COURT OF APPEAL FOR ONTARIO

CITATION: Chanderpaul v. Caesars Convention Centre Ltd., 2026 ONCA 332
DATE: 20260511
DOCKET: COA-25-CV-0267

Huscroft, Coroza and Monahan JJ.A.

BETWEEN

Michelle Chanderpaul

Plaintiff (Appellant)
Respondent by way of cross-appeal

and

Caesars Convention Centre Ltd., c.o.b. as Throne Entertainment Venue, R.K.S. Investments Ltd., Rajesh Kaura and Kanta Kaura

Defendants (Respondents)
Appellants by way of cross-appeal

Ashu Ismail, for the appellant/respondent by way of cross-appeal

Matthew M.A. Stroh and Angela Yu, for the respondents/appellants by way of cross-appeal

Heard: October 23, 2025

On appeal from the judgment of Justice M.J. Lucille Shaw of the Superior Court of Justice dated January 27, 2025, with reasons reported at 2025 ONSC 558.

Coroza J.A.:

[1] The appellant, Michelle Chanderpaul was injured in a car accident. She was a passenger in a car driven by Aaron Ramrattan. Mr. Ramrattan was intoxicated at the time of the accident.

[2] The appellant brought claims against the respondents seeking damages for her injuries from the accident.[1]

[3] Prior to the accident, the appellant and Mr. Ramrattan were at Throne Entertainment Venue ("Throne"), a nightclub operated by Caesars Convention Centre ("Caesars"). Mr. Ramrattan was underage and used a fake ID to buy alcohol there. The claim against Caesars was based on the theory that it had overserved Mr. Ramrattan prior to the accident.

[4] Rajesh and Kanta Kaura (collectively, the "Kauras") are the directors and shareholders of Caesars. The Kauras are also the directors and shareholders of R.K.S. Investments Ltd. ("R.K.S."), which owns the property where Caesars operated. The appellant made several claims against the Kauras and R.K.S., including allegations that they negligently operated Caesars as a nightclub, failed to properly insure it, and took steps to wrongfully render Caesars judgment-proof.

[5] The appellant issued a consolidated claim against Caesars, the Kauras, and R.K.S. in December 2020.

---

[1] The appellant also commenced proceedings against the drivers of both vehicles involved in the accident. She settled these claims.

[6] Pursuant to r. 20 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the respondents brought a motion for summary judgment to dismiss the proceedings against them. In the alternative, the respondents sought to strike the pleadings pursuant to r. 21 of the *Rules*.

[7] With respect to the claim against Caesars, the motion judge found that the appellant had adduced admissible evidence to establish that Caesars had overserved Mr. Ramrattan. This claim was permitted to proceed.

[8] With respect to the claims against the Kauras and R.K.S., the motion judge dealt with four key issues. First, whether the claims were commenced after the expiry of the limitation period. Second, whether the appellant could pierce the corporate veil and hold the Kauras and R.K.S. liable for Caesars' alleged tortious conduct. Third, whether the claim against the Kauras personally for failing to obtain insurance was otherwise viable. And fourth, whether waiver of tort was a valid cause of action and disgorgement an appropriate remedy.

[9] The motion judge found that most of the claims were not statute-barred under the *Limitations Act*, 2002, S.O. 2002, c. 24, Sched. B, except for the claim against the Kauras personally for failing to obtain insurance for Caesars. However, the motion judge concluded that the appellant failed to establish that she could pierce the corporate veil and hold the Kauras and R.K.S. liable for Caesars' wrongdoing, both on the pleadings and on the evidence adduced at

summary judgment. She also determined that, even if the claim against the Kauras personally for failing to obtain insurance was not statute-barred, it was not otherwise viable. Finally, the motion judge recognized that waiver of tort is not a viable independent cause of action, and that disgorgement is an equitable remedy available only once a viable cause of action has been properly made out. No viable cause of action against the Kauras and R.K.S. had been made out here, so the remedy was unavailable.

[10] Accordingly, the motion judge dismissed the motion for summary judgment with respect to the claim against Caesars and granted summary judgment with respect to the claims against the Kauras and R.K.S.

