paragraph 11.

A handwritten signature in blue ink, consisting of several large, overlapping loops and a central vertical stroke, positioned above a horizontal line.

C.J.Q.B.