

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Nimish Patel et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 12AP-16
Krisjal, L.L.C. et al.,	:	(C.P.C. No. 07CVC-08-11206)
Defendants-Appellees.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on March 28, 2013

Porter, Wright, Morris & Arthur LLP, Craig R. Carlson and Ryan P. Sherman, for appellants.

Sanjay K. Bhatt, for appellee Krisjal, L.L.C.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} This case began as a tort action in the Franklin County Court of Common Pleas to recover funds diverted from a British company by persons acting in Kenya on behalf of an Ohio corporation that used the money to purchase land in Franklin County, Ohio. Plaintiffs later added a claim seeking to force judicial sale of the subject property. The trial court has refused to order a judicial sale and has granted summary judgment for the defendant in the tort action. Plaintiffs-appellants bring the following two assignments of error:

[I.] The trial court erred in granting Appellee's motion for summary judgment.

[II.] The trial court erred in denying Appellants' motion for summary judgment.

{¶ 2} As the above summary suggest, the facts and procedural posture of this case are neither simple nor typical. Appellants in this action are Mr. Nimish Patel and Mr. Bijal Shah, acting in their capacities as joint administrators of Jairaj Investments & Properties Ltd., a now-insolvent firm incorporated in England to serve as a real estate investment vehicle for its investing shareholders. Messrs. Patel and Shah hold their appointments (functionally equivalent to bankruptcy trustees under United States law) through a 2007 order issued by the High Court of England and Wales (hereinafter "the English court"), which oversees Jairaj's insolvency proceedings. After Jairaj's administration progressed to the point of "winding up" (liquidation) in 2008, their status changed from joint administrators to joint liquidators; for the sake of convenience and symmetry with the trial court proceedings in this case, we will continue to refer to them as "the administrators."

{¶ 3} Defendant-appellee, Krisjal, L.L.C., is an Ohio limited liability company with no apparent assets or activity beyond holding some undeveloped real estate that was purchased with funds transferred from Jairaj. Krisjal and Jairaj share some common owner-investors and a common promoter, Mr. Mukundroy Amin, whose alleged misdeeds animate much of the plaintiffs' narrative.¹

{¶ 4} The initial complaint in this matter, filed August 21, 2007, generally alleges that Mukundroy Amin and other individuals associated with Jairaj and Krisjal transferred one million British pounds from a Jairaj account to Krisjal on July 14, 1999, and that in August 1999, Krisjal used the funds to purchase real property in Dublin, Ohio. The general tenor of the complaint is that this transfer was unauthorized, surreptitious, without consideration to Jairaj, and beneficial only to Mukundroy Amin and certain favored Jairaj shareholders.

{¶ 5} The named plaintiffs consisted of the two joint administrators and five persons stated to be owner-investors of both Krisjal and Jairaj. These individual plaintiffs all share a common surname with one of the administrators and are therefore collectively

¹ In addition to the Krisjal transaction, the English court has before it allegations concerning an even larger transfer of Jairaj funds by Mukundroy Amin to another insolvent entity, Kruger Trading Ltd. Counsel for Jairaj in that case, whether by local custom or personal temperament, are even less restrained than their American colleagues in their characterizations of Mukundroy Amin's business practices: A document in the record of proceedings before the English court colorfully describes Mukundroy Amin as "profoundly dishonest and cunning. He has a propensity to inspire initial trust, later to be regretted." (Application for Summary Dismissal, at 6, appended to plaintiff's Oct. 20, 2009 Motion for Stay; R. 92.)

and confusingly referred to below as "the Patels." More confusingly yet, two of these individual plaintiffs, Milan Patel and Mahendra Patel, are characterized in various pleadings as being among those favored Jairaj shareholders who benefited from the transfer of funds to Krisjal. A footnote in one of the administrators' filings further reflects that the status of the individual plaintiffs was ambiguous from the outset: "The Administrators have never represented the Patels' interest in this or any other matter. The Patels were identified as Plaintiffs solely to make clear that the Administrators were asserting the rights and interests in Krisjal that had been assigned to them by the Patels." (Plaintiffs' Memorandum Contra Summary Judgment, at 6, fn. 2; R. 69). Fortunately, the five individual plaintiffs have long since dismissed their claims, and in fact did so before the trial court issued any dispositive rulings in the case, which simplifies the posture of the case upon appeal.

