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## Claims Against Related Non-Parties to a Joint Venture Agreement: What You Need to Know

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Parties who enter into joint venture / development agreements (“JDA”) are often contractually bound by dispute resolution processes, such as arbitration.

JDA's often require that, in the event of a dispute, the parties may only pursue relief by way of arbitration, rather than being able to resort to the Courts.

Canadian Courts are unwavering in holding the parties to their arbitration agreement. In the face of an arbitration clause, any Court action commenced by either party under the JDA will most likely be stayed, or dismissed.

But where one party to a JDA has a legitimate equitable claim beyond the contract against an entity related to its JDA partner, what remedies are available and how will the Courts handle that situation?

A recent decision from the Ontario Superior Court, Commercial List, *Bridlewood Finch Developments Ltd. v. 2372285 Ontario Ltd.*, 2022 ONSC 2546 (“*Bridlewood*”), illustrates that valid equitable claims against related parties to a JDA may proceed in Court with claims for equitable, statutory and common law relief.

For full disclosure, it should be noted that counsel for the plaintiff in *Bridlewood* included the authors.

### The Joint Development Project

*Bridlewood* involved a JDA between the plaintiff and the Defendant, 2372285 Ontario Ltd. (“JVP”), dated November 15, 2006, to develop condominiums projects on parcels of land that were part of an urban mall in Scarborough, Ontario (the “Mall”).

Title to the Mall was held by an affiliate of the JVP, with both JVP and Mall Owner under common

ownership and direction (jointly, the “Defendant Companies”). JVP was a party to the JDA, whereas the Mall Owner was not.

Ultimately, the condominium envisioned by the JDA was unsuccessful, each party blaming the other for that outcome.

JVP served the plaintiff with a Notice to Arbitrate pursuant to the JDA’s arbitration clause, seeking relief based on the alleged failure of the plaintiff to fulfill its obligations under the JDA (the “Arbitration”).

The plaintiff initially requested that JVP consent to adding the Mall Owner as a party to the Arbitration, so that the plaintiff could seek relief against both JVP and the Mall Owner for their alleged failure to fulfill their obligations under the JDA, but they refused to allow the Mall Owner to be joined as a party to the Arbitration.

Accordingly, the plaintiff commenced a civil action in the Superior Court, naming both JVP and Mall Owner as defendants (the “Action”), so that all claims could be heard in one proceeding.

In the Action, the plaintiff sought, as against the Mall Owner, a CPL against title to the Mall, an oppression remedy, and damages based on equitable claims of unjust enrichment and *quantum meruit*. The plaintiff further sought a trust interest in the Mall, based on these latter equitable claims.

In response to the Action, the Defendant Companies brought a motion to stay the Action either permanently, or temporarily.

### **Action Against Non-Party to Joint Venture Not Stayed**

On the Defendants’ motion, the plaintiff in *Bridlewood* acknowledged that the Action against JVP had to be stayed since the parties were bound by the arbitration clause in the JDA.

However, the Court granted the plaintiff a CPL against title to the Mall and refused to permanently stay the Action against the Mall Owner.

Noting that the doctrine of abuse of process should be applied “sparingly” to dismiss actions outright, the Court held that there were serious issues to be tried with respect to the plaintiff’s claim in the Action against the Mall Owner, even though it was not a party to the JDA.

The Court noted that the existence of the JDA itself (and the fact that Mall Owner was not a party to it) did not preclude a claim against the Mall Owner in the Action.

In legal phraseology, the JDA itself, as a contract between the plaintiff and JVP only, did not constitute “the absence of a juristic reason” for Mall Owner’s enrichment: *see generally Garland v. Consumers’ Gas Co.*, 2004 SCC 25, at para. 30.

The Court rejected the Mall Owner’s argument that, by entering into the JDA, the plaintiff and JVP agreed that *any* claims in respect of the joint venture would be governed by and limited to the JDA.