[11] On appeal, the appellant argues that the motion judge erred in terminating her claims against the Kauras and R.K.S.

[12] The respondents bring a cross-appeal and argue that the motion judge erred in permitting the claim against Caesars to proceed.

[13] For the reasons that follow, I would dismiss the appeal and the cross-appeal.

I. HISTORY OF THE PLEADINGS

[14] The car accident took place on April 7, 2013. The appellant commenced proceedings against the drivers involved in 2014.

[15] In January 2015, the appellant added Caesars as a party to the action, on the theory that Caesars, carrying on business as Throne, was operating as a nightclub and overserved Mr. Ramrattan that night.

[16] Despite operating as a nightclub, Caesars was insured only as a “Banquet Hall – Facility Rental Only No Food and/or Liquor”. As such, the insurer refused to provide Caesars a defence or indemnity for the proceedings against it.

[17] In April 2015, without having filed a defence, Caesars was noted in default. After the default, the Kauras dissolved Caesars and its assets were sold at a loss.

[18] In December 2015, the appellant brought a second action, now adding the Kauras and R.K.S., alleging that they had operated Caesars with a reckless disregard for the safe service of alcohol, encouraged overserving, improperly acted to render Caesars judgment-proof by dissolving it after it was noted in default, and wrongfully maximized the profits for their personal benefit. The appellant sought accounting and the disgorgement of profits under the doctrine of waiver of tort, as well as punitive damages.

[19] The noting in default of Caesars was set aside in September 2019.

[20] In December 2020, the actions were consolidated. A claim against the Kauras personally was added to the consolidated action, alleging negligence in relation to the Kauras’ failure to properly insure Caesars.

[21] In June 2023, the respondents moved for summary judgment under r. 20 or, in the alternative, to strike the pleadings pursuant to r. 21 of the *Rules*. The motion was heard on April 29, 2024 and a decision was rendered on January 27, 2025.

II. ISSUES ON APPEAL

[22] The appellant raises the following issues on appeal:

(1) the motion judge erred in concluding that the appellant's pleadings were insufficient and not granting her leave to amend;

(2) the motion judge erred in concluding that the corporate veil could not be pierced and thus dismissing the claim against the Kauras and R.K.S.;

(3) the motion judge erred in concluding that the claim against the Kauras personally for negligently failing to obtain proper insurance for Caesars was statute-barred; and

(4) the motion judge erred in concluding that the Kauras did not owe a duty of care to ensure that Caesars was adequately insured.

[23] During oral argument, counsel for the appellant focused her submissions on the first two grounds of appeal.

[24] The standard of review is not disputed. These are appeals from orders made pursuant to rr. 20.04 and 21.01(1)(b) of the *Rules*.

[25] On a rule 21.01(1)(b) motion to strike, the standard of review is correctness: *Attis v. Canada (Health)*, 2008 ONCA 660, 93 O.R. (3d) 35, at para. 23, leave to appeal refused, [2008] S.C.C.A. No. 491. A claim will be struck on a r. 21.01(1)(b) motion only if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17.

[26] On a r. 20.04 motion for summary judgment, errors of law are reviewed on a standard of correctness. Errors of fact and errors of mixed fact and law are reviewed on a standard of palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.

III. ANALYSIS OF APPEAL

i. Insufficiency of the Pleadings

[27] The appellant submits that the motion judge improperly and unfairly disposed of her pleadings pursuant to r. 21 of the *Rules*.

[28] Importantly, the motion judge considered r. 21 only in relation to whether the appellant had pleaded sufficient facts to (i) pierce the corporate veil and hold the Kauras and R.K.S. liable for the wrongful conduct of Caesars; and (ii) hold the Kauras personally liable for failing to properly insure Caesars.

[29] The appellant argues that the respondents did not act promptly in bringing their r. 21 motion, and that the delay alone should have barred relief. Furthermore,

the appellant submits that once the motion judge concluded that the pleadings were insufficient, she ought to have given the appellant an opportunity to cure this deficiency by amending her pleadings.