{¶ 6} The complaint alleges that the "misappropriated" £1 million continued to be represented in Jairaj's books as cash on deposit through 2002, thereby concealing the transfer, and that the first conclusive notice of the transfer resulted when a copy of Jairaj's bank statements were obtained in March 2007 in Jairaj's insolvency proceedings before the English court. The complaint further asserts that there is no formal documentation in Jairaj's administrative records relating to the transfer to Krisjal, and that there was no effective notification to Jairaj's shareholders and no resolution by the board of directors of Jairaj approving the transfer.

{¶ 7} The original complaint sets forth causes of action for fraud, misappropriation, conversion, and unjust enrichment. As a remedy, it seeks imposition of a lien or constructive trust on the real estate, a declaration of rights in property, and other emergency relief as may be necessary to protect Jairaj's rights.

{¶ 8} Krisjal answered the original complaint with a general denial and asserted various defenses, including an assertion that the claims were barred by the applicable statutes of limitations.

{¶ 9} On April 16, 2008, the five individual plaintiffs dismissed their claims. Krisjal filed a motion for summary judgment on December 23, 2008. Jairaj's administrators filed a memorandum contra. The parties traded motions to strike various evidentiary submissions, each asserting that the other's affidavits contained hearsay, were

improperly sworn, or were otherwise deficient. Jairaj's administrators also filed a request for a continuance, pursuant to Civ.R. 56(F), seeking additional time to procure discovery. While the trial court never explicitly ruled on this discovery motion prior to final judgment, it did not go forward with Krisjal's summary judgment motion because in October 2009, the administrators moved in the trial court to stay the case entirely pending resolution of Jairaj's insolvency proceedings before the English court. The trial court granted the general stay by order dated November 17, 2009. During this phase of the proceedings, the administrators also sought and obtained a contempt finding against Krisjal for delay and frustration of their discovery efforts. On April 20, 2009, the trial court found Krisjal in contempt and awarded \$8,080.06 in attorney fees to the administrators. The record bears no indication that this award has been satisfied, although the administrators concede that the specific discovery requests underlying the contempt have been resolved.

{¶ 10} On September 30, 2010, the administrators filed a motion in the trial court requesting that the court lift the November 2009 stay for the limited purpose of recognizing that Nimish Patel had been appointed liquidator of Krisjal itself, in addition to his role as liquidator of Jairaj. This appointment resulted from Krisjal's intervention into the Jairaj proceedings before the English court and a subsequent award of £65,000 in attorney fees in favor of Jairaj and against Krisjal. When Krisjal failed to pay this sum, the English court apparently deemed that Krisjal's intervention in the Jairaj proceedings sufficed to give the court plenary jurisdiction over this Ohio corporation. Despite the firm's lack of any significant British activity or presence, the English court placed Krisjal itself in liquidation at the behest of Jairaj as a creditor, and appointed Nimish Patel as Krisjal's liquidator effective November 24, 2009.

{¶ 11} In response to the administrators' motion, the court of common pleas entered an order "recognizing Mr. Patel's appointment and aiding in the execution and enforcement of Mr. Patel's authority under English law. Mr. Patel, as Liquidator, is authorized to take whatever actions with respect to Krisjal as are specifically authorized by English law." (Trial court's Oct. 5, 2010 order; R. 98.) Nimish Patel accordingly now claims to act as liquidator for both debtor and creditor (as the parties align in the English court), and tort defendant and plaintiff (as the parties stand before us in Ohio). In

keeping with the general incoherence of the case, he has made no move to advance the action by confessing judgment on behalf of Krisjal on the tort claims.

{¶ 12} On March 25, 2011, the administrators filed an amended complaint, styled as a "supplemental" complaint, repeating the prior claims and adding a particularized demand for money damages. This supplemental complaint also seeks an order compelling judicial sale of the subject real estate, and adds the Franklin County Treasurer as a new defendant holding a competing interest in the property due to unpaid taxes. Although this attempt to amend the claims in the original complaint was arguably out-of-rule, being filed long after the defendant had moved for summary judgment, Krisjal does not raise the point on appeal and we presume that the trial court intended to grant leave to amend the original complaint.

