



The Supreme Court concludes that claims against a company operating a Ponzi scheme are not statute-barred.

Joseph Lacasse owned and operated Golden Oaks Enterprises Inc, a rent-to-own residential property company. Lorne Scott, one of the appellants, was a real estate agent who was paid interest and commissions to recruit new investors. The company appeared to be successful, but, in reality, was a Ponzi scheme. A Ponzi scheme is a form of fraud in which existing investors are paid with funds collected from new investors. In this case, Mr. Lacasse lured investors to lend money to the company for unlawfully high interest rates, and then paid existing investors by recruiting new investors. The Ponzi scheme collapsed in July 2013. Doyle Salewski Inc. served as the “trustee in bankruptcy”. A trustee administers the property of a bankrupt person under the *Bankruptcy and Insolvency Act* (“BIA”). Salewski started legal proceedings against the investors to recover the illegal interest and commissions they were paid by Golden Oaks, arguing that they were unjustly enriched. The investors argued in response that the actions were statute-barred under Ontario’s *Limitations Act, 2002*, because Mr. Lacasse knew of the illegal payments when they were made. The *Limitations Act, 2002* says that legal proceedings generally cannot be started more than two years after the person making the claim knew or ought to have known of the claims. After that point, they become “statute-barred”.

The trial judge attributed Mr. Lacasse’s knowledge to the company. However, she found that the trustee’s actions against the company were not statute-barred for other reasons. She ordered the investors to return the illegal interest payments they had received. The investors appealed the trial judge’s decision, arguing that she had wrongly concluded that the actions were not statute-barred. The trustee also appealed the trial judge’s decision that Mr. Lacasse’s knowledge should be attributed to Golden Oaks.

The Court of Appeal did not accept the investors’ arguments, and agreed with the trustee that the trial judge should not have attributed Mr. Lacasse’s knowledge to the company. The Court of Appeal concluded that there are public interest reasons to ensure that those who benefitted from the Ponzi scheme could not avoid being held responsible in legal proceedings by attributing Mr. Lacasse’s knowledge to the company. The legal proceedings were therefore not statute-barred because Golden Oaks did not have the knowledge to bring the actions at the relevant time. The investors appealed to the Supreme Court, primarily on the grounds that Mr. Lacasse’s knowledge must be attributed to Golden Oaks, because it is a one-person corporation and the two are essentially the same.

The Supreme Court dismissed the appeal.

The knowledge of the sole officer and shareholder of Golden Oaks should not be attributed to the corporation.

Writing for the majority, Justice Jamal concluded that the trustee’s actions are not statute-barred by the *Limitations Act, 2002*. The principles of the corporate attribution doctrine, summarized in the companion appeal *Aquino v. Ernest & Young Inc.*, 2024 SCC 31, apply to one-person corporations. The corporate attribution doctrine must be applied purposively, contextually, and pragmatically to give effect to the policy goals of the law under which a party seeks to attribute to a corporation the actions, knowledge, state of mind, or intent of its directing mind. The Court of Appeal was therefore correct to conclude that Mr. Lacasse’s knowledge should not be attributed to the company. This would not have promoted the purposes of the *Limitations Act, 2002* or the *BIA*, which include avoiding the injustice of barring a claim before a person is able to make it, and ensuring a fair distribution of the bankrupt person’s assets and protecting the public interest.

Breakdown of the decision: *Majority:* Justice [Jamal](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Rowe](#), [Martin](#), and [O’Bonsawin](#) agreed). | *Concurring:* Justice [Côté](#) agreed that the appeal should be dismissed, but reached this conclusion for different reasons than the majority.

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