[30] I reject both submissions.

[31] To begin, there was nothing procedurally unfair about how things unfolded before the motion judge. The appellant was on notice that the respondents had brought a summary judgment pursuant to r. 20 and that, in the alternative, the respondents also relied on r. 21 to strike the consolidated claim. She had every opportunity to respond to both rules relied upon by the respondents.

[32] As to whether the motion judge should have barred the respondents from relying on r. 21 because of the delay, the appellant has not persuaded me that this was a live issue in the court below. As noted above, the case had a lengthy history. The motion judge acted appropriately to expedite the matter.

[33] With regard to the piercing of the corporate veil, the motion judge was permitted to consider whether the corporate veil could be pierced in the context of a r. 21 motion: see *FNF Enterprises Inc. v. Wag and Train*, 2023 ONCA 92, 165 O.R. (3d) 401, at para. 30; *Ceballos v. DCL International Inc.*, 2018 ONCA 49, at paras. 11-12.

[34] The motion judge concluded that the appellant failed to allege specific misconduct on the part of the Kauras and R.K.S. Instead, the pleadings merely

referred to “the defendants” generally. This lack of specificity in the pleadings did not provide the necessary factual underpinning to justify piercing the corporate veil.

[35] Moreover, the motion judge did not dispose of this issue solely on the r. 21 motion. She went on to consider the issue as a summary judgment motion and similarly concluded that there was no genuine issue to be determined at trial:

> In the event the pleading is sufficient and the claims against Mr. and Ms. Kaura should not be struck at the pleading stage, I will consider the evidentiary record to determine if there is a genuine issue to be tried to determine if the corporate veil can be pieced and liability attached to Mr. and Ms. Kaura for the alleged wrongdoing of the corporations.

[36] Considering each respondent in turn, and assuming that the pleadings had been properly particularized, the motion judge found on the evidence adduced that there was still no genuine issue requiring trial.

[37] Given that the motion judge went on to apply the analysis from r. 20 in any event, I see no unfairness flowing to the appellant from the motion judge’s application of r. 21.

[38] With regard to whether the Kauras could be held personally liable for failing to insure Caesars, the motion judge had already determined that this claim was statute-barred. The r. 21 ruling was made only in the alternative. Again, I see no unfairness flowing to the appellant from the trial judge’s consideration of r. 21.

[39] Turning now to the issue of leave to amend, the appellant's submissions on this issue are misplaced.

[40] The motion before the motion judge was at its core a summary judgment motion pursuant to r. 20. The question before the judge on the motion was whether there was a genuine issue requiring a trial. That determination was based on the evidence that was tendered on the motion.

[41] As stated above, on both issues in which r. 21 was invoked, the motion judge made alternate findings that these claims either did not raise a genuine issue requiring trial or were statute-barred. In this context, the question of whether the pleadings could be amended was irrelevant. Amending the pleadings could not cure either a deficiency in the record or the belated issuance of a claim.

[42] Moreover, as a matter of general principle, a motion judge's decision to deny leave to amend involves the exercise of discretion and is entitled to deference: *Hartman v. Canada (Attorney General)*, 2026 ONCA 270, at para. 73. Where it is plain and obvious that a claim cannot proceed, there is no requirement that a motion judge grant leave to amend: see, e.g. *Abbasbayli v. Fiera Foods Company*, 2021 ONCA 95, at para. 29. The hurdle the appellant faces here is that there is nothing in the record that shows a viable path to amend her pleadings such that these claims could properly proceed.

[43] I reject this ground of appeal.

ii. Piercing the Corporate Veil

[44] The appellant next contends that the motion judge erred in failing to pierce the corporate veil to hold the Kauras and R.K.S. liable for Caesars' wrongdoing. While I find errors in the motion judge's analysis, I ultimately agree with her conclusion that the appellant did not properly plead the necessary facts nor adduce an adequate evidentiary basis to pierce the corporate veil.