{¶ 13} On July 25, 2011, the administrators filed their own motion for partial summary judgment, seeking only to compel judicial sale of the property and recognize Nimish Patel's right, as liquidator of Krisjal, to distribute the proceeds pursuant to the results reached in the English courts. The administrators did not move for summary judgment on their tort claims.

{¶ 14} The trial court held an oral hearing on the administrators' motion on November 10, 2011. At this time, the court verbally indicated that, although the hearing was prompted by the administrators' recent motion for partial summary judgment, the court would reserve the right to rule on the long-pending December 23, 2008 motion for summary judgment filed by Krisjal with respect to the original tort claims.

{¶ 15} On December 6, 2011, the trial court rendered a decision that, indeed, did address both summary judgment motions. The trial court first denied the administrators' motion for judicial sale of the property and oversight of the proceeds, expressing reluctance to take conclusive action in this jurisdiction based upon incomplete proceedings in a foreign one: "[T]his court is giving full faith and credit to the English proceedings, but this Court has been presented nothing to support fraud, conversion, or misrepresentation. * * * There is no judgment in the United Kingdom against the Dublin, Ohio property (at least it has never been served on this Court) and there couldn't be because the United Kingdom Court has no jurisdiction over real estate in the United States. Moreover, this Court does have jurisdiction over real estate in Dublin, Ohio but

has issued no judgment or findings regarding the Dublin, Ohio property." (Trial court final judgment, at 3; R. 135-36.) The court did not otherwise address the scope of Nimish Patel's rights as liquidator of Krisjal and the extent to which the court might be prepared to enforce them.

{¶ 16} The trial court then proceeded to grant summary judgment in favor of Krisjal on the original tort claims brought by the administrators. The court found that these were barred by the applicable statutes of limitation based upon the lapse of time between the transfer of funds from Jairaj's account to Krisjal on July 14, 1999 (misdated by the trial court as July 14, 1990), the purported ratification of the transfer at a Jairaj shareholders meeting held in 2000, and the filing of the original complaint in August 2007. The court determined that the administrators' Civ.R. 56(F) motion seeking additional time to procure discovery was moot. The court then concluded by terminating the case entirely.

{¶ 17} This appeal presents three broad issues for discussion and determination: whether the trial court properly granted summary judgment on the original tort claims brought by the administrators, whether the trial court properly declined to recognize the judgment of the English court and thereby grant unfettered authority to Nimish Patel as a court-appointed liquidator for Krisjal, and whether the trial court erred in specifically declining to order the sale of the Dublin, Ohio property.

{¶ 18} Initially we note that this last issue is no longer before us. After the filing of this appeal, the administrators filed a "motion for leave to supplement the record on appeal or, alternatively, to take judicial notice of tax foreclosure action." This motion points out that during the pendency of this appeal, the Franklin County Treasurer has brought a separate action in the court of common pleas under case No. 12CVE-01-946, and foreclosed upon the subject real property as a result of Krisjal's failure to pay the pertinent real estate taxes. The administrators are named defendants in case No. 12CVE-01-946, and concede that this action by the county treasurer renders futile any attempt to correct error on the part of the trial court in the case before us when it refused to order such a sale.

{¶ 19} Despite the resolution of the property sale issue, the broader issue of recognition of Nimish Patel's powers as liquidator pursuant to his appointment in the

English court subsists, and the balance of administrators' second assignment of error will be addressed below in due course. We also note that the court in case No. 12CVE-01-946 has ordered that the proceeds of the property sale will be entrusted to the clerk of court to await the outcome in the case before us, and that our disposition of this appeal therefore impacts that case as well.

{¶ 20} Under their first assignment of error, the administrators raise several procedural and substantive arguments in support of their contention that the trial court erred in granting summary judgment for Krisjal on the original tort claims. Most directly, they argue that the evidence sufficed to maintain a genuine issue of material fact on whether their claims were time-barred. The administrators further assert that consideration of Krisjal's motion for summary judgment was stayed by the trial court in 2009, and then abruptly decided two years later without formally lifting the stay and without resumption of needed discovery or meaningful review of their long-pending Civ.R. 56(F) motion for additional time.

