

COURT OF APPEAL FOR ONTARIO

CITATION: Boyce Estate v. 2113626 Ontario Inc., (Hampton Inn and Suites),
2026 ONCA 323
DATE: 20260505
DOCKET: COA-25-CV-0970

Miller, Favreau and Rahman JJ.A.

BETWEEN

The Estate of Elizabeth Boyce

Plaintiff (Respondent)

and

2113626 Ontario Inc., c.o.b. as Hampton Inn and Suites* and Danny Bawa

Defendants (Appellant*)

Stephen Schwartz, for the appellant

Derek Sinko, for the respondent

Heard and rendered orally: April 30, 2026

On appeal from the order of Justice Andrew J. Spurgeon of the Superior Court of Justice, dated June 30, 2025, with reasons at 2025 ONSC 3844.

REASONS FOR DECISION

[1] The appellant, 2113626 Ontario Inc. (“211”), appeals a judgment finding that it was a common employer with 2170990 Ontario Inc. (“217”), and holding it liable, along with 217, for the wrongful dismissal of Elizabeth Boyce. We are satisfied that the motion judge made no errors and that the appeal should be dismissed.

[2] In 2009, Ms. Boyce was hired to be a manager at the Hampton Inn and Suites in Brantford, Ontario. The contract was to have a term of three years. Her employment was terminated five months after she started. Ms. Boyce brought a claim for wrongful dismissal against 217, and obtained an uncontested judgment for \$120,000. When it became evident that 217 would not satisfy the judgment, Ms. Boyce commenced a claim against 211 and Danny Bawa for wrongful dismissal. Ms. Boyce died before her claim could be adjudicated and her estate has continued the litigation.

[3] The motion judge granted summary judgment against 211 and dismissed the claim against Mr. Bawa. The motion judge found that 211 and 217 met the common employer test. He further found that the doctrines of *res judicata* and abuse of process did not prevent Ms. Boyce or her estate from pursuing a claim against 211. 211 submits that the motion judge erred in reaching these conclusions. We see no such errors.

[4] The motion judge articulated the correct legal test for determining that 211 and 217 are common employers. He made findings of fact that were available to him on the record. In particular, he made findings that both companies were jointly involved in running the hotel. He also found that both companies had a common intention to create a relationship of employment with Ms. Boyce. 211 essentially invites this court to reconsider and reweigh the evidence. Absent an extricable error of law, this court owes deference to the motion judge's findings of fact and to

his application of the common employer test to the evidence. 211 has not identified any palpable and overriding errors.

[5] We also see no error in the motion judge's determination that the doctrines of *res judicata* and abuse of process should not preclude the estate from pursuing this claim. 211 was not a defendant to the initial action and it therefore has suffered no unfairness in having to respond to this claim. In addition, in circumstances such as here, where 211 and 217 are closely tied entities and their relationship and roles were not easily discernable, it would be unfair to Ms. Boyce or her estate to preclude a claim against 211 once it became evident that 217 would not satisfy the judgment. The motion judge made no error when he concluded that the common employer doctrine is meant to "negate an artificial and unjust application of the *res judicata* doctrine in circumstances like this."

[6] The appeal is dismissed.

[7] As agreed between the parties, we award \$7,500 all inclusive in costs to the respondent on a partial indemnity basis.

"B.W. Miller J.A."
"L. Favreau J.A."
"M. Rahman J.A."