[45] To situate the appellant's arguments, it is helpful to review the principles of piercing the corporate veil. Zarnett J.A. helpfully reviewed these principles in *FNF Enterprises*:

> Piercing or lifting the corporate veil is an equitable exception to certain statutory rules. Those rules provide that a corporation is a separate legal person (with the consequence that its property, rights, and obligations are its own, not those of the individuals through whom it acts) and that a shareholder is not liable for any act, default, obligation, or liability of the corporation: at para. 17. [Citation omitted.]

[46] In Ontario, the test for piercing the corporate veil was set out by Sharpe J., as he then was, in *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 28 O.R. (3d) 423 (Gen. Div.), at pp. 433-34, aff'd [1997] O.J. No. 3754 (C.A.): "courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct." See also *Yaiguaje v. Chevron*

Corporation, 2018 ONCA 472, 141 O.R. (3d) 1, leave to appeal refused, [2018] S.C.C.A. No. 255, at paras. 36, 65-71.

[47] As explained by Zarnett J.A. in *FNF Enterprises*, at para. 20:

> The first element of the *Transamerica* test requires not just ownership or control of a corporation, but complete domination or abuse of the corporate form. The second element requires fraudulent or improper conduct, and contemplates that it is that conduct that has given rise to the liabilities the plaintiff seeks to enforce. Where those two elements are present, the corporate veil will be lifted to prevent the person who engaged in that conduct from asserting that the liabilities the fraudulent or improper conduct gave rise to are those of the corporation only.

[48] The appellant did not specifically seek to pierce the corporate veil to hold the Kauras and R.K.S. liable for Caesars' alleged tortious conduct. However, on the motion, the respondents argued that the corporate veil would need to be pierced in order for the appellant to make out her claims, and that the appellant had not pleaded the facts nor adduced the evidentiary basis necessary to do so.

[49] Thus, in order to address the motion, the motion judge had to consider whether piercing the corporate veil was necessary and, if so, whether an adequate basis in the pleadings and the evidence had been established to pierce it.

[50] The motion judge agreed with the respondents that the appellant would need to pierce the corporate veil in order to hold the Kauras liable for Caesars' misconduct. The motion judge thoroughly canvassed the applicable law on

piercing the corporate veil, as set out above. The motion judge then found that the appellant's pleadings failed to disclose sufficient allegations to do so, and, even if they did, that the appellant had not adduced the requisite evidentiary record to make out this claim at the summary judgment stage.

[51] First, as stated above, the motion judge found that the appellant's pleadings, apart from the insurance issue, did not allege specific misconduct on the part of the Kauras and R.K.S. Instead, the pleadings merely referred to "the defendants" generally. This lack in specificity in the pleadings did not provide the necessary factual underpinning to justify piercing the corporate veil.

[52] Second, even accepting these non-specific pleadings as alleging specific misconduct by the Kauras and R.K.S., the alleged misconduct was not enough to pierce the corporate veil. In the motion judge's view, the alleged actions taken to render Caesars "judgment-proof" did not have a nexus with the appellant's injuries. The remaining allegations were directed at how Caesars was operated and alcohol was served on the premises. This was not conduct independent of the corporation, but rather part and parcel of the operation of the corporation itself. As such, according to the motion judge, the appellant failed to plead the necessary facts to assert a basis for piercing the corporate veil.

[53] In the alternative, the motion judge held that, even if the pleadings were sufficient and should not be struck, the evidentiary record adduced by the appellant

did not raise a genuine issue for trial as to whether the corporate veil could be pierced and liability attached to the Kauras.

[54] The motion judge observed that Ms. Kaura was not actively involved in the business of Caesars. There was no wrongful conduct on Ms. Kaura's part to support piercing the corporate veil against her. And, while Mr. Kaura worked as a manager at the nightclub, even if the motion judge were to accept the allegations about Mr. Kaura's wrongful conduct regarding the operation of Caesars, this was not conduct that supported a claim to pierce the corporate veil, because the evidence of wrongdoing adduced by the appellant was in connection to Mr. Kaura's role as directing mind of Caesars, and not the product of actions taken outside of that role. Finally, the motion judge held that R.K.S. could not be held liable, as it was a separate corporation and not a shareholder of Caesars.