{¶ 21} This aspect of the matter was decided in the trial court by summary judgment, which under Civ.R. 56(C) may be granted only when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 629 (1992), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64 (1978). Additionally, a moving party cannot discharge its burden under Civ.R. 56 simply by making conclusory assertions that the nonmoving party has no evidence to prove its case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Rather, the moving party must point to some evidence that affirmatively demonstrates that the nonmoving party has no evidence to support each element of the stated claims. *Id.*

{¶ 22} An appellate court's review of summary judgment is de novo. *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994); *Bard v. Soc. Natl. Bank, nka KeyBank*, 10th Dist. No. 97APE11-1497 (Sept. 10, 1998). Thus, we conduct an independent review of the record and stand in the shoes of the trial court. *Jones v. Shelly Co.*, 106 Ohio App.3d 440, 445 (5th Dist.1995). As such, we have the authority to overrule

a trial court's judgment if the record does not support any of the grounds raised by the movant, even if the trial court failed to consider those grounds. *Bard*.

{¶ 23} The administrators first argue that the trial court erred procedurally by going forward with the summary judgment motion submitted by Krisjal some three years before. The administrators point out that this motion was subject both to the November 2009 stay entered by the trial court, and a Civ.R. 56(F) request for additional time for discovery. They assert that by acting on the motion in derogation of the stay and without allowing the administrators to proceed with further discovery, with or without benefit of further orders by the trial court to compel, the court granted summary judgment based upon incomplete discovery.

{¶ 24} With respect to the pending Civ.R. 56(F) motion, the trial court never ruled upon it and the administrators cannot claim any expectation of continuance based thereon. As a result, the administrators must demonstrate error on the part of the court in failing to grant the motion for additional time to complete discovery. The decision to grant or deny a Civ.R. 56(F) continuance is committed to the sound discretion of the trial court. *Tipton v. Tipton*, 2d District No. 2006 CA 131, 2007-Ohio-6346. We may not reverse absent a demonstrated abuse of discretion. *Id.* "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 25} Given that the trial court granted the administrators later motion for a general stay of the case in order to allow further progress in the related English proceedings, the administrators effectively received the delay they sought by Civ.R. 56(F) motion. They then declined to employ the intervening two-year delay to undertake the discovery that they now complain they lack. Instead, they chose to essentially abandon their tort claims and pursue recovery by other avenues based on Nimish Patel's new status as liquidator of Krisjal. ("At this point, the case changed. Mr. Patel was no longer pursuing the underlying tort causes of action. Instead, he sought recognition of his English court appointment and enforcement of his authority to sell Krisjal's property.") Appellant's brief, at 2. The administrators therefore cannot articulate any degree of prejudice from the trial court's decision to proceed and consider Krisjal's summary

judgment motion despite their pending Civ.R. 56(F) motion and, therefore, have not demonstrated error on the part of the trial court in this respect.

{¶ 26} For the similar reasons, the administrators cannot argue prejudice or surprise based upon the trial court's decision to implicitly terminate the November 2009 stay and go forward with Krisjal's long-pending summary judgment motion at the same 2011 hearing, at which the court addressed the administrators own recent motion for summary judgment. Given the passage of time, the avowed change in objectives by the administrators, and their own willingness to file both an amended complaint and a motion for partial summary judgment in derogation of the supposed stay, they could hardly complain that the trial court must allow older aspects of the case to linger while addressing newer pleadings filed by the administrators. The trial court did not err in deciding Krisjal's summary judgment motion when it did.

{¶ 27} Turning to the substance of the summary judgment motions, the administrators argue that the evidence submitted in support of summary judgment by Krisjal was in the form of affidavits that were either beyond the scope of personal knowledge of the affivants or simply constituted outright hearsay. The administrators also argue that their own affidavits presented in opposition of summary judgment are sufficient to establish genuine issues of material fact.

{¶ 28} The trial court granted summary judgment on the underlying tort claims because it determined that the applicable statute of limitations had run. It is undisputed that the transfer took place in 1999 and that in the summer of 2000, Mukundroy Amin arranged one or more shareholders meetings in Kenya, which were attended by some of the Jairaj shareholders. Among the items on the agenda for these meetings was a proposal to invest in hotel properties in the United States. The question presented is whether Jairaj through its directors or shareholders was made aware of the transfer at that time, or whether the transfer was concealed until insolvency proceedings brought it to light in 2007, and whether this concealment tolled the applicable statute of limitations. If the statute is tolled, the action can be maintained; if not, it is time-barred.