The Court held that while the existence of the JDA likely precluded a claim for unjust enrichment against JVP, which was a party to the JDA, the same reasoning did not apply to the Mall Owner, which was a non-party to the JDA:

First, there is no contractual agreement or other arrangement between [the plaintiff] and [Mall Owner] that would constitute a juristic reason as between these two parties.

... insofar as the contractual arrangements between [the plaintiff] and [JVP] are relevant, the [JDA] specifically contemplated that [the plaintiff] would undertake development activity on the property owned by [Mall Owner] and would thereby benefit [Mall Owner] until such time as beneficial ownership of the ... Lands was transferred to [the plaintiff] and [JVP].

... the [JDA] contemplated expressly that [the plaintiff] would undertake development activities for the benefit of [Mall Owner] with the intention that the lands so benefitted would be conveyed beneficially to [the plaintiff] and its joint venture partner as a consequence of that activity.

Similarly, the plaintiff's action for *quantum meruit* against Mall Owner was valid on the basis of the pleadings and evidence to date. According to the Court, the effect of the JDA was to obligate the plaintiff "to incur expenditures that would benefit [Mall Owner], even if [the plaintiff's] obligation was made in favour of [JVP]".

In the circumstances, the Court concluded that there were serious issues to be tried in the Action, namely the plaintiff's claims for unjust enrichment and by way of *quantum meruit*.

### Temporary Stay of Action

The Court held that the Action against Mall Owner should be temporarily stayed, pending the resolution of the Arbitration, on the basis that:

- Most of the plaintiff's claims were asserted against both JVP and Mall Owner and "are based in large measure on the same factual circumstances";
- A determination of the merits of the claims against JVP in the Arbitration "will also determine most of the issues in respect of the claims against [Mall Owner]". The determination of facts relating to the plaintiff's oppression and misrepresentation claims against JVP would be fundamental and "probably determinative of [the plaintiff's] claims of unjust enrichment and *quantum meruit* against" both Defendant Companies;
- The plaintiff was allowed to pursue any claims in dispute against Mall Owner after completion of the Arbitration; and
- The plaintiff would not be prejudiced by staying the Action against Mall Owner because the Court was willing to grant the plaintiff a certificate of pending litigation on title to the Mall to protect the plaintiff's interests.

On the motion, the Motion Judge considered and distinguished the application of the Supreme Court of Canada's decision in *Telus Communications v. Wellman*, 2019 SCC 19, which held that an arbitration agreement did not preclude non-parties to the agreement from seeking a remedy in Court.

### Why the Right to Claim Against Non-Parties Is Important

A number of important lessons emerge from the Court's reasoning in *Bridlewood*.

1. **A Valid Claim Against Non-Parties to a Joint Venture Agreement can be Pursued in Court.** The fact that Mall Owner was not a party to the JDA did not preclude the plaintiff from being able to proceed with equitable claims based on unjust enrichment and *quantum meruit* against Mall Owner. This is an important consideration in any venture where related parties under common ownership are employed, i.e., one to hold assets such as real estate and another being the operating entity. Equitable relief against non-parties to a joint development agreement remains the domain of the Courts, even where an underlying contract calls for arbitration between parties to the agreement; and
2. **Expect Any Action Against the Non-Party to be Temporarily Stayed.** The reasoning in *Bridlewood* is very much in keeping with the non-interventionist approach to arbitrations, adopted by Canadian Courts. While recognizing that the Action against Mall Owner gave rise to serious issues that needed to be tried in Court, the Motion Judge also held that there was no good reason that the Arbitration involving JVP ought not to proceed first.

In the face of an express arbitration provision in the JDA, the Court held that the Arbitration should go ahead, with the Court playing a parallel role in adjudicating claims in the Action against Mall Owner in equity, *after* the resolution of the Arbitration.

*Bridlewood* recognizes the pragmatic commercial realities of joint venture arrangements.

While the Courts are of course willing to enforce the contractual bargain between parties to a joint development agreement, including the requirement to arbitrate disputes, the mere existence of an arbitration clause in no way precludes equitable claims against non-parties to the agreement, especially where they are related to the joint venture partner.

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