[55] In light of these rulings, the appellant advances two submissions. First, the appellant submits that the motion judge erred by reasoning that the wrongful conduct was restricted to the purpose of the corporation at the time of incorporation. Second, the appellant submits that the motion judge erred in failing to consider whether the Kauras directed the corporation to commit wrongs that ultimately led to her injuries.

[56] On the appellant's first submission that the motion judge wrongfully restricted the wrongful conduct of the respondents to the corporation's purpose at

the time of incorporation, the appellant impugns the following reasoning of the motion judge:

> There is no evidence that Caesars was incorporated for an illegal or unlawful purpose. The evidence is that Caesars was incorporated to operate a business at the property. While there is a lack of clarity about when and for how long it operated as a banquet hall before opening as a nightclub, there is evidence that it applied for a liquor license and registered the name Throne before it began to operate as a nightclub. Ms. Chanderpaul's various allegations about how Throne was operated including claims about its failure to comply with the [*Liquor License Act*, R.S.O. 1990, c. L-19 (the "*LLA*")] and allegations that it encouraged the overconsumption of alcohol and failed to keep proper records and inappropriately contracted out the sale of liquor [are] not evidence that supports the allegation that Caesars was incorporate[d] for an unlawful [or] illegal purpose. [Emphasis added.]

[57] Standing on its own, I agree that this portion of the motion judge's reasons appears to reflect an overly restrictive reading of the second part of the *Transamerica* test. Certainly, the corporate veil may be pierced when the company is incorporated for an illegal, fraudulent or improper purpose: see *642947 Ontario Ltd. v. Fleisher et al.* (2001), 56 O.R. (3d) 417 (C.A.), at para. 68. But wrongful conduct is plainly not limited to the time of incorporation.

[58] Importantly, however, we cannot read this excerpt from the reasons in isolation. In other parts of her lengthy judgment, the motion judge clearly understood that the appellant's allegations of wrongful conduct went well beyond

the time of incorporation. Indeed, in a previous paragraph the motion judge said the following:

> To pierce the corporate veil, there must be a link or nexus between the alleged wrongful conduct by the individual director/officer/shareholder and the damages sought to be imposed by piercing the corporate veil. In this case, that is missing, save and except for any possible wrongful conduct as it relates to noncompliance with the *LLA* and the alleged overservice of alcohol. [Emphasis added.]

[59] Reading the impugned paragraph in context, the motion judge was evidently attempting to explain that she was not satisfied that Caesars was being used as a shield to facilitate unlawful or fraudulent conduct on behalf of the respondents. Although the motion judge did not specifically frame it in this way, we must read her reasons as a whole and in the circumstances of this case.

[60] In light of her lengthy review of the jurisprudence and thorough treatment with the issues raised by the parties, I see no reason to read the motion judge's reasons narrowly on this point.

[61] Second, the appellant argues that the motion judge did not consider whether the Kauras' directed the corporation to commit wrongs that ultimately caused her injuries. These wrongs included breaching the *LLA*, contracting out the sale of liquor, and encouraging excessive and underaged drinking of alcohol, in an assetless bar, without adequate insurance.

[62] As noted above, from my review of the reasons, the motion judge understood these submissions and considered whether this type of conduct could pierce the corporate veil.

[63] However, in addressing these submissions, the motion judge appears to have erroneously stated that, to meet the test from *Transamerica*, the fraudulent or improper conduct had to be taken by the respondents for a purpose outside of their role as directing minds, and had to be independently actionable as against them. The motion judge found no such independent purpose here, stating:

> The allegations with respect to the operation of Caesars and the alleged violations of the *LLA* including encouraging employees to overserve patrons and creating an environment to enable patrons of Throne to become intoxicated are not separate alleged wrongful acts of Mr. and Ms. Kaura as directors but related to the operation of the corporate defendant itself. [Emphasis added.]