{¶ 29} We first address the claim for unjust enrichment, which falls under a different standard of viability and which we accordingly find is clearly time-barred on the face of the pleadings, without need to refer further to the evidence. An action for unjust

enrichment arises when a party retains money or benefits which, in justice and equity, belongs to another. *Liberty Mut. Ins. Co. v. Indus. Comm.*, 40 Ohio St.3d 109 (1988). Such a claim is subject to a six-year statute of limitations under R.C. 2305.07. *Drozeck v. Lawyers Title Ins. Corp.*, 140 Ohio App.3d 816, 823 (8th Dist.2000), citing *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 182 (1984). A claim for unjust enrichment accrues on the date which the money is wrongly retained. *Palm Beach Co. v. Dun & Bradstreet, Inc.*, 106 Ohio App.3d 167, 175 (1st Dist.1995). Therefore, if the administrators have an unjust enrichment claim, the claim accrued at the time of the 1999 transfer of funds.

{¶ 30} The statute of limitations for an unjust enrichment claim is not subject to equitable tolling or a discovery rule. *Ignash v. First Serv. Fed. Credit Union*, 10th Dist. No. 01AP-1326, 2002-Ohio-4395; *Binsack v. Hipp*, 6th Dist. No. H-97-029 (June 5, 1998). The complaint in the present case was not filed until 2007, more than six years after the transfer that gives rise to the claim. The administrators' unjust enrichment claim therefore fails on the face of the complaint, and summary judgment was appropriate.

{¶ 31} We now turn to the claims for fraud and conversion. Common-law claims for conversion and fraud are subject to the four-year statute of limitations defined in R.C. 2305.09. *Mattlin Holdings, L.L.C. v. First City Bank*, 189 Ohio App.3d 213, 2010-Ohio-3700 (10th Dist.). Unlike a claim for unjust enrichment, the discovery rule can act to toll the statute of limitations for claims for common-law conversion and fraud. *Cundall v. U.S. Bank*, 122 Ohio St.3d 188, 2009-Ohio-2523. The statute reflects this common-law rule and, pursuant to R.C. 2305.09(E), the time to bring an action does not begin to run until the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, a possible cause of action. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625.

{¶ 32} In support of summary judgment, Krisjal presented two affidavits and several purportedly authenticated documents to establish that Jairaj was actually or constructively aware of the transfer of funds to Krisjal by 2000, and that the statute of limitations must run from that time. The first affidavit is that of Mukundroy Amin. In this he avers that he was present at a Jairaj shareholder's meeting in Nakuru, Kenya in 2000. He avers that the transfer of £1 million to Krisjal was "thoroughly discussed" amongst the numerous shareholders present, including Dr. Vinubhai Patel, the chairman

of Jairaj. (Mukundroy Amin affidavit, at 1; R.66.) The transfer eventually was agreed upon as part of a plan to allow certain shareholders to cash out of Jairaj. Finally, the affidavit avers that Vinubhai Patel continued to serve as chairman until 2006.

{¶ 33} The second affidavit is that of Pratima Amin, Mukundroy's wife (or possibly now ex-wife; various filings before the English court suggest a divorce, while others deny it as a sham undertaken in connection with his personal bankruptcy). She avers that she was a signatory on Jairaj bank accounts in 1999, and executed the transfer order at the behest of Mahendra Patel, a director of Jairaj, with the approval of Vinubhai Patel. She states that Milan Patel, Mahendra's son and also a director, aided in executing the document.

{¶ 34} The third affidavit is that of James Mandeville, who avers that through his company MWM Accountants, he served as the outside accountant and auditor for Jairaj starting in 1998. Mandeville's affidavit is presented to authenticate two attached documents: The minutes of his meeting on March 21, 2007 with Bijal Shah, administrator of Jairaj, and a letter from Mandeville to Vinubhai Patel dated May 2, 2001. The affidavit avers that "[b]oth these documents have been duly signed by me and the contents of these documents are true to the best of my knowledge." (Mandeville affidavit; R.66.) Other than establishing that the company's outside accountant and auditor was aware of the transfer, these documents provide no further definite information regarding specifically which directors or officers of Jairaj knew of the transfer and when they were informed.

{¶ 35} The administrators argue that the affidavits of Mukundroy and Pratima Amin not only consist of inadmissible hearsay evidence, but are mere self-serving affidavits that cannot of themselves suffice to defeat summary judgment. We first address the administrators' arguments addressing the weight of "mere" self-serving affidavits by a party. An otherwise-competent affidavit is not invalid for the sole reason that it is executed by a party and submitted to aver facts in opposition to summary judgment. To the contrary, a party's affidavit is competent to create a genuine issue of material fact if the relevant factual assertions are made on personal knowledge. *Wolf v. Big Lots Stores, Inc.*, 10th Dist. No. 07AP-511, 2008-Ohio-1837, ¶ 12. To the extent, therefore, that these affidavits do not present mere conclusory assumptions but set forth matters within the

personal knowledge of the affiants, the trial court could consider them in support of summary judgment.

{¶ 36} With respect to the content of the affidavits, we agree with the trial court that these are not inadmissible hearsay. Both affidavits present, based on personal knowledge, evidence that the affiants informed directors and officers of Jairaj about the 1999 transfer to Krisjal. Pritima Amin states that she executed the transfer request to the bank at the request of Milan Patel, a director of the company. She also states that Vinubhai Patel, chairman of Jairaj, was aware of the transfer and approved it. Mukundroy Amin similarly attests that various members and directors of Jairaj were made aware of the transfer at the 2000 meeting in Kenya, where the question was "thoroughly discussed." (Mukundroy Amin affidavit; R. 67.)

{¶ 37} In support of their memorandum opposing summary judgment, the administrators presented two affidavits and numerous appended documents.

{¶ 38} The affidavit of Amar Desai, M.D., states that he is a shareholder and former director of Jairaj. He did not attend the June 2000 shareholders' meetings in Kenya. He never approved or consented to any investment in the United States by Jairaj, and was unaware of the transfer to Krisjal until it was brought to his attention in 2007.

{¶ 39} The affidavit of Nimish Patel primarily addresses the validity of his appointment as administrator. This is an issue not raised in the present appeal. The affidavit also describes his actions since his appointment and his interpretation of various company documents, including the minutes of shareholders' meetings and the annual financial accounts filed with British authorities. He also references and includes a copy of a "sworn witness statement" by Mandeville, apparently filed with the English court. Because these documents speak for themselves, and because Nimish Patel has no personal knowledge of company business prior to assuming his duties in 2007, the contents of his affidavit do not of themselves add to the evidentiary debate in the case.

{¶ 40} The sworn statement by Mandeville rather prudently details his personal nonparticipation in the actual transfer of funds, stating that he was unaware of the transfer until early 2000, when he prepared Jairaj's accounts for 1999. He then describes how the funds were treated on Jairaj's books:

It was agreed that the £1 million transfer would be shown as a deposit in the Company's accounts on which interest would be

paid by Krisjal on behalf of Mahendra [Patel]. My understanding was that this was because Krisjal was effectively Mahendra's company. However, no interest was actually paid. It was subsequently clear to me that this was not a cash deposit because the money was not going to be repaid to the Company. It was a loan. With hindsight I have to accept that the accounts could be described as misleading as they conceal the transfer of £1 million in 1999. I do however know that Dr. V A [Vinubhai] Patel was aware of the transfer.

(Mandeville Witness Statement, at 3; exhibit No. 5; R. 69.)

{¶ 41} In sum, the evidence presented by the administrators establishes that one shareholder who was not present at the meeting was ignorant of the transfer, that Mahendra Patel and Milan Patel had a distinct conflict of interest with respect to the transfer, and that both Jairaj's Chairman Vinubhai Patel and accountant James Mandeville were fully aware of the transfer by June of 2000. These propositions do not create a genuine issue of material fact regarding any tolling of the statute of limitations.

{¶ 42} "Knowledge obtained by a corporate director will be imputed to the entire corporation, when that information is obtained in the course and scope of employment and is related to a matter over which the director's authority extends." *American Mut. Share Ins. Corp. v. CUMIS Ins. Soc., Inc.*, 10th Dist. No. 08AP-576, 2009-Ohio-364, ¶ 24, citing *State ex rel. Nicodemus v. Indus. Comm.*, 5 Ohio St.3d 58, 59-60 (1983); *Hey v. Cummer*, 89 Ohio App. 104, 119 (8th Dist.1950); *London & Lancashire Indemn. Co. of America v. Fairbanks Steam Shovel Co.*, 112 Ohio St. 136, 149 (1925). See also, *Arcanum Natl. Bank v. Hessler*, 69 Ohio St.2d 549 (1982) (knowledge of corporate officers imputed to corporation); *Kreller Group, Inc. v. WFS Fin., Inc.*, 155 Ohio App.3d 14, 2003-Ohio-5393 (1st Dist.).