[64] Later, in relation to Mr. Kaura, the motion judge went on to say:

> Even if I accept that there is evidence to support Ms. Chanderpaul's claims about the wrongful conduct of Mr. Kaura in the operation of Throne and the alleged wrongful conduct regarding the finances of Caesars, that is not conduct that supports a claim to pierce the corporate veil. Any evidence that supports breaches of the *LLA* and the operation of Throne is in connection with Mr. Kaura's conduct in his role as a directing mind of Caesars and not actions that are outside that role. [Emphasis added.]

[65] With respect, it is unclear what the motion judge meant in these paragraphs. Without explicitly saying as much, the motion judge seems to have imposed a requirement that, in order to pierce the corporate veil, the improper conduct must not be "related to the operation of the corporate defendant", and instead must be taken "outside" the role of directing mind.

[66] This is an error. The corporate veil can be pierced if those in control expressly direct a wrongful act to be done by the corporation, regardless of whether these acts are "related to the operation of the corporate defendant itself" or form "part of the role as a directing mind" of the corporation. The question is simply whether the corporate entity is completely dominated and controlled and whether "those in control expressly direct a wrongful thing to be done": *Fleisher*, at para. 68, quoting *Clarkson Co. Ltd. v. Zhelka et al.*, [1967] 2. O.R. 565 (Ont. H.C.), at p. 578. Any further requirements imposed by the motion judge were in error.

[67] This point was made clear in *Shoppers Drug Mart Inc. v. 6470360 Canada Inc. (Energyshop Consulting Inc./Powerhouse Energy Management Inc.)*, 2014 ONCA 85, 372 D.L.R. (4th) 90. In *Shoppers*, the motion judge erred by refusing to pierce the corporate veil despite evidence that the corporation's directing mind had misappropriated funds within the corporation. The motion judge refused to pierce the corporate veil because the corporation was not specifically used to avoid or conceal liability for the impropriety. As explained by Pepall J.A., this additional requirement that the corporation be specifically used to avoid or conceal liability

was imposed in error. The corporate veil can be pierced if those in control expressly direct a wrongful act to be done, regardless of whether the company structure was used to evade liability: at paras. 42-43.

[68] The motion judge made a similar error here. The appellant did not need to show that Mr. Kaura engaged in wrongful conduct outside the scope of his role as directing mind of the corporation, or for some purpose unrelated to the operation of the corporate defendant. Returning to the test from *Transamerica*, it was enough for the appellant to establish that Mr. Kaura exerted total domination and control over the corporation and used it as a shield for fraudulent and improper conduct – regardless of whether this misconduct was related to the purpose or operation of the corporation.

[69] Despite this error in the motion judge's analysis, I would nonetheless reject the appellant's argument on appeal, because I agree with the motion judge's ultimate conclusion that there was insufficient evidence of wrongful conduct on the part of the non-Caesars respondents to support piercing the corporate veil.

[70] The motion judge reviewed the relevant evidence led by the appellant on the summary judgment motion. The appellant relies on the following evidence to justify piercing the veil: (i) two advertisements promoting the sale of alcohol at the venue, including one for the night in question; (ii) photographs from events at the venue showing people dancing and holding alcohol; (iii) sales records from four servers

working at Caesars on the night of the accident; and (iv) an opinion from a forensic accountant that the documentation produced by the respondents was not adequate to ensure complete and accurate accounting and determine the revenue earned by Caesars on the night in question.

[71] The appellant asserts that, taken together, this evidence supports the conclusion there was uncontrolled movement of alcohol at the nightclub and the respondents were underreporting the amount of alcohol they were selling. In my view, this evidence falls short of meeting the test to pierce the corporate veil.

[72] This court has held that the test to meet to pierce the corporate veil is high. As Hourigan J.A. noted in *Yaiguaje*, at para. 70:

> [C]orporate separateness is the rule. Where the corporate form is being abused to the point that the corporation is not a truly separate corporation and is being used to facilitate fraudulent or improper conduct, the law recognizes an exception to this rule. It is important that courts be rigorous in their application of the *Transamerica* test because the rule is provided for in statute and stakeholders of corporations have a right to believe that, absent extraordinary circumstances, they may deal with the corporation as a natural person. [Emphasis added.]