{¶ 43} Under the circumstances, the trial court did not err in finding that Jairaj as an organization must be imputed with knowledge no later than June 2000 of the transfer of funds to Krisjal in 1999. Even if we discount on the theory that both are tainted by their stake in Krisjal, the certainty that directors Mahendra Patel and Milan Patel were aware of the transfer because they orchestrated it, there remains no genuine issue of material fact that the company chairman, Vinubhai Patel, was aware of the transfer. Furthermore, accountant Mandeville states that the transfer was carried on the books as interest-bearing cash on deposit with Krisjal, and that the accounts were presented to

shareholders at the 2000 meeting. We accordingly find that the statute of limitations pursuant to R.C. 2305.09 is not tolled, and the matter is time-barred. The administrators' first assignment is overruled, and we find that the trial court did not err in granting summary judgment to Krisjal on the initial tort claims for fraud, conversion, and unjust enrichment.

{¶ 44} The administrators' second assignment of error represents their shift in focus through the course of this litigation. After first pursuing a tort claim seeking to recoup their money based upon the circumstances surrounding the initial transfer of funds, the administrators now seek to enforce their authority as granted by the English court to proceed with the liquidation of Krisjal, and through that process, recover the money on behalf of Jairaj as a creditor. For the moment their only explicit claim to payment arises from the English court's award of fees, but presumably the administrators can yet establish Jairaj's status as a creditor of Krisjal based upon financial accounting between the companies on the original £1 million transfer. To initiate this process, the administrators sought to force a sale of real property in order to reduce Krisjal's assets to liquid and distributable form.

{¶ 45} To achieve this end the administrators seek to apply principles of comity to give effect in Ohio to the powers granted under the order of the English court. Comity is " 'a principle in accordance with which the courts in one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation but out of deference and respect.' " *Kaur v. Bharmota*, 182 Ohio App.3d 696, 700, 2009-Ohio-2344, ¶ 7, quoting *Bobala v. Bobala*, 68 Ohio App. 63, 71 (7th Dist.1940). States are empowered, if they freely elect to do so, to recognize the validity of certain judicial decrees of foreign governments when they are found by the state of the forum to be valid under the law of the foreign state and when such recognition is harmonious with the public policy of the forum state. *Yoder v. Yoder*, 24 Ohio App.2d 71, 72 (5th Dist.1970). While the doctrine of comity reflects a recognition of the desirability of consistent and economical adjudication of disputes that may not always be confined by jurisdictional borders, an Ohio court's recognition of a foreign decree is a matter of courtesy rather than of right. *State ex rel. Lee v. Trumbull Cty. Probate Ct.*, 83 Ohio St.3d 369, 374 (1998). But see, *Asvesta v. Petroutsas*, 580 F.3d 1000 (9th Cir.2009), arguably defining a greater

degree of deference: The extent to which the United States, or any state, honors the judicial decrees of foreign nations is a matter of choice, governed by the comity of nations.

* * * Extension of comity to a foreign judgment is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. (Citations and internal quotations omitted.) *Id.* at 1010-11.

{¶ 46} While Ohio cases do not provide a standard of review upon appeal, federal cases suggest that we review the trial court's decision to grant or deny comity under an abuse of discretion standard: "This Court also reviews a district court's grant or denial of comity to a foreign judgment for abuse of discretion. * * * 'A district court abuses its discretion when the court fails to apply the proper legal standard or to follow proper procedures in making its determination.' " *Belize Telecom, Ltd. v. Government of Belize*, 528 F.3d 1298, 1301 (11th Cir.2008), quoting *Daewoo Motor Am., Inc. v. Gen. Motors Corp.*, 459 F.3d 1249, 1256 (11th Cir.2006).

{¶ 47} Our first conclusion on the comity question is that procedurally the trial court erred in terminating the case in toto after granting summary judgment to the defendant on the tort claims and denying summary judgment to the plaintiffs on their claim for judicial sale of real estate. Before the trial court was a three-year-old motion for summary judgment on the part of Krisjal. This motion did not address Nimish Patel's status as liquidator of Krisjal, since at the time of filing that motion he did not hold such powers. It was only subsequently that Messrs. Patel and Bijal, in addition to their position as liquidators of Jairaj, managed to obtain appointment of Nimish Patel as liquidator of Krisjal as well. It is apparent, therefore, that even if the trial court were to deny judicial sale of the property, it had before it no motion or other cause to abruptly and totally terminate the administrators' pursuit of their attempt to enforce Nimish Patel's rights as liquidator of Krisjal. On this basis alone, the case would require remand to the trial court for further proceedings.

{¶ 48} Beyond this, the administrators have put forth certain propositions on appeal that bear discussion. Most significantly, the administrators take the position that, once the trial court entered an order recognizing Nimish Patel's position as liquidator of Krisjal, it was bound to enter any order that he requested or required in pursuit of his authority granted by the English court. As the above-cited authorities make clear, comity

is accorded under a more nuanced standard. An Ohio court is not bound to enforce a foreign judgment when it is repugnant to the laws of the United States and Ohio or violates Ohio public policy. *Kalia v. Kalia*, 151 Ohio App.3d 145, 2002-Ohio-7160, ¶ 27-29 (11th Dist.), citing *Tahan v. Hodgson*, 662 F.2d 862, 864 (C.A.D.C.1981), and *Hilton v. Guyot*, 159 U.S. 113 (1895); see also, *State ex rel. Smith v. Smith*, 75 Ohio St.3d 418 (1996).

{¶ 49} Almost all of the numerous cases cited by the administrators involve proceedings in United States Bankruptcy Court. What these cases demonstrate, however, is that liquidation of a domestic corporation, pursuant to foreign judgments, typically takes place under far more direct oversight by the foreign court in question than what we have seen here. Typically, these cases go forward as ancillary proceedings in the United States when the principal liquidation takes place in a foreign court, or if both jurisdictions assert plenary powers, involve highly coordinated proceedings undertaken in parallel by the courts of two or more nations—often with the appointment of a special master to oversee that coordination. See, e.g., *In re Maxwell Communication Corp. PLC*, 186 B.R. 807 (S.D.N.Y.1995); *In re Griffin Trading Co.*, 270 B.R. 905 (N.D.Ill.2001); *Cunard Steamship Co. v. Salen Reefer Servs., A.B.*, 49 B.R. 614 (S.D.N.Y.1985).

{¶ 50} Appellants have put little before us to suggest that, having successfully petitioned for winding up of an Ohio corporation in an English court, they may then proceed as they wish with all the Ohio assets of that Ohio corporation, based solely upon a £65,000 debt established pursuant to a judgment of the English court. General principles of fairness and orderly opportunity to litigate would suggest that an Ohio court should be circumspect before delegating all authority over assets held in Ohio to a foreign-appointed liquidator. The trial court might be justified, for example, in awaiting a specific order from the English court that sets forth the accounting status between Jairaj and Krisjal regarding the original transfer of funds. More to the point, it is apparent in the present case that the trial court chose to never fully determine this aspect of the case in the first instance, and we are reluctant to do so on appeal based upon a partial record and development of the applicable law.

{¶ 51} With the matter thus reduced and the point of the case sharpened, we remand to the trial court for further proceedings to fully develop both the scope of the

administrators' rights, obligations, and powers under English law, and the extent to which this will govern the trial court's orders with respect to distribution of proceeds from the judicial sale. We further note that it is apparent that the foreclosure action brought by the Franklin County treasurer has gone forward under a different case number, and this will require coordination between these two separate actions before different judges in order to fully address the rights of the parties.

{¶ 52} In summary, the first assignment of error brought by appellants Nimish Patel and Bijal Shah is overruled because the trial court did not err in granting summary judgment in favor of appellee Krisjal, LLC, on their claims for fraud, conversion, and unjust enrichment. Appellants' second assignment of error is rendered moot in part and sustained in part, and the matter is remanded to the Franklin County Court of Common Pleas for further proceedings.

*Judgment affirmed in part
and reversed in part; cause remanded.*

KLATT, P.J., and TYACK, J., concur.