[73] In my view, the appellant has simply failed to establish that this is one of those exceptional cases that would permit a court to pierce the corporate veil. The appellant did not put forward any evidence of systemic wrongdoing which would justify piercing the corporate veil. Using the language of Hourigan J.A. in

Yaiguaje, at para. 70, there was nothing in the evidence tendered before the motion judge to suggest that the corporate form was being "abused to the point that the corporation is not a truly separate corporation".

[74] The appellant had ample time to adduce the factual record in this case. The appellant was not entitled to sit back and rely on the possibility that more favourable facts would develop at trial. By the time of these motions, she was fairly expected to "lead trump or risk losing": *1061590 Ontario Ltd. v. Ontario Jockey Club* (1995), 21 O.R. (3d) 547 (C.A.), at p. 557. She did not meet that expectation.

[75] The appellant relies heavily on *Shoppers*. However, that decision reaffirms the basic principle that "only exceptional cases that result in flagrant injustice warrant going behind the corporate veil": at para. 43.

[76] In *Shoppers*, the evidence established that the sole shareholder of the corporation had misappropriated funds to his unjust enrichment. It was uncontroverted that he was the directing mind of the corporation, had sole signing authority over the corporation's accounts, and had "expressly directed and caused" the transfer of these funds for his benefit: at para. 45. In those circumstances, the corporate veil should have been pierced.

[77] The evidence here falls far short of the evidence in *Shoppers*. As summarized above, the appellant has adduced two advertisements, photographs that show people holding alcohol, sales records of four servers from a one-day

period, and a forensic accountant's opinion that it was not possible to determine the revenue of Caesars on the night in question. This evidence does not establish wrongdoing on the night in question, let alone reflect systemic broader wrongdoing that would suggest that Caesars was completely dominated and controlled and being used as a shield for fraudulent and improper conduct such that the corporate veil should be pierced.

[78] Therefore, while I agree that the motion judge erred in her analysis, applying the correct test I would still reach the same outcome. Accordingly, I reject this ground of appeal.

iii. Failure to Obtain Insurance

[79] The appellant's third and fourth issues may be dealt with briefly. Both issues arise out of the appellant's claim against the Kauras in their personal capacity, alleging that they negligently failed to properly insure Caesars. Again, these arguments were not pressed in oral argument.

[80] The motion judge found that the appellant's claim against the Kauras for failing to obtain the appropriate insurance for Caesars was statute-barred.

[81] In the alternative, assuming that the claim was not barred, the motion judge also found that claim did not disclose a viable cause of action because the appellant had not pleaded facts that would take the Kauras outside of their role as

corporate directors in obtaining insurance for Caesars. Thus, the pleadings failed to disclose a cause of action against the Kauras in their personal capacity.

[82] Moreover, even if these facts were pleaded, the motion judge ruled that the Kauras did not owe the appellant a duty of care to adequate insure Caesars, as insurance is obtained to protect the business, not third parties.

[83] The appellant's primary submission is that the motion judge erred in concluding that the claim against the Kauras personally for negligently failing to obtain proper insurance for Caesars was statute-barred.

[84] I do not accept this submission. In my view, there is no basis for appellate intervention on the trial judge's finding that this claim was brought after the limitations period had expired.

[85] The appellant adduced no evidence of when she learned that Caesars did not have proper insurance coverage to serve alcohol. Nevertheless, in reaching her conclusion that the claim was statute-barred, the motion judge found that the latest the appellant could have learned of the inadequate insurance coverage was in December 2015, when the appellant filed her second statement of claim, in which she alleged that the respondents "decided not to carry adequate insurance" as evidence that the Kauras and R.K.S. intentionally rendered Caesars judgment-proof and then used this protection to maximize their profits.

[86] Despite learning of Caesars' inadequate insurance coverage no later than December 2015, the appellant did not bring her claim against the Kauras until she filed her consolidated claim in December 2020, five years later.

[87] The appellant does not contest these factual findings, however she submits that the trial judge erred by applying an overly stringent or technical approach to this analysis, citing *Di Filippo v. Bank of Nova Scotia*, 2024 ONCA 33, at paras. 40-43.

[88] I disagree. The motion judge found that, even on the timeline most favourable to the appellant, she still did not did bring this claim against the Kauras within the applicable timeframe. I see no reason to disturb this finding.

[89] Given that there is no error in the motion judge's conclusion that this claim was statute-barred, it is not necessary to deal with the appellant's further argument that seeks to revisit the motion judge judge's alternative finding the Kauras did not owe a duty of care to the appellant to ensure that Caesars was adequately insured.

[90] I reject this ground of appeal. As such, in the result, I would dismiss the appeal.

IV. ISSUES ON CROSS-APPEAL

[91] The respondents, on cross-appeal, raise the following arguments:

(1) the motion judge erred in concluding that the claim against Caesars for overservice raised a genuine issue requiring trial; and

(2) the motion judge erred in finding that the claims against the Kauras and R.K.S. were not statute-barred.

[92] The respondents acknowledge that the second issue they raise need be addressed only if the appeal is allowed.

V. ANALYSIS OF CROSS-APPEAL

[93] As set out above, the motion judge determined that the claim against Caesars for overservice raised a genuine issue requiring trial and allowed the claim to proceed. The respondents submit that this was an error.

[94] The respondents argued before the motion judge that the action against Caesars for alleged overservice should be dismissed because: (i) the appellant failed to adduce admissible evidence of the alleged overservice; and (ii) the appellant failed to compel the driver to testify on the motion. The motion judge rejected both arguments.

[95] First, the respondents submitted that the evidence adduced by the appellant to establish overservice was inadmissible. The appellant adduced a report by a toxicologist retained by the appellant, opining that the driver of the vehicle was intoxicated at the time of the accident. The respondents argued that this report was inadmissible hearsay, because it relied on evidence from a report from a different toxicologist prepared in connection to the related criminal proceedings against the driver for impaired driving.

[96] The motion judge disagreed that the report was inadmissible hearsay. Relying on *R. v. Lavallee*, [1990] 1 S.C.R. 852, the motion judge concluded that the toxicologist's reliance on the other report did not render the report inadmissible but merely went to the weight to be given to the report. Even if the report carried minimal weight, it remained uncontroverted because the respondents had not filed a competing report.

[97] Second, the respondents submitted that the appellant failed to put her best foot forward because she did not compel the driver to testify on the motion.

[98] The motion judge disagreed on this point as well. The appellant had made considerable efforts to obtain evidence from the driver. The appellant served the driver with a summons to attend a court reporter's office so that a transcript of his evidence would be available for the motion, but he failed to attend. The appellant then hired a private investigator who attempted to get the driver to give evidence, but this too was unsuccessful. In light of these efforts, the motion judge found that the appellant should not be faulted for not providing any evidence from the driver.

[99] The respondents raise these same arguments again on cross-appeal. I see no reason to revisit them. I defer to the motion judge's conclusion that there is a genuine issue for trial as to whether Caesars overserved the driver on the night in question.

[100] Even if the motion judge erred in relying on the toxicology report, evidence was led that the driver had been served alcohol at Caesars that night and later pleaded guilty to driving with a blood alcohol level of over 80 at the time of the incident. This evidence may not carry the day at trial. However, in my view, this was enough to conclude that there was a genuine issue for trial regarding whether the driver was overserved at Caesars. I would defer to the motion judge's conclusion on this point.

[101] In light of my rejection of the appellant's appeal, it is not necessary to deal with the respondents' other argument.

[102] In the result, I would dismiss the respondents' cross appeal.

VI. DISPOSITION

[103] I would dismiss the appellant's appeal and fix costs for the appeal payable to the respondents in the agreed-upon amount of $10,000. Furthermore, I would dismiss the respondents' cross-appeal and fix costs for the cross-appeal payable to the appellant in the agreed-upon amount of $5,000.

Released: May 11, 2026 "G.H."

"S. Coroza J.A."
"I agree. Grant Huscroft J.A."
"I agree. P. J. Monahan J